

TWENTIETH REPORT  
STANDING COMMITTEE ON SOCIAL JUSTICE  
AND EMPOWERMENT  
(2014-2015)

(SIXTEENTH LOK SABHA)

MINISTRY OF MINORITY AFFAIRS

THE WAQF PROPERTIES (EVICTION OF  
UNAUTHORISED OCCUPANTS) BILL, 2014

*Presented to Lok Sabha on 12.8.2015  
Laid in Rajya Sabha on 12.8.2015*



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COMPOSITION OF THE STANDING COMMITTEE ON SOCIAL JUSTICE  
AND EMPOWERMENT (2014-2015)

Shri Ramesh Bais – *Chairperson*

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# Nominated w.e.f. 22.12.2014.

## Nominated w.e.f. 29.1.2015.

\* Nominated w.e.f. 25.3.2015.

\*\* Shri Dilip Singh Bhuria expired on 24.6.2015.

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4. Smt. Shashi Bisht — *Executive Assistant*

## PREFACE

I, the Chairperson of the Department-related Parliamentary Standing Committee on Social Justice and Empowerment (2014-15) having been authorized by the Committee to present the Report on its behalf, do present this Twentieth Report of the Committee on “The Waqf Properties (Eviction of Unauthorised Occupants) Bill, 2014”.

2. The Waqf Properties (Eviction of Unauthorised Occupants) Bill, 2014 was introduced in Rajya Sabha on 18.2.2014 and was referred to the Standing Committee on Social Justice and Empowerment on 5.3.2014 for examination and Report. The examination and Report on the Bill, however, could not be completed due to announcement of General Elections, 2014 and subsequently the dissolution of 15th Lok Sabha. The Bill was again re-referred to the Committee by the Hon’ble Speaker, Lok Sabha on 16.9.2014 under Rule 331E(b) of the Rules of Procedure and Conduct of Business in Lok Sabha for examination and Report within the period of three months (*i.e.* by 16th December, 2014).

3. As the examination of the Bill could not be completed by 16th December, 2014, the Committee sought extension of time for presentation of the Report on the Bill upto end of the Budget Session of Parliament (*i.e.* May, 2015).

4. The Committee further wanted to hear the views of some more stakeholders and State Waqf Boards for detailed examination of the Bill during their study visits to Mumbai, Kolkata and Hyderabad in June, 2015. The Committee again sought extension of time for presentation of the Report on the Bill by the end of the Monsoon Session (July-August, 2015) of Parliament.

5. The Committee held four sittings during the course of examination of the Bill, *i.e.*, on 28.10.2014, 7.11.2014, 6.7.2015 and 10.08.2015.

6. The Committee considered the draft Report and adopted the same on 10.08.2015.

7. The Committee broadly relied on the following documents in finalizing the Report:—

- (i) The Waqf Properties (Eviction of Unauthorised Occupants) Bill, 2014.

- (ii) Background Notes and reasons for formulation and introduction of the Bill as received from the Ministry of Minority Affairs.
- (iii) Briefing by the Ministry of Minority Affairs, Ministry of Urban Development and Ministry of Law and Justice (Legislative Department).
- (iv) Views/suggestions and written replies received from the Waqfs Tenants Welfare Association, Delhi, Delhi Waqf Board and other State Waqf Boards.

8. The Committee also undertook on-the-spot study visits to Bengaluru, Chennai and Panaji in January, 2015 and Mumbai, Kolkata and Hyderabad in June, 2015 and interacted with representatives of the respective State Governments and State Waqf Boards of Karnataka, Maharashtra, West Bengal, and Andhra Pradesh.

9. On behalf of the Committee, I would like to acknowledge with thanks the contributions made by not only those who deposed before the Committee but also those who gave their valuable suggestions to the Committee through written submissions. The Committee have immensely benefitted by their inputs.

10. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

NEW DELHI;  
10 August, 2015  

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18 Shrawana, 1937 (Saka)

RAMESH BAIS,  
Chairperson,  
Standing Committee on  
Social Justice and Empowerment.



## REPORT

### CHAPTER I

#### CONCEPT, MEANING AND ORIGIN OF WAQF AND WAQF LEGISLATIONS

##### Introduction

1.1 The concept of waqf is rooted in Quranic injunctions and the Sunna of Prophet Mohammed dealing with charity. Islam's followers borrowed this concept of charity to set up the institution of waqf. It forms an important branch of Muslim Law for it is interwoven with the religious life and social economy of Muslims. Literally, waqf means endowment of moveable or immovable property by Muslims for the welfare of the poor and the needy and for maintaining properties dedicated to mosques, tombs, orphanages, shrines, imambaras and the like. The waqif (settler), in his deed, appoints a mutawalli (manager or caretaker) for the administration of the waqf. Waqf endowments can be made in any form as enshrined in Qazis Act II of 1864, the Waqf Act, 1995 as amended by the Waqf (Amendment) 2013 and Durgah Khawaja Saheb Act, 1995, Central Waqf Act of 1954, Waqf Amendment Act of 1959, UP Muslim Act of 1960 to name a few.

1.2 The Central Waqf Council is constituted by the Central Government under Section 9 of the Waqf Act, 1995 (**Annexure-II**), which has twenty members from a cross section of eminent persons. Despite such a wide representative structure in place, the properties of most of Waqfs in the country are mismanaged and misappropriated. The decisions of the State Waqf Boards are often challenged and several cases are pending either in Waqf Tribunals or in other Courts. As a result, Mansha-e-Wakif is getting totally ignored and encroachers, which include squatters, private businessmen and vested interests are holding the possession of the waqf properties. Even State and Central Government organizations and institutions are holding possession of many of the waqf properties. In this dismal scenario, a large number of registered Waqfs which were meant to uplift the poor and needy Muslims have not achieved their purpose for which they were created.

1.3 The Constitution of India has recognized the institution of 'Waqf' as a concept covering 'Trusts and Trustees' and 'Charities and charitable institutions, charitable and religious endowments and religious institutions' which is incorporated in entries no. 7 and 28, respectively of List III (Concurrent List) of the Seventh Schedule to the Constitution. Thus, both the Central and State Governments may make laws relating to Waqf.

1.4 Despite having statutory provision in the Waqf Act, 1995 for compulsory registration of Waqfs, the exact number of Waqfs in the country is still not available. On the basis of several surveys and registration of Waqfs, it is estimated that there are more than 4.9 lakh registered Waqfs spread over different States and Union Territories. Large concentration of the waqf properties is found in Uttar Pradesh followed by West Bengal. Other States with a sizeable number of Waqf are Kerala, Karnataka, Telangana and Andhra Pradesh. The total area under waqf properties all over India is estimated at about 6 lakh acres and the market value is approximately more than 1.2 lakh crore. Such properties, if managed and developed professionally, with a minimum annual return of 10%, would be capable of generating an income of Rs. 12000 crores per annum. The Government of India established the National Waqf Development Corporation with authorized share capital of Rs. 500 crores with initial paid-up capital of Rs. 100 crores to develop and protect invaluable Waqf properties in the country. The 35 State Waqf Boards in India stretching from Kolkata to Thiruvananthpuram are by no means a catchall welfare net. They are owners of huge properties and owe surprisingly little accountability to the constituents they purport to serve.

1.5 The Waqf Act, 1995, which came into force *w.e.f.* 1st January, 1996 throughout the country except the State of Jammu & Kashmir was passed by the Parliament to safeguard the large number of waqf properties in India. However, over the years that there are persistent problems of management of waqf properties especially due to encroachments and illegal occupation on them and inability of the State Waqf Boards (SWBs) in removing these encroachments from these properties.

1.6 Section 13 of the Waqf Act, 1995, mandates the State Government to establish a Board of auqaf to manage and regulate the waqf properties in the State while Section 32 of the Act provides that the general superintendence of all auqaf in the State vests in the Waqf Board. The major changes, which were brought in by the Waqf Act, 1995 are as under:

- (a) The Waqf Board of the State and Union Territory shall not have less than seven and not more than thirteen members of which majority will comprise members elected from among Muslim Members of Parliament, Muslim Members of State Legislature, Muslim Members from the Bar Council and Mutawallis of Waqf having an annual income of Rs. 1 Lakh or more. The nominated members will be from Muslim

organizations of State eminence, recognized scholars or Islamic theology (Shia and Sunni) and a representative of the State Government not below the rank of Joint Secretary in the State. One person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government. In a State where there are Shia Waqfs but no separate Shia Board, at least one of the members of the Board shall be a Shia Muslim.

- (b) Creation of the office of the Chief Executive Officer and distribution of power between the Waqf Board and the Chief Executive Officer.
- (c) The Chief Executive Officer is made subordinate to the Board. He shall be on full time basis and not below the rank of Deputy Secretary to the State Government.
- (d) Prohibition of lease of Waqf properties for more than thirty years.
- (e) Giving powers to the Chief Executive Officer for removal of encroachment from Waqf properties and enforcement of the order through the sub-Divisional Magistrate as per sections 54 and 55 of the Act.
- (f) Fresh survey of Waqf properties under section 4 and survey shall be completed within one year.
- (g) Establishment of three members Waqf tribunals.

1.7 A High Level Committee headed by Justice Rajinder Sachar was constituted on 9th March, 2005 to study the Social, Economic and Educational Status of the Muslim Community of India. The Committee presented its Report (known as Sachar Committee Report) on 17th November, 2006, highlighting various problems including those relating to waqf properties. One of the recommendations of the Sachar Committee was related to Waqfs, as notified in the Gazette to be treated as Public Premises as these properties are for the benefit of public and not individuals. The Committee observed that auqaf are meant for a large section of the Public. Some activities of the auqaf such as running of schools, orphanages, monthly financial assistance to the community, are philanthropic and secular in nature. Any encroachment on these properties should be treated as encroachment on Government Land. The Committee, therefore, recommended that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, should be applied to remove encroachment from the waqf properties.

1.8 The Joint Parliamentary Committee (JPC) on Waqfs was also constituted in January, 2006, to ascertain the Status of the implementation of the Waqf Act, 1995, and to suggest such amendments to the Waqf Act, 1995, as may be considered necessary, so as to achieve its objectives including retrieval of the waqf properties encroached upon. The Committee presented its Report to the Rajya Sabha on 4th March, 2008. One of the recommendations of the JPC was that all the State Governments may bring the waqf properties under the purview of the State Public Premises (Eviction of Unauthorised Occupants) Act for the purpose of removal of encroachment.

1.9 The Select Committee of Rajya Sabha on the Waqf Amendment Bill, 2010 in its report under “Additional (General) Recommendation” also recommended that “the relevant provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, may be incorporated in the Bill or alternatively the State bring legislation of their own to this effect”.

1.10 However, only the State Governments of Karnataka, Rajasthan and Tripura have included auqaf in their respective State’s Public Premises Act. The provisions contained in these States Public Premises Act have been observed to be more helpful in removal of encroachments from the waqf properties.

#### **Reasons for formulation and introduction of the Waqf properties (Eviction of Unauthorised Occupants) Bill, 2014**

1.11 The Section 54 of the Waqf Act, 1995, as amended by the Waqf (Amendment) Act, 2013, makes provision for removal of encroachment from waqf properties. However, it has been felt that the provision is not stringent enough to effectively deal with encroachments and illegal occupation of waqf properties.

1.12 The proposal was taken up with the Ministry of Urban Development. The Ministry felt that waqf properties are not owned or hired by the Government. Therefore, these cannot be covered under the Public Premises (Eviction of Unauthorised Occupants) Act 1971. Ministry of Law & Justice also advised that it is not legally feasible to include waqf in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

1.13 The matter regarding feasibility of bringing a new Stand-alone Legislation on the lines of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was taken up with the Ministry of Law & Justice, who advised that there is no legal or Constitutional objection in bringing such Legislation.

1.14 Thus, Ministry of Minority Affairs formulated “The Waqf properties (Eviction of Unauthorised Occupants) Bill, 2014” (**Annexure-I**) and introduced it in Rajya Sabha on 18.2.2014. The Bill was referred to the Standing Committee on Social Justice and Empowerment for examination and report. Meanwhile, Fifteenth Lok Sabha was dissolved and the Committee could not examine and submit their Report on the Bill.

1.15 The Speaker, Lok Sabha in consultation with the Chairman, Rajya Sabha, re-referred “The Waqf properties (Eviction of Unauthorised Occupants) Bill, 2014” as introduced in Rajya Sabha to the Standing Committee on Social Justice and Empowerment on 16 September, 2014 for examination and report.

#### **Aims and objectives of the Bill**

1.16 The present Bill seeks to address the following major issues:—

- (i) The Act will apply to waqf properties as well as the waqf properties of the Durgah Khawaja Saheb, Ajmer excluding the ancient monuments, archaeological sites and remains declared as protected monuments/archaeological sites/ remains by the Archaeological Survey of India.
- (ii) Statutory authority would mean the Waqf Board or Waqf or anyone acting on its behalf including Mutawalli.
- (iii) Unauthorised occupation would mean where such authorization has expired or determined.
- (iv) The Chief Executive Officer of the State Waqf Board would be the Waqf Estate Officer.
- (v) The Waqf Estate Officer after making enquiry would evict any person who is in temporary occupation of a waqf property. If such person refuses or fails to evict the waqf property, the Waqf Estate Officer may use force.
- (vi) The Waqf Estate Officer for the purposes of holding inquiry has been given power of Civil Court to summon any person, enforce attendance for examination of him and for discovery and production of documents etc.
- (vii) An Appeal shall lie before the Tribunal within 12 days from the order of the Waqf Estate Officer. Appeal shall be disposed of as expeditiously as possible.
- (viii) Every Order made by the Waqf Estate Officer or the Tribunal shall be final and not to be questioned in original suit or proceedings.

- (ix) Unlawful occupier of the waqf property shall be punished with punishment which may extend to six months imprisonment or fine upto Rs. 5000/- or both. In any subsequent unlawful occupation, the punishment has been extended upto 1 year or with fine of Rs. 5000/- or both. Offence under this Clause to be tried summarily.
- (x) Offence of unlawful occupation under the aforesaid Clause has been made cognizable for the purpose of investigation and arrest of person on the complaints of an officer of the Board equivalent to the rank of Group 'A' officer of the Central Government or such executive officer as may be appointed by the Board.
- (xi) Proceedings of recovery of arrears of rent, damages may continue against the legal heir or representative of the unauthorised occupants.
- (xii) Any portion of rent, damages, expenses or cost not paid, may be recovered as arrear of land revenue by the Collector with the certificate issued by the Waqf Estate Officer.
- (xiii) Jurisdiction of Court to entertain suit or proceeding has been barred in respect of eviction of unauthorised occupant, removal, demolition of any building or structure, sealing of work, recovery of arrear of rent, damages, cost and expenses etc. in relation to waqf property.
- (xiv) The Central Government may make rule for carrying out the purpose of the Act.
- (xv) The provisions of the proposed legislation shall be in addition to and not in derogation of the provisions of any other Law for the time being in force.

**According to the Ministry, the Bill after enactment, would ensure:**

- (a) Removal of encroachment from waqf properties and the income generated through these properties could be utilized for the benefit of the down-trodden, the poor and the needy;
- (b) Stop alienation of the waqf properties and to empower the State Waqf Boards in removal of encroachment; and
- (c) The role of State Waqf Boards gets strengthened in removal of encroachment from waqf properties and their development for enhancing the income which could be used for the benefit of the down-trodden, the poor and the needy amongst the community.

## CHAPTER II

### AMENDMENTS PROPOSED IN THE BILL

2.1 Some of the important amendments in “The Waqf properties (Eviction of Unauthorised Occupants) Bill, 2014” are as under:–

Clause	Heading	Clauses
1	2	3
1.	<b>Short title, extent, application and commencement</b>	<p><b>1(4)</b>–The Act will apply to waqf properties as well as the waqf properties of the Durgah Khawaja Saheb, Ajmer excluding the ancient monuments, archaeological sites and remains declared as protected monuments/archaeological sites/ remains by the Archaeological Survey of India.</p> <p><b>1(5)</b>–The provision of the Act may be made applicable to different States for different areas or different dates through notification in the official Gazette to be brought out by the Central Government.</p>
2.	<b>Definitions</b>	<p><b>2(b)</b>–‘rent’ means consideration payable periodically for the authorized occupation of the Waqf property includes electricity, water or any other services, any tax (by whatever name called) where such charges and taxes are payable by the Waqf Board.</p> <p><b>2(c)</b>–Statutory authority would mean the Waqf Board or Waqf or anyone acting on its behalf including Mutawalli.</p> <p><b>2(d)</b>–Temporary occupation of waqf property, authorized by the Waqf Board should be less than thirty days.</p>

1	2	3
		<p><b>2(f)</b>—Unauthorised occupation in relation to any waqf property would be under three circumstances (i) if it is in occupation without any authority; (ii) continuance of occupation by a person after the expiry of the original authority (under lease or any other mode of transfer); and (iii) determined for any reason whatsoever.</p> <p><b>2(g)</b>—Definition of waqf in respect of the present Bill (2014) gives further elaboration on the waqf definition in the Waqf Act 1995 as amended by Waqf (Amendment) Act, 2013 (<b>Annexure-II</b>) in or part of the building which include its surroundings. It says that Waqf would include garden, water bodies, grounds which appertain to such buildings or part of building and any fittings affixed to such buildings.</p> <p><b>2(h)</b>—Waqf Estate Officer would be the Chief Executive Officer appointed under Section 23 of the Waqf Act, 1995 which stipulates that he should be a Muslim, appointed by the State Government through Gazette notification and shall be ex-officio Secretary of the Board and under the administrative control of the Board.</p>
<p><b>3. Eviction from temporary occupation</b></p>		<p><b>3</b>—Unauthorised occupants of the waqf property, to be determined through an inquiry and due process including reason to be recorded in writing, can be evicted by the Waqf Estate Officer and for the purpose he can use force as may be necessary.</p>



1	2	3
4.	<b>Issue of notice to show cause against order of eviction</b>	<b>4(1) &amp; (3)</b> —Provides for issue of a notice to show cause against order of eviction giving at least 7 days to reply and appearing before the WEO for adducing evidence process of serving the notice has also been described.
5.	<b>Eviction of unauthorised occupants</b>	<b>5(1)&amp;(2)</b> —Provides for issuing orders of eviction by the WEO to the unauthorised occupant, after following due process, and recording reasons for such order and in case of its non-compliance within 15 days of notification, evict the person, if necessary by using force.
6.	<b>Power to remove unauthorised construction, etc.</b>	<b>6(1)&amp;(2)</b> —The clause prohibits (a) erecting or placing or raise any building or any movable structure or fixture; (b) displaying or spreading any goods; or (c) bringing or keeping any cattle or any other animal on or against or in front of any waqf property without permission. Here also the Waqf Estate Officer has the powers to remove the unauthorised construction in accordance with the laid down procedure and recover the cost of such removal from the person concerned as an arrear of land revenue.
7.	<b>Order of demolition of unauthorised construction</b>	<b>7(1)(2) (5), 8 &amp; 9 (1)(2)(4)</b> —Waqf Estate Officer can order demolition of unauthorised constructions or stopping of any erection on the waqf property, after following due procedure including serving of notice. He also has the power to seal the premises of any waqf property on which unauthorised construction/ erection has commenced.
8.	<b>Power to seal unauthorised construction</b>	

1	2	3
9.	<b>Disposal of property left on waqf property by unauthorised occupants</b>	After demolition, he may remove or cause to be removed or dispose of by public auction any property remaining in such property or materials, cattle or other animals. The proceeds of such auction/sale, after deducting the expenses of the sale, is to be paid to such person as may appear to the Waqf Estate Officer to be entitled to the same. The power to remove the seal has been given to the Waqf Estate Officer or the Waqf tribunal.
10.	<b>Power to require payment of rent or damages in respect of waqf properties</b>	<b>10(2) (3)</b> —Waqf Estate Officer may recover the arrears of rent, damages or cost payable in respect of any waqf property, in a specific time period and instalments, after giving proper show cause notice.
11.	<b>Power of Waqf Estate Officer</b>	<b>11(a)</b> —The Waqf Estate Officer shall for the purpose of holding an inquiry under this Act have the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 when trying a suit.
12.	<b>Appeals</b>	<b>12(1)(2)(3)</b> —An appeal may be made against every order of the Waqf Estate Officer made in respect of any waqf property under Section 5, or Section 8 of the Tribunal having jurisdiction area where such property is situated. Various time limits have been prescribed for filing appeals under the above referred sections.
13.	<b>Finality of orders</b>	<b>13</b> —Normally every order made by a Waqf Estate Officer or Tribunal under this Act shall be final and shall not be called in question in any original suit, applicable or execution

1	2	3
		proceedings and no instruction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.
14.	<b>Offences and penalty</b>	<b>14(1)(2)(3)</b> —If a person occupies a waqf property unlawfully, he will be punishable with suitable imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or both. However, a person simply overstaying after lawful occupation or any waqf property shall not be guilty of such offence. Also after eviction, repeat offence of unauthorised occupation shall be punishable by imprisonment for a term which may extend to one year or with fine which may extend to five thousand or with both. Apart from this, any other action under the law can also be taken.
15.	<b>Offences under section 14 to be cognizable</b>	<b>15(a)(b)(ii)</b> —The Code of Criminal Procedure, 1973 shall apply to an offence, under section 14 as if it were a cognizable offence with certain conditions.
16.	<b>Power to obtain information</b>	<b>16</b> —The Waqf Estate Officer has the power to obtain information relating to names and other particulars of the persons suspected to be in unauthorised occupation of the waqf properties.
17.	<b>Liability of heirs and legal representatives</b>	<b>17(1)(2)(3)</b> —Provides for recovery of the arrears of rent, damages, interest on arrears, due to the Waqf Board from the heirs and legal representatives of the deceased person against whom the claims are pending.

1	2	3
18.	<b>Recovery of rent, etc., as an arrear of land revenue</b>	<b>18</b> —If the Board is unable to recover the arrears of rent interest or costs payable under various sub sections of the Act from the person(s) concerned, the Waqf Officer may issue a certificate for the amount due to the collector for effecting their recovery as an arrear of land revenue.
19.	<b>Bar of jurisdiction</b>	<b>19(a)to(f)</b> —Courts shall not have jurisdiction to entertain any suit or proceedings in respect of the action taken or being taken under the various provisions of the Act.
20.	<b>Protection of action taken in good faith</b>	<b>20</b> —No prosecution or other legal proceedings shall lie against Waqf Board or Waqf Estate Officer or any other authorized officer in good faith.
21.	<b>Delegation of Powers</b>	<b>21</b> —Provides for delegation of powers by the Board through notification, exercisable also by such officers of the Board.
22.	<b>Power to make rules</b>	<b>22</b> —The Central Government have the powers to make rules in respect of devising forms for serving notices; holding inquiries; procedure to be followed in taking possession of Waqf property; assessment of damage for unauthorised occupation; sealing of any erection or work; rate of interest to be payable on arrears, manner in which appeals may be preferred, any other matter has to be or may be prescribed.
23.	<b>Act not in derogation of any other law</b>	<b>23</b> —The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law, for the time being in force.

## CHAPTER III

### ANALYSIS OF THE CLAUSES OF THE BILL, OBSERVATIONS AND RECOMMENDATIONS

3.1 The Waqf properties (Eviction of Unauthorised Occupants) Bill, 2014 according to its preamble, has been brought before the Parliament,

“to provide for the eviction of unauthorised occupants from waqf properties and for matters connected therewith or incidental thereto.”

3.2 On the rationale for bringing a standalone legislation for eviction of unauthorised occupants of waqf properties, especially when “The Waqf Act, 1995 as amended in 2013”, already provides for such provision, the Secretary, Ministry of Minority Affairs during evidence before the Committee submitted:—

“We conducted a survey wherein it was estimated that there is 6 lakh acres of waqf land and out of that already 40 per cent has been occupied illegally. And the other factor is that illegal possession is not the only issue it has two ramifications. It is community property occupied by anti social elements and they are taking individual benefit from it. Thus it is a crime against community. Many a times, it becomes the ground for dispute. Recently at many places tension erupted and criminal cases were filed.

Thirdly, intention of the person for donating this property to waqf was that it will be beneficial for community and public but it went into hands of a few people.

There are two issues in it. In the Sachar Committee report, it was thought that the purpose would be fulfilled, if Public Premises Act is applied on waqf property and five States namely Karnataka, Tamil Nadu, Tripura, Haryana and Rajasthan implemented it. But later on, the Ministry of Law and Justice opined that this may create a legal hurdle. Why only waqf property and why not ‘devsthan’ and property of ‘Gurudwara Prabandhak Samiti’. This may create a constitutional question also. Then Ministry of Law and Justice also advised that it is not legally feasible to include Waqfs in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Ministry of Urban Development too felt that waqf

properties are not owned or hired by the Government, these cannot be covered under the 1971 Act. Basically to remove illegal occupation and to make it neutral this public property may not be covered under Government property. Therefore, framing a standalone legislation, a special legislation, a security cover needs to be given to this property.”

3.3 The Secretary, Ministry of Law and Justice (Legislative Department)] supplemented the above view of the Ministry by stating that:—

“When this proposal was examined in Ministry of Law and Justice, two affordable options were suggested. The first is that a self contained chapter on eviction and encroachment may be included in Waqf Act. And the second is that a separate legislation may be framed.”

Stating that the provisions (Clauses 54, 55, 56) of the Waqf Act, 1995, were inadequate for solving the problem, the Secretary, the Ministry of Minority Affairs further informed the Committee that, “it was decided that such legislation may be brought as may be having an appropriate and simple procedure to evict unauthorised occupation on these properties. It has one more thing in the last provision. These provisions should be read with the provisions of Waqf Act, 1995. They will supplement each other so that coherency may be maintained in both legislations”.

3.4 When asked why cannot normal laws of the land take care of the waqf properties, the Ministry in their written reply informed as under:—

“Many of the waqf properties in the country are in illegal occupation. Unauthorised persons, Central or State Governments, Departments or institutions belonging to the local self Government have occupied these properties. It is estimated that waqf properties worth thousand of rupees have been illegally occupied or unauthorisedly encroached upon. There are a large number of cases where waqf properties have been encroached by unscrupulous elements and they cannot be evicted for want of effective legal provisions and law pertaining to waqf properties.

There is a need for legislation for removal of encroachments from waqf properties and for the development of these properties. The income generated through such properties would be utilized for the welfare of the downtrodden, the poor and the needy persons

belonging to the Muslim Community. The Sachar Committee also in its report has mentioned about the poor social-economic condition of the Muslims. The enhanced income by the development of these waqf properties will be used for the benefit of the weaker sections of the Muslim community. Further, this will be an affirmative action for the weaker sections within the meaning of Article 46 of the Constitution.

Section 54 of the Waqf Act, 1995 provides for removal of encroachment from waqf properties. CEO has been empowered to make an application to the Tribunal for grant of Order of eviction for removing such encroachment. It is still felt that the process may take longer period and can hinder in removal of encroachment. Thus, the provision in the Waqf Act, 1995 is time-consuming and not stringent enough to deal with the encroachment or illegal occupation of waqf properties.

Sachar Committee recommended that the “Public Premises (Eviction of Unauthorised Occupants) Act, 1971” should be applied to remove encroachments from the waqf properties. The Joint Parliamentary Committee on Waqf recommended that “all the State Governments may bring the Waqf properties under the purview of State Public Premises (Eviction of Unauthorised Occupants) Act for the purpose of removal of encroachment”. The Select Committee of Rajya Sabha to whom the Waqf (Amendment) Bill, 2011 was referred had also recommended that the relevant provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 may be incorporated in the Bill or alternatively the States produce legislation of their own to the same effect. The proposal was taken up with the Ministry of Urban Development and Ministry of Law & Justice. Both advised that on the lines of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, a separate legislation for removal of encroachment from waqf properties may be brought.”

3.5 Why should there be a separate law for eviction of unauthorised occupants of the waqf properties only, when it is the courts and police who will be deciding the appeals and enforcing the eviction orders respectively as done in cases of other property disputes, the Ministry in their written reply stated as under:–

“Sachar Committee suggested that any encroachments in these properties should be treated as encroachments on Government land. Therefore, the Committee had recommended that the “Public

Premises (Eviction of Unauthorised Occupants) Act, 1971” should be applied to remove encroachments from the waqf properties and arrears of rent at market rates should be recovered as arrears of land revenue.

The Joint Parliamentary Committee on Waqf in its 3rd Report presented to the Rajya Sabha on 4th March, 2008 had also recommended that “all the State Governments may bring the Waqf properties under the purview of State Public Premises (Eviction of Unauthorised Occupants) Act for the purpose of removal of encroachment.

The proposal was placed before the Ministry of Urban Development. They felt that Waqf properties are not owned or hired by the Government. Therefore, these cannot be covered under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Ministry of Law & Justice also advised that it is not legally feasible to include Waqf in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In view of this, it was decided to have a standalone Legislation to protect waqf properties from encroachments and alienation. Such a Law should lead to increase in the income through these properties which could be utilized for the benefit of the down-trodden, the poor and the needy”.

3.6 When asked, during evidence, to comment on the ‘encroachment’ aspect of the waqf properties, a representatives of the Central Waqf Council (CWC) submitted:—

“There are encroachments against which no litigation has been filed in true sense. Because process of law is too long. There are internal court cases, as may be seen in the case of CEO and ‘mutawalli’. We call that internal legal battle. External legal battle goes to the court. So the number of cases are 20,000 and they may take care of about 2 lakh properties. In one litigation ten to fifteen other points are added.”

3.7 On being asked to give some practical solution to the perennial problem of ‘unauthorised possession’ of waqf properties for a long tenure, especially by the Government Departments and influential persons, the Secretary, Ministry of Minority Affairs stated as under:—

“The basic issue was as to what is the way out in case of a property under Government possession or anybody else’s possession, it can’t be demolished. The eviction through litigation is a time consuming process. Sometimes this process takes time of generations



to complete. A provision of lease agreement as per the market value has been made in the Waqf Act. A provision has been made in respect of the Waqf rules that whatever are benchmarks of the Municipality or NDMC there, they may be made contemporary. There is a provision to make it contemporary. There are two points in this. The concerned law recognizes the 'Right of Adverse Possession' after a period of twelve years in case of a possession since long. Why should its market value be not realized and the money thus collected be utilized.”

3.8 Further, when asked as to why cannot the Muslim community take care of their properties themselves through charitable trusts on the pattern as being followed by other religious communities in the country, the Ministry, in their written note stated that “the Waqf Act, 1995 was enacted to provide for the better administration and supervisions of Waqf in country. Under Section 96 of the Act, Central Government is empowered to regulate the secular activities of the auqaf. For the purpose of this section secular activities shall include social, economic, education and other welfare activities.”

3.9 On a specific question regarding the existing arrangements for making the State Waqf Boards accountable to the Governments, the Ministry of Minority Affairs stated that “the Waqf Board in a State is constituted by the respective State Government. Further, the general superintendence of all auqaf vests in the Board established in the State. Section 26 provides that whenever the CEO considers that an order or resolution passed by the Board has not been passed in accordance with the Law or is in excess of or is an abuse of the powers conferred on the Board or its implementation is likely to cause financial loss to the Board/Waqf or lead to riot and danger to human life, he may refer the matter to the State Government and the decision of the State Government thereon shall be final. Also, while granting of lease of any property beyond one year, the same has to be intimated to the State Government immediately. The State Government has the power to issue directions to the Waqf Board in their performance of its functions and the Board has to comply with such directions. The State Government has also power to supersede the Board as defined under Section 99 of the Act. Under section 96 of the Act, the Central Government has the power to regulate secular activities of Auqaf.”

3.10 For proper understanding of the functioning and activities of the Waqf Boards and their financial status, the Committee wanted to know the sources of income of Delhi Waqf Board, a representative of the Board stated that “their source of income is (i) Grant from State Government, (ii) Income from rent, (iii) Income from advertisement, and (iv) Waqf contribution”.

3.11 The representative of the Board further explained that “the expenditure of the Board was downsized to match the income by restricting activities like capital work, filling of posts, etc. The earnings and expenditure figures of the Board during the last three years show that they don’t have enough funds even for running their day to day activities. Because of lack of funds they are unable to carry out many developmental activities. They have sent proposals time and again to State Government to give 100% grant to the Board and pleaded for Rs. 3 crore per annum to run their affairs”.

3.12 A large number of waqf properties are situated in the heart of a town/city and are commercially valuable assets of the Waqf Board and should be available for appropriate development and enhancement of revenue. Unfortunately, these are occupied by Corporations or third parties. When enquired how would such complex disputes be settled expeditiously without an effective methodology which is missing with most of the State Waqf Boards, the steps proposed to bring clarity, administratively as well as by legislation to improve State Waqf management and to check interference of State Governments/Minorities Department of State Governments in the affairs (including day-to-day affairs) of the Waqf Boards, the Ministry of Minority Affairs informed the Committee that effective checks and balances in the working of the State Waqf Boards are in place. The Ministry further informed the Committee as follows:–

1. The general superintendence of all auqaf, as per Section-32 of the Waqf Act, 1995, vests with the Waqf Board or the State. Further, the State Waqf Board are established by the respective State Governments. Therefore, the performance of the Boards should be checked by that State Government to monitor better administration of auqaf.
2. In the Waqf (Amendment) Act, 2013 (**Annexure-III**), it has been provided that the CEO shall be on full time basis, to be appointed by the State Government and who shall not be below the rank of Deputy Secretary to the State Government and in case of non-availability of a Muslim Officer of that rank, a Muslim Officer of equivalent, rank may be appointed on deputation. Therefore, now a person cannot be given additional charge and he cannot be below the rank of Deputy Secretary.
3. The Central Government as well as the State Government have the powers to intervene/regulate the activities of the Waqf Boards. In the Waqf (Amendment) Act, 2013, the role

of CWC has been enhanced from advisory to regulatory. Now under Section 9(4) of the Act, the CWC may ask for information from the Board on their performance, particularly of their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, Annual Report and Audit Report. The Council may also *suo-motu* call for information on specific issues from the Board, if it is satisfied that there was *prima-facie* irregularity or violation of the provisions of the Waqf Act. The Council may also issue directives to the Board and the Board has to comply with the directions.

