



PARLIAMENT OF INDIA

RAJYA SABHA

REPORT OF THE SELECT COMMITTEE ON
THE WAKF (AMENDMENT) BILL, 2010

PRESENTED TO THE RAJYA SABHA ON THE 16th December, 2011

RAJYA SABHA SECRETARIAT

NEW DELHI

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COMPOSITION OF THE COMMITTEE

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Parvez Hashmi
4. Shri Tariq Anwar
5. Dr. Prabha Thakur
6. Shri Mukhtar Abbas Naqvi
7. Shri Prakash Javadekar
8. Shri Anil Madhav Dave
9. Shri Balwinder Singh Bhunder
- *10. Shri Moinul Hassan
11. Shri Munquad Ali
12. Shri Mohammed Adeeb
13. Dr. Bhalchandra Mungekar

SECRETARIAT

1. Shri Surinder K. Watts, Joint Secretary
2. Shri M.K. Khan, Director
3. Ms. S. Pankajavalli, Deputy Director
4. Shri Ranjan Chaturvedi, Assistant Director
5. Shri R.P. Sharma, Committee Officer

REPRESENTATIVES OF MINISTRY OF MINORITY AFFAIRS

1. Shri Surajit Mitra, Secretary
2. Shri E.R. Solomon, Joint Secretary
3. Shri Mohd. Afzal, Deputy Secretary

REPRESENTATIVES OF MINISTRY OF LAW AND JUSTICE

1. Shri N.K. Nampoothiry, Additional Secretary, Legislative Department
2. Dr. Sanjay Singh, Joint Secretary, Legislative Department
3. Shri R. K. Pattanayak, Deputy Legislative Counsel
4. Shri K.V. Kumar, Deputy Legislative Counsel

** Appointed w.e.f. 23.11.2011 vice Shri Mohammed Amin, MP retired from membership of Rajya Sabha w.e.f. 18.08.2011.*

REPORT

I, the Chairman of the Select Committee of the Rajya Sabha on the Wakf (Amendment) Bill, 2010, to whom the aforesaid Bill, as passed by the Lok Sabha on the 7th May, 2010, was referred, having been authorised by the Select Committee to submit the Report on its behalf, present this Report of the Committee alongwith the Bill, as amended by the Committee, annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 27th April, 2010, with a view to remove the infirmities/deficiencies in the existing Wakf Act, 1995. The Wakf (Amendment) Bill, 2010 proposed to amend the Wakf Act, 1995, *inter-alia*, to provide for the following, namely:

- (i) Survey of wakfs within a specific period and that the survey data is appropriately reflected in the land records by the revenue authorities;
- (ii) Change the composition of the Central Wakf Council and the State Wakf Boards, so as to provide for representation of women, professionals and experts in the Council and the Boards,
- (iii) Prohibition on the sale and gift of wakf properties;
- (iv) Stringent penal provisions to prevent encroachments and to streamline the process of removal of encroachments;
- (v) Increase the maximum permissible period of lease or sub-lease of wakf properties to thirty years;
- (vi) Provide statutory power of monitoring to the Central Wakf Council;
- (vii) Constitution of Tribunals for determination of all the disputes, questions and other matters relating to wakf or wakf properties, consisting of a Chairman, who is not below the rank of District, Session or Civil Judge Class I, 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.

3. The Motion for reference of the Bill, as passed by the Lok Sabha, to a Select Committee of the Rajya Sabha, was moved by Dr. Salman Khurshid, Minister of Minority Affairs on the 31st August, 2010 and was adopted by the House on the same day.(Appendix-). The Committee held 22 meetings. It also held discussions with some experts in the field.

4. At its first meeting held on the 24th September, 2010, the Committee deliberated upon the course of action as well as the procedure for examination of the Bill. As decided by the Committee, views of various State Governments, as well as that of various reputed organisations/institutions and eminent experts on the Wakf Affairs were solicited. The views of the representatives of the Ministry of Minority Affairs, Ministry of Law and Justice (The Legislative Department and the Department of Legal Affairs) were also heard. Besides, the Committee referred to the recommendations/observations contained in the Reports of the Joint Parliamentary Committee on Wakf. Hon”ble Deputy Chairman, Rajya Sabha also made a presentation on the subject before the Committee on the 8th December, 2010.

5. The Committee heard oral evidence of 18 delegations/organisations (Appendix-). Besides, some individuals/organisations, etc., also made written submissions before it. The Committee tried to hear maximum possible witnesses. It was to present its Report to the House within six weeks. It was, however, granted four extensions of time i.e., upto 30th November 2010; upto 11th March, 2011; upto the last day of the first week of Monsoon Session 2011; and upto the first day of the last week of the Winter Session, 2011.

6. Though the provisions of the Wakf Act, 1995 did not apply to the State of Jammu and Kashmir, yet it had a unique system of Wakf administration. The Committee, therefore, undertook a study visit to Leh, Jammu and Srinagar from 9th to 13th June, 2011, and interacted with a wide spectrum of the people, representatives of the concerned Departments of the State Government and the agencies involved in the administration of Wakf. Some eminent personalities from the State shared their experience with the Committee, so as to facilitate strengthening of various provisions of the Act.

7. The Committee considered the draft Report at its meeting held on the 12th December, 2011, and adopted the same, with some changes.

8. The Committee initiated clause-by-clause consideration of the Bill on the 28th April, 2011. In subsequent 11 meetings, the Committee decided to modify 19 Clauses. The changes suggested by the Committee in the Bill and the reasons therefor are set out in the succeeding paragraphs of this Report:-

Clause 5

This clause seeks to amend section 3 of the Act relating to definitions.

