

Waqf Act 1995 Chapter IX - Miscellaneous

96. Power of Central Government to regulate secular activities of auqaf:

(1) For the purpose of regulating the secular activities of auqaf, the Central Government shall have the following powers and functions, namely:—

(a) to lay down general principles and policies of waqf administration in so far as they relate to the secular activities of the auqaf;

(b) to co-ordinate the functions of the Central Waqf Council and the Board, in so far as they relate to their secular functions;

(c) to review administration of the secular activities of auqaf generally and to suggest improvements, if any.

(2) In exercising its powers and functions under sub-section (1), the Central Government may call for any periodic or other reports from any Board and may issue to the Board such directions as it may think fit and the Board shall comply with such directions.

Explanation.—For the purposes of this section “secular activities” shall include social, economic, educational and other welfare activities.

97. Directions by State Government:

Subject to any directions issued by the Central Government under section 96, the State Government may, from time to time, give to the Board such general or special directions as

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**the State Government thinks fit and in the performance of its functions, the Board shall comply with such directions:**

**Provided that the State Government shall not issue any direction being contrary to any waqf deed or any usage; practice or custom of the waqf.**

**98. Annual report by State Government:**

**As soon as may be after the close of a financial year, the State Government shall cause a general annual report on the working and administration of the State Waqf Board and the Administration of auqaf in the State during that year to be prepared and laid before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one House, before that House, and every such report shall be in such form and shall contain such matters as may be provided by regulations.**

**99. Power to supersede Board:**

**(1) If the State Government is of opinion that the Board is unable to perform or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully and without sufficient cause failed to comply with any direction issued by the Central Government under section 96 or the State Government under section 97, or if the State Government is satisfied on consideration of any report submitted after annual inspection, that the Board's continuance is likely to be injurious to the interests of the auqaf in the State, the State Government may, by notification in the Official Gazette, supersede the Board for a period not exceeding six months:**

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Provided that before issuing a notification under this sub-section, the State Government shall give a reasonable time to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board:

Provided further that the power of the State Government under this section shall not be exercised unless there is a prima facie evidence of financial irregularity, misconduct or violation of the provisions of this Act.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) all the members of the Board shall, as from the date of supersession, vacate their offices as such members;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct; and

(c) all properties vested in the Board shall, during the period of supersession vest in the State Government.

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

(a) extend the period of supersession by another six months with reasons to be recorded in writing and, the period of continuous supersession shall not exceed more than a year; or

(b) reconstitute the Board in the manner provided in section 14.

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**100. Protection of action taken in good faith:**

No suit or other legal proceeding shall lie against the board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

**101. Survey Commissioner, members and officers of the Board, deemed to be public servants:**

(1) The Survey Commissioner, members of the Board, every officer, every auditor of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(2) Every mutawalli of a waqf, every member of managing committee, whether constituted by the Board or under any deed of waqf, every Executive Officer and every person holding any office in a waqf shall also be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

**102. Special provision for reorganisation of certain Boards:**

(1) Where on account of the reorganisation of States under any law providing reorganisation of States, the whole or any part of a State in respect of which a Board was, immediately before the day of such reorganisation, functioning has been transferred on that day to another State and by reason of such transfer, it appears to the Government of a State in any part of which the Board is functioning that the Board should be dissolved or that it should be reconstituted as an Intra-

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**State Board for the whole or any part of that State, the State Government may frame a scheme or such dissolution or such reconstitution, including proposals regarding the transfer of the assets, rights and liabilities of the Board to any other Board or State Government and the transfer or re-employment of employees of the Board and forward the scheme to the Central Government.**

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

**(3) An order under sub-section (2) may provide for all or any of the following matters, namely:—**

**(a) the dissolution of the Board;**

**(b) the reconstitution in any manner whatsoever of the Board including the establishment, where necessary, of a new Board;**

**(c) the area in respect of which the reconstituted Board or new Board shall function and operate;**

**(d) the transfer, in whole or in part, of the assets, rights and liabilities of the Board (including the rights and liabilities under any contract made by it) to any other Board or State Government and the terms and conditions of such transfer;**

**(e) the substitution of any such transferee, for the Board, or the addition of any such transferee, as a party to any legal proceeding to which the Board is a party; and the transfer of**

any proceeding pending before the Board to any such transferee;

(f) the transfer or re-employment of any employee of the Board to or by, any such transferee and subject to the provisions of law providing for the reorganisation of the concerned State, the terms and conditions of service applicable to such employees after such transfer or re-employment; and

(g) such incidental, consequential and supplemental matters as may be necessary to give effect to the approved scheme.

