

**Bill No. 53 of 2010**

**THE WAKF (AMENDMENT) BILL, 2010**

A

**BILL**

*to amend the Wakf Act, 1995.*

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

**1.** (1) This Act may be called the Wakf (Amendment) Act, 2010.

Short title and  
com-  
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

43 of 1995.

**2.** In the long title to the Wakf Act, 1995 (hereinafter referred to as the principal Act), for the word “Wakfs”, the word “Auqaf” shall be substituted.

Amendment  
of long title.

**3.** In section 1 of the principal Act, in sub-section (1), for the word “Wakf”, the word “Waqf” shall be substituted.

Amendment  
of section 1.

Substitution of references to certain expressions by certain other expressions.

4. 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.

Amendment of section 3.

5. In section 3 of the principal Act,—

(i) after clause (e), the following clause shall be inserted, namely:—

‘(ee) “encroacher” means any person 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 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 such 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” shall, respectively, be substituted;

(v) in clause (r), for the words ‘and “wakf” means any person making such dedication;’, the words ‘and “waqif” means any person making such dedication, subject to the condition that when the line of succession fails, the income of the waqf shall be spent for education, development and welfare of the community;’ shall be substituted.

Amendment of section 4.

6. In section 4 of the principal Act,—

(a) after sub-section (I), the following sub-section shall be inserted, namely:—

“(IA) Every State Government shall maintain a list of auqaf referred to in sub-section (I) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2010, in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2010:

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.”;

(b) in sub-section (6), in the proviso, for the words “twenty years”, the words “ten years” shall be substituted.

Amendment of section 5.

7. 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 list published in the Official Gazette under sub-section (2) shall be referred to by the revenue authorities whenever they are updating the land records.

(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.”.

**8.** In section 6 of the principal Act, in sub-section (1), —

Amendment  
of section 6.

(a) for the words “or 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,—

Amendment  
of section 7.

(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 “any person aggrieved by the publication of the list of auqaf under section 5 or” shall be substituted;

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

“(6) The Tribunal shall have 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.** For section 8 of the principal Act, the following section shall be substituted, namely:—

Substitution of  
new section  
for section 8.

“8. 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.”.

State  
Government  
to bear cost of  
survey.

**11.** In section 9 of the principal Act,—

Amendment  
of section 9.

(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 State Waqf 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 State Waqf 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 or 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 State Waqf 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 Central Council and the Council may suo motu call for information on specific issues from the State Waqf 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 State Waqf Board under intimation to the concerned State Government.**

(5) **Any dispute arising out of a directive issued by the Central Waqf 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 and the fee and travelling and other allowances payable to the Presiding Officer shall be such as may be determined by that Government.”.**

Amendment  
of section 13.

12. 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 one year from the date of the commencement of the Wakf (Amendment) Act, 2010.”;

(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 case of Shia waqf, the Members shall consist of Shia members and in the case of Sunni waqf, the Members shall consist of Sunni members.”.

Amendment  
of section 14.

13. In section 14 of the principal Act, —

(1) 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 enrolled with 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, the State Government may nominate any reputed person from that State having knowledge or experience of law, and”;

(b) after sub-clause (iv), the following proviso and *Explanation* shall be inserted, namely:—

“Provided that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.

*Explanation.*—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;”;

(iii) 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 from amongst Muslims, to be nominated by the State Government from recognised scholars in 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 Deputy Secretary to the State Government;”;

(II) after sub-section (I), the following sub-section shall be inserted, namely:—

“(IA) 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 three and not more than five 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 (I):

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 (7) shall be omitted.

Amendment of section 15.

**14.** 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.

Insertion of new section 20A.

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

Removal of Chairperson by vote of no confidence.

“20A. 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 the 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 the 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) 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) quorum for such a meeting of the Board shall be one-half of the total number of members of the Board;

(h) 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 show of hands;

(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.”.

**16.** In section 23 of the principal Act, for sub-section (I), the following sub-sections shall be substituted, namely:—

Amendment of section 23.

“(I) 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.

(IA) In case such Muslim officer is not available in the State, an officer not below the rank of Under Secretary to the State Government may be appointed.”.

**17.** For section 27 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 27.

“27. 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.”.

Delegation of powers by Board.

**18.** Section 29 of the principal Act shall be numbered as sub-section (I) thereof, and—

Amendment of section 29.

(a) in sub-section (I) 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 (I) 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.”.

Amendment  
of section 31.

**19.** 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”.

Amendment  
of section 32.

**20.** In section 32 of the principal Act,—

(I) in sub-section (2), in clause (j),—

(a) the words “sale, gift,” shall be omitted;

(b) for the proviso, the following provisos shall be substituted, namely:—

“Provided that no such sanction shall be given unless more than fifty per cent. of the total membership of the Board are present and at least two-thirds of the members present and 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.”;

(c) after sub-clause (n), the following sub-clause shall be inserted, namely:—

“(na) to determine or cause to be determined, in such manner as may be specified by the Board, fair 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, or residential flats or such other development” shall be substituted;

(III) in sub-section (5), the words “with the prior approval of the Government,” shall be omitted.

Amendment  
of section 33.

**21.** In section 33 of the principal Act, in sub-section (1), after the words “the Chief Executive Officer”, the words “or any other officer authorised by him in writing” shall be inserted.

Amendment  
of section 36.

**22.** 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 waqif” shall be substituted.

Amendment  
of section 37.

**23.** 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.”.

**24.** In section 44 of the principal Act,—

Amendment  
of section 44.

(a) in sub-section (1), after the words “Every mutawalli of a wakf”, the words “having a net annual income exceeding fifty thousand rupees” shall be inserted;

(b) in sub-section (2), for the words “ninety days”, the words “thirty days” shall be substituted;

(c) 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.”.

**25.** 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.

Amendment  
of section 46.

**26.** In section 47 of the principal Act,—

Amendment  
of section 47.

(i) in sub-section (1), in clauses (a) and (b), for the words “ten thousand rupees”, at both the places where they occur, the words “one lakh rupees” shall be substituted;

(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 “one lakh rupees and above” shall be substituted.

**27.** In section 51 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

Amendment  
of section 51.

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

Provided that no mosque, dargah, khanqah, graveyard or imambara shall be exchanged or mortgaged except in accordance with any law for the time being in force.