Sub-clause (i) seeks to insert definition of the word “encroacher” in section 3 so as 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. ***The Committee modified the definition of ‘encroacher’ further to include ‘any person or institution, public or private’, with a view to obviate the possibility of encroachment by any public or private institution.***

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 “khanqah”, respectively.

The Committee also decided to include ‘Peerkhana’ and ‘Karbala’, in the list of religious institutions mentioned in Section 3 (k) (i), before the word maqbara.

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 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.

The Committee felt that the formulation “ ... the commencement of the Wakf (Amendment) Bill, 2010” may be inaccurate, considering that the Bill could not be passed in 2010. It, therefore, decided that the year of the Bill may be determined in consultation with the Legislative Department, while redrafting the Bill.

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 after 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.

The Committee observed that status of the Wakf properties once notified in the Gazette, should not be questioned. The Committee, therefore, decided to modify the existing proviso by making a provision that Wakf properties already notified shall not be reviewed again in subsequent survey, except in respect of properties whose status has been changed in accordance with the provisions of any law.

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.

The Committee agreed with the intent of Sub Clause (b) to include four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine. It also decided to substitute the word ‘or’ occurring between words ‘architecture’ or medicine with the word ‘and’.

In Sub Clause (c) in the proposed new Sub- Section (4), the word ‘Central’ appeared to be superfluous and the Committee decided to retain only the word Council, as the definitions given in Section 3 (e) of the Act, recognize the ‘ Council’ as the Central Wakf Council.

The Committee also decided that in Sub-Clause (c), in the proposed Sub-Section (5), in addition to retired Supreme Court Judge, option of retired Chief Justice of a High Court, too should be included, to preside over the proposed Board of Adjudication. The Committee, therefore, decided to modify the Sub–Section, accordingly.

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 the 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 the 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.

In Sub Clause (a), the Committee decided that the Board of the Wakf should be established within six months, instead of the proposed one year, from the commencement of the Wakf (Amendment) Act, 2011.

In Sub Clause (b), in the proposed new Sub Section (2A), the Committee decided that members of the Board of Waqf , in case of Shia Waqf, should belong to that community and in the case of Sunni Waqf, members should belong to the said community.

Clause 13

This clause seeks to amend Section 14 of the Act relating to composition of a Board of the 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 recognized scholars in Islamic Theology, besides a nominee of the State Government, who should 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 should be women.

In respect of Sub Clause (1) (ii) (a) regarding the representation of Muslim member enrolled with the Bar Council of the concerned State, the Committee decided that in case there was no Muslim member enrolled with the Bar Council of State, the State Government may nominate any reputed person from that State, having knowledge or experience of law.

Clause 15

This clause seeks to insert a new section 20A dealing with removal of a Chairperson by vote of no confidence. It provides for removal of the Chairperson of a Board on the ground of no confidence. The said section also lays down the manner for such removal. A resolution expressing 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 prior permission of the State Government.

In the newly inserted Section 20(A) sub Section (j) (B), providing for election by show of hands, the Committee decided that the election should be done by method of secret ballot.

Clause 16

This clause seeks to amend section 23 of the Act, which deals with appointment of Chief Executive Officer, 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, an officer, not below the rank of Under Secretary to the State Government, could be appointed.

The Committee decided to substitute the words ‘an officer’ with the words ‘a Muslim Officer’.

The Committee also decided to provide that in case of non-availability of a Muslim Officer of the rank of Deputy Secretary to State Government, a Muslim Officer of equivalent rank may be appointed on deputation.

New Clause 18

Drawing upon the view taken by the Committee regarding amendment to Section 24 of the parent Act and omission of Section 28, the committee decided that Section 28 of the present Act may be amended as under :-

“Subject to the provisions of this Act and the rules made thereunder, the District Magistrate or in his absence an Additional District Magistrate or Sub Divisional Officer in a district in the State shall be responsible for implementation of the decisions of the Board which may be conveyed through the Chief Executive Officer and the Board may, wherever considered necessary, issue suitable directions to the authorities concerned for implementation of its decisions.”

This way, the Committee has tried to make the District Magistrate or in his absence an Additional District Magistrate or Sub-divisional Magistrate in a district in a State responsible

for implementation of the decisions of the Board, which may be conveyed through the CEO of the Board.

Clause 19

(**Original Clause 18**)

This clause seeks to amend section 29 of the Act relating to powers of the 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 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 custody of the 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.

The Committee decided to delete the words “at all reasonable time” occurring in the proposed sub-section I of Section 29 of the principal Act, thereby removing the time limit for inspecting any office or record, registers or documents related to a wakf or immovable or movable properties.

Clause 21

(**Original 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 is 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 muttawali concerned is not willing or is incapable of executing the desired works.

In addition to precluding the sale or gift of a waqf property by the Waqf Boards, the Committee decided to remove the power of Waqf Boards to even ‘ mortgage’ any waqf property. The Committee, accordingly, decided to modify Sub Clause (I) (a). In Sub Clause (I) (b), the Committee was of the view that sanction for any transfer of immovable property should not be given unless at least two thirds of the total membership of the Board was present, and at least two third of members of the Board present vote in favour of such transaction. In Sub Clause (I) (c), in the proposed new sub Clause (na), the Committee decided to substitute the word ‘fair’ rent with ‘market’ rent. For the purpose of development of Wakf Properties, the Committee decided to include in Sub Clause (II), the expression “market, housing or residential flats and the like” after the words “as a shopping center”.

Clause 22

(Original Clause 21)

This clause seeks to amend sub-section (1) of section 33 of the Act relating to powers of inspection by the Chief Executive Officer or the person authorised by him. It is proposed to enable the Chief Executive Officer to authorize, 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 muttawali in the performance of his duties and responsibilities with respect to wakf properties.

The Committee observed that the words ‘either himself or any other person authorized by him in writing in this behalf,’ occurring in Section 33 (1) of the Principal Act, were superfluous and decided that the same may be deleted in the parent Act.