(4) Where an order is made under this section transferring the assets, rights and liabilities of the Board, then, by virtue of that order, such assets, rights and liabilities of the Board shall vest in, and be the assets, rights and liabilities of, the transferee.

(5) Every order made under this section shall be published in the Official Gazette.

(6) Every order made under this section shall be laid before each House of Parliament, as soon as may be, after it is made.

**103. Special provision for establishment of Board for part of a State:**

(1) Where on account of the territorial changes brought about by any law providing for the reorganisation of any State, this Act is as from the date on which that law comes into force applicable only to any part or parts of a State but has not been brought into force in the remaining part thereof, then notwithstanding anything contained in this Act, it shall be lawful for the Government of the State to establish one or

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more Boards for such part or parts in which this Act is in force and in such a case any reference in this Act to the word “State” in relation of a Board shall be construed as a reference to that part of the State for which the Board is established.

(2) Where any such Board has been established and it appears to the Government of the State, that a Board should be established for the whole of the State, the State Government may, by order notified in the Official Gazette dissolve the Board established for the part of the State or reconstitute and reorganise, such Board or establish a new Board for the whole of the State and thereupon, the assets, rights and liabilities of the Board for the part of the State shall vest in and be the assets, rights and liabilities of the reconstituted Board or the new Board, as the case may be.

104. Application of Act to properties given or donated by persons not professing Islam for support of certain waqf:

Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a waqf being—

- (a) a mosque, idgah, imambara, dargah, khangah or a maqbara;**
- (b) a Muslim graveyard;**
- (c) a choultry or a musafirkhana,**

then such property shall be deemed to be comprised in that waqf and be dealt in the same manner as the waqf in which it is so comprised.

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**104A. Prohibition of sale, gift, exchange, mortgage or transfer of waqf property:**

(1) Notwithstanding anything contained in this Act or any other law for the time being in force or any waqf deed, no person shall sell, gift, exchange, mortgage or transfer any movable or immovable property which is a waqf property to any other person.

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

**104B. Restoration of waqf properties in occupation of Government agencies to waqf Board:**

(1) If any waqf property has been occupied by the Government agencies it shall be returned to the Board or the mutawalli within a period of six months from the date of the order of the Tribunal.

(2) The Government agency may, if the property is required for a public purpose, make an application for determination of the rent, or as the case may be, the compensation, by the Tribunal at the prevailing market value.

**105. Power of Board and Chief Executive Officer to require copies of documents, etc., to be furnished:**

Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Board or the Chief Executive Officer to require any person having the custody of any record, register, report or other document relating to a waqf or any immovable property, which is waqf property, to furnish, subject to the payment of necessary costs, copies of, or extracts from, any such record, register, report or

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document and every person to whom such a requisition is made, shall furnish, as soon as may be practicable, to the Board or Chief Executive Officer, copies or extracts from the required record, register, report or other document.

**106. Powers of Central Government to constitute common Boards:**

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

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

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

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

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

(2) Every common Board established under sub-section (1) shall, as far as practicable, consist of the persons specified in sub-section (1) or, as the case may be, sub-section (7) of section 14.

(3) Whenever any common Board is established under sub-section (1)—

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(a) all powers vested in the State Government under any deed of waqf or any provision of law for the time being in force relating to auqaf, shall stand transferred to, and vested in, the Central Government and, thereupon, references in such deed of waqf or law to the State Governments shall be construed as references to the Central Government:

Provided that while establishing a common Board for two or more States, the Central Government shall ensure, that at least one representative of each of the concerned States is included as a member of the Board;

(b) references in this Act to a State shall be construed as references to each of the States for which the common Board has been established;

(c) the Central Government may, without prejudice to any rule applicable to a Board in a State, may, by notification in the Official Gazette, rules regulating the conduct of business by, and affairs of, the common Board.

(4) The common Board shall be a body corporate, with objects not confined to one State, having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property, subject to such conditions and restrictions as may be specified by the Central Government, and shall by the said name sue or be sued.

107. Act 36 of 1963 not to apply for recovery of waqf properties:

Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any waqf or for possession of any interest in such property.

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**108. Special provision as to evacuee waqf properties:**

The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of section 2 of the Administration of Evacuee Property Act, 1950 (31 of 1950) which immediately before it became such evacuee property within the said meaning was property comprised in any waqf and, in particular any entrustment (whether by transfer of any documents or in any other manner and whether generally or for specified purpose) of any such property to a Board made before the commencement of this Act in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment had operated to—

(a) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (1) of section 11 of the Administration of Evacuee of Property Act, 1950 (31 of 1950), with effect from the date of such entrustment, and

(b) authorise such Board to assume direct management of the waqf concerned for so long as it might deem necessary.

