

# THE UNIFIED WAQF MANAGEMENT, EMPOWERMENT, EFFICIENCY AND DEVELOPMENT ACT, 1995

[Act 43 of 1995, dt. 22-11-1995]

(As amended by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025,  
w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025)

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

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

## CHAPTER I PRELIMINARY

### 1. Short title, extent and commencement

(1) This Act may be called the <sup>2</sup>[Unified Waqf Management, Empowerment, Efficiency and Development] Act, 1995.

(2) It extends to the whole of India <sup>3</sup>[xxx].

(3) It shall come into force in a State on such date <sup>4</sup>as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein, be construed as reference to the commencement of that provision in such State or area.

## COMMENT

The Waqf (Amendment) Act, 2025 has amended the short title of the Act in place of existing “the Waqf Act, 1995” by “the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995”.

### 2. Application of the Act

Save as otherwise expressly provided under this Act, this Act shall apply to all <sup>5</sup>[auqaf] whether created before or after the commencement of this Act:

PROVIDED that nothing in this Act shall apply to Dargah Khawaja Saheb, Ajmer to which the Dargah Khawaja Saheb Act, 1955 (36 of 1955) applies:

<sup>6</sup>[PROVIDED FURTHER that nothing in this Act shall, notwithstanding any judgement, decree or order of any court, apply to a trust (by whatever name called) established before or after the commencement of this Act or statutorily regulated by any statutory provision pertaining to public charities, by a Muslim for purpose similar to a waqf under any law for the time being in force.]

1 Substituted for “Wakfs” by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.  
2 Substituted for “Waqf” by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.  
3 Words “except the State of Jammu and Kashmir” omitted by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), dt. 9-8-2019, w.e.f. 31-10-2019 vide SO 2889(E), dt. 9-8-2019.  
4 Enforced w.e.f. 1-1-1996 vide SO 1007(E), dt. 27-12-1995.  
5 Substituted for “wakfs” by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.  
6 Inserted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

**3. Definitions**

In this Act, unless the context otherwise requires—

- (a) “beneficiary” means a person or object for whose benefit a <sup>1</sup>[waqf] is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law;
- <sup>2</sup>[(aa) “Aghakhani waqf” means a waqf dedicated by an Aghakhani waqif;]
- (b) “benefit” does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli;
- (c) “Board” means a Board of <sup>3</sup>[Waqf] established under sub-section (1), or as the case may be, under sub-section (2) of section 13 and shall include a common <sup>3</sup>[Waqf] Board established under section 106;
- <sup>2</sup>[(ca) “Bohra waqf” means a waqf dedicated by a Bohra waqif;]
- (d) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (1) of section 23;
- <sup>2</sup>[(da) “Collector” includes the Collector of land-revenue of a district, or the Deputy Commissioner, or any officer not below the rank of Deputy Collector authorised in writing by the Collector;]
- (e) “Council” means the Central <sup>2</sup>[Waqf] Council established under section 9;
- <sup>4</sup>[(ee) “encroacher” means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board;]
- (f) “Executive Officer” means the Executive Officer appointed by the Board under sub-section (1) of section 38;
- <sup>2</sup>[(fa) “Government Organisation” includes the Central Government, State Governments, Municipalities, Panchayats, attached and subordinate offices and autonomous bodies of the Central Government or State Government, or any organisation or Institution owned and controlled by the Central Government or State Government;
- (fb) “Government property” means movable or immovable property or any part thereof, belonging to a Government Organisation;]
- <sup>5</sup>[(g) “list of auqaf” means the list of auqaf published under sub-section (2) of section 5 or contained in the register of auqaf maintained under section 37;]
- (h) “member” means a member of the Board and includes the Chairperson;
- (i) “mutawalli” means any person appointed <sup>6</sup>[xxx] under any deed or instrument by which a <sup>1</sup>[waqf] has been created, or by a competent authority, to be the mutawalli of a <sup>1</sup>[waqf] and includes any person who is a mutawalli of a <sup>1</sup>[waqf] by virtue of any custom or who is a naib-mutawalli, a khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being, managing or administering any <sup>1</sup>[waqf] or <sup>1</sup>[waqf] property:

1 Substituted for “wakf” by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

2 Inserted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

3 Substituted for “Wakf” by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

4 Inserted by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

5 Substituted by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

6 Words “, either verbally or” omitted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

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

<sup>1</sup>[PROVIDED FURTHER that the mutawalli shall be a citizen of India and shall fulfil such other qualifications as may be prescribed:

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

- (j) "net annual income", in relation to a <sup>2</sup>[waqf], means net annual income determined in accordance with the provisions of the Explanations to sub-section (1) of section 72;
- (k) "person interested in a <sup>2</sup>[waqf]" means any person who is entitled to receive any pecuniary or other benefits from the <sup>2</sup>[waqf] and includes—
- (i) any person who has a right to <sup>3</sup>[offer prayer] or to perform any religious rite in a mosque, idgah, imambara, dargah, <sup>4</sup>[khanqah, peerkhana and karbala], maqbara, graveyard or any other religious institution connected with the <sup>2</sup>[waqf] or to participate in any religious or charitable institution under the <sup>2</sup>[waqf];
- (ii) the <sup>5</sup>[waqif] and any descendant of the waqif and the mutawalli;
- <sup>6</sup>[(ka) "portal and database" means the waqf asset management system or any other system set up by the Central Government for the registration, accounts, audit and any other detail of waqf and the Board, as may be prescribed by the Central Government;]
- <sup>7</sup>[(l) "prescribed" means prescribed by rules made under this Act;]
- (m) "regulations" means the regulations made by the Board under this Act;
- (n) "Shia <sup>2</sup>[waqf]" means a waqf governed by Shia law;
- (o) "Sunni <sup>2</sup>[waqf]" means a waqf governed by Sunni law;
- <sup>8</sup>[xxx]
- (q) "Tribunal", in relation to any area, means the Tribunal constituted under sub-section (1) of section 83, having jurisdiction in relation to that area;
- <sup>9</sup>[(r) "waqf" means the permanent dedication by <sup>10</sup>[any person showing or demonstrating that he is practising Islam for at least five years, of any movable or immovable property, having ownership of such property and that there is no contrivance involved in the dedication of such property,] for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