3.13 The Committee, during their interaction with some Waqf Boards of States in connection with examination of the Bill, observed that despite wide powers and responsibilities given to the State Governments in the matter of Waqf administration under the Waqf Act, 1995, the State Governments have failed to monitor and regulate the activities of the Waqf Boards. Even Waqf Boards have totally failed in protecting the Waqf properties and enforcing the Waqf Act, 1995 in letter and spirit. The Committee found that Waqf Boards are mired in following major problems:—

- (i) Lack of proper infrastructure, inadequate and incompetent manpower and meager funds.
- (ii) Major activities of most of the Boards are limited only to appointment or removal of Mutawallis and Boards have been used for the purpose of political patronage by the ruling party.
- (iii) The documentation of the properties of Waqf institutions have not been properly classified by the Boards in the country. More so, valuable property documents have either been destroyed or removed and not at all properly preserved.
- (iv) Legal set up of almost all Waqf Boards is very weak and Boards are not in a position to defend legal suits filed against them because of their meager resources.
- (v) People were kept in dark about the existence of waqf properties in States and many persons in connivance with the Mutawallis or managers (who were in actual possession of all major waqf properties and treated them as their personal fiefdom) of the waqfs have grabbed or illegally occupied or sold the waqf properties. Even, unscrupulous staff of the Boards have allowed encroachment and illegal occupation in connivance with the Mutawallis. There is no vigilance staff in most of the Boards to keep a watch on waqf properties.

3.14 The Committee also found inaction by the State Governments too has resulted in pathetic condition of these Boards. The Committee noticed that:—

- (i) Inordinate delays in the constitution of Waqf Boards. Government machinery, particularly, the bureaucracy have neglected the Waqf Boards and not taken any interest in their monitoring.
- (ii) Though every State has a nodal Ministry, some even separate Waqf Ministry and they are supposed to monitor the working of these Boards, their activities, assist them in protection and development of waqf properties by issuing directions to the Boards under section 97 of the Waqf Act, 1995. However, State Govts. have barely shown any interest in the management of these Boards and development of waqf properties.
- (iii) The criterion defined in the Waqf Act, 1995 for appointment of Chairmen and members of Board has been blatantly violated and therefore, Boards have miserably failed to function as vehicle of protection and development of waqf properties.
- (iv) Majority of States have not appointed full time CEO resulting in the breakdown of the entire machinery of the Waqf Boards. More so, States have hardly considered the CEOs as important functionaries of the Boards.

**3.15 The Committee are of the considered view that all their above observations have direct bearing on the functioning of Waqf Boards and unless these basic issues are not only looked into but addressed too, the encroachment and unauthorised occupation of waqf properties cannot be removed by simply enacting this legislation. The Committee, therefore, strongly urge the Government to assert themselves and use their powers under section 96 (1)(a)(b)(c) and (2) of the Waqf Act, 1995 so as to keep an eye on and periodically check the activities of the Waqf Boards, call for reports from the Boards and not only suggest improvements but also issue directions as and when required regarding their functioning which the Boards are bound to comply.**

**Short title, extent, application and commencement**

3.16 Clause 1(4) of the Bill reads as under:—

“Nothing in this Act shall apply to any ancient monuments, archaeological sites and remains which is preserved, regulated or

protected under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the rules made thereunder, or any other law for the time being in force.”

3.17 The Committee received a suggestion from the Karnataka State Waqf Board stating that there are certain institutions like Masjid, Dargah, Ashoorkana and the land which belongs to these institutions which is used by the Muslims for offering prayers or Fateha or celebration of Moharram festival or urus etc. and therefore, provisions of this Clause should be made applicable to these institutions too. The Committee find the suggestion acceptable.

**3.18 The Committee hence desire that following proviso may be added to the above sub-clause appropriately:—**

**“Provided that where an institution has a Masjid or a Dargah or an Ashoorkana and the land belonging to such institution being used by Muslim community the provisions of this Act shall be applicable to such portions of land and buildings.”**

3.19 The Committee find that there are number of mosques which are under the control of Archeological Departments and offering of prayers by Muslims is not allowed there. On the other hand, these mosques are being used as cattle sheds, have become gambling dens, even used for drinking wine etc. in the absence of any safeguard and watch by the Government. In Metropolitan city of Delhi too, there are number of mosques around which Muslim habitats have come up.

The Committee, therefore, desire that in clause 1(4) of the Bill, after the words “archeological sites and remains”, addition of words “not being any mosque or place of worship” be considered.

3.20 Clause 1(5) states that:—

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

3.21 There was a suggestion before the Committee that the object of the Bill would be frustrated if the Act it not made applicable with

retrospective effect as the cases of unauthorised occupancy, which are already in existence would not be covered by it, if it is made effective with current date. When the Committee asked the Ministry to respond, the Ministry in their written reply stated as under:–

“The object of the Bill will not be frustrated if it is made effective from the current date. The reason being that an unauthorised occupant of waqf property, whether holding such property now or for decades, will be treated as an “unauthorised occupant” and action as envisaged in the Bill will be taken irrespective of the period of unauthorised occupation.”

**3.22 The Committee are satisfied with the reply of the Ministry. The Committee, however, expect that whatever be the dates of commencement of various provisions of this Act, the Waqf Boards of States will be in position to take back or evict the possession of their decades old properties which are under unauthorised possession not only by the State Governments but by the high-and-mighty as well.**

#### **Definitions**

3.23 Under Clause 2 (1)(b) of the Bill:–

“Rent”, in relation to any waqf property means, the consideration payable periodically for the authorised occupation of the property, and includes–

- (i) “any charge for electricity, water or any other services in connection with the occupation of the waqf property”.
- (ii) “any tax (by whatever name called) payable in respect of the waqf property, where such charge or tax is payable by the waqf or the Board.”

3.24 In the above Clause, the Government propose to include ‘electricity’ and ‘water’ charges also as part of rent. However, the Government have neither given any reason nor any rationale for including ‘water’ and ‘electricity’ charges in rent. The Committee have received several representations against it stating that water and electricity charges are never paid to the landlord or owner of the property but to the agencies/corporations providing these amenities. The Committee too have not come across any such statute where electricity and water charges are treated part of rent as these are directly paid to the service providers. More so, the Committee feel that Waqf Boards are neither agents nor authorized representatives of the concerned authorities or Corporations so as to collect these charges on their behalf.

3.25 The Committee are of considered view that ‘water’ and ‘electricity’ charges should not come under the definition of ‘rent’ as they are directly payable to the concerned authorities. The Committee, therefore, recommend that ‘water’ and ‘electricity’ charges should not form part of rent. Further, the Committee desire that definition of rent should also be covered in the Waqf Act, 1995 and defined in the Waqf Properties Lease Rules, 2014 as well where there is a provision to give waqf properties on rent or lease.

3.26 Clause 2(1)(f) of the Bill defines ‘unauthorised occupation’:-

“unauthorised occupation, in relation to any waqf property as, the occupation by any person of the waqf property without authority for such occupation, and includes the continuance in occupation by any person of the waqf property after the statutory authority, (whether by way of lease or any other mode of transfer), under which the person was allowed to occupy the property has expired or has been determined for any reason whatsoever.”

3.27 The Committee find that biggest problem in eviction of unauthorised occupants from waqf properties would be in cases where waqf properties have not been demarcated. In most of the cases, there is no demarcation/site plan. The demarcation is a must before proceeding against the encroachers. Orders of the Authorities cannot be acted upon because of their inability to identify the exact location of the property. The Revenue authorities also sometimes are unable to provide information, if records are old. Moreover, the Gazette notifications have become untenable in many cases. In many cases there are no entries in the revenue record reflecting Waqf character of the property. In such cases it becomes difficult to prove that the property in question is a waqf property and it exists at a particular point having a particular area.

3.28 When asked what steps have been taken by the Delhi Waqf Board for proceeding against the encroachers, a very grim picture emerged. The Committee were informed that the Board have initiated proceedings against the errants under section-54 of the Waqf Act, 1995. While, a total 989 eviction orders have been passed and about 120 police complaints have also been filed with concerned Police Station against the encroachers, 418 cases are still pending before the CEO for further hearing. Four waqf properties have been recovered by the Delhi Waqf Board during the last ten years.

3.29 The Committee find that there is no future usage or roadmap of the properties which have been encroached and the only object of the Government is to remove the encroachment. Asked about the difficulties

being faced by the Board, the remedial measures proposed and how the present Bill would address these issues, the Delhi Waqf Board in their written reply informed the Committee as under:—

“The problems were basically procedural in nature. After passing order by the CEO, the eviction order is sent for execution to the concerned SDM, under section-55 of the Waqf Act, 1995. The encroacher against whom the order is passed approaches Waqf Tribunal where cases are pending for a fairly long time without any decision. Even the SDMs do not execute the orders. The Board in some cases has approached High Court by way of writ for execution of its order. The situation has now changed considerably after the amendment in Waqf Act, in 2013. Now the CEO has to approach the Waqf Tribunal for getting eviction order passed after hearing both the parties, which again would be time consuming process. The order passed by the Tribunal shall be sent to SDMs for execution. Hence, the present Bill is being legislated on the line of Public Premises Act, which would be of immense help in removing encroachments and unauthorised occupants. However, even after eviction it is very difficult to protect the waqf properties from re-encroachments due to paucity of funds and infrastructure.”

3.30 The Committee also heard the views of the representatives of the Waqf Tenants Welfare Association, Delhi in the matter. They submitted that:—

“They are tenants for the last 60-65 years spanning over almost three generations now. None of them has ever defaulted...when we go to Board our tenancy is created which says you are created a tenant subject to payment of this and rent as this’. This is how things normally work and there is a period defined. Earlier period was not defined. When new agreements were made then it happened. How new agreements are made? If somebody in the family dies, his legal heirs are called by the Waqf Board and are asked to change the tenancy in their name first and then pay the rent. Whenever new agreements were made the rates were revised...there is no objection to it. This is agreeable to all tenants and members of Board as well. It is only the amendment Act or the rules which are creating problems. Act says tenancy can be upto 30 years.. it’s fine..but when they framed rules they did categorization (viz. Shopkeeper will get for 2-5 years, hospitals for 5-10 years etc.). If you segregate them like this then where will we go? Then they have mentioned that there will be no display of goods. If there is a shop and I am not allowed display the goods



I am selling then what do I sell and how? It is very difficult. Then they have also added a word movable-immovable structures and fixtures. Under fixtures there are chairs, table, fan, tube lights and even bulb. Tomorrow, you can object these things too. We cannot even make show-window neither raise platform. Under these restrictions how can we work? Sir, we are doing everything as per the law of the land. We are not doing any illegal business over there. All of them are paying VAT and taxes. So let us not demarcate all the commercial activities. They are commercial activities and all are paying taxes. We are legalized regular tenants of Delhi Waqf Board and are tenants for past more than 50 years. After the enactment of Waqf (Amendment) Act, 2013, the Delhi Waqf Board has stopped accepting rent on the plea that their tenancy or otherwise will be freshly determined as per the provision of the new law (present legislation). This, notwithstanding the fact that they are paying huge donations to the Waqf Board for which they have proper receipts. They have not been issued any show cause notice of being encroachers on the waqf land till date.”

The representatives of the Waqf Tenants Welfare Association, Delhi further added that:—

“In the proposed Bill, it has been suggested that after the death of the tenant, his legal representatives would be treated as unauthorised occupants, similarly whose tenancy has been terminated for any reason, he would also be treated as unauthorised occupant. The definition of unauthorised occupants, needs to be suitably amended. Nowhere in any Act, a person who is inducted as a legal occupier in any property cannot become an unauthorised occupant after death of original tenant.”

3.31 When the Committee wanted the Delhi Waqf Board to respond in the matter, Delhi Waqf Board in their written submission submitted as under:—

“The donation has not been received as a pre payment or advance, it is in the nature of penalty for violation of the terms and conditions of law/lease agreement from the tenants where tenancy has been transferred without the permission of DWB or where the encroachers have been made tenants for. The donation is condonation of violation of lease agreement... they had not accepted rent under the Waqf Act, 1995 on account of amendment in the Waqf Act, 1995, which came into force on 01.11.2013, so that fresh tenancies can be created in accordance with amended law and property Rules framed

there-under. However, later, they accepted the rent/license fee till new tenancy is created as per new rules. The Board also does not want to include these tenants in the category of defaulter/encroachers, if they (tenants) agree to pay minimum rent as required under the Waqf Act, 1995 as amended up-to-date and Rules framed there-under. The Delhi Waqf Board has passed a Resolution in this regard and in accordance with the said resolution, has give them first option to become tenants on fresh terms and conditions as provided under the Act. But none of them have come forward to execute new tenancy.”

3.32 When asked whether those tenants, who have been paying rent regularly for past many years and have also paid huge donations (to the extent of 25-40 lakhs and for which they have proper receipts also) time and again, have valid lease documents/agreement, can be called encroachers or unauthorised occupants, the Ministry of Minority Affairs categorically stated that “a person in possession of valid documents of waqf property from legal point of view, if permitted by the authority, is occupying the property, cannot be an unauthorised occupant”.

3.33 The Secretary, Ministry of Minority Affairs during his evidence further clarified the position as under:—

“The amended Waqf Act which came in 2013, states clearly how waqf properties can be given on lease or rent. The process has been described in the Act... old tenants will now be treated under this new Act. This will also be tested in a court of law as to what is their validity...2013 Act was brought only to check the irregularities being committed before that...we have described a procedure of inquiry in this Bill as to who is unauthorised and who is not. If anybody does not agree he can make an appeal...Sir, the provisions you are talking about (*viz.* type of rent to be paid, how it is to be paid etc.) have already been detailed in 2013 Act and it is of no use talking about it now as that Act has already been passed by Parliament...tenancy is not in perpetuity. Tenancy is neither hereditary nor in perpetuity. Tenancy is always for a period. You cannot claim that since I am using a property for 60 years, I shall not leave it or after my death it should be given to my children. You cannot claim that. That right does not accrue ever. Same is the case with waqf property. Even if you are using it for 50 years, 100 years or 200 years your right does not accrue on it...the period of lease is also limited. Lease also has a terminal period. If you are talking about practical problems, yes they are and I don't deny it.

If one's lease is valid then he is not unauthorised. In this Bill too, it is not that CEO will decide who is unauthorised and throw him out. He will serve notice first and in turn, the tenant will produce documents in his support and on that CEO will have to give speaking orders as to why he considers him to be an unauthorised occupant... waqf property is not meant for the welfare of a tenant, but it is for the welfare of the Muslim community...A tenant will have to pay the current rate...he can continue to be a tenant...There is a procedure how to renew the lease and under which, if he wants, he can continue to be a tenant...it is not necessary that he will be evicted but he will have to undergo the process time and again...he cannot claim it as his hereditary right... under the existing provisions he has been given first right of refusal... he will be first asked whether he wants to continue...if he refuses then only others will get the right..."

**3.34 The Committee find that there are large number of waqf properties in the country which are under unauthorised occupation not only by persons but by public and private institutions/ Departments/organizations as well. The Committee, therefore, recommend that in Clause 2(1)(f) after the words 'any person' the words 'or institution, public or private' be added. Similar addition may also be made wherever the word 'person' is repeated in the Bill in the context of unauthorised occupants. Similarly, the Committee further desire that the definition of unauthorised occupants, also needs to be suitably amended to the extent that if a person who is legally in possession of any waqf property cannot become an unauthorised occupant of that property after the death of the original tenant.**

3.35 The Committee observe that prime waqf properties in the country are under encroachment or under unauthorised possession by the State/ Central Governments/Departments and mighty private individuals who are not paying any rent or whatever rent they are paying, the same is either too less or almost insignificant. As a result, Boards are neither generating any revenue from these properties nor getting any significant rent there from. While on the other side, there are many legitimate small tenants of the waqf properties over so many years who are sincerely and regularly paying their rent which is revised by the respective Waqf Boards at regular intervals. Even huge donations have been taken from these tenants by the Boards time and again either to renew the lease or to change or transfer the tenancy. The Committee are in agreement with the contentions of the Waqf tenants Welfare Association, Delhi that any person/legal heir/nominee who has been inducted as a tenant, directly or indirectly by the Board and is paying rent regularly should not be treated as encroacher.

3.36 The Committee desire that all such tenants, specially of Delhi Waqf Board, who have never defaulted in paying rent to Boards and are legitimate tenants for past so many years may not be considered as ‘encroachers’. The definition of ‘encroacher’ should be as defined in Section 3 (ee) of the Waqf Act, 1995. Further, all these tenants may be offered first opportunity to renew/extend their existing lease agreement keeping in view that all these years they have faithfully followed the directions/guidelines of the Board and also abided by the decisions of the Board besides maintaining these waqf properties.

The Committee further find that all commercial activities are also proposed to be demarcated which is beyond their comprehension. In Committee’s view, a commercial activity is a commercial activity and there should be no demarcation or categorization of commercial activities. The Committee desire that Government must reconsider and revisit the issue.

### 3.37 Clause 2(1)(h)

“Waqf Estate Officer” means the Chief Executive Officer appointed under section 23 of the Waqf Act, 1995.

3.38 The Committee find that as per the provision of this Bill, CEO of the Waqf Board is also the Waqf Estate Officer. The provision of section 28 of the Waqf Act, 1995 which is untouched by the amending Act in 2013 states that CEO to act through Collectors whereas section 55 of the same Act, after amendment, states that the execution or orders passed under section 54(3) would be through SDM or Executive Magistrate. When the Ministry were asked to clarify the position, the Ministry in their written submission stated as under:—

“It is clarified that Section 28 of the Act was amended *vide* Waqf (Amendment) Act, 2013 and it now has provision that District Magistrate or in his absence, an Addl. District Magistrate or Sub-Divisional Magistrate of a District in the State shall be responsible for implementation of the decisions of the Board which may be conveyed through CEO Section 28 deals with the responsibility of the District Administration in implementation of the decisions of the Board. In Section 55 of the Act, CEO has been empowered to get the order of Tribunal enforced, given under Section 54(4) and not under Section 54(3) as mentioned in the questionnaire, through the Executive Magistrate. It is further clarified that while CEO will implement the decision of Board given under Section 28 through

District Magistrate or in his absence, an Addl District Magistrate or Sub-Divisional Magistrate of a District in the State, the enforcement of order given by Tribunal under Section 54(4) is implemented by CEO through the Executive Magistrate.”

#### **Eviction from temporary occupation**

3.39 Clause 3 of the Bill deals with procedure for eviction from temporary occupation of any waqf property while Clause 4 also deals with eviction of unauthorised occupation. Clause 3 reads as follows:—

“Notwithstanding anything contained in section 4 or section 5, if the Waqf Estate Officer, after making such inquiry as he deems expedient in the circumstances of the case, is satisfied that any person who was allowed temporary occupation of any waqf property or is in unauthorised occupation of the said property, he may, for reasons to be recorded in writing, make an order for the eviction of such person forthwith and thereupon, if such person refuses or fails to comply with the said order of eviction, he may evict him from the waqf property and take possession thereof and may, for that purpose, use such force as may be necessary.”

3.40 Further, Clause 4 (1) reads as under:—

“If the Waqf Estate officer is of the opinion that any person is in unauthorised occupation of any waqf property and that he should be evicted, the Waqf Estate Officer shall issue, in the manner hereinafter provided, a notice in writing calling upon such person to show why an order of eviction should not be made.”

3.41 The Committee find that while in Clause 3, an unauthorised occupation can be removed by the Waqf Estate Officer by an order of eviction, duly recording reasons in writing, however, there is no provision for issue of show cause notice as provided in Clause 4 of the Bill. The Committee are also of the view that the Waqf Estate Officer while using necessary force for eviction must take assistance of District Magistrate, Commissioner of Police or Superintendent of Police as the case may be to avoid any law and order problem.

Further, the Committee observe that no grounds have been mentioned for eviction in Clause 4. These grounds are neither there in the Waqf Act, 1995 nor in the rules made thereunder due to which a tenant is and will always be at the mercy of the Waqf Estate Officer or any other officer of the Waqf Board.

The Committee also find that seven days time to respond to show cause from the date of issue is too short and appears to be unjustified and should be in accordance with or on the lines as provided in the Code of Civil Procedure, 1908.

3.42 The Committee desire that in Clause 3 of the Bill after the words ‘for reasons to be recorded in writing’, the words ‘duly following the procedure laid down in Clause 4 of the Bill’, be added. Further, after the words ‘fails to comply with the said order of eviction’, the words ‘the Waqf Estate Officer or any other officer duly authorised by him’ be added. Similarly, after the words ‘use such force as may be necessary’, the words ‘with the aid and assistance of the District Collector, Commissioner of Police and Superintendent of Police of the respective cities and districts and the said authorities shall comply the orders of the Waqf Estate Officer for eviction of the encroacher over the waqf property within a stipulated time not exceeding 15 days from the date of eviction order’ be added.

The Committee are also of the considered view that the grounds for eviction of unauthorised occupation need to be clearly specified so that there is no ambiguity of any kind in the minds of such occupants. The Committee also find the period of seven days to show cause from the date of issue as stipulated in Clause 4(2)(b)(i) of the Bill as unreasonable. The Committee, therefore, desire that this period may be enhanced to 15 days from the date of service of show cause.

#### **Eviction of unauthorised occupants**

3.43 Clause 5 (2) reads as under:–

“If any person refuses or fails to comply with the order of eviction on or before the date specified in the said order or within fifteen days of the date of its publication under subsection (1), whichever is later, the Waqf Estate Officer or any other officer duly authorised by the Waqf Estate Officer in this behalf may, after the date so specified or after the expiring of the period aforesaid, whichever is later, evict that person from, and take possession of the waqf property and may, for that purpose, use such force as may be necessary.”

3.44 The Committee find that the above Clause does not specify the nature of force which is likely to be necessary and used by the WEO for eviction. The Committee feel that often in such evictions there

arise a law and order problem. The Committee, therefore, desire that in all such cases, eviction process may be carried out with the assistance of the District Collector, Commissioner of Police and Superintendent of Police of the respective cities and districts that too by exercising due restraint.

**Power to remove unauthorised construction, etc.**

3.45 Clause 6 (1) reads as under:—

“No person shall:—

- (a) erect or place or raise any building or any movable or immovable structure or fixture;
- (b) display or spread any goods”

Further, Clause 6 (3) states:—

“Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought or kept, on any waqf property, in contravention of the provision of sub-section (1) by any person, the Waqf Estate Officer may, by order, remove or cause to be removed without notice, such structure, fixture, goods, cattle or other animal as the case may be, from the waqf property and recover the cost of such removal from such person as an arrear of land revenue.”

3.46 The Committee feel that if any premises is given to any tenant for any lawful purpose, then the tenant is liable to display his goods to sell them. No tenant can run his business without either by displaying them or by spreading them and more so there should be no action too against the construction of movable structure in the shop. When the Ministry were asked to respond, they in their written submission, stated as under:—

“The reference made in section 6(1)(b) regarding ‘display or spread of any goods’ *inter-alia* pertains to goods displayed outside the boundary of the leased shop/premises. Such display or spread of goods will amount to encroachment of public place and has to be removed. However, goods will not be removed if these are displayed within the allocated area.”

**3.47 The Committee find that erection of movable structure and fixture is not permissible. According to them, all structures which**

are movable are not illegal in any Municipal Building Bye laws. A shopkeeper requires certain movable structures in his shop such as show window, showcase, display boards, sign boards, cupboards, racks, counter(s) and other such movable items as necessary for his trade requirements. Similarly, for shop purpose certain furniture, fixtures and fitting are required and are necessary too. Further, a shopkeeper cannot do business without displaying or spreading the goods and therefore, action against such construction of movable structure and display or spread the goods appears unjustified. In the Committee's view, no shopkeeper can run his shop/business under so many restrictions and in such a watertight compartment. The Committee, therefore, desire the Government to reconsider all these small but very important issues from the point of view of the shopkeepers so as to give them desired flexibility in doing their business.

3.48 Clause 7(5) states as under:—

“Where an erection or work has been demolished, the Waqf Estate Officer may, by order, require the person concerned to pay the expenses of such demolition within such time and in such number of instalments, as may be specified in the order.”

3.49 The Committee find that sub-section (5) of Clause 7 states that WEO may by order require any person whose erection or work has been demolished to pay the expenses of such demolition within such time and in number of instalments as may be specified in the order. The mode of recovery has, however, not been specified. The Committee desire that at the end of the said Clause the words “On failure of payment of such expense, the cost of such removal shall be recovered from the person as arrear of land revenue” may be added.

**Disposal of property left on waqf property by unauthorised occupants**

3.50 Under Clause 9 (1)&(2), the Waqf Estate Officer is required to publish the notice in at least one newspaper having circulation in the locality before passing orders under various sections.

3.51 In Committee's view these conditions are unnecessary because a number of waqf properties are situated in rural areas and villages where no newspaper has any circulation. The Committee, therefore, feel that this condition of publication of the notice in the newspaper is superfluous and desire that the same may be deleted. Needless to say, once this condition is dispensed with, sub-Section (3) of Clause 9 too becomes redundant.



3.52 Clause 9(4) reads as under:—

“Where any property is sold under sub-section (1), the sale proceeds thereof shall, after deducting the expenses of the sale and the amount, if any, due to the Waqf or Waqf Board on account of arrears of rent or damages or costs, be paid to such person as may appear to the Waqf Estate Officer to be entitled to the same:

Provided that where the Waqf Estate Officer is unable to decide as to the person to whom the balance of the amount is payable or as to the apportionment of the same, he may refer such dispute to the civil court of the competent jurisdiction and the decision of the court thereon shall be final.”

3.53 The Committee find that sub-Section (4) of Clause 9 the Waqf Estate Officer has been enabled to refer disputes regarding removal or disposal of any property remaining on waqf property, disposal of goods, materials, cattle or other animals removed from any waqf property to a civil court of the competent jurisdiction. Whereas, Section 19 of the Bill has taken away jurisdiction of any court in respect of such matters.

#### **Power of Waqf Estate Officer**

3.54 Clause 11 states that a Waqf Estate Officer shall, for the purpose of holding an inquiry under this Act, have the same powers as are vested in civil court under the Code of Civil Procedure, 1908.

3.55 The Committee observe that WEO has been vested with powers of courts without prescribing any legal qualification for him. Further, the Committee during their interactions with the CEOs of various Waqf Boards found them either ill informed or limited knowledge of waqf properties besides not possessing the requisite experience.

3.56 When asked why can't WEO be necessarily taken from All India or Central Services directly recruited through UPSC taking into account the quantum of land of Waqf Boards under encroachment, in dispute, in litigation, etc. besides the quantum of money involved. More so, most of the Waqf Boards too are of the same view. Even Sachar Committee were also of the similar opinion. The Ministry in their written reply furnished as under:—

“As per the Bill, Waqf Estate Officer (WEO) means the CEO appointed under Section 23 of the Waqf Act, 1995. Normally, the State Waqf Rules provide for appointment of an officer of the Indian Administrative Service or the State Administrative Service to the post of CEO. It takes about 7-8 years for the IAS and 15-16 years

for the officer of the State services to reach the level of DS, which is the minimum level prescribed for the post of CEO. It is felt that the multi-experience gained by the officers during the above period is sufficient to discharge the duties assigned with the post of WEO. As regards, the observation of the Committee for appointment of WEO directly from All India Service, etc., it is stated that recommendation of the Sachar Committee for creation of a new All India Cadre of officers, to manage the affairs of State Waqf Boards and Central Waqf Council, was not accepted by the Government. With regard to suggestion of Sachar Committee for creation of Services for Waqf purposes, it was not accepted by the Government because the cadre size will be too small (35) and there will be no scope for career progression of the officers so appointed.”

**3.57 The Committee are of the view that the affairs of the Waqf Boards and that of Central Waqf Council can be better and efficiently managed if the WEO is appointed from the officers of All India/State Civil Services. The Committee therefore, desire that WEO or CEO, as the case may be, should be appointed as far as possible from amongst the officers from All India/State Civil Services.**

#### **Appeals**

**3.58 Clause 12 (1) reads as follows:—**

“An appeal shall lie, from every order of the Waqf Estate Officer made in respect of any waqf property under section 5 or section 7 or section 8 or section 10, to the Tribunal having jurisdiction in the area where such property is situated”.

**3.59 The Committee observe that as per the above Clause, an appeal shall lie to the Tribunal from every order of the Waqf Estate Officer made in respect of any Waqf property under section 5, 7 or 8, whereas there is no appeal against orders of the Waqf Estate Officer passed under section 3 (eviction from temporary occupation) of the Bill.**

**3.60 The Committee are of the considered opinion that provision of appeal to the Tribunal should also be there against the orders of the Waqf Estate Officer passed under section 3 of the Bill. The Committee, therefore, desire that Clause 12(1) may be reframed as under:—**

‘An appeal shall lie, from every order of the Waqf Estate Officer made in respect of any Waqf property under section 3, section 5, or section 7 or section 8 or section 10, to the Tribunal having jurisdiction in the area where such property is situated.’”

3.61 Clause 12(2)(a)(b)(c)—timeframe for all appeals.

3.62 When the Committee pointed out that the timeframe for issue of notice and filing reply given in the Bill appears to be too short and unreasonable as well and why can't the same be raised to at least 30 days as prescribed in most provisions of civil courts. The Ministry in their written reply stated as under:—

“The suggestion of increasing timeframe for filing an appeal from existing provision of 12 days to at least 30 days appears to be on higher side. However, keeping in view that timeframe for filing appeal in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is 15 days, the Committee may recommend an increase the appeal timeframe to 15 days from 12 days.”

3.63 The Committee find that raising the timeframe from 12 days to 15 days still might not be sufficient and of much help for tenants and 30 days time would be an ideal duration for them to file their reply. Further, in Clause 12(4), there is no time limit given for disposing of the appeal by the Tribunal. The Committee find the terms ‘as expeditiously as possible’ as vague.

**3.64 The Committee desire that timeframe for filing an appeal be raised from proposed 12 days to 30 days as has been prescribed in the provisions of most civil courts.**

**The Committee further desire that reasonable time limit must be there for the Tribunal to dispose of every appeal. The Committee, therefore, recommend that the words ‘as expeditiously as possible’ be replaced by some definite period under which the Tribunal must dispose of an appeal.**

#### **Offences and penalty**

3.65 Clause 14 reads as follows:—

“(1) If any person unlawfully occupies any waqf property, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both:

Provided that a person who, having been lawfully in occupation of any waqf property, by virtue of any permission (whether by way of lease or by any other mode of transfer) continues to be in occupation of such property after such permission has ceased to be valid, shall not be guilty of such offence.

(2) If any person who has been evicted from any waqf property under this Act again occupies the property without permission for such occupation, he shall be punishable with imprisonment for a term, which may extend to one year or with fine which may extend to five thousand rupees, or with both.

(3) Any magistrate convicting a person under sub-section (2) may make an order for evicting that person summarily and he shall be liable to such eviction without prejudice to any other action that may be taken against him under this Act.”

3.66 The Committee are of the view that penal provisions provided in Clause 14 as inadequate and not deterrent at all keeping in view the huge market rate/rent of these properties. Further, the Code of Criminal Procedure, 1973 should also not be applicable to the offences committed under section 14.

3.67 When asked, why can't the fine under section 14(1) be enhanced to one lakh rupees and imprisonment for a term which may extend upto three years or with both. Similarly, under section 14(2), the fine be five lakh rupees and imprisonment for a term which may extend to five years or both besides the imprisonment too may be rigorous instead of simple. The Ministry in their written submission furnished as follows:—

“Most of the Waqf properties under unauthorised occupation is with small peasants, labourers, shopkeepers etc. and the fine/penalty proposed in the Bill are considered adequate for them. Any increase in the monetary fine or rigorous imprisonment may lead to filing of court cases and the very purpose of evicting them expeditiously will not be achieved. However, if Standing Committee feels to do so, this Ministry has no objection.”

3.68 The Committee are not convinced with the reply of the Government that imposing higher penalty/fine may lead to filing court cases as most of these people are small peasants, labourers and shopkeepers. In Committee's view, if occupants of these waqf properties belong to such strata of society then chances of their going to court against heavy penalty are less. Further, persons promoting encroachers to occupy waqf properties should also be penalized.

**3.69 The Committee are of the considered opinion that whole purpose of law is to act as deterrent. The Committee do not find proposed quantum of penalty as effective deterrent for the unauthorised occupiers of waqf properties. More so, in the Waqf**

Act, 1995 too, there is a provision of rigorous imprisonment for a term which may extend to two years for alienation or purchase of waqf property without prior sanction of the Board (Section 52A). The Committee, therefore, recommend that section 14 of the Bill be reframed as under:–

**Section 14(1)**

“If any person unlawfully occupies any waqf property, and any other person who subscribes and promotes the cause of the encroacher shall be punishable with rigorous imprisonment for a term which may extend upto three years, or with fine which may extend to one lakh rupees, or with both:

Provided that a person who, having been lawfully in occupation of any waqf property, by virtue of any permission (whether by way of lease or by any other mode of transfer) continues to be in occupation of such property after such permission has ceased to be valid, shall not be guilty of such offence.”

**Section 14(2)**

“If any person who has been evicted from any waqf property under this Act again occupies the property without permission for such occupation, he shall be punishable with rigorous imprisonment for a term, which may extend to five years or with fine which may extend to five lakh rupees, or with both.”

**Offences under section 14 to be cognizable**

3.70 Clause 15 states:–

The Code of Criminal Procedure, 1973 shall apply to an offence under section 14 as if it were a cognizable offence–

- (a) for the purposes of investigation of such offence, and
- (b) for the purposes of matters others than–
  - (i) matters referred to in section 42 of that Code, and
  - (ii) arrest of a person except on the complaint of, or upon information received from, an officer of the Board equivalent to the rank of a Group ‘A’ officer of the Central Government or where it is not possible to specify an officer of such equivalent rank, such executive officer as may be appointed by the Board.

3.71 The Committee note that sub-clause (ii)(b) of Clause 15 specifies that the arrest of a person except on the complaint of, or upon information received from an officer of Board equivalent of a Group A officer of the Central Government or where it is not possible to specify an officer of such equivalent rank, such executive officer as may be appointed by the Board. During the course of interaction with Waqf Boards of various States, the Committee found that in the office of Waqf Boards there are no officers in the rank of Group 'A' officer in the Central Government and therefore, it would be difficult for the Waqf Estate Officer to implement the said provision.

**3.72 The Committee desire that Clause 15(b)(ii) may be reframed as under:—**

**“Arrest of a person except on the complaint of, or upon information received from, an officer of the Board equivalent not below the rank of Superintendent or where it is not possible to specify an officer of such equivalent rank, such executive officer as may be appointed by the Waqf Estate Officer.”**

#### **Bar of jurisdiction**

3.73 Clause 19 reads as follows:—

“No court shall have jurisdiction to entertain any suit or proceeding in respect of—

- (a) the eviction of any person who is in unauthorised occupation of any waqf property.”