**108A. Act to have overriding effect:**

The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

**109. Power to make rules:**

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

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

**(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;**

**(ii) any other matter under clause (f) of sub-section (4) of section 4;**

**(iii) the particulars which a list of Auqaf published under sub-section (2) of section 5, may contain;**

**(iv) the manner of election of members of the Board by means of a single transferable vote, under sub-section (1) of sub-section (2) of section 14;**

**(v) the terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 23;**

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

**(via) the period within which the mutawalli or any other person may produce documents related to waqf properties under sub-section (2) of section 31;**

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(vib) the conditions under which an agency of the Government or any other organisation may supply copies of records, registers and other documents under sub-section (3) of section 31;

(vii) the conditions subject to which an Executive Officer and supporting staff may be appointed under sub-section (1) of section 38;

(viii) the manner in which an inquiry may be held by the Chief Executive Officer under sub-section (1) of section 39;

(ix) the form in which, and the time within which, a separate budget for Auqaf under the direct management of the Board shall be prepared under sub-section (1) of section 45;

(x) the interval at which accounts of Auqaf may be audited in pursuance of the provisions of sub-section (1) of section 47;

(xii) the guidance subject to which the Collector shall recover the property transferred in contravention of the provisions of this Act, under section 52;

(xiii) the manner of service of notice issued under sub-section (1) of section 54 and the manner in which any inquiry is to be made under sub-section (3) of that section;

(xiv) the manner in which any inquiry may be held under section 64 or section 71;

(xv) the other matters which may be specified in the report submitted under sub-section (3) of section 65;

(xvi) the manner of publication of order made under sub-section (2) of section 67;

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(xvii) the manner in which consultation may be made with mutawalli under sub-section (1) of section 69;

(xviii) the manner of publication of order made under sub-section (3) of section 69;

(xix) the rate at which contribution is to be made by a mutawalli under section 72;

(xx) the payment of moneys into the Waqf Fund, the investment, the custody and disbursement of such moneys under section 77;

(xxi) the form in which, and the time within which, the budget of the Board may be prepared and submitted under section 78;

(xxii) the time within which application is to be made to the Tribunal under sub-section (2) of section 83;

(xxiia) the terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members under sub-section (4A) of section 83;

(xxiii) the procedure which the Tribunal shall follow under sub-section (6) of section 83;

(xxiv) the form in which the annual report is to be submitted and the matters which such report shall contain under section 98; and

(xxv) any other matter which is required to be, or may be, prescribed.

110. Powers to make regulations by the Board:

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(1) The Board may, with previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made thereunder, for carrying out its functions under this Act.

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

(a) the time and places of the meetings of the Board under sub-section (1) of section 17;

(b) the procedure and conduct of business at the meetings of the Board;

(c) the constitution and functions of the committees and the Board and the procedure for transaction of business at the meetings of such committees;

(d) the allowances or fees to be paid to the Chairperson or members of the Board or members of committees;

(e) the terms and conditions of service of the officers and other employees of the Board under sub-section (2) of section 24;

(f) the forms of application for registration of Auqaf further particulars to be contained therein and the manner and place of registration of Auqaf under sub-section (3) of section 36;

(g) further particulars to be contained in the register of Auqaf under Section 37;

(h) the form in which, and the time within which, the budgets of Auqaf may be prepared and submitted by the Mutawalli

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**and approved by the Board under sub-section (1) of section 44;**

**(i) the books of accounts and other books to be maintained by the Board under section 79;**

**(j) fees payable for inspection of proceedings and records of the Board or for issue of copies of the same;**

**(k) persons by whom any order or decision of the Board may be authenticated; and**

**(l) any other matter which has to be, or may be, provided by regulations.**

**(3) All regulations made under this section shall be published in the Official Gazette and shall have effect from the date of such publication.**

**111. Laying of rules and regulations before State Legislature:**

**Every rule made under section 109 and every regulation made under section 110 shall be laid, as soon as may be after it is made, before the State Legislature.**

**112. Repeal and savings:**

**(1) The Wakf Act, 1954 (29 of 1954) and the Wakf (Amendment) Act, 1984 (69 of 1984) are hereby repealed.**

**(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.**

**(3) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed:**



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Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken.

113. Power to remove difficulties:

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

(2) However, order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