1 Inserted by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

2 Substituted for "wakf" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

3 Substituted for "worship" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

4 Substituted for "khanzah" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

5 Substituted for "wakif" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

6 Inserted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

7 Substituted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025. Prior to substitution, clause (l) read as under:

"(l) "prescribed", except in Chapter III, means prescribed by rules made by the State Government;"

8 Clause (p) omitted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025. Prior to omission, read as under:

"(p) "Survey Commissioner" means the Survey Commissioner of Waqf appointed under sub-section (1) of section 4 and includes any Additional or Assistant Survey Commissioners of Auqaf under sub-section (2) of section 4;"

9 Substituted by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

10 Substituted for "any person, of any movable or immovable property" by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

<sup>1</sup>[xxx]

- (ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;
  - (iii) "grants", including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and
  - (iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare <sup>2</sup>[, or maintenance of widow, divorced woman and orphan, if waqif so intends, in such manner, as may be prescribed by the Central Government,] or and such other purposes as recognised by Muslim law,
- and "waqif" means <sup>3</sup>[any such person] making such dedication;]
- (s) "<sup>4</sup>[waqf] deed" means any deed or instrument by which a <sup>4</sup>[waqf] has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied;
  - (t) "<sup>5</sup>[Waqf] Fund" means a <sup>4</sup>[waqf] fund formed under sub-section (1) of section 77:

<sup>6</sup>[PROVIDED that the existing waqf by user properties registered on or before the commencement of the Waqf (Amendment) Act, 2025 as waqf by user will remain as waqf properties except that the property, wholly or in part, is in dispute or is a government property.]

#### COMMENT

The Waqf (Amendment) Act, 2025 has amended some definitions as Aghakhani Waqf, Bohra Waqf, Collector, Government organisations, Government property, etc.

#### **Beneficiary**

Under section 3 of the Indian Trusts Act, 1882, beneficiary is the person for whose benefit the confidence is reposed and accepted. Generally, beneficiary is one who benefits from the act of another; a party who will benefit from a transfer of property or other arrangement. Examples include the beneficiary of a trust, the beneficiary of a life insurance policy, and a beneficiary of an estate.

Under section 3(a) of the Wakf Act, 1954, "beneficiary" means a person or object for whose benefit a waqf is created and includes religious, pious and charitable object and any other objects of public utility established for the benefit of the Muslim community.

A beneficiary is one who is beneficially entitled to or interested in property.—*Padma Sundaqri v. Parbati Devi ILR 37 Pat 138*

#### **Benefit**

Benefit means advantage, profit, fruit, privilege, gain, interest. The receiving as the exchange for promise some performance or forbearance which promisor was not previously entitled to

1 Sub-clause (i) omitted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025. Prior to omission, clause (i) read as under:

"(i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;"

2 Inserted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

3 Substituted for "any person" by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

4 Substituted for "wakf" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

5 Substituted for "Wakf" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

6 Inserted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

receive.—*Graphic Arts Finishers, Inc. v. Boston Redevelopment Authority, 357 Mass. 40, 255 N.E. 2d 793, 795*

Benefit is something that promotes well-being; advantage; useful aid; help; financial help in time of sickness, old age or unemployment.—*Webster's Ninth New Collegiate Dictionary*.

As per section 3(b) of the Wakf Act, 1954, benefit does not include any benefit which a Mutawalli is entitled to claim solely by reason of his being such Mutawalli.

The word "benefit" includes benefits, express or otherwise, in terms of money but requiring computation.—*Proprietor, Lenox Photo Manufacturing v. Presiding Officer, Labour Court, AIR 1965 (Mad) 450*.

Benefit means an advantage and includes monetary as well as non-monetary one.—*Board of Directors v. Mohammad Khan AIR 1963 Mad 192*

#### **Board**

Under section 13(2) of the Act, if the Shia Auqaf in any State constitute in number more than fifteen per cent of all auqaf in the State or if the income of the properties of the Shia auqaf in the State constitutes more than fifteen per cent of the total income of properties of all the auqaf in the State, the State Government may, by notification in the Official Gazette, establish a Board of Auqaf each of Sunni Auqaf and Shia Auqaf under such names as may be specified in the notification.

Board within the meaning of section 3(c) includes a common Waqf Board established under section 106 also. The said section says that where the Central Government is satisfied that by reasons of so—

- (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 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.

#### **Chief Executive Officer**

The Chief Executive Officer is appointed by the State Government by notification in Official Gazette in consultation with the Waqf Board. The necessary qualifications of the C.E.O. are not prescribed under the Act and the same may be prescribed under the rules to be prepared by the State Government. However, the Act lays down that the C.E.O. shall be a Muslim and he shall be ex-officio Secretary of the Waqf Board and as such would work under the administrative control of the Board.

#### **Council**

Under section 9 of the Act, the Central Government may establish a Council called the Central Waqf Council to advise it on matters concerning the working of Boards and the due administration of Auqaf, and the Council should consist of members drawn from Muslim Organisation, administrative and financial experts, Members of Parliament, Chairpersons of the State Waqf Boards, Judges of High Courts and Supreme Court, Advocates, mutawallis and eminent scholars in Muslim law. However there is a school of thought which apprehends that this pattern of Central Waqf Council could provide an opportunity to Government to foster its political interest through the persons chosen.