3.74 It was pointed out to the Committee that there are contradictions in the Waqf Act, 1995 and the present Bill on the issue of filing suit or proceedings in respect of eviction of unauthorised occupation of waqf properties. It was stated that Section-54 of Waqf Act, 1995, deals with the evictions. Section-54 (4) of the same Act provides for filing of suit against the order of CEO passed under Section 54 (3) whereas, Section-19 of the present Bill bars any suit or proceedings. The Committee have been informed that fifty eight encroachers have filed cases against the Delhi Waqf Board against eviction orders.

3.75 The Committee find that jurisdiction of courts is barred from entertaining suits on matters relating to eviction of unauthorised occupation, demolition of any building, arrear of rents payable, recovery of cost of damages, etc. One of the main reasons for keeping courts away from these matters might be delays in decision by the courts

leading to prolonging the process of eviction etc. When enquired about to what extent and how far is it justified in giving unlimited/sweeping powers to State Waqf Boards in deciding the matters involving crores and crores of rupees particularly keeping in view the fact that most of these Boards are deeply mired in corruption and most waqf properties have managers who treat even heritage sites as their fiefdoms by building offices, businesses and even houses. The Ministry of Minority Affairs in their written reply stated that:—

“Section 85 of the Waqf Act, 1995, also bars jurisdiction of Civil Court. This Bill is complementary to the Waqf Act, 1995 in terms of removal of waqf properties from encroachers. Further, Section 15 of the Public Premises (EQUO), Act, 1971 also has provision barring jurisdiction of any Court to entertain any suit or proceedings in certain cases. Similar provisions have, therefore, been provided in the present Bill.”

**3.76 The Committee, therefore, desire the Government either to consider deletion of Section 19 or expressly the jurisdiction be awarded to any court which is competent to decide such matters.**

#### **Delegation of Powers**

3.77 Section 21 of the Bill states that the Board by notification published in three newspapers in the State, direct that any power exercisable by it under this Act shall, subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer of the Board as may be specified in the notification.

3.78 In the above context, the Committee felt that, *per se*, in the entire Bill, there is no mention of any role to be played by the Board in the implementation and execution of encroachment removal and no authority whatsoever has been conferred upon the Board. When the Ministry were asked to comment, the Ministry in their written reply submitted as under:—

“The Section 21 of the proposed Bill has been framed on the lines of similar provision in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. As has been observed by the Standing Committee that in the light of the role to be played by the Board in the implementation and execution of encroachment removal, the Ministry opines that the Section 21 of the Bill may be deleted.”

3.79 Section 54 of the Waqf Act, 1995 provides for removal of encroachment from waqf property stipulating elaborate legal procedure. After enactment of the present Bill, which is more effective than the implementation of the Section 54. On being asked whether keeping this provision (Section 54) in the Waqf Act, 1995 needed reconsideration preferably either by amending it or deleting it, the Ministry in their written reply stated that “As suggested by the Committee, Section 54 of the Waqf Act, 1995, as amended, will be superseded, after the proposed Bill is passed.”

3.80 The Committee are of the considered opinion that in the entire Bill there is no mention of any role to be played by the Board in the implementation and execution of removal of encroachment and therefore, the Section 21 of the Bill is redundant. The Committee, therefore, desire that the same may be deleted.

The Committee observe that Section 54 of the Waqf Act, 1995 also provides for removal of encroachment from waqf properties detailing elaborate legal procedure whereas the present Bill too provides stringent penalty for encroachment of waqf properties and after enactment will be more effective than Section 54 of 1995 Act. The Committee are of the firm view that keeping Section 54 in the Waqf Act, 1995, after the present Bill becomes an Act, may become redundant. The Committee desire the Government to either amend Section 54 of the Waqf Act, 1995 or consider superseding the same.

The Committee also desire that notwithstanding anything contained in any other law for time being in force relating to eviction of encroachers in waqf properties, the provisions of this Bill should prevail.



## CHAPTER IV

### MISCELLANEOUS

4.1 The Committee note that provisions of the Waqf Properties (Eviction of Unauthorised Occupants) Bill, 2014 not only have a direct or indirect bearing on the Waqf Act, 1995 and the Waqf (Amendment) Act, 2013, the Rules made thereunder but some of its provisions also flow from them. After enactment of the present Bill, consequential changes or amendments will also be required to be done in the Waqf Act, 1995. While doing so, the Committee desire that the Ministry should also consider the following suggestions which though not directly come under the Clauses of the present Bill, but certainly relate to either the Waqf Act, 1995 or the Waqf Properties Lease Rules, 2014 (Annexure-IV).

- (a) While defining Waqf/Waqf property under section 3 of the Waqf Act, 1995, there is no mention whether a waqf either of public nature or private (waqf-alal-aulad) could or could not be created on a Government land (Nazul land) held by a Muslim leaseholder.
- (b) There is no codification of law in respect of Nazul land/ Government land, particularly in the State of Madhya Pradesh, Chhattisgarh etc. due to which authorities are taking guidance from outdated Revenue Book circular of British regime. Therefore, a comprehensive Nazul Act is imperative to cope with various shortcomings in the overall management of Nazul lands.
- (c) Section 109 of the Waqf Act, 1995 provides for making rules by State Governments while Section 110 provides framing of regulations by State Waqf Boards. The Committee found that most of the State Waqf Boards, even after almost 20 years of enactment of the Act, have neither made rules nor framed any regulations till date in the absence of which most of the activities of Waqf Boards are being carried out as per whims of the office bearers of the Boards. The Committee desire the Government to impress upon these Waqf Boards/State Governments to fulfill the requirement of Sections 109 and 110 of the Waqf Act, 1995 without further delay.
- (d) The Committee feel that small shops which also come within the meaning of commercial activities should be excluded

from the category of commercial activities as many of such shops/Waqf properties are used by tenants for mere subsistence.

- (e) In Section 19 of Lease Rules, 2014, the purpose and period of lease has been given. For shops, lease is up to five years, for cold storages, marriage halls or small industries it is up to ten years, for educational institutions, hospitals, madarasa's or maktabas etc. it is up to 30 years. The Committee fail to understand the rationale behind such division of lease duration. The Committee are of the considered opinion that there is no need to bifurcate the commercial activities and all leases for commercial activities should be of same duration/period. The Committee, therefore, desire that necessary changes to this effect may kindly be made in Section 19 of the Lease Rules, 2014. Further, there should also be provision to extend the lease by way of negotiation with the tenant by the full Board consisting of all members and Chairman.
- (f) The Ministry stated that "A provision of lease agreement as per the market value has been made in the Waqf Act. A provision has been made in respect of the Waqf rules that whatever are benchmarks of the Municipality or NDMC there, they may be made contemporary. There is a provision to make it contemporary. There are two points in this. The concerned law recognizes the 'Right of Adverse Possession' after a period of twelve years in case of a possession since long. Why should its market value be not realized and the money thus collected be utilized" (Para 3.7 of the Report). The Committee desire that the Government while fixing the market value of the properties must consider their structural condition, life, availability of the civic amenities of the locality, etc. and commercial activities undertaken at the place of worship like Jama Masjid, etc.
- (g) Survey of waqf properties as mandated in Section 4 of the Waqf Act, 1995 has not been carried out and completed by most of the States even after 19 years of the enactment of the Waqf Act. This shows the attitude and sincerity of the State Governments in protecting and preserving the waqf properties. The Committee feel that Central Government must impress upon the States to complete the survey at the earliest so that the extent of encroachment of waqf properties could be ascertained.
- (h) The Committee were informed that "there is no laid down criteria to collect donation at Delhi Waqf Board from the

prospective tenants. However, it was a past practice to collect donation from the prospective tenants or on transfer of tenancy by way of negotiation with the tenant by the full Board consisting of all members and Chairman. There is no rule to collect donation from the tenants. However, it is collected from the tenants on voluntarily basis. As per practice, the amount of donation received at the time of creation of new tenancy or transfer of tenancy is based on the mutual agreement between tenants and the Board. There is no provision for returning the amount of donation as it is not refundable.”

Andhra Pradesh State Waqf Board informed the Committee that donation collected from the occupants/tenants is a kind of security. When any occupant leaves/vacate the premises at the end of their tenure and Board finds any damages to that property at that time then the Board gets the same repaired from that donation amount. If the Board finds the property intact then the donation amount is refunded to the occupant.

The Committee desire that there must be some uniform laid down criteria to collect donation and amount of donation from the tenants by the Waqf Boards.

4.2 To sum up, the Committee are of the considered opinion that the proposed legislation should be very carefully calibrated so as to fulfill the avowed objectives of the Bill *i.e.*, to bring uniformity throughout the country and to provide for a speedy mechanism for eviction of unauthorized occupants from the waqf properties besides making stringent provisions to deal with the encroachment or illegal occupation of waqf properties.

NEW DELHI;  
10 August, 2015  
19 Shrawana, 1937 (Saka)

RAMESH BAIS,  
Chairperson,  
Standing Committee on  
Social Justice and Empowerment.

ANNEXURE I

AS INTRODUCED IN THE RAJYA SABHA

**Bill No. VIII of 2014**

THE WAQF PROPERTIES (EVICTION OF UNAUTHORISED  
OCCUPANTS), BILL, 2014

A

BILL

*to provide for the eviction of unauthorised occupants from waqf  
properties and for matters connected therewith or incidental  
thereto.*

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

Short title,  
extent,  
application  
and  
commence-  
ment.

1. (1) This Act may be called the Waqf  
Properties (Eviction of Unauthorised Occupants)  
Act, 2014.

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

(3) This Act shall apply to Waqf properties  
under all auqaf and Waqf properties  
administered under the Durgah Khawaja Saheb  
Act, 1955.

36 of 1955.

(4) Nothing in this Act shall apply to any  
ancient monuments, archaeological sites and  
remains which is preserved, regulated or  
protected under the Ancient Monuments and  
Archaeological Sites and Remains Act, 1958 and  
the rules made thereunder, or any other law  
for the time being in force.

24 of 1958.

(5) It shall come into force in a State on  
such date as the Central Government may, by  
notification in the Official Gazette, appoint;  
and different dates may be appointed for

different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein, be construed as reference to the commencement of that provision in such State or area.

2. (1) In this Act unless the context Definitions. otherwise requires,—

(a) “prescribed” means prescribed by the rules made under this Act;

(b) “rent”, in relation to any Waqf property means, the consideration payable periodically for the authorised occupation of the property, and includes—

(i) any charge for electricity, water or any other services in connection with the occupation of the Waqf property;

(ii) any tax (by whatever name called) payable in respect of the Waqf property,

where such charge or tax is payable by the Waqf or the Board;

(c) “statutory authority” in relation to Waqf property means any Waqf Board or Waqf or anyone acting on its behalf including mutawallis;

(d) “temporary occupation”, in relation to any Waqf property means occupation by any person on the basis of permission granted by the Waqf or the Board for a total period (including the extended period, if any) which is less than thirty days;

(e) “Tribunal” means the Tribunal constituted under sub-section (1) of section 83 of the Waqf Act, 1995;

43 of 1995.

(f) “unauthorised occupation”, in relation to any Waqf property means, the

occupation by any person of the Waqf property without authority for such occupation, and includes the continuance in occupation by any person of the Waqf property after the statutory authority, (whether by way of lease or any other mode of transfer), under which the person was allowed to occupy the property has expired or has been determined for any reason whatsoever;

(g) “Waqf” means any of the following waqf properties, namely:—

(i) any movable or immovable property referred to in clause (r) of section 3 of the Waqf Act, 1995 which includes any land or any building or part of building and includes— 43 of 1995.

(ii) the garden, water bodies, grounds, if any, appertaining to such building or part of a building, and

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

(h) “Waqf Estate Officer” means the Chief Executive Officer appointed under section 23 of the Waqf Act, 1995; 43 of 1995.

(2) The words and expressions used herein and not defined but defined in the Waqf Act, 1995 shall have the meanings respectively assigned to them under the said Act. 43 of 1995.

Eviction from temporary occupation.

3. Notwithstanding anything contained in section 4 or section 5, if the Waqf Estate Officer, after making such inquiry as he deems expedient in the circumstances of the case, is satisfied that any person who was allowed temporary occupation of any Waqf property or is in unauthorised occupation of the said property, he may, for reasons to be recorded in writing, make an order for the eviction of such person forthwith and thereupon, if such person refuses

or fails to comply with the said order of eviction, he may evict him from the waqf property and take possession thereof and may, for that purpose, use such force as may be necessary.

4. (1) If the Waqf Estate Officer is of the opinion that any person is in unauthorised occupation of any waqf property and that he should be evicted, the Waqf Estate Officer shall issue, in the manner hereinafter provided, a notice in writing calling upon such person to show cause why an order of eviction should not be made.

Issue of notice to show cause against order of eviction.

(2) The notice referred to in sub-section (1) shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require such person who is, or may be in occupation of, or claims interest, in the waqf property,

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof; and

(ii) to appear before the Waqf Estate Officer on the date specified in the notice along with evidence which he intends to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

(3) The Waqf Estate Officer shall cause the notice to be served by registered post or by having it affixed on the outer door or some other conspicuous part of the waqf property, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to the person concerned.

Eviction of unauthorised occupants.

5. (1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of the sub-section (2) of section 4, the Waqf Estate Officer is satisfied that the waqf property is in unauthorised occupation, the Waqf Estate Officer may make an order of eviction, for reasons to be recorded therein, directing that the waqf property shall be vacated, on such date as may be specified in the order, by the person who may be in occupation thereof or any part thereof, and cause a copy of the order to be served by registered post or to be affixed on the outer door or some other conspicuous part of the waqf property.

(2) If any person refuses or fails to comply with the order of eviction on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later, the Waqf Estate Officer or any other officer duly authorised by the Waqf Estate Officer in this behalf may, after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person from, and take possession of the waqf property and may, for that purpose, use such force as may be necessary.

Power to remove unauthorised construction etc.

6. (1) No person shall—

(a) erect or place or raise any building or any movable or immovable structure or fixture;

(b) display or spread any goods; or

(c) bring or keep any cattle or other animal,

on or against, or in front of any waqf property except in accordance with the permission, whether by way of lease or any other mode of transfer, under which he was allowed to occupy such property.



(2) Where any building or other immovable structure or fixture has been erected, placed or raised on any waqf property in contravention of the provisions of sub-section (1), the Waqf Estate Officer may serve upon the person erecting such building or other structure or fixture, a notice requiring him either to remove, or to show cause why he shall not remove such building or other structure or fixture from the waqf property within such period, not being less than seven days, as he may specify in the notice; and on the omission or refusal of such person either to show cause or to remove such building or other structure or fixture from the waqf property, or where the cause shown is not, in the opinion of the Waqf Estate Officer, sufficient, the Waqf Estate Officer may by order, remove or cause to be removed the building or other structure or fixture from the waqf property and recover the cost of such removal from the person aforesaid as an arrear of land revenue.

(3) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought or kept, on any waqf property, in contravention of the provision of sub-section (1) by any person, the Waqf Estate Officer may, by order, remove or cause to be removed without notice, such structure, fixture, goods, cattle or other animal as the case may be, from the waqf property and recover the cost of such removal from such person as an arrear of land revenue.

7. (1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed on any waqf property by any person in occupation of such waqf property under the permission, whether by way of lease or any other mode of transfer, and such erection of building or execution of work is in contravention of, or not authorised by, such authority, then,

Order of demolition of unauthorised construction.

the Waqf Estate Officer may, in addition to any other action that may be taken under this Act or in accordance with the terms of the permission aforesaid, make an order, for reasons to be recorded therein, directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced, or is being carried on, or has been completed, within such period, as may be specified in the order:

Provided that no order under this sub-section shall be made unless the person concerned has been served by means of a notice of not less than seven days in the prescribed manner, a reasonable opportunity of showing cause as to why such order should not be made.

(2) Where the erection or work has not been completed, the Waqf Estate Officer may, by the same order or by a separate order, whether made at the time of issue of the notice under the proviso to sub-section (1) or at any other time, direct the person at whose instance the erection or work has been commenced, or is being carried on, to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under section 12.

(3) The Waqf Estate Officer shall cause every order made under sub-section (1), or, as the case may be, under sub-section (2) to be served, by registered post or affixed on the outer door, or some other conspicuous part, of the waqf property.

(4) Where no appeal has been preferred against the order of demolition made by the Waqf Estate Officer under sub-section (1) or where an order of demolition made by the Waqf Estate Officer under that sub-section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with the order

within the period specified therein, or, as the case may be, within the period, if any, fixed by the Tribunal on appeal, and, on the failure of the person to comply with the order within such period, the Waqf Estate Officer or any other Officer duly authorised by the Waqf Estate Officer in this behalf, may cause the erection or work to which the order relates to be demolished.

(5) Where an erection or work has been demolished, the Waqf Estate Officer may, by order, require the person concerned to pay the expenses of such demolition within such time and in such number of instalments, as may be specified in the order.

**8. (1)** It shall be lawful for the Waqf Estate Officer, at any time, before or after making an order of demolition under section 7, to make an order directing the sealing of such erection or work or of the waqf property in which such erection or work has been commenced or is being carried on or has been completed in such manner as may be prescribed, for the purpose of carrying out the provision of this Act, or for preventing any dispute as to the nature and extent of such erection or work.

Power to seal unauthorised construction.

(2) Where any erection or work on any waqf property in which any erection or work is being carried on has, or have been sealed, the Waqf Estate Officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except—

(a) under an order made by the Waqf Estate Officer under sub-section (2); or

(b) under an order of the Tribunal made in an appeal under this Act.

Disposal of property left on waqf property by unauthorised occupants.

9. (1) Where any person has been evicted from any waqf property under section 5, or where any building or other work has been demolished under section 7, the Waqf Estate Officer may, after giving fourteen days notice to the person from whom possession of the waqf property has been taken and after publishing the notice in at least one newspaper having circulation in the locality, remove or cause to be removed or dispose of by public auction any property remaining on such property.

(2) Where any goods, materials, cattle or other animals have been removed from any waqf property under section 6, the Waqf Estate Officer may, after giving fourteen days notice to the person owning such goods, materials, cattle or other animals and after publishing the notice in at least one newspaper having circulation in the locality, dispose off, by public auction, such goods, materials cattle or other animals.

(3) Notwithstanding anything contained in sub-section (1) and sub-section (2), the giving or publication of any notice referred to therein shall not be necessary in respect of any property which is subject to speedy and natural decay, and the Waqf Estate Officer may, after recording such evidence as he may think fit, cause such property to be sold or otherwise disposed of in such manner as he may think fit.

(4) Where any property is sold under sub-section (1), the sale proceeds thereof shall, after deducting the expenses of the sale and the amount, if any, due to the Waqf or Waqf Board on account of arrears of rent or damages or costs, be paid to such person as may appear to the Waqf Estate Officer to be entitled to the same:

Provided that where the Waqf Estate Officer is unable to decide as to the person to whom the balance of the amount is payable or as to

the apportionment of the same, he may refer such dispute to the civil court of the competent jurisdiction and the decision of the court thereon shall be final.

(5) The expression "cost" referred to in sub-section (4), shall include the cost, of removal or recoverable under section 6 and the cost of demolition recoverable under section 7.

10. (1) Where any person is in arrears of rent payable in respect of any waqf property, the Waqf Estate Officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

Power to require payment of rent or damages in respect of waqf properties.

(2) Where any person is, or has at any time been, in unauthorised occupation of any waqf property, the Waqf Estate Officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use or occupation of such property and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(3) While making an order under sub-section (1) or sub-section (2), the Waqf Estate Officer may direct that the arrears of rent or, as the case may be, damages or costs shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of Interest Act, 1978.

14 of 1978.

(4) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the Waqf Estate Officer.

Power of  
Waqf Estate  
Officer.

11. A Waqf Estate Officer shall, for the purpose of holding an inquiry under this Act, have the same powers as are vested in civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

Appeals.

12. (1) An appeal shall lie, from every order of the Waqf Estate Officer made in respect of any waqf property under section 5 or section 7 or section 8 or section 10, to the Tribunal having jurisdiction in the area where such property is situated.

(2) An appeal under sub-section (1) shall be preferred,—

(a) in the case of an appeal from an order under section 5, within twelve days from the date of publication of the order under sub-section (1) of that section;

(b) in the case of an appeal from an order under section 7 or section 10, within twelve days from the date on which the order is communicated to the appellant; and

(c) in the case of an appeal from an order under section 8, within twelve days from the date of such order:

Provided that the Tribunal may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the Waqf Estate Officer, the Tribunal may stay the enforcement of that order for such period and on such conditions as it deems fit:

Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made under section 7 for the demolition or removal of such building or other structure or fixture, the Tribunal shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the Tribunal, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal.

(4) Every appeal under this section shall be disposed of by the Tribunal as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the Tribunal.

**13.** Save as otherwise expressly provided in this Act, every order made by a Waqf Estate Officer or Tribunal under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Finality of orders.

**14. (1)** If any person unlawfully occupies any waqf property, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both:

Offences and penalty.

Provided that a person who, having been lawfully in occupation of any waqf property, by virtue of any permission (whether by way of

lease or by any other mode of transfer continues to be in occupation of such property after such permission has ceased to be valid, shall not be guilty of such offence.

(2) If any person who has been evicted from any waqf property under this Act again occupies the property without permission for such occupation, he shall be punishable with imprisonment for a term, which may extend to one year or with fine which may extend to five thousand rupees, or with both.

(3) Any magistrate convicting a person under sub-section (2) may make an order for evicting that person summarily and he shall be liable to such eviction without prejudice to any other action that may be taken against him under this Act.

Offences under section 14 to be cognizable.

**15.** The Code of Criminal Procedure, 1973 shall apply to an offence under section 14 as if it were a cognizable offence—

2 of 1974.

(a) for the purposes of investigation of such offence, and

(b) for the purposes of matters other than—

(i) matters referred to in section 42 of that Code, and

(ii) arrest of a person except on the complaint of, or upon information received from, an officer of the Board equivalent to the rank of a Group A officer of the Central Government or where it is not possible to specify an officer of such equivalent rank, such executive officer as may be appointed by the Board.

Power to obtain information.

**16.** If the Waqf Estate Officer has reason to believe that any person is in unauthorised occupation of any waqf property, the Waqf Estate Officer or any officer authorised by him



in this behalf may require that person or any other person to furnish information relating to the names and other particulars of the person in occupation of the waqf property and every person so required shall be bound to furnish the information in his possession.

17. (1) Where any person against whom any proceeding for the determination of arrears of rent or for the assessment of damages or for the determination of the amount payable by way of interest on such arrears of rent or damages is to be or has been taken dies before the proceeding is taken or during the pendency thereof, the proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person.

Liability of heirs and legal representatives.

(2) Where any person from whom any cost of removal of any building or other structure or fixture, or, as the case may be, any goods, cattle or other animal is to be recovered under sub-section (2) or sub-section (3) of section 6, or any expenses of demolition are to be recovered under sub-section (5) of section 7, dies before any proceeding is taken for the recovery of such cost or during the pendency thereof, the proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person.

(3) Any amount due to a waqf or Board from any person whether by way of arrears of rent or damages or costs of removal referred to in section 6 or expenses of demolition referred to in section 7 or interest referred to in sub-section (3) of section 10 or any other cost shall, after the death of the person, be payable by his heirs or legal representatives but their liability shall be limited to the extent of the assets of the deceased in their hands.

18. If any person refuses or fails to pay the expenses of demolition payable under subsection (5) of section 7 or the arrears of rent payable under sub-section (1) of section 10 or the damages payable under sub-section (2) or the

Recovery of rent, etc., as an arrear of land revenue.

interest determined under sub-section (3) of that section or the costs awarded to the waqf or the Board under sub-section (5) of section 12 or any portion of such rent, damages, expenses, interest or costs, within the time, if any, specified therefor in the order relating thereto, the Waqf Estate Officer may issue a certificate for the amount due to the Collector who shall proceed to recover the same as an arrear of land revenue.

Bar of jurisdiction.

**19.** No court shall have jurisdiction to entertain any suit or proceeding in respect of—

(a) the eviction of any person who is in unauthorised occupation of any waqf property, or

(b) the removal of any building, structure or fixture or goods, cattle or other animal from any waqf property under section 6, or

(c) the demolition of any building or other structure made, or ordered to be made, under section 7, or

(d) the sealing of any erection or work or of any waqf property under section 8, or

(e) the arrears of rent payable under sub-section (1) of section 10 or damages payable under sub-section (2), or interest payable under sub-section (3) of that section, or

(f) the recovery of—

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 6, or

(ii) expenses of demolition under section 7, or

(iii) costs awarded to a waqf or Board under sub-section (5) of section 12, or

(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to a waqf or Board.

**20.** No suit, prosecution or other legal proceeding shall lie against a waqf or Board or Waqf Estate Officer or any officer authorised by him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

Protection of action taken in good faith.

**21.** The Board may, by notification, published in three newspapers in the State, direct that any power exercisable by it under this Act shall, subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer of the Board as may be specified in the notification.

Delegation of Powers.

**22. (1)** The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

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

(a) the form of any notice required or authorised to be given under this Act and the manner in which it may be served;

(b) the holding of inquiries under this Act;

(c) the procedure to be followed in taking possession of waqf properties;

(d) the manner in which damages for unauthorised occupation may be assessed and the principles which may be taken into account in assessing such damages;

(e) the manner in which the sealing of any erection or work or of any waqf property shall be made under sub-section (1) of section 8;

(f) the rate at which interest shall be payable on arrears of rent specified in any order made under sub-section (1) of section 10, or damages assessed under sub-section (2) of that section;

(g) the manner in which appeals may be preferred and the procedure to be followed in appeals;

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

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

Act not in  
derogation  
of any  
other law.

**23.** The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law, for the time being in force.

## STATEMENT OF OBJECTS AND REASONS

The Waqf Act, 1995 has been amended by the Wakf (Amendment) Act, 2013 which has come into force w.e.f. 1st November, 2013. Section 54 of the Waqf Act, 1995 makes provision for removal of encroachment from the waqf properties; however, the provision is not stringent enough to deal with the encroachment or illegal occupation of waqf properties.

2. The Sachar Committee recommended that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 should be applied to waqf properties as these properties are for the benefit of the public and not for any individual. The Joint Parliamentary Committee on Waqf in its Third Report also stated that all the State Governments may bring the waqf properties under the State Public Premises (Eviction of Unauthorised Occupant) Act. However, only the State Governments of Karnataka, Rajasthan and Tripura have included Waqf in their respective States' Public Premises Acts. The Select Committee of Rajya Sabha reiterated the recommendations of the Sachar Committee and the Joint Parliamentary Committee on Waqf.

3. The Ministry of Urban Development stated that the waqf properties are not owned or hired by the Government; therefore, these cannot be covered under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Ministry of Law and Justice had also advised that it is not legally feasible to include Waqf in the said Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

4. Therefore, Government of India proposes to bring the Waqf Properties (Eviction of Unauthorised Occupants) Bill, 2014 which would bring uniformity throughout the country and would provide for a speedy mechanism for eviction of unauthorised occupants from the waqf properties. The Bill is intended to bar the jurisdiction of the Civil Court in entertaining any suit or proceeding in this regard.

5. This Bill seeks to achieve the above objectives.

NEW DELHI;  
*The 11th February, 2014.*

K. RAHMAN KHAN

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 22 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matter, *inter alia*, include matters: (a) the form of any notice required or authorised to be given under the proposed legislation and the manner in which it may be served; (b) the holding of inquiries under the proposed legislation; (c) the procedure to be followed in taking possession of waqf properties; (d) the manner in which damages for unauthorised occupation is to be assessed and the principles which are to be taken into account in assessing such damages; (e) the manner in which the sealing of any erection or work or of any waqf property shall be made under sub-clause (1) of clause 8; (f) the rate at which interest shall be payable on arrears of rent specified in any order made under sub-clause (1) of clause 10, or damages assessed under sub-clause (2) of that clause; (g) the manner in which appeals are to be preferred and the procedure to be followed in appeals; (h) any other matter which is to be, or may be, prescribed. Sub-clause (3) of that clause provides that every rule made by the Central Government is required to be laid, as soon as it is made, before each House of Parliament.

2. The matters in respect of which rules may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers is, therefore, of a normal character.

RAJYA SABHA

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BILL

to provide for the eviction of unauthorised occupants from waqf properties and for matters connected therewith or incidental thereto.

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*(Shri K. Rahman Khan, Minister of Minority Affairs)*

THE WAQF ACT, 1995

(43 of 1995)

[22nd November, 1995]

*An Act to provide for the better administration of <sup>1</sup>[Auqaf] and for matters connected therewith or incidental thereto.*

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

CHAPTER I

PRELIMINARY

**1. Short title, extent and commencement.**—(1) This Act may be called the <sup>2</sup>[Waqf] Act, 1995.

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

(3) It shall come into force in a State on such date<sup>3</sup> as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein be construed as reference to the commencement of that provision in such State or area.

**2. Application of the Act.**—Save as otherwise expressly provided under this Act, this Act shall apply to all <sup>4</sup>[auqaf] whether created before or after the commencement of this Act:

Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer to which the Durgah Khawaja Saheb Act, 1955 (36 of 1955), applies.

**3. Definitions.**—In this Act, unless the context otherwise requires,—

- (a) “beneficiary” means a person or object for whose benefit a <sup>1</sup>[waqf] is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law;
- (b) “benefit” does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli;
- (c) “Board” means a Board of <sup>2</sup>[Waqf] established under sub-section (1), or as the case may be, under sub-section (2) of section 13 and shall include a common <sup>2</sup>[Waqf] Board established under section 106;
- (d) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (1) of section 23;
- (e) “Council” means the Central <sup>2</sup>[Waqf] Council established under section 9;

1. Subs. by Act 27 of 2013, sec. 2, for “Wakfs”.

2. Subs. by Act 27 of 2013, sec. 3, for “Wakf”.

3. Came into force on 1-1-1996, vide S.O. 1007 (E), dated 27th December, 1995.

4. Subs. by Act 27 of 2013, sec. 4, for “Wakfs”.

5. Subs. by Act 27 of 2013, sec. 4, for “Wakfs”.

6. Subs. by Act 27 of 2013, sec. 4, for “Wakfs”.



<sup>1</sup>[(ee) “encroacher” means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board;]

(f) “Executive Officer” means the Executive Officer appointed by the Board under sub-section (1) of section 38;

<sup>2</sup>[(g) “list of auqaf” means the list of auqaf published under sub-section (2) of section 5 or contained in the register of auqaf maintained under section 37;]

(h) “member” means a member of the Board and includes the Chairperson;

(i) “mutawalli” means any person appointed, either verbally or under any deed or instrument by which a <sup>3</sup>[waqf] has been created, or by a competent authority, to be the mutawalli of a <sup>3</sup>[waqf] and includes any person who is a mutawalli of a <sup>3</sup>[waqf] by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any <sup>3</sup>[waqf] or <sup>3</sup>[waqf] property:

Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office bearer of such committee or corporation:

<sup>4</sup>[Provided further that the mutawalli shall be a citizen of India and shall fulfil such other qualifications as may be prescribed:

Provided also that in case a waqf has specified any qualifications, such qualifications may be provided in the rules as may be made by the State Government;]

(j) “net annual income” in relation to a <sup>3</sup>[waqf], means net annual income determined in accordance with the provisions of the *Explanations* to sub-section (1) of section 72;

(k) “person interested” in a <sup>3</sup>[waqf] means any person who is entitled to receive any pecuniary or other benefits from the <sup>3</sup>[waqf] and includes—

(i) any person who has a right to <sup>5</sup>[offer prayer] or to perform any religious rite in a mosque, idgah, imambara, dargah <sup>6</sup>[khanqah, peerkhana and karbala] maqbara, graveyard or any other

1. Ins. by Act 27 of 2013, sec. 5(i).

2. Subs. by Act 27 of 2013, sec. 5(ii), for clause (g). Clause (g), before substitution, stood as under:

‘(g) “List of wakfs” means the list of wakfs published under sub-section (2) of section 5;’.

3. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

4. Ins. by Act 27 of 2013, sec. 5(iii).

5. Subs. by Act 27 of 2013, sec. 5(iv), for “worship”.

6. Subs. by Act 27 of 2013, sec. 5(iv), for “Khanqah”.

- religious institution connected with the <sup>1</sup>[waqf] or to participate in any religious or charitable institution under the <sup>1</sup>[waqf];
- (ii) the <sup>2</sup>[waqif] and any descendant of the <sup>2</sup>[waqif] and the mutawalli;
- (l) “prescribed”, except in Chapter III, means prescribed by rules made by the State Government;
- (m) “regulations” means the regulations made by the Board under this Act;
- (n) “Shia <sup>1</sup>[waqf]” means a <sup>1</sup>[waqf] governed by Shia law;
- (o) “Sunni <sup>1</sup>[waqf]” means a <sup>1</sup>[waqf] governed by Sunni law;
- (p) “Survey Commissioner” means the Survey Commissioner of <sup>3</sup>[Waqf] appointed under sub-section (1) of section 4 and includes any Additional or Assistant Survey Commissioners of <sup>4</sup>[Auqaf] under sub-section (2) of section 4;
- (q) “Tribunal”, in relation to any area, means the Tribunal constituted under sub-section (1) of section 83, having jurisdiction in relation to that area;
- <sup>5</sup>[(r) “waqf” means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—
- (i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;
- (ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;
- (iii) “grants”, including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakif”.

3. Subs. by Act 27 of 2013, sec. 4, for “Wakf”.

4. Subs. by Act 27 of 2013, sec. 4, for “Wakfs”.

5. Subs. by Act 27 of 2013, sec. 5(v), for clause (r). Clause (r), before substitution, stood as under:

‘(r) “wakf” means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

- (i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;
- (ii) “grants”, including mashrut-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and
- (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, and “wakif” means any person making such dedication;’.

- (iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law,  
and “waqif” means any person making such dedication;]
- (s) “<sup>1</sup>[waqf] deed” means any deed or instrument by which a <sup>1</sup>[waqf] has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied;
- (t) “<sup>2</sup>[Waqf] Fund” means a <sup>2</sup>[Waqf] Fund formed under sub-section (1) of section 77.