Clause 25

(Original Clause 24)

This clause seeks to amend section 44 of the Act relating to budget of the 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 requirement 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.

With a view to ensure positive response to audit provisions and to strengthen autonomy of Wakf Boards, in Sub Clause (a), the Committee is inclined to make it incumbent upon every mutawalli to prepare a budget and, therefore, disagreed with the proposed exclusion upto threshold net annual income of Rupees fifty thousand. It accordingly, decided to delete the Clause and to re-number the remaining Sub-Clauses.

Clause 27

(Original 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.

In Clause 26 (i) the Committee is inclined to reduce the proposed threshold income level from Rupees one lakh to Rupees fifty thousand for compulsory audit. Further, the Committee did not agree with the existing provision in Section 47(1) (a) of the parent Act, providing for annual audit of only 2% of smaller wakfs. The Committee suggested deletion of such provisions from the parent Act. In case of Section 47 (1) (c) of the parent Act regarding powers of the State Government to have the accounts of a wakf audited, the Committee decided that the State Government should do so under intimation to the Wakf Board.

Further, in case of proposed Clause 26(ii) regarding audit of the Wakfs by empanelled auditors, the Committee was inclined to reduce the threshold from the proposed Rupees One lakh and above to ‘more than rupees fifty thousand and less than rupees one lakh.

The Committee decided that Section 47 of the parent Act be amended and accordingly modified Clause 26.

Clause 28
(Original Clause 27)

This clause seeks to amend section 51 of the Act, making alienation of the 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 prior sanction of the Board. Further, 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 and* 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. 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. 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.

The Committee decided to delete the words ‘except in accordance with any law for the time being in force’ in the proviso to the proposed new sub-section I of Section 51 of the Act, thereby making exchange or mortgage of mosque, dargah, khanqah, graveyard or imamabara, improbable.

In Sub Clause (1A), the Committee apprehended that the expression ‘total transfer’ may be misconstrued and, therefore, decided to delete the word ‘total’, for unqualified preclusion of transfer of wakf property.

In Sub Clause (1A), in the proviso to the proposed new sub-section 1A of Section 51 of the Act, which allows for application of Land Acquisition Act, 1874, the Committee decided that such acquisition should be effected in consultation with the Wakf Board. Accordingly, it decided that after the words ‘acquisition of land’, the words ‘subject to consultation with Board’ should be inserted.

The Committee decided that either the prevailing market value plus reasonable solatium should be paid as compensation in lieu of acquired property or equally valuable land should be provided. Accordingly in the same proviso to the proposed new sub-section 1A of the Act, the words ‘plus the solatium and’ were substituted by the word ‘or’ and the words ‘with reasonable solatium’ were inserted after the words ‘equally valuable land’.

Clause 30

(Original 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. If 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. Further 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.

In the proposed new Sub-Section (3) of the new Section 52 (A), the Committee is of the view that in addition to Board, the said complaint should also be allowed to be made by any officer, duly authorized by the State Government. Accordingly, the word ‘an’

was substituted by the word ‘any’ and the word ‘Board’ was substituted by the words ‘State Government’.

Clause 32

(Original 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 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 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 would be required to be laid before Parliament.

The Committee decided that in the case of commercial activities, the lease should be for a period upto fifteen years and for education or health purposes, the lease should be for a period upto thirty years. It also disagreed with the proposal that rules regarding grant of lease of wakf property should be made by the Central Government, therefore, such formulations should be deleted from the Clause.

Clause 35

(Original 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.

Instead of an Executive Magistrate, as provided in the Bill, the Committee decided to widen the options by including the District Magistrate or the Additional District Magistrate, in addition to Sub-Divisional Magistrate, to whom the removed mutawalli or a member of the management committee removed by the Board, will deliver possession of the records, accounts and all properties of the wakf.

Clause 40

(Original 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 the 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.

The Committee decided to add 'before the State Legislature', after the words ' laying of the report', as a measure of abundant clarification.

Clause 48

(Original 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 wakf property given or donated by persons not professing Islam and any such sale, gift or transfer of property shall be *void ab initio*.

The Committee apprehended that the expression 'totally transfer' may be misconstrued and, therefore, decided to delete the word 'total', to ensure unqualified preclusion of transfer of waqf property.

Enacting Formula and Clause 1

Amendments made in the enacting Formula and Clause I are of formal nature, necessitated due to passage of time.

9. The Committee, at all stages of its consideration of the Bill, has been guided by an abiding concern to protect, preserve and restore the waqf properties as per the will of the waqif for the welfare of deserving section of the Muslim community. The Bill is supposed to make Waqf Boards more professional and effective forum for the administration of waqfs.

10. Apart from appropriate modifications in respective Clauses of the Bill, the Committee has also given some recommendations which are of critical importance for achieving the objectives of the wakf administration but were not covered by the Bill. It is important that these recommendations are duly incorporated.

11. The Committee wishes to express its gratitude to all the distinguished persons/expert bodies who appeared before the Committee or furnished the requisite information in connection with examination of the Bill. The Committee is particularly thankful to the Wakf Authorities of Jammu & Kashmir Government, the Chairman and other functionaries of the J&K Muslim Aukaf Trust and other individuals who met it in Leh, Jammu and Srinagar. The Committee also wishes to place on record its appreciation to the representatives of the Ministries of Minority Affairs and Law & Justice (Legislative Department and Department of Legal Affairs) for rendering valuable assistance to the Committee in its deliberations.

12. The Committee recommend that the Bill, as reported by it, be passed. The Government may also take further measures, as recommended by it in this Report.