#### **Executive Officer**

Under Section 38, the Waqf Board is empowered to appoint an Executive Officer in respect of any Waqf which has a gross annual income of not less than five lakhs of rupees, if in its opinion

it is necessary to do so in the interest of the Waqf concerned. Necessary supporting staff can also be appointed by the Board. However it is necessary that such Executive Officer should be a Muslim. He has to discharge such duties as pertain only to the administration of the properties of the Waqf and should function under the direction, control and supervision of the Waqf Board. The Executive Officer is specially prevented from interfering in any religious duties or any usage or custom of the Waqf sanctioned by the Muslim law.

#### *List of Auqaf*

List of Waqf properties under section 5(2) cannot be challenged under article 226 of the Constitution in view of the fact that a civil suit is maintainable to challenge the list published under section 5(2).—*Gulistan Shadi Mahal Trust, Bangalore v. Karnataka Board of Auqaf, 2002 AIHC 999 Kar (HC)*

#### *Mutawalli*

The manager of waqf property is called a mutawalli. Under the Mahomedan law, as soon as a waqf is created, all rights of property pass out of the waqif (dedicator) and vest in the Almighty. The mutawalli has no right in the property belonging to the waqf; the property is not vested in him, and he is not a trustee in the technical sense. He is merely a superintendent or manager.—*Vidya Varuthi v. Balusami, AIR 1922 (PC) 123*. The founder of a waqf may appoint himself, or his children and descendants, or any other person, even a female, or a non-mahomedan, to be mutawalli of waqf property. A mutawalli has no power, without the permission of the court, to mortgage, sell or exchange waqf property unless he is expressly empowered by the deed of waqf to do so.

Mutawalli means any person appointed either verbally or under any deed or instrument by which a waqf has been created or by a competent authority to be the mutawalli of a waqf and includes any naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and, save as otherwise provided by the Auqaf Act, any person or committee for the time being managing or administering any waqf property as such Wakf Act, 1954, s. 3(f).

A mutawalli is more like a manager than a trustee and so far as the waqf property is concerned, has to see that the beneficiaries get the advantage of the usufruct.—*Bibi Siddique Fatima v. Saiyed Mohammad Mahmood Hasan AIR, 1978 (SC) 1362*

According to Islamic jurisprudence the position of the mutawalli is very significant in the sense that he is not merely a servant or manager of the Waqf to carry out the directions of the Waqif (i.e., one who creates Waqf) as enumerated in the Waqf deed, but he has also to exercise his own discretion and take decisions diligently for the protection of the Waqf property and proper utilisation of its income according to the direction of the Waqif. He does not wait always to receive orders from anybody in day-to-day functioning, but has to take all necessary steps for the proper management and safety of the Waqf. He has control over the income of the Waqf property but not over the corpus of the Waqf. This view is also endorsed in *Syed Ahmed v. Hafiz Zahid, AIR 1934 (All) 732*.

#### *Net annual income*

"Net annual income" in relation to a waqf means the gross income thereof from all sources in a year excluding only—

- (i) Land revenue, cess, rates and taxes payable to the government or any local authority; and
- (ii) donations given or offerings made with a specific direction that they shall form part of the corpus of the waqf.

PROVIDED that the interest or income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income [*Waqf Act, 1954, section 3(g)*]

Explanation 1 to section 72 of the Wakf Act, 1995 says that "net annual income" shall mean the gross income of the Waqf from all sources, including Nazars and offerings which do not amount to contributions to the corpus of the Waqf, in a year after deducting therefrom the items enumerated thereunder.

#### *Shia Waqf and Sunni Wakf*

Shia Waqf is a Waqf governed by Shia law. Under the Shia law, a Baligh (major), sane Muslim may, of his free will, Waqf the corpus of his property in perpetuity by declaration or conduct; it ceases to be his property and it could not be subjected to sale, gift or inheritance, for private, public, religious or pious purposes. Under this law, the corpus belongs to beneficiaries. While a Muslim is making a Waqf of his property, the object of such Waqf must not be opposed to the tenets of Islam and should be for the benefit of mankind.

A Sunni Waqf is a Waqf governed by Sunni law.—Wakf Act, 1954, section 3(k). Sunni lawyers consider Quran as "an amending Act" rather than an exhaustive Code. In their view Muslim law of inheritance is the mixture of pre-islamic customs and usages, and the changes introduced by Quran and says etc. of the founder of Islam.

#### *Person interested in a Waqf*

The purpose of the expression "person interested in a Waqf" is to expand the definition of 'beneficiary' in order to include a person who has a pecuniary right to worship or perform any religious rite in any Mosque, Idgah, Imambara, dargah, Khangah, Maqbara, graveyard or any religious or charitable institution under the Waqf. The term "beneficiary' is confined to persons or objects for whose benefit a Waqf is created, whereas a person who has a right to worship or perform religious rite in the aforementioned places is a "person interested in a Waqf" and he is entitled to receive benefit from such Auqaf in the widest connotation and, therefore, has a right to sue against misuse or misappropriation of any Waqf property including Mosques, Dargah, etc.. Similarly a Waqif or a descendant of a Wa'kif and a mutawalli is also included in this expression.

#### *Tribunal*

This is a special feature of the Wakf Act, 1995. Although Waqf Tribunal as a separate specialised forum for the resolution of Waqf disputes arising out of the Waqf Act was provided in the Waqf (Amendment) Act, 1984 the same was never given any effect. Now again in the Waqf Act, 1995, it is provided in Chapter VIII Sections 83 to 95, for the settlement of Waqf disputes. Therefore the jurisdiction of Civil Courts to hear the Waqf suits is barred under Section 85 of the Waqf Act, 1995.