## CHAPTER II

### SURVEY OF <sup>3</sup>[AUQAF]

**4. Preliminary survey of <sup>4</sup>[auqaf].**—(1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of <sup>5</sup>[Auqaf] and as many Additional or Assistant Survey Commissioners of <sup>5</sup>[Auqaf] as may be necessary for the purpose of making a survey of <sup>6</sup>[auqaf] in the State].

<sup>7</sup>[(1A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013, in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:

Provided that where no Survey Commissioner of Waqf has been appointed, a Survey Commissioner for auqaf shall be appointed within three months from the date of such commencement.]

(2) All Additional and Assistant Survey Commissioners of <sup>5</sup>[Auqaf] shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of <sup>5</sup>[Auqaf].

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of <sup>8</sup>[auqaf] existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:—

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.
2. Subs. by Act 27 of 2013, sec. 4, for “Wakf”.
3. Subs. by Act 27 of 2013, sec. 4, for “WAKFS”.
4. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.
5. Subs. by Act 27 of 2013, sec. 4, for “Wakfs”.
6. Subs. by Act 27 of 2013, sec. 6(a), for “wakfs existing in the State at the date of the commencement of this Act.”.
7. Ins. by Act 27 of 2013, sec. 6(b).
8. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

- (a) the number of <sup>1</sup>[auqaf] in the State showing the Shia <sup>1</sup>[auqaf] and Sunni <sup>1</sup>[auqaf] separately;
- (b) the nature and objects of each <sup>2</sup>[waqf];
- (c) the gross income of the property comprised in each <sup>2</sup>[waqf];
- (d) the amount of land revenue, cesses, rates and taxes payable in respect of each <sup>2</sup>[waqf];
- (e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each <sup>2</sup>[waqf]; and
- (f) such other particulars relating to each <sup>2</sup>[waqf] as may be prescribed.

(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) summoning and examining any witness;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record from any court or office;
- (d) issuing commissions for the examination of any witness or accounts;
- (e) making any local inspection or local investigation;
- (f) such other matters as may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular <sup>2</sup>[waqf] is a Shia <sup>2</sup>[waqf] or Sunni <sup>2</sup>[waqf] and there are clear indications in the deed of <sup>2</sup>[waqf] as to its nature, the dispute shall be decided on the basis of such deed.

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

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

<sup>4</sup>[Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.]

**5. Publication of list of <sup>5</sup>[auqaf].**—(1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and <sup>6</sup>[forward it back to the Government within a period of six months for publication in the Official Gazette] a list of Sunni <sup>1</sup>[auqaf] or Shia <sup>1</sup>[auqaf] in the

1. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. Subs. by Act 27 of 2013, sec. 6(c)(i), for “twenty years”.

4. Ins. by Act 27 of 2013, sec. 6(c)(ii).

5. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

6. Subs. by Act 27 of 2013, sec. 7(a), for “publish in the official Gazette”.

State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

<sup>1</sup>[(3) The revenue authorities shall—

- (i) include the list of auqaf referred to in sub-section (2), while updating the land records; and
- (ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records.]

<sup>1</sup>[(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.]

#### COMMENTS

It is incumbent on the Board to examine the survey report and forward it to the Government within a period of six months for publication in the Official Gazette a list of Sunni auqaf or Shia auqaf in the State.

**6. Disputes regarding <sup>2</sup>[auqaf].**—(1) If any question arises whether a particular property specified as <sup>3</sup>[waqf] property in the list of <sup>4</sup>[auqaf] is <sup>5</sup>[waqf] property or not or whether a <sup>3</sup>[waqf] specified in such list is a Shia <sup>3</sup>[waqf] or Sunni <sup>3</sup>[waqf], the Board or the mutawalli of the <sup>3</sup>[waqf] or <sup>5</sup>[any person aggrieved] may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of <sup>4</sup>[auqaf]:

<sup>6</sup>[Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.]

<sup>7</sup>[\*\*\*]

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any <sup>3</sup>[waqf] shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against

1. Ins. by Act 27 of 2013, sec. 7(b).

2. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

3. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

4. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

5. Subs. by Act 27 of 2013, sec. 8(a), for “any person interested therein”.

6. Ins. by Act 27 of 2013, sec. 8(b).

7. *Explanation* omitted by Act 27 of 2013, sec. 8(c). The *Explanation*, before omission, stood as under:

*Explanation.*—For the purposes of this section and section 7, the expression “any person interested therein”, shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under section 4.’.

him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of <sup>1</sup>[auqaf] shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

#### COMMENTS

If any question arises as to (i) whether a particular property is waqf property or not, or (ii) whether a particular waqf is a Shia waqf or Sunni waqf, the Board or the mutawalli of the waqf or any person aggrieved therein may institute a suit in a Tribunal for the decision of such question and the decision of the Tribunal in respect of such matter shall be final. The period of limitation for instituting a suit is one year from the date of the publication of the list of auqaf. The Survey Commissioner shall be immune from being made a party to any suit.

**7. Power of Tribunal to determine disputes regarding <sup>1</sup>[auqaf].—** (1) If, after the commencement of this Act, <sup>2</sup>[any question or dispute] arises, whether a particular property specified as <sup>3</sup>[waqf] property in a list of <sup>4</sup>[auqaf] is <sup>3</sup>[waqf] property or not, or whether a <sup>3</sup>[waqf] specified in such list is a Shia <sup>3</sup>[waqf] or a Sunni <sup>3</sup>[waqf], the Board or the mutawalli of the <sup>3</sup>[waqf], or <sup>5</sup>[or any person aggrieved by the publication of the list of auqaf under section 5] therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that—

- (a) in the case of the list of <sup>4</sup>[auqaf] relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of <sup>4</sup>[auqaf]; and
- (b) in the case of the list of <sup>4</sup>[auqaf] relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any <sup>3</sup>[waqf] shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

1. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

2. Subs. by Act 27 of 2013, sec. 9(a)(i), for “any question”.

3. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

4. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

5. Subs. by Act 27 of 2013, sec. 9(a)(ii), for “any person interested”.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of <sup>1</sup>[auqaf] and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

<sup>2</sup>[(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.]

<sup>3</sup>[8. State Government to bear cost of survey.—The total cost of making a survey including the cost of publication of the list or lists of auqaf under this Chapter shall be borne by the State Government.]

### CHAPTER III

#### CENTRAL <sup>4</sup>[WAQF] COUNCIL

**9. Establishment and constitution of Central <sup>5</sup>[Waqf] Council.**—<sup>6</sup>[(1) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising the

1. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

2. Ins. by Act 27 of 2013, sec. 9(b).

3. Subs. by Act 27 of 2013, sec. 10, for section 8. Section 8, before substitution, stood as under:

“8. *Recovery of costs of survey.*—(1) The total cost of making a survey including the cost of publication of the list or lists of wakfs under this Chapter shall be borne by all the mutawalli of the wakfs the net annual income whereof exceeds five hundred rupees, in proportion to the net annual income accruing in the State to such wakfs, such proportion being assessed by the Survey Commissioner.

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

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

4. Subs. by Act 27 of 2013, sec. 4, for “WAKF”.

5. Subs. by Act 27 of 2013, sec. 4, for “Wakf”.

6. Subs. by Act 27 of 2013, sec. 11(a), for sub-section (1). Sub-section (1), before substitution, stood as under:

“(1) For the purpose of advising it, on matters concerning the working of Boards and the due administration of wakfs, the Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Wakf Council.”

Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.]

<sup>1</sup>[(1A) The Council referred to in sub-section (1) shall issue directives to the Boards, on such issues and in such manner, as provided under sub-sections (4) and (5).]

(2) The Council shall consist of,—

- (a) the Union Minister in charge of <sup>2</sup>[waqf]—*ex officio* Chairperson;
- (b) the following members to be appointed by the Central Government from amongst Muslims, namely:—
  - (i) three persons to represent Muslim organisations having all India character and national importance;
  - <sup>3</sup>(ii) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine;]
  - (iii) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;
  - (iv) Chairpersons of three Boards by rotation;
  - (v) two persons who have been judges of the Supreme Court or a High Court;
  - (vi) one advocate of national eminence;
  - (vii) one person to represent the mutawallis of the <sup>4</sup>[waqf] having a gross annual income of rupees five lakhs and above;
  - (viii) three persons who are eminent scholars in Muslim Law.

<sup>5</sup>[Provided that at least two of the members appointed under sub-clauses (i) to (viii) shall be women.]

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

<sup>6</sup>[(4) The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the Council and it may *suo motu* call for information on specific issues from the Board, if it is satisfied that there was *prima facie* evidence of irregularity or violation of the provisions

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1. Subs. by Act 27 of 2013, sec. 11(a), for sub-section (1).

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. Subs. by Act 27 of 2013, sec. 11(b)(i), for sub-clause (ii). Sub-clause (ii), before substitution, stood as under:

“(ii) four persons of national eminence of whom two shall be from amongst persons having administrative and financial expertise;”.

4. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

5. Ins. by Act 27 of 2013, sec. 11(b)(ii).

6. Ins. by Act 27 of 2013, sec. 11(c).



of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.]

<sup>1</sup>[(5) Any dispute arising out of a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court or a retired Chief Justice of a High Court and the fees and travelling and other allowances payable to the Presiding Officer shall be such as may be specified by that Government.]

**10. Finance of Council.**—(1) Every Board shall pay from its <sup>2</sup>[Waqf] Fund annually to the Council such contributions as is equivalent to one per cent. of the aggregate of the net annual income of the <sup>3</sup>[auqaf] in respect of which contribution is payable under sub-section (1) of section 72:

Provided that where the Board, in the case of any particular <sup>4</sup>[waqf] has remitted under sub-section (2) of section 72 the whole of the contribution payable to it under sub-section (1) of that section, then for calculating the contribution payable to the Council under this section the net annual income of the <sup>4</sup>[waqf] in respect of which such remission has been granted shall not be taken into account.

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

(3) Subject to any rules that may be made by the Central Government in this behalf, the Central <sup>2</sup>[Waqf] Fund shall be under the control of the Council and may be applied for such purposes as the Council may deem fit.

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

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

(3) The costs of the audit shall be paid from the Central <sup>2</sup>[Waqf] Fund.

**12. Powers of Central Government to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.

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

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

(b) control over and application of the Central <sup>2</sup>[Waqf] Fund;

1. Ins. by Act 27 of 2013, sec. 11(c).

2. Subs. by Act 27 of 2013, sec. 4, for “Wakf”.

3. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

4. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

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

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

#### CHAPTER IV

#### ESTABLISHMENT OF BOARD AND THEIR FUNCTIONS

**13. Incorporation.**—(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of <sup>1</sup>[Auqaf] under such name as may be specified in the notification.

<sup>2</sup>[Provided that in case where a Board of Waqf has not been established, as required under this sub-section, a Board of Waqf shall, without prejudice to the provisions of this Act or any other law for the time being in force, be established within six months from the date of commencement of the Wakf (Amendment) Act, 2013.]

(2) Notwithstanding anything contained in sub-section (1), if the Shia <sup>3</sup>[auqaf] in any State constitute in number more than fifteen per cent. of all the <sup>3</sup>[auqaf] in the State or if the income of the properties of the Shia <sup>3</sup>[auqaf] in the State constitutes more than fifteen per cent. of the total income of properties of all the <sup>3</sup>[auqaf] in the State, the State Government may, by notification in the Official Gazette, establish a Board of <sup>1</sup>[Auqaf] each for Sunni <sup>3</sup>[auqaf] and for Shia <sup>3</sup>[auqaf] under such names as may be specified in the notification.

<sup>4</sup>[(2A) Where a Board of Waqf is established under sub-section (2) of section 13, in the case of Shia waqf, the Members shall belong to the Shia Muslim and in the case of Sunni waqf, the Members shall belong to the Sunni Muslim.]

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

#### COMMENTS

The State Government has been empowered to establish (i) a Board of a Auqaf; or (ii) Boards of Auqaf each for Sunni auqaf and for Shia auqaf. In the case of Shia auqaf, the members shall belong to Shia Muslim and in the case of Sunni auqaf, the members shall belong to Sunni Mulsim. Such Board(s) shall be body corporate.

1. Subs. by Act 27 of 2013, sec. 4, for “Wakfs”.

2. Ins. by Act 27 of 2013, sec. 12(a).

3. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

4. Ins. by Act 27 of 2013, sec. 12(b).

**14. Composition of Board.**—(1) The Board for a State and <sup>1</sup>[the National Capital Territory of Delhi] shall consist of—

- (a) a Chairperson;
- (b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of—
  - (i) Muslim Members of Parliament from the State or, as the case may be, the <sup>1</sup>[the National Capital Territory of Delhi],
  - (ii) Muslim Members of the State Legislature,
  - <sup>2</sup>(iii) Muslim Members of the Bar Council of the concerned State or Union territory:

Provided that in case there is no Muslim member of the Bar Council of a State or a Union territory, the State Government or the Union territory administration, as the case may be, may nominate any senior Muslim advocate from that State or the Union territory, and]

- (iv) Mutawallis of the <sup>3</sup>[auqaf] having an annual income of rupees one lakh and above;

<sup>4</sup>[*Explanation I.*—For the removal of doubts, it is hereby declare that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.]

<sup>4</sup>[*Explanation II.*—For the removal of doubts it is hereby declared that in case a Muslim member ceases to be a Member of Parliament from the State or National Capital Territory of Delhi as referred to in sub-clause (i) of clause (b) or ceases to be a Member of the State Legislative Assembly as required under sub-clause (ii) of clause (b), such member shall be deemed to have vacated the office of the member of the Board for the State or National Capital Territory of Delhi, as the case may be, from the date from which such member ceased to be a Member of Parliament from the State or National Capital Territory of Delhi, or a Member of the State Legislative Assembly, as the case may be;]

- <sup>5</sup>[(c) one person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government;]

1. Subs. by Act 27 of 2013, Sec. 13(l)(i), for “the Union Territory of Delhi”.

2. Subs. by Act 27 of 2013, Sec. 13(l)(ii)(a), for sub-clause (iii). Sub-clause (iii), before substitution, stood as under:

“(iii) Muslim Members of the Bar Council of the State, and”.

3. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

4. Ins. by Act 27 of 2013, sec. 13(l)(ii)(b).

5. Subs. by Act 27 of 2013, sec. 13(iii) for clauses (c) to (e). Clause (c) to (e), before substitution, stood as under:

*Contd. on next page*

- (d) one person each from amongst Muslims, to be nominated by the State Government from recognised scholars in Shia and Sunni Islamic Theology;
- (e) one person from amongst Muslims, to be nominated by the State Government from amongst the officers of the State Government not below the rank of Joint Secretary to the State Government;]

<sup>1</sup>[(1A) No Minister of the Central Government or, as the case may be, a State Government, shall be elected or nominated as a member of the Board:

Provided that in case of a Union territory, the Board shall consist of not less than five and not more than seven members to be appointed by the Central Government from categories specified under sub-clauses (i) to (iv) of clause (b) or clauses (c) to (e) in sub-section (1):

Provided further that at least two Members appointed on the Board shall be women:

Provided also that in every case where the system of mutawalli exists, there shall be one mutawalli as the member of the Board.]

(2) Election of the members specified in clause (b) of sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed:

Provided that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board:

Provided further that where there are no Muslim Members in any or the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the ex-Muslim Members of Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall constitute the electoral college.

(3) Notwithstanding anything contained in this section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.

(4) The number of elected members of the Board shall at, all times, be more than the nominated members of the Board except as provided under sub-section (3).

<sup>2</sup>[\*\*\*]

*Contd. from previous page*

- “(c) one and not more than two members to be nominated by the State Government representing eminent Muslim organisations;
- (d) one and not more than two members to be nominated by the State Government, each from recognised scholars in Islamic Theology;
- (e) an officer of the State Government not below the rank of Deputy Secretary”.

1. Ins. by Act 27 of 2013, sec. 13(II).

2. Sub-section (5) omitted by Act 27 of 2013, sec. 13(III). Sub-section (5), before omission, stood as under:

“(5) Where there are Shia wakfs but no separate Shia Wakfs Board exists, at least one of the members from the categories listed in sub-section (1), shall be a Shia Muslim.”.

(6) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia <sup>1</sup>[auqaf] and Sunni <sup>1</sup>[auqaf] to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

<sup>2</sup>[\*\*\*]

(8) Whenever the Board is constituted or re-constituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.

**15. Term of office.**—The members of the Board shall hold office for a term of five years <sup>3</sup>[from the date of notification referred to in sub-section (9) of section 14.]

**16. Disqualification for being appointed, or for continuing as, a member of the Board.**—A person shall be disqualified for being appointed, or for continuing as, a member of the Board if—

- (a) he is not a Muslim and is less than twenty-one years of age;
- (b) he is found to be a person of unsound mind;
- (c) he is an undischarged insolvent;
- (d) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
- <sup>4</sup>[(da) he has been held guilty of encroachment on any waqf property;]
- (e) he has been on a previous occasion—
  - (i) removed from his office as a member or as a mutawalli, or
  - (ii) removed by an order of a competent court or tribunal from any position of trust either for mismanagement or for corruption.

#### COMMENTS

No person who (i) is not a Muslim and is less than 21 years of age, (ii) is of unsound mind, (iii) is an undischarged insolvent, (iv) has been convicted of an offence involving moral turpitude, (v) has been held guilty of encroachment on any waqf property and (vi) has been on a previous occasion removed from his office as a member or as a mutawalli or removed from any position of trust either for mismanagement or for corruption, can be appointed as a member, or continue to be member, of the Board.

1. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

2. Sub-section (7) omitted by Act 27 of 2013, sec. 13(IV). Sub-section (7), before omission, stood as under:

“(7) In the case of the Union territory other than Delhi, the Board shall consist of not less than three and not more than five members to be appointed by the Central Government from amongst the categories of persons specified in sub-section (1):

Provided that there shall be one mutawalli as the member of the Board.”

3. Ins. by Act 27 of 2013, sec. 14.

4. Ins. by Act 27 of 2013, sec. 15.

**17. Meetings of the Board.**—(1) The Board shall meet for the transaction of business at such time and places as may be provided by regulations.

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

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

**18. Committees of the Board.**—(1) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of <sup>1</sup>[auqaf].

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

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

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

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

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

- (a) is or becomes subject to any disqualifications specified in section 16; or
- (b) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the <sup>1</sup>[Auqaf]; or
- (c) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.

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

<sup>2</sup>[**20A. Removal of Chairperson by vote of no confidence.**—Without prejudice to the provisions of section 20, the Chairperson of a Board may be removed by vote of no confidence in the following manner, namely:—

- (a) no resolution expressing a vote of confidence or no confidence in any person elected as Chairperson of a Board shall be moved except in the manner prescribed and twelve months have not elapsed after the date of his election as a Chairperson and be removed except with the prior permission of the State Government;

1. Subs. by Act 27 of 2013, sec. 4 for “wakfs”.

2. Ins. by Act 27 of 2013, sec. 16.

- (b) notice for no confidence shall be addressed to the State Government stating clearly the grounds on which such motion is proposed to be moved and shall be signed by at least half the total members of the Board;
- (c) at least three members of the Board signing the notice of no confidence shall personally present to the State Government, the notice together with an affidavit signed by them to the effect that the signatures on no confidence motion are genuine and have been made by the signatories after hearing or reading the contents of the notice;
- (d) on receipt of the notice of no confidence, as provided hereinabove, the State Government shall fix such time, date and place as may be considered suitable for holding a meeting for the purpose of the proposed no confidence motion:

Provided that at least fifteen days notice shall be given for such a meeting;

- (e) notice for meeting under clause (d) shall also provide that in the event of no confidence motion being duly carried on or, election of the new Chairperson, as the case may be, shall also be held in the same meeting;
- (f) the State Government shall also nominate a Gazetted Officer (other than an officer of the department which is concerned with the supervision and administration of the Board) to act as presiding officer of the meeting in which the resolution for no confidence shall be considered;
- (g) the quorum for such a meeting of the Board shall be one-half of the total number of members of the Board;
- (h) the resolution for no confidence shall be deemed to be carried out, if passed by a simple majority of the members present;
- (i) if a resolution for no confidence is carried out, the Chairperson shall cease to hold office forthwith and shall be succeeded by his successor who shall be elected by another resolution in the same meeting;
- (j) election of the new Chairperson shall be conducted under clause (i), in the meeting under the chairmanship of the said presiding officer referred to in clause (f), in the following manner, namely:—
  - (A) Chairperson shall be elected from amongst the elected members of the Board;
  - (B) nomination of candidates shall be proposed and seconded in the meeting itself and election after withdrawal, if any, shall be held by method of secret ballot;
  - (C) election shall be held by simple majority of the members present in the meeting and in case of equality of votes, the matter shall be decided by drawing of lots; and
  - (D) proceedings of the meeting shall be signed by the presiding officer;

- (k) new Chairperson elected under clause (h) shall hold the office only up to the remainder of the term of the Chairperson removed by the resolution of no confidence; and
- (l) if the motion for passing the resolution of no confidence fails for want of quorum or lack of requisite majority at the meeting, no subsequent meeting for considering the motion of no confidence shall be held within six months of the date of the previous meeting.]

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

**22. Vacancies, etc., not to invalidate proceedings of the Board.**—No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

**23. Appointment of Chief Executive Officer and his term of office and other conditions of service.**—<sup>1</sup>[(1) There shall be a full-time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette, from a panel of two names suggested by the Board and who shall not be below the rank of Deputy Secretary to the State Government and in case of non-availability of a Muslim officer of that rank, a Muslim officer of equivalent rank may be appointed on deputation.]

(2) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.

(3) The Chief Executive Officer shall be *ex officio* Secretary of the Board and shall be under the administrative control of the Board.

**24. Officers and other employees of the Board.**—(1) 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 this Act, details thereof shall be determined by the Board in consultation with the State Government.

(2) The appointment of officers and other employees, their term of office and conditions of service shall be such as may be provided by regulations.

**25. Duties and powers of Chief Executive Officer.**—(1) Subject to the provisions of this Act and of the rules made there under and the directions of the Board, functions of the Chief Executive Officer shall include—

- (a) investigating the nature and extent of <sup>2</sup>[auqaf] and <sup>3</sup>[waqf] properties and calling whenever necessary, an inventory of <sup>3</sup>[waqf]

1. Subs. by Act 27 of 2013, sec. 17, for sub-section (1). Sub-section (1), before substitution, stood as under:

“(1) There shall be a Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, in consultation with the Board, by notification in the Official Gazette.”

2. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

3. Subs. by Act 27 of 2013, sec. 4, for “wakf”.



properties and calling, from time to time, for accounts, returns and information from mutawallis;

- (b) inspecting or causing inspection of <sup>1</sup>[waqf] properties and account, records, deeds or documents relating thereto;
- (c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of <sup>2</sup>[auqaf].

(2) In exercising the powers of giving directions under sub-section (1) in respect of any <sup>1</sup>[waqf], the Board shall act in conformity with the directions by the <sup>1</sup>[waqf] in the deed of the <sup>1</sup>[waqf], the purpose of <sup>1</sup>[waqf] and such usage and customs of the <sup>1</sup>[waqf] as are sanctioned by the school of Muslim law to which the <sup>1</sup>[waqf] belongs.

(3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act.

**26. Powers of the Chief Executive Officer in respect of orders or resolutions of Board.**—Where the Chief Executive Officer considers that an order or resolution passed by the Board—

- (a) has not been passed in accordance with the law; or
- (b) is in excess of or is an abuse of the powers conferred on the Board by or under this Act or by any other law; or
- (c) if implemented, is likely to—
  - (i) cause financial loss to the Board or to the concerned <sup>1</sup>[Waqf] or to the <sup>2</sup>[Auqaf] generally; or
  - (ii) lead to a riot or breach of peace; or
  - (iii) cause danger to human life, health or safety; or
- (d) is not beneficial to the Board or to any <sup>1</sup>[waqf] or to <sup>2</sup>[auqaf] generally,

he may, before implementing such order or resolution place the matter before the Board for its reconsideration and, if such order or resolution is not confirmed by a majority of vote of the members present and voting after such reconsideration, refer the matter to the State Government along with his objections to the order or resolution, and the decision of the State Government thereon shall be final.

<sup>3</sup>[**27. Delegation of powers by the Board.**—The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the Chief Executive Officer 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

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

3. Subs. by Act 27 of 2013, sec. 18, for section 27. Section 27, before substitution, stood as under:

“27. *Delegation of powers by the Board.*—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.”

said order, such of its powers and duties under this Act, as it may deem necessary, except the powers and functions of the Board mentioned under clauses (e), (d), (g) and (j) of sub-section (2) of section 32 and section 110.]

<sup>1</sup>[**28. Power of District Magistrate, Additional District Magistrate or sub-divisional Magistrate to implement the directions of the Board**—Subject to the provisions of this Act and the rules made thereunder, the District Magistrate or in his absence an Additional District Magistrate or Sub Divisional Magistrate of a District in the State shall be responsible for implementation of the decisions of the Board which may be conveyed through the Chief Executive Officer and the Board may, wherever considers necessary, seek directions from the Tribunal for the implementation of its decisions.]

**29. Powers of Chief Executive Officer to inspect records, registers, etc.—**  
<sup>2</sup>[(1)] The Chief Executive Officer or any officer of the Board duly authorised by him in this behalf shall, <sup>3</sup>[subject to such conditions as may be prescribed], be entitled at all reasonable time to inspect, in any public office, any records, registers or other documents relating to a <sup>4</sup>[waqf] or movable or immovable properties which are <sup>4</sup>[waqf] properties or are claimed to be <sup>4</sup>[waqf] properties.

<sup>5</sup>[(2)] The mutawalli or any other person having the custody of any document related to waqf properties shall produce the same, within the prescribed period, before the Chief Executive Officer on being called upon to do so in writing.]

<sup>5</sup>[(3)] Subject to such conditions as may be prescribed, an agency of the Government or any other organisation shall supply, within ten working days, copies of the records, registers of properties or other documents relating to waqf properties or claimed to be waqf properties, to the Chief Executive Officer on a written request to this effect from him:

Provided that before taking any course of action as mentioned in sub-sections (2) and (3), the Chief Executive Officer shall obtain approval of the Board.]

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1. Subs. by Act 27 of 2013, sec. 19, for section 28. Section 28, before substitution, stood as under:

“28. *Chief Executive Officer to exercise powers through Collectors, etc.—*(1) Subject to the provisions of this Act and of the rules made thereunder, the Chief Executive Officer may exercise all or any of the powers conferred on him by or under this Act with the previous approval of the Board through the Commissioner of the division or the Collector of the district in which the concerned wakf property is situated or through any other Gazetted Officer whom he may appoint for such purpose and may, from time to time, delegate any of his powers to any such Commissioner of the division or Collector or any other Gazetted Officer and may, at any time, revoke the delegation so made by him.

(2) Where any delegation of powers is made by the Chief Executive Officer under sub-section (1), the person to whom such delegation is made may exercise those powers in the same manner and to the same extent as if they have been conferred on him directly by this Act and not by way of delegation.”.

2. Section 29 renumbered as sub-section (1) thereof by Act 27 of 2013, sec. 20.

3. Subs. by Act 27 of 2013, sec. 20(a) for “subject to such conditions and restrictions as may be prescribed and subject to the payment of such fees as may be leviable under any law for the time being in force”.

4. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

5. Ins. by Act 27 of 2013, sec. 20(b).

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

(2) All copies issued under this section shall be certified by the Chief Executive Officer of the Board in the manner provided in section 76 of the Indian Evidence Act, 1872 (1 of 1872).

(3) The Powers conferred on the Chief Executive Officer by sub-section (2) may be exercised by such other officer or officers of the Board as may either generally or specially be authorised in this behalf by the Board.

**31. Prevention of disqualification for membership of Parliament.**— It is hereby declared that the offices of the Chairperson or members of a Board shall not be disqualified and shall be deemed never to have been disqualified for being chosen as, or for being, a member of parliament <sup>1</sup>[or a Member of Union territory Legislature or a Member of a State Legislature if so declared under a law made by the appropriate State Legislature].

**32. Powers and functions of the Board.**—(1) Subject to any rules that may be made under this Act, the general superintendence of all <sup>2</sup>[auqaf] in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the <sup>2</sup>[auqaf] under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such <sup>2</sup>[auqaf] were created or intended:

Provided that in exercising its powers under this Act in respect of any <sup>3</sup>[waqf], the Board shall act in conformity with the directions of the <sup>4</sup>[waqif], the purposes of the <sup>3</sup>[waqf] and any usage or custom of the <sup>3</sup>[waqf] sanctioned by the school of Muslim law to which the <sup>3</sup>[waqf] belongs.

*Explanation.*—For the removal of doubts, it is hereby declared that in this sub-section, <sup>3</sup>[waqf] includes a <sup>3</sup>[waqf] in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

(2) Without prejudice to the generality of the foregoing power, the functions of the Boards shall be—

- (a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every <sup>3</sup>[waqf];
- (b) to ensure that the income and other property of <sup>2</sup>[auqaf] are applied to the objects and for the purposes for which such <sup>2</sup>[auqaf] were intended or created;
- (c) to give directions for the administration of <sup>2</sup>[auqaf];
- (d) to settle schemes of management for a <sup>3</sup>[waqf]:

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

1. Ins. by Act 27 of 2013, sec. 21.

2. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

3. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

4. Subs. by Act 27 of 2013, for “wakif”.

(e) to direct—

- (i) the utilisation of the surplus income of a <sup>1</sup>[waqf] consistent with the objects of a <sup>1</sup>[waqf];
- (ii) in what manner the income of a <sup>1</sup>[waqf], the objects of which are not evident from any written instrument, shall be utilised;
- (iii) in any case where any object of <sup>1</sup>[waqf] has ceased to exist or has become incapable of achievement, that so much of the income of the <sup>1</sup>[waqf] as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:

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

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

- (i) in the case of a Sunni <sup>1</sup>[waqf], by the Sunni members of the Board only; and
- (ii) in the case of a Shia <sup>1</sup>[waqf], by the Shia members of the Board only:

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

- (f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of account of <sup>2</sup>[auqaf];
- (g) to appoint and remove mutawallis in accordance with the provisions of this Act;
- (h) to take measures for the recovery of lost properties of any <sup>1</sup>[waqf];
- (i) to institute and defend suits and proceedings relating to <sup>2</sup>[auqaf];
- <sup>3</sup>[(j) to sanction lease of any immovable property of a waqf in accordance with the provisions of this Act and the rules made thereunder:

Provided that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction:

Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.]

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

3. Subs. by Act 27 of 2013, sec. 22(l)(a), for clause (j). Clause (j), before substitution, stood as under:

“(j) to sanction any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange or lease, in accordance with the provisions of this Act:

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

- (k) to administer the <sup>1</sup>[Waqf] Fund;
- (l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the <sup>2</sup>[waqf] property as the Board may, from time to time, require;
- (m) to inspect, or cause inspection of, <sup>2</sup>[waqf] properties, accounts, records or deeds and documents relating thereto;
- (n) to investigate and determine the nature and extend of <sup>2</sup>[waqf] and <sup>2</sup>[waqf] property, and to cause, whenever necessary, a survey of such <sup>2</sup>[waqf] property;
- <sup>3</sup>[(na) to determine or cause to be determined, in such manner as may be specified by the Board, market rent of the waqf land or building;]
- (o) generally do all such acts as may be necessary for the control, maintenance and administration of <sup>4</sup>[auqaf].

(3) Where the Board has settled any scheme of management under clause (d) or given any direction under clause (e) of sub-section (2), any person interested in the <sup>2</sup>[waqf] or affected by such settlement or direction may institute a suit in a Tribunal for setting aside such settlement or directions and the decision of the Tribunal thereon shall be final.

(4) Where the Board is satisfied that any <sup>2</sup>[waqf] land, which is a <sup>2</sup>[waqf] property, <sup>5</sup>[has the potential for development as an educational institution, shopping centre, market, housing or residential flats and the like] \*market, housing flats and the like, it may serve upon the mutawalli of the concerned <sup>2</sup>[waqf] a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works, specified in the notice.

(5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may, <sup>6</sup>[\*\*\*] take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from <sup>1</sup>[Waqf] funds or from the finances which may be raised on the security of the properties of the <sup>2</sup>[waqf] concerned, and control and manage the properties till such time as all expenses incurred by the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate changes incurred on the property are recovered from the income derived from the property:

1. Subs. by Act 27 of 2013, sec. 4, for “Wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. Ins. by Act 27 of 2013, sec. 22(I)(b).

4. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

5. Subs. by Act 27 of 2013, sec. 22(II), for “offers a feasible potential for development as a shopping centre”.

Ed.—The star marked words “market, housing flats and the like” have become redundant after the amendment made by Act 27 of 2013, sec. 22(II).

6. The words “with the prior approval of the Government”, omitted by Act 27 of 2013, sec. 22(III).

Provided that the Board shall compensate annually the mutawalli of the concerned <sup>1</sup>[waqf] to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.

(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned <sup>1</sup>[waqf].

#### STATE AMENDMENT

**West Bengal.**—In section 32, in sub-section (5), after the words “and control and manage the properties”, insert these words, “in such manner as may be prescribed,”.

[Vide West Bengal Act 33 of 1997, sec. 3.]

**33. Powers of inspection by Chief Executive Officer or persons authorised by him.**—(1) With a view to examining whether, by reason of any failure or negligence on the part of a mutawalli in the performance of his executive or administrative duties, any loss or damage has been caused to any <sup>1</sup>[waqf] or <sup>1</sup>[waqf] property, the Chief Executive Officer <sup>2</sup>[or any other person authorised by him in writing] with the prior approval of the Board, <sup>3</sup>[\*\*\*] may inspect all movable and immovable properties, which are <sup>1</sup>[waqf] properties, and all records, correspondences, plans, accounts and other documents relating thereto.

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

(3) Where, after any such inspection, it appears that the concerned mutawalli or any officer or other employee who is or was working under him had misappropriated, misapplied or fraudulently retained, any money or other <sup>1</sup>[waqf] property, or had incurred irregular, unauthorised or improper expenditure from the funds of the <sup>1</sup>[waqf], the Chief Executive Officer may, after giving the mutawalli or the person concerned a reasonable opportunity of showing cause why an order for the recovery of the amount or property should not be passed against him and after considering such explanation, if any, as such person may furnish, determine the amount or the property, which has been misappropriated, misapplied or fraudulently retained, or the amount of the irregular, unauthorised or improper expenditure incurred by such person, and make an order directing such person to make payment of the amount so determined and to restore the said property to the <sup>1</sup>[waqf], within such time as may be specified in the order.

