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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10866-10867 OF 2010

IN THE MATTER OF: -

M. Siddiq (D) Thr. Lrs.

... Appellant

VERSUS

Mahant Suresh Das & Ors. etc. etc.

... Respondents

AND

OTHER CONNECTED CIVIL APPEALS

COMPILATION OF STATUTES

BY

DR. RAJEEV DHAVAN, SENIOR ADVOCATE

(PLEASE SEE INDEX INSIDE)

ADVOCATE-ON-RECORD: EJAZ MAQBOOL

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the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation 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 or regulation.]

[a] Inserted by Delegated Legislation Provisions (Amendment) Act (4 of 1986), S. 2, Sch. (15-5-86).

[THE] RELIGIOUS ENDOWMENTS ACT, 1863

(ACT 20 OF 1863)

[The text of the Act printed here is as on 31-7-1998.]

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STATEMENT OF OBJECTS AND REASONS

"It has long been the avowed policy of the Government of India to divest itself of all the direct concern with the management of religious endowments, but the obligations imposed on its Officers by law in the Presidencies of Bengal and Madras present difficulties which have hitherto as far as regards those Presidencies prevented the full accomplishment of this purpose.

The subject has given rise to much correspondence to which it is not necessary more particularly to advert. It may suffice to state that the Secretary of State in his Despatch dated the 16th July, 1860, reviewing the more recent proceedings of the Government of India relative to "the repeal of those provisions of the Bengal and Madras Codes by which the general superintendence of the endowments for the support of Mosques and Temples is vested in the Revenue Officers of Government, expressed an opinion "that all that is requisite is an Act on the principle of Act No. X of 1840 in regard to the Temple of Juggernath, repealing the existing enactments on the subject, and transferring the entire superintendence of the institutions to their respective Trustees, provision being made for an appeal by suit in the ordinary way to the established Courts of Justice in all disputes relating to the appointment and succession to the management of Hindu and Mahomedan

religious institutions, and to the control and application of their funds."

Previous to this expression of opinion by the Secretary of State, a Bill had been brought into the Legislative Council early in 1860, simply repealing Regulation XIX, 1810 of the Bengal Code, and Regulation VII, 1817 of the Madras Code, and reserving the jurisdiction now exercised or which but for those Regulations might have been exercised by Courts of Justice, in enforcing the due execution or administration of any trust or endowment, and in securing the due appointment or succession to the management thereof.

To this proposed measure two objections have been made. First, that by repeal of the Regulations above cited, the Government is relieved of all concern in the management, not only of all religious endowments, but also of other trusts not of a religious character, which those Regulations impose on it, and which is not desirable that it should be relieved of. Second, that a sudden and abrupt relinquishment by Government of the guardianship of the property of religious and charitable endowments which it has so long managed on behalf of the public, without making due provision for their future management, would be unjust.

Concurring in these objections I have endeavoured to frame this Bill so as to carry out the object proposed by the Secretary of State, without interfering with the provisions of the existing law so far as they define the duty of Government and its officers in respect to public property not connected with religious endowments, and at the same time to provide for the due supervision of religious endowments which are now managed by the Government and its officers, but from which they will henceforth be disconnected."—Calcutta Gazette, 1862, p. 753.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

- Short title given by Act 14 of 1897.
- Adapted by A.O., 1937; A.C.A.O., 1948.
- Amended by Acts 12 of 1891; 21 of 1925; 10 of 1940; 20 of 1983.
- Amended in West Bengal by Beng. Act 13 of 1934.
- Amended in Uttar Pradesh by U.P. Act 29 of 1951.
- Extended by Regn. 6 of 1963.
- Extended to Kanara by Bom. Act 7 of 1865.
- Extended in Madhya Pradesh by M. P. Act 12 of 1950.
- Extended in Tamil Nadu by T. N. Act 35 of 1949.
- Application of the Act restricted by Acts 13 of 1943; 36 of 1955; A. P. Act 17 of 1966; Bih. Acts 8 of 1948; 17 of 1949; 1 of 1951; T. N. Acts 19 of 1951; 22 of 1959; U. P. Act 16 of 1939.
- Repealed in part by Acts 7 of 1870; 14 of 1870; 16 of 1874; 10 of 1914; 29 of 1954.
- Repealed in—
 - A. P. by A. P. Acts 20 of 1979; 30 of 1987.
 - Bombay by Bom. Acts 29 of 1950; 6 of 1960;
 - Tamil Nadu by T. N. Acts 1 of 1925; 2 of 1927.
 - U. P. Act 28 of 1971.

COGNATE ACTS AND PROVISIONS

1. Charitable and Religious Trusts Act, 16 of 1920.
2. Kazis Act, 12 of 1880.
3. Mussalman Wakf Act, 42 of 1923.
4. Mussalman Wakf Validating Act, 6 of 1913.
5. Mussalman Wakf Validating Act, 32 of 1930.
6. Religious Society Act, 1 of 1880.
7. Wakf Act, 28 of 1954.

[THE] RELIGIOUS ENDOWMENTS ACT, 1863

(ACT 20 OF 1863)^a

[10th March, 1863]

An Act to enable the Government to divest itself of the management of Religious Endowments.

Preamble

WHEREAS it is expedient to relieve the Boards of Revenue, and the local Agents, in the Presidency of Fort William in Bengal, and the Presidency of Fort Saint George, from the duties imposed on

PREAMBLE — SYNOPSIS

1. Object and effect of the Act.
2. Applicability of the Act.

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them by regulation XIX, 1810, of the Bengal Code (for the due appropriation of rent and produce of lands granted for the support of Mosques, Hindu Temples, Colleges and other purposes; for the maintenance and repair of Bridges, Sarais, Kattras and other public buildings; and for the custody and disposal of Nazul Property or Escheats) and Regulation VII, 1817, of the Madras Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples and Colleges or other public purposes; for the maintenance and repair of Bridges, Choultries, or Chattrams, and other public buildings; and for the custody and disposal of Escheats), so far as those duties embrace the superintendence of lands granted for the support of mosques or Hindu temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connexion with the management of such religious establishments; [* * *]. It is enacted as follows :—

[a] Short title was given by the Indian Short Titles Act, 1897 (14 of 1897).

The Act as been extended to Kanara by the Religious Endowments (Extension to Kanara) Act, 1865 (Bom. 7 of 1865).

It has been declared, by notification under S. 3(a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Schedule District namely :

The Districts of Hazaribah, Lohardaga (now the Ranchi) District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum (Bihar State) See Gazette of India, 1881 Pt. I p. 504

The Scheduled portion of the

Mirzapur District (U. P.)	Ditto	1879 Pt. I p. 383
Jaunsar Bawar (U. P.)	Ditto	1879, Pt. I, p. 382

Preamble (contd.)

1. Object and effect of the Act.

(1) The object of the Act is to replace certain provisions of the two regulations referred to in the Act so as to relieve the Boards of Revenue and Local agents from the duties imposed on them by those Regulations. AIR 1932 Oudh 152 (153, 154) (FB) ** AIR 1934 Cal 328 (334) (DB).

(2) The superintending authority over religious endowments exercised by the old rulers of the country passed to the British Government and Madras Regulation VII merely defined the manner in which that power was thenceforth to be exercised. (1873-74) 1 Ind App 209 (228, 234) (PC).

(3) The effect of the Act was to divest the Government of the rights of control and supervision over all religious institutions till then managed through their Revenue Commissioners, and to entrust them to temple Committees appointed under the Act. AIR 1935 Bom 371(372) (DB) ** AIR 1930 Mad 292(294) (DB). (Where Regulation 7 of 1817 applied or where trustee was appointed by the Government or one of its officers or such appointment was subject to its approval the powers were transferred to temple committees. In other cases the proeprty which is subject of endowment reverted to legally entitled trustee and the Revenue Board was divested of all control.)

(4) This Act, is was held, dealt only with the management of the properties of Religious Endowments and, did not stand in the way of their acquisition under the provisions of the U.P. Abolition of Zamindari and Land Reforms Act. AIR 1952 SC 252(313).

(5) The Preamble to the Act no doubt refers to existing mosques, Hindu temples or other religious institutions. But that limitation cannot be imported into any section of the Act when it is quite clear from its general language that its application was not intended to be restricted in that manner. AIR 1959 All 612(613) (DB). (Sections 13, 14 and 18 do not restrict themselves to existing endowments. Hence applications under those sections are maintainable even where the endowment in question came into existence after this Act was passed.)

2. Applicability of the Act.

(1) Except Section 22 which applies to whole of British India. Act XX of 1863 is not in force in the Central provinces. (1890) 3 CPLR 11(12).

(2) Section 4 of the Madras Hindu Religious Endowments Act repealed the Religious Endowments Act of 1863 and the Madras Endowments and Escheat Regulation 7 of 1817 in so far as they applied to Hindu Religious Endowments in the Province of Madras. AIR 1952 Mad 650(655).

(3) Act is applicable to the Punjab as Bengal Regulation XIX of 1810 was extended to Punjab by Rules and Orders. 1900 Pun Re No. 95. p. 386(389) (DB).

(4) All endowments which were affected by Regulation XIX of 1810 whether they came under the Board of Revenue or not fall within the purview of Act XX of 1863. (1907) 34 Cal 587(594) (DB).

(5) The act applies even to religious institutions

[The] Religious Endowments Act, 1863

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The Scheduled Districts in Ganjam (Orissa) and Vizagapatnam

(A: P.)...	Ditto	1898, Pt. I, p. 870
Assam (except the North Lushal Hills, now known as Mizo district and forming Union Territory of Mizoram)	Ditto	1897, Pt. I, p. 299.
It has been extended by notifications under S. 5 of the last mentioned Act to the following Scheduled Districts, namely:-		
Kumaon and Garhwal (U. P.)	See Gazette of India	1876, Pt. I, p. 605
The Tarai of the Province of Agra (U. P.)	Ditto	1877, Pt. I, p. 505
Ajmer and Merwara (Rajasthan)	Ditto	1877, Pt. I, p. 605

The Act has been extended to the States merged in the State of—

Madhya Pradesh : see M. P. Act 12 of 1950, S. 3 (3-4-1950);

Tamil Nadu : see T. N. Act 25 of 1949, S. 3 (1-1-1950).

It has been extended to the Union Territory of Dadra and Nagar Haveli by Regulation 6 of 1963 (1-7-1965).

The Act does not apply to—

- any wakf to which the Wakf Act, 1954 (29 of 1954) applies : see S. 69 of that Act;
- any wakf in the State of Bihar : see Bih. Act 8 of 1948, S. 4(5) (1-4-1948);
- any wakf in the State of Uttar Pradesh—See U. P. Act 16 of 1960, S. 60 (3-9-1960);
- any Hindu religious trust in the State of Bihar : see Bih. Act 1 of 1951, S. 4(5) (15-8-1951);
- any administration of public religious and charitable trust in the State of Bombay : see Bom. Act 29 of 1950, S. 85 (14-8-1950);
- any Hindu Religious Institution and Endowment in the State of Tamil Nadu : see T. N. Act 22 of 1959, S. 5 (1-1-1960); and in Andhra Pradesh—See A. P. Act 47 of 1966, S. 110 (26-1-1967).

The Act has been overridden in its application to the Bodha Gaya Temple and properties appertaining thereto by Bih. Act 17 of 1949, S. 16 (6-7-1949) and in its application to the Shri Badrinath Temple and its endowment by U. P. Act 16 of 1939, S. 2 (15-4-1940), in its application to the Nathdwara Temple—See Raj. Act 13 of 1959, S. 34 (30-3-1959); and in its application to Durgah Khwaja Saheb—See Act 36 of 1955, S. 3.

- The words and figures “and whereas it is expedient for that purpose to repeal so much of Regulation XIX, 1810. of the Bengal Code, and Regulation VII, 1817, of the Madras Code, as relate to endowments for the support of mosques, Hindu temples or other religious purposes” were repealed by the Repealing Act, 1874 (16 of 1874), S. 1 and Sch.

Preamble -- Note 2 (contd.)

founded after commencement of the Act. AIR 1961 All 125(127) (DB) ** 1971 Sim LJ 337(343) (Him Pra). (Temples in Kulu District fall within Act.)

(6) The Religious Endowments Act does not apply to an endowment which is not a public one but which is made for benefit of an ancestral family idol. AIR 1941 Pat 260(266) (DB).

(7) The question whether a temple is public or otherwise depends upon evidence as to user. The character of the endowment is a legal inference to be proved from evidence. On a question of this description long user by public is a material consideration from which inference of dedication to the public may be drawn. Besides user the conduct of the founder and his descendants is also relevant and if in fact they had held out the temple to be public temple, very strong presumption of dedication would arise. AIR 1954 Pat 279 (279) (DB).

(8) Public or private trust — Evidence to show that idols of deities had been installed — There used to be regular Puja paath, regbhog etc. — Villagers worshipping deities in temple freely, without any interference by discipline — Mahant giving property to his chela to look after properties — Restrictions put in gift that chela could not sell or mortgage the proper-

ties — Temple declared to be public trust within meaning of Act. AIR 1989 Pat 259.

(9) A dedication may be either absolute or partial. The property may be given out and out to the idol or it may be subjected to a charge in favour of the idol. The question whether the idol itself shall be considered the true beneficiary subject to a charge in favour of the heirs or specified relative of the testator for their upkeep or that, on the other hand, these heirs shall be considered the true beneficiaries of the property subject to a charge for the upkeep, worship and expenses of the idol is a question which can only be settled by a conspectus of the entire provisions of the will. Thus where by a will certain premises were expressly declared as absolutely dedicated to a deity as its permanent habitation with only the right given to the Sebayats to reside in the said premises for the purposes of carrying on the daily and periodical seva and the festivals etc. of the deity it was held, that there was a clear indication of the intention of the testator to absolutely dedicate the said premises to the deity and that the right given to the sebayats did not detract from the absolute character of the dedication. AIR 1954 SC 69(72).

(10) In the absence of direct evidence dedication can be inferred from the conduct of the parties and the

STATE AMENDMENTS

Andhra Pradesh :

In its application to the State of Andhra, in Preamble for the words "Presidency of Fort St. George" substitute the words "State of Andhra".—Andh. A.L.O., 1953.

Tamil Nadu :

In its application to the added territories in the State of Tamil Nadu, in the Preamble for the words "State of Andhra" substitute the words "Presidency of Fort St. George."—Mad. (Add. Terr.) A.L.O., 1961.

1. Repeal of parts of Bengal Regulation 19 of 1810 and Madras Regulation 7 of 1817—Repealed by the Repealing Act, 1870 (14 of 1870), S. 1 and Sch.

2. Interpretation-clause.—In this Act,—

* * * *

* * * *

"Civil Court" and "Court".

the words "Civil Court" and "Court" shall ^b[save as provided in section 10] mean the principal Court of original civil jurisdiction in the district in which ^b[or any other Court empowered in that behalf by the [State Government] within the local limits of the jurisdiction of which] the mosque, temple or religious establishment is situate,^d relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.

[a] The clause relating to "number" and "gender" were repealed by the Repealing and Amending Act, 1914 (10 of 1914), section 3 and Sch. II.

[b] Inserted by the Religious Endowments (Amendment) Act, 1925 (21 of 1925), section 2.

[c] Substituted for the words "Provincial Government" by A.L.O., 1950.

[d] Courts of subordinate Judges in the Malabar district of the State have been so empowered by Kerala Government—See Ker. Gaz., 1-11-1966, Pt. I, p. 528; and all Courts of Principal Subordinate Judges in Orissa have been so empowered—See Ori. Gaz., 2-3-1964, Ext. (No. 388).

Preamble -- Note 2 (contd.)

user of the properties. It is usually only inferred from user when the evidence covers a very long period of time. AIR 1946 Lah 31(33)(DB).

(11) Where there is no mention of the archakas in the Inam Register or Inam Statement and the grant is clearly shown as being to the temple alone, it cannot be presumed, because of the long possession of the land by the archakas, and from the fact of the assessment of the property as shown in the Inam Register being the same as that shown in the Inam Statement as the income derived by the Inamdar, that the grant was of the kudivaram rights to the archakas and of melwaram rights only to the temple. AIR 1948 Mad 72(73).

(12) The term "land" in the Act has a wide meaning and includes buildings and, accordingly, the Act is attracted to case where shops and the Nohra and other buildings with the land upon which they stand are endowed. AIR 1961 All 125(128) (DB).