#### *Waqf*

"Waqf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes,—(i) a waqf by user; (ii) grants (including mashrut-ul-khidmat) for any purpose recognised by the Muslim law as pious, religious or charitable; and (iii) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable; and 'waqif' means any person making such dedication.—*Board of Muslim Auqaf, Rajasthan v. Radha Kishan, AIR 1979 (SC) 289*

Waqf is the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman law as religious, pious or charitable but does not include any waqf, such as is described in section 3 of the Mussalman Waqf Validating Act, 1913, under which any benefit is for the time being claimable for himself by the person by whom the waqf was created or by any of his family or descendants.—*Mussalman Wakf Act, 1923, s. 2(e)*

Waqf means the permanent dedication by a person professing Islam of any movable and immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes—

- (i) a waqf by user;

- (ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name, entered in a revenue record;
- (iii) mushrut-ul-khidmat; and
- (iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious or charitable.

According to section 3(r), "waqif" means any person making such declaration.

A Waqf-Alal-Aulad is a dedication by a Mohomedan by means of which the property is tied up so that the usufruct might be utilised for the benefit of the members of the family but it must ultimately go for the benefit of the poor.—*Salah v. Husain, AIR 1955 (Hyd.) 229*

According to the statutory definition in section 3(r) of the Wakf Act, 1995, Waqf means a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable. According to this part of the definition, dedication "by a person professing Islam" is an essential pre-requisite for the reason that the very purpose of creating Waqf recognised by Muslim law as pious, religious or charitable is equally recognised by the laws of other communities in the same manner as pious, religious and charitable and therefore, if such a distinction is not clearly mentioned in the definition of Waqf under the Waqf Act then all charitable and many pious endowments created by other communities would have come within the purview and governed by the Wakf Act, 1995, which is not the intention of the Legislature. The term "Wakif" is applied to the person who makes the Waqf. As per the definition of Waqf given in Section 3(r) of the Wakf Act, 1995, a Waqf is a dedication of movable or immovable property "by a person professing Islam". Therefore it is necessary that in order to be governed by the provisions of the Wakf Act, 1995, a valid Waqf be created under section 3(1) only by a person professing Islam. This point was well discussed in *Peeran Sahib v. Madras State Waqf Board*. Although this judgment was delivered in the year 1967, it would hold good even for the purposes of the Wakf Act, 1995, as the definition of Waqf under Section 3(r) still contain the words "dedication by a person professing Islam" and the words, "or any other person" are not included in the present definition.

#### **Waqf deed**

The corresponding word in Urdu for a Waqf deed is "Waqfnama".

According to Section 36 of the Wakf Act, 1995, every Waqf, whether created before or after the commencement of this Act is required to be registered at the office of the Waqf Board. The responsibility for making an application for registration is imposed upon the mutawalli which term includes many other persons like the Naib-mutawalli, Khadim, Sajjadanashin, etc.

Under section 77(1) of the 1995 Act which corresponds to section 48 of the 1954 Act, all moneys received or realized by the Board under the Act and all moneys received as donations, benefactions or grants by the Board shall form a fund to be called the Waqf Fund. Sub-section (2) says that all moneys received by the Board as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head. Sub-section (4) enumerates the purposes for which the Waqf Fund shall be applied. They are:

- (a) Repayment of any loan incurred under Section 75 and payment of interest thereon;
- (b) Payment of the cost of audit of the Waqf Fund and the accounts of Auqaf;
- (c) Payment of the salary and allowances to the officers and staff of the Board;
- (d) Payment of travelling allowances to the chairperson, members of the Board;
- (e) Payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act;
- (f) Payment of all expenses incurred by the Board for the discharge of any obligation imposed on it by or under any law for the time being in force.
- (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.

If any balance remains after meeting the expenditure referred to in sub-section (4), the Board may use any portion of such balance for the preservation and protection of Waqf properties or for such other purposes as it may deem fit.

Under the old Waqf Act, 1954, the expenditure towards the cost of audit of accounts of any Waqf was to be paid out of the Waqf Fund under Section 33 of the Waqf Act, 1954, therefore, such expenditure was allowed under clause (3) of sub-section (3) of Section 48 of the old Waqf Act, 1954. But under the provisions of the new Waqf Act, 1995, the cost of the audit of any Waqf is now to be met out of the funds of that Waqf and it is not to be paid out of Waqf Fund of the Waqf Board. But such expenditure of audit of accounts of any Waqf is still in Section 77 (4)(b) of the Waqf Act, 1995 to be met out of the Waqf Fund under this Section.

<sup>1</sup>**3A. Certain conditions of waqf**

(1) No person shall create a waqf unless he is the lawful owner of the property and competent to transfer or dedicate such property.

(2) The creation of a waqf-alal-aulad shall not result in denial of inheritance rights of heirs, including women heirs, of the waqif or any other rights of persons with lawful claims.

**3B. Filing of details of waqf on portal and database**

(1) Every waqf registered under this Act, prior to the commencement of the Waqf (Amendment) Act, 2025, shall file the details of the waqf and the property dedicated to the waqf on the portal and database, within a period of six months from such commencement:

PROVIDED that the Tribunal may, on an application made to it by the mutawalli, extend such period of six months under this section for a further period not exceeding six months as it may consider appropriate, if he satisfies the Tribunal that he had sufficient cause for not filing the details of the waqf on the portal within such period.

(2) The details of the waqf under sub-section (1), amongst other information, shall include the following, namely:—

- (a) the identification and boundaries of waqf properties, their use and occupier;
- (b) the name and address of the creator of the waqf, mode and date of such creation;
- (c) the deed of waqf, if available;
- (d) the present mutawalli and its management;
- (e) the gross annual income from such waqf properties;
- (f) the amount of land-revenue, cesses, rates and taxes annually payable in respect of the waqf properties;
- (g) an estimate of the expenses annually incurred in the realisation of the income of the waqf properties;
- (h) the amount set apart under the waqf for—
  - (i) the salary of the mutawalli and allowances to the individuals;
  - (ii) purely religious purposes;
  - (iii) charitable purposes; and
  - (iv) any other purposes;
- (i) details of court cases, if any, involving such waqf property;
- (j) any other particular as may be prescribed by the Central Government.