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Ins. by Act 27 of 2013, sec. 23(a).

3. The words “either himself or any person authorised by him in writing, in this behalf”, omitted by Act 27 of 2013, sec. 23(b).

(4) A mutawalli or other person aggrieved by such order may, within thirty days of the receipt by him of the order, appeal to the Tribunal:

Provided that no such appeal shall be entertained by the Tribunal unless the appellant first deposits with the Chief Executive Officer the amount which has been determined under sub-section (3) as being payable by the appellant and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3).

(5) The Tribunal may, after taking such evidence as it may think fit, confirm, reverse or modify the order made by the Chief Executive Officer under sub-section (3) or may remit, either in whole or in part, the amount specified in such order and may make such orders as to costs as it may think appropriate in the circumstances of the case.

(6) The order made by the Tribunal under sub-section (5) shall be final.

**34. Recovery of the amount determined under section 33.**—Where any mutawalli or other person who has been ordered, whether under sub-section (3) or sub-section (5) of section 33, to make any payment or to restore the possession of any property, omits or fails to make such payment or restoration within the time specified in such order, the Chief Executive Officer, with the prior approval of the Board shall, take such steps as he may think fit for the recovery of possession of the property aforesaid and shall also send a certificate to the Collector of the district in which the property of such mutawalli or other person is situate, stating therein the amount that has been determined by him or by the Tribunal as the case may be, under section 33, as being payable by such mutawalli or other person, and, thereupon, the Collector shall recover the amount specified in such certificate as if it were an arrear of land revenue and on the recovery of such amount, pay the same to the Chief Executive Officer, who shall, on receipt thereof, credit the amount to the funds of the concerned <sup>1</sup>[waqf].

**35. Conditional attachment by Tribunal.**—(1) Where the Chief Executive Officer is satisfied that the mutawalli or any other person who has been ordered under sub-section (3) or sub-section (5) of section 33 to make any payment, with intent to defeat or delay the execution of the said order,—

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

(b) is about to remove the whole or any part of his property from the jurisdiction of the Chief Executive Officer,

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

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

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1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

(3) The Tribunal may direct the mutawalli or the person concerned, as the case may be, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order; to produce and place at the disposal of the Tribunal when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the amount specified in the certificate referred to in section 34, or to appear and show cause why he should not furnish such security.

(4) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(5) Every attachment made under this section shall be made in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as if it were an order for attachment made under the provision of the said Code.

#### CHAPTER V REGISTRATION OF <sup>1</sup>[AUQAF]

**36. Registration.**—(1) Every <sup>2</sup>[waqf], whether created before or after the commencement of this Act, shall be registered at the office of the Board.

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

Provided that such applications may be <sup>3</sup>[made by the waqf] or his descendants or a beneficiary of the <sup>2</sup>[waqf] or any Muslim belonging to the sect to which the <sup>2</sup>[waqf] belongs.

(3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain following particulars:—

- (a) a description of the <sup>2</sup>[waqf] properties sufficient for identification thereof;
- (b) the gross annual income from such properties;
- (c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the <sup>2</sup>[waqf] properties;
- (d) an estimate of the expenses annually incurred in the realisation of the income of the <sup>2</sup>[waqf] properties;
- (e) the amount set apart under the <sup>2</sup>[waqf] for—
  - (i) the salary of the mutawalli and allowances to the individuals;
  - (ii) purely religious purposes;
  - (iii) charitable purposes; and
  - (iv) any other purposes;
- (f) any other particulars provided by the Board by regulations.

(4) Every such application shall be accompanied by a copy of the <sup>2</sup>[waqf] deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the <sup>2</sup>[waqf].

1. Subs. by Act 27 of 2013, sec. 4, for “WAKFS”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. Subs. by Act 27 of 2013, sec. 24, for “made by the wakf”.



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

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

(7) On receipt of an application for registration, the Board may, before the registration of the <sup>1</sup>[waqf] make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the <sup>1</sup>[waqf] property, the Board shall, before registering the <sup>1</sup>[waqf], give notice of the application to the person administering the <sup>1</sup>[waqf] property and shall hear him if he desires to be heard.

(8) In the case of <sup>2</sup>[auqaf] created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of <sup>2</sup>[auqaf] created after such commencement, within three months from the date of the creation of the <sup>1</sup>[waqf]:

Provided that where there is not Board at the time of creation of a <sup>1</sup>[waqf], such application will be made within three months from the date of establishment of the Board.

#### COMMENTS

Registration of every waqf at the office of the Board is a *sine qua non* to its valid creation. Every application for registration of waqf shall be made within three months from the date of (a) the commencement of this Act, (b) the creation of the waqf, (c) the establishment of the Board, as the case may be.

**37. Register of <sup>3</sup>[auqaf].**—<sup>4</sup>[(1)] The Board shall maintain a register of Auqaf which shall contain in respect of each <sup>1</sup>[waqf] copies of the Waqf deeds, when available and the following particulars, namely:—

- (a) the class of the <sup>1</sup>[waqf];
- (b) the name of the mutawalli;
- (c) the rule of succession to the office of mutawalli under the <sup>1</sup>[waqf] deed or by custom or by usage;
- (d) particulars of all <sup>1</sup>[waqf] properties and all title deeds and documents relating thereto;
- (e) particulars of the scheme of administration and the scheme of expenditure at the time of registration;
- (f) such other particulars as may be provided by regulations.

<sup>5</sup>[(2) The Board shall forward the details of the properties entered in the register of auqaf to the concerned land record office having jurisdiction of the waqf property.]

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

3. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

4. Section 37 renumbered as sub-section (1) thereof by Act 27 of 2013, sec. 25.

5. Ins. by Act 27 of 2013, sec. 25.

<sup>1</sup>[(3) On receipt of the details as mentioned in sub-section (2), the land record office shall, according to established procedure, either make necessary entries in the land record or communicate, within a period of six months from the date of registration of waqf property under section 36, its objections to the Board.]

**38. Powers of Board to appoint Executive Officer.**—(1) Notwithstanding anything contained in this Act, the Board may, if it is of the opinion that it is necessary so to do in the interests of the <sup>2</sup>[waqf], appoint on whole time or part-time basis or in an honorary capacity, subject to such conditions as may be provided by regulations, an Executive Officer with such supporting staff as it considers necessary for any <sup>2</sup>[waqf] having a gross annual income of not less than five lakh rupees:

Provided that the person chosen for appointment should be a person professing Islam.

(2) Every Executive Officer appointed under sub-section (1) shall exercise such powers and discharged such duties as pertain only to the administration of the property of the <sup>2</sup>[waqf] for which he has been appointed and shall exercise those powers and discharge those duties under the direction, control and supervision of the Board:

Provided that the Executive Officer who is appointed for a <sup>2</sup>[waqf] having a gross annual income of not less than five lakh rupees shall ensure that the budget of the <sup>2</sup>[waqf] is submitted, the accounts of the <sup>2</sup>[waqf] are regularly maintained, and the yearly statement of accounts are submitted within such time as the Board may specify.

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

(4) The salaries and allowances of the Executive Officer and his staff shall be fixed by the Board and in fixing the quantum of such salary the Board shall have due regard to the income of the <sup>2</sup>[waqf], the extent and nature of the duties of the Executive Officer and shall also ensure that amounts of such salaries and allowances are not disproportionate to the income of the <sup>2</sup>[Waqf] and do not operate as an unnecessary financial burden on it.

(5) The salaries and allowances of the Executive Officer and his staff shall be paid by the Board from the <sup>3</sup>[Waqf] Fund and, if the <sup>2</sup>[waqf] generates any additional income as a result of appointment of the Executive Officer, the Board may claim reimbursement of amounts spent on the salaries and allowances from the fund of the <sup>2</sup>[waqf] concerned.

(6) The Board may, for sufficient reasons, and after giving to the Executive Officer or a member of his staff, reasonable opportunity of being heard, suspend, remove or dismiss the Executive Officer or a member of his staff from his post.

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1. Ins. by Act 27 of 2013, sec. 25.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. Subs. by Act 27 of 2013, sec. 4, for “Wakf”.

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

**39. Powers of Board in relation to <sup>1</sup>[auqaf] which have ceased to exist.—**

(1) The Board shall, if it is satisfied that the objects or any part thereof, of a <sup>2</sup>[waqf] have ceased to exist, whether such cesser took place before or after the commencement of this Act, cause an inquiry to be held by the Chief Executive Officer, in the prescribed manner, to ascertain the properties and funds pertaining to such <sup>2</sup>[waqf].

(2) On the receipt of the report of inquiry of the Chief Executive Officer, the Board shall pass an order—

- (a) specifying the property and funds of such <sup>2</sup>[waqf];
- (b) directing that any property or funds pertaining to such <sup>2</sup>[waqf] which have been recovered shall be applied or utilised for the renovation of any <sup>2</sup>[waqf] property and where there is no need for making any such renovation or where utilisation of the funds for such renovation is not possible, be appropriated, to any of the purposes specific in sub-clause (iii) of clause (e) of sub-section (2) of section 32.

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

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

- (a) is <sup>2</sup>[waqf] property;
- (b) has not been acquired under any law for the time being in force relating to acquisition of land or is not under any process of acquisition under any such law, or has not vested in the State Government under any law for the time being in force relating to land reforms; and
- (c) is not in the occupation of any person who has been authorised by or under any law for the time being in force to occupy such building or other place, make an order—
  - (i) directing the recovery of such building or place from any person who may be in unauthorised possession thereof, and
  - (ii) directing that such property, building or place be used for religious purpose or instruction as before, or if such use is not

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1. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

possible, be utilised for any purpose specified in sub-clause (iii) of clause (e) of sub-section (2) of section 32.

**40. Decision if a property is <sup>1</sup>[waqf] property.**—(1) The Board may itself collect information regarding any property which it has reason to believe to be <sup>2</sup>[waqf] property and if any question arises whether a particular property is <sup>2</sup>[waqf] property or not or whether a <sup>2</sup>[waqf] is a Sunni <sup>2</sup>[waqf] or a Shia <sup>2</sup>[waqf] it may, after making such inquiry as it may deem fit, decide the question.

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

(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the societies Registration Act, 1860 (21 of 1860) or under any other Act, is <sup>2</sup>[waqf] property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is <sup>2</sup>[waqf] property, call upon the trust or society, as the case may be, either to register such property under this Act as <sup>2</sup>[waqf] property or show cause why such property should not be so registered:

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

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

#### COMMENTS

The decision of the Board on the questions whether a particular property is waqf property or not, shall, unless revoked or modified by the Tribunal, be final.

**41. Power to cause registration of <sup>1</sup>[waqf] and to amend register.**— The Board may direct a mutawalli to apply for the registration of a <sup>2</sup>[waqf], or to supply any information regarding a <sup>2</sup>[waqf] or may itself cause the <sup>2</sup>[waqf] to be registered or may at any time amend the register of <sup>3</sup>[auqaf].

**42. Change in the management of <sup>4</sup>[auqaf] to be notified.**—(1) In the case of any change in the management of a registered <sup>2</sup>[waqf] due to the death or retirement or removal of the mutawalli, the incoming mutawalli shall forthwith, and any other person may notify the change to the Board.

(2) In the case of any other change in any of the particulars mentioned in section 36, the mutawalli shall, within three months from the occurrence of the change, notify such change to the Board.

#### COMMENTS

Any change in the management of a registered waqf is required to be notified to the Board, within three months from the occurrence of the change.

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

4. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

43. <sup>1</sup>[Auqaf] registered before the commencement of this Act deemed to be registered.—Notwithstanding anything contained in this Chapter, where any <sup>2</sup>[Waqf] has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the <sup>2</sup>[waqf] under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act.

#### CHAPTER VI

#### MAINTENANCE OF ACCOUNTS OF <sup>3</sup>[AUQAF]

44. **Budget.**—(1) Every mutawalli of a <sup>2</sup>[waqf] shall, in every year prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuring showing the estimated receipts and expenditure during that financial year.

(2) Every such budget shall be submitted by the mutawalli at least <sup>4</sup>[thirty days] before the beginning of the financial year to the Board and shall made adequate provision for the following:—

- (i) for carrying out the objects of the <sup>2</sup>[waqf];
- (ii) for the maintenance and preservation of the <sup>2</sup>[waqf] property;
- (iii) for the discharge of all liabilities and subsisting commitments binding on the <sup>2</sup>[waqf] under this Act or any other law for the time being in force.

<sup>5</sup>[(3) In case the Board considers any item in the budget being contrary to the objects of the waqf and the provisions of this Act, it may give such direction for addition or deletion of such item as it may deem fit.]

(4) If in the course of the financial year the mutawalli finds it necessary to modify the provisions made in the budget in regard to the receipt or to the distribution of the amounts to be expended under the different heads, he may submit to the Board a supplementary or a revised budget and the provisions of sub-section (3) shall, as far as may be, apply to such supplementary or revised budget.

45. **Preparation of budget of <sup>6</sup>[auqaf] under direct management of the Board.**—(1) The Chief Executive Officer shall prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure for each of the <sup>7</sup>[auqaf] under the direct management of the Board, showing therein the estimated receipts and expenditure and submit it to the Board for its approval.

1. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. Subs. by Act 27 of 2013, sec. 4, for “WAKFS”.

4. Subs. by Act 27 of 2013, sec. 26(a), for “ninety days”.

5. Subs. by Act 27 of 2013, sec. 26(b), for sub-section (3). Sub-section (3), before substitution, stood as under:

“(3) The Board may give such directions for making alterations, omissions or additions in the budget as it may deem fit, consistent with the objects of the wakf and the provisions of this Act.”.

6. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

7. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

(2) While submitting the budget under sub-section (1), the Chief Executive Officer shall also prepare statement giving details of the increase, if any, in the income of each <sup>1</sup>[waqf] under the direct management of the Board and the steps which have been taken for its better management and the results accruing therefrom during the year.

(3) The Chief Executive Officer shall keep regular accounts and be responsible for the proper management of every <sup>1</sup>[waqf] under the direct management of the Board.

(4) Every budget submitted by the Chief Executive Officer under sub-section (1) shall comply with the requirements of section 46 and, for this purpose, references therein to the mutawalli of the <sup>1</sup>[waqf] shall be construed as references to the Chief Executive Officer.

(5) The audit of accounts of every <sup>1</sup>[waqf] under the direct management of the Board shall be undertaken by the State Examiner of Local Funds or any other officer appointed by the State Government for this purpose, irrespective of the income of the <sup>1</sup>[waqf].

(6) The provisions of sub-sections (2) and (3) of section 47 and the provisions of sections 48 and 49 shall, in so far as they are not inconsistent with the provisions of this section, apply to the audit of accounts referred to in this section.

(7) Where any <sup>1</sup>[waqf] is under the direct management of the Board, such administrative charges as may be specified by the Chief Executive Officer shall be payable by the <sup>1</sup>[waqf] to the Board:

Provided that the Chief Executive Officer shall not collect more than ten per cent. of the gross annual income of the <sup>1</sup>[waqf] under the direct management of the Board as administrative charges.

**46. Submission of accounts of <sup>2</sup>[auqaf].**—(1) Every mutawalli shall keep regular accounts.

(2) Before the <sup>3</sup>[1st day of July] next, following the date on which the application referred to in section 36 has been made and thereafter before the <sup>3</sup>[1st day of July] in every year, every mutawalli of a <sup>1</sup>[waqf] shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be provided by regulations by the Board, of all moneys received or expended by the mutawalli on behalf of the <sup>1</sup>[waqf] during the period of twelve months ending on the 31st day of March, or, as the case may be, during that portion of the said period during which the provisions of this Act, have been applicable to the <sup>1</sup>[waqf]:

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

**47. Audit of accounts of <sup>2</sup>[auqaf].**—(1) The accounts of <sup>4</sup>[auqaf] submitted to the Board under Section 46 shall be audited and examined in the following manner, namely:—

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

3. Subs. by Act 27 of 2013, sec. 27, for “1st day of May”.

4. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

- (a) in the case of a <sup>1</sup>[waqf] having no income or a net annual income not exceeding <sup>2</sup>[fifty thousand rupees], the submission of a statement of accounts shall be a sufficient compliance with the provisions of section 46 and the accounts of two per cent. of such <sup>3</sup>[auqaf] shall be audited annually by an auditor appointed by the Board;
- (b) the accounts of the <sup>1</sup>[waqf] having net annual income exceeding <sup>4</sup>[fifty thousand rupees] shall be audited annually, or at such other intervals as may be prescribed, by an auditor appointed by the Board from out of the panel of auditors prepared by the State Government and while drawing up such panel of auditors, the State Government shall specify the scale of remuneration of auditors;
- (c) the State Government may, <sup>5</sup>[under intimation to the Board] at any time cause the account of any <sup>1</sup>[waqf] audited by the State Examiner of Local Funds or by any other officer designated for that purpose by that State Government;

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

(3) The cost of the audit of the accounts of a <sup>1</sup>[waqf] shall be met from the funds of that <sup>1</sup>[waqf]:

Provided that the remuneration of the auditors appointed from out of the panel drawn by the State Government in relation to <sup>3</sup>[auqaf] having a net annual income of <sup>6</sup>[more than fifty thousand rupees] shall be paid in accordance with the scale of remuneration specified by the State Government under clause (c) of sub-section (1):

Provided further that where the audit of the accounts of any <sup>1</sup>[waqf] is made by the State Examiner of Local Funds or any other officer designated by the State Government in this behalf, the cost of such audit shall not exceed one and a half per cent. of the net annual income of such <sup>1</sup>[waqf] and such costs shall be met from the funds of the <sup>3</sup>[auqaf] concerned.

**48. Board to pass orders on auditor's report.**—(1) The Board shall examine the auditor's report, and may call for the explanation of any person in regard to

1. Subs. by Act 27 of 2013, sec. 4, for "wakf".

2. Subs. by Act 27 of 2013, sec. 28(l)(i), for "ten thousand rupees".

3. Subs. by Act 27 of 2013, sec. 4, for "wakfs".

4. Subs. by Act 27 of 2013, sec. 28(l)(ii), for "ten thousand rupees".

5. Ins. by Act 27 of 2013, sec. 28(l)(iii).

6. Subs. by Act 27 of 2013, sec. 28(l), for "more than ten thousand rupees but less than fifteen thousand rupees".

any matter mentioned therein, and shall pass such orders as it thinks fit including orders for the recovery of the amount certified by the auditor under sub-section (2) of section 47.

(2) The mutawalli or any other person aggrieved by any order made by the Board may, within thirty days of the receipt by him of the order, apply to the Tribunal to modify or set aside the order and the Tribunal may, after taking such evidence as it may think necessary, confirm or modify the order or remit the amount so certified either in whole or in part, and may also make such order as to costs as it may think appropriate in the circumstances of the case.

(3) No application made under sub-section (2) shall be entertained by the Tribunal unless the amount certified by the auditor under sub-section (2) of section 47 has first been deposited in the Tribunal and the Tribunal shall not have any power to stay the operation of the order made by the Board under sub-section (1).

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

(5) Every amount for the recovery of which any order has been made under sub-section (1) or sub-section (2) shall, where such amount remains unpaid, be recoverable in the manner specified in section 34 or section 35 as if the said order were an order for the recovery of any amount determined under sub-section (3) of section 35.

**49. Sums certified to be due recoverable as arrears of land revenue.—**(1) Every sum certified to be due from any person by an auditor in his report under section 47 unless such certificate is modified or cancelled by an order of the Board or of the Tribunal made under section 48, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Board.

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

**50. Duties of mutawalli.—**It shall be the duty of every mutawalli—

- (a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;
- (b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;
- (c) to allow inspection of <sup>1</sup>[waqf] properties, accounts or records or deeds and documents relating thereto;
- (d) to discharge all public dues; and
- (e) to do any other act which he is lawfully required to do by or under this Act.

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1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.



**51. Alienation of <sup>1</sup>[waqf] property without sanction of Board to be void.—**  
<sup>2</sup>[(1) Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the Board:

Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013.]

<sup>2</sup>[(1A) Any sale, gift, exchange, mortgage or transfer of waqf Property shall be void *ab initio*:

Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take-up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:

Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 (1 of 1894) or any other law relating to acquisition of land if such acquisition is made in consultation with the Board:

Provided also that—

- (a) the acquisition shall not be in contravention of the Places of <sup>3</sup>[\*\*\*\*] Worship (Special Provisions) Act, 1991 (42 of 1991);
- (b) the purpose for which the land is being acquired shall be undisputedly for a public purpose;
- (c) no alternative land is available which shall be considered as more or less suitable for that purpose; and
- (d) to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or a suitable land with reasonable solatium *in lieu* of the acquired property;]

<sup>4</sup>[\*\*\*\*]

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 29(i), for sub-section (1). Sub-section (1), before substitution, stood as under:

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

Provided that no mosque, dargah or khangah shall be gifted, sold, exchanged or mortgaged except in accordance with any law for the time being in force.”

3. The word “public” omitted by corrigendum, published in the Gazette of India, Extra., Pt. II, Sec. 1, No. 3, dated 1st January, 2014.

4. Sub-sections (2), (3), (4) and (5) omitted by Act 27 of 2013, sec. 29(ii). Sub-sections (2), (3), (4) and (5), before omission, stood as under:

“(2) The Board may, after publishing in the Official Gazette, the particulars relating to the transaction referred to in sub-section (1) and inviting any objections and suggestions with respect thereto and considering all objections and suggestions,

*Contd. on next page*

**52. Recovery of <sup>1</sup>[waqf] property transferred in contravention of section 51.—**(1) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a <sup>2</sup>[waqf] entered as such in the register of <sup>2</sup>[waqf] maintained under section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of section 51 <sup>3</sup>[or section 56], it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

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

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

- (a) by giving or tendering the order, or by sending it by post to the person for whom it is intended; or
- (b) if such person cannot be found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some adult male member or servant

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*Contd. from previous page*

if any, that may be received by it from the concerned mutawalli or any other person interested in the wakf, accord sanction to such transaction if it is of opinion that such transaction is—

- (i) necessary or beneficial to the wakf;
- (ii) consistent with the objects of the wakf;
- (iii) the consideration thereof is reasonable and adequate:

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

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

(3) The utilisation or investment of the amount realised by the sale or exchange mortgage of any property shall be made by the mutawalli subject to the approval of the Board, and where any amount has been raised by mortgage of any such property, the mutawalli or other person shall make repayment of the mortgage-debt and obtain a discharge of the mortgage-debt from the mortgage within such reasonable time as the Board may specify.

(4) Every approval given by the Board under sub-section (3) shall be communicated to the mutawalli and shall also be published in the manner prescribed.

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

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. Ins. by Act 27 of 2013, sec. 30.

of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:

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

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

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

(6) In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations.

#### COMMENTS

The Board has been empowered to recover the possession of waqf property which was alienated without its previous sanction.

#### <sup>1</sup>[52A. Penalty for alienation of waqf property without sanction of Board.—

(1) Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time being in force, be vested in the Board without any compensation therefor.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any offence punishable under this section shall be cognizable and non-bailable.

(3) No court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.

(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.]

#### **53. Restriction on purchase of property on behalf of <sup>2</sup>[waqf].—**

Notwithstanding anything contained in a <sup>3</sup>[waqf] deed, no immovable property shall be purchased for or on behalf of any <sup>3</sup>[waqf] from the funds of any <sup>3</sup>[waqf] except with the prior sanction of the Board, and the Board shall not accord such sanction unless it considers that the acquisition of such property is necessary or

1. Ins. by Act 27 of 2013, sec. 31.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

beneficial to the <sup>1</sup>[waqf] and that the price proposed to be paid therefore is adequate and reasonable:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in the Official Gazette inviting objections and suggestions with respect thereto and, the Board shall, after considering the objections and suggestions that may be received by it from mutawallis or other persons interested in the <sup>1</sup>[waqf], make such orders as it may think fit.

**54. Removal of encroachment from <sup>2</sup>[waqf] property.**—(1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is <sup>1</sup>[waqf] property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

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

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is <sup>1</sup>[waqf] property and that there has been an encroachment on any such <sup>1</sup>[waqf] property, <sup>3</sup>[he may, make an application to the Tribunal for grant of order of eviction for removing] such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the <sup>1</sup>[waqf].

<sup>4</sup>[(4) The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property:

Provided that the Tribunal may before making an order of eviction give, an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer.]

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1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. Subs. by Act 27 of 2013, sec. 32(a), for “he may, by an order, require the encroacher to remove”.

4. Subs. by Act 27 of 2013, sec. 32(b), for sub-section (4). Sub-section (4), before substitution, stood as under:

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

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

<sup>1</sup>[(5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property.]

#### COMMENTS

The Chief Executive Officer has been empowered to issue notice to the encroacher to remove encroachment(s) from a waqf property and deliver possession thereof to the concerned mutawalli. If the Chief Executive Officer is satisfied that the property in question is waqf property and that there has been an encroachment on such waqf property, he may make an application to the Tribunal for grant of order of eviction for removing such encroachment.

**55. Enforcement of orders made under section 54.**—Where the person, ordered under <sup>2</sup>[sub-section (4)] of section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or property to which the order relates, within the time aforesaid, the Chief Executive Officer may <sup>3</sup>[refer the order of the Tribunal to the Executive Magistrate] within the local limits of whose jurisdiction the land, building, space or other property is situated for evicting the encroacher, and, thereupon, such magistrate shall make an order directing the encroacher to remove encroachment, or, as the case may be, vacate the land, building, space or other property and to deliver possession thereof to the concerned mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for the purpose, take such police assistance as may be necessary.

#### STATE AMENDMENT

**West Bengal.**—(a) After section 55, insert the following section, namely:—

“55A. *Penalty for encroachment on wakf properties.*—

- (1) Whoever encroaches on any land, building space or other property which is wakf property, and which has been registered as such under this Act, shall be punishable with rigorous imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.
- (2) Any offence punishable under this section shall be cognizable.
- (3) No court shall take cognizance of any offence punishable under this section save on complaint made by the Board or by an officer of the Board duly authorized by it in this behalf.
- (4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.
- (5) Any fine imposed under this section shall, when realised, be credited to the Wakf Fund.”

(b) In section 55A as inserted by the Wakf (West Bengal Amendment) Act, 1997 (West Bengal Act 33 of 1997)—

- (i) in such section (1), omit the words “or with fine which may extend to five thousand rupees, or with both”;

1. Subs. by Act 27 of 2013, sec. 32(b), for sub-section (4).

2. Subs. by Act 27 of 2013, sec. 33(a), for sub-section (3).

3. Subs. by Act 27 of 2013, sec. 33(b), for “apply to the Sub-Divisional Magistrate”.

(ii) in such section (2) after the word “cognizable”, insert the words “and non-bailable”;

(iii) omit sub-section (5).

[Vide West Bengal Act 16 of 1998, sec. 3.]

**<sup>1</sup>[55A. Disposal of property left on waqf property by unauthorised occupants.—**(1) Where any person has been evicted from any waqf property under sub-section (4) of the section 54, the Chief Executive Officer may, after giving fourteen days’ notice to the person from whom possession of the waqf property has been taken and after publishing the notice in at least one newspaper having circulation in the locality and after proclaiming the contents of the notice by placing it on conspicuous part of the waqf property, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

(2) Where any property is sold under sub-section(1), the sale proceeds shall, after deducting the expenses relating to removal, sale and such other expenses, the amount, if any, due to the State Government or a local authority or a corporate authority on account of arrears of rent, damages or costs, be paid to such person, as may appear to the Chief Executive Officer to be entitled to the same:

Provided that where the Chief Executive Officer is unable to decide as to the person to whom the balance of the amount is payable or as to the <sup>2</sup>[apportionment] of the same, he may refer such dispute to the Tribunal and the decision of the Tribunal thereon shall be final.]

**56. Restriction on power to grant lease of <sup>3</sup>[waqf] property.—**(1) <sup>4</sup>[A lease for any period exceeding thirty years] of any immovable property which is <sup>5</sup>[waqf] property shall, notwithstanding anything contained in the deed or instrument of <sup>5</sup>[waqf] or in any other law for the time being in force, be void and of no effect.

<sup>6</sup>[Provided that a lease for any period up to thirty years may be made for commercial activities, education or health purposes, with the approval of the State Government, for such period and purposes as may be specified in the rules made by the Central Government:

Provided further that lease of any immovable waqf property, which is an agricultural land, for a period exceeding three years shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect:

Provided also that before making lease of any waqf property, the Board shall publish the details of lease and invite bids in at least one leading national and regional news papers.]

1. Ins. by Act 27 of 2013, sec. 34.

2. Corrected by corrigendum, for “appointment”, published in the Gazette of India, Extra., Pt. II, Sec. 1, No. 3, dated 1st January, 2014.

3. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

4. Subs. by Act 27 of 2013, sec. 35(a)(i), for “A lease or sub-lease for a period exceeding three years”.

5. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

6. Ins. by Act 27 of 2013, sec. 35(a)(ii).

(2) <sup>1</sup>[A lease for a period of one year but not exceeding thirty years] of immovable property which is <sup>2</sup>[waqf] property shall, notwithstanding anything contained in the deed or instrument of <sup>2</sup>[waqf] or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease <sup>3</sup>[\*\*\*] or renewal thereof under this section review the terms and conditions on which the lease <sup>3</sup>[\*\*\*] is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct:

<sup>4</sup>[Provided that the Board shall immediately intimate the State Government regarding a lease for any period exceeding three years of any waqf property and thereafter it may become effective after the expiry of forty-five days from the date on which the Board intimates the State Government.]

<sup>5</sup>[(4) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

**57. Mutawalli entitled to pay certain costs from income of <sup>6</sup>[waqf] property.**—Notwithstanding anything contained in the <sup>2</sup>[waqf] deed, every mutawalli may pay from the income of the <sup>2</sup>[waqf] property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 36 or any accounts under section 46 or any information or documents required by the Board or for the purpose of enabling him to carry out the directions of the Board.

**58. Power of Board to pay dues in case of default by mutawalli.**—(1) Where a mutawalli refuses to pay or fails to pay any revenue, cess, rates or taxes due to the Government or any local authority, the Board may discharge dues from the <sup>7</sup>[waqf] Fund and may recover the amount so paid from the <sup>2</sup>[waqf] property and may also recover damages not exceeding twelve and a half per cent. of the amount so paid.

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

1. Subs. by Act 27 of 2013, sec. 35(b), for “A lease or sub-lease for any period exceeding one year and not exceeding three years”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. The words “or sub-lease” omitted by Act 27 of 2013, sec. 35(c)(i).

4. Ins. by Act 27 of 2013, sec. 35(c)(ii).

5. Ins. by Act 27 of 2013, sec. 35(d).

6. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

7. Subs. by Act 27 of 2013, sec. 4, for “Wakf”.

#### COMMENTS

If any mutawalli refuses or fails to pay any revenue, cess, rates or taxes due to the Government or any local authority, the Board can discharge dues from the Waqf Fund and recover the amount so paid along with damages not exceeding 12.5% thereof from the waqf property.

**59. Creation of reserve fund.**—For the purpose of making provisions for the payment of rent and of revenue, cess, rates and taxes due to the Government or any local authority, for the discharge of the expenses of the repair of the <sup>1</sup>[waqf] property and for the preservation of the <sup>1</sup>[waqf] property, the Board may direct the creation and maintenance, in such manner as it may think fit, of a reserve fund from the income of a <sup>1</sup>[waqf].

#### COMMENTS

The Board has been empowered to direct a reserve fund to be created and maintained from the income of a waqf for making provisions for the payment of rent and of revenue, cess, rates and taxes due to the Government or any local authority, for discharge of expenses of the repair of waqf property and for the preservation of the waqf property.

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

**61. Penalties.**—(1) If a mutawalli fails to—

- (a) apply for the registration of a <sup>2</sup>[auqaf];
- (b) furnish statements of particulars or accounts or returns as required under this Act;
- (c) supply information of particulars as required by the Board;
- (d) allow inspection of <sup>2</sup>[waqf] properties, accounts, records or deeds and documents relating thereto;
- (e) deliver possession of any <sup>1</sup>[waqf] property, if ordered by the Board or Tribunal;
- (f) carry out the directions of the Board;
- (g) discharge any public dues; or
- (h) do any other act which he is lawfully required to do by or under this Act.

he shall, unless he satisfies the court or the Tribunal that there was reasonable cause for his failure, be punishable with fine which may extend to <sup>3</sup>[ten thousand rupees for non-compliance of clauses (a) to (d) and in case of non-compliance of clauses (e) to (h), he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to ten thousand rupees].

(2) Notwithstanding anything contained in sub-section (1), if—

- (a) a mutawalli omits or fails, with a view to concealing the existence of a <sup>1</sup>[waqf], to apply for its registration under this Act,—

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

3. Subs. by Act 27 of 2013, sec. 36, for “eight thousand rupees”.



- (i) in the case of a <sup>1</sup>[waqf] created before the commencement of this Act, within the period specified therefor in sub-section (8) of section 36;
  - (ii) in the case of a <sup>1</sup>[waqf] created after such commencement, within three months from the date of the creation of the <sup>1</sup>[waqf];  
or
- (b) a mutawalli furnishes any statement, return or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular,  
he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees.
- (3) No court shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer duly authorised by the Board in this behalf.
- (4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.
- (5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the fine imposed under sub-section (1), when realized, shall be credited to the <sup>2</sup>[Waqf] Fund.
- (6) In every case where offender is convicted after the commencement of this Act, of an offence punishable under sub-section (1) and sentenced to a fine, the court shall also impose such term of imprisonment in default of payment of fine as is authorised by law for such default.

#### COMMENTS

If any mutawalli fails to (i) apply for the registration of a waqf, (ii) furnish statements of particulars or accounts or returns, (iii) supply information or particulars as required by the Board, (iv) allow inspection of waqf properties, accounts, records or deeds and documents relating thereto, (v) delivery possession of any waqf property, if ordered by the Board or Tribunal, (vi) carry out the directions of the Board, (vii) discharge any public dues, or (viii) do any other act which he is lawfully required to do, he shall be punishable with fine upto ten thousand rupees. And if any mutawalli omits or fails, with a view to concealing the existence of a waqf, to apply for its registration (a) in the case of a waqf created before the commencement of this Act, (b) in the case of any waqf created after such commencement, or if any mutawalli furnishes false, misleading, untrue or incorrect statement, return any information to the Board, he shall be punishable, with imprisonment upto six months and also with fine upto fifteen thousand rupees.