(13) Cy pres, doctrine of — Doctrine not applicable to gifts inter vivos — Money collected for specific purpose — Purpose failing — There being no general charitable intention money cannot be applied cy pres. AIR 1960 Andh Pra 605 (610, 611, 612) : (1960) 1 Andh WR 326 (DB).

(14) Religious endowment — Constitution — Specific grant — Where the grant was to continue as

long as the service was performed and the trustees were dharmakartas of the kalyanotsavam and that they have been performing that service, showed that the grant was a specific endowment and constituted a specific trust and not a grant to the trustees with the added obligation of spending on the service. AIR 1960 SC 622 (624).

Section 2

(1) For purposes of the several sections of Act the District Court is not a persona designata but a Civil Court exercising jurisdiction under Act. AIR 1915 Mad 827 (829, 830) (DB).

(2) An Additional District Judge has no jurisdiction to entertain an application for removal of a trustee under Section 14, Religious Endowments Act, unless he is empowered in that behalf by the State Government under Section 2 of the C.P. and Berar Courts Act. The provisions of the C.P. and Berar Courts Act cannot justify the passing of an order of removal of the trustee when the application for removal is not purported to be made under Sec. 14, Religious Endowments Act but is made in the ordinary jurisdiction of the Additional District Judge in the execution proceeding before him. AIR 1961 Bom 239(241).

(3) Additional District Judge is competent to dispose of application moved under Section 18 before the District Judge and assigned to him for disposal. AIR 1972 All 355(357) : 1972 All WR (HC) 156.

3. Government to make special provision respecting mosques, etc.— In the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in ^a[the preamble to this Act] are applicable, and nomination of the trustee, manager or superintendent thereof, at any time of the passing of this Act, is vested in, or may be exercised by, the Government or any public officer, or in which the nomination of such trustee, manager or superintendent shall be subject to the confirmation of the Government or any public officer, the ^b[State Government] shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided.

[a] Substituted for the word and figure "section 1" by the Repealing and Amending Act, 1891 (12 of 1891).

[b] Substituted for the words "Provincial Government" by A.L.O., 1950.

4. Transfer to trustees, etc. of trust-property in charge of Revenue Board.— In the case of every such mosque, temple or other religious establishment which, at the time of the passing of this Act, shall be under the management of any trustee, manager or superintendent, whose nomination shall not vest, in, nor be exercised by, nor be subject to the confirmation of, the Government, or any public officer, the ^a[State Government] shall, as soon as possible after the passing of this Act, transfer to such trustee, manager or superintendent, all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue or any local agent, and belonging to such mosque, temple or other religious establishment, except such property as is hereinafter provided :

Cessation of Board's powers as to such property.

and the powers and responsibilities of the Board of Revenue, and the local agents, in respect to such mosque, temple or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent, previous to such transfer, shall cease and determine.

[a] Substituted for the words "Provincial Government" by A.L.O., 1950.

Section 3

(1) Before Section 3 can be applied the Endowment must be one governed by one of the specified Regulations and the nomination of the trustee, manager, or superintendent should be governed by one of the methods mentioned in the section. AIR 1930 Mad 292 (294) (DB).

(2) Where it is clear that person in management of mosque to which provisions of Madras Regulation VII of 1817, were applicable is not hereditary trustee and there is no evidence that the trusteeship of the mosque has ever been hereditary, right to nominate the trustee, manager or superintendent for the institution must be deemed to have vested in the Government or any public officer when the Religious Endowments Act (XX of 1863) came into force and Section 3 of the Act would therefore apply to it. AIR 1947 Mad 333 (333).

(3) A wrongful assumption by Government of power to appoint a trustee is not sufficient to bring a temple within Sec. 3. AIR 1916 Mad 475(477) (DB).

(4) A temple of which one of the trustees is a hereditary trustee and the others are appointed by a committee comes under Section 3 of the Act. AIR 1917 Mad 551 (553) (DB).

(5) Circumstance that a committee has been appointed under Section 3 and the committee has worked for many years without protest or challenge is

prima facie evidence that the endowment is of the character described in Section 3. (1913) 40 Cal 323(333) (DB).

(6) Words "religious establishment" in Section 3 cover case of Kattalais and, unless the Kattalai itself is such that its trustees are to be nominated by the Government or a Public Officer, Section 3 cannot apply to it. AIR 1923 Mad 209(211) (DB). (Devasthanam Committee held on facts to have no right of supervision over the kattalais.)

(7) Words "Public Officer" mean public officer under the Government of Madras and not a public officer anywhere outside British India, or a public officer outside control of the Government of Madras. AIR 1930 Mad 292(294) (DB).

(8) Clerk in Devasthanam governed by scheme framed by Court is not Public Officer or one whose tenure is defined by statute. AIR 1935 Mad 945 (946, 947).

Section 4

(1) Villagers actively managing institution after 1904 — Presumption is that they had right to manage even before 1904. By allowing archakas for some years before 1904 to manage small property of temple, villagers held did not lose their right of management of institution. AIR 1941 Mad 312(313).

5. Procedure in case of dispute as to right of succession to vacated trusteeship.— Whenever from any cause a vacancy shall occur in the office of any trustee, manager or superintendent, to whom any property shall have been transferred under the last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the mosque, temple or religious establishment to which such property shall belong, or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple or other religious establishment, and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office.

Powers of managers appointed by Court.

The manager so appointed by the Civil Court shall have and shall exercise all the powers which, under this or any other Act, the former trustee, manager or superintendent, in whose place such manager is appointed by the Court, had or could exercise in relation to such mosque, temple or religious establishment, or the property belonging thereto.

[a] Section 5 shall not apply to any wakf to which the Wakf Act, 1954 (29 of 1954) applies—see section 69 of that Act.

6. Rights, etc., of trustees to whom property is transferred under section 4.— The rights, powers and responsibilities of every trustee, manager or superintendent, to whom the land and other property of any mosque, temple or other religious establishment is transferred in the manner prescribed in section 4 of this Act, as well as the conditions of their appointment, election and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue and local agents, given by the Regulations hereby repealed, over such mosque, temple or religious establishment, and over such trustee, manager, or superintendent, which authority is hereby determined and repealed.

Section 5

(1) Courts have no power to appoint trustees under this section unless the property has been actually transferred to the former trustee under Section 4. (1910) 14 Cal WN 1104 (1105, 1106) (DB) ** AIR 1921 All 351(352) (DB). (Temporary manager can be appointed only when office of trustees to whom property transferred under Section 4 falls vacant.)

(2) Section 5 applies only when a vacancy exists at time of application and only in cases where there are trustees, managers or superintendents under the control of Government — An application for the removal of trustee and appointment of another does not lie under this section. AIR 1935 All 273 (276) (DB).

(3) Kazi can appoint mutawalli when vacancy occurs and there is none to take office under deed of wakf or where mutawalliship devolves on minor. Powers of District Judge of appointing mutawallis in summary proceedings and their limitations stated. AIR 1940 Pat 9 (11, 13, 14) (DB).

(4) Appointment of trustees — Wishes of founder may be considered by Court — Subject to this, no party has absolute right to be appointed — Court has to make appointment in the best interests of the institution — Female should be appointed only if all available males are incompetent. AIR 1935 Mad 638 (639, 640) (DB).

(5) Order under Section 5 of the Act does not bar

suit under Section 92, C.P.C. AIR 1921 Cal 425(426) (DB).

(6) When the committee became dissolved and was functus officio by the amendment of Section 34 of Madras Act V (5) of 1944 and the Hindu Religious Endowment Board could assign the duties of the committee to various officers, held, such a committee had no authority to come to Court for declaration of title and recovery of possession of suit house. AIR 1952 Mad 650 (655, 656) : (1951) 1 MLJ 588 (DB).

(7) Where the District Judge does not at all consider the question of the applicability of Section 5 his order is open to revision by High Court. AIR 1921 All 351(353) (DB).

(8) The proceeding started by an application under Section 5 is a miscellaneous proceeding and not a suit — Order passed is not decree — No appeal from order. AIR 1921 All 348(348) (DB).

Section 6

(1) Words “manager” “trustee” and “superintendent” used indifferently and indiscriminately in the body of Act are used to denote one and the same idea of management. AIR 1934 Cal 328(335) (DB).

(2) Absence legal necessity — Mathadhipathi has no power to grant perpetual lease of math properties at a fixed rent. AIR 1966 SC 1603 (1605).

(3) The constitution of a particular shrine must govern the succession and the mere fact that a certain chela has succeeded to one of the shrines enjoyed by

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under the said section 4 of this Act, may, from the date of such transfer, be exercised by any trustee, manager or superintendent to whom such transfer is made.

7. **Appointment of committees.**— In all cases described in section 3 of this Act the "[State Government] shall once for all appoint one or more committees in every division or district to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed.

Constitution and duties of committees.

Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act.

[a] Substituted for the words "Provincial Government" by A.L.O., 1950.

Section 6 (contd.)

his Guru does not ipso facto entitle him to succeed to another shrine, which was also enjoyed by his Guru. AIR 1924 Lah 170 (171) (DB).

(4) Power to alter the line of succession under deed of endowment given to two persons by name — The power can be exercised by both or not at all; but if power is given to two persons not by name but as office-holders, the power can be exercised even by the survivor of the two; where power is given to two persons by name coupled with the description of their office then Court has to gather the intention from the terms of the deed whether power was given to them as *persona designata* or as holders of the office and the rule above stated is to be applied. AIR 1940 All 252 (255) (DB).

(5) No rule of Mahomedan Law prohibiting a woman holding religious office unless there are religious duties which she cannot perform by deputy; prohibition arises from local custom or usage — Onus of establishing exclusion of woman is on those asserting it. AIR 1942 Mad 485(486) (DB).

SECTION 7 — SYNOPSIS

1. Committee and its status.

2. Powers of Committee.

1. Committee and its status.

(1) Committees under the Act are Statutory bodies — Procedure in matters of management and administration governed by rules applicable to Corporation — Difference in powers between Committee and Corporation stated. AIR 1934 Cal 328(340) (DB) ** (1912) 39 Cal 304 (308) (DB). (Committee appointed under Act XX of 1863 is a legal corporation endowed with powers which do not belong to the individual members who may go and come but this offspring of law remains the same; (34 Mad 1, Dissented from.) ** AIR 1916 Pat 44 (45) (DB). (But a suit brought by some only of existing members joining the other members of committee as defendant is bad for defective joinder of parties.)

(But see (1911) 34 Mad 1 (4, 5) (DB). (Law governing corporate bodies regarding capacity of

members to act is not applicable to Statutory body appointed under Act; majority of members originally appointed is insufficient to give full powers to surviving members of Committee.)]

(2) Death of a member of committee pending suit — Suit does not ipso facto abate. AIR 1934 Cal 328(333) (DB).

(3) Powers of Committee are not suspended by occurrence of vacancy among its members. AIR 1917 Mad 551 (553) (DB).

(4) Where the strength of certain Devasthanam Committee constituted under the Act is varied by certain Government notifications purporting to vary the constitution of that Committee under Madras Religious Endowments Act of 1927, it means that it was abolished and reconstituted validly. AIR 1931 Mad 340(342) (DB).

(5) Committee established under the Act and in existence at commencement of Madras Religious Endowments Act of 1925 is committee constituted under S. 16 and within definition of Section 5 of the Madras Act. AIR 1931 Mad 340 (341) (DB).

2. Powers of Committee.

(1) The intention of the Legislature is that the extensive powers conferred on the Board of Revenue should be exercised thereafter by Temple Committees. Courts should be very slow to construe the Act in such a manner as to impede the due exercise of these powers; Courts cannot interfere with statutory powers conferred upon members of the Committee so as to deprive them of their statutory functions although it might frame a scheme conditional on legislative sanction being obtained for it. AIR 1917 Mad 551 (553, 554) (DB).

(2) Temple Committee has all the powers of Board of Revenue under Bengal Regn. 19 of 1840. It can grant lease of trust property for more than a year. AIR 1922 All 417(418) (DB).

(3) A committee constituted by notification under Section 7 of Act 20 of 1863 can take all steps which

Section 7 - Note 2 (contd.)

may seem to them reasonably necessary for the due preservation of the properties of the institution and the only limitation imposed upon their powers is that they should not unnecessarily interfere with anything that may be described as the existing scheme of management. AIR 1937 Mad 327(329) (DB).

(4) Temple Committee can appoint trustee temporarily — Temporary appointment can be made only in emergent and exceptional cases. AIR 1921 Mad 114(115) (DB).

(5) Madras Hindu Devasthanam Committee created under Act can make appointment of trustee for term of years. Trustee is not servant of committee. AIR 1941 Mad 546 (547, 548) (DB).

(6) A temple committee under Act has discretionary power to appoint additional trustees to a temple under its superintendence and such appointment can only be questioned on the ground that the power was not exercised reasonably and in good faith. AIR 1915 Mad 1067 (1067) (DB).

(7) Committee has power to appoint muttawalli — Muttawalli so appointed is servant of committee — Endowment properties vest in committee and committee can take over management. AIR 1934 Cal 328 (334, 335, 336) (DB).

(8) An insolvent ought not to be appointed to the position of trust; absence of loss during his management does not make appointment proper. AIR 1926 Mad 500(503) (DB).

(9) Committee of Mutt appointed under Section 7 can sue Tahsildar for accounts. (1909) 9 Cal LJ 636 (637) (DB).

(10) Temple originally subject to the Committee of one taluk — Lands assigned to another taluk in revenue distribution — Former committee continues to have jurisdiction AIR 1917 Mad 484(485) (DB).

(11) A trustee of a kattalai or a minor endowment can be removed only by the Court and in a properly instituted suit. AIR 1934 Mad 381(382).

(12) Temple committee cannot dismiss dharmakartha for not voluntarily rendering accounts or failure to furnish security. (1913) 24 Mad LJ 358 (359, 361) (DB).

(13) The power of suspension by Committee of a Trustee of temple is the same as the power of dismissal; where no sufficient enquiry has been made into allegations against trustee and no explanation requires from him, his suspension or dismissal is illegal. (1898) 21 Mad 179(221) (FB).

(14) Powers of temple committee to dismiss trustee are not wider than those possessed by Court under Section 14; burden rests on party justifying dismissal to show that trustee has been dismissed for

good and sufficient cause; procedure for inquiry indicated. AIR 1918 Mad 816 (819, 821) (DB).

(15) In order to give jurisdiction to temple committee to appoint trustee or to file suit requiring accounts from the trustee or directing transfer of property to trustee appointed by them, it must be shown that case fell under Section 3. AIR 1930 Mad 292 (294, 295) (DB).

(16) In a suit by a temple committee for a declaration that the suit temple was subject to its control and should be managed by a trustee appointed by it, the committee must prove that the right of appointing trustee vested in it. AIR 1916 Mad 475(477) (DB).

(17) Status of trustee not that of servant; he can be dismissed only on sufficient grounds and after enquiry into facts, and dismissal not so justified may be set aside by Courts of Law. Mere disobedience of committee's order by trustee in matter of his colleague's taking over charge is not sufficient reason for dismissal. AIR 1940 Mad 823(824).

(18) The person who represents the temple and the properties and in whom they are vested is the trustee appointed by the committee; the committee does not represent the properties of temple and are not entitled to the possession of temple or its properties. AIR 1939 Mad 346(348).

(19) Power of temple committee to frame rules must not infringe on rights of trustees — Any attempt by rules to reduce trustee to position of a servant is ultra vires. AIR 1918 Mad 816 (819, 821) (DB).

(20) An archaka of temple is bound to obey orders of trustee and not those of Committee in those matters. AIR 1920 Mad 551(553) (DB).

(21) Temple Committee have power of general superintendence over endowments for purpose of seeing that endowments are appropriated for purpose for which they are granted; they have also the power of appointing trustees or managers and of calling for accounts from them and scrutinizing them; they also possess the power of calling for budgets every year and of passing them every year with or without modification; but the mere exceeding of budget allotments by trustee or manager is not itself a sufficient ground for compelling trustee or manager to make good the excess amount spent by him though for purpose binding on trust. AIR 1937 Mad 970 (971).