(1A) Any sale, gift or total transfer of waqf property shall be void *ab initio*:

Provided that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 or any other law relating to acquisition of land:

Provided further that —

(a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991;

(b) the purpose for which the land is being acquired shall be undisputedly for a public purpose;

(c) there shall be no alternative land being available which shall be considered as more or less suitable for that purpose; and

(d) the compensation shall be the prevailing market value plus the solatium and an equally suitable land in lieu of the acquired property to safeguard adequately the interest and objective of the waqf.”.

Amendment  
of section 52.

**28.** 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.

Insertion of  
new section  
52A.

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

Penalty for  
alienation of  
waqf property  
without  
sanction of  
Board.

“52A. (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 any offence punishable under this section shall be cognizable and non-bailable. 2 of 1974.

(3) No court shall take cognizance of any offence under this section save on a 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 section.”.

Amendment  
of section 55.

**30.** In section 55 of the principal Act, before the words “the Sub-divisional Magistrate”, the words “the Executive Magistrate or” shall be inserted.

Amendment  
of section 56.

**31.** In section 56 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “three years”, the words “thirty years” shall be substituted;

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

“Provided that a lease or sub-lease for any period exceeding three years and up to ten years may be made for commercial activities for period and purposes which may be specified in the rules to be made by the Central Government:

Provided further that a lease or sub-lease exceeding ten years and up to thirty years may be made for education and health and for specific period as may be provided by the rules to be made by the Central Government.”;

(b) in sub-section (2), for the words “three years”, the words “thirty years” shall be substituted;

(c) in sub-section (3), the following proviso shall be inserted at the end, namely:—

“Provided that the Board shall immediately intimate the State Government regarding a lease or sub-lease for any period exceeding one year and exchange or mortgage 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.”.

**32.** 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. Amendment of section 61.

**33.** In section 65 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:— Amendment of section 65.

“(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.”.

**34.** In section 68 of the principal Act, in sub-section (2), for the words “Magistrate of the first class” and “Magistrate”, wherever they occur, the words “Executive Magistrate or Sub-Divisional Magistrate” shall be substituted. Amendment of section 68.

**35.** In section 69 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:— Amendment of section 69.

“(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.”.

**36.** In section 71 of the principal Act, in sub-section (1), for the figures “73”, the figures “70” shall be substituted. Amendment of section 71.

**37.** In section 72 of the principal Act, in sub-section (1), in *Explanation I*, in clause (iii),— Amendment of section 72.

(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.”.

**38.** In section 77 of the principal Act, in sub-section (4), after clause (f), the following clause shall be inserted, namely:— Amendment of section 77.

“(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.”.

- Amendment of section 81. **39.** 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 the orders passed by the State Government, shall be forwarded by the State Government to the Central Waqf Council within one month of laying of the report”.
- Amendment of section 83. **40.** In section 83 of the principal Act, 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 presented.”.**
- Amendment of section 85. **41.** 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.
- Amendment of section 86. **42.** 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.
- Amendment of section 90. **43.** In section 90 of the principal Act, in sub-section (3), for the words “one month”, the words “six months” shall be substituted.
- Amendment of section 97. **44.** 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.”.
- Amendment of section 99. **45.** 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”.
- Amendment of section 102. **46.** In section 102 of the principal Act, in sub-section (2), for the words “after consulting the State Governments”, the words “after consulting the Central Waqf Council and the State Governments” shall be substituted.

47. After section 104 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 104A.

“104A. (1) No person shall, notwithstanding anything contained in this Act or any other law for the time being in force or any waqf deed, shall sell, gift or totally transfer any movable or immovable property which is a waqf property to any other person.

Prohibition of sale, gift or transfer of waqf property.

(2) Any sale, gift or transfer of property referred in sub-section (1) shall be void *ab initio*.”.

48. 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 Central Waqf Council and the Government” shall be substituted.

Amendment of section 106.

49. In section 109 of the principal Act, in sub-section (2),—

Amendment of section 109.

(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 29;

(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 29;”;

(d) 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* member under sub-section (4A) of section 83;”.

## STATEMENT OF OBJECTS AND REASONS

The Wakf Act, 1995, [which repealed and replaced the Wakf Act, 1954 and the Wakf (Amendment) Act, 1984] came into force on the 1st day of January, 1996. The Act provides for the better administration of auqaf and for matters connected therewith or incidental thereto. However, over the years of the working of the Act, there has been a widespread feeling that the Act has not proved effective enough in improving the administration of auqaf.

2. The Prime Minister's High Level Committee for Preparation of Report on Social, Economic and Educational Status of the Muslim Community of India (also known as Sachar Committee) in its Report submitted to the Prime Minister on the 17th November, 2006 considered the aforementioned issue and suggested certain amendments to the Act relating to women's representation, review of the composition of the Central Waqf Council and the State Waqf Boards, a stringent and more effective approach to countering encroachments of Waqf properties and other matters. The Committee stressed the need for setting up of a National Waqf Development Corporation and State Waqf Development Corporations so as to facilitate proper utilisation of valuable waqf properties for the objectives intended. The Committee recommended that the Act should be amended so that the State Waqf Boards become effective and are empowered to properly deal with the removal of encroachments of waqf properties. It also recommended to amend the Act so that the Waqf Tribunal will be manned by a full time Presiding Officer appointed exclusively for waqf properties. The Joint Parliamentary Committee on Waqf in its Third Report presented to the Rajya Sabha on the 4th March, 2008 made recommendations for a wide range of amendments relating to time bound survey of waqf properties, prevention and removal of encroachments, making the Central Waqf Council a more effective and meaningful body, provisions for development of waqf properties, etc. In its Ninth Report presented to the Rajya Sabha on the 23rd October, 2008, the Joint Parliamentary Committee reconsidered certain issues. The recommendations of the Joint Parliamentary Committee on Waqf were considered by the Central Waqf Council. The various issues and the need for amendments to the Act have also been considered in consultation with other stakeholders such as the All India Muslim Personal Law Board, representatives of the State Governments and the Chairmen and the Chief Executive Officers of State Waqf Boards.

3. The major issues which required to be addressed urgently are as mentioned below:—

(i) *Inadequacy of data on waqf properties* : The Wakf Act, 1995 provides for survey of waqf properties for which the State Governments are required to appoint Survey Commissioners. There is no time limit fixed in the Act for completion of such surveys. So far only one State has completed the survey. Thus, even after a decade, the data about the number of waqf properties in the country is not complete.