<sup>1</sup> Inserted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

**3C. Wrongful declaration of waqf**

(1) Any Government property identified or declared as waqf property, before or after the commencement of this Act, shall not be deemed to be a waqf property.

(2) If any question arises as to whether any such property is a Government property, the State Government may, by notification, designate an Officer above the rank of Collector (hereinafter referred to as the designated officer), who shall conduct an inquiry as per law, and determine whether such property is a Government property or not and submit his report to the State Government:

PROVIDED that such property shall not be treated as waqf property till the designated officer submits his report.

(3) In case the designated officer determines the property to be a Government property, he shall make necessary corrections in revenue records and submit a report in this regard to the State Government.

(4) The State Government shall, on receipt of the report of the designated officer, direct the Board to make appropriate correction in the records.

**3D. Declaration of protected monument or protected area as waqf to be void**

Any declaration or notification issued under this Act or under any previous Act in respect of waqf properties shall be void, if such property was a protected monument or protected area under the Ancient Monuments Preservation Act, 1904 (7 of 1904) or the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), at the time of such declaration or notification.

**3E. Bar of declaration of any land in Scheduled or Tribal area as waqf**

Notwithstanding anything contained in this Act or any other law for the time being in force, no land belonging to members of Scheduled Tribes under the provisions of the Fifth Schedule or the Sixth Schedule to the Constitution shall be declared or deemed to be waqf property.]

COMMENT

The Waqf (Amendment) Act, 2025 has inserted new sections relating to certain conditions of waqf, filing of details of waqf on portal and database; and provides for prevention of wrongful declaration of waqf.

**CHAPTER II**

**SURVEY OF <sup>1</sup>[AUQAF]**

**4. <sup>2</sup>[Survey of auqaf]**

<sup>3</sup>(1) Any survey of auqaf pending before the Survey Commissioner, on the commencement of the Waqf (Amendment) Act, 2025, shall be transferred to the Collector having jurisdiction and the Collector shall make the survey in accordance with the procedure in the revenue laws of the State, from the stage such survey is transferred to the Collector, and submit his report to the State Government.]

1 Substituted for "WAKFS" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

2 Substituted for "Preliminary survey of auqaf" by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

3 Substituted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025. Prior to substitution, sub-section (1) read as under:

"(1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Auqaf and as many Additional or Assistant Survey Commissioners of Auqaf as may be necessary for the purpose of making a survey of auqaf in the State."

<sup>1</sup>[xxx]

(4) The <sup>2</sup>[Collector] shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

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

(5) If, during any such inquiry, any dispute arises as to whether a particular <sup>3</sup>[waqf] is a Shia <sup>3</sup>[waqf] or Sunni <sup>3</sup>[waqf] <sup>4</sup>[or Aghakhani waqf or Bohra waqf] and there are clear indications in the deed of <sup>3</sup>[waqf] as to its nature, the dispute shall be decided on the basis of such deed.

<sup>5</sup>[xxx]

#### COMMENT

The Waqf (Amendment) Act, 2025 has amended this section to replace the Collector in place of the Survey Officers, so as to confer powers upon the Collector to make the survey in accordance with the procedure in revenue laws of the State. This Amendment Act has added Aghakhani Waqf or Bohra Waqf regarding disputes relating to auqaf.

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- 1 Sub-sections (1A), (2) and (3) omitted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025. Prior to omission, read as under:  
“(1A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013, in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:  
PROVIDED that where no Survey Commissioner of Waqf has been appointed, a Survey Commissioner for auqaf shall be appointed within three months from the date of such commencement.  
(2) All Additional and Assistant Survey Commissioners of Auqaf shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Auqaf.  
(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of auqaf existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:—  
(a) the number of auqaf in the State showing the Shia auqaf and Sunni auqaf separately;  
(b) the nature and objects of each waqf;  
(c) the gross income of the property comprised in each waqf;  
(d) the amount of land revenue, cesses, rates and taxes payable in respect of each waqf;  
(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each waqf; and  
(f) such other particulars relating to each waqf as may be prescribed.”
  - 2 Substituted for “Survey Commissioners” by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.
  - 3 Substituted for “wakf” by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.
  - 4 Inserted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.
  - 5 Sub-section (6) omitted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025. Prior to omission, it read as under:  
“(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of waqf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):  
PROVIDED that no such second or subsequent survey shall be made until the expiry of a period of ten years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3):  
PROVIDED FURTHER that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.”

**5. Publication of list of <sup>1</sup>[auqaf]**

(1) On receipt of a report under <sup>2</sup>[sub-section (1)] of section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and <sup>3</sup>[forward it back to the Government within a period of six months for publication in the Official Gazette] a list of Sunni <sup>1</sup>[auqaf] or Shia <sup>1</sup>[auqaf] <sup>4</sup>[or Aghakhani auqaf or Bohra auqaf] in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

<sup>4</sup>[(2A) The State Government shall upload the notified list of auqaf on the portal and database within ninety days from the date of its publication in the Official Gazette under sub-section (2).

(2B) The details of each waqf shall contain the identification, boundaries of waqf properties, their use and occupier, details of the creator, mode and date of such creation, purpose of waqf, their present mutawallis and management in such manner as may be prescribed by the Central Government.]

<sup>5</sup>[(3) The revenue authorities, before deciding mutation in the land records, in accordance with revenue laws in force, shall give a public notice of ninety days, in two daily newspapers circulating in the localities of such area of which one shall be in the regional language and give the affected persons an opportunity of being heard.]

(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time <sup>6</sup>[on the portal and database].]

**COMMENTS**

Challenge to the list of Waqf properties published under section 5(2) impermissible under article 226 of the Constitution in view of the fact that a civil suit is maintainable against such a list.—*Gulistan Shadi Mahal Trust v. Karnataka Board of Auqaf 2002 AIHC 999 (Kar) (HC)*.