(22) A temple committee has powers of suspending or removing trustees of temple for sufficient cause — Power must be exercised at meeting duly held for the purpose — Order on circulation of papers is illegal — Liability of committee for damages if order of suspension is illegal or ultra vires. AIR 1919 Mad 1182 (1183, 1184, 1185) (DB).

(23) It is only after the gift was made, the donee

8. Qualifications of member of committee.— The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple or other religious establishment.

The appointment of the Committee shall be notified in the Official Gazette.

Ascertaining wishes of persons interested.

In order to ascertain the general wishes of such persons in respect of such appointment, the ^a[State Government] may cause an election to be held, under such rules ^b[by notification in the Official Gazette,] (not inconsistent with the provisions of this Act) as shall be framed by such ^a[State Government].

^b[Every rule framed under this section shall be laid, as soon as it is framed, before the State Legislature.]

[a] Substituted for the words "Provincial Government" by A.L.O., 1950.

[b] Inserted by the Delegated Legislation Provisions (Amendment) Act, 1983 (20 of 1983), section 2 and the Schedule (15-3-84).

9. Tenure of office.— Every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness;

Removal.

and no such member shall be removed except by an order of the Civil Court as hereinafter provided.

10. Vacancies to be filled.— Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided.

Procedure.

The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for

Section 7 - Note 2 (contd.)

constituted himself the shebait. On his death the shebaitship would devolve upon the heirs. AIR 1965 SC 254(256).

(24) Sections 5 and 7 read with the preamble to Regulation 7 and Clause 15 of the Regulation contemplated that the committee can receive and hold property. Hence the dedication of the property and the construction of the temple committee to manage as dharmakartha could not be questioned. AIR 1952 Mad 650(655) (DB).

Section 8

(1) Attempt to narrow terms of section by substituting word "sect" for "religion" is unwarranted. (1899) 9 Mad LJ 173(174) (DB).

(2) Where, at certain election three candidates are to be elected and only three nomination papers are received but one of them is rejected, fresh nomination papers should be called for and meeting should be called for electing three candidates. AIR 1939 Bom 335 (337, 338).

(3) Signature by means of stamp is sufficient where document is required to be signed, and it is not necessary that stamp should be facsimile of signature. Even printed heading of name of the party is sufficient signature if document is written in his hand. Nor is it

necessary that the signature should be at foot of document. AIR 1939 Bom 335(337).

(4) If nomination paper is not valid on the last day fixed for its receipt due to absence of signature of candidate, signature put after that date cannot make it valid. AIR 1939 Bom 335 (337).

Section 9

(1) Improper or unfit person appointed — Remedy for removal is by proceedings equivalent to quo warranto in England. AIR 1916 Mad 268(270) (DB).

(2) Committee appointing undesirable person, e.g., undischarged bankrupt as trustee of rich temple — Committee unfit to carry duties and should be removed from office. AIR 1926 Mad 500(503) (DB).

(3) Section 9 was intended to create a right in favour of a member of Committee and not to deprive him of the liberty of retiring from his office. Member of committee could resign his office at his will. (1882) 6 Mad 114(117) (DB).

SECTION 10 — SYNOPSIS

1. Scope and applicability.
2. Election — Validity.
3. Para 3 — Filling up vacancy by Court.
4. Revision and review.

an election of a new member by the persons interested as above provided, under rules for elections which shall be framed by the [State Government];

and whoever shall be then elected, under the said rules, shall be a member of the committee to fill such vacancy.

When Court may fill vacancy.

If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply; and, if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.

^b[Explanation.— In this section “Civil Court” means the principal Court of original civil jurisdiction in the district in which the mosques, temples or establishments for which the committee has been appointed or any of them are situate.]

[a] Substituted for the words “Provincial Government” by A.L.O., 1950.

[b] Inserted by the Religious Endowment (Amendment) Act, 1925 (21 of 1925), section 3.

STATE AMENDMENT

Uttar Pradesh :

In its application to the State of Uttar Pradesh, for paragraph 2 of section 10, substitute the following, namely :—

“The remaining members of the Committee and, where no members remain, the State Government shall, as soon as possible, give public notice of such vacancy and shall fix a day, which shall not be later than three months from the date of such vacancy, for election of new members by the persons interested as above provided under rules for elections which shall be framed by the State Government.”—U.P. Act 29 of 1951, section 2 (1-1-1952).

1. Scope and applicability.

(1) The object of Section 10 is to prevent a deadlock in case the Committee do not do their duty in holding an election by ordering the remaining members to fill up the vacancy if the Court does not itself do it. AIR 1915 Mad 827 (800, 831) (DB). (On appeal see AIR 1971 PC 71.)

(2) Section 10 refers only to the remaining members of Committee and not to the committee. So it is not the corporate body of the committee that fills up the vacancy but the remaining members. AIR 1937 Mad 597(599).

(3) The qualifications contained in Sec. 8 of Act regarding committee members apply to vacancies filled up under Section 10 of the said Act. AIR 1916 Mad 268(270) (DB).

(4) A person improperly appointed under Section 10 can be removed either by proceedings by quo warranto or by injunction. AIR 1916 Mad 268(270).

(5) The Civil Court has jurisdiction to entertain a suit challenging the appointment of a member of a Committee by the Wakf Board under Section 10 of the Religious Endowments Act as amended by Section 78 of the Bengal Wakf Act. Under Section 10 of the Religious Endowments Act, the Civil Court was the appointing authority in certain circumstances, and all that Section 78 of the Bengal Wakf Act did was to substitute the Wakf Board as the appointing authority in those circumstances. From that change it cannot possibly be inferred that it was the intention of the Legislature to oust the jurisdiction of the Civil Court in all matters arising under Section 10 of the Religious

Endowments Act. Nor is the jurisdiction of the Civil Court in these matters ousted by reason of Section 92 of the Bengal Wakf Act. AIR 1949 Cal 272 (275, 276, 277).

(6) Words “Remaining members” — Interpretation of — Words cannot be construed to mean “a single member” as it would be repugnant in context of other provisions. AIR 1970 Cal 505(510): 75 Cal WN 256.

2. Election — Validity.

(1) Voters list very old — Claims of persons entitled to vote not considered and voters list itself in question — Election invalid. AIR 1927 Mad 462(463) (DB).

(2) Unless there is some provision to the contrary, the validity of the election depends upon the regularity of the procedure according to which it is held and not upon the results, which may by accident be the same if it had been regularly conducted. AIR 1927 Mad 462 (463, 464) (DB).

(3) Court ordering election in a suit by interested persons against remaining members of committee — Petition of Judge by one of committee members. (defendants) to contest validity of election is not maintainable. (1926) 92 Ind Cas 902 (903) (DB) (Cal).

(4) Where there is no quorum, adjournment of meeting is invalid. If no notice of adjournment is given to members adjourned meeting is invalid — Nature of notice required of meeting stated. AIR 1923 Bom 272(273) (DB).

STATE AMENDMENT

Section 10-A :

Uttar Pradesh :

In its application to the State of Uttar Pradesh, after section 10, add the following section 10-A, namely—

“10-A. Subject to the provisions of section 14, every member, whether elected or appointed, under the provisions of section 10 shall hold his office for a period of five years from the date of his election or appointment, as the case may be :

Provided that in the case of a member who was elected or appointed more than four years before the date of commencement of the Religious Endowments (Uttar Pradesh Amendment) Act, 1951, the period as above provided shall be deemed to expire on a date after one year from the said date.”—U.P. Act 29 of 1951, section 3 (17-1-1952).

11. No member of committee to be also trustee, etc., of mosque, etc.—No member of a committee appointed under this Act shall be capable of being, or shall act, also as a trustee, manager, or superintendent of the mosque, temple or other religious establishment for the management of which such committee shall have been appointed.

Section 10 - Note 2 (contd.)

(5) Election to fill up vacancies even though held by majority is without authority of law when no meeting of remaining members is duly or even called for to decide the steps to be taken to fill the vacancy. Such election is illegal and invalid. AIR 1970 Cal 505(511) : 75 Cal WN 256.

(6) Notice of vacancy given in daily newspaper by one of three remaining members — Notice not disclosing the authority by which election was being held — Election held without legal sanction of select body of committee — Due publication of notice does not legalise election otherwise invalid for want of sanction and authority. AIR 1970 Cal 505(511) : 75 Cal WN 256.

(7) Section 78 of the Bengal Wakf Act 1934 amended Ss. 5 and 10 of Act (XX of 1963), in its application to Bengal providing that the powers of Civil Court under the said section shall be exercised in respect of any wakf property by the Board of Wakfs. There is no power or authority entrusted to the Commissioner of Wakfs to cancel any election and direct fresh election by selection by the remaining members. AIR 1970 Cal 505(511) : 75 Cal WN 256.

3. Para 3 — Filling up vacancy by Court.

(1) Where the vacancy has not been filled up by the election within 3 months and the Civil Court orders the vacancy to be filled up by the remaining members, it is they that have to fill up the vacancy; it is to be done by them forthwith without aid or intervention of any other persons. AIR 1917 PC 71(76).

(2) Remaining members are not the committee but are only a select body authorized to fill up the vacancy — Opinion of majority among them is sufficient — They are not specified persons but such members of committee as are still alive. AIR 1937 Mad 597 (599).

(3) Nature of proceeding under S. 10 — Record-

ing of evidence is not obligatory before appointing to a vacancy. AIR 1916 Mad 268(269) (DB).

(4) Neither Rule 94 of the Madras Civil Rules of Practice (Moffusil) as to taking evidence nor S. 141, Civil P.C., has application to proceedings under S. 10 by the District Court for the appointment of a committee member. AIR 1916 Mad 268(269) (DB).

(5) District Judge has no jurisdiction or power to fill in vacancies on the Committee constituted under Religious Endowments Act for waqf of a Dargah which is governed by U.P. Muslim Wakfs Act under the Scheme of the U.P. Muslim Wakfs Act, the control and supervision over the wakf is that of the Wakf Board constituted under S. 10 of the Religious Endowments Act. AIR 1971 SC 1396(1398).

4. Revision and review.

(1) Order of District Court recognising validity of election is an adjudication — Revision lies. AIR 1915 Mad 827(830) (DB).

(2) District Judge exercises judicial functions in making appointment of muttawalli and his orders are subject to revision under S. 115, Civil P.C. AIR 1947 Nag 31(33) ** AIR 1917 PC 71 (74, 75).

[But see AIR 1916 Mad 268(271) (DB). (Proceedings not judicial therefore no revision.)]

(3) A District Judge has no power to review his own decision passed under S. 10. AIR 1919 Mad 244(246) (DB).

Section 11

(1) When an individual member of committee or the committee completely usurps the function of trustees they are liable to Devasthanam for breaches of trust as trustees de son tort and they are entitled to the right of contribution as between themselves. (1912) 23 Mad LJ 278(282) (DB).

12. On appointment of committee, Board and local agents to transfer property.— Immediately on the appointment of a committee as above provided for the superintendence of any such mosque, temple or religious establishment, and for the management of its affairs, the Board of Revenue, or the local agents acting under the authority of the said Board, shall transfer to such committee all landed or other property which at the time of appointment shall be under the superintendence, or in the possession of the said Board or local agents, and belonging to the said religious establishment, except as is herein-after provided for.

Termination of powers and responsibilities of Board and agents.

and thereupon the powers and responsibilities of the Board and the local agents, in respect to such mosque, temple or religious establishment, and to all land and other property so transferred except as above, and except as regards acts done and liabilities incurred by the said Board or agents previous to such transfer, shall cease and determine.

Commencement of powers of committee.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may from the date of such transfer be exercised by such committee to whom such transfer is made.

13. Duty of trustee, etc., as to accounts.— It shall be the duty of every trustee, manager and superintendent of a mosque, temple or religious establishment to which the provisions of this Act shall apply to keep regular accounts of his receipts and disbursements in respect of the endowments and expenses of such mosque, temple or other religious establishment;

and of committee.

and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee, manager and superintendent of such mosque, temple or other religious establishment, the production of such regular accounts of such receipts and disbursements at least once in every year; and every such committee of management shall themselves keep such accounts thereof.

14. Persons interested may singly sue in case of breach of trust, etc.— Any person or persons interested in any mosque, temple or religious establishment, or in the performance of the worship or of

Section 12

WN 256.

(1) Section 15 of Regulation 7 of 1817 of the Madras Code and Section 12 of Act excludes powers of committee to interfere in internal management or in mere matters of ritual or ceremonial. AIR 1920 Mad 551 (552, 553) (DB).

Section 13

(1) Duty of trustee to keep accounts of receipts and disbursements and duty of temple committee to require production of accounts from trustee stated. AIR 1939 Mad 346 (349).

(2) Committee of temple cannot dismiss Dharamakartha for not voluntarily submitting accounts — Committee must call for accounts from him before dismissing him for failure to keep accounts — Committee's illegal order of dismissal not validated by attaching conditions for submitting accounts for reinstatement. (1912) 24 Mad LJ 358(359) (DB).

(3) Decisions that hereditary trustee is not liable to account doubted. AIR 1917 Mad 551 (553) (DB).

(4) Section 13 always refers to the context and on a reading of the entire provisions of the Act, there is no warrant in the proposition that the words "remaining members" in S. 10 would also include "a single member". AIR 1970 Cal 505(510) : (1971) 75 Cal

(5) Sections 13 and 18 refer to such in respect of mosques, temples or charitable establishment in general but these sections do not provide that the mosque, temple or the religious establishment must be only those which are covered by Ss. 3 to 13. The words mosques, temples etc. are of wide import. 1984 All LJ 673 (677) : 1984 All WC 423 (FB). (1889) ILR 11 All 18 not good law.)

SECTION 14 — SYNOPSIS

1. To what endowments the section applies.
2. Scope of suit under section.
3. "Trustee, manager or superintendent".
4. "Appointed under the Act."
5. Neglect of duty.
6. Suit to remove trustee — Scope of.
7. Grounds for removal of trustee.
8. Powers of District Judge.
9. Appeal.
10. Sanction for suit.
11. Alienation of trust property.
12. Alienation of office.
13. Other powers generally of trustees and manager.
14. Trustees and archakas.
15. Other illustrative cases.

the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to, them respectively :

Powers of Civil Court.

and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee,

and may decree damages and costs against such trustee, manager, superintendent or member of a committee,

and may also direct the removal of such trustee, manager, superintendent or member of a committee.

Section 14 (contd.)

1. To what endowments the section applies.

(1) All that is necessary to attract provisions of Ss. 14 and 18 is to show that endowment is of a nature that superintendence of it could vest in the Board of Revenue under Regulation XIX of 1810 if it were in force. AIR 1932 Pat 177 (178, 179) (DB) ** (1896) 18 All 227 (231) (DB). (It is not necessary for the section to be applicable to show that temple was one which was formerly under control of Board of Revenue. 11 All 18 (26) (FB) held to be incorrect and 7 Cal 767, Approved.) ** (1910) 14 Cal WN 1104 (1106) (DB) ** AIR 1934 Cal 741 (743, 744) (DB). (Case law reviewed; Act applies to endowments coming into existence after 1863.)

(2) Section 14 of Act is general and applies to endowments created both before and after 1863. AIR 1925 Pat 544 (546) (DB) ** 1986 All LJ 163 (164) : 1985 All WC 832 ** 1984 All WC 423 (428) : 1984 All LJ 673. ((1889) ILR 11 All 18 (FB) Not good law.)

(3) There is no reason to restrict the applicability of Ss. 14 and 18 of Religious Endowments Act of 1863 only to endowments which were in existence on that date. AIR 1949 All 612 (613) (DB).

(4) Where granthi is to be remunerated from Government grants partly it is public institution and S. 14 will apply to such institution. 1912 Pun LR No. 216, p. 685 (690) (DB).

(5) Provisions of S. 14 are not applicable to temples for maintenance of which no endowment in land has been made. AIR 1932 Oudh 152 (154) (FB) ** AIR 1952 All 358 (359) (DB). (A charge on certain houses for recovery of money due to the temple cannot make it an endowment of land to attract the applicability of S. 14.)

(6) "Any mosque" means not only mosques which were in existence in 1863 but mosques which are now in existence and relating to which Civil Court could give relief. AIR 1930 All 577 (577) (DB).

2. Scope of suit under section.

(1) Object of suit is to protect an endowment from misfeasance, breach of trust or neglect of duty

— Section 14 is applicable. AIR 1925 Pat 544 (546) (DB).