**62. Mutawalli not to spend any money belonging to <sup>3</sup>[waqf] for self-defence.**—No mutawalli shall spend any money out of the funds of the <sup>1</sup>[waqf], of which he is the mutawalli, for meeting any costs, charges, or expenses which are or may be, incurred by him, in relation to any suit, appeal or any other proceeding for, or incidental to, his removal from office or for taking any disciplinary action against himself.

#### COMMENTS

No mutawalli shall be entitled to spend any money out of the funds of the waqf for his self-defence.

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “Wakf”.

3. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

**63. Power to appoint mutawallis in certain cases.**—When there is a vacancy in the office of the mutawalli of a <sup>1</sup>[waqf] and there is no one to be appointed under the terms of the deed of the <sup>1</sup>[waqf], or where the right of any person to act as mutawalli is disputed the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit.

**64. Removal of mutawalli.**—(1) Notwithstanding anything contained in any other law or the deed of <sup>1</sup>[waqf], the Board may remove a mutawalli from his office if such mutawalli—

- (a) has been convicted more than once of an offence punishable under section 61; or
- (b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or
- (c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or
- (d) is an undischarged insolvent; or
- (e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or
- (f) is employed as a paid legal practitioner on behalf of, or against, the <sup>1</sup>[waqf]; or
- (g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or
- (h) is interested, directly or indirectly, in a subsisting lease in respect of any <sup>1</sup>[waqf] property, or in any contract made with, or any work being done for, the <sup>1</sup>[waqf] or is in arrears in respect of any sum due by him to such <sup>1</sup>[waqf]; or
- (i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the <sup>1</sup>[waqf] or in respect of any money or other <sup>1</sup>[waqf] property; or
- (j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;
- (k) misappropriates or fraudulently deals with the property of the <sup>1</sup>[waqf].

(2) The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the <sup>1</sup>[waqf] property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

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

(4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (i) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the <sup>1</sup>[waqf], by an order suspend such mutawalli until the conclusion of the inquiry:

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

(6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the <sup>1</sup>[waqf] pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), appoint a suitable person as receiver to manage <sup>1</sup>[waqf] and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the <sup>1</sup>[waqf] are safeguarded.

(7) Where a mutawalli has been removed from his office under sub-section(1), the Board may, by order, direct the mutawalli to deliver possession of the <sup>1</sup>[waqf] property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the <sup>1</sup>[waqf] property.

(8) A mutawalli of a <sup>1</sup>[waqf] removed from his office under this section shall not be eligible for re-appointment as a mutawalli of that <sup>1</sup>[waqf] for a period of five years from the date of such removal.

#### COMMENTS

The Board has been empowered to remove a mutawalli from his office if he (i) has been convicted more than once of an offence punishable under section 61 of the Act, or (ii) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, or (iii) is of unsound mind or is suffering from other mental or physical defect or infirmity, or (iv) is an undischarged insolvent, or (v) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of narcotic drugs, or (vi) is employed as a paid legal practitioner on behalf of, or against, the waqf, or (vii) has failed to maintain regular accounts or has failed to submit the yearly statement of accounts for two consecutive years, or (viii) is interested in a subsisting lease in respect of any property, or in any contract made with, or any work being done for, the waqf or is in arrears in respect of any sum due by him to the waqf, or (x) continuously neglect his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the waqf or in respect of any money or other waqf property, or (xi) wilfully or persistently disobeys the lawful orders made by the Central Government,

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1. Subs. by Act 27 of 2013, sec. 4, for "wakf".

State Government or Board; (xii) misappropriates or fraudulently deals with the property of the waqf.

**65. Assumption of direct management of certain <sup>1</sup>[auqaf] by the Board.—**

(1) Where no suitable person is available for appointment as a mutawalli of a <sup>2</sup>[waqf], or where the Board is satisfied, for reasons to be recorded by it in writing, that the filling up of the vacancy in the office of a mutawalli is prejudicial to the interests of the <sup>2</sup>[waqf], the Board may, by notification in the Official Gazette, assume direct management of the <sup>2</sup>[waqf] for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification.

(2) The State Government, may, on its own motion or on the application of any person interested in the <sup>2</sup>[waqf], call for the records of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the notification issued by the Board under sub-section (1) and pass such orders as it may think fit and the orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (1).

(3) As soon as possible after the close of every financial year, the Board shall send to the State Government a detailed report in regard to every <sup>2</sup>[waqf] under its direct management, giving therein—

- (a) the details of the income of the <sup>2</sup>[waqf] for the year immediately preceding the year under report;
- (b) the steps taken to improve the management and income of the <sup>2</sup>[waqf];
- (c) the period during which the <sup>2</sup>[waqf] has been under the direct management of the Board and explaining the reasons as to why it has not been possible to entrust the management of the <sup>2</sup>[waqf] to the mutawalli or any committee of management during the year; and
- (d) such other matters as may be prescribed.

(4) The State Government shall examine the report submitted to it under sub-section (3), and after such examination issue such directions or instructions to the Board as it may think fit and the Board shall comply with such directions or instructions on receipt thereof.

<sup>3</sup>[(5) Notwithstanding anything contained in sub-section (1), the Board shall take over the administration of a waqf, if the waqf Board has evidence before it to prove that management of the waqf has contravened the provisions of this Act.]

#### COMMENTS

Board has been empowered to assume direct management of the waqf for a period not exceeding five years when no suitable person is available for appointment as a mutawalli or when the Board is satisfied that the filling up of the vacancy in the office of a mutawalli is prejudicial to the interest of the waqf. Correctness, legality or propriety

1. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. Ins. by Act 27 of 2013, sec. 37.

assumption of direct management can be challenged before the State Government by any person interested in the waqf. State Government can also take up the matter on its own motion.

**66. Powers of appointment and removal of mutawalli when to be exercised by the State Government.**—Whenever a deed of <sup>1</sup>[waqf] or any decree or order of a court of any scheme of management of any <sup>1</sup>[waqf] provides that a court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise exercise superintendence over the <sup>1</sup>[waqf], then notwithstanding anything contained in such deed of <sup>1</sup>[waqf], decree, order or scheme, such powers aforesaid shall be exercisable by the State Government:

Provided that where a Board has been established, the State Government shall consult the Board before exercising such powers.

**67. Supervision and supersession of committee of management.**— (1) Whenever the supervision or management of any <sup>1</sup>[waqf] is vested in any committee appointed by the <sup>1</sup>[waqf], then, notwithstanding anything contained in this Act, such committee shall continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the <sup>1</sup>[waqf], whichever is earlier:

Provided that such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time:

Provided further that if the Board is satisfied that any scheme for the management of a <sup>1</sup>[waqf] by a committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions of the <sup>1</sup>[waqf], it may, at any time, modify the scheme in such manner as may be necessary to bring it in conformity with the directions of the <sup>1</sup>[waqf] or of the provisions of this Act and the rules made thereunder.

(2) Notwithstanding anything contained in this Act and in the deed of the <sup>1</sup>[waqf], the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the <sup>1</sup>[waqf] is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the <sup>1</sup>[waqf], insofar as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the Committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the <sup>1</sup>[waqf].

(4) Any order made by the board under sub-section (2) shall be final:

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1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

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

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

(6) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the <sup>1</sup>[waqf], and every such order for the removal of any member shall be served upon him by registered post:

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

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

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

(1) Where any mutawalli or committee of management has been removed by the Board in accordance with the provisions of this Act, or of any scheme made by the Board, the mutawalli or the committee so removed from the office (herein after in this section referred to as the removed mutawalli or committee) shall hand over charge and deliver possession of the records, accounts and all properties of the <sup>1</sup>[waqf] (including cash) to the successor mutawalli or the successor committee, within one month from the date specified in the order.

(2) Where any removed mutawalli or committee fails to deliver charge or deliver possession of the records, accounts and properties (including cash) to the successor mutawalli or committee within the time specified in sub-section (1), or prevents or obstructs such mutawalli or committee, from obtaining possession thereof after the expiry of the period aforesaid, the successor mutawalli or any member of the successor committee may make an application, accompanied by a certified copy of the order appointing such successor mutawalli or committee, to any <sup>2</sup>[District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent] within the local limits of whose jurisdiction any part of the <sup>1</sup>[waqf] property is situated and, thereupon, such <sup>3</sup>[District

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1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 38(i), for “Magistrate of the first class”.

3. Subs. by Act 27 of 2013, sec. 38(i), for “Magistrate”.

Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent] may, after giving notice to the removed mutawalli or members of the removed committee, make an order directing the delivery of charge and possession of such records, accounts and properties (including cash) of the <sup>1</sup>[waqf] to the successor mutawalli or the committee, as the case may be, within such time as may be specified in the order.

(3) Where the removed mutawalli or any member of the removed committee, omits or fails to deliver charge and possession of the records, accounts and properties (including cash) within the time specified by <sup>1</sup>[any Magistrate] under sub-section (2), the removed mutawalli or every member of the removed committee, as the case may be, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

(4) Whenever any removed mutawalli or any member of the removed committee omits or fails to comply with the orders made by <sup>2</sup>[any Magistrate] under sub-section (2), any Magistrate may authorise the successor mutawalli or committee to take charge and possession of such records, accounts, properties (including cash) and may authorise such person to take such police assistance as may be necessary for the purpose.

(5) No order appointment of the successor mutawalli or committee, shall be called in question in the proceedings before <sup>2</sup>[any Magistrate] under this section.

(6) Nothing contained in this section shall bar the institution of any suit in a competent civil court by any person aggrieved by any order made under this section, to establish that he has right, title and interest in the properties specified in the order made by <sup>2</sup>[any Magistrate] under sub-section (2).

#### COMMENTS

The removed mutawalli or committee shall have to hand over charge and deliver possession of the records, accounts and all properties of the waqf to the successor mutawalli or successor committee within one month.

**69. Power of Board to frame scheme for administration of <sup>3</sup>[waqf].—<sup>4</sup>[(1) Where the Board is satisfied after an enquiry, whether on its own motion or on the application of not less than five persons interested in any waqf, to frame a scheme for the proper administration of the waqf, it may, by an order, frame such scheme for the administration of the waqf, after giving reasonable opportunity and after consultation with the mutawalli or others in the prescribed manner.]**

1. Subs. by Act 27 of 2013, sec. 4, for "wakf".

2. Subs. by Act 27 of 2013, sec. 38(ii), for "the Magistrate".

3. Subs. by Act 27 of 2013, sec. 4, for "wakf".

4. Subs. by Act 27 of 2013, sec. 39, for sub-section (1). Sub-section (1), before substitution, stood as under:

“(1) Whenever the Board is satisfied, whether on its own motion or on the application of not less than five persons interested in any wakf, that it is necessary or desirable to frame a scheme for the proper administration of the wakf, it may by an order frame such scheme for the administration of the wakf, after consultation with the mutawalli or the applicant in the prescribed manner.”.

(2) A scheme framed under sub-section (1) may provide for the removal of the mutawalli of the <sup>1</sup>[waqf] holding office as such immediately before the date on which the scheme comes into force:

Provided that where any such scheme provides for the removal of any hereditary mutawalli, the scheme shall also provide for the appointment of the person next in hereditary succession of the mutawalli so removed, as one of the members of the committee appointed for the proper administration of the <sup>1</sup>[waqf].

(3) Every order made under sub-section (2) shall be published in the prescribed manner, and, on such publication shall be final and binding on the mutawalli and all persons interested in the <sup>1</sup>[waqf]:

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

Provided further that the Tribunal shall have no power to stay the operation of the order made under this section.

(4) The Board may, at any time by an order, whether made before or after the scheme has come into force, cancel or modify the scheme.

(5) Pending the framing of the scheme for the proper administration of the <sup>1</sup>[waqf], the Board may appoint a suitable person to perform all or any of the functions of the mutawalli thereof and to exercise the powers, and perform the duties, of such mutawalli.

**70. Inquiry relating to administration of <sup>2</sup>[waqf].**—Any person interested in a <sup>1</sup>[waqf] may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the <sup>1</sup>[waqf] and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the <sup>1</sup>[waqf] are being mismanaged, it shall take such action thereon as it thinks fit.

**71. Manner of holding inquiry.**—(1) The Board may, either on an application received under section <sup>3</sup>[70] or on its own motion,—

- (a) hold an inquiry in such manner as may be prescribed; or
- (b) authorised any person in this behalf to hold an inquiry into any matter relating to a <sup>1</sup>[waqf] and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents.

#### CHAPTER VII

#### FINANCE OF THE BOARD

**72. Annual contribution payable to Board.**—(1) The mutawalli of every <sup>1</sup>[waqf], the net annual income of which is not less than five thousand rupees,

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. Subs. by Act 27 of 2013, sec. 40, for “73”.



shall pay annually, out of the net annual income derived by the <sup>1</sup>[waqf], such contributions, not exceeding seven per cent. of such annual income, as may be prescribed, to the Board for the services rendered by such Board to the <sup>1</sup>[waqf].

*Explanation I.*—For the purposes of this Act, “net annual income” shall mean the gross income of the <sup>1</sup>[waqf] from all sources, including *nazars* and offerings which do not amount to contributions to the corpus of the <sup>2</sup>[auqaf], in a year after deducting therefrom the following, namely:—

- (i) the land revenue paid by it to the Government;
- (ii) the rates, cesses, taxes and licence fees, paid by it to the Government or any local authority;
- (iii) expenditure incurred for all or any of the following purposes, <sup>3</sup>[in respect of lands directly under cultivation by the mutawalli for the benefit of the waqf] namely:—
  - (a) maintenance of, or repairs to, irrigation works, which shall not include the capital cost of irrigation;
  - (b) seeds or seedlings;
  - (c) manure;
  - (d) purchase and maintenance of agricultural implements;
  - (e) purchase and maintenance of cattle for cultivation;
  - (f) wages for ploughing, watering, sowing, transplanting, harvesting, threshing and other agricultural operations:

Provided that the total deduction in respect of an expenditure incurred under this clause shall not exceed <sup>4</sup>[twenty per cent.] of the income derived from lands belonging to the <sup>1</sup>[waqf]:

<sup>5</sup>[Provided further that no such deduction shall be permitted in respect of waqf land given on lease, by whatever name called, whether *batai* or share cropping or any other name.]

- (iv) expenditure on sundry repairs to rented buildings, not exceeding five per cent. of the annual rent derived therefrom, or the actual expenditure, whichever is less;
- (v) sale proceeds of immovable properties or rights relating to, or arising out of immovable properties, if such proceeds are re-invested to earn income for the <sup>1</sup>[waqf]:

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

- (a) advances and deposits recovered and loans taken or recovered;
- (b) deposits made as security by employees, lessees or contractors and other deposits, if any;

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

3. Ins. by Act 27 of 2013, sec. 41(i).

4. Subs. by Act 27 of 2013, sec. 41(ii), for “ten per cent”.

5. Ins. by Act 27 of 2013, sec. 41(iii).

- (c) withdrawals from banks or of investments;
- (d) amounts recovered towards costs awarded by courts;
- (e) sale proceeds of religious books and publications where such sales are under taken as an un-remunerative enterprise with a view to propagating religion;
- (f) donations in cash or kind or offerings made by the donors as contribution to the corpus of the <sup>1</sup>[waqf]:
 

Provided that the interest on income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income;
- (g) voluntary contributions received in cash or kind for a specific service to be performed by the <sup>1</sup>[waqf] and expended on such service;
- (h) audit recoveries.

*Explanation II.*—In determining, the net annual income for the purposes of this section, only the net profit derived by any <sup>1</sup>[waqf] from its remunerative undertakings, if any, shall be taken as income and in respect of its non remunerative undertakings, such as, schools, colleges, hospitals, poor homes, orphanages or any other similar institutions, the grants given by the Government or any local authority or donations received from the public or fees collected from the pupils of educational institutions shall not be taken as income.

(2) The Board may in the case of any mosque or orphanage or any particular <sup>1</sup>[waqf] reduce or remit such contribution for such time as it thinks fit.

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

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

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

(5) If a mutawalli realises the income of the <sup>1</sup>[waqf] and refuses to pay or does not pay such contribution, he shall also be personally liable for such contribution which may be realised from his person or property in the manner aforesaid.

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1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

(6) Where, after the commencement of this Act, the mutawalli of a <sup>1</sup>[waqf] fails to submit a return of the net annual income of the <sup>1</sup>[waqf] within the time specified therefor or submits a return which, in the opinion of the Chief Executive Officer is incorrect or false in any material particular, or which does not comply with the provisions of this Act or any rule or order made thereunder, the Chief Executive Officer may assess the net annual income of the <sup>1</sup>[waqf] to the best of his judgment or revise the net annual income as shown in the return submitted by the mutawalli and net annual income as so assessed or revised shall be deemed to be the net annual income of the <sup>1</sup>[waqf] for the purposes of this section:

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

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

(8) If, for any reason, the contribution or any portion thereof leviable under this section has escaped assessment in any year, whether before or after the commencement of this Act, the Chief Executive Officer may, within five years from the last date of the year to which such escaped assessment relates serve upon the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment, and demanding payment thereof within thirty days from the date of service of such notice, and the provisions of this Act and the rules made thereunder, shall, as far as may be, apply as if the assessments were made under this Act, in the first instance.

**73. Power of Chief Executive Officer to direct banks or other person to make payments.**—(1) Notwithstanding anything contained in any other law for the time being in force, the Chief Executive Officer, if he is satisfied that it is necessary and expedient so to do, make an order directing any bank in which, or any person with whom any money belonging to a <sup>1</sup>[waqf] is deposited, to pay the contribution, leviable under section 72, out of such money, as may be standing to the credit of the <sup>1</sup>[waqf] in such bank or may be deposited with such person, or out of the moneys which may, from time to time, be received by bank or other person for or on behalf of the <sup>1</sup>[waqf] by way of deposit, and on receipt of such orders, the bank or the other person, as the case may be, shall, when no appeal has been preferred under subsection (3), comply with such orders, or where an appeal has been preferred under sub section (3), shall comply with the orders made by the Tribunal on such appeal.

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1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

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

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

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

**74. Deduction of contribution from perpetual annuity payable to the <sup>1</sup>[waqf].**—(1) Every authority empowered to disburse any perpetual annuity payable to a <sup>2</sup>[waqf] under any law relating to the abolition of zamindaries or jagirs or laying down land ceilings, shall, on receipt of a certificate from the Chief Executive Officer, specifying the amount of contribution payable by the <sup>2</sup>[waqf] under section 72 which remains unpaid, deduct before making payment of the perpetual annuity to the <sup>2</sup>[waqf], the amount specified in such certificate and remit amount so deducted to the Chief Executive Officer.

(2) Every amount remitted under sub-section (1) to the Chief Executive Officer shall be deemed to be a payment made by the <sup>2</sup>[waqf] and shall, to the extent of the amount so remitted, operate as a full discharge of the liability of such authority with regard to the payment of the perpetual annuity.

**75. Power of Board to borrow.**—(1) For the purpose of giving effect to the provisions of this Act, the Board may, with the previous sanction of the State Government, borrow such sum of money and on such terms and conditions as the State Government may determine.

(2) The Board shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.

**76. Mutawalli not to lend or borrow moneys without sanction.**— (1) No mutawalli, Executive Officer or other person in charge of the administration of a <sup>2</sup>[waqf] shall lend any money belonging to the <sup>2</sup>[waqf] or any <sup>2</sup>[waqf] property or borrow any money for the purposes of the <sup>2</sup>[waqf] except with the previous sanction of the Board:

Provided that no such sanction is necessary if there is an express provision in the deed of <sup>2</sup>[waqf] for such borrowing or lending, as the case may be.

(2) The Board may, while according sanction, specify any terms and conditions subject to which the person referred to in sub-section (1) is authorised by him to lend or borrow any money or lend any other <sup>2</sup>[waqf] property.

(3) Where any money is lent or borrowed, or other <sup>2</sup>[waqf] property is lent in contravention of the provisions of this section, it shall be lawful for the Chief Executive Officer,—

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1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

- (a) to recover an amount equal to the amount which has been so lent or borrowed, together with interest due thereon, from the personal funds of the person by whom such amount was lent or borrowed;
- (b) to recover the possession of the <sup>1</sup>[waqf] property lent in contravention of the provisions of this Act, from the person to whom it was lent, or from persons who claim title to such property through the person to whom such property was lent.

**77. <sup>2</sup>[Waqf] Fund.**—(1) All moneys received or realised by the Board under this Act and all other moneys received as donations, benefactions or grants by the Board shall form a fund to be called the <sup>3</sup>[Waqf] Fund.

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

(3) Subject to any rules that may be made by the State Government in this behalf, the <sup>3</sup>[Waqf] Fund shall be under the control of the Board, so, however, that the <sup>3</sup>[Waqf] Fund under the control of common <sup>3</sup>[Waqf] Board shall be subject to rules, if any, made in this behalf by the Central Government.

(4) The <sup>3</sup>[Waqf] Fund shall be applied to—

- (a) repayment of any loan incurred under section 75 and payment of interest thereon;
- (b) payment of the cost of audit of the <sup>3</sup>[Waqf] Fund and the accounts of <sup>4</sup>[auqaf];
- (c) payment of the salary and allowances to the officers and staff of the Board;
- (d) payment of travelling allowances to the Chairperson, members, of the Board;
- (e) payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act;
- (f) payment of all expenses incurred by the Board for the discharge of any obligation imposed on it by or under any law for time being in force.
- <sup>5</sup>(g) payment of maintenance to Muslim women as ordered by a court of competent jurisdiction under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (25 of 1986).]

(5) If any balance remains after meeting the expenditure referred to in sub-section (4), the Board may use any portion of such balance for the preservation and protection of <sup>1</sup>[waqf] properties or for such other purposes as it may deem fit.

**78. Budget of Board.**—(1) The Board shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “Wakf”.

3. Subs. by Act 27 of 2013, sec. 4, for “Wakf”.

4. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

5. Ins. by Act 27 of 2013, sec. 42.

showing the estimated receipts and expenditure during that financial year and forward a copy of the same to the State Government.

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

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

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

**79. Accounts of Board.**—The Board shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be provided by regulations.

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

(2) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify whether the accounts of every <sup>1</sup>[waqf] under the direct management of the Board have been kept separately and whether such accounts have been audited annually by the State Examiner of Local Funds and shall also specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(3) The cost of the audit shall be paid from the <sup>2</sup>[Waqf] Fund.

**81. State Government to pass orders on auditor's report.**—The State Government shall examine the auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit <sup>3</sup>[and a copy of the said auditor's report, along with orders shall be forwarded by the State Government to the Council within a period of thirty days of laying of such report before each House of the

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1. Subs. by Act 27 of 2013, sec. 4, for "wakf".

2. Subs. by Act 27 of 2013, sec. 4, for "Wakf".

3. Ins. by Act 27 of 2013, sec. 43.

State Legislature where it consists of two Houses or where such Legislatures consist of one House, before that House.]

**82. Dues of Board to be recovered as arrears of land revenue.**— (1) Every sum certified to be due from any person by an auditor in his report under section 80, be paid by such person within sixty days after the service of a demand notice by the Board.

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

#### *CHAPTER VIII* **JUDICIAL PROCEEDINGS**

**83. Constitution of Tribunals, etc.**—<sup>1</sup>[(1)The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.]

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

(3) Where any application made under sub-section (1) relates to any <sup>2</sup>[waqf] property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the <sup>2</sup>[waqf] actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the <sup>2</sup>[waqf] or any other person interested in the <sup>2</sup>[waqf] or the <sup>2</sup>[waqf] property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such <sup>2</sup>[waqf] or <sup>2</sup>[waqf] property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached

1. Subs. by Act 27 of 2013, sec. 44(a), for sub-section (1). Sub-section (1), before substitution, stood as under:

“(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

before the Tribunal from which the application has been so transferred, except where the tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

<sup>1</sup>[(4) Every Tribunal shall consist of—

- (a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;
- (b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;
- (c) one person having knowledge of Muslim law and jurisprudence, Member,

and the appointment of every such person shall be made either by name or by designation.]

<sup>1</sup>[(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as *ex officio* members shall be such as may be prescribed.]

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

(6) Notwithstanding anything contained in the code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying it self as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

#### STATE AMENDMENT

**West Bengal.**—In section 83, for sub-section (4), substitute the following sub-section, namely:—

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1. Subs. by Act 27 of 2013, sec. 44(b), for sub-section (4). Sub-section (4), before substitution, stood as under:

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



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

(b) On such appointment, such person shall be designated as Judge, Wakf Tribunal, becoming the name of the State and shall hold office for a term of three years from the date of such appointment or till he attains the age of sixty-two years, whichever is earlier.”

[Vide West Bengal Act 20 of 2001, sec. 3]

Ed.—This amendment was made prior to the amendment made by the Central Act 27 of 2013, sec. 44(b).

**84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision.**—Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a <sup>1</sup>[waqf] or <sup>1</sup>[waqf] property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute.

**85. Bar of jurisdiction of civil courts.**—No suit or other legal proceeding shall lie in any <sup>2</sup>[civil court, revenue court and any other authority] in respect of any dispute, question or other matter relating to any <sup>1</sup>[waqf], <sup>1</sup>[waqf] property or other matter which is required by or under this Act to be determined by a Tribunal.

**86. Appointment of a receiver in certain cases.**—Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or in any other law for the time being in force, where any suit or other legal proceeding is instituted or commenced—

- (a) by or on behalf of a Board—
  - (i) to set aside the sale of any immovable property, which is <sup>1</sup>[waqf] property, in execution of a decree or order of a civil court;
  - (ii) to set aside the transfer of any immovable property, which is <sup>1</sup>[waqf] property, made by the mutawalli thereof, whether for valuable consideration or not, without or otherwise than in accordance with, the sanction of the Board;
  - (iii) to recover possession of the property referred to in clause (a) or clause (b) or to restore possession of such property to the mutawalli of the concerned <sup>1</sup>[waqf]; or
- (b) by a mutawalli to recover possession of immovable property, which is <sup>1</sup>[waqf] property, which has been transferred by a previous mutawalli, <sup>3</sup>[or by any other person] whether for valuable consideration or not, without otherwise than in accordance with the sanction of the Board, and which is in the possession of the defendant,

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 45, for “civil court”.

3. Ins. by Act 27 of 2013, sec. 46.

the court may, on the application of the plaintiff, appoint a receiver of such property and direct such receiver to pay from time to time to the plaintiff, out of the income of the property, such amount as the court may consider to be necessary for further prosecution of the suit.

<sup>1</sup>[87. Bar to the enforcement of right on behalf of unregistered wakfs.—  
[Rep. by the Wakf (Amendment) Act, 2013 (27 of 2013), sec. 47.]]

**88. Bar to challenge the validity of any notification, etc.**—Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any civil court.

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

**90. Notice of suits, etc., by courts.**—(1) In every suit or proceeding relating to a title to or possession of <sup>2</sup>[waqf] property or the right of a mutawalli or beneficiary, the court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

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

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

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

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1. Section 87, before repeal, stood as under:

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

*(2) The provisions of sub-section (1) shall apply, as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act.”*

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

3. Subs. by Act 27 of 2013, sec. 48, for “one month”.

**91. Proceedings under Act 1 of 1894.**—(1) If, in the course of proceedings under the Land Acquisition Act, 1894 or under any law for the time being in force relating to the acquisition of land or other property, <sup>1</sup>[and before an award is made, in case the property] under acquisition is <sup>2</sup>[waqf] property, a notice of such acquisition shall be served by Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.

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

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

(3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2) no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard.

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

**92. Board to be party to suit or proceeding.**—In any suit or proceeding in respect of a <sup>2</sup>[waqf] or any <sup>2</sup>[waqf] property the Board may appear and plead as a party to the suit or proceeding.

**93. Bar to compromise of suits by or against mutawallis.**—No suit or proceeding in any court by or against the mutawalli of a <sup>2</sup>[waqf] relating to title to <sup>2</sup>[waqf] property or the rights of the mutawalli shall be compromised without the sanction of the Board.

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

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1. Subs. by Act 27 of 2013, sec. 49, for “it appears to the Collector before an award is made that any property”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

(2) Where a mutawalli is under an obligation to discharge any other duties imposed on him under the <sup>1</sup>[waqf] and the mutawalli willfully fails to discharge such duties, the Board or any person interested in the <sup>1</sup>[waqf] may make an application to the Tribunal and the Tribunal may pass such order thereon as it thinks fit.

#### COMMENTS

Where a mutawalli fails to discharge his duties the Board or any person interested in the waqf may apply to the Tribunal for passing necessary orders.

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

#### CHAPTER IX

#### MISCELLANEOUS

**96. Power of Central Government to regulate secular activities of <sup>2</sup>[auqaf].**—(1) For the purpose of regulating the secular activities of <sup>3</sup>[auqaf], the Central Government shall have the following powers and functions, namely:—

- (a) to lay down general principles, and policies of <sup>1</sup>[waqf] administration in so far as they relate to the secular activities of the <sup>3</sup>[auqaf];
- (b) to co-ordinate the functions of the Central <sup>4</sup>[Waqf] Council and the Board, in so far as they relate to their secular functions;
- (c) to review administration of the secular activities of <sup>2</sup>[Auqaf] generally and to suggest improvements, if any.

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

*Explanation.*—For the purposes of this section “secular activities” shall include social, economic, educational and other welfare activities.

**97. Directions by State Government.**—Subject to any directions issued by the Central Government under section 96, the State Government may, from time to time give to the Board such general or special directions as the State Government thinks fit and in the performance of its functions, the Board shall comply with such directions:

<sup>5</sup>[Provided that the State Government shall not issue any direction being contrary to any waqf deed or any usage; practice or custom of the waqf.]

**98. Annual report by State Government.**—As soon as may be after the close of a financial year, the State Government shall cause a general annual report on

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

3. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

4. Subs. by Act 27 of 2013, sec. 4, for “Wakf”.

5. Ins. by Act 27 of 2013, sec. 50.

the working and administration of the State <sup>1</sup>[Waqf] Board and the Administration of <sup>2</sup>[auqaf] in the State during that year to be prepared and laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House, and every such report shall be in such form and shall contain such matters as may be provided by regulations.

**99. Power to supersede Board.**—(1) If the State Government is of opinion that the Board is unable to perform or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully and without sufficient cause failed to comply with any direction issued by the Central Government under section 96 or the State Government under section 97, or if the State Government is satisfied on consideration of any report submitted after annual inspection, that the Board's continuance is likely to be injurious to the interests of the <sup>2</sup>[auqaf] in the State, the State Government may, by notification in the Official Gazette, supersede the Board for a period not exceeding six months:

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

<sup>3</sup>[Provided further that the power of the State Government under this section shall not be exercised unless there is a *prima facie* evidence of financial irregularity, misconduct or violation of the provisions of this Act.]

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

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

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

- <sup>4</sup>(a) extend the period of supersession by another six months with reasons to be recorded in writing and, the period of continuous supersession shall not exceed more than a year; or]
- (b) reconstitute the Board in the manner provided in section 14.

1. Subs. by Act 27 of 2013, sec. 4, for “Wakf”.

2. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

3. Ins. by Act 27 of 2013, sec. 51(a).

4. Subs. by Act 27 of 2013, sec. 51(b), for clause (a). Clause (a), before substitution, stood as under:

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

**100. Protection of action taken in good faith.**—No suit or other legal proceeding shall lie against the Board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

**101. Survey Commissioner, members and officers of the Board deemed to be public servants.**—(1) The Survey Commissioner, members of the Board, every officer, every auditor of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(2) Every mutawalli of a <sup>1</sup>[waqf], every member of managing committee, whether constituted by the Board or under any deed of <sup>1</sup>[waqf], every Executive Officer and every person holding any office in a <sup>1</sup>[waqf] shall also be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

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

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

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

- (a) the dissolution of the Board;
- (b) the reconstitution in any manner whatsoever of the Board including the establishment, where necessary, of a new Board;
- (c) the area in respect of which the reconstituted Board or new Board shall function and operate;
- (d) the transfer, in whole or in part, of the assets, right and liabilities of the Board (including the rights and liabilities under any contract made by it) to any other Board or State Government and the terms and conditions of such transfer;

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1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Subs. by Act 27 of 2013, sec. 52, for “after consulting the State Governments”.

- (e) the substitution of any such transferee for the Board, or the addition of any such transferee, as a party to any legal proceeding to which the Board is a party; and the transfer of any proceeding pending before the Board to any such transferee;
- (f) the transfer or re-employment of any employee of the Board to or by, any such transferee and subject to the provisions of law providing for the reorganisation of the concerned State, the terms and conditions of service applicable to such employees after such transfer or re-employment; and
- (g) such incidental, consequential and supplemental matters as may be necessary to give effect to the approved scheme.

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

(5) Every order made under this section shall be published in the Official Gazette.

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

**103. Special provision for establishment of Board for part of a State.—**(1) Where on account of the territorial changes brought about by any law providing for the reorganisation of any State, this Act is as from the date on which that law comes into force applicable only to any part or parts of a State but has not been brought into force in the remaining part thereof, then notwithstanding anything contained in this Act, it shall be lawful for the Government of the State to establish one or more Boards for such part or parts in which this Act 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 that part of the State for which the Board is established.

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

#### COMMENTS

The State Government has been empowered to establish a Board for any part or parts of its State on account of the territorial changes brought about by any law providing for the reorganisation of any State.

**104. Application of Act to properties given or donated by persons not professing Islam for support of certain <sup>1</sup>[waqf].—**Notwithstanding anything

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a <sup>1</sup>[waqf] being—

- (a) a mosque, idgah, imambara, dargah, khanqah or a maqbara;
- (b) a Muslim graveyard;
- (c) a choultry or a *musafirkhana*,

then such property shall be deemed to be comprised in that <sup>1</sup>[waqf] and be dealt in the same manner as the <sup>1</sup>[waqf] in which it is so comprised.

<sup>1</sup>[104A. Prohibition of sale, gift, exchange, mortgage or transfer of waqf property.—(1) Notwithstanding anything contained in this Act or any other law for the time being in force or any waqf deed, no person shall sell, gift, exchange, mortgage or transfer any movable or immovable property which is a waqf property to any other person.

(2) Any sale, gift, exchange, mortgage or transfer of property referred to in sub-section (1) shall be void *ab initio*.]