Prof. Saif ud din Soz
Chairman, Select Committee on
the Waqf (Amendment) Bill, 2010

New Delhi
December 12, 2011

ADDITIONAL (GENERAL) RECOMMENDATIONS

1. Based on the experience ever since the Waqf Act, 1995 came into force, the Bill proposed extensive amendments in the parent Act. However, there has to be a continuous exercise to evolve any piece of legislation to respond to the infirmities that accentuate over a period of time. There are some issues that have not been addressed adequately in this Bill.

2. The Committee, while considering the provisions of the Bill, referred to those recommendations of the 9th Report of the Joint Parliamentary Committee on Waqf, which had not been incorporated in the Bill and sought the response of the Ministry, for not incorporating the same in the Bill. The Committee laid particular emphasis on those important issues that were covered by the JPC on Waqf, but were not reflected in the Bill and made commensurate recommendations:–

1. Development and Promotion of the Waqf properties

Development of the waqf properties has been recognized by the JPC and the Government. The Committee was informed it has been decided, in-principle, to set up National Waqf Development Corporation and State Waqf Development Corporation, for developing the waqfs. The Joint Parliamentary Committee had recommended that a new chapter “Development and Promotion” may be added at the appropriate place in the Act which should provide that the Central Government shall, as soon as possible, establish a National Board for promotion of education among Muslims and utilize the surplus funds of the Waqf institutions in the Country generated through development of Waqf properties. Also, a National Waqf Development Corporation be constituted by the Central Government with revolving corpus funds of Rs.500 crores.

The Ministry of Minority Affairs submitted that there was a proposal in the proposed restructure of the National Minorities Development & Finance Corporation to set up the National Waqf Development Agency, which has already been approved in-principle.

Though there is an in-principle agreement on setting up of National Waqf Development Corporation and State Waqf Development Corporations for developing the waqfs, no provision has been made to that effect in the Bill. The Committee proposed an

institution, National Waqf Development Agency, independent of NMDFC, as this body has nothing to do with Waqf properties.

2. Waqf properties under the purview of Public Premises (Eviction of Unauthorised Occupants) Act

The Joint Parliamentary Committee had suggested that all the State Governments may bring the Waqf properties under the purview of the Public Premises (Eviction of Unauthorized Occupants) Acts, for the purpose of removal of encroachments.

The Ministry of Minority Affairs, in its reply, submitted that it was for the State Governments to amend in their respective Public Premises Acts. The Ministry had written to the State Governments to include waqf properties in the definition of 'Public Premises'.

In his submission before the Committee on the issue of incorporating the relevant provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1970, the representative of Legislative Department, Ministry of Law and Justice, stated:

“as the hon. Committee wants the scheme of eviction, that is, summary procedure as available under the Public Premises (Eviction of Unauthorised Occupants) Act, should be squarely applicable to the Wakf properties, in my personal opinion, it would make it amply clear and accurate if we bring that scheme of that legislation within a chapter of the Wakf Act because it is not possible to successfully argue that the Wakf falls within the public premises as envisaged under that legislation and as provided under that legislation. So, if we want to have that scheme in this legislation, I feel that we can bring those two or three things, namely, the concept of Estate Officer, the concept of summary eviction, etc., of that legislation within the scheme of this legislation. I think that it will be easy and we will be able to bring it into this law. This is what I personally feel.”

Further, in his presentation before the Committee, the representative of the Department of Legal Affairs submitted before the Committee that though the existing Act implicitly excluded such provision, a specific provision needs to be added.

“Sir, as of now, this Act explicitly excludes that. A specific provision has to be added. It is implicitly there. Encroachment, eviction, etc. have been spelt out. If you want to put it specifically, you can do it.”

In view of the submissions made by the Ministry of Minority Affairs, the Legislative Department and the Department of Legal Affairs, the Committee is of the view that the relevant provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 may be incorporated in the Bill or alternatively the State produce legislation of their own to the same effect.

3. Exemption of Waqf properties from Rent Control Acts

The Joint Parliamentary Committee had recommended that all the State governments may exempt Waqf properties in their respective states from the purview of the Rent Control Act. For this purpose, the State Governments may make necessary amendments in the Rent Control Act.

The Ministry of Minority Affairs submitted that it was for the State Governments to amend the Rent Control Act, to exempt the Waqf properties.

In his submission before the Committee, the representative of the Department of Legal Affairs had agreed with the recommendation of the JPC in this respect.

The Committee concurred with the observation made in the Sachar Committee Report that in order to exempt the Waqf properties from the Rent Control Acts of the States, an over-riding provision in the Waqf Act should be introduced.

In view of Government's intention to make waqf properties financially viable, the Committee recommends that waqf properties be exempted from the Rent Control Act.

4. Deemed Mutation of Waqf Properties

The Joint Parliamentary Committee had recommended that once a Survey Commissioner notifies the Waqf property, the same shall be treated as "Deemed Mutation" for the purposes of revenue records and determination of title to the property.

This recommendation also has not been included in the Bill. The Ministry of Minority Affairs submitted that due process of State Revenue laws has to be followed.

The Committee recommends that once a Survey Commissioner has notified the Waqf properties, it should be treated as "Deemed Mutation" for the purposes of revenue records and for determination of title to the property.

5. Disqualification of persons who have been held guilty of encroachment on a Waqf property for being appointed or for continuing as a member of the Board

In addition to the existing list of disqualifications as prescribed in the parent Act, for being appointed or for continuing as a member of the Board, as prescribed in the parent Act, the Committee recommends that any person who has been held guilty of encroachment on Waqf property, shall not be eligible for appointment/continuation as a Member of the Board.

6. Meetings of the Waqf Boards

The Committee finds that much inefficiency has set in due to lack of adequate supervision by the Waqf Boards. To address the issue, the Committee recommends that the rules must provide for regular meetings of the State Waqf Boards. The time gap between two meetings of the Board should not exceed 90 days.