(2) A Civil Court has jurisdiction to try suit brought under S. 14 of the Act. 1910 Mad WN 613 (614) (DB).

(3) Administration of endowment — Mismanagement — Bona fides of committee not questioned — Acts not shown to be detrimental to endowment — No relief can be had against committee under S. 14. AIR 1934 Cal 348 (356) (DB).

(4) Section 14 refers to suit against trustee, manager or member of committee — Relief that can be asked is performance of duty or their removal or award of damages and costs. AIR 1919 Cal 179 (180) (DB).

(5) The legislature could not have intended that where there is a committee appointed under S. 3 which controls the trustee, manager or superintendent, a suit may be instituted not merely against the committee but independently of the committee against the trustee, manager or superintendent for his removal. (1912) 40 Cal 323 (332) (DB).

(6) Relief under S. 14 is different from Section 92. Civil P.C. and appointment of new trustee and framing of scheme can be made under S. 92, Civil P.C. AIR 1925 Pat 544 (546) (DB).

(7) Section 14 only gives jurisdiction to order damages, direct specific performance of duties by trustees and order their removal. Where a claim for damages is given up, a relief that the defendant be ordered to render and explain accounts of the trust property cannot be granted under the power to grant damages. In such a case no Commissioner can be appointed to find out what amounts are due from the defendant to the trust. This relief falls under S. 92 Civil P.C. and is a different relief to that which can be claimed by way of damages under S. 14. Religious Endowments Act. AIR 1961 All 125 (128) (DB).

(8) Suit by member of committee for declaring resolutions to be invalid on the ground of non-service of notice comes under ordinary law. AIR 1926 Cal 583 (584) (DB).

Section 14 - Note 2 (contd.)

(9) Lease by mutawalli — Suit by worshipper to declare invalidity is not within section and only class of suits coming under section is one primarily against trustee, members of committee, e.g., for specific performance, damages, removal, etc. AIR 1919 Cal 179 (180) (DB).

(10) A suit for establishment of right to act as Mutawalli is cognizable by ordinary Civil Court without any preliminary formalities; but it is otherwise where appointment of a trustee has been recognised and it is sought to remove him for breach of trust. AIR 1925 Pat 544 (547) (DB).

(11) Suit under the section is a representative suit; all such interested persons become in the eye of law parties to such a suit. AIR 1928 Mad 614 (619) ** 1985 All LJ 562 (564) : 1985 All WC 262. (Suit does not abate on death of party — Any interested person could continue suit.) ** AIR 1918 Mad 560 (562) (DB). (Suit does not abate on death of any party.)

(12) Suit by managers against pujaris for possession of some temple property and injunction — Ss. 14 and 18 have no application — S. 92, Civil P.C. too has no application. (1955) 8 Sau LR 204 (207).

(13) Where in respect of a religious institution. The dispute was between the rival managing committees and both claim to have been duly elected, the suit by one of the Committees against another under S. 14 of the Act would be maintainable. AIR 1994 All 1 (7, 8) : 1994 All LJ 104.

(14) Where the title of the math to the suit land was already extinguished by adverse possession, held by his election in 1939 the present mathadhipathi could not acquire the right to possess and enjoy or to recover properties which no longer belonged to the trust. AIR 1966 SC 1603 (1606).

(15) Section 14 covers a case of misfeasance, breach of trust or neglect of duty and not a general prayer for accounts. All the dealings of a trustee and not merely instances of misfeasance, breach of trust or neglect of duty are covered by the relief for accounts. The decree shall not be merely for damages and costs but also for the money still in the hands of the trustee. AIR 1966 All 189 (190) : 1965 All LJ 890.

(16) Mosque is public trust — De facto manager is competent to sue on behalf of mosque. (1965) 1 Ker LR 106 : 1965 Ker LT 12 (13).

(17) H creating by a Will a trust for religious purposes — T made manager of Dera along with its properties for carrying out objects of the Dera and effect improvements — T selected for his ability and learning — Panchayat given right to remove him in case he became bad character — Property not to be alienated except for the purposes of the Dera itself — Held, that a public trust for religious purposes was

created by the will. AIR 1970 Punj 182 (189).

(18) Section 94(3)(c) of the U.P. Public Charitable and Hindu Religious Institutions and Endowments Ordinance (16 of 1976) which provides for abatement of proceedings does not apply to proceedings before a Court. So a suit under S. 14 pending at the commencement of the Ordinance could not abate under S. 94 (3) (c). Section 94 (3) (d) of the Ordinance only provided for a forum for suit, appeal or application and further provided that the same forum would be available to suits, appeals or applications pending at the commencement of the Ordinance. Under the Ordinance the present proceeding was saved and did not abate. 1980 UPLT (NOC) 80.

(19) Section 94 of the U.P. Public Charitable and Hindu Religious Institutions and Endowments Ordinance did not repeal the Central Act but merely suspended the operation of the Central Act temporarily. Hence application under S. 14 of the Act made after expiry of the ordinance would be maintainable. 1986 All LJ 163 (165) : 1985 All WC 832.

(20) Where a suit is filed in Civil Court for permanent injunction restraining the defendants from making any construction over the land in suit (a private graveyard and a private Inambara) which is in the nature of Wakf Alalaulad, in which dead bodies of the family of the plaintiffs are buried, the reliefs in the suit could not be said to be covered either by any clauses of S. 92 of the Civil P.C. or by S. 14 of the Act. 1988 All LJ 1323 (1325) : 1988 All WC 1414.

3. "Trustee, manager or superintendent"

(1) The words "trustee, manager or superintendent" of any mosque, temple or religious establishments in S. 14 mean a trustee, manager or superintendent of a mosque, temple or religious institution to which the provisions of Regulation 19 of 1810 would have been applicable if they were in force now. AIR 1934 Cal 741 (744) (DB). (Act applies to endowments of public character though coming into existence after 1863.)

(2) Suit against trustee, manager or superintendent contemplated by S. 14 is suit against trustee, manager or superintendent to whom endowed property has been transferred under S. 4. (1913) 40 Cal 323 (332) (DB).

(3) For the operation of this Act, it is immaterial whether the office of trustee or manager is hereditary or not and in either case, a trustee or manager who misconducts himself and acts contrary to the object of the endowment can be dealt with under the provisions of this Act. (1907) 34 Cal 587 (595) (DB).

(4) A manager of a religious institution is in the same position as an express trustee for purposes of S. 10. Limitation Act. AIR 1935 Mad 483 (485) (DB).

Section 14 (contd.)

4. "Appointed under the Act."

(1) The words "appointed under the Act" in S. 14 apply not only to "the Members of the Committee", but also to the words "trustee, manager or superintendent". AIR 1935 All 273 (276) (DB). (Application for removal of trustee and appointment of another is not governed by S. 14 in absence of members of committee as parties.)

[But see AIR 1949 All 612(614)(DB)** 1971 Sim LJ (Him Pra) 337 (344)** AIR 1934 Cal 741 (741) (DB). (Words "appointed under this Act", in S. 14 refer only to committee. Trustee or manager who can be sued under the Act, therefore, need not be trustee or manager appointed under Act.)]

5. Neglect of duty.

(1) Neglect of duty which justifies removal must be of the same seriousness as misfeasance or breach of trust. AIR 1939 Mad 346 (349, 350).

(2) Person appointed by committee to dharmakartaship need not be of a particular sect, although it is desirable that the Dharmakarta should be of the sect to which temple belongs, it is not a misfeasance or breach of trust or neglect on committee if they do not insist of this qualification in making appointment. (1884) 7 Mad 222 (223, 224) (DB).

(3) Suit by one member of committee against other members for declaration that resolutions passed at certain meetings are ultra vires and invalid — Suit is not for "neglect of duty" by any person with regard to religious endowment. AIR 1926 Cal 583 (584) (DB).

6. Suit to remove trustee — Scope of.

(1) Question of validity of appointment of trustee cannot be gone into — Question that can be dealt with, stated. AIR 1926 Lah 16(17) (DB).

(2) Section contemplates that in a suit under this section Court has not to pass any order against a person who is alleged to have got into management without authority; but the only question to be considered is whether a person in whom property, has been vested should be removed for misfeasance or malfeasance. AIR 1938 Bom 311(314) (DB).

(3) Where plaintiffs in suit are not trustees themselves, and are not entitled to possession of property, they are entitled to sue for removal of trustees without asking for possession themselves. (1911) 21 Mad LJ 450(451) (DB).

(4) Suit was brought against surviving member of committee for his removal for neglect of duty and when he died pending litigation it was held that as relief claimed was personal cause of action did not survive against his heir during litigation. (1913) 40 Cal 223(220) (DB).

(5) Suit for removal of manager of religious institution by a person alleging that the institution is private and founded and maintained by his ancestors, and that he alone has power of appointing and dismissing manager — Ad valorem court-fee and not a stamp of ten rupees is payable. 1912 Pun LR No. 216, p. 685 (687) (DB).

(6) Suit by person appointed by committee as trustee against defendant for his removal — Plaintiff must prove that temple falls under S. 3 and that defendant has no right to manage it, (1909) 6 Mad L Tim 282(283).

(7) The Additional District Judge has no jurisdiction to entertain an application for removal of a trustee under S. 14 of the Religious Endowments Act unless he is empowered in that behalf by the State Government under S. 2 of the C.P. and Berar Courts Act. The provisions of the C.P. and Berar Courts Act cannot justify the passing of such an order when the application for removal is not purported to be made under S. 14 of the Religious Endowments Act but is made in the ordinary jurisdiction of the Additional District Judge in the execution proceedings before him. AIR 1961 Bom 239 (241).

(8) The District Judge, as a principal Civil Court of original jurisdiction, has by virtue of his powers as a Kazi, a general power of nominating or appointing a mutawalli to a mosque, when there is a vacancy in the office in a summary proceeding, i.e., on a mere application; but where the application is for the removal of an existing mutawalli and the appointment of another in his place, it cannot lie. AIR 1947 Nag 31(32).

(9) Suit for removal of manager of temple — Misfeasance, breach of trust and negligence in performance of duties alleged — No land shown to have been endowed for support of temple — S. 14 does not apply. AIR 1979 All 74(82).

7. Grounds for removal of trustee.

(1) Interest of trust not kept in view by defendant and his conduct not being such to inspire confidence — Defendant should be removed from trusteeship — Acts of misfeasance and breach of trust proved — Court may direct removal. AIR 1926 Lah 16(19) (DB).

(2) Grounds for removal of sajjadanashin mutawallis stated — Neglect to repair wakf premises with funds in his hands — Failure to produce accounts not explained. AIR 1934 Pat 443 (450, 453) (DB).

(3) Custom to have member of founder's family as one of trustees — No such member available and plaintiff stranger appointed as trustee — Committee subsequently removing him at meeting and defendant, not member of founder's family appointed in his place — Requirements of meeting not followed —

Section 14 - Note 7 (contd.)

Removal of plaintiff and appointment of defendant, held invalid. AIR 1939 Mad 346(351).

(4) Trustee neglecting duties to be performed under trust, setting up title in himself and selling portions of trust property as his own — Removal of trustee is proper. AIR 1928 PC 106 (107).

(5) Mere disobedience by trustee of committee's directing his co-trustee to take joint charge is not sufficient reason for his dismissal. AIR 1940 Mad 823(824).

8. Powers of District Judge.

(1) When an office of mutawalli falls vacant the District Judge has power in proper circumstances to make an appointment to fill up the vacancy — Power is limited and defined by Ss. 18 and 14 of Act and S. 92, C.P.C. — No power to remove mutawalli in miscellaneous proceedings or to call for rendition of accounts exists. AIR 1938 Pat 537(538).

(2) Temple — Scheme for management framed by decree — Provisions regarding election of trustee, his qualifications for election made — Scheme empowering trustee worshippers or voters of temple to apply to Court for such further directions as may be necessary for carrying out scheme — Worshippers and voters held entitled to apply to Court for determination whether person nominated for election as trustee was eligible — Court has power to determine that question and give directions — Relief asked for need not be provided for in decree or asked for in separate suit — What is misconduct of trustee stated. AIR 1939 Mad 605 (606, 607, 608).

9. Appeal.

(1) Jurisdiction is conferred upon the "Civil Court" to determine matters which fall to be determined under the Religious Endowments Act. Section 14 of the Act expressly uses the word "decree" in regard to the claim for damages and costs. The reliefs which can be granted under S. 14, Religious Endowments Act, would conclusively determine the rights of the parties within S. 2(2), Civil P.C. Hence an order passed under S. 14 amounts to a decree and is appealable. AIR 1961 All 125(129) (DB).

(2) Scheme providing for District Judge exercising control over management — His orders are final not subject to appeal. AIR 1927 Bom 422(423) (DB).

(3) Suit by two members of committee challenging election of other members — Death of one plaintiff — Appeal from decree in suit is not incompetent in absence of deceased plaintiff — Right of remaining plaintiff subsists — Substitution of deceased plaintiff is not necessary. AIR 1970 Cal 505 (509): 75 Cal WN 256.

10. Sanction for suit.

(1) The sanction of the Board is required under

S. 5(2) of the Wakf Act, 1954 only in respect of suits of the nature contemplated under S. 55(1) i.e. suits falling within the scope of S. 92, C.P.C. or S. 14 of the Religious Endowments Act. There is no need to obtain the leave or consent for filing a suit in respect of a private trust or private wakf. (1971) 84 Mad LW 83(84).

(2) Application by any person or authority other than Board for sanction of Collector under S. 93, Civil P.C. for institution of suit under S. 92 against trustees of Wakf — Maintainable — Sanction of Board required under S. 55(2) of the Wakf Act, 1954 is in addition to that required under S. 92, Civil P.C. AIR 1962 Ker 343 : 1962 Ker LT 544 (FB).

(3) If the suit in respect of public and private waqfs is filed for any of the reliefs mentioned in S. 14 of the Act and S. 92 of the Civil P. C., then such a suit is not maintainable by any person or authority other than the Board unless the consent of the Board in writing has been obtained. 1987 All LJ 920(921): 1987 All WC 1125.

11. Alienation of trust property.

(1) Manager of endowed property has authority to alienate or mortgage endowed property if an occasion should arise when it becomes necessary in the interest of the endowment to do so; he has authority to charge or sell endowed property if it is necessary to perform the Sradh of a deceased mahant and there are not sufficient funds for that purpose. AIR 1924 Pat 611 (612) (DB).

(2) A mahant can grant a permanent lease of math lands provided such a settlement is made in the ordinary course of management. AIR 1938 Pat 613 (618) (DB) ** AIR 1941 Pat 354 (358, 359) (DB). (Properties appertaining to asthal necessarily mean properties of deities presiding in asthal — Alienation by mahant — Necessity — And benefit of estate — Conditions stated.)

(3) A mahant is at liberty to dispose of property of mutt during the period of his life. AIR 1933 PC 75 (78) ** AIR 1934 Lah 964 (965) (DB). (Powers of mahant to make compromise creating an interest in trust property beyond his lifetime — Powers discussed.)

(4) A trustee of a temple can validly grant a lease of temple lands for building purposes for a period of 21 years with an option for the tenant to renew it for a like period at an enhanced rate. AIR 1924 Mad 731 (735) (DB).

(5) Mourasi Mokarrari patta or lease granted by shebait at fixed rent in perpetuity — Claim by succeeding shebait for enhancement of rent — Patta not challenged by succeeding shebait for large number of years — Inference of legal necessity. (1936) 63 Cal LJ 22 (24, 25).

Section 14 - Note 11 (contd.)

(6) Shebait gomasta of debuttar property is not competent to grant permanent lease at a fixed rent unless it be for imperative legal necessity for the benefit of estate. It must also be shown that the entire amount raised as salami was necessary to meet the actual pecuniary pressure on the estate and that amount actually required for meeting pressing needs could not be raised by a lease for a term even in perpetuity at a variable rent. AIR 1936 Cal 256 (258).

(7) All shebait constitute one body in the eye of law — Even the act of majority can bind neither the dissentient minority nor the debutter estate — No valid title can pass on a transfer of any right by a shebait unless the act was done with the sanction and approval of all the co-trustees. (1964) 68 Cal WN 532 (535).