<sup>2</sup>[104B. Restoration of waqf properties in occupation of Government agencies to waqf Board.—(1) If any waqf property has been occupied by the Government agencies it shall be returned to the Board or the mutawalli within a period of six months from the date of the order of the Tribunal.

(2) The Government agency may, if the property is required for a public purpose, make an application for determination of the rent, or as the case may be, the compensation, by the Tribunal at the prevailing market value.]

**105. Power of Board and Chief Executive Officer to require copies of documents, etc., to be furnished.**—Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Board or the Chief Executive Officer to require any person having the custody of any record, register, report or other document relating to a <sup>1</sup>[waqf] or any immovable property, which is <sup>1</sup>[waqf] property, to furnish subject to the payment of necessary costs, copies of, or extracts from, any such record, register, report or document and every person to whom such a requisition is made, shall furnish, as soon as may be practicable, to the Board or Chief Executive Officer copies or extracts from the required record, register, report or other document.

**106. Powers of Central Government to constitute common Boards.**—(1) Where the Central Government is satisfied that by reasons of—

- (i) the smallness of the Muslim population in two or more States,
- (ii) the slender resources of the <sup>4</sup>[auqaf] in such States, and
- (iii) the disproportion between the number and income of the <sup>4</sup>[auqaf] and the Muslim population in such States,

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Ins. by Act 27 of 2013, sec. 53.

3. Ins. by Act 27 of 2013, sec. 54.

4. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.



it is expedient in the interests of the <sup>1</sup>[auqaf] in the States and the Muslim population of such States, to have, instead of separate Boards for each of such States, a common Board, it may, <sup>2</sup>[after consultation with the Council and the Government] of each of the concerned States, establish, by notification in the Official Gazette, a common Board for such States as it may deem fit, and may, by the same or any subsequent notification specify the place at which the principal office of such common Board shall be located.

(2) Every common Board established under sub-section (1) shall, as far as practicable, consist of the persons specified in sub-section (1) or, as the case may be, sub-section (7) of section 14.

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

(a) all powers vested in the State Government under any deed of <sup>3</sup>[waqf] or any provision of law for the time being in force relating to <sup>1</sup>[auqaf], shall stand transferred to, and vested in, the Central Government and, thereupon, references in such deed of <sup>3</sup>[waqf] or law to the State Governments shall be construed as references to the Central Government:

Provided that while establishing a common Board for two or more States, the Central Government shall ensure that at least one representative of each of the concerned States is included as a member of the Board;

(b) references in this Act to a State shall be construed as references to each of the States for which the common Board has been established;

(c) the Central Government may, without prejudice to any rule applicable to a Board in a State, make, by notification in the Official Gazette, rules regulating the conduct of business by and affairs of, the common Board.

(4) The common Board shall be a body corporate, with objects not confined to one State, having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property, subject to such conditions and restrictions as may be specified by the Central Government, and shall by the said name sue or be sued.

**107. Act 36 of 1963 not to apply for recovery of <sup>4</sup>[waqf] properties.**— Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any <sup>3</sup>[waqf] or for possession of any interest in such property.

**108. Special provision as to evacuee <sup>4</sup>[waqf] properties.**—The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of section 2 of the Administration of Evacuee Property Act, 1950 (31 of 1950), which immediately before it became such evacuee property within the said meaning was property

1. Subs. by Act 27 of 2013, sec. 4, for “wakfs”.

2. Subs. by Act 27 of 2013, sec. 55, for “after consultation with the Government”.

3. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

4. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

comprised in any <sup>1</sup>[waqf] and, in particular any instrument (whether by transfer of any documents or in any other manner and whether generally or for specified purpose) of any such property to a Board made before the commencement of this Act in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment has operated to—

- (a) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (1) of section 11 of the Administration of Evacuee Property Act, 1950 (31 of 1950) with effect from the date of such entrustment, and
- (b) authorise such Board to assume direct management of the <sup>1</sup>[waqf] concerned for so long as it might deem necessary.

<sup>2</sup>[108A. Act to have overriding effect.—The provisions of this Act shall have overriding effect notwithstanding anything inconsistent there with contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.]

**109. Power to make rules.**—(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act, other than those of Chapter III.

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

- <sup>3</sup>[(i) the qualifications required to be fulfilled by a person to be appointed as a mutawalli under clause (i) of section 3;]
- <sup>3</sup>[(ia) other particulars which the report of the Survey Commissioner may contain under clause (f) of sub-section (3) of section 4;]
- (ii) any other matter under clause (f) of sub-section (4) of section 4;
- (iii) the particulars which a list of <sup>4</sup>[auqaf] published under sub-section (2) of section 5, may contain;
- (iv) the manner of election of members of the Board by means of a single transferable vote, under sub-section (2) of section 14;
- (v) the terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 23;
- (vi) the conditions and restrictions subject to which the Chief Executive Officer or any other officer may inspect any public office, records or registers <sup>5</sup>[under sub-section (1) of ] section 29;

1. Subs. by Act 27 of 2013, sec. 4, for “wakf”.

2. Ins. by Act 27 of 2013, sec. 56.

3. Subs. by Act 27 of 2013, sec. 57(a), for clause (i). Clause (i), before substitution, stood as under:

“(i) other particulars which the report of the Survey Commissioner may contain, under clause (f) of sub-section (3) of section 4;”.

4. Subs. by Act 27 of 2013, sec. 4, for “Wakfs”.

5. Subs. by Act 27 of 2013, sec. 57(b), for “under”.

- <sup>1</sup>[(via) the period within which the mutawalli or any other person may produce documents related to waqf properties under sub-section (2) of section 31;]
- <sup>1</sup>[(vib) [the conditions under which an agency of the Government or any other organisation may supply copies of records, registers and other documents under sub-section (3) of section 31;]
- (vii) the conditions subject to which an Executive Officer and supporting staff may be appointed under sub-section (1) of section 38;
- (viii) the manner in which an inquiry may be held by the Chief Executive Officer under sub-section (1) of section 39;
- (ix) the form in which, and the time within which, a separate budget for <sup>2</sup>[Auqaf] under the direct management of the Board shall be prepared under sub-section (1) of section 45;
- (x) the interval at which accounts of <sup>2</sup>[Auqaf] may be audited in pursuance of the provisions of sub-section (1) of section 47;
- <sup>3</sup>[\*\*\*]
- (xii) the guidance subject to which the Collector shall recover the property transferred in contravention of the provisions of this Act, under section 52;
- (xiii) the manner of service of notice issued under sub-section (1) of section 54 and the manner in which any inquiry is to be made under sub-section (3) of that section;
- (xiv) the manner in which any inquiry may be held under section 64 or section 71;
- (xv) the other matters which may be specified in the report submitted under sub-section (3) of section 65;
- (xvi) the manner of publication of order made under sub-section (2) of section 67;
- (xvii) the manner in which consultation may be made with mutawalli under sub-section (1) of section 69;
- (xviii) the manner of publication of order made under sub-section (3) section 69;
- (xix) the rate at which contribution is to be made by a mutawalli under section 72;
- (xx) the payment of moneys into the <sup>4</sup>[Waqf] Fund, the investment, the custody and disbursement of such moneys under section 77;

1. Ins. by Act 27 of 2013, sec. 57(c).

2. Subs. by Act 27 of 2013, sec. 4, for "Wakfs".

3. Clause (xi) omitted by Act 27 of 2013, sec. 57(d). Clause (xi), before omission, stood as under:

"(xi) the time within which, the sale of any property is to be informed under the first proviso to sub-section (2) of section 51 and the manner in which the approval given under sub-section (3) of that section shall be published;"

4. Subs. by Act 27 of 2013, sec. 4, for "Wakf".

- (xxi) the form in which, and the time within which, the budget of the Board may be prepared and submitted under section 78;
- (xxii) the time within which application is to be made to the Tribunal under sub-section (2) of section 83;
- <sup>1</sup>[(xxiia) the terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as *ex officio* member under sub-section (4A) of section 83;]
- (xxiii) the procedure which the Tribunal shall follow under sub-section (6) of section 83;
- (xxiv) the form in which the annual report is to be submitted and the matters which such report shall contain under section 98; and
- (xxv) any other matter which is required to be, or may be prescribed.

#### STATE AMENDMENT

**West Bengal.**—In section 109, in sub-section (2), after clause (vi), insert the following clause, namely:—

“(via) The manner of control and management of the properties of the wakf under sub-section (5) of section 32;”

[Vide West Bengal Act 33 of 199, sec. 5.]

**Ed.**—This amendment was made prior of the amendment made by the Central Act 27 of 2013, sec. 57(c).

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

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

- (a) the time and places of the meetings of the Board under sub-section (1) of section 17;
- (b) the procedure and conduct of business at the meetings of the Board;
- (c) the constitution and functions of the committees and the Board and the procedure for transaction of business at the meetings of such committees;
- (d) the allowances or fees to be paid to the Chairperson or members of the Board or members of committees;
- (e) the terms and conditions of service of the officers and other employees of the Board under sub-section (2) of section 24;
- (f) the forms of application for registration of <sup>2</sup>[Auqaf] further particulars to be contained therein and the manner and place or registration of <sup>2</sup>[Auqaf] under sub-section (3) of section 36;

1. Subs. by Act 27 of 2013, sec. 57(e).

2. Subs. by Act 27 of 2013, sec. 4, for “Wakfs”.

- (g) further particulars to be contained in the register of <sup>1</sup>[Auqaf] under section 37;
- (h) the form in which, and the time within which, the budgets of <sup>1</sup>[Auqaf] may be prepared and submitted by the mutawalli and approved by the Board under sub-section (1) of section 44;
- (i) the books of accounts and other books to be maintained by the Board under section 79;
- (j) fees payable for inspection of proceedings and records of the Board or for issue of copies of the same;
- (k) persons by whom any order or decision of the Board may be authenticated; and
- (l) any other matter which has to be, or may be provided by regulations.

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

**111. Laying of rules and regulations before State Legislature.**— Every rule made under section 109 and every regulation made under section 110 shall be laid, as soon as may be after it is made, before the State Legislature.

**112. Repeal and savings.**—(1) The Wakf Act, 1954 (29 of 1954) and the Wakf (Amendment) Act, 1984 (69 of 1984) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

(3) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed:

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

**113. Power to remove difficulties.**—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

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

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1. Subs. by Act 27 of 2013, sec. 4, for “Wakfs”.

**THE WAKF (AMENDMENT) ACT, 2013**

(27 OF 2013)

[20th September, 2013]

*An Act to amend the Wakf Act, 1995.*

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

**1. Short title and commencement.**—(1) This Act may be called the Wakf (Amendment) Act, 2013.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Amendment of long title.**—In the long title to the Wakf Act, 1995 (43 of 1995) (hereinafter referred to as the principal Act), for the word “Wakfs”, the word “Auqaf” shall be substituted.

**3. Amendment of section 1.**—In section 1 of the principal Act, in sub-section (1), for the word “Wakf”, the word “Waqf” shall be substituted.

**4. Substitution of references to certain expressions by certain other expressions.**—Throughout the principal Act, for the words “wakf”, “wakfs” and “wakif”, wherever they occur, the words “waqf”, “auqaf” and “waqif” shall, respectively, be substituted, and such other consequential amendments as the rules of grammar may require shall also be made.

**5. Amendment of section 3.**—In section 3 of the principal Act,—

(i) after clause (e), the following clause shall be inserted, namely:—

‘(ee) “encroacher” means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board;’;

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

‘(g) “list of auqaf” means the list of auqaf published under sub-section (2) of section 5 or contained in the register of auqaf maintained under section 37;’;

(iii) in clause (i), after the proviso, the following provisos shall be inserted, namely:—

“Provided further that the mutawalli shall be a citizen of India and shall fulfil such other qualifications as may be prescribed:

Provided also that in case a waqf has specified any qualifications, such qualifications may be provided in the rules as may be made by the State Government;”;

(iv) in clause (k), in sub-clause (i), for the words “worship” and “khangah”, the words “offer prayer” and “khanqah, peerkhana and karbala” shall, respectively, be substituted;

(v) for clause (r), the following clause shall be substituted, namely:—

‘(r) “waqf” means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

- (i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;
  - (ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;
  - (iii) “grants”, including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and
  - (iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law,
- and “waqif” means any person making such dedication;’.

**6. Amendment of section 4.**—In section 4 of the principal Act,—

- (a) in sub-section (1), for the words “wakfs existing in the State at the date of the commencement of this Act”, the words “auqaf in the State” shall be substituted;
- (b) after sub-section (1), the following sub-section shall be inserted, namely:—
  - “(1A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013, in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:
  - Provided that where no Survey Commissioner of Waqf has been appointed, a Survey Commissioner for auqaf shall be appointed within three months from the date of such commencement.”;
- (c) in sub-section (6),—
  - (i) in the proviso, for the words “twenty years”, the words “ten years” shall be substituted;
  - (ii) after the proviso, the following proviso shall be inserted, namely:—
    - “Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.”.

**7. Amendment of section 5.**—In section 5 of the principal Act,—

- (a) in sub-section (2), for the words “publish in the Official Gazette”, the words “forward it back to the Government within a period of six months for publication in the Official Gazette” shall be substituted;
- (b) after sub-section (2), the following sub-sections shall be inserted, namely:—
  - “(3) The revenue authorities shall—
  - (i) include the list of auqaf referred to in sub-section (2), while updating the land records; and
  - (ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records.
  - (4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.”.

**8. Amendment of section 6.**—In section 6 of the principal Act, in sub-section (1),—

- (a) for the words “any person interested therein”, the words “any person aggrieved” shall be substituted;
- (b) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.”;

(c) the Explanation shall be omitted.

9. In section 7 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “any question”, the words “any question or dispute” shall be substituted;

(ii) for the words “or any person interested”, the words and figure “or any person aggrieved by the publication of the list of auqaf under section 5” shall be substituted;

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

“(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.”.

10. **Substitution of new section for section 8.**—For section 8 of the principal Act, the following section shall be substituted, namely:—

“8. *State Government to bear cost of survey.*—The total cost of making a survey including the cost of publication of the list or lists of auqaf under this Chapter shall be borne by the State Government.”.

11. **Amendment of section 9.**—In section 9 of the principal Act,—

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

“(1) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.

(1A) The Council referred to in sub-section (1) shall issue directives to the Boards, on such issues and in such manner, as provided under sub-sections (4) and (5).”;

(b) in sub-section (2), in clause (b),—

(i) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine;”;

(ii) after sub-clause (viii), the following proviso shall be inserted, namely:—

“Provided that at least two of the members appointed under sub-clauses (i) to (viii) shall be women.”;

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

“(4) The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time



as may be specified by the Council and it may *suo motu* call for information on specific issues from the Board, if it is satisfied that there was *prima facie* evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.

(5) Any dispute arising out of a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court or a retired Chief Justice of a High Court and the fees and travelling and other allowances payable to the Presiding Officer shall be such as may be specified by that Government.”.

**12. Amendment of section 13.**—In section 13 of the principal Act,—

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

“Provided that in case where a Board of Waqf has not been established, as required under this sub-section, a Board of Waqf shall, without prejudice to the provisions of this Act or any other law for the time being in force, be established within six months from the date of commencement of the Wakf (Amendment) Act, 2013.”;

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

“(2A) Where a Board of Waqf is established under sub-section (2) of section 13, in the case of Shia waqf, the Members shall belong to the Shia Muslim and in the case of Sunni waqf, the Members shall belong to the Sunni Muslim.”.

**13. Amendment of section 15.**—In section 14 of the principal Act,—

(I) in sub-section (1),—

(i) for the words “the Union Territory of Delhi”, wherever they occur, the words “the National Capital Territory of Delhi” shall be substituted;

(ii) in clause (b),—

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

“(iii) Muslim members of the Bar Council of the concerned State or Union territory:

Provided that in case there is no Muslim member of the Bar Council of a State or a Union territory, the State Government or the Union territory administration, as the case may be, may nominate any senior Muslim advocate from that State or the Union territory, and”;

(b) after sub-clause (iv), the following *Explanations* shall be inserted, namely:—

“*Explanation I.*—For the removal of doubts, it is hereby declared that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.

*Explanation II.*—For the removal of doubts it is hereby declared that in case a Muslim member ceases to be a Member of Parliament from the State or National Capital Territory of Delhi as referred to in sub-clause (i) of clause (b) or ceases to be a Member of the State Legislative Assembly as required under sub-clause (ii) of clause (b), such member shall be deemed to have vacated the office of the member of the Board for the State or National Capital Territory of Delhi, as the case may be, from the

date from which such member ceased to be a Member of Parliament from the State or National Capital Territory of Delhi, or a Member of the State Legislative Assembly, as the case may be;”

(iv) for clauses (c) to (e), the following clauses shall be substituted, namely:—

“(c) one person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government;

(d) one person each from amongst Muslims, to be nominated by the State Government from recognised scholars in Shia and Sunni Islamic Theology;

(e) one person from amongst Muslims, to be nominated by the State Government from amongst the officers of the State Government not below the rank of Joint Secretary to the State Government;”;

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

“(1A) No Minister of the Central Government or, as the case may be, a State Government, shall be elected or nominated as a member of the Board:

Provided that in case of a Union territory, the Board shall consist of not less than five and not more than seven members to be appointed by the Central Government from categories specified under sub-clauses (i) to (iv) of clause (b) or clauses (c) to (e) in sub-section (1):

Provided further that at least two Members appointed on the Board shall be women:

Provided also that in every case where the system of mutawalli exists, there shall be one mutawalli as the member of the Board.”;

(III) sub-section (5) shall be omitted.

(IV) sub-section (7) shall be omitted.

**14. Amendment of section 15.**—In section 15 of the principal Act, the words, brackets and figures “from the date of notification referred to in sub-section (9) of section 14” shall be inserted at the end.

**15. Amendment of section 16.**—In section 16 of the principal Act, after clause (d), the following clause shall be inserted, namely:—

“(da) he has been held guilty of encroachment on any waqf property;”.

**16. Insertion of new section 20A.**—After section 20 of the principal Act, the following section shall be inserted, namely:—

“20A. *Removal of Chairperson by vote of non-confidence.*— Without prejudice to the provisions of section 20, the Chairperson of a Board may be removed by vote of no-confidence in the following manner, namely:—

(a) no resolution expressing a vote of confidence or no confidence in any person elected as Chairperson of a Board shall be moved except in the manner prescribed and twelve months have not elapsed after the date of his election as a Chairperson and be removed except with the prior permission of the State Government;

(b) notice for no confidence shall be addressed to the State Government stating clearly the grounds on which such motion is proposed to be moved and shall be signed by at least half the total members of the Board;

(c) at least three members of the Board signing the notice of no confidence shall personally present to the State Government, the notice together

- with an affidavit signed by them to the effect that the signatures on no-confidence motion are genuine and have been made by the signatories after hearing or reading the contents of the notice;
- (d) on receipt of the notice of no-confidence, as provided hereinabove, the State Government shall fix such time, date and place as may be considered suitable for holding a meeting for the purpose of the proposed no-confidence motion:  
Provided that at least fifteen days notice shall be given for such a meeting;
  - (e) notice for meeting under clause (d) shall also provide that in the event of no-confidence motion being duly carried on or, election of the new Chairperson, as the case may be, shall also be held in the same meeting;
  - (f) the State Government shall also nominate a Gazetted Officer (other than an officer of the department which is concerned with the supervision and administration of the Board) to act as presiding officer of the meeting in which the resolution for no-confidence shall be considered;
  - (g) the quorum for such a meeting of the Board shall be one-half of the total number of members of the Board;
  - (h) the resolution for no-confidence shall be deemed to be carried out, if passed by a simple majority of the members present;
  - (i) if a resolution for no confidence is carried out, the Chairperson shall cease to hold office forthwith and shall be succeeded by his successor who shall be elected by another resolution in the same meeting;
  - (j) election of the new Chairperson shall be conducted under clause (i), in the meeting under the chairmanship of the said presiding officer referred to in clause (f), in the following manner, namely:—
    - (A) Chairperson shall be elected from amongst the elected members of the Board;
    - (B) nomination of candidates shall be proposed and seconded in the meeting itself and election after withdrawal, if any, shall be held by method of secret ballot;
    - (C) election shall be held by simple majority of the members present in the meeting and in case of equality of votes, the matter shall be decided by drawing of lots; and
    - (D) proceedings of the meeting shall be signed by the presiding officer;
  - (k) new Chairperson elected under clause (h) shall hold the office only up to the remainder of the term of the Chairperson removed by the resolution of no-confidence; and
  - (l) if the motion for passing the resolution of no-confidence fails for want of quorum or lack of requisite majority at the meeting, no-subsequent meeting for considering the motion of no confidence shall be held within six months of the date of the previous meeting.”.

**17. Amendment of section 23.**—In section 23 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) There shall be a full-time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette, from a panel of two names suggested by the Board and who shall not be below the rank of Deputy Secretary to the State Government, and in case of non-availability of a Muslim officer of that rank, a Muslim officer of equivalent rank may be appointed on deputation.”.

**18. Substitution of new section for section 27.**—For section 27 of the principal Act, the following section shall be substituted, namely:—

“27. *Delegation of powers by Board.*—The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the Chief Executive Officer 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, except the powers and functions of the Board mentioned under clauses (c), (d), (g) and (j) of sub-section (2) of section 32 and section 110.”

**19. Substitution of new section for section 28.**—For section 28 of the principal Act, the following section shall be substituted, namely:—

“28. *Power of District Magistrate, Additional District Magistrate or Sub-Divisional Magistrate to implement the directions of the Board.*—Subject to the provisions of this Act and the rules made thereunder, the District Magistrate or in his absence an Additional District Magistrate or Sub-Divisional Magistrate of a District in the State shall be responsible for implementation of the decisions of the Board which may be conveyed through the Chief Executive Officer and the Board may, wherever considers necessary, seek directions from the Tribunal for the implementation of its decisions.”

**20. Amendment of section 29.**—Section 29 of the principal Act shall be numbered as sub-section (1) thereof, and—

- (a) in sub-section (1) as so numbered, for the words “subject to such conditions and restrictions as may be prescribed and subject to the payment of such fees as may be leviable under any law for the time being in force”, the words “subject to such conditions as may be prescribed” shall be substituted;

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

“(2) The mutawalli or any other person having the custody of any document related to waqf properties shall produce the same, within the prescribed period, before the Chief Executive Officer on being called upon to do so in writing.

(3) Subject to such conditions as may be prescribed, an agency of the Government or any other organisation shall supply, within ten working days, copies of the records, registers of properties or other documents relating to waqf properties or claimed to be waqf properties, to the Chief Executive Officer on a written request to this effect from him:

Provided that before taking any course of action as mentioned in sub-sections (2) and (3), the Chief Executive Officer shall obtain approval of the Board.”

**21. Amendment of section 31.**—In section 31 of the principal Act, the following shall be inserted at the end, namely:—

“or a Member of Union territory Legislature or a Member of a State Legislature if so declared under a law made by the appropriate State Legislature.”

**22. Amendment of section 32.**—In section 32 of the principal Act,—

- (l) in sub-section (2),—

- (a) for clause (j), the following clause, shall be substituted, namely:—

“(j) to sanction lease of any immovable property of a waqf in accordance with the provisions of this Act and the rules made thereunder:

Provided that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction:

Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.”;

(b) after clause (n), the following clause shall be inserted, namely:—

“(na) to determine or cause to be determined, in such manner as may be specified by the Board, market rent of the waqf land or building;”;

(II) in sub-section (4), for the words “offers a feasible potential for development as a shopping centre”, the words “has the potential for development as an educational institution, shopping centre, market, housing or residential flats and the like” shall be substituted;

(III) in sub-section (5), the words “with the prior approval of the Government,” shall be omitted.

**23. Amendment of section 33.**—In section 33 of the principal Act, in sub-section (1),—

(a) after the words “the Chief Executive Officer”, the words “or any other person authorised by him in writing” shall be inserted;

(b) the words “either himself or any other person authorised by him in writing in this behalf” shall be omitted.

**24. Amendment of section 36.**—In section 36 of the principal Act, in sub-section (2), in the proviso, for the words “made by the wakf”, the words “made by the waqf” shall be substituted.

**25. Amendment of section 37.**—Section 37 of the principal Act shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:—

“(2) The Board shall forward the details of the properties entered in the register of auqaf to the concerned land record office having jurisdiction of the waqf property.

(3) On receipt of the details as mentioned in sub-section (2), the land record office shall, according to established procedure, either make necessary entries in the land record or communicate, within a period of six months from the date of registration of waqf property under section 36, its objections to the Board.”.

**26. Amendment of section 44.**—In section 44 of the principal Act,—

(a) in sub-section (2), for the words “ninety days”, the words “thirty days” shall be substituted;

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

“(3) In case the Board considers any item in the budget being contrary to the objects of the waqf and the provisions of this Act, it may give such direction for addition or deletion of such item as it may deem fit.”.

**27. Amendment of section 46.**—In section 46 of the principal Act, in sub-section (2), for the figure, letters and words “1st day of May”, at both the places where they occur, the figure, letters and words “1st day of July” shall be substituted.

**28. Amendment of section 47.**—In section 47 of the principal Act,—

(I) in sub-section (1),—

(i) in clause (a), for the words “ten thousand rupees”, the words “fifty thousand rupees” shall be substituted;

(ii) in clause (b), for the words “ten thousand rupees”, the words “fifty thousand rupees” shall be substituted;

(iii) in clause (c), after the words “the State Government may,”, the words “under intimation to the Board,” shall be inserted;

(II) in sub-section (3), in the first proviso, for the words “more than ten thousand rupees but less than fifteen thousand rupees”, the words “more than fifty thousand rupees” shall be substituted.

**29. Amendment of section 51.**—In section 51 of the principal Act,—

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

“(1) Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the Board:

Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013.

(1A) Any sale, gift, exchange, mortgage or transfer of waqf property shall be void *ab initio*:

Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:

Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 (1 of 1894) or any other law relating to acquisition of land if such acquisition is made in consultation with the Board:

Provided also that—

- (a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991 (42 of 1991);
- (b) the purpose for which the land is being acquired shall be undisputedly for a public purpose;
- (c) no alternative land is available which shall be considered as more or less suitable for that purpose; and
- (d) to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or a suitable land with reasonable solatium in lieu of the acquired property.”;

(ii) sub-sections (2), (3), (4) and (5) shall be omitted.

**30. Amendment of section 52.**—In section 52 of the principal Act, in sub-section (1), after the words and figures “provisions of section 51”, the words and figures “or section 56” shall be inserted.

**31. Insertion of new section 52A.**—After section 52 of the principal Act, the following section shall be inserted, namely:—

“52A. *Penalty for alienation of waqf property without sanction of Board.*—(1) Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time being in force, be vested in the Board without any compensation therefor.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any offence punishable under this section shall be cognizable and non-bailable.

(3) No court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.

(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.”.

**32. Amendment of section 54.**—In section 54 of the principal Act,—

(a) in sub-section (3), for the words “he may, by an order, require the encroacher to remove”, the words “he may, make an application to the Tribunal for grant of order of eviction for removing” shall be substituted;

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

“(4) The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property:

Provided that the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer.

(5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property.”.

**33. Amendment of section 55.**—In section 55 of the principal Act,—

(a) for the word, brackets and figure “sub-section (3)”, the word, brackets and figure “sub-section (4)” shall be substituted;

(b) for the words “apply to the Sub-Divisional Magistrate”, the words “refer the order of the Tribunal to the Executive Magistrate” shall be substituted.

**34. Insertion of new section 55A.**—After section 55 of the principal Act, the following section shall be inserted, namely:—

“55A. *Disposal of property left on waqf property by unauthorised occupants.*—(1) Where any person has been evicted from any waqf property under sub-section (4) of section 54, the Chief Executive Officer may, after giving fourteen days’ notice to the person from whom possession of the waqf property has been taken and after publishing the notice in at least one newspaper having circulation in the locality and after proclaiming the contents of the notice by placing it on conspicuous part of the waqf property, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

(2) Where any property is sold under sub-section (1), the sale proceeds shall, after deducting the expenses relating to removal, sale and such other expenses, the amount, if any, due to the State Government or a local authority or a corporate authority on account of arrears of rent, damages or costs, be paid to such person, as may appear to the Chief Executive Officer to be entitled to the same:

Provided that where the Chief Executive Officer is unable to decide as to the person to whom the balance of the amount is payable or as to the

appointment of the same, he may refer such dispute to the Tribunal and the decision of the Tribunal thereon shall be final.”.

**35. Amendment of section 56.**—In section 56 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “A lease or sub-lease for any period exceeding three years”, the words “A lease for any period exceeding thirty years” shall be substituted;

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

“Provided that a lease for any period up to thirty years may be made for commercial activities, education or health purposes, with the approval of the State Government, for such period and purposes as may be specified in the rules made by the Central Government:

Provided further that lease of any immovable waqf property, which is an agricultural land, for a period exceeding three years shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect:

Provided also that before making lease of any waqf property, the Board shall publish the details of lease and invite bids in at least one leading national and regional news papers.”;

(b) in sub-section (2), for the words “A lease or sub-lease for any period exceeding one year and not exceeding three years”, the words “A lease for a period of one year but not exceeding thirty years” shall be substituted;

(c) in sub-section (3),—

(i) the words “or sub-lease”, at both the places where they occur, shall be omitted;

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

“Provided that the Board shall immediately intimate the State Government regarding a lease for any period exceeding three years of any waqf property and thereafter it may become effective after the expiry of forty-five days from the date on which the Board intimates the State Government.”;

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

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

**36. Amendment of section 61.**—In section 61 of the principal Act, in sub-section (1), for the words “eight thousand rupees”, the words, brackets and letters “ten thousand rupees for non-compliance of clauses (a) to (d) and in case of non-compliance of clauses (e) to (h), he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to ten thousand rupees” shall be substituted.

**37. Amendment of section 65.**—In section 65 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—



“(5) Notwithstanding anything contained in sub-section (1), the Board shall take over the administration of a waqf, if the waqf Board has evidence before it to prove that management of the waqf has contravened the provisions of this Act.”.

**38. Amendment of section 68.**—In section 68 of the principal Act,—

- (i) in sub-section (2), for the words “Magistrate of the first class” and “Magistrate”, the words “District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent” shall be substituted;
- (ii) in sub-sections (3), (4), (5) and sub-section (6), for the words “the Magistrate” the words “any Magistrate” shall be substituted.

**39. Amendment of section 69.**—In section 69 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where the Board is satisfied after an enquiry, whether on its own motion or on the application of not less than five persons interested in any waqf, to frame a scheme for the proper administration of the waqf, it may, by an order, frame such scheme for the administration of the waqf, after giving reasonable opportunity and after consultation with the mutawalli or others in the prescribed manner.”.

**40. Amendment of section 71.**—In section 71 of the principal Act, in sub-section (1), for the figures “73”, the figures “70” shall be substituted.

**41. Amendment of section 72.**—In section 72 of the principal Act, in sub-section (1), in *Explanation I*, in clause (iii),—

- (i) after the words “following purposes”, the words “in respect of lands directly under cultivation by the mutawalli for the benefit of the waqf” shall be inserted;
- (ii) in sub-clause (f), in the proviso, for the words “ten per cent.”, the words “twenty per cent.” shall be substituted;
- (iii) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that no such deduction shall be permitted in respect of waqf land given on lease, by whatever name called, whether *batai* or share cropping or any other name.”.

**42. Amendment of section 77.**—In section 77 of the principal Act, in sub-section (4), after clause (f), the following clause shall be inserted, namely:—

“(g) payment of maintenance to Muslim women as ordered by a court of competent jurisdiction under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (25 of 1986).”.

**43. Amendment of section 81.**—In section 81 of the principal Act, after the words “as it thinks fit”, the following shall be inserted at the end, namely:—

“and a copy of the said auditor’s report, along with orders shall be forwarded by the State Government to the Council within a period of thirty days of laying of such report before each House of the State Legislature where it consists of two Houses or where such Legislatures consist of one House, before that House.”.

**44. Amendment of section 83.**—In section 83 of the principal Act,—

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

“(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights

- and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals;”;
- (b) for sub-section (4), the following sub-sections shall be substituted, namely:—

“(4) Every Tribunal shall consist of—

- (a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;
- (b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;
- (c) one person having knowledge of Muslim law and jurisprudence, Member;

and the appointment of every such person shall be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as *ex officio* members shall be such as may be prescribed.”.

**45. Amendment of section 85.**—In section 85 of the principal Act, for the words “civil court”, the words “civil court, revenue court and any other authority” shall be substituted.

**46. Amendment of section 86.**—In section 86 of the principal Act, in clause (b), after the words “a previous mutawalli”, the words “or by any other person” shall be inserted.

**47. Omission of section 87.**—Section 87 of the principal Act shall be omitted.

**48. Amendment of section 90.**—In section 90 of the principal Act, in sub-section (3), for the words “one month”, the words “six months” shall be substituted.

**49. Amendment of section 91.**—In section 91 of the principal Act, in sub-section (1), for the words “it appears to the collector before an award is made that any property”, the words “and before an award is made, in case the property” shall be substituted.

**50. Amendment of section 97.**—In section 97 of the principal Act, the following proviso shall be inserted at the end, namely:—

“Provided that the State Government shall not issue any direction being contrary to any waqf deed or any usage; practice or custom of the waqf.”.

**51. Amendment of section 99.**—In section 99 of the principal Act,—

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

“Provided further that the power of the State Government under this section shall not be exercised unless there is a *prima facie* evidence of financial irregularity, misconduct or violation of the provisions of this Act.”;

- (b) in sub-section (3), for clause (a), the following clause shall be substituted, namely:—

“(a) extend the period of supersession by another six months with reasons to be recorded in writing and, the period of continuous supersession shall not exceed more than a year; or”.

**52. Amendment of section 102.**—In section 102 of the principal Act, in sub-section (2), for the words “after consulting the State Governments”, the words “after consulting the Council and the State Governments” shall be substituted.

**53. Insertion of new section 104A.**—After section 104 of the principal Act, the following section shall be inserted, namely:—

“104A. *Prohibition of sale, gift, exchange, mortgage or transfer of waqf property.*—(1) Notwithstanding anything contained in this Act or any other law for the time being in force or any waqf deed, no person shall sell, gift, exchange, mortgage or transfer any movable or immovable property which is a waqf property to any other person.

(2) Any sale, gift, exchange, mortgage or transfer of property referred to in sub-section (1) shall be void *ab initio*.”.