It was held by the Supreme Court, in *Tamil Nadu Waqf Board v. Halhija Ammal AIR 2002 SC 402*, that under section 5(2), after a property is notified to be Waqf property, a determination is to be made by a civil court whenever any dispute arises after the notification is published by the Waqf Board as to whether a particular property specified as Waqf property in the list is Waqf property or not.

Under sub-section (3), as amended by the Waqf (Amendment) Act, 2025, the revenue authorities shall give a public notice of 90 days in two daily newspapers in regional language while deciding mutation in the land records and give affected persons an opportunity of being heard. Under sub-section (4), as amended by the said Amendment Act, the State Government shall maintain a record of the lists on the portal and database.

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- 1 Substituted for "wakfs" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.
- 2 Substituted for "sub-section (3)" by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.
- 3 Substituted for "publish in the Official Gazette" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.
- 4 Inserted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.
- 5 Substituted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025. Prior to substitution, sub-section (3) read as under:  
"(3) The revenue authorities shall—  
(i) include the list of auqaf referred to in sub-section (2), while updating the land records; and  
(ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records."
- 6 Inserted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

**6. Disputes regarding <sup>1</sup>[auqaf]**

(1) If any question arises whether a particular property specified as <sup>2</sup>[waqf] property in the list of <sup>1</sup>[auqaf] is <sup>2</sup>[waqf] property or not or whether a <sup>2</sup>[waqf] specified in such list is a Shia <sup>2</sup>[waqf] or Sunni <sup>2</sup>[waqf], <sup>3</sup>[or Aghakhani waqf or Bohra waqf] the Board or the mutawalli of the <sup>2</sup>[waqf] or <sup>4</sup>[any person aggrieved] may institute a suit in a Tribunal for the decision of the question <sup>5</sup>[xxx]:

PROVIDED that no such suit shall be entertained by the Tribunal after the expiry of <sup>6</sup>[two years] from the date of the publication of the list of <sup>1</sup>[auqaf]:

<sup>7</sup>[PROVIDED FURTHER that an application may be entertained by the Tribunal after the period of two years specified in the first proviso, if the applicant satisfies the Tribunal that he has sufficient cause for not making the application within such period.]

<sup>8</sup>[xxx]

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

(3) The <sup>9</sup>[Collector] shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

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

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

**COMMENTS**

It is within the jurisdiction of the Tribunal to determine a dispute as to the question whether any property in the list published under section 5(2) is Waqf property or not. Tahsildar cannot adjudicate upon the character of waqf property as same can be decided in manner provided in

- 1 Substituted for "wakfs" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.
- 2 Substituted for "wakf" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.
- 3 Inserted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.
- 4 Substituted for "any person interested therein" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.
- 5 Words "and the decision of the Tribunal in respect of such matter shall be final" omitted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.
- 6 Substituted for "one year" by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.
- 7 Substituted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025. Prior to substitution, second proviso read as under:  
"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."
- 8 Explanation omitted by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013. Prior to omission, read as under:  
"Explanation: For the purposes of this section and section 7, the expression "any person interested therein", shall, in relation to any property specified as waqf property in the list of auqaf published after the commencement of this Act, shall include also every person who, though not interested in the waqf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under section 4."
- 9 Substituted for "Survey Commissioner" by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

Section 6 of the Waqf Act. Therefore the finding of the Tahsildar that disputed property is not waqf property is erroneous and without jurisdiction. This finding cannot operate as *resjudicata* in subsequent suit filed by the Waqf Board under Section 6 of the Waqf Act for deciding the character of Waqf Property. Doctrine of *Resjudicata* does not apply to decision of Court/tribunal which lacked jurisdiction. Further Section 14 of Inam's Act which bars jurisdiction of Civil Court does not bar suit filed by Waqf Board.—*Sayyed Ali & Ors. v. Andhra Pradesh Waqf Board AIR 1998 SC 972*

The Bombay High Court, in *Marathwada Waqf Board v. Rajaram Ramjivan Mauthri & Ors. AIR 2002 Bom 144*, held that if a person who is a non-muslim whether he be a Christian, a Hindu, a Sikh, a Parsi or of any other religious denomination and if he is in possession of a certain property his right, title and interest cannot be put in jeopardy simply because that property is included in the list published under sub-section (2) of Section 5." This view was upheld by the Supreme Court in *Board of Muslim Auqaf, Rajasthan v. Radha Kishan AIR 1979 SC 289*, also and therefore, following the view of the Supreme Court, the Maharashtra High Court concluded thus, "therefore from the above, it is extremely clear that the respondent No. 1 who is a non-muslim, being a Hindu, could not file a suit under Section 6 of the Waqf Act, but he cannot be barred from filing a suit especially in view of the fact that his right, title, and interest have been jeopardised in view of the notification issued by the Government of Maharashtra.

The limitation of one year for filing a suit challenging inclusion of certain property in Waqf list is not applicable to government as the government is not bound by such limitation period.—*Karnataka Waqf Board v. State of Karnataka AIR 1996 Kar 55*

The Waqf (Amendment) Act, 2025 has amended this section relating to disputes regarding auqaf so as to insert the words "Aghakhani Waqf or Bohra Waqf" and the words "and decision of the Tribunal in respect of such matter shall be final" have been omitted.