(8) Public trust created by Will — Manager appointed — Manager not competent to alienate the property of the trust — Manager could not make a gift of the property in favour of his Chela. AIR 1970 Punj 182 (189).

12. Alienation of office.

(1) Alienation of office of archaka to one in line of heirs not for consideration and not in any way opposed to or inconsistent with the interest of the institution is not invalid. AIR 1935 Mad 220 (226, 227) (DB). (Where a principal deity is worshipped at a shrine, a number of other idols are placed there and have benefit of that worship; it is not usual to regard them as objects of independent mirasi rights of worship.)

(2) Transfer of office of trustee by Board and Committee in return for present payment of certain amount and annual contribution of certain sum is opposed to public policy. AIR 1938 Mad 713 (714) (DB).

(3) Office of mutawalli is neither heritable nor transferable in the absence of any provision in wakfnama; Mutawalli has no right to appoint his successor in his own lifetime and in health and withdraw from management while in good health unless his powers are general. In suit for possession of wakf property from trespasser where its wakf nature is denied, all mutawallis must join. AIR 1935 Cal 623 (624, 625).

(4) An alienation or release or renunciation of an office of a trustee not for value in favour of next or immediate heir is valid; otherwise it is invalid. AIR 1941 Mad 552 (556).

(5) Alienation of office at whim of any particular holder not allowed. AIR 1942 Mad 485 (486) (DB).

(6) Hereditary religious offices are inalienable

and no custom qualifying the principle can be upheld. AIR 1935 Mad 5(6) (DB).

13. Other powers generally of trustees and manager.

(1) Mutawalli appointed by Committee — Property vests in committee and not in mutawalli — Committee can sign cheques — Committee entrusted with administration of endowment has full power to incur expenditure necessary for purpose of management. AIR 1934 Cal 348 (351, 353).

(2) Delegation to a committee of trustees by all the trustees of powers of management is not invalid. AIR 1934 Mad 672 (673).

(3) Expenditure on festivals by trustees in temples should not be wholly guided by considerations similar to expenditure by guardians for minors' necessities or benefit; distinction in their nature stated and trustees' powers regarding expenditure on festivals stated. AIR 1937 Mad 970 (972).

(4) Decision of majority of trustees of public trust binds minority in matters connected with management of trust property but does not bind them in regard to matters which are ultra vires. (1909) 19 Mad LJ 513 (515) (FB).

(5) Suit to recover endowed property — Public endowment — Suit to recover property alienated by Shebait — Suit can be instituted by person who is shebait at time of institution of suit and not by the prospective shebait. AIR 1938 Pat 394 (395).

(6) Person managing affairs of institution and treated as mahant by all persons — Property entered in his name in revenue records — Such person is entitled to recover for benefit of mutt, property which belonged to mutt but has been held by trespassers. AIR 1935 PC 44 (45).

(7) The mere fact that a man professes to act as mutawallis does not entitle him to institute a suit for recovery of possession of wakf properties from one who may have wrongfully acquired possession of it. AIR 1927 Cal 130 (135, 136) (DB). (The office of mutawalli being a hereditary one, suit to oust a person from such office is regulated by Art. 120, Limitation Act, and a person not ousted within six years gets indefeasible title to it.)

14. Trustees and archakas.

(1) Archakas of subordinate temple openly setting up exclusive right to possession and management of temple adverse to right of management of trustees — Trustees have no right to interfere with the said management except to exercise a general supervision over them and have no right to oust them. AIR 1940 Mad 208 (209).

15. Nature of interest entitling person to sue.— The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple or religious establishment, or partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

16. Reference to arbitrators.— In any suit or proceeding instituted under this Act it shall be lawful for the Court before which such suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators.

Act 10 of 1940 applied.

Whenever any such order shall be made, the provisions of "[Chapter IV of the Arbitration Act, 1940] shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under "[section 21 of the said Act].

[a] Substituted for "Chapter VI of the Code of Civil Procedure" by the Arbitration Act, 1940 (10 of 1940), section 49 and Sch. IV (1-7-1940).

[b] Substituted for the words and figure "Section 312 of the said Code", *ibid*.

17. Reference under Act 10 of 1940.— Nothing in the last preceding section shall prevent the parties from applying to the Court, or the Court from making the order of reference, under the said "[section 21 of the Arbitration Act, 1940].

[a] Substituted for the words and figure "Section 312 of the said Code of Civil Procedure" by the Arbitration Act, 1940 (10 of 1940), section 49 and Sch. IV (1-7-1940).

18. Application for leave to institute suits.— No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit, "[* * *].

The Court, on the perusal of the application, shall determine whether there are sufficient *prima facie* grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution.

Costs.

"[* * *] If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.

Section 14 - Note 14 (contd.)

(2) An arrangement by which archakas are remunerated by share of offerings is not by any means detrimental to interests of institution; arrangement is not in the nature of a "lease" because collection is made by temple authorities themselves and a portion only is handed over to the archakas. AIR 1935 Mad 220 (228) (DB).

(3) Offerings at the worship in temples belong to archakas — Cash offerings during processions of idol belong to archakas and other surplus offerings to those who carry the idol at time of the procession. 1937 Mad WN 975 (976).

(4) A pujari is appointed by the founder to conduct the worship of the deity. He cannot claim better rights and also cannot resist the suit of a *de facto* shebait for his removal specially when he is setting up a title in himself with respect to a portion of temple premises. 1972 All WR (HC) 98 (99).

15. Other illustrative cases.

(1) Suit against mutawallis — Inam granted to

them for the performance of religious services — Service-holder is not liable to account — Trust property is divisible among such holders for better convenience. AIR 1922 Mad 8 (9) (DB).

(2) Practice of certain institution cannot be presumed from practice prevalent in majority of religious institutions — Rule of practice should be collected from its own constitution or practice as proved in evidence. AIR 1941 PC 56 (61).

(3) Where shebait of an idol is disqualified to manage property or idol, idol being under a perpetual disability the Court of Wards can take over its management. Compromise by manager of Court of Wards, in whose hands management of property is placed, which is not for benefit of idol, is bad. AIR 1941 Pat 260 (266) (DB).

SECTION 18 — SYNOPSIS

1. Sanction to sue.
2. Para 2.
3. Appeal and revision.
4. Costs.

- [a] The words "The application may be made upon unstamped paper", were omitted by the Court-fees Act, 1870 (4 of 1870), section 2 and Sch. III.
- [b] The words "in calculating the costs at the termination of the suit, the stamp duty on the preliminary application shall be estimated, and shall be added to the costs of the suit" were omitted, *ibid*.

Section 18 (contd.)

1. Sanction to sue.

(1) A trust governed by the Religious Endowments Act requires sanction under S. 18. Even if no such sanction is necessary, where other persons are interested plaintiff cannot sue without permission under O. 1, Rule 8 or S. 92, C. P. Code. (1910) 8 Mad LTim 357 (358) (DB).

(2) Sanction to institute a suit against trustees managers etc. in their capacity as such trustees is necessary under S. 18. (1910) 11 Cri LJ 192 (192) (Mad).

(3) Person electing to proceed under the Act can be given only such special relief as that special statute provides for and if he wishes for any special relief beyond that, he should proceed u/S. 539, C. P. Code — Suit for scheme and removal of trustees — Sanction of Advocate-General and not of Court necessary. AIR 1917 Cal 835 (836) (DB) ** (1911) 12 Mad LJ 450 (451) (DB).

(4) Suit for individual worshipper against trustee is competent without sanction under S. 92 where his individual rights are infringed — Consideration relevant in such suit stated. AIR 1927 Mad 554 (555) (DB).

(5) Persons having interest in temple can sue for declaration that trustee must carry out certain duties and no sanction is necessary for such suit. AIR 1917 Mad 868 (870).

(6) A trustee of a religious endowment constituted under the Act can sue his co-trustee for a breach of trust even without sanction under S. 18. The right to sue is given by the general law and is independent of the provisions of this Act. (1909) 19 Mad LJ 513 (514) (DB).

(7) Section 18 confers very wide powers on the District Judge — His discretion cannot be rightly interfered with. AIR 1916 Mad 384 (384) (DB).

(8) Permission to file suit — Grant of — Court need not express its final opinion on controversies raised — His satisfaction that prima facie grounds exist for filing suit is sufficient. 1986 All LJ 163 (165) : 1985 All WC 832.

(9) In suit against sajjadanashin and mutawalli of religious endowment charging him with not having discharged his duties the plaintiffs are entitled to proceed under S. 18 of Act or under wider alternative of S. 92, Civil P. C. AIR 1934 Pat 443 (446) (DB).

(10) Act applies to endowments of public character though coming into existence after 1863 — Trustee or manager need not be appointed under Act; and

leave can be granted under S. 18 to sue trustee or manager of such endowments. AIR 1934 Cal 741 (741, 742, 744) (DB) ** AIR 1949 All 612 (613).

(11) In order to attract provisions of Ss. 18 and 14, all that is necessary is to show that the endowment is of a nature that the superintendence of it could vest in the Board of Revenue under Regulation 10 of 1810 if it were in force. AIR 1932 Pat 177 (179) (DB).

(12) Leave once refused may be subsequently granted on fresh partition. (1911) 2 Mad WN 167 (167).

(13) Section 18 is very similar to S. 195, Criminal P.C. and differs from S. 92, C.P.C. — Distinction in grant of sanction under different sections explained. AIR 1918 Mad 560 (561, 562) (DB).

(14) Sanction when given to two persons, one of them cannot sue without getting the sanction amended. AIR 1915 Mad 127 (127, 128) (DB).

(15) Suit for appointment of proper persons as trustees after removal of present trustees and for a scheme — Suit maintainable with sanction under S. 539, C.P.C. and no leave under S. 18 is necessary. AIR 1917 Cal 835 (836) (DB).

(16) Suit brought by the general trustee of a temple against a subordinate trustee or katalaidar for the recovery of the balance of the amount due by defendant under the terms of his trust and not paid by him to the temple — Sanction necessary under S. 92(d), C.P.C. if it be sought to recover it by way of damages, then the suit falls under S. 14 of the Religious Endowments Act, and is bad for want of the sanction required by S. 18 of the same. AIR 1921 Mad 479 (479) (FB).

(17) Fact that application for leave to sue made no mention of Act and that all plaintiffs in suit under section were not applicants do not constitute defects vitiating Court's order for removal of defendant trustee from managership. 1900 Punj Re No. 95, p. 386 (389) (DB).

(18) This section does not apply to a suit by the managers against the pujaris for the possession of some temple property and injunction. (1955) 8 Sau LR 204 (207).

(19) Sections 18 and 14 apply to any mosque, temple or religious endowments created after 1863. (1889) ILR 21 All 18 (FB) held did not lay down correct law. 1984 All LJ 673 : 1984 All WC 423 (428) (FB) ** 1986 All LJ 163 (164) : 1985 All WC 832.

(20) Sections 13 and 18 refer to suits in respect of mosques, temples and religious establishments in

19. Court may require accounts of trust to be filed.— Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may order the trustee, manager or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part thereof as to the Court may seem necessary.

20. Proceedings for criminal breach of trust.— No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

21. Cases in which endowments are partly for religious and partly for secular purposes.— In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character,

or in which the endowment made for the support of an establishment is, appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence of the trustee, manager or superintendent, or of the committee,

and also what annual amount, if any, shall be charged, on the land or other property which may be so transferred to the superintendence of the said trustee, manager or superintendent, or of the committee, and made payable to the said Board or to the local agents, for secular uses as aforesaid.

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

Section 18 - Note 1 (contd.)

general, and these are not restricted to those used in Ss. 3 to 13. These words in Ss. 13 and 18 are of wide import. 1984 All LJ 673 (677) : 1984 All WC 423 (FB).

(21) "Kshetra" is for a charitable purpose. If in the discharge of its functions acts of non-feasance or misfeasance are attributed to authorities concerned the Kshetra being registered under Societies Registration Act, the remedy cannot lie under S. 18. 1982 All LJ (NOC) 11.

(22) Sanction to sue under S. 18 — Granted to two persons — Suit filed under S. 14 could not abate even on demise of both original plaintiffs — Any interested person can continue it — Fresh sanction under S. 18 not necessary. 1985 All LJ 562 (564) : 1985 All WC 262.

2. Para 2.

(1) Application for leave to sue must specify charges. AIR 1924 Mad 644 (645) (DB).

(2) The District Judge can make preliminary enquiry as to the contents of the petition before passing an order under S. 18; he is not bound to act on mere perusal of the petition. (1910) 7 Mad LT 126 (126) (DB).

(3) No elaborate enquiry is necessary or essential under S. 18 of the Act. AIR 1930 All 577 (577) (DB).

(4) A sanction, in general terms giving leave to sue any or all the respondents leaving the petitioner to choose which of them they will proceed against, is improper. AIR 1924 Mad 644 (645) (DB).

(5) While an application has to be presented before the District Judge, it could be transferred and heard by an Additional District Judge who has been assigned the disposal of the application by the District Judge. AIR 1972 All 355 (357) : 1972 All WR 156.

3. Appeal and revision.

(1) Order refusing leave to institute a suit under Act is not appealable. AIR 1925 Pat 138 (139) (DB).

(2) Order of District Judge under S. 18 of Act is not open to revision under S. 622 (old) C.P.C. (1910) 7 Mad LT 126 (126) (DB).

(3) While giving permission under S. 18 to file a suit under S. 14 the trial Court gave a finding that circumstances casted a cloud on the title of the trust property and created obstacles in the proper functioning of the trust no interference was called for in revision under S. 115, C.P.C. 1982 All LJ 546 (548) : 1982 All WC 194.

4. Costs.

(1) Costs of sanction petition would ordinarily be allowed if it is bona fide. AIR 1916 Mad 384 (384, 385) (DB).

22. Government not to hold charge henceforth of property for support of any mosque, temple, etc.— Except as provided in this Act, it shall not be lawful [* * *] for [the Central Government or any State Government], or for any officer of any Government in his official character,

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment, or

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other establishment, or

to nominate or appoint any trustee, manager or superintendent thereof, or to be in any way concerned therewith.

[a] The words "after the passing of this Act" were omitted by the Repealing Act, 1874 (16 of 1874), section 1 and Sch.

[b] Substituted for the words "any Government in India" by A.C.A.O., 1948 (23-3-1948).

STATE AMENDMENT

West Bengal :

In its application to the State of West Bengal, to section 22, the following proviso shall be added, namely,—

"Provided that this section shall not so far as it is inconsistent with the provisions of the Bengal Wakf Act, 1934, apply to any wakf property in Bengal."—Beng. Act, 13 of 1934, section 77 (19-7-1934).

23. Effect of Act in respect of Regulations therein mentioned, and of buildings of antiquity, etc.— Nothing in this Act shall be held to affect the provisions of the "Regulations mentioned in this Act, except insofar as they relate to mosques, Hindu temples and other religious establishments; or to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said regulations, to prevent injury to and preserve buildings remarkable for their antiquity, or for their historical or architectural value, or required for the convenience of the public.

[a] Namely, the Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1870 (Ben. Regn. 19 of 1810), and Madras Endowments and Escheats Regulation, 1817 (Mad. Regn. 7 of 1817).

STATE AMENDMENT

Section 23-A :

West Bengal :

In its application to the State of West Bengal, after section 23, the following section shall be inserted, namely :—

"23-A. Powers of Civil Court to be exercised by the Board of Wakfs in Bengal.— Notwithstanding anything contained in this Act, the powers of the Civil Court under sections 5 and 10 shall be exercised in respect of any wakf property in Bengal by the Board of Wakfs appointed under the Bengal Wakf Act, 1934."—Beng. Act 13 of 1934, section 78.

24. "India".— [Repealed by A.C.A.O., 1948.]

Section 23-A (West Bengal)

(1) There is no power or authority entrusted to the Commissioner of Wakfs to cancel any election and direct fresh election by selection by the remaining members. In view of S. 23-A, the Board of Wakfs and

not the Commissioner is competent to hold that there was no election within the statutory period and to appoint a person to fill the vacancy. Illegal acts of Commissioner though ratified by Board cannot be sustained. AIR 1970 Cal 505 (506) : 75 Cal WN 256.