(ii) *Encroachments on waqf properties*: Many waqf properties are on prime urban lands. With the fast pace of urban growth, such waqf properties are consistently getting encroached, depriving the benefits to the community and thus contrary to the object of such auqaf. In some cases, such alienation takes place owing to acts of commission or omission by mutuwallis and concerned State Waqf Boards. The procedure prescribed for the removal of encroachments is long drawn and generally ineffective. Therefore, the provisions of the Act are required to be strengthened to deal effectively with the issues of encroachment and alienation of waqf properties.

(iii) *Development of waqf properties* : Since many waqf properties are on prime urban land, there is potential for generating considerable returns for fulfilling the objective of the auqaf. The Act restricts the period of lease of waqf properties to three years. While it has been decided in principle to set up National Waqf Development Corporation and State Waqf Development Corporations for developing such auqaf, it is essential that the law should permit such properties to be leased for sufficiently long periods to make such development feasible and viable.

(iv) *Absence of statutory obligation to ensure flow of information from the State Waqf Boards and State Governments to the Central Waqf Council* : The role of the Central Waqf Council as provided in the Act does not, in the absence of a statutory obligation, ensure proper and adequate flow of information from the State Waqf Boards and State Governments to the Central Waqf Council. Lack of adequate communication and lack of timely access to required data are serious impediments in the Council's ability to render effective and useful advice. The Joint Parliamentary Committee recommended for conferring statutory powers upon the Central Waqf Council for monitoring. There is also a generally accepted view that the Council, in order to be effective, should have some powers to intervene, if a *prima facie* case of irregularity is established or if there is gross violation of the provisions of the Act. After a wide range of consultations with all the stakeholders, it has been possible to work out a consensus that the Central Waqf Council ought to have some powers of intervention, but in the event of a difference of opinion between the State Government and the Waqf Board or the Board and the Central Waqf Council arising out of such advice or directive, as the case may be, there should be an appropriate and independent adjudicatory machinery for resolution of such disputes.

4. In view of above, it is proposed to amend the Wakf Act, 1995, *inter-alia*, to provide,—

(i) a specific time period for completion of survey of auqaf and to ensure that the list of auqaf based on the survey data is appropriately reflected while updating the land records by the revenue authorities;

(ii) for change in composition of the Central Waqf Council and State Waqf Boards so as to provide for representation of women, professionals and experts in the Council or Boards, as the case may be;

(iii) for reducing the scope of alienation of waqf properties by prohibiting the sale and gift of waqf properties;

(iv) stringent penal provisions to prevent encroachments and to streamline the process of removal of encroachments;

(v) for increasing the maximum permissible period of lease or sub-lease of waqf properties from three years, as at present, to thirty years;

(vi) statutory power of monitoring to the Central Waqf Council and to authorise it to issue directives and advice in specific cases, along with the provision for independent dispute resolution machinery in the shape of a Board of adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court;

(vii) for constituting the Tribunals, for the determination of all disputes, questions and other matters relating to waqf or waqf properties, as a three member body consisting of a person not below the rank of District, Session or Civil Judge Class I as the Chairman and two other members, namely, an officer from the State Civil Service equivalent in rank to that of Additional District Magistrate and another person having knowledge of Muslim law and jurisprudence; and

(viii) to change the short title of the Act from "the Wakf Act, 1995" to "the Waqf Act, 1995" and to make certain other verbal changes.

5. The notes on clauses explain the various provisions of the Bill.

6. This Bill seeks to achieve the above objectives.

SALMAN KHURSHID.

*Notes on clauses*

*Clause 1.*— This clause provides for the short title and commencement of the proposed legislation.

*Clause 2.*— This clause seeks to amend the long title of the Wakf Act, 1995 (hereinafter referred to as the Act) so as to substitute the word “wakfs” with the word “Auqaf”.

*Clause 3.*— This clause seeks to amend section 1 of the Act relating to its short title. It is proposed to change the short title of the Act to read as the Waqf Act, 1995.

*Clause 4 .*— This clause seeks to provide for the substitution of the words “wakf”, “wakfs” and “wakif”, throughout the Act, with the words “waqf”, “auqaf” and “waqif” respectively with such other consequential amendments as the rules of grammar may require.

*Clause 5 .*— This clause seeks to amend section 3 of the Act relating to definitions. Sub-clause (i) seeks to insert the definition of the word “encroacher” in the said section to mean any person 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 the concerned Board of Wakf. Sub-clause (ii) seeks to define the term “list of auqaf” to mean the list of auqaf published under sub-section (2) of section 5 or contained in the register of auqaf maintained under section 37. Sub-clause (iii) seeks to insert two new provisos to clause (i) relating to the definition of the word “mutawalli”. It is proposed to provide that the mutawalli shall be a citizen of India and shall fulfill such other qualifications as may be prescribed by rules. Further, in case a wakf has specified any such qualifications, the same may be provided in the rules as may be made by the State Government.

Sub-clause (iv) seeks to amend clause (k) of section 3 so as to substitute the words “worship” and “khangah” by the words “offer prayer” and “khanquh” respectively. Sub-clause (v) seeks to amend clause (r) relating to the definition of “wakf”. It is proposed to provide that the word “wakif” would mean any person making the dedications as referred to in the said clause (r) subject to the condition that when the line of succession fails, the income of the waqf shall be spent for education, development and welfare of the community.

*Clause 6.*— This clause seeks to amend section 4 of the Act relating to preliminary survey of wakfs. Sub-clause (a) seeks to insert a new sub-section (1A) in the said section 4 so as to make it obligatory on the part of every State Government to maintain a list of auqaf and to complete the survey, within a period of one year, from the date of commencement of the proposed legislation, in case a survey was not done before such commencement. Further, in case no Survey Commissioner of wakf has been appointed, the State Government shall appoint such a commissioner within three months from the date of commencement of the proposed legislation. Sub-clause (b) seeks to amend the proviso to sub-section (6) of section 4 so as to provide for a second or subsequent survey for every ten years, in place of the existing period of twenty years, from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3) of the said section 4.

*Clause 7.*— This clause seeks to amend section 5 of the Act relating to publication of list of wakfs. Sub-clause (a) seeks to amend sub-section (2) of the said section 5 so as to provide that instead of the Board of Wakf publishing the list of Sunni wakf or Shia wakf in the Official Gazette, the Board shall forward back to the State Government within a period of six months for publication in the Official Gazette. Sub-clause (b) seeks to insert new sub-sections (3) and (4) so as to provide that the list of wakfs published by the State Government in the Official Gazette shall be referred to the revenue authorities whenever they are updating the land records and that the State Government will be maintaining a record of the lists published under sub-section (2) from time to time.