7. Meetings of the Central Waqf Council

The Committee finds that neither the Waqf Act, 1995 nor do the Rules framed thereunder, stipulate the periodicity of the meetings of the Central Waqf Council (CWC). In the absence of such stipulation, the meetings of the Council have been too infrequent and spaced out, to meet its mandate effectively. The Committee, therefore, recommends that not more than 120 days should lapse between two meetings of the Central Waqf Council.

8. Representation of Shia Community in Central Waqf Council.

The Committee agrees with the suggestion that the Shia community should be adequately represented in the Central Waqf Council.

9. Exemption from application of Sections 18 and 28A of Land Acquisition Act, 1894

In the context of Section 91 of the Waqf Act, 1995 pertaining to application of Section 1 of the Land Acquisition Act, 1894, the Committee agreed that the concerned Waqf Boards

should be given adequate opportunity to plead the case in the event of acquisition of Waqf property, as provided in the Bill. The Committee felt that such opportunity to seek redressal should not be restricted by the application of Sections 18 and 28A of the Land Acquisition Act, 1894.

The Committee recommends that nothing contained in sections 18 and 28A of the Land Acquisition Act, 1894 with respect to limitation, should apply to acquisition of the Waqf properties. Such provision shall be in consonance with the stated objective of the Bill, to preserve the wakf properties from any alienation.

10. Apportionment of compensation on acquisition of Waqf Property

As the Bill proposes to widen the definition of encroachment and to declare illegal encroachment as void *ab initio*, the Committee observed that the Act should explicitly deny the encroacher of the waqf property any right of claim any compensation.

The Committee, therefore, recommends that nothing contained in section 30 of the Land Acquisition Act, 1894, regarding apportionment of compensation between the Board and the lessee or any person claiming any right, title or interest, in any manner whatsoever, should apply to acquisition of the Waqf properties, provided that Board may decide to compensate the lessee as it deems proper.

11. Reversion of Waqf property if not put to use for public purpose

The Committee recommends that if Waqf land already acquired is not put to use within one year for the public purpose for which it was acquired, then it shall revert back to the Waqf Board/Mutawalli concerned.

The Committee also recommends that there should be a review of Waqf lands acquired since 1995 to ascertain whether they have been put to the use for the public purpose for which they were acquired. In case there is a default in use or if the land/property so acquired is encroached upon or put to some other use, then the lands should automatically revert back to the Waqf Board/Mutawalli concerned. However, if such reversion is not feasible, then the market value of the said property should be paid to the

Waqf Board/Mutawalli concerned at present day prices after deducting the cost of acquisition already paid or land of equivalent present market value be given to the Wakf Board.

12. Resoration of waqf properties occupied by Government/Government agencies to Waqf Board

The Committee recommends that all Waqf lands occupied by the Government or their agencies are to be vacated within 6 months or market rent for the same be paid to the Waqf Board/Mutawalli concerned since occupation of the said properties. This would be in keeping with the direction issued by the then Prime Minister Mrs. Indira Gandhi vide letter of March/April 1975.

13. Collector to give notice to Waqf Board in the event of acquisition of waqf property

In Sub –Section (I) of the Section 91 of the principal Act, the words ‘ if it appears to the Collector’ may be omitted and it should be made mandatory on the part of Collector to give notice of acquisition to the Waqf Board in respect of acquisition of all waqf properties.

14. Change in Section 3 pertaining to Definitions

Inclusion of words “ by reason of any entry in the name including Shamlat Patti, Shamlat Deh, Jumla Malkan or any other name in any revenue record” in Section 3 (r) (i) may be considered.

15. Treating Waqf Law as a Special law

As the Waqf Laws and Rules framed thereunder are intended to serve special purpose of the Muslim community, they should be treated as special laws.

The Committees, accordingly, recommends that the provisions of this Act and of the rules and orders made hereunder shall have effect, notwithstanding anything

inconsistent therewith contained in any other law for the time being in force, or in any instrument having effect by virtue of any such law.

The Committee recommends that in addition to proposed amendments in the Bill the measures covered in this Chapter should also be taken into consideration to achieve the stated objectives of the Bill.

	13-12-2011/6:00 pm.	
	<p>THE WAKF (AMENDMENT) BILL, 2010 (AS REPORTED BY THE SELECT COMMITTEE)</p>	
	<p>THE WAKF (AMENDMENT) BILL, <u>2011</u> (AS REPORTED BY THE SELECT COMMITTEE) <i>[Words underlined indicate the amendments and asterisks indicate omissions suggested by the Select Committee]</i></p> <p style="text-align: center;">A</p> <p style="text-align: center;">BILL</p> <p style="text-align: center;"><i>to amend the Wakf Act, 1995.</i></p> <p>BE it enacted by Parliament in the Sixty-<u>second</u> Year of the Republic of India as follows:—</p>	
	<p>1. <i>(1)</i> This Act may be called the Wakf (Amendment) Act, <u>2011</u>.</p> <p><i>(2)</i> It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.</p>	Short title and commencement.
43 of 1995.	<p>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.</p>	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.	<p>5. In section 3 of the principal Act,—</p> <p>(i) after clause (e), the following clause shall be inserted, namely:—</p> <p>‘(ee) “encroacher” means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by the Board;’;</p> <p>(ii) for clause (g), the following clause shall be substituted, namely:—</p> <p>‘(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;’;</p> <p>(iii) in clause (i), after the proviso, the following provisos shall be inserted, namely:—</p> <p>“Provided further that the mutawalli shall be a citizen of India and shall fulfil such other qualifications as may be prescribed:</p> <p>Provided also that in case a waqf has specified any ** qualifications, such qualifications may be provided in the rules as may be made by the State Government;”;</p> <p>(iv) in clause (k), in sub-clause (i), for the words “worship” and “khangah”, the words “offer prayer” and “khanqah, <u>peerkhana and karbala</u>” shall, respectively, be substituted;</p> <p>(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.</p>	
Amendment of section 4.	<p>6. In section 4 of the principal Act,—</p> <p>(a) after sub-section (1), the following sub-section shall be inserted, namely:—</p> <p>“(1A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, <u>2011</u>, in case such survey was not done before the commencement of the Wakf (Amendment) Act, <u>2011</u>:</p> <p>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.’;</p> <p>(b) <u>in sub-section (6),—</u></p> <p>(i) <u>in the proviso, for the words “twenty years”, the words “ten years” shall be substituted;</u></p>	