- While TDR refund requests are filed & registered on IRCTC website www.irctc.co.in, they are processed by Zonal Railways as per Railway Refund Rules.(detail available on www.irctc.co in under heading General Information.
- In premium special train cancellation is not allowed.
- Confirmed ticket can be cancelled upto thirty minutes before scheduled departure of the train. However, no refund shall be granted on cancellation of confirmed ticket after four hours before the scheduled departure of train.
- RAC/partially confirmed Ticket can be cancelled upto thirty minutes before scheduled departure of the train. However, refund will be granted as per provisions of extant Railway Refund Rule.
- In case, on a party e-ticket or a family e-ticket issued for travel of more than one passenger, some passengers have confirmed reservation and others are on RAC or waiting list, full refund of fare, less clerkage, shall be admissible for confirmed passengers also subject to the condition that the ticket shall be cancelled online or online TDR shall be filed for all the passengers upto thirty minutes before the scheduled departure of the train.
- For Suvidha Train, only 50% refund is allowed in case of cancellation of Confirm/RAC tickets upto 6 hours before the scheduled departure of the train or preparation of chart whichever is earlier.
- In case of Train Cancellation, full refund will be granted automatically by the System. However, if the train is cancelled partially on its run, passengers are required to file TDR within 72hrs from schedule departure of the train from the passenger's boarding station.
- Passengers are advised not to carry inflammable/dangerous/explosive/articles as part of their luggage and also to desist from smoking in the trains.
- Contact us on: 24*7 Hrs Customer Support at 95553-95553 or www.paytm.com/care.
- Variety of meals available in more than 1500 trains. For delivery of meal of your choice on your seat log on to www.ecatering.irctc.co.in or call 1323 Toll Free. For any suggestions/complaints related to Catering services, contact Toll Free No. 1800-111- 321 (07.00 hrs to 22.00 hrs)
- Railway Security Helpline No.182
- ALL India Passenger Helpline no 138
- PNR and train arrival/departure enquiry no. 139
- To report unsavoury situation during journey, Please dial railway security helpline no. 182
- All the Terms and conditions specified will be applicable in case of opting Travel Insurance facility. Please Refer Travel Insurance -> Terms & Conditions available on Home page of www.irctc.co.in website.
- Never purchase e-ticket from unauthorized agents or persons using their personal IDs for commercial purposes. Such tickets are liable to be cancelled and forfeited without any refund of money, under section (143) of the Indian Railway Act 1989. List of authorized agents are available on www.irctc.com E-Ticket Agent Locator
- Contact us on: 24*7 Hrs Customer Support at 95553-95553 or www.paytm.com/care.

General Rules/ Information for E-ticket passengers

a) Status of E-tickets after Chart preparation :

1. Confirmed E-ticket -E-ticket where all passengers are confirmed.
2. Partially waitlist/Confirmed/RAC E ticket -E-ticket where some passengers are confirmed/ RAC and other wait-listed.
3. Fully waitlisted E tickets -E-ticket where all passengers are waitlisted.

b) Authorization to board the train :

1. Passengers with confirmed E ticket are permitted to board the train. Their names will appear on the reservation chart.

c) Name of passengers with Partially Waitlisted /Confirmed/RAC will appear on the chart (including the waitlisted passengers in the partially waitlist ticket).

d) Cancellation & refund rules :

1. Confirmed E-ticket before chart preparation: E-ticket can be cancelled online and the amount will be refunded electronically to the respective agent's account used for booking.
2. Confirmed E-ticket after chart preparation: Cancellation/ Refund request received after preparation of chart are forwarded by IRCTC to concerned railway for manual processing. Refund amount received from concerned railway will be credit back to the respective agent's account used for booking by IRCTC.
3. Partially waitlisted E-ticket before chart preparation: E-ticket can be cancelled online and the amount will be refunded electronically to the respective agent's account used for booking.
4. Partially waitlisted E-ticket after chart preparation: E-ticket cannot be cancelled online after chart preparation. Partially waitlisted e-ticket holder where part passengers have travelled and want to claim refund for passengers who have not travelled is required to send the original certificate issued by TTE / Conductor in lieu of the same to IRCTC after filing online refund request through the respective agent. The partially waitlisted e-ticket holder where no passengers have travelled & wants to claim refund is required to file online refund request through respective agent. It would then be forwarded to concerned railway and refund received from Railways would be credited back electronically to the respective agent's account used for booking by IRCTC.
5. If the ticket is partially waitlisted/ Confirmed/ RAC at remote location chart preparation then E-ticket cannot be cancelled online. It is required to file refund request online for claiming refund through the respective agent. It would then be processed offline and refund received from Railways would be credited back electronically to the respective agent's account used for booking by IRCTC.

e) Dynamic fare pricing:

Dynamic fare stands for the fare component which may be increased with the subsequent bookings in Premium special train.

1. No concession shall be applicable on this train.
2. Only end to end, GN quota bookings will be applicable.
3. Cancellation is not allowed. However, ticket can be cancelled and full refund is admissible if the train is cancelled by Indian Railways.
4. For any reason, if berth cannot be given to passenger by Indian Railways on booked PNR, full refund shall be granted to the passenger through TDR.
5. Agents will not be allowed to book tickets in trains with dynamic pricing.

f) If train is cancelled, E-ticket can be cancelled online up to 3 days from the date of departure of the train through the respective agent's account used for booking.

g) Bank charges, if any, will be payable extra. (For details of bank charges kindly refer to Terms and Conditions on www.irctc.co.in)

h) The Compartment/ Cabin/ Coupe/ Coach/ Seat numbers for first AC and First class will be allotted at the time of chart preparation.

i) The customer who has opted for auto-up gradation during booking of his/her e-ticket is requested to check the up-gradation chart before boarding the train.

j) IRCTC Service Charge for E-Ticket (Incl. of GST)- Non-refundable:

Class	Service Charge
SL/2S	0
1AC/2AC/3AC/CC/3E/FC	0

k) Agent(Paytm) Service Charge for e-ticket (Incl. of GST)- Non-refundable:

Class	Service Charge
SL/2S	0
1AC/2AC/3AC/CC/3E/FC	0

Customer Support- Contact us at 95553 95553 or www.paytm.com/care

THE OUDH LAWS ACT, 1876¹

(ACT NO. XVIII OF 1876)

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1. For S. O. R., see Gaz. of I., 1873, Pt. V, p. 493; for R. S. Com., see *ibid*, 1876, Pt. V, p. 713; and for Proceedings in Council, see *ibid*, 1871, Supple-

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(AMENDED BY U. P. ACT XXIV OF 1954)

*Adapted and modified by the Government of India (Adaptation of Indian Laws) Order, 1937, and the Supplementary Order, 1937.**Adapted and modified by the Adaptation of Laws Order, 1950, A. O. (No. 2) of 1956.**[Received the assent of the Governor-General on the 10th October, 1876]**An Act to declare and amend the laws to be administered in Oudh***Preamble.**—Whereas it is expedient to declare and amend the laws to be administered in Oudh ; It is hereby enacted as follows :

PART I

PRELIMINARY

1. Short title.—This Act may be called the Oudh Laws Act, 1876.**Local extent.**—It extends only to * * *² Oudh ; and it shall come into force on the passing thereof.**Scope.**—The object of the Act is to do away with the nebulous state of law by laying down definite, certain and clear rules in a codified form.³ The general principles of universal application cannot be ignored,⁴ but the Act cannot be construed in the light of Mohammedan Law in matters of pre-emption,⁵ so as to exclude strangers.⁶**2. Commencement.**—[*Repeal of enactments.*] *Rep. by Act I of 1938, S. 2 and Schedule.*

PART III

GENERAL LAW TO BE ADMINISTERED IN OUDH

3. Statutory law to be administered in Oudh.—The law to be administered by the Courts of Oudh shall be as follows :

(a) the laws for the time being in force regulating the assessment and collections of land-revenue ;

(b) in questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family-relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—

(1) any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment, altered or abolished, and has not been declared to be void by any competent authority :

(2) the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, except in so far as such law has been, by this or any

2. The words "the territories for the time being administered by the Chief Commissioner of" omit. by the A. O. 1937.

3. *Gaya Prasad v. Faiyaz Husain*, 7 O W N 622.

4. *Mohammad Ibrahim and others v. Zahur Ahmad*, 8 O W N 688.

5. *Basdeo and others v. Indar Bikram Singh*,

7 O W N 835.

6. *Ibid.*

7. The provisions of this section have been rep. in so far as they are inconsistent with the Muslim Personal Law (Shariat) Application Act, 1937, (Act XXVI of 1937), S. 6.

other enactment, altered or abolished, or has been modified by any such custom as is above referred to ;

- (c) the rules contained in this Act ;
- (d) the rules published in the [official *Gazette*]⁸ as provided by Section 40, or made under any other Act for the time being in force in Oudh ;
- (e) the Regulations and Acts specified in the second schedule hereto annexed, subject to the provisions of Section 4, and to the modifications mentioned in the third column of the same schedule ;
- (f) subject to the modifications hereinafter mentioned, all enactments for the time being in force and expressly, or by necessary implication, applying to ⁹[territories which, immediately before the 1st November, 1956, were comprised in the States of Punjab and Delhi] or Oudh or some part of Oudh ;
- (g) in cases not provided for by the former part of this section, or by any other law for the time being in force, the Courts shall act according to justice, equity and good conscience.

Scope.—If a case is not provided for by any part of the section or any law in force, the Court may act under clause (g) and apply doctrines of English law.¹⁰

Custom.—Custom prevails over Mohammedan Law.¹¹ The plea of custom may be entertained in modification of personal law but not in entire abrogation of it.¹²

Trust, if gift.—The word gift in this section includes trust, the incidents of which will be governed by the Mohammedan Law.¹³ The restrictions regarding transfer to stranger is valid.¹⁴

4. Validity of local customs and mercantile usage.—All local customs and mercantile usages shall be regarded as valid, unless they are contrary to justice, equity or good conscience, or have, before the passing of this Act, been declared to be void by any competent authority.

Judicial Notice.—The Court may take judicial notice of a customary right of privacy in Oudh.¹⁵

PART III

CHAPTER I

DOWER AMONG MUHAMMADANS

5. Muhammadan dower contracts how to be enforced.—Where the amount of dower stipulated for in any contract of dower by a Muhammadan is excessive with reference to the means of the husband, the entire sum provided in the contract shall not be awarded in any suit by decree in favour of the plaintiff, or by allowing it by way of set-off, lieu or otherwise to the defendant, but the amount of the dower to be allowed by the Court shall be reasonable with reference to the means of the husband and the status of the wife.

Rule applicable after husband's death.—This rule shall be applicable whether the suit to enforce the contract be brought in the husband's lifetime or after his death.

8. Subs. for [Local official *Gazette*] by the A. O. 1937.

9. Subs. by the A. O. (No. 2) of 1956.

10. *Raghuraj Singh v. Bhagwat Kuar and another*, 2 O C 239, see also 9 O C 227.

11. 1936 O W N 1123.

12. *Mitra Sen Singh v. Maqbul Hasan and others*, 4 O W N 1243.

13. 19 O C 192 ; 25 O C 291 ; *Hashim Ali Khan v. Sadiq Husain Khan*, 14 O C 356.

14. *Mohammad Raza v. Musammat Abbas Bandi*, 1932 P C 158=59 I A 236.

15. 13 O L J 512 ; *Bagridi and others v. Rahim Bux*, 1926 O 352.

Scope.—The section is confined in its application to Oudh, and therefore if a marriage contract is entered into at Lucknow no suit for dower would lie at Meerut.¹⁶ If amount is fixed by decree of competent court outside Oudh, the question cannot be reopened in Oudh Courts.¹⁷ Means of husband and status of wife and the fact that they left no children may be considered in determining dower.¹⁸ No hard and fast rules can be laid down on which to assess the amount except the broad principles mentioned in the Section.¹⁹ The position of wife is that of a creditor.²⁰

Means of Husband.—Refers to the position of the husband at the time of suit, not at the time the contract was entered into.²¹ It also signifies the value of the husband's estate at the time of his death in cases in which a claim is made by the widow.²² The means of the husband's father may be taken into account if the husband gets his subsistence allowance from parents.²³ Heritable *wasika* may be taken into account.²⁴ The extent and nature of the claims of various persons who as heirs are entitled to divide the estate should also be taken into consideration;²⁵ e. g. where dower is fixed at Rs. 25 lacs and the estate is worth Rs. 19 lacs, award of one lac is reasonable and sufficient.²⁶

CHAPTER II

PRE-EMPTION

6. Right of pre-emption.—The right of pre-emption is a right of the persons hereinafter mentioned or referred to, to acquire, in the cases hereinafter specified, immovable property in preference to all other persons.

Scope.—The words in the cases hereinafter specified show that the right of pre-emption is limited to the cases specified in the sections which follow.²⁷ In the case of a town lands outside *abadi* are subject to pre-emption.²⁸ The right of pre-emption is given to co-sharers whether their names are or not recorded.²⁹ Previous denial of title does not deprive a person of his right of pre-emption.³⁰ The right of pre-emption is a right to acquire immovable property in preference to all other persons.³¹

Agreement of repurchase.—A property is sold and simultaneously an agreement to repurchase is executed. The property is subject to pre-emption.³²

7. Presumption as to its existence.—Unless the existence of any custom or contract to the contrary is proved, such right shall, whether recorded in the settlement-record or not, be presumed—

(a) to exist in all village-communities, however constituted, and whether proprietary or under-proprietary, and in the cases referred to in Section 40 of the Oudh Land Revenue Act,³³ and

(b) to extend to the village-site, to the houses built upon it, to all lands and shares of lands within the village-boundary, and to all transferable rights affecting such lands.

Scope.—This section raises a presumption as to the existence of the right of pre-emption in all village-communities. The true test, therefore, is to determine whether a village community continues to exist. If it does, the custom will still be presumed even though a

16. 32 A 477.

17. 15 O C 127.

18. 10 O L J 409.

19. *Abdul Rahman Khan v. Mt. Inayati Bibi*, 1931 O 63=7 O W N 1181.

20. *Bansidhar v. Mt. Nawab Jahan Begam*, 1937 O W N 1176=1938 O 44.

21. *Naurozi Musammam v. Mahammad Noor Khan*, 5 O W N 1031; 7 O W N 1181.

22. 19 O C 246.

23. 55 I C 441.

24. *Syed Ahmad Raza Khan v. Mirza Ali Husain and others*, 7 O C 176; but see 10 O C 241.

25. *Mt. Alia Bibi v. Mt. Amalia Bibi*, 1926 O 128.

26. I O L J 281.

27. *Bajinath v. Mahabir Prasad*, 1937 O W N 1202=1938 O 37.

28. *Rauf Ahmad v. Fahmida Begam*, 1943 O W N 395; *Khadim Ali v. Jagannath*, 1941 O 77.

29. *Sri Nath Misra v. Bhawani Prasad and others*, 5 O W N 130.

30. 23 I C 13; 55 I C 729.

31. *Pahlad Pande v. Jwala Prasad Pande*, 4 O L R (Luck) 32.

32. *Bindra Ban v. Ganga Prasad*, 1944 O 190.

33. See now the U. P. Land Revenue Act, 1901 (U. P. Act III of 1901), Vol. III.

part of the village may have been included within the ambit of town.³⁴ A sale by the Secretary of State is immune.³⁵ The rights should be presumed to exist not only in the case of under-proprietary communities but also in the case of communities constituted by the holders of leases, which are transferable and heritable.³⁶

Village community.—The section contemplates a proprietary village community.³⁷ It does not include anyone who happens to reside in the village and has no proprietary interest therein.³⁸ A muafidar, if he is neither an under-proprietor nor a proprietor, has no right of pre-emption.³⁹ Where two villages are amalgamated, they do not constitute one village community.⁴⁰ Where vendor of a house has no proprietary or under-proprietary right sale does not give the village proprietor right to sue.⁴¹

Qabzadari Land.—A Qabzadar has a right to pre-empt Qabzadari land.⁴²

Under-proprietor.—An under-proprietor has no right to pre-empt a transfer of proprietary tenure.⁴³

Wajib-ul-arz.—The entry in wajib-ul-arz negating custom of pre-emption may be taken as evidence of contract between the then co-sharers, which renders this section inapplicable.⁴⁴ The presumption prevails only in case where the wajib-ul-arz is silent.⁴⁵

Duty of Court.—The law of pre-emption can be circumvented, but it is open to court to scrutinise all such devices very closely and to see if the transaction is a sale.⁴⁶

8. Its existence in towns to be proved.—The right of pre-emption shall not be presumed to exist in any town or city, or any sub-division thereof, but may be shown to exist therein and to be exercisable therein by such persons and under such circumstances as the local custom prescribes.