*Clause 8.*— This clause seeks to amend section 6 of the Act which deals with disputes regarding wakfs. It proposes to amend sub-section (1), and to insert a second proviso, after the existing proviso to that sub-section and also to omit the existing *Explanation*. The

proposed amendments seek to enable any person aggrieved to initiate legal proceedings before a Tribunal. Further, it is proposed to provide that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to sub-section (6) of section 4.

*Clause 9.*—This clause seeks to amend section 7 of the Act which deals with the power of Tribunal to determine disputes regarding wakfs. It proposes to amend sub-section (1) and to insert a new sub-section (6). These amendments seek to empower the Tribunal to have the powers to analyse the damages by unauthorised occupants of the wakf properties, to penalise such unauthorised occupants, to recover damages as arrears of land revenue and to impose a fine which may extend to fifteen thousand rupees on every public servant who fails in his lawful duty to prevent or remove an encroachment.

*Clause 10.*— This clause seeks to substitute section 8 of the Act which deals with recovery of costs of survey with a new section providing that the cost of making a survey including the cost of publication of lists of auqaf shall be borne by the State Government.

*Clause 11.*— This clause seeks to amend section 9 of the Act which deals with establishment and constitution of Central Wakf Council. It proposes to substitute sub-section (1) and to insert a new sub-section (1A) *inter alia*, to empower the Central Wakf Council to issue directives to the State Wakf Boards on such issues and in such manner as provided under the proposed sub-sections (4) and (5). It further proposes to substitute sub-clause (ii) and to insert a proviso after sub-clause (viii) of clause (b) of sub-section (2) so as to broaden the field of selection of persons of national eminence and to provide at least two women members in the Central Wakf Council. It also proposes to insert new sub-sections (4) and (5) so as to empower the Central Wakf Council to issue directive to the State Wakf Boards under intimation to the concerned State Government and to provide for a mechanism for resolution of any dispute arising out of such directive.

*Clause 12.*—This clause seeks to amend section 13 of the Act relating to incorporation of Board of Wakf. It is proposed to amend the said section by inserting a proviso to sub-section (1) and a new sub-section (2A) to provide for establishment of a Board of Wakf, where such Board has not been established, within a period of one year from the date of commencement of the proposed legislation and to provide that where a Board of Wakf is established under sub-section (2) of section 13, the Members shall consist of Shia members in the case Shia wakf and Sunni members in the case of Sunni wakf.

*Clause 13.*—This clause seeks to amend section 14 of the Act relating to the composition of a Board of Wakf. It proposes to substitute the expression “the Union territory of Delhi” with the expression “the National Capital Territory of Delhi”, and to substitute sub-clauses (iii) and (iv) of clause (b) of sub-section (1) to expand the scope of selection of members. It further seeks to substitute the existing clauses (c) to (e) of sub-section (1) of the said section to expand the field of selection to include persons from amongst Muslims with professional experience in town planning or business management, social work, finance or revenue, agriculture and developmental activities and recognised scholars in Islamic Theology, besides a nominee of the State Government who shall be an officer of the State Government belonging to the muslim community not below the rank of Deputy Secretary to the State Government. It further proposes to insert a new sub-section (1A) and a proviso to ensure that a minimum of three and maximum of five members are appointed by the Central Government in case of a Union territory and that at least two of them shall be women.

*Clause 14.*— This clause seeks to amend section 15 of the Act relating to term of office of the members of the Board. It provides that the members of the State Board shall hold office for a term of five years from the date of publication of the notification of appointment in the Official Gazette.

*Clause 15.*— This clause seeks to insert a new section 20A dealing with removal of Chairperson by vote of no confidence. It provides for the removal of the Chairperson of a

Board on grounds of no confidence. The said section also lays down the manner of such removal. A resolution expressing a vote of confidence or no confidence in any person elected as Chairperson of a Board could be moved only within twelve months of his election and with the prior permission of the State Government.

*Clause 16.*— This clause seeks to amend section 23 of the Act which deals with appointment of Chief Executive Officer and his term of office and other conditions of service. It proposes to substitute sub-section (1) and to insert a new sub-section (1A) which provides for 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 who shall not be below the rank of Deputy Secretary to the State Government and in case such Muslim officer is not available in the State, then, an officer not below the rank of Under Secretary to the State Government could be appointed.

*Clause 17.*— This clause seeks to substitute section 27 of the Act dealing with delegation of powers by Board. It proposes to empower the Board to delegate, such of its powers and duties 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, 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. This has to be done by a general or special order in writing.

*Clause 18.*— This clause seeks to amend section 29 of the Act relating to the powers of Chief Executive Officer to inspect records, registers, etc., by re-numbering the existing section 29 as sub-section (1) thereof and substitution of 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” with the words “subject to such conditions as may be prescribed”. It further seeks to insert sub-sections (2) and (3) with a proviso. The proposed sub-section (2) provides that the muttawalli or any other person having the custody of documents relating to the wakf properties should produce them before the Chief Executive Officer within the prescribed time. The proposed sub-section (3) provides that a person or any organisation or agency or the Government has to supply copies of documents within ten working days when asked for by the Chief Executive Officer with the approval of the Board.

*Clause 19.*— This clause seeks to amend section 31 of the Act relating to prevention of disqualification for membership of Parliament. It proposes to provide that holder of the office of Chairperson or members of a Board shall not be disqualified for being chosen or for being a Member of Parliament or of a Union territory Legislature.

*Clause 20.*— This clause seeks to amend section 32 of the Act which lays down the powers and functions of the State Wakf Board. Clause (j) of sub-section (2) is sought to be amended to do away with the powers of the Board to sanction transfer of immovable property of a wakf by way of sale or gift. The existing proviso to clause (j) is proposed to be substituted to provide that no such sanction shall be given by the Board unless more than fifty per cent. of the total membership of the Board are present and at least two-thirds of the members of the Board present vote in favour of such transaction and for recording of reasons in writing when the Board decides not to sanction such transaction. It further proposes to insert a new sub-clause (*na*) to enable the Board to determine fair rent of the wakf land or building. It also proposes to amend sub-section (4) to broaden the powers of the Board to execute the developmental works in respect of an educational institution, shopping centre, market or residential flats or such other development. It also proposes to amend sub-section (5) to do away with the requirement of obtaining approval of the Government for taking over the building or works if the muttawalli concerned is not willing or incapable of executing the desired works.