	<p>(ii) <u>after the proviso, the following proviso shall be inserted, namely:—</u></p> <p><u>“Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.”.</u></p>	
Amendment of section 5.	<p>7. In section 5 of the principal Act,—</p> <p>(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;</p> <p>(b) after sub-section (2), the following sub-sections shall be inserted, namely:—</p> <p>“(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.</p> <p>(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.”.</p>	
	<p>8. In section 6 of the principal Act, in sub-section (1),—</p> <p>(a) for the words “any person interested therein”, the words “any person aggrieved” shall be substituted;</p> <p>(b) after the proviso, the following proviso shall be inserted, namely:—</p> <p>“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.”;</p> <p>(c) the <i>Explanation</i> shall be omitted.</p>	Amendment of section 6.
	<p>9. In section 7 of the principal Act,—</p> <p>(a) in sub-section (1),—</p> <p>(i) for the words “any question”, the words “any question or dispute” shall be substituted;</p> <p>(ii) for the words “or any person interested”, the words “or any person aggrieved by the publication of the list of auqaf under section 5” shall be substituted;</p> <p>(b) after sub-section (5), the following sub-section shall be inserted, namely:—</p> <p>“(6) The Tribunal shall have <u>the</u> 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:</p> <p>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.”.</p>	Amendment of section 7.
	<p>10. For section 8 of the principal Act, the following section shall be substituted, namely:—</p> <p>“8. The total cost of making a survey including the cost of publication of the list</p>	<p>Substitution of new section for section 8.</p> <p>State</p>

	or lists of auqaf under this Chapter shall be borne by the State Government.”.	Government to bear cost of survey.
	<p>11. In section 9 of the principal Act,—</p> <p>(a) for sub-section (1), the following sub-sections shall be substituted, namely:—</p> <p>“(1) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.</p> <p>(1A) The Council referred to in sub-section (1) shall issue directives to the Boards, on such issues and in such manner, as provided under sub-sections (4) and (5).”;</p> <p>(b) in sub-section (2), in clause (b),—</p> <p>(i) for sub-clause (ii), the following sub-clause shall be substituted, namely:—</p> <p>“(ii) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture <u>and</u> medicine;”;</p> <p>(ii) after sub-clause (viii), the following proviso shall be inserted, namely:—</p> <p>“Provided that at least two of the members appointed under sub-clauses (i) to (viii) shall be women.”;</p> <p>(c) after sub-section (3), the following sub-sections shall be inserted, namely:—</p> <p>“(4) The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the ** Council and it may suo motu call for information on specific issues from the Board, if it is satisfied that there was prima facie evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.</p> <p>(5) Any dispute arising out of a directive issued by the ** Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court or a retired Chief Justice of a High Court and the fees and travelling and other allowances payable to the Presiding Officer shall be such as may be specified by that Government.”.</p>	Amendment of section 9.
Amendment of section 13.	<p>12. In section 13 of the principal Act,—</p> <p>(a) after sub-section (1), the following proviso shall be inserted, namely:—</p> <p>“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 <u>six months</u> from the date of * commencement of the Wakf (Amendment) Act, <u>2011</u>.”;</p>	

	<p>(b) after sub-section (2), the following sub-section shall be inserted, namely:—</p> <p>“(2A) Where a Board of Waqf is established under sub-section (2) of section 13, in the case of Shia waqf, the Members shall <u>belong to that community</u> and in the case of Sunni waqf, the Members shall <u>belong to the said community</u>.”.</p>	
<p>Amendment of section 14.</p>	<p>13. In section 14 of the principal Act,—</p> <p>(I) in sub-section (I),—</p> <p>(i) for the words “the Union territory of Delhi”, wherever they occur, the words “the National Capital Territory of Delhi” shall be substituted;</p> <p>(ii) in clause (b),—</p> <p>(a) for sub-clause (iii), the following sub-clause shall be substituted, namely:—</p> <p>“(iii) Muslim members enrolled with the Bar Council of the concerned State or Union territory:</p> <p>Provided that in case there is no Muslim member <u>enrolled with</u> the Bar Council of a State, the State Government may nominate any reputed person from that State having knowledge or experience of law, and”;</p> <p>(b) after sub-clause (iv), the following <i>Explanations</i> shall be inserted, namely:—</p> <p>“<i>Explanation I.</i>— For the removal of doubts, it is hereby declared that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.</p> <p><i>Explanation II.</i>—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;”;</p> <p>(iii) for clauses (c) to (e), the following clauses shall be substituted, namely:—</p> <p>“(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;</p> <p>(d) one person from amongst Muslims, to be nominated by the State Government from recognised scholars in Islamic Theology;</p> <p>(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;”;</p> <p>(II) after sub-section (I), the following sub-section shall be inserted, namely:—</p> <p>“(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:</p>	