Sub-division.—Includes a part made by division of a town or city and is not confined to a part made by division of a part of a city into smaller parts.⁴⁷ If a village area is incorporated in a town, it does not become a town within the meaning of this section; it is the *abadi* only which constitutes the town.⁴⁸

9. Devolution of right when property to be sold or foreclosed is a proprietary or under proprietary tenure.—If the property to be sold or foreclosed is a proprietary or under-proprietary tenure, or a share of such a tenure, the right to buy or redeem such property belongs in the absence of a custom to the contrary:—

First, to co-sharers of the sub-division (if any) of the tenure in which the property is comprised, in order of their relationship to the vendor or mortgager;

Secondly, to co-sharers of the whole mahal in the same order;

Thirdly, to any member of the village-community; and

Fourthly, if the property be an under-proprietary tenure, to the proprietor.

Where two or more persons are equally entitled to such right, the person to exercise the same shall be determined by lot.

34. *Mahboob Ali v. Avadh Behari*, 1947 O 162=1947 O W N 132.

35. *Gur Bux Singh v. Harnam Singh*, 1933 O 134.

36. *Bhagwati Prasad v. Balgovind*, 1933 O 161; 1937 O W N 285.

37. *Birendra Bikram Singh v. Brij Mohan Pande*, 11 O W N 843.

38. *Ram Prasad v. Ram Bharosey*, 1939 O 193=1939 O W N 140; *Birendra Bikram Singh v. Brij Mohan Pande*, 11 O W N 843.

39. *Prabhu Dayal v. Bisheshwar Nath and others*, 1939 O W N 1111.

40. *Bindeshwari Prasad Upadhyay v. Krishna*

Murari, 11 O W N 430=1934 O 145

41. 4 O C 26.

42. *Jagdamba Prasad v. Mata Prasad*, 1935 O W N 818.

43. *Ram Prasad v. Ram Bharosey*, 1939 O W N 140=1939 O 193, See also 7 O W N 835.

44. 3 O L J 415.

45. 3 O L J 11.

46. *Ram Anand v. Ram Das*, 1933 O 329=10 O W N 619.

47. *Kalidin Pande v. Muneshwar Prasad*, 1936 O W N 759, See also 9 O C 211.

48. *Rauf Ahmad v. Fakhma Begam*, 1914 O 27=1943 O W N 395.

Scope.—The case of *Shooratan Singh v. Ujjagar Singh*, 15 O C 389 gives the history of development and custom and statutory law of pre-emption in Oudh. Under the section only proprietary or under-proprietary tenures can be the subject of pre-emption and not any of the rights mentioned in Section 40 of the Oudh Land Revenue Act, 1876.⁴⁹ A sale of proprietary tenure by a Hindu widow even if not proved to be made wholly for legal necessity gives rise to a right of pre-emption.⁵⁰ Where a vendor sells a share in the property and leaves the consideration with the vendee to finance a litigation, the sale is capable of being pre-empted.⁵¹ A denial of vendor's title antecedent or subsequent to the sale does not deprive a person of his right of pre-emption; it is only when he sets up a title in himself that he is prevented from asserting the title in the vendor.⁵² Where a portion of the proprietary mahal is sold, and there are no co-sharers in the mahal an under-proprietor has no preferential right of pre-emption.⁵³ If property transferred is only an interest for life it cannot be regarded as a proprietary tenure and no pre-emption would lie. Sale in favour of members of pre-empting class cannot be pre-empted by another member of the same class.⁵⁴ Where a superior proprietor created an under-proprietary right and sold it to an under-proprietor, a co-sharer in mahal cannot sue for pre-emption,⁵⁵ for the rights of the under-proprietor to pre-empt *see* 1937 O W N 1217. Sale partly in lieu of money and something computable in money, right of pre-emption arises.⁵⁶ For waiver *see* 6 O W N 763. If a stranger joins in the suit for pre-emption, the right is lost.⁵⁷

Clause 1.—The word sub-division should be liberally construed so as to include an under-proprietary *khata* which is a unit for component part of the under-proprietary tenure in the mahal.⁵⁸ Where a whole *Talugdari mahal* is sold the members of the under-proprietary village community have no right to sue.⁵⁹ Where it appeared from a latter *khawat* that a joint *khata* had been split up in two the parties ceased to be co-sharers.⁶⁰ Sub-division has always been construed as meaning not only a part made by division of part of a mahal, but also a part made by division of a mahal.⁶¹ Where a portion of proprietary mahal is sold and there are no co-shares in the mahal, an under-proprietor in the mahal has no preferential right of pre-emption against a co-sharer in another mahal.⁶² Division of village into proprietary mahals but not into under-proprietary mahals the under-proprietary *khata*s are not sub-divisions of the mahal and therefore if plots in one under-proprietary *khata* are sold holders of another under-proprietary *khata* in the same mahal have no preferential right of pre-emption.⁶³ Grove-holders are not co-sharers, although they are members of the village community.⁶⁴ Sale by a co-sharer of plots in separate patti and plots in *shamilat* to a relation who is also co-sharer in *shamilat* only, a person who is not a relation but is a co-sharer in separate patti and as well as *shamilat* has preferential right of pre-emption in respect of plots in separate patti only.⁶⁵ "Co-sharer" denotes persons possessing interests in immovable property and mere relationship does not create right of pre-emption, as the general principle is that the right of pre-emption runs with the land.⁶⁶ Words 'in order of their relationship' mean 'according to the decree in the line of relationship with the vendor'.⁶⁷

Clause 2.—Imperfect partition of village into *thoks* each having a *lambardar*; sub-division of *thoks* into pattis and revenue assessed on each *thok*, the *thoks* were treated as mahals but pattis were not.⁶⁸ An under-proprietor is not entitled to pre-empt a share of superior proprietary right.⁶⁹ The word *maal* means any parcel or parcels of land separately assessed

49. *Jhagroo Khan v. Mohd. Ishaq*, 1950 A 200.

50. *Mohan Singh v. Srimati Rukmini Devi*, 1944 O 127=1946 O W N 68. But *see* 32 I C 225.

51. *Pollan Singh v. Prag Narain*, 1944 O W N 405=1954 O 467. But *see* 80 I-C 83.

52. *Ibid.*

53. *Mumtaz Husain v. Manzoor Ali*, 1945 O W N 399 (CC), *Swami Dayal v. Ram Adhar*, 8 O W N 366.

54. 1925 O 665.

55. *Kazim Husain and another v. Mohfuz Ali*, 1940 O W N 409.

56. 16 O C 99.

57. 27 O C 137.

58. *Bhikhari Singh v. Badri*, 1936 O W N 424=1936 O 307; *Shao Dat Tewari v. Bhagwati Das*, 1942 O 113: 1936 O W N 759.

59. *Birendra Bikram Singh v. Brij Mohan Pande*, 1934 P C 153.

60. *Mohd. Hanif v. Gobardhan Das*, 1931 O 316.

61. *Kalidin Pandey v. Muneshwar Prasad*, 1936 O 403.

62. *Mumtaz Husain v. Manzoor Ali*, 1945 O W N 399.

63. *Kedar Nath v. Rameshar*, 1944 O 160.

64. *Rauf Ahmed v. Mt. Fakmida Begam*, 1944 O 27.

65. *Gauri Shankar v. Mohammad Bashir*, 1942 O 117.

66. 25 O C 319; *see also* 32 A 351 (P C) and 10 O C 257.

67. 4 O W N 766; *see also* 14 O C 193; 17 O C 250.

68. *Suraj Baksh v. Baldeo Singh*, 1937 O W N 309=1937 O 256.

69. *Rani Manraj Kuar v. Basant Rai*, 1937 O W N 1217.

to or held under a separate engagement for revenue for which a separate record-of-rights has been prepared.⁷⁰ It may comprise many villages separately assessed to revenue, but carrying joint liability for revenue extending over all villages in *taluqdari mahal*.⁷¹ Co-sharer—meaning.⁷²

Clause 3.—Ownership of land is a condition precedent to being a member of the village community and payment of revenue is no criterion⁷³; residence also is not necessary.⁷⁴ The person having under-proprietary interest in a village of which he is a superior proprietor and the purchaser having under-proprietary rights are equally entitled.⁷⁵ If parties are members of the village community relationship is no consideration and there is no right of preference.⁷⁶

Clause 4.—An under-proprietor has no right of pre-emption in respect of transfer of proprietary property but a proprietor has such a right.⁷⁷ An ordinary tenant in a village cannot be said to be a member of the under-proprietary village community.⁷⁸ The right of proprietor to pre-empt a transfer of under-proprietary tenure arises not because of Section 7 but because of Section 9 (4).⁷⁹

Drawing of lots.—This section gives jurisdiction to courts to draw lots only after the rights of the parties have been gone into and their equality of rights has been ascertained, otherwise the drawing of lots would be a nullity.⁸⁰ The clause applies whether sale is to a stranger or to one having equal rights.⁸¹

⁸²[9-A. When a suit for pre-emption lies.—No suit shall lie for enforcing a right of pre-emption under this Act in respect of a portion only of the property sold or foreclosed :

Provided that, where the plaintiff has a right of pre-emption in respect of only a portion of the property sold or foreclosed, then notwithstanding anything to the contrary contained in any enactment a suit for the pre-emption of that portion only shall lie and the plaintiff shall have to pay the proportionate price or the proportionate amount due in respect of such mortgage for such portion of the property, as the case may be.]

Scope.—Part of the property covered by one composite sale deed may be pre-empted ; where a plaintiff has a right to a part only of the property conveyed by a deed, he can only obtain a decree for pre-emption of that part on payment of proportionate part of the consideration, though the consideration for the whole is a lump sum.⁸³

10. Notice to pre-emption.—When any person proposes to sell any property, or when he forecloses a mortgage upon any property, in respect of which any persons have a right of pre-emption, he shall give notice to the persons concerned of the price at which he is willing to sell such property, or of the amount due in respect of such mortgage, as the case may be :

⁸⁴[Provided that, where a person has a right of pre-emption in respect of a portion only of the property proposed to be sold or foreclosed, the notice to such person shall specify the proportionate amount of the price or the proportionate amount due in respect of such mortgage at which the person proposing to sell or foreclose is willing to sell or redeem such portion of the property, as the case may be.]

70. 13 O C 165 ; 4 O C 365 ; 32 A 351.

71. 22 O C 353.

72. 7 O C 284 (P C) ; 3 O C 110 ; 1937 O 492 ; 2 O W N 264 ; 7 O W N 99.

73. 1925 O 665. See also 8 O W N 294 ; 1931 O 316.

74. 7 O C 19 ; 206 ; 275.

75. 9 O C 271 ; 7 O W N 99 ; 13 I C 631 ; 24 A 420 ; 3 O L J 193.

76. 1932 O 159 ; see also *Kazim Husain v. Mahfooz Ali*, 1940 O 390.

77. *Khadim Ali, v. Jagannath*, 1941 O 77.

78. *Lachmi Narain v. Musaheb Ali*, 1940 O 214=1940 O W N 80.

79. *Ram Prasad v. Ram Bharose*, 1939 O W N 140.

80. *Gaya Din Singh v. Chedi Singh*, 1943 O 321 ; *Lachmi Narain v. Musaheb Ali*, 1940 O 214.

81. 13 O C 260.

82. Add. by S. 2 of U. P. Act XV of 1939.

83. *Pahlad Pande v. Jiwala Prasad Pande*, 4 D L R (Lucknow) 32.

84. Add. by S. 3 of U. P. Act XV of 1939.

Such notice shall be given through the Court within the local limits of whose jurisdiction the property or any part thereof is situate, and shall be deemed sufficiently given if it be struck up on the *chaupal* or other public place of the village or city in which the property is situate.

Scope.—This section means that a person intending to sell property, subject to pre-emption must issue notice to all persons entitled to pre-empt.⁸⁵ The notice need not be given individually, but may be stuck up on the *Chaupal* or other public place of the village or city in which the property is situate.⁸⁶ Notice may be issued after contract has been entered into but before actual sale has taken place.⁸⁷ Oral evidence of notice is not admissible.⁸⁸ Legitimate pre-emptor includes a person on whom pre-emptor's interest has devolved.⁸⁹ Any person does not include a Collector taking action under Section 28, U. P. Encumbered Estates Act.⁹⁰

Proviso.—Under this section and Section 11 as they stood before the amendment, pre-emption of part only of the property sold on payment of a proportionate part of the consideration was incompetent and the amending Act by which such partial pre-emption was allowed is not retrospective in operation.⁹¹

Estoppel.—Where estoppel by acquiescence, as distinct from estoppel by prescribed notice is pleaded it is necessary that there must be an offer specifying the price at which it was proposed to sell the property and refusal to purchase it.⁹²

11. Loss of right of pre-emption.—Any person having a right of pre-emption in respect of any property proposed to be sold shall lose such right, unless within three months from the date of such notice he or his agent pays or tenders the price⁹³ [specified in the notice given under the preceding section] to the person so proposing to sell.

Scope.—This section makes it obligatory on a person having a right of pre-emption to pay or tender "the price aforesaid" to the person proposing to sell within three months from the date of such notice.⁹⁴ If a notice is issued but the sale deed is executed before the expiry of the period, failure to make the tender does not bar pre-emptor's right to sue.⁹⁵ A pre-emptor is not entitled to a decree merely on the ground that a notice on being issued under Section 10, a tender was made under Section 11 but refused.⁹⁶

12. Right of pre-emptor on foreclosure.—When the right of pre-emption arises in respect of the foreclosure of a mortgage⁹⁷ [or a portion of the mortgage], any person entitled to such right may, at any time within three months after the giving of the notice required by Section 10, pay or tender to the mortgagee or his successor in title the amount specified in such notice, and shall thereupon acquire a right to purchase the property,⁹⁸ [or a portion thereof, as the case may be].

On completion of the purchase the person exercising the right of pre-emption shall be bound to pay to the mortgagee or his successor in title the amount specified in such notice, together with interest on the principal sum secured by the mortgage⁹⁹ [or the proportionate amount of such principal sum in respect of the portion of the property in which he possesses the right of pre-emption, as the case may be], at the rate specified by the instrument of

85. 5 O W N 82.

86. *Baij Nath v. Mahabir Prasad*, 1938 O 37=1937 O W N 1202; see also 2 O W N 264.

87. 6 O L J 501.

88. 1 O C 254.

89. 1930 O 274.

90. *Maneshwar Bux Singh v. Ram Narain*, 1949 A 774.

91. *Abhairaj Singh v. Udayraj Dube*, 1943 O 382; *Pahalwan Khan v. Sheo Narain Lal*, 1943 O 129; *Mohe Prasad v. Dukh*

Karan, 1943 O W N 414.

92. *Gur Baksh Singh v. Harnam Singh*, 10 O W N 113=1933 O 134.

93. Subs. for [aforesaid] by S. 4 of U. P. Act XV of 1939.

94. *Baij Nath v. Mahabir Prasad*, 1937 O W N 1202.

95. 14 O C 1.

96. *Jugga Singh v. Ranjita*, 4 O W N 852; 10 O C 179.

97. Add. by S. 5 U. P. Act XV of 1939.

98. Add. by S. 6 of *ibid.*

mortgage, for any time which has elapsed since the date of the notice, and any additional costs which may have been properly incurred by the mortgagee or his successor in title.

13. Suit to enforce right of pre-emption.—Any person entitled to a right of pre-emption may bring a suit to enforce such right on any of the following grounds (namely) :

- (a) that no due notice was given as required by Section 10 ;
- (b) that tender was made under Section 11 or Section 12 and refused ;
- (c) in the case of a sale, that the price stated in the notice was not fixed in good faith ;
- (d) in the case of a mortgage, that the amount claimed by the mortgagee was not really due on the footing of the mortgage and was not claimed in good faith, and that it exceeds the fair market-value of the property mortgaged, ⁹⁹or the portion of the property mortgaged in respect of which he possesses the right of pre-emption as the case may be].

If, in the case of sale, the Court finds that the price was not fixed in good faith, the Court shall fix such price as appears to it to be the fair market-value of the property sold ¹[or the portion of the property sold in respect of which he possesses the right of pre-emption, as the case may be.]