*Clause 21.*— This clause seeks to amend sub-section (1) of section 33 of the Act relating to powers of inspection by Chief Executive Officer or person authorised by him. It

is proposed to enable the Chief Executive Officer to authorise in writing any other officer to inspect all movable and immovable properties, all records, accounts and other documents with a view to examining the extent of failure or negligence on the part of a mutawali in the performance of his duties and responsibilities with respect to wakf properties.

*Clause 22.*— This clause seeks to amend section 36 of the Act relating to registration of wakfs. The words “made by the wakf” occurring in sub-section (1) of the said section is proposed to be substituted with the words “made by the waqif”.

*Clause 23.*— This clause seeks to amend section 37 of the Act relating to register of wakfs by re-numbering the said section 37 as sub-section (1) thereof and to insert new sub-sections (2) and (3) to provide that the Board shall forward the details of the properties entered in the register of wakfs to the concerned land record office and the concerned land record office has to either make necessary entries in the land records or communicate its objections to the Board within a period of six months from the date of registration of the property.

*Clause 24.*— This clause seeks to amend section 44 of the Act relating to budget of wakf. It proposes to amend sub-sections (1), (2) and (3) relating to requirements for maintenance of accounts of wakfs by a mutawalli. The proposed amendment envisages exclusion of a mutawalli having a net annual income up to fifty thousand rupees from the requirements of this section for preparation of budget every year. It further proposes to submit the budget by mutawalli to the Board at least thirty days before the beginning of the financial year.

*Clause 25.*— This clause seeks to amend section 46 of the Act relating to submission of accounts of wakfs. It proposes to amend sub-section (2) to provide for the accounts of the previous year to be submitted by the mutawalli to the Board by 1st of July instead of the existing specified date of 1st of May.

*Clause 26.*— This clause seeks to amend section 47 of the Act relating to audit of accounts of wakfs. It proposes to amend the existing clauses (a) and (b) of sub-section (1) and the first proviso to sub-section (3) of section 47. It is proposed to raise the threshold income level for compulsory audit of the accounts of wakf to one lakh rupees and to provide for appointment of auditors from the panel drawn up by the State Government.

*Clause 27.*— This clause seeks to amend section 51 of the Act relating to alienation of wakf property without sanction of Board to be void. It proposes to substitute the existing sub-section (1) which, *inter alia*, provides that notwithstanding anything contained in the wakf deed, any exchange or mortgage of any immovable property which is wakf property shall be void unless such exchange or mortgage is effected with the prior sanction of the Board. It further provides that no mosque, dargah, khanqah, graveyard or imambara shall be exchanged or mortgaged except in accordance with any law for the time being in force. The proposed sub-section (1A) provides that any sale, gift or total transfer of wakf property shall be *void ab initio*. It also provides that it shall not affect any acquisition of wakf properties for a public purpose under the Land Acquisition Act, 1894 or any other law relating to acquisition of land and such acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991 and the purpose for which the land is being acquired shall be undisputedly for a public purpose and there shall be no alternative land being available which shall be considered as more or less suitable for that purpose. Further, the compensation shall be the prevailing market value plus the solatium and an equally suitable land in lieu of the acquired property to safeguard adequately the interest and objective of the wakf.

*Clause 28.*— This clause seeks to amend section 52 of the Act relating to recovery of wakf property transferred in contravention of section 51 so as to put restriction on power to grant lease of such property.

*Clause 29.*— This clause seeks to insert a new section 52A in the Act which provides for penalty for alienation, purchase or possession of wakf property without sanction of the

Board. Any person alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a wakf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years. The offence shall be a cognizable and non-bailable offence. It further provides that no court shall take cognizance of any offence under this section save on a complaint made by the Board or an officer duly authorised by the Board in this behalf and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this clause.

*Clause 30.*— This clause seeks to amend section 55 of the Act relating to enforcement of orders made under section 54. It proposes to empower the Executive Magistrate also along with the Sub-Divisional Magistrate for enforcement of orders relating to removal of encroachment of wakf property.

*Clause 31.*— This clause seeks to amend section 56 of the Act relating to restriction on power to grant lease of wakf property. It proposes to amend sub-sections (1) and (2) of the said section so as to enhance the period of lease from three years to thirty years. It further proposes to insert two provisos at the end of the existing sub-section (1) which provides for a lease or sub-lease for any period exceeding three years and upto ten years be made for commercial activities for such period and purposes as may be specified in the rules made by the Central Government. In case of education or health, a lease or sub-lease exceeding ten years and upto thirty years may be made as specified in the rules to be made by the Central Government. It also provides that the Board shall immediately intimate the State Government regarding a lease or sub-lease for any period exceeding one year and exchange or mortgage of any wakf property and thereafter it may become effective after the expiry of forty-five days from the date on which the Board gives intimation to the State Government. The rules which may be made by the Central Government are required to be laid before Parliament.

*Clause 32.*— This clause seeks to amend section 61 of the Act relating to penalties. It proposes to amend sub-section (1) to enhance the penalties from eight thousand rupees to ten thousand rupees for non-compliance of any of the matters enumerated in clauses (a) to (d) of that sub-section and imprisonment of not less than six months and fine of not less than ten thousand rupees in case of non-compliance of any of the matters enumerated in clauses (e) to (h) of sub-section (1).

*Clause 33.*— This clause seeks to amend section 65 of the Act relating to assumption of direct management of certain wakf by the Board. It proposes to insert a new sub-section after sub-section (4) to make it obligatory for the Board of Wakf to take over the administration of a wakf, if the Board has evidence to prove that the management of the wakf has contravened the provisions of the Act.

*Clause 34.*— This clause seeks to amend section 68 of the Act relating to duty of mutawalli or committee to deliver possession of records, etc. It proposes to substitute the words “Magistrate of the first class” and “Magistrate” with the words “Executive Magistrate or Sub-Divisional Magistrate” to whom the removed mutawalli or a member of a management committee removed by the Board has to deliver possession of records, accounts and all properties of the wakf.