	<p>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 (1):</p> <p>Provided further that at least two Members appointed on the Board shall be women:</p> <p>Provided also that in every case where the system of mutawalli exists, there shall be one mutawalli as the member of the Board.”;</p> <p>(III) sub-section (7) shall be omitted.</p>	
Amendment of section 15.	<p>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.</p>	
<p>Insertion of new section 20A.</p> <p>Removal of Chairperson by vote of no confidence.</p>	<p>15. After section 20 of the principal Act, the following section shall be inserted, namely:—</p> <p>“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:—</p> <p>(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;</p> <p>(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 <u>of</u> the total members of the Board;</p> <p>(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;</p> <p>(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:</p> <p>Provided that at least fifteen days notice shall be given for such a meeting;</p> <p>(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;</p> <p>(f) the State Government shall also nominate a Gazetted Officer (other than an officer of the department which is concerned with the supervision and administration of the Board) to act as presiding officer of the meeting in which the resolution for no confidence shall be considered;</p> <p>(g) the quorum for such a meeting of the Board shall be one-half of the total number of members of the Board;</p> <p>(h) the resolution for no confidence shall be deemed to be carried out, if passed by a simple majority of the members present;</p>	

	<p>(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;</p> <p>(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:—</p> <p>(A) Chairperson shall be elected from amongst the elected members of the Board;</p> <p>(B) nomination of candidates shall be proposed and seconded in the meeting itself and election after withdrawal, if any, shall be held by <u>method of secret ballot</u>;</p> <p>(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</p> <p>(D) proceedings of the meeting shall be signed by the presiding officer;</p> <p>(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</p> <p>(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.”.</p>	
	<p>16. In section 23 of the principal Act, for sub-section (I), the following sub-section shall be substituted, namely:—</p> <p>“(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 <u>and in case of non availability of a Muslim officer of that rank, a Muslim officer of equivalent rank may be appointed on deputation.</u>”.</p> <p style="text-align: center;">* * * * *</p>	<p>Amendment of section 23.</p>
	<p>17. For section 27 of the principal Act, the following section shall be substituted, namely:—</p> <p>“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.”.</p>	<p>Substitution of new section for section 27.</p> <p>Delegation of powers by Board.</p>
	<p>18. For section 28 of the principal Act, the following section shall be substituted, namely:—</p> <p>“28. Subject to the provisions of this Act and the rules made thereunder, <u>the District Magistrate or in his absence an Additional District Magistrate or Sub Divisional Magistrate of a district in the State shall be responsible for implementation of the decisions of the Board which may be conveyed through the Chief Executive Officer and the Board may, wherever consider necessary,</u></p>	<p>Substitution of new section for section 28.</p> <p>Power of District Magistrate, Additional District Magistrate or Sub Divisional Magistrate to implement the</p>

	<u>issue suitable directions to the authorities concerned for implementation of its decisions.</u>	<u>directions of the Board.</u>
	<p>19. Section 29 of the principal Act shall be numbered as sub-section (I) thereof, and—</p> <p>(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 <u>be entitled at all reasonable time</u>”, the words “subject to such conditions as may be prescribed <u>be entitled</u>” shall be substituted;</p> <p>(b) after sub-section (I) as so numbered, the following sub-sections shall be inserted, namely:—</p> <p>“(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.</p> <p>(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:</p> <p>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.”.</p>	Amendment of section 29.
Amendment of section 31.	<p>20. In section 31 of the principal Act, the following shall be inserted at the end, namely:—</p> <p>“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”.</p>	
Amendment of section 32.	<p>21. In section 32 of the principal Act,—</p> <p>(I) in sub-section (2), in clause (j),—</p> <p>(a) <u>for the words “sale, gift, mortgage, exchange or lease”, the words “lease or exchange” shall be substituted;</u></p> <p>(b) for the proviso, the following provisos shall be substituted, namely:—</p> <p>“Provided that no such sanction shall be given unless <u>two-thirds</u> of the total membership of the Board are present and <u>a majority of not less than two-thirds of the members present cast their vote in favour of such transaction:</u></p> <p>Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.”;</p> <p>(c) after sub-clause (n), the following sub-clause shall be inserted, namely:—</p> <p>“(na) to determine or cause to be determined, in such manner as may be specified by the Board, <u>market</u> rent of the waqf land or building.”;</p> <p>(II) in sub-section (4), for the words “offers a feasible potential for development as a shopping centre, market, housing flats and the like”, the words “has the potential for development as an educational institution, shopping centre, market, <u>housing or residential flats</u> and the like” shall be substituted;</p> <p>(III) in sub-section (5), the words “with the prior approval of the Government,”</p>	

	shall be omitted.	
Amendment of section 33.	<p>22. In section 33 of the principal Act, in sub-section (1),—</p> <p>(a) after the words “the Chief Executive Officer”, the words “or any other officer authorised by him in writing” shall be inserted;</p> <p>(b) <u>the words “either himself or any other person authorised by him in writing in this behalf” shall be omitted.</u></p>	
Amendment of section 36.	<p>23. 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.</p>	
Amendment of section 37.	<p>24. 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:—</p> <p>“(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.</p> <p>(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.”.</p>	
	<p>25. In section 44 of the principal Act,—</p> <p style="text-align: center;">* * * * *</p> <p>(a) in sub-section (2), for the words “ninety days”, the words “thirty days” shall be substituted;</p> <p>(b) for sub-section (3), the following sub-section shall be substituted, namely:—</p> <p>“(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.”.</p>	Amendment of section 44.
	<p>26. 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.</p>	Amendment of section 46.
	<p>27. In section 47 of the principal Act,—</p> <p>(I) <u>in sub-section (1),—</u></p> <p>(i) <u>in clause (a),—</u></p> <p>(a) <u>for the words “ten thousand rupees”, the words “fifty thousand rupees” shall be substituted;</u></p> <p>(b) <u>the words “and the accounts of two percent. of such wakfs shall be audited annually an auditor appointed by the Board” shall be omitted;</u></p> <p>(ii) <u>in clause (b), for the words “ten thousand rupees”, the words “fifty thousand rupees” shall be substituted;</u></p> <p>(iii) <u>in clause (c), after the words “the State Government may,”, the words “under intimation to the Board,” shall be inserted;</u></p>	Amendment of section 47.