#### 7. Power of Tribunal to determine disputes regarding <sup>1</sup>[auqaf]

(1) If, after the commencement of this Act, <sup>2</sup>[any question or dispute] arises, whether a particular property specified as <sup>3</sup>[waqf] property in a list of <sup>1</sup>[auqaf] is <sup>3</sup>[waqf] property or not, or whether a <sup>3</sup>[waqf] specified in such list is a Shia <sup>3</sup>[waqf] or a Sunni <sup>3</sup>[waqf] <sup>4</sup>[or Aghakhani waqf or Bohra waqf], the Board or the mutawalli of the <sup>3</sup>[waqf], <sup>5</sup>[or any person aggrieved by the publication of the list of auqaf under section 5] therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question <sup>6</sup>[xxx]:

PROVIDED that:—

- (a) in the case of the list of <sup>1</sup>[auqaf] relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of <sup>7</sup>[two years] from the date of publication of the list of <sup>1</sup>[auqaf]; and
- (b) in the case of the list of <sup>1</sup>[auqaf] relating to any part of the State and published at any time within a period of <sup>7</sup>[two years] immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of <sup>7</sup>[two years] from such commencement:

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1 Substituted for "wakfs" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.  
2 Substituted for "any question" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.  
3 Substituted for "wakf" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.  
4 Inserted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.  
5 Substituted for "any person interested" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.  
6 Words "and the decision of the Tribunal thereon shall be final" omitted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.  
7 Substituted for "one year" by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

<sup>1</sup>[PROVIDED FURTHER that an application may be entertained by the Tribunal after the period of two years specified in the first proviso, if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period:

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

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

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

(4) The list of <sup>3</sup>[auqaf] and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

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

<sup>4</sup>[(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorized occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

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

#### COMMENTS

In *Badagara Jumayath Palli Dharas Committee v. Peedikayalakath Ummar Kutty Haji*, AIR 2002 (Ker) 56, the Kerala High Court held that the coming into force of the Waqf Act, 1995 does not in any way prevent the High Court from considering the question whether the judgment in appeal is correct or not in spite of the fact that the question to be decided is whether the plaint schedule property is waqf property or not. Further, we find that Section 7(5) of the Act merely says that the tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceedings instituted or commenced in a civil court under sub-section (1) of Section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement. Section 7(5) clearly exempts appeal from the bar of jurisdiction. Hence, the High Court is perfectly competent to decide the question regarding waqf in this appeal. In *Abdul Majeed Musaliyar v. M. T. Manumad Koya*, AIR 2002 (Ker) 71, the court held that the Waqf Act does not in any way affect the appellate jurisdiction of the District Court also.

1 Substituted for "PROVIDED FURTHER that" by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025.

2 Substituted for "wakf" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

3 Substituted for "wakfs" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

4 Inserted by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

Under sub-section (6), the Tribunal is empowered to assess damages caused by unlawful occupants and to penalise them as per the law prescribed.

<sup>1</sup>[8. **State Government to bear cost of survey**

The total cost of making a survey including the cost of publication of the list or lists of auqaf under this Chapter shall be borne by the State Government.]

**CHAPTER III**

**CENTRAL<sup>2</sup>[WAQF] COUNCIL**

**9. Establishment and constitution of Central<sup>3</sup>[Waqf] Council**

<sup>4</sup>[(1) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.

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

<sup>5</sup>[(2) The Council shall consist of—

- (a) the Union Minister in charge of waqf—Chairperson, *ex officio*;
- (b) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;
- (c) the following members to be appointed by the Central Government from amongst Muslims, namely:—

1 Substituted by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013. Prior to substitution, it read as under:

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

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

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

2 Substituted for “WAKF” by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

3 Substituted for “Wakf” by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

4 Substituted by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013. Prior to substitution, sub-section (1) read as under:

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

5 Substituted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025. Prior to substitution, sub-section (2) read as under:

“(2) The Council shall consist of—

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

PROVIDED that at least two of the members appointed under sub-clauses (i) to (viii) shall be women.”

- (i) three persons to represent Muslim organisations having all India character and national importance;
- (ii) Chairpersons of three Boards by rotation;
- (iii) one person to represent the mutawallis of the waqf having a gross annual income of five lakh rupees and above;
- (iv) three persons who are eminent scholars in Muslim law;
- (d) two persons who have been Judges of the Supreme Court or a High Court;
- (e) one Advocate of national eminence;
- (f) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine;
- (g) Additional Secretary or Joint Secretary to the Government of India dealing with waqf matters in the Union Ministry or department—member, *ex officio*:

PROVIDED that two of the members appointed under clause (c) shall be women:

PROVIDED FURTHER that two members appointed under this sub-section, excluding *ex officio* members, shall be non-Muslim.]

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

<sup>1</sup>[(4) The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the Council and it may *suo motu* call for information on specific issues from the Board, if it is satisfied that there was *prima facie* evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.

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

#### COMMENT

The Waqf (Amendment) Act, 2025 has amended this section so as to provide the composition broad-based by making provision for including two members from non-Muslim community.

Vide Notification SO 650(E), dt. 4-2-2019, the Central Government hereby establishes the Central Waqf Council and appoints thereto the following Chairperson and members, for a period of three years, from the date of publication of this notification in the Official Gazette, namely:—

- 1. Union Minister in charge of Waqfs—Chairperson**
- 2. Members appointed under sub-clause (i) of clause (b) of sub-section (2) of Section 9—**
  - (i) Shri Rais Khan Pathan,  
B-15, First Floor,

<sup>1</sup> Inserted by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

Hazrat Nizamuddin West,  
New Delhi-110013

- (ii) Shri Haneef Ali,  
H. No. 22-1-48/D, "Haneef Estate",  
Jambagh, Darulshifa,  
Hyderabad-500024
- (iii) Shri Muhammad Harun,  
A-379, Meer Vihar,  
Madan Pur Dabas,  
Delhi-110081

**3. Members appointed under sub-clause (ii) of clause (b) of sub-section (2) of Section 9—**

- (i) Dr. Darakhshan Andrabi,  
433, First Floor,  
Opposite Govt. Girls Hr. Sec. School,  
Shastri Nagar, Jammu-180084
- (ii) Shri Wasim Rahatali Khan,  
Flat No. A/603,  
Gundecha Asta, A.K. Road,  
Mehra Compound,  
Sakinaka, Mumbai-400072
- (iii) Dr. (Mrs) Syed Tanveer Nasreen  
Keshab Residency,  
Block-1, Flat 7B,  
138, Keshab Chandra Sen Street,  
Kolkata-700009