*Clause 35.*— This clause seeks to amend section 69 of the Act which deals with power of Board to frame scheme for administration of wakf. It proposes to substitute sub-section (1) so as to empower every Board of Wakf to frame scheme for administration of wakf after giving reasonable opportunity and after consultation with the mutawalli or others in the manner prescribed.

*Clause 36.*— This clause seeks to amend section 71 of the Act relating to manner of holding inquiry. It provides for the manner of holding inquiry relating to administration of wakf property by the Board, either on an application made by any person interested in a

wakf or on its own motion. It is proposed to amend the reference of section 73 as a reference to section 70 which deals with inquiry relating to administration of wakf.

*Clause 37.*— This clause seeks to amend section 72 of the Act which deals with annual contribution payable to Board. It proposes to amend the *Explanation I* below sub-section (1) and to insert a proviso, after the existing proviso to sub-section (1) regarding annual contribution payable by mutawalli of a wakf property to the Wakf Board. It is proposed to enhance the deduction in respect of expenditure incurred under clause (iii) of *Explanation 1* from ten per cent., as at present, to twenty per cent. However, the permissible deductions shall not be applicable in respect of wakf land given on lease.

*Clause 38.*— This clause seeks to amend section 77 of the Act relating to wakf fund. It proposes to insert a new clause (g) in sub-section (4) to provide that payment of maintenance to muslim women in terms of orders of a competent court, under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986, shall be one of the specified purposes for which the wakf fund can be applied to.

*Clause 39.*— This clause seeks to amend section 81 of the Act which deals with orders on auditor's report. The proposed amendment seeks to provide that the State Government shall forward a copy of auditor's report on the accounts of the Wakf Board and the orders passed thereon to the Central Wakf Council within one month of laying of the report.

*Clause 40.*— This clause seeks to amend section 83 of the Act relating to constitution of Tribunals, etc. It proposes to substitute sub-section (4) with a view to expand the composition of a Tribunal. Every Tribunal constituted by the State Government will have a Chairman 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. There will be two other members one of whom shall be an officer from the State Civil Services equivalent in rank to that of Additional District Magistrate and the other a person having knowledge of Muslim law and jurisprudence.

*Clause 41.*— This clause seeks to amend section 85 of the Act dealing with bar of jurisdiction of civil courts so as to bar the jurisdiction of the revenue courts and any other authorities besides civil courts in respect of disputes, questions or other matters relating to wakfs, wakf properties or other matters required to be determined by the Tribunal.

*Clause 42.*— This clause seeks to amend section 86 of the Act dealing with appointment of a receiver in certain cases. It proposes to enlarge the scope of the provisions of the Act by providing for recovery of possession of immovable property which is wakf property by the mutawalli from any other person also besides from a previous mutawalli.

*Clause 43.*— This clause seeks to amend section 90 of the Act relating to notice of suits, etc., by courts. It proposes to increase the period of notice of suits required to be given by parties to the Wakf Board from one month to six months.

*Clause 44.*— This clause seeks to amend section 97 of the Act relating to directions by State Government. It proposes to insert a proviso to provide that the directions of the State Government to the Wakf Board shall not be contrary to any wakf deed or any usage, practice or custom of the wakf.

*Clause 45.*— This clause seeks to amend section 99 of the Act which deals with power of State Government to supersede Board. It proposes to insert a new proviso after the existing proviso in sub-section (1) so as to provide that the State Government shall not supersede the Board unless there is a *prima facie* evidence of financial irregularity, misconduct or violation of the provisions of the Act. It further proposes to substitute clause (a) of sub-section (3) to extend the period of supersession of the Wakf Board by another six months for reasons to be recorded in writing and, the period of such continuous supersession shall not exceed more than one year.

*Clause 46.*— This clause seeks to amend 102 of the Act relating to special provision for reorganisation of certain Boards. It proposes to amend sub-section (2) relating to special provision for reorganisation of certain Boards so as to provide that the powers are exercised by the Central Government after consultation with not only the State Governments concerned but also with the Central Wakf Council.

*Clause 47.*— This clause seeks to insert a new section 104A in the Act to provide for prohibition of sale, gift or transfer of wakf property. It proposes that no person shall, notwithstanding anything contained in the Act or any other law for the time being in force or any wakf deed, sell, gift or totally transfer any movable or immovable property which is a wakf property to any other person to prevent alienation of waqf property given or donated by persons not professing Islam and any such sale, gift or transfer of property shall be *void ab initio*.

*Clause 48.*— This clause seeks to amend section 106 of the Act relating to powers of the Central Government to constitute common Boards in two or more States . It proposes to amend sub-section (1) to provide that the powers to constitute common board shall be exercised by the Central Government after consultation with not only the State Governments concerned but also with the Central Wakf Council.

*Clause 49.*— This clause seeks to amend section 109 of the Act relating to power to make rules. It proposes to substitute clause (i) and insert new clauses (*ia*), (*via*) and (*vib*) specifying the matters in respect of which rules may be made.

## FINANCIAL MEMORANDUM

The Wakf (Amendment) Bill, 2010 seeks, *inter alia*, to insert new sub-sections (4) and (5) in section 9 of the Wakf Act, 1995 to empower the Central Wakf Council to issue a directive to the State Wakf Board under intimation to the State Government concerned and to provide for a mechanism for resolution of any dispute arising out of such a directive. It is envisaged that such dispute would be resolved by referring it to a Board of Adjudication to be constituted by the Central Government and the Board of Adjudication shall be presided over by a retired Judge of the Supreme Court and the fee and travelling and other allowances payable to the presiding officer shall be such as may be determined by that Government. Hence, setting up of the Board of Adjudication, as and when necessitated, may involve expenditure on account of payment of fees, etc. Since the provision is contingent upon arising of a dispute, it is not practicable to estimate the expenditure at this stage. Further, the expenditure on payment of fee to the adjudicator may have to be shared equally by the parties to the dispute.

2. The Bill also seeks to substitute the existing sub-section (4) of section 83 of the Act relating to constitution of Tribunals. The said sub-section provides that the Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank not below that of District, Sessions or Civil Judge Class I. The proposed new sub-section (4) envisages to expand the composition of a Tribunal by two more members; one from the State Civil Services and the other being a person having knowledge of Muslim law and Jurisprudence. The expansion of the composition of the Tribunal would involve additional expenditure on account of salaries, allowances and other administrative expenditure. The incidence of additional expenditure would, however, devolve on the State Governments concerned and there is no anticipated outgo from the Consolidated Fund of India. However, there may be negligible expenditure in respect of the Union territories.