	<p><u>Government</u> in this behalf.</p> <p>(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.”.</p>	
Amendment of section 55.	<p>31. In section 55 of the principal Act, before the words “the Sub-divisional Magistrate”, the words “the Executive Magistrate or” shall be inserted.</p>	
Amendment of section 56.	<p>32. In section 56 of the principal Act,—</p> <p>(a) in sub-section (1),—</p> <p>(i) for the words “three years”, the words “thirty years” shall be substituted;</p> <p>(ii) the following provisos shall be inserted at the end, namely:—</p> <p>“Provided that a lease or sub-lease for any period ***** up to <u>fifteen</u> years may be made for commercial activities: * * *</p> <p>Provided further that a lease or sub-lease **** up to thirty years may be made for education <u>or</u> health <u>purposes</u>.; * * *</p> <p>(b) in sub-section (2), for the words “three years”, the words “thirty years” shall be substituted;</p> <p>(c) in sub-section (3), the following proviso shall be inserted at the end, namely:—</p> <p>“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.”.</p> <p style="text-align: center;">* * * * *</p>	
	<p>33. 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.</p>	Amendment of section 61.
	<p>34. In section 65 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—</p> <p>“(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.”.</p>	Amendment of section 65.
	<p>35. <u>In section 68 of the principal Act,—</u></p> <p>(i) <u>in sub-section (2), for the words “Magistrate of the first class” and “Magistrate”, the words “District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent” shall be substituted;</u></p> <p>(ii) <u>in sub-sections (3), (4), (5) and sub-section (6), for the words “the Magistrate”, the words “any Magistrate” shall be substituted.</u></p>	Amendment of section 68.
	<p>36. In section 69 of the principal Act, for sub-section (1), the following sub-</p>	Amendment of section 69.

	<p>section shall be substituted, namely:—</p> <p>“(I) 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.”.</p>	
	<p>37. In section 71 of the principal Act, in sub-section (I), for the figures “73”, the figures “70” shall be substituted.</p>	Amendment of section 71.
	<p>38. In section 72 of the principal Act, in sub-section (I), in <i>Explanation I</i>, in clause (iii),—</p> <p>(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;</p> <p>(ii) in sub-clause (f), in the proviso, for the words “ten per cent.”, the words “twenty per cent.” shall be substituted;</p> <p>(iii) after the proviso, the following proviso shall be inserted, namely:—</p> <p>“Provided further that no such deduction shall be permitted in respect of waqf land given on lease, by whatever name called, whether <i>batai</i> or share cropping or any other name.”.</p>	Amendment of section 72.
Amendment of section 77.	<p>39. In section 77 of the principal Act, in sub-section (4), after clause (f), the following clause shall be inserted, namely:—</p> <p>“(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.”.</p>	25 of 1986.
Amendment of section 81.	<p>40. In section 81 of the principal Act, after the words “as it thinks fit”, the following shall be inserted at the end, namely:—</p> <p><u>“and a copy of the said auditor’s report, along with orders shall be forwarded by the State Government to the *** Council within a period of thirty days of laying of such report before each House of the State legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.”.</u></p>	
Amendment of section 83.	<p>41. In section 83 of the principal Act, for sub-section (4), the following sub-sections shall be substituted, namely:—</p> <p>“(4) Every Tribunal shall consist of—</p> <p>(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;</p> <p>(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;</p> <p>(c) one person having knowledge of Muslim law and jurisprudence, Member,</p> <p>and the appointment of every such person shall be made either by name or by designation.</p>	

	(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as <i>ex officio</i> members shall be such as may be prescribed.”.	
Amendment of section 85.	42. 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.	43. 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.	44. 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.	45. 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.	46. 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 <i>prima facie</i> 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.	47. In section 102 of the principal Act, in sub-section (2), for the words “after consulting the State Governments”, the words “after consulting the *** Council and the State Governments” shall be substituted.	
Insertion of new section 104A.	48. After section 104 of the principal Act, the following section shall be inserted, namely:—	
Prohibition of sale, gift, mortgage or transfer of waqf property.	“104A. (1) <u>Notwithstanding anything contained in this Act or any other law for the time being in force or any waqf deed, no person shall sell, gift, mortgage or transfer any movable or immovable property which is a waqf property to any other person.</u> (2) Any sale, gift, <u>mortgage</u> or transfer of property referred to in sub-section (1) shall be void <i>ab initio</i> .”.	
Amendment of section 106.	49. In section 106 of the principal Act, in sub-section (1), for the words “after consultation with the Government”, the words “after consultation with the *** Council and the Government” shall be substituted.	
Amendment of section 109.	50. In section 109 of the principal Act, in sub-section (2),— (a) for clause (i), the following clauses shall be substituted, namely:—	

	<p>“(i) the qualifications required to be fulfilled by a person to be appointed as a mutawalli under clause (i) of section 3;</p> <p>(ia) other particulars which the report of the Survey Commissioner may contain under clause (f) of sub-section (3) of section 4;”;</p> <p>(b) in clause (vi), for the word “under”, the words, brackets and figure “under sub-section (1) of ” shall be substituted;</p> <p>(c) after clause (vi), the following clauses shall be inserted, namely:—</p> <p>“(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;</p> <p>(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;”;</p> <p>(d) after clause (xxii), the following clause shall be inserted, namely:—</p> <p>“(xxiia) the terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as <i>ex officio</i> members under sub-section (4A) of section 83;”.</p>	
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