**54. Insertion of new section 104B.**—After section 104A of the principal Act, the following section shall be inserted, namely:—

“104B. *Restoration of waqf properties in occupation of Government agencies to waqf Board.*—(1) If any waqf property has been occupied by the Government agencies it shall be returned to the Board or the mutawalli within a period of six months from the date of the order of the Tribunal.

(2) The Government agency may, if the property is required for a public purpose, make an application for determination of the rent, or as the case may be, the compensation, by the Tribunal at the prevailing market value.”.

**55. Amendment of section 106.**—In section 106 of the principal Act, in sub-section (1), for the words “after consultation with the Government”, the words “after consultation with the Council and the Government” shall be substituted.

**56. Insertion of new section 108A.**—After section 108 of the principal Act, the following section shall be inserted, namely:—

“108A. *Act to have overriding effect.*—The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”.

**57. Amendment of section 109.**—In section 109 of the principal Act, in sub-section (2),—

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

“(i) the qualifications required to be fulfilled by a person to be appointed as a mutawalli under clause (i) of section 3;

(ia) other particulars which the report of the Survey Commissioner may contain under clause (f) of sub-section (3) of section 4;”;

(b) in clause (vi), for the word “under”, the words, brackets and figure “under sub-section (1) of ” shall be substituted;

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

“(via) the period within which the mutawalli or any other person may produce documents related to waqf properties under sub-section (2) of section 31;

(vib) the conditions under which an agency of the Government or any other organisation may supply copies of records, registers and other documents under sub-section (3) of section 31;”;

(d) clause (xi) shall be omitted;

(e) after clause (xxii), the following clause shall be inserted, namely:—

“(xxiia) the terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as *ex-officio* members under sub-section (4A) of section 83;”.

**ANNEXURE IV**

**THE WAQF PROPERTIES LEASE RULES, 2014**

MINISTRY OF MINORITY AFFAIRS

NOTIFICATION

New Delhi, the 3rd June, 2014

**G.S.R. 380(E).**—In exercise of the powers conferred by sub-section (1) of Section 56 of the Waqf Act, 1995 (43 of 1995), the Central Government hereby makes the following rules, namely:—

**1. Short title and commencement.**—(1) These rules may be called The Waqf Properties Lease Rules, 2014.

(2) They shall come into force on the date of their publication in the Official Gazette.

**2. Definitions.**—(1) In these rules, unless the context otherwise requires,—

- (a) “Act” means the Waqf Act, 1995 (43 of 1995);
- (b) “agricultural purpose” means use of land for the purpose of growing crops;
- (c) “commercial activities” means business, trade enterprise or such other activities undertaken for the purpose of making profit;
- (d) “educational purpose” means the purpose of imparting education or training for skill development and shall include running educational institutions, schools, colleges, universities or madarsa;
- (e) “Form” means a form appended to these rules;
- (f) “health purpose” means running of hospital, dispensary, mutab or nursing home;
- (g) “land” means the waqf land and anything attached to the land except building and trees;
- (h) “lease” “lessor” and “lessee” shall have the same meaning as assigned to them under the Transfer of Property Act, 1882 (4 of 1882);

- (i) “lease year” means each successive periods of calendar months during the term ending after completion of one year of the commencement date;
- (j) “leased premises” means the land or the building leased out by the lessor to lessee;
- (k) “lease rent” means the amount payable by the lessee to the lessor including the charges for the fittings and fixtures attached to the land.

(2) Words and expressions used but not defined herein shall have the same meaning as assigned to them in the Act.

**3. Restriction on grant of lease in certain cases.—**(1) No mutawalli or Board shall give on lease any mosque, dargah, khanqah, graveyard or imambara:

Provided that no such restriction shall apply to the waqf land situated outside the main premises of a mosque, dargah, khanqah, graveyard or imambara:

Provided further that any graveyard given on lease before the commencement of the Waqf (Amendment) Act, 2013, in the States of Punjab, Haryana, Himachal Pradesh and Chandigarh may be continued in accordance with the provisions of these rules.

**4. Procedure as to short duration lease of less than one year.—**(1) A mutawalli or Board may give on lease waqf property, for any period of less than one year, on such terms and conditions as agreed upon by the parties.

(2) The mutawalli or Board shall invite applications from persons desiring to take the property on lease under sub-rule (1) by publishing a notice in the surrounding vicinity, distributing leaflets, pamphlets or beating of drums and pasting the said notice on any conspicuous place like mosque or any other public place.

(3) The mutawalli or Board shall execute the lease of the property in favour of a person offering to pay higher lease rent.

(4) The mutawalli, Board or any member of the managing committee of a waqf, including their spouse, parents, children, brothers, sisters, spouses of brothers and sisters or children of brothers and sisters, shall not be eligible to apply for lease under this rule.

**5. Procedure for lease other than short duration lease.**—Save as provided in rule 4 above relating to short duration lease, the mutawalli or Board, as the case may be, shall in all cases where lease of waqf property is required to be given for a period of more than one year but not exceeding thirty years, publish the invitation of bids in at least one leading national (Hindi, Urdu or English) newspaper and one regional or local newspaper containing the following details, namely: —

- (i) exact area or description and location of the waqf property;
- (ii) the purpose or object for which the property is required to be leased;
- (iii) the period for which the property is required to be leased;
- (iv) the minimum reserve price per square feet.

Provided that no such advertisement in newspaper shall be required for lease of waqf property whose lease rental income is less than Rs. 1,000 (Rupees One Thousand) per month and the mutawalli or Board shall invite applications from persons desiring to take the property on lease and execute the lease by following the procedure specified in sub-rules (2) and (3) of rule 4:

Provided further that the mutawalli, Board or any member of the managing committee of a waqf, including their spouse, parents, children, brothers, sisters, spouses of brothers and sisters or children of brothers and sisters, shall not be eligible to apply for lease under this rule.

**6. Invitation of bid for lease.**—Competitive bids shall be invited in all cases in which the rental income from the leased property is more than Rs. 1,000 (Rupees One Thousand) per month and the waqf property shall be leased out to the highest bidder:

Provided that the bid shall in no case be less than the reserve price referred to in rule 7.

**7. Reserve price.**—(1) The reserve price per square feet for lease of the waqf property shall not be less than 5% per annum of the market value of the property.

(2) The market value referred to in sub-rule (1) shall be the price fixed for registering a conveyance at the office of the Registrar or sub-Registrar.

**8. Payment of security deposit.**—(1) Upon the execution of lease, the lessee shall make payment of a security deposit of the amount based on the period of lease, as under, namely:—

- (i) three months lease rent on lease period of upto one year;

- (ii) eleven months lease rent on lease period of more than one year and upto five years;
- (iii) eighteen months lease rent on lease period of more than five years and up to ten years; and
- (iv) twenty-four months lease rent on lease period of more than ten years and up to thirty years.

(2) The security deposit received under sub-rule (1) shall be kept in a nationalised Bank and the Board may utilise the amount for development of waqf properties, with the sanction of not less than two-thirds of the members of the Board.

**9. Registration of lease.**—(1) A lease of waqf property for any period exceeding one year and up to thirty years shall be registered at the office of Registrar or sub-Registrar under whose jurisdiction the property is situated.

(2) The expenses towards registration of lease under sub-rule (1) shall be borne by the lessee.

**10. Lease rent.**—(1) The lessee shall pay to the lessor for the leased premises lease rent in respect of each year of the term or renewal terms, as the case may be, payable in advance and without notice or demand, in monthly or annual instalments as agreed upon between the parties, from the date of execution of the lease agreement.

(2) The lease rent tendered by the lessee on time by way of money order, if refused by the lessor in accepting or giving receipt, may be deposited before the concerned Waqf Board and the Lease rent shall be treated as validly deposited if deposited by the lessee within 15 days of such refusal by the lessor.

**11. Increase of lease rent per annum.**—Every lease agreement shall contain a clause to the effect that there shall be an increase of lease rent every year by an amount of not less than 5% on the existing lease rent.

**12. Payment and recovery of lease rent.**—(1) All amounts payable by the lessee to the lessor pursuant to the lease of waqf property shall be deemed to be lease rent and be recoverable as lease rent by the lessor who shall have all right against the lessee for default in any payment thereof.

(2) Lease rent shall be paid to the lessor without deduction or set-off, at the address of the lessor or to such other person or at such other address, as the lessor may from time to time, designate in writing.

(3) If the lessee continues to occupy the premises after the expiration or earlier termination of the lease, the lessee shall, subject to final orders passed in any proceedings, continue to pay lease rent for the period of such unauthorised occupation.

**13. Time limit for decision on proposal for lease by mutawalli or Board.**—The mutawalli or Board shall, on receipt from the lessee of a proposal for grant of lease of waqf property which is complete in all respects, consider and give its decision on the proposal, within a period of thirty days.

**14. Submission of report by mutawalli to the Board.**—The mutawalli shall give the status of all lease agreements executed between the lessor and the lessee to the Board as early as possible but not later than one month from the date on which the agreement of lease was so executed.

**15. Submission of details of waqf property**—Every mutawalli shall furnish in Form appended to these Rules, details of immovable property or properties forming part of the Waqf to be leased out, specifying the period of lease, lease rent, terms and conditions of lease and such other detail thereof to the Board, within three months from the date of notification of these rules in the Official Gazette.

**16. Prohibition to assign, sub-lease or transfer waqf property.**—The lessee shall not assign, sub-lease, pledge or transfer the lease or any interest therein or in any way part with possession of all or any part of the leased premises, or permit all or any part of the leased premises to be used or occupied by any other person:

Provided that the lease agreement entered into by any corporation or an agency of the Government in respect of waqf property shall be governed by the terms and conditions mutually agreed between the parties.

**17. Grant of long term lease of upto thirty years in certain cases.**—  
(1) A lease of any immovable waqf property exceeding one year period and extending up to thirty years may be granted for the purposes of carrying out any commercial activity, education or health purposes, with the approval of the State Government. If the State Government fails to grant permission within 3 months, the permission may be deemed to be granted.

(2) The sanction for grant of lease under sub-rule (1) shall be given by the Board in accordance with the procedure contained in clause (j) of sub-section (2) of section 32 of the Act.



**18. Renewal of lease.**—(1) No lease agreement shall contain a clause providing for automatic renewal.

(2) The Board shall, while renewing the lease, give preference to the present lessee if such lessee participates in the bid and matches the highest bid.

**19. Purpose and period of lease.**—(1) The Board may give on lease any immovable waqf property for the purposes and for the period relating thereto as under, namely:—

- (i) for shops, lease shall be granted for a period of up to five years;
- (ii) for cold storages, marriage halls or small industries, lease shall be granted for a period of up to ten years;
- (iii) for establishing or running of shopping malls, residential buildings, hotels, restaurants or Inns, lease shall be granted for a period of up to thirty years;
- (iv) for establishing or running educational institutions like schools, colleges, universities, hospitals, dispensaries, madarasa's or maktabas, lease shall be granted for a period of upto thirty years;
- (v) for agricultural purposes, the lease shall be granted on year to year basis or until the life of the crop in case the crop has a life span of more than one year, but no lease for agricultural purposes shall be granted for a period exceeding three years in any case.

(2) The commencement date of the lease shall mean the date of execution of lease deed or the effective date of lease mentioned in the lease deed.

**20. Use and occupation of leased property.**—(1) The lessee shall not use or permit to be used the leased premises or any part thereof for any other purpose other than the purpose agreed between the parties:

Provided that no waqf property shall be given on lease for purposes which are against sharia such as gambling or lottery or sale of liquor or other intoxicants.

(2) The lessee shall not build any structure on the leased premises without due approval of the Board:

Provided that any structure build by the lessee without due approval of the Board shall become the property of the waqf and the lessee shall not be entitled to any compensation for the expenses incurred in building such structure.

(3) The lessee shall maintain the leased premises and keep the property in good order and condition and remove all debris and garbage from the leased premises.

**21. Rights and obligations of the lessor and lessee.**—(1) The rights and liabilities of the lessee shall include the following, namely:—

(i) **Operation of leased premises.**—The lessee shall assume full responsibility for the operation and maintenance of the leased premises and for the repair or replacement of all fixtures located therein or thereon and to pay all expenses incurred in connection with such maintenance and operation of the leased premises:

Provided that the lessor may, upon failure to discharge such responsibility for the lessee under this clause, at its sole option and upon fourteen days prior written notice and without, any obligation to the lessee, elect to perform such maintenance, repairs or replacement as the lessor may reasonably deem necessary or desirable.

(ii) **Access by lessor.**—The lessee shall permit the lessor to enter the leased premises at any time outside normal hours in case of an emergency and otherwise, where such entry will not unreasonably disturb or interfere with the lessee's use of the leased premises.

(iii) **Lessee to carry out certain obligations.**—The lessee shall,—

(i) promptly pay electricity charges, water charges or any cess, levies, duties, assessments, and license fees whatsoever whether municipal, school, provincial, parliamentary or otherwise;

(ii) upon the request of the lessor, promptly deliver to the lessor for examination all receipts for payment of such levies, duties, assessments and license fees;

(2) **Installation of fixtures or improvements.**—If any installation or repair work carried out by the lessee interferes with or damages the mechanical or electrical systems or the structure of the leased premises, the lessee shall promptly repair or remove such installations or fixtures on the leased property at its own expense:

Provided that the lessee shall, if required by the lessor, remove any leasehold improvements or fixtures from the leased premises upon the termination of the lease.

**(3) Alterations by lessee.**—The lessee shall bear the cost for making any modification, additions or improvements including alterations to the exterior walls, roof, or other structural components of the leased premises made by the lessee:

Provided that the lessor shall perform any such work at the expense of the lessee as may be mutually agreed between the parties.

**(4) Liens.**—The lessee shall not create any lien or encumbrance on the leased premises under any circumstances including on the leasehold rights.

**(5) Permission from local authorities.**—The lessee shall, for the purpose of construction of any structure on the leased premises, take all necessary permission from the local authorities, after prior approval of the Board.

**22. Unforeseen damage and destruction.**—If during the period of lease, the leased premises or any part thereof is damaged by fire, lightning, tempest, structural defects or acts of God or by any unforeseen perils, the following provisions shall apply, namely:—

- (i) If as a result of such damage the leased premises are rendered partially unfit for occupancy by the lessee, the lease rent shall abate in the proportion to that part of the leased premises rendered unfit for occupancy by the lessee.
- (ii) Notwithstanding anything contained in clause (i) above, if in the opinion of the lessor's architect or engineer given within sixty days of the happening of damage, the leased premises is incapable of being rebuilt, repaired or restored with reasonable diligence within one hundred and eighty days after the occurrence of the damage, then either the lessor or the lessee may opt to terminate the lease by giving to the other party a notice in writing within fifteen days of such opinion of the lessor's architect or engineer:

Provided that upon notice by either party, lease shall terminate from the date of such damage and the lessee shall immediately surrender the leased premises and all interest therein to the lessor and the lease rent shall be apportioned and shall be payable by the lessee only up to the date of the damage and the lessor may thereafter re-enter and repossess the leased premises.

- (iii) If the leased premises are capable with reasonable diligence of being rebuilt, repaired or restored within one hundred and eighty days of the occurrence of such damage, then the lessor shall proceed to rebuild, restore or repair the leased premises within the said period of one hundred and eighty days plus any additional period caused by strikes, lock-outs, slow-downs, shortages of material or labour, acts of God, acts of war, inclement weather or other occurrences which are beyond the reasonable control of the lessor, and the lease rent shall abate in the manner provided for in clause (i) above until the leased premises have been rebuilt, repaired or restored.

**23. Default.**—(1) Each of the following events shall constitute an event of default, namely: —

- (i) all or any part of the lease rent is not paid by the lessee after it become due for such payment;
- (ii) the lessee fails to observe, perform or keep each and every of the covenants, agreements and conditions and fails to rectify or remedy the failure even after one month's notice by the lessor requiring the lessee to so remedy, correct, desist or comply;
- (iii) the lessee builds any structure on the land or building without prior sanction or approval of the Board; or
- (iv) non-payment by the lessee of lease rentals or lease considerations for three consecutive months.

(2) Upon the occurrence of one or more of the events referred to in sub-rule (1), the lessor may, at its option,—

- (i) be entitled to the full amount of the lease rent due and payable;
- (ii) have no obligation to refund the security deposit which shall be deemed to be forfeited in favour of the Waqf.
- (iii) seize and sell such goods and equipment of the lessee after obtaining an order from the Tribunal and may apply the proceeds thereof to all lease rent to which the lessor is then entitled under the lease:

Provided that any such sale may be effected by public auction or otherwise, and either in bulk or by individual item, as the lessor in its sole discretion may decide;

- (iv) terminate the lease by giving one months notice and the lessee shall pay to the lessor lease rent for the unexpired portion of the term had it not been terminated.

**24. Surrender of leased property on expiration or termination of lease.**—(1) Upon expiration or termination of the lease, the lessee shall immediately surrender possession of the leased premises and all leasehold improvements in substantially the condition in which the lessee is required to maintain the leased premises excepting only reasonable wear and tear, and upon surrender, all right, title, and interest of the lessee in the leased premises shall cease.

(2) If after the expiration or termination of the lease, the lessee continues to occupy the leased premises, it shall be treated as an encroachment and such encroachment shall be removed in accordance with the procedure specified in section 54 of the Act.

(3) The lessor may remove and sell or otherwise dispose of any leasehold improvements, equipment or any other property of the lessee left on the leased premises by the lessee after the termination of the lease, in accordance with the procedure specified in section 55-A of the Act.

**25. Notice.**—Any notice under these rules shall be given in writing and sent by registered mail or by speed post and delivered to the lessor at his address; and to the lessee, personally or at the leased premises.

**26. Successors and assigns**—Subject to the specific provisions contained in these rules to the contrary, the lease shall be for the benefit of and be binding upon the successors and assigns of the lessor and the heirs, executors and administrators and the permitted successors and assigns of the lessee.

[F.No. 12/04/2013-Waqf]

RAKESH MOHAN, Jt. Secy.

## APPENDIX

FORM (See rule 15)

1.	Name of the Waqf Board							
2.	Name of the mutawalli or management committee.							
3.	Name of Waqf and its nature and object.							
4.	Details of the Waqf properties attached with the Waqf.							
5.	Period of lease intended.							
6.	Place where the waqf property is situated.							
7.	Name and address of the lessor.							
8.	<b>A. Particulars of land to be leased</b>							
	Area of Waqf land	Type of Waqf land	Revenue/ Cess/ tax/ assessment	Average annual yield	Structure, if any on the Waqf land	Gross income likely to be generated	Litigation/ Court cases, if any	
	<b>B. Particulars of house/building</b>							
	Area of site	Type of house/ building	Plinth Area	Total rate applicable	Cost of structure	Facilities (Garage, sanitary, electric installation, etc.)	Year of construction	Litigation/ Court cases, if any
9.	Market value of the above property							
10.	Terms and conditions, if any of lease							
11.	Reference No.							

It is hereby certified that the undersigned has no beneficial interest in the above waqf and the information furnished above are true to the best of my knowledge.

(Signature)

Name of the mutawalli or the management committee

Place:

Date:

**ANNEXURE V**

**MINUTES OF THE FOURTH SITTING OF THE STANDING COMMITTEE  
ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON TUESDAY,  
28TH OCTOBER, 2014**

The Committee met from 1100 hrs. to 1300 hrs. in Committee Room 'E', Parliament House Annexe, New Delhi.

**PRESENT**

Shri Ramesh Bais – *Chairperson*

**MEMBERS**

*Lok Sabha*

2. Kunwar Bharatendra
3. Shri Dilip Singh Bhuria
4. Shri Jhina Hikaka
5. Sadhvi Niranjan Jyoti
6. Shri Bhagwant Khuba
7. Shri Sadashiv Lokhande
8. Smt. Maragatham K.
9. Shri Kariya Munda
10. Prof. A.S.R. Naik
11. Sadhvi Savitri Bai Phule
12. Smt. Satabdi Roy
13. Smt. Neelam Sonkar

*Rajya Sabha*

14. Smt. Jharna Das Baidya
15. Shri Ahamed Hassan
16. Smt. Sarojini Hembram
17. Shri Prabhat Jha
18. Smt. Mohsina Kidwai
19. Shri Praveen Rashtrapal
20. Shri Nand Kumar Sai
21. Smt. Vijila Sathyananth
22. Smt. Wansuk Syiem

SECRETARIAT

1. Shri Ashok Kumar Singh – *Joint Secretary*
2. Shri Ashok Sajwan – *Director*
3. Shri Kushal Sarkar – *Additional Director*

**REPRESENTATIVES OF THE MINISTRY/DEPARTMENT**

I. REPRESENTATIVES OF MINISTRY OF MINORITY AFFAIRS

1. Dr. Lalit K. Panwar Secretary
2. Shri Rakesh Mohan Joint Secretary
3. Shri Ali Ahmed Khan Secretary, CWC
4. Shri Badruddin Khan Executive Director, NAWADCO
5. Shri Mohd. Afzal Director

II. REPRESENTATIVES OF MINISTRY OF LAW AND JUSTICE  
(LEGISLATIVE DEPARTMENT)

1. Dr. Sanjay Singh Secretary
2. Shri K.V. Kumar Deputy Legislative Counsel

III. REPRESENTATIVES OF MINISTRY OF URBAN DEVELOPMENT

1. Shri Durga Shanker Mishra Additional Secretary
2. Shri Mahmood Ahmed Land and Development Officer

IV. REPRESENTATIVE OF MINISTRY OF HOME AFFAIRS

1. Shri J.P. Agrawal Joint Secretary (Judicial)

2. At the outset, the Chairperson welcomed the Members and representatives of the Ministries - Ministry of Minority Affairs, Ministry of Home Affairs, Ministry of Law and Justice and Ministry of Urban Development. The Chairperson drew the attention of the witnesses to Direction 55(1) of the Directions by the Speaker, Lok Sabha. The Committee then took evidence of representatives of the concerned Ministries on "The Waqf Properties (Eviction of Unauthorized Occupants) Bill, 2014".

3. The broad issues which were discussed at the meeting relating to the Bill are as follows:-

- (i) Various Provision of Waqf Bill, 2014



- (ii) Criteria adopted for declaring/notifying any property as Waqf Property;
- (iii) Section 54, 55 & 56 of the Waqf Act, 1995 which provides for removal of encroachment of the Waqf properties;
- (iv) Details of Waqf properties, encroachments by Government agencies and private individuals;
- (v) Qualifications of CEO/WEO;
- (vi) Role of Mutawallis in managing the Waqf properties;
- (vii) Major difficulties being faced in eviction of illegal occupations of Waqf properties and
- (viii) Claim/outstanding dues from States;

4. The representatives of the Ministries responded to the queries raised by the Members to the extent possible. The Chairperson directed them to furnish written replies to those points which could not be replied to as early as possible.

5. The Chairperson thanked the Secretaries and other officials of the Ministries for giving valuable information to the Committee and expressing their views in a free and frank manner on the issues raised by the Members.

6. The verbatim proceedings were kept on record.

*The witnesses then withdrew.*

*The Committee then adjourned.*

**ANNEXURE VI**

**MINUTES OF THE FIFTH SITTING OF THE STANDING COMMITTEE  
ON SOCIAL JUSTICE AND EMPOWERMENT HELD ON FRIDAY,  
7TH NOVEMBER, 2014**

The Committee met from 1500 hrs. to 1635 hrs. in Committee Room 'G-074', Parliament Library Building, New Delhi.

**PRESENT**

Shri Ramesh Bais – *Chairperson*

**MEMBERS**

*Lok Sabha*

2. Kunwar Bharatendra
3. Shri Santokh Singh Chaudhary
4. Shri Jhina Hikaka
5. Shri Bhagwant Khuba
6. Shri Kariya Munda
7. Prof. A.S.R. Naik
8. Shri Asaduddin Owaisi
9. Smt. Satabdi Roy
10. Smt. Neelam Sonkar

*Rajya Sabha*

11. Shri Ahamed Hassan
12. Shri Avtar Singh Karimpuri
13. Smt. Mohsina Kidwai
14. Shri Nand Kumar Sai
15. Smt. Vijila Sathyananth

**SECRETARIAT**

1. Shri Ashok Sajwan – *Director*
2. Shri Kushal Sarkar – *Additional Director*

## REPRESENTATIVES OF WAQFS TENANTS WELFARE ASSOCIATION, DELHI

1. Mohd. Saleem	Vice President, Waqfs Tenants Welfare Association, Delhi
2. Shri Sardar Preet Pal Singh Mehta	Vice President, Waqfs Tenants Welfare Association, Delhi
3. Shri Hari Gidwani	Vice President, Waqfs Tenants Welfare Association Delhi
4. Shri Anshuman Chawla	General Secretary, Waqfs Tenants Welfare Association, Delhi
5. Shri Inderjeet Madan	Secretary, Waqfs Tenants Welfare Association, Delhi
6. Shri Sudhir Jaggi	Joint Secretary, Waqfs Tenants Welfare Association, Delhi
7. Shri Rajesh Sachdev	Treasurer, Waqfs Tenants Welfare Association, Delhi
8. Shri Manmohan Sachdev	Member, Waqfs Tenants Welfare Association, Delhi
9. Shri H.S. Mehta	Member, Waqfs Tenants Welfare Association, Delhi
10. Shri Noor Mohd	Member, Waqfs Tenants Welfare Association, Delhi
11. Shri Rama Shanker Khandelwal	Member, Waqfs Tenants Welfare Association, Delhi
12. Shri Sanjay Bhargav	Member, Waqfs Tenants Welfare Association, Delhi
13. Shri Mohd. Yusuf	Member, Waqfs Tenants Welfare Association, Delhi
14. Shri Bahar Barqui	Legal advisor, Waqfs Tenants Welfare Association, Delhi

2. At the outset, the Chairperson welcomed the representatives of the Waqfs Tenants Welfare Association, Delhi and invited their attention to the provisions contained in Direction 55(1) of the Directions by the Speaker, Lok Sabha.

3. The Chairperson, thereafter, asked the representatives of the Association to express their views on “The Waqf Properties (Eviction of Unauthorized Occupants) Bill, 2014” before the Committee.

4. The representatives of Waqfs Tenants Welfare Association submitted their views on broadly the following issues:-

- (i) Definition of encroachers needs reconsideration.
- (ii) Clauses of the Bill which are detrimental to carry out the business for tenants needs to be redefined.
- (iii) Notice for eviction (Section 20 of the Bill) also needs reconsideration.
- (iv) Terms and conditions for retaining tenancy after expiry of lease need relook.
- (v) Jurisdiction of the Court in deciding matter under “The Waqf Properties (Eviction of Unauthorized Occupants) Bill, 2014” should not be done away with.

5. The Chairperson thanked them for giving valuable information to the Committee and expressing their views in a free and frank manner on the “The Waqf Properties (Eviction of Unauthorized Occupants) Bill, 2014”. The Chairperson directed the representatives of the Waqfs Tenants Association to furnish the information in writing within ten days which was not ready available with them.

A copy of the verbatim proceedings of the sitting was kept for record.

*(The representatives of the Waqfs Tenants Welfare Association, Delhi then withdrew)*

#### **REPRESENTATIVES OF DELHI WAQF BOARD**

1. Shri S.M. Ali Chief Executive Officer, Delhi Waqf Board
2. Shri Mohammed Qaseem Chief Legal Officer, Delhi Waqf Board
3. Shri Khursheed Alam Farooqui Section Officer, Delhi Waqf Board

6. At the outset, the Chairperson welcomed the Chief Executive Officer, Delhi Waqf Board and other representatives of the Delhi Waqf Board and invited their attention to the provisions contained in Direction 55(1) of the Directions by the Speaker, Lok Sabha.

7. The Chairperson, thereafter, asked the representatives of the Delhi Waqf Board to express their views on “The Waqf Properties (Eviction of Unauthorized Occupants) Bill, 2014” before the Committee.

8. The representatives of the Delhi Waqf Board expressed their views before the Committee. The broad issues discussed at the meeting relating to the Bill are as follows:-

- (i) Details of Waqf properties in Delhi which are under unauthorized occupation/encroachments.
- (ii) Rent being charged by Delhi Waqf Board from all 1976 tenants in Delhi.
- (iii) Number of tenants in the areas *i.e.* Fatehpuri, Katra-Boria, Khari Bawali, Jogibara and Ballimaran and market values of these areas.

9. The Committee were not at all satisfied with the replies of the representatives of Delhi Waqf Board as they were unable to furnish the specific information sought by the Members, *viz.* details of encroachers, details of eviction proceedings initiated by the Board, exact amount of rent received by the Board from these properties, commercial rate of rent of the prime waqf properties, etc. Accordingly, the Committee directed the Chief Executive Officer of the Delhi Waqf Board to collect all the relevant data/information and send to the Committee within ten days. The Committee also decided to hear them again.

A copy of the verbatim proceedings of the sitting was kept for record.

*(The representatives of the Delhi Waqf Board then withdrew)*

*The Committee then adjourned.*

*ANNEXURE VII*

MINUTES OF THE TWENTY FIFTH SITTING OF THE STANDING  
COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT  
HELD ON MONDAY, 6TH JULY, 2015

The Committee met from 1130 hrs. to 1345 hrs. in Committee Room 'E', Parliament House Annexe, New Delhi.

PRESENT

Shri Ramesh Bais – *Chairperson*

MEMBERS

*Lok Sabha*

2. Kunwar Bharatendra
3. Shri Santokh Singh Chaudhary
4. Shri Sher Singh Ghubaya
5. Shri Prakash Babanna Hukkeri
6. Smt. Maragatham K.
7. Prof. A.S.R. Naik
8. Shri Asaduddin Owaisi
9. Sadhvi Savitri Bai Phule
10. Dr. Udit Raj
11. Smt. Satabdi Roy
12. Smt. Neelam Sonkar
13. Smt. Mamta Thakur

*Rajya Sabha*

14. Smt. Jharna Das Baidya
15. Shri Ahamed Hassan
16. Smt. Sarojini Hembram
17. Smt. Mohsina Kidwai
18. Smt. Vijila Sathyananth
19. Smt. Wansuk Syiem

SECRETARIAT

1. Shri Ashok Sajwan — *Director*
2. Shri Kushal Sarkar — *Additional Director*

REPRESENTATIVES OF THE MINISTRY OF MINORITY AFFAIRS

1. Dr. Arvind Mayaram Secretary, Ministry of Minority Affairs
2. Shri Ali Ahmed Khan Secretary, Central Waqf Council (CWC)
3. Shri Rakesh Mohan Joint Secretary, Ministry of Minority Affairs
4. Shri Badruddin Khan Executive Director, National Waqf Development Corporation (NAWADCO)

2. At the outset, the Chairperson welcomed the Members and representatives of the Ministry of Minority Affairs. The Chairperson drew the attention of the witnesses to Direction 55(1) of the Directions by the Speaker, Lok Sabha. The Committee then took evidence of representatives of the Ministry of Minority Affairs on “The Waqf Properties (Eviction of Unauthorized Occupants) Bill, 2014”.

3. The broad issues which were discussed at the meeting relating to the Bill are as follows:—

- (i) Various Provision of Waqf Act, 1995.
- (ii) Indifference of the State Governments in the management of Waqf properties and corruption in State Waqf Board.
- (iii) Non-availability of details/data on the encroached Waqf properties with the State Waqf Boards.
- (iv) Inadequate punishment for the encroachers.
- (v) Police protection for eviction of encroachers.
- (vi) Yardsticks for determination of encroachers.
- (vii) Conferment of judicial powers to CEO and Waqf Estate Officers (WEO).
- (viii) Implementation of law in evicting encroachers.
- (ix) Limitation of a strong law as a deterrent to encroachment and conviction.

- (x) Acceptance of appeals and stay against the orders of Waqf Boards by the High Courts.
- (xi) Specific time limit for disposal of appeals.
- (xii) Central Waqf Council and role of NAWADCO in development of Waqf properties.
- (xiii) Accountability for taking wrong decision by the Boards and CEO in transferring or disposal of Waqf land.
- (xiv) Examining and imbibing the spirit of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959—Sections 77 and 84 and Himachal Pradesh Hindu Public Religious Institution and Charitable Endowments Act, 1984 for strengthening the proposed Eviction Act.
- (xv) Litigations pending before the Boards and the Courts.
- (xvi) Writ Mandamus for enforcing the law.
- (xvii) Use of Section 94 of the Waqf Act by the Central Waqf Council by which they have the regulatory powers.
- (xviii) Payment of donation for continuance as tenant.
- (xix) Human angle in declaring existing tenants as encroachers.

4. The representatives of the Ministry responded to the queries raised by the Members to the extent possible. The Chairperson directed them to furnish written replies to those points which could not be replied to as early as possible. The Secretary assured to comply.

5. The Chairperson thanked the Secretary and other officials of the Ministry for giving valuable information to the Committee and expressing their views in a free and frank manner on the issues raised by the Members.

6. The verbatim proceedings were kept on record.

*The witnesses then withdrew.*

*The Committee then adjourned.*



**ANNEXURE VIII**

**MINUTES OF THE TWENTY-SEVENTH SITTING OF THE STANDING  
COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT  
HELD ON MONDAY, 10TH AUGUST, 2015**

The Committee met from 1500 hrs. to 1545 hrs. in Committee Room 'E', Parliament House Annexe, New Delhi.

**PRESENT**

Shri Ramesh Bais – *Chairperson*

**MEMBERS**

*Lok Sabha*

2. Shri Jasvantsinh Sumanbhai Bhabhor
3. Shri Kunwar Bharatendra
4. Smt. Maragatham K.
5. Prof. A.S.R. Naik
6. Smt. Neelam Sonkar
7. Smt. Mamta Thakur

*Rajya Sabha*

8. Smt. Jharna Das Baidya
9. Shri Ahamed Hassan
10. Smt. Wansuk Syiem

**SECRETARIAT**

1. Shri Ashok Sajwan – *Director*
2. Shri Kushal Sarkar – *Additional Director*

2. At the outset, Hon'ble Chairperson welcomed the Members to the sitting of the Committee and apprised them that the sitting had been convened to consider and adopt the draft Twentieth Report on "The Waqf Properties (Eviction of Unauthorised Occupants) Bill, 2014".

3. The Chairperson then requested the Members to give their suggestions on the draft Report. The Report was adopted by the

Committee with slight modifications/amendments. The Committee then authorized the Chairperson to finalize the Report in the light of consequential changes that might arise out of factual verification of the draft Report and to present the same to both the Houses.

*The Committee then adjourned.*