3. No other expenditure, both recurring and non-recurring, is likely to be involved.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to amend section 3 of the Wakf Act, 1995. Sub-clause (iii) of the said clause seeks to insert two new provisos to clause (i) relating to the definition of the word “mutawalli”. It is proposed to provide that the mutawalli shall be a citizen of India and shall fulfill such other qualifications as may be prescribed by rules as may be made by the State Government. Further, in case a wakf has specified any such qualifications, the same may be provided in the rules as may be made by the State Government.

2. Clause 18 of the Bill seeks to amend section 29 of the aforesaid Act relating to powers of Chief Executive Officer to inspect records, registers, etc. The said clause *inter alia* seeks to insert sub-sections (2) and (3). The proposed sub-section (2) provides that the mutawalli or any other person having the custody of any documents relating to the wakf properties should produce them before the Chief Executive Officer within the prescribed time. The proposed sub-section (3) provides that subject to such conditions as may be prescribed, an agency of the Government or any other organisation shall supply copies of documents within ten working days when asked for by the Chief Executive Officer with the approval of the Board.

3. Clause 31 of the Bill seeks to amend section 56 of the Act relating to restriction on power to grant lease of wakf property. The proposed amendments *inter alia* provides for making of rules by the Central Government regarding the period and purposes relating to leases and sub-leases of wakf property.

4. Clause 40 of the Bill seeks to amend section 83 of the aforesaid Act relating to constitution of Tribunals, etc. It proposes to substitute sub-section (4) with a view to expanding the composition of a Tribunal. Every Tribunal constituted by the State Government will have a Chairman 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. There will be two other members one of whom shall be an officer from the State Civil Services equivalent in rank to that of Additional District Magistrate and the other a person having knowledge of Muslim law and jurisprudence. The new sub-section (4A) seeks to provide for enabling the State Government to make rules laying down the terms and conditions of appointment including the salaries and allowances payable to, the Chairman and other members.

5. Clause 49 of the Bill proposes to amend section 109 of the aforesaid Act relating to power of State Government to make rules. Sub-section (1) of the said section empowers the State Government to make rules to carry out the provisions of the Wakf Act. Sub-section (2) enumerates the various matters in respect of which the State Government may make such rules. It is proposed to specify the various matters referred to in clauses 5, 18, 31, 40 and 49 of the Bill in respect of which the State Government may make rules. As no specific provision relating to the other matters referred to in clause (f) of sub-section (3) of section 4 is given in sub-section (2) of section 109, necessary provision for that matter is also added in that sub-section.

6. The rules made by the Central Government or the State Government are required to be laid before Parliament or the State Legislature, as the case may be. The matters in respect of which rules may be made by the Central Government or the State Government in accordance with the provisions of the said Act are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE WAKF ACT, 1995

(43 OF 1995)

An Act to provide for the better administration of Wakfs and for matters connected therewith or incidental thereto.

\* \* \* \* \*

CHAPTER I  
PRELIMINARY

1. (I) This Act may be called the Wakf Act, 1995.

Short title,  
extent and  
commencement.

\* \* \* \* \*

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

Definitions.

\* \* \* \* \*

(g) "list of wakfs" means the list of wakfs published under sub-section (2) of section 5;

\* \* \* \* \*

(i) "mutawalli" means any person appointed, either verbally or under any deed or instrument by which a wakf has been created, or by a competent authority, to be the mutawalli of a wakf and includes any person who is a mutawalli of a wakf 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 wakf or wakf property:

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

\* \* \* \* \*

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

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

\* \* \* \* \*

(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 "wakf" means any person making such dedication;

\* \* \* \* \*

CHAPTER II  
SURVEY OF WAKFS

Preliminary survey of wakfs.

4. (1) \* \* \* \* \*

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

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

Publication of list of wakfs.

5. (1) \* \* \* \* \*

(2) The Board shall examine the report forwarded to it under sub-section (1) and publish in the Official Gazette a list of Sunni wakfs or Shia wakfs in the 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.

Disputes regarding wakfs.

6. (1) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list in a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a 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 wakfs.

*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.

\* \* \* \* \*

Power of Tribunal to determine disputes regarding wakfs.

7. (1) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that—

(a) in the case of the list of wakfs 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 wakfs; and

(b) in the case of the list of wakfs 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.

\* \* \* \* \*

**8.** (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.

Recovery of costs of survey.

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

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

**CHAPTER III**  
**CENTRAL WAKF COUNCIL**

**9.** (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, established a Council to be called the Central Wakf Council.

Establishment and constitution of Central Wakf Council.

(2) The Council shall consist of—

\* \* \* \* \*

(b) the following members to be appointed by the Central Government from amongst Muslims, namely:—

\* \* \* \* \*

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

\* \* \* \* \*

(viii) three persons who are eminent scholars in Muslim Law.

\* \* \* \* \*

**14.** (1) The Board for a State and the Union territory of Delhi shall consist of—

Composition of Board.

\* \* \* \* \*

(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—

\* \* \* \* \*

(iii) Muslim Members of the Bar Council of the State, and;

(iv) mutawallis of the wakfs having an annual income of rupees one lakh and above;

(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.

\* \* \* \* \*

(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.

\* \* \* \* \*

**15.** The members of the Board shall hold office for a term of five years.

Term of office.

\* \* \* \* \*

Appointment of Chief Executive Officer and his term of office and other conditions of service.

**23. (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.

\* \* \* \* \*

Delegation of powers by the Board.

**27.** 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.

\* \* \* \* \*

Powers of Chief Executive Officer to inspect records, registers, etc.

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

\* \* \* \* \*

Prevention of disqualification for membership of Parliament.

**31.** 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.

Powers and function of the Board.

**32. (1)** \* \* \* \* \*

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

\* \* \* \* \*

(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;

\* \* \* \* \*

(4) Where the Board is satisfied that any wakf land, which is a wakf property, officers a feasible potential for development as a shopping centre, market, housing flats and the like, it may serve upon the mutawalli of the concerned wakf 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) One consideration of the reply, if any, received to the notice issued under subsection (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, with the prior approval of the Government, 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 Wakf funds or from the finances which may be raised on the security of the properties of the wakf 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 charges incurred on the property are recovered from the income derived from the property:

Provided that the Board shall compensate annually the mutawalli of the concerned

wakf 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.