**4. Member appointed under sub-clause (vi) of clause (b) of sub-section (2) of Section 9—**

Shri Naushad T.O., Advocate  
Thazhathethli, Venmoney Post Office,  
Chengannoor, Alappuzha District,  
Kerala-689509

**5. Members appointed under sub-clause (viii) of clause (b) of sub-section (2) of Section 9—**

- (i) Smt. S. Munawari Begum,  
1/320, Pudiya Panjaliyur,  
Peddethalapalli Post,  
Krishnagiri-635002 (Tamil Nadu)
- (ii) Shri Syed Zainul Abedin Ali Khan,  
Haveli Dewan Saheb Dargah Shreef,  
Ajmer (Rajasthan)

**10. Finance of Council**

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

<sup>1</sup> Substituted for "Wakf" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

<sup>2</sup> Substituted for "wakfs" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

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

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

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

#### 11. Accounts and audit

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

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

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

#### 12. Power of Central Government to make rules

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

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

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

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

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

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

#### COMMENTS

In *Kerala Wakf Board v. Abdul Sattar Haji Moosa Sait ILR 1974 (2) Ker 316*, the court rejected the allegation of discrimination in the matter of uniform contribution of one per cent by all the Auqaf and the discrimination, if any, seems to arise out of fortuitous circumstances and not violative of article 14 of the Constitution.

<sup>1</sup> Substituted for "wakf" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

<sup>2</sup> Substituted for "Wakf" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

**CHAPTER IV**  
ESTABLISHMENT OF BOARD AND THEIR FUNCTIONS

**13. Incorporation**

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

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

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

<sup>4</sup>[(2A) The State Government may, if it deems necessary, by notification in the Official Gazette, establish a separate Board of Auqaf for Bohras and Aghakhanis.]

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

COMMENTS

The Waqf (Amendment) Act, 2025 has empowered the State Government to establish a separate Board of Auqaf for Bohras and Aghakhanis, if it deems necessary, by Notification in Official Gazette.

Powers of Waqf Board to control and supervise Waqf administration, regulate the powers of Mutawallis insofar as it relates to management of Waqf properties cannot be challenged as unconstitutional as violative of fundamental right guaranteed under article 26(b) of the Constitution "to administer such property in accordance with law", as it falls under article 26(d) and as such subject to the law made by the Parliament. There is nothing in the Act depriving the religious denomination, namely Muslims, of their right of administration or administering properties owned and acquired by it.—*Usman Ali Khan v. Faezulla AIR 1959 MP 377*

Where a waqf Board has not been established, it shall be established within six months from the commencement of Wakf (Amendment) Act, 2013.

Where a waqf Board is established u/s 13(2), in the case of Shia Waqf, the members shall belong to Shia Muslim, in case of Sunni Waqf, the members shall belong to Sunni Muslim.

"Article 25 of the Constitution guarantees to every person and not merely to the citizens of India, the freedom of conscience and the right freely to profess, practice and propagate religion. This is subject, in every case, to public order, health, and morality. Further exceptions

1 Substituted for "Wakfs" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

2 Inserted by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

3 Substituted for "wakfs" by Act 27 of 2013, dt. 20-9-2013, w.e.f. 1-11-2013 vide SO 3292(E), dt. 29-10-2013.

4 Substituted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025. Prior to substitution, sub-section (2A) read as under:

"(2A) Where a Board of Waqf is established under sub-section (2) of section 13, in the case of Shia waqf, the Members shall belong to the Shia Muslim and in the case of Sunni waqf, the Members shall belong to the Sunni Muslim."

are engrafted upon this right by Clause (2) of the Article. Sub-clause (a) of Clause (2) saves the power of the State to make law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice and sub-clause (b) reserves the State's power to make laws providing for special reforms and social welfare even though they might interfere with religious practices. Thus subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to state regulation imposed to secure order, public health and morals of the people."

"The scheme of the Act does not in any way show the interference of the State in the matters of religion thus allegedly violating the guarantee as provided under Articles 25 and 26 of the Constitution. The writ petition appears to have been filed upon unfounded apprehensions and concocted grounds. The allegations made in the petition are based upon hypothesis, which have nothing to do with the reality."—*Syed Shah Mohammad-Al-Hussaini v. Union of India AIR 1999 Kar 112, Ratilal Puran Chand Gandhi v. State of Bombay AIR 1954 SC 388, Digyadarshan Rajindra Ramdassji Varu v. State of A.P. AIR 1970 SC 181*

#### 14. Composition of Board

<sup>1</sup>[(1) The Board for a State and the National Capital Territory of Delhi shall consist of, not more than eleven members, to be nominated by the State Government,—

- (a) a Chairperson;
- (b) (i) one Member of Parliament from the State or, as the case may be, the National Capital Territory of Delhi;
- (ii) one Member of the State Legislature;
- (c) the following members belonging to Muslim community, namely:—
  - (i) one mutawalli of the waqf having an annual income of one lakh rupees and above;
  - (ii) one eminent scholar of Islamic theology;
  - (iii) two or more elected members from the Municipalities or Panchayats:
 PROVIDED that in case there is no Muslim member available from any of the categories in sub-clauses (i) to (iii), additional members from category in sub-clause (iii) may be nominated;

1 Substituted by the Waqf (Amendment) Act, 2025 (No. 14 of 2025), dt. 5-4-2025, w.e.f. 8-4-2025 vide SO 1646(E), dt. 8-4-2025. Prior to substitution, sub-sections (1), (1A), (2), (3) and (4) read as under:

"(1) The Board for a State and the National Capital Territory of Delhi shall consist of—

(a) a Chairperson;

(b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of—

(i) Muslim Members of Parliament from the State or, as the case may be, the National Capital Territory of Delhi,

(ii) Muslim Members of the State Legislature,

(iii) Muslim members of the Bar Council of the concerned State or Union territory:

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

.....Footnote contd.....on next page.