\* \* \* \* \*

**33. (1)** With a view to examining whether, by reason of any failure or negligence on the part of a mutawalli in the performance of his executive or administrative duties, any loss or damage has been caused to any wakf or wakf property, the Chief Executive Officer with the prior approval of the Board, either himself or any other person authorised by him in writing in this behalf, may inspect all movable and immovable properties, which are wakf properties, and all records, correspondences, plans, accounts and other documents relating thereto.

Powers of inspection by Chief Executive Officer or persons authorised by him.

\* \* \* \* \*

#### CHAPTER V REGISTRATION OF WAKFS

**36. (1)** \* \* \* \* \* Registration.

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

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

\* \* \* \* \*

#### CHAPTER VI MAINTENANCE OF ACCOUNTS OF WAKFS

**44. (1)** Every mutawalli of a wakf 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 ensuing showing the estimated receipts and expenditure during that financial year.

Budget.

(2) Every such budget shall be submitted by the mutawalli at least ninety days before the beginning of the financial year to the Board and shall make adequate provision for the following:—

(i) for carrying out the objects of the wakf;

(ii) for the maintenance and preservation of the wakf property;

(iii) for the discharge of all liabilities and subsisting commitments funding on the wakf under this Act or any other law for the time being in force.

(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.

\* \* \* \* \*

**46. (1)** \* \* \* \* \* Submission of accounts of wakfs.

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

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

Audit of accounts of wakfs.

**47.** (1) The accounts of wakfs submitted to the Board under section 46 shall be audited and examined in the following manner, namely:—

(a) in the case of a wakf having no income or a net annual income not exceeding ten 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 wakfs shall be audited annually by an auditor appointed by the Board;

(b) the accounts of the wakf having net annual income exceeding ten 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;

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

**51.** (1) Notwithstanding anything contained in the wakf deed, any gift, sale or exchange 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.

\* \* \* \* \*

Recovery of wakf property transferred in contravention of section 51.

**52.** (1) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a wakf entered as such in the register of wakf maintained under section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of section 51, 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.

\* \* \* \* \*

Enforcement of orders made under section 54.

**55.** Where the person, ordered under sub-section (3) 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 other property to which the order relates, within the time aforesaid, the Chief Executive Officer may apply to the Sub-divisional Magistrate, within the local limits of whose jurisdiction the land, building, space or other property is situate for evicting the encroacher, and, thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property and to deliver possession thereof to the concerned mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.

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

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

\* \* \* \* \*

**61.** (1) If a mutawalli fails to— Penalties.

(a) apply for the registration of a wakfs;

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

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

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

(e) deliver possession of any wakf 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 eight thousand rupees.

\* \* \* \* \*

**68.** (1) \* Duty of mutawalli or committee to deliver possession of records, etc.

(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 Magistrate of the first class within the local limits of whose jurisdiction any part of the wakf property is situated and, thereupon, such Magistrate 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 wakf to the successor mutawalli or the committee, as the case may be, within such time as may be specified in the order.

\* \* \* \* \*

**69.** (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. Power of Board to frame scheme for administration of wakf.

\* \* \* \* \*

**71.** (1) The Board may, either on an application received under section 73 or on its own motion,— Manner of holding inquiry.

(a) hold an inquiry in such manner as may be prescribed; or

(b) authorise any person in this behalf to hold an inquiry into any matter relating to a wakf and take such action as it thinks fit.

\* \* \* \* \*

CHAPTER VII  
FINANCE OF THE BOARD

Annual contribution payable to Board.

**72.** (1) The mutawalli of every wakf, the net annual income of which is not less than five thousand rupees, shall pay annually, out of the net annual income derived by the wakf, 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 wakf.

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

(i) the land 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, namely:—

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

(b) seeds or seedlings;

(c) manure;

(d) purchase and maintenance of agricultural implements;

(e) purchase and maintenance of cattle for cultivation;

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

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

\* \* \* \* \*

Wakf fund.

**77.** (1) \* \* \* \* \*

(4) The Wakf Fund shall be applied to—

\* \* \* \* \*

State Government to pass orders on auditor's report.

**81.** 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.

\* \* \* \* \*

CHAPTER VIII  
JUDICIAL PROCEEDINGS

Constitution of Tribunals, etc.

**83.** (1) \* \* \* \* \*

(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.

\* \* \* \* \*

Bar of jurisdiction of civil courts.

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

5 of 1908.

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

Appointment of a receiver in certain cases.

\* \* \* \* \*

(b) by a mutawalli to recover possession of immovable property, which is wakf property, which has been transferred by a previous mutawalli, whether for valuable consideration or not, without otherwise than in accordance with the sanction of the Board, and which is in the possession of the defendant,

the court may, on the application of the plaintiff, appoint a receiver of such property and direct such receiver to pay from time to time to the plaintiff, out of the income of the property, such amount as the court may consider to be necessary for further prosecution of the suit.

\* \* \* \* \*

**90. (1)** \* \* \* \*

Notice of suits, etc., by courts.

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

\* \* \* \* \*

**97.** 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.

Directions by State Government.

**99. (1)** \* \* \* \*

Power to supersede Board.

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

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

\* \* \* \* \*

**102. (1)** \* \* \* \*

Special provision for reorganisation of certain Boards.

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

\* \* \* \* \*

**106. (1)** Where the Central Government is satisfied that by reasons of—

Powers of Central Government to constitute common Boards.

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

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

(iii) the disproportion between the number and income of the wakfs and the Muslim population in such States,

it is expedient in the interests of the wakfs in the States and the Muslim population of such States, to have, instead of separate Boards for each of such States, a common Board, it may, after consultation with the Government of each of the concerned States establish, by notification in the Official Gazette, a common Board for such States as it may deem fit, and may, by the same or any subsequent notification specify the place at which the principal office of such common Board shall be located.

\* \* \* \* \*

Power to  
make rules.

**109. (1)** \* \* \* \* \*

(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:—

(i) other particulars which the report of the Survey Commissioner may contain, under clause (f) of sub-section (3) of section (4);

\* \* \* \* \*

(vi) the conditions and restrictions subject to which the Chief Executive Officer or any other officer may inspect any public office, records or registers under section 29;

\* \* \* \* \*

LOK SABHA

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BILL  
to amend the Wakf Act, 1995.

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*(Shri Salman Khurshid, Minister of State for Minority Affairs)*