If, in the case of a mortgage, the Court finds that the amount claimed by the mortgagee was not really due on the footing of the mortgage, and that it was not claimed in good faith and that it exceeds the fair market-value of the property mortgaged ¹[or the portion of the property mortgaged in respect of which he possesses the right of pre-emption, as the case may be], the amount to be paid to the mortgagee shall not exceed what the Court finds to be such market-value.

Scope.—Clause (a) of the section refers only to cases in which no notice was issued at all or was issued in irregular manner and Clause (d) covers cases in which either the amount claimed by the mortgagee was not really due on the mortgage or was not claimed in good faith or exceeded the fair market-value of the property mortgaged. It would make no difference whether the amount was claimed in good faith or not because it is in excess of the market-value, not more than the market-value would be payable.³ The words "entitled to a right of pre-emption" must be construed as meaning "entitled at the date of suit".³ If the price entered in the deed was not fixed in good faith, the Court must determine fair market-value.⁴ In many cases price actually paid may well be taken to be the fair market price in the absence of other evidence.⁵ The words "in good faith" means "honestly".⁶ The Court cannot go into the good faith of the plaintiff in asking for pre-emption.⁷ If any single item is fictitious Court must fix market-value.⁸ Court is to determine whether the price stated is fictitious and if so its market-value,⁹ which may be evidence of bad faith.¹⁰ In such cases the vendee is not entitled to conveyance charges or to interest.¹¹ The word 'and' in Clause (d) and the last para of the section indicates that it is necessary to prove the existence of the three conditions mentioned therein before the Court can reduce the amount payable to the mortgagee.¹²

99. Add. by S. 6, *ibid.*

1. Add. by S. 6 of U. P. Act XV of 1939.

2. *Jagaji v. Udai Raj Singh*, 1943 O 282.
See also 1936 O W N 337 ; 7 O W N 622 ; 8 O W N 688.

3. *Mohammad Ibrahim v. Zahur Ahmad*, 8 O W N 688.

4. *Lulloo Singh v. Jagjivan Prasad*, 1935 O W N 1348.

5. 6 O W N 264 ; 8 O W N 44.

6. 4 O W N 795.

7. 22 O C 323.

8. 54 I C 34.

9. *Qadir Ahmad v. M. Fazal Haq*, 1931 O 137 ; 1926 O 68.

10. 1 O C 227 ; 4 O C 274.

11. 1940 O W N 358.

12. *Suklunandan v. Surajbali*, 1951 A 119= 1951 A L J 60=1951 A W R 59=6 D L R (A) 54.

Partial Pre-emption.—By the amendment of the Oudh Laws Act now partial pre-emption is permissible and therefore the cases reported in *Silla Sahai v. Sri Ram*, 1939 O W N 1026; *Baij Nath v. Mahabir Prasad*, 1937 O W N 1202; *Mohammad Zafar v. Taj Taj Bibi*, 1936 O 250 are no more good law.

14. Decree to fix time for payment.—If the Court find for the plaintiff, the decree shall specify a day on or before which the purchase money or the amount to be paid to the mortgagee shall be paid.

15. Effect of non-payment of purchase-money.—If such purchase-money or amount is not paid into Court before it rises on that day, the decree shall become void, and the plaintiff shall, so far only as relates to such sale or mortgage, lose his right of pre-emption over the property to which the decree relates.

Tender.—The mere submission of a tender for the deposit of a decree amount as per terms of a pre-emption decree on a particular date, cannot be regarded as payment on that date so as to constitute compliance with the terms of Section 15 which must be construed strictly. But if the amount is paid to Nazir after 3 p. m. its refusal is not justified and the pre-emptor cannot be made to suffer¹³.

Appeal.—The right of pre-emption is not lost when the pre-emptor has not deposited the amount but has preferred an appeal contesting the amount either before or after the expiry of the period fixed by the trial Court.¹⁴

Deposit.—The pre-emptor is bound to pay into Court regardless of whether the decree provides for such payment or not¹⁵, as payment in Court is an obligation independent of the terms of the decree¹⁶. When money is tendered in Court, but is handed over by Court to the party concerned it amounts to a valid tender in Court¹⁷. The payment out of Court is invalid unless induced by the vendee¹⁸. Order dismissing suit for non-deposit is a decree and appealable¹⁹. If costs not awarded, they need not be deposited²⁰.

Decree.—Means the final decree.²¹

CHAPTER III

PROCEDURE OF THE COURTS

16. Rule of limitation.—The Judicial Commissioner's Circular No. 104 of July, 1860, shall be held to have been a notification within the meaning of Section 24 of Act XIV of 1859²² and such Act shall be deemed to have been in force in Oudh from the fourth day of July, 1862; and all orders and decrees passed under the rules contained in the said Circular, or under the said Act, shall be deemed to have been passed under a law in force for the time being.

Nothing in this section affects the provisions of Sections 102, 104, 105, 106, 107 and 108 of the Oudh Rent Act [XIX of 1868]²³ with regard to the limitation of suits under that Act.

17. [Act XXXII of 1871, Section 28, to cease in any district from date of notification that it is no longer under settlement.] Rep. by Act XII of 1891.

13. *Bandhu Upadhyaya v. Jagdambha Prasad*, 1947 O W N 238.

14. *Jai Krishna v. Brijpal Singh*, 1940 O 120=1940 O W N 358.

15. 14 O C 85; 8 O C 7.

16. *Ibid.*

17. 7 O N 655.

18. 1924 O 153.

19. 17 O C 14.

20. *Karta Krishna v. Indrani Kuar*, 1942 O

399.

21. *Bankey Behari Lal v. Abdul Rahman*, 8 O W N 1267.

22. See now the Limitation Act, 1908 (Act IX of 1908).

23. Act XIX of 1858 was rep. by the Oudh Rent Act, 1886 (Act XXII of 1886), which has been rep. by the U. P. Tenancy Act (U. P. Act XVII of 1939), Vol. IV.

18. [Recognized agents.] Rep. by Act XII of 1891.

19. **Rules for taking evidence.**—²⁴Section 172 of Act No. VIII of 1859 is hereby repealed; so far as the Province of Oudh is concerned, and the following section is substituted therefor:

"On the day appointed for the hearing of the suit, or on some other day to which the hearing may be adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge.

"A note of the essential points of the evidence of each witness is to be taken at the time, and in the course of oral examination, by the officer who tries the case, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed, and shall form part of the record of the case.

"If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down to be interpreted to him in the language in which it was given.

"It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there appear any special reason for so doing, or any party or his pleader requires it.

"If any question put to a witness be objected to by either of the parties or their pleaders, and the Court allow the same to be put, the question and the answer shall be taken down, and the objection and the name of the party making it shall be noticed in taking down the depositions, together with the decision of the Court upon the objection.

"The Court shall record such remarks as it may think material respecting the demeanour of the witness while under examination.

²⁵[The note as above required may be written and signed by the Judge with his own hand or typed to his dictation in open court and signed by him with his own hand, and such note shall form part of the record.]"

Scope.—Under this section it is necessary to interpret the evidence recorded in English to a witness who gives the evidence in another language only if he does not understand English and requests that his deposition be interpreted to him.²⁶

²⁷[20. **Execution sale of ancestral and acquired property in land.**—So much of Section 60 of the Code of Civil Procedure, 1908, as renders land liable to sale in execution of a decree shall be subject to the following restriction: No ancestral land shall be sold in satisfaction of a decree without the permission of the [State Government]²⁸.]

Explanation.—In this section the words "ancestral land" mean—

(a) land forming a mahal or share in or portion of a mahal, which has been owned continuously from the conclusion of the first

24. See now Ss. 181 to 190 both inclusive, of the Code of Civil Procedure, 1908 (Act V of 1908).

25. Subs. by U. P. Act XXIV of 1954.

26. *Hazari v. Emperor*, 8 O W N 685=1931 O 385.

27. S. 20 was subs. by S. 2 of U. P. Act III of 1912.

28. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [Lieutenant Governor.]

regular settlement by the proprietor, which term shall include an under-proprietor as defined in Section 4, clause (15), of the United Provinces Land Revenue Act, 1901, or by the person or persons from whom such proprietor has directly or indirectly inherited such land :

- (b) land forming an estate or part of an estate as defined in the Oudh Estates Act, 1869 ;
- (c) land conferred by the British Government as a reward for services rendered to the State on the owner or on a person from whom such owner has directly or indirectly inherited such land ; or
- (d) the interest of the holder of a grant of land revenue conferred by the British or any former Government on him or on a person from whom he has directly or indirectly inherited such interest.

Scope.—A transfer under Section 5 read with Section 4 (a) of the U. P. Regulation of Sales Act without the permission of the local Government is invalid and to such a transfer Section 20 applies.²⁹ There is no repugnancy between this section and the provisions whereby the Collector executes a decree under the U. P. Regulation of Sales Act.³⁰ Failure to obtain permission takes away Court's jurisdiction to sell.³¹

Decree.—Includes decree under Sections 88 and 89, T. P. Act.³²

Ancestor.—Land acquired by adverse possession is not ancestral.³³

21. [Appointment of manager of land attached.] Rep. by Act XIII of 1879.

22. **Service of process within jurisdiction of Lucknow Civil Court.**—Notwithstanding anything contained in the said Code, any Civil Court sitting within the local limits of the jurisdiction of the Lucknow Civil Court, but exercising jurisdiction beyond such limits, may cause summonses, warrants, notices and other processes to be served within the local limits of the jurisdiction of the Lucknow Civil Court without causing the same processes to be served through such Court.

23. [Section substituted for Act XIX of 1868, Section 109.] Rep. by Act XXII of 1886.

24. [Section substituted for Act XIX of 1868 Section 118.] Rep. by Act XXII of 1886.

25. [Right of occupancy in judgment-debtor's sir-land.] Rep. by U. P. Act IV of 1901.

26. **Revenue Agents authorized to appear, etc., in rent-suits.**—Notwithstanding anything contained in Act No. XX of 1865,³⁴ all persons duly admitted and enrolled as Revenue-agents under that Act in * * *³⁵ Oudh may appear, plead and act in suits under the Oudh Rent Act³⁶ in the Courts of officers exercising the powers of Assistant Collectors, Deputy Collectors, Collectors and Commissioners under the same Act.

29. *Hasant Rai v. Bishanath Singh*, 1943 O. 302=1943 O. W. N. 116.

30. *Abu Gopind Prasad v. Maharaj Kuar*, (1945) O. W. N. 123.

31. 3 O. C. 409.

32. 1 O. C. 1.

33. 1925 O. C. 11.

34. Now the U. P. Tenancy Act.

1879 (Act XVIII of 1879).

35. The words [the territories for the time being under the administration of the Chief Commissioner of] omit. by the A. O. 1937.

36. Rep. by the U. P. Tenancy Act, 1939 (U. P. Act XV II of 1939), Vol. IV.

27. Power to make rules for custody and sale of attached property.—With the sanction of the [State Government],³⁷ the [High Court]³⁸ may from time to time make rules consistent with this Act and with the Code of Civil Procedure.³⁹

- (a) for the custody and sale of movable property attached in execution of decrees,
- (b) for the levy of a fee or commission on the sale of attached property and the disposal of the funds accruing from such fees;⁴⁰
- (c) as to the appointment and remuneration of persons⁴¹ [not being persons in the service of the [Government]⁴²] by whom property is to be attached, kept in custody and sold;
- (d) as to the appointment and remuneration of persons⁴³ [not being persons in the service of the [Government]⁴²] by whom local investigations under Section 180, and investigations and adjustments of accounts under Section 181, of the Code of Civil Procedure³⁹ are to be made.

28. [Power to revise decrees and orders of subordinate Courts.] Rep. by Act XIII of 1879.

CHAPTER IV VILLAGE AND ROAD-POLICE

29. Right to nominate village policeman.—The nomination to the post of village-policeman shall be made by the zamindar of the village, or, where there are more zamindars than one, by the lambardar as their representative; and, where there are more lambardars than one, the opinion of the majority (unless there is some special provision to the contrary in the village administration-paper) shall prevail.

30. Obligation to nominate.—Every person authorized to nominate to the office of village-policeman shall, within fifteen days after the occurrence of a vacancy in such office, nominate a proper person to the vacant post, and communicate the nomination to the Magistrate of the district.

31. Discretion to appoint or reject nominee.—The person so nominated shall, after due enquiry into his age, character and ability, be appointed or rejected [by the State Government].⁴³

32. Power to Government to appoint.—In default of such nomination within the said fifteen days, the [State Government]⁴⁴ shall appoint such person as [it]⁴⁵ thinks fit to the vacancy.

Procedure in case of rejection of nominees.—If the nomination has been made within the said fifteen days, but the nominee is rejected, the person authorized to nominate shall, within fifteen days from the date of such

37. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [Chief Commissioner].

38. Subs. by the A. O. 1950 for [Chief Court] which had been subs. for [Judicial Commissioner] by S. 49 and Sch. I of U. P. Act IV of 1925.

39. See now the Code of Civil Procedure, 1908 (Act V of 1908).

40. See Not. No. 103/I—218H, Dated April 20, 1904, in Gaz. 1904, Pt. I, p. 261.

41. Ins. by the A. O. 1937.

42. Subs. by the A. O. 1950 for [Crown].

43. Subs. the A. O. 1950 for [by the Provl. Govt.] which had been subs. by the A. O. 1937 for [at discretion by such magistrate, or by some officer authorized by him in that behalf.]

44. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [Magistrate of the district].

45. Subs. for [he] by the A. O. 1937.

rejection, nominate another person to the vacant post; and in default of such nomination, or if such nomination has been made but the nominee is again rejected, the [State Government]^{45a} shall appoint such person as [it]^{45b} thinks fit to the vacancy.

33. Appointment of road-police.—Subject to the rules to be framed under Section 39 and for the time being in force, the [State Government]^{45a} may from time to time appoint persons to be [road-police].⁴⁶

34. Duties of village and road-policemen.—Every village-policeman and every road-policeman shall perform the following duties :

- (a) he shall give immediate information to the officer in charge of the police-station appointed for his village or beat—
 - (1) of every unnatural, suspicious or sudden death occurring in the village of which he is chaukidar, or within his beat ;
 - (2) of each of the following offences occurring in such village or on such beat (that is to say), murder, culpable homicide, rape, dacoity, theft, robbery, mischief by fire, house-breaking, counterfeiting coin, causing grievous hurt, riot, harbouring a proclaimed offender, exposure of a child, concealment of birth, administering stupefying drugs, kidnapping, lurking house-trespass ; and
 - (3) of all attempts and preparations to commit, and abetments of, any of the said offences ;
- (b) he shall keep the police informed of all disputes which are likely to lead to any riot or serious affray ;
- (c) he shall arrest all proclaimed offenders, and all persons, whom he may find in the act of committing any offence specified in paragraph (a), clause (2), of this section ;
- (d) he shall observe and from time to time report to the officer in charge of the police-station within the jurisdiction of which his village or beat may be situate, the movements of all bad-characters in or on such village or beat ;
- (e) he shall report to the officer in charge of such police-station the arrival of suspicious characters in the neighbourhood ;
- (f) he shall supply to the best of his ability any local information which a Magistrate or any officer of police may require, and shall promptly execute all orders issued to him by competent authority.

35. Procedure on arrest by village or road-policeman.—Whenever a village-policeman or road-policeman arrests any person, he shall take him as soon as possible to the police-station within the jurisdiction of which his village or beat is situate.

36. Dismissal of village or road-policeman.—The Magistrate of the district may dismiss any village-policeman or road-policeman for any misconduct or neglect of duty.

Where any village-policeman is guilty of neglect of duty or other misconduct, the person authorized to nominate to his office may report him for

45a. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for [Magistrate of the District].

45b. Subs. for [he] by the A. O. 1937.

46. Subs. for [the road-police of his district] by *ibid.*

dismissal to the Magistrate of the district; and such Magistrate shall dismiss him accordingly, unless the Magistrate has reason to think that such dismissal would be improper.

37. Acts punishable.—Every village-policeman and road-policeman guilty of any wilful misconduct in his office, or of neglect of duty, such misconduct or neglect not being an offence within the meaning of the Indian Penal Code,

or withdrawing from the duties of his office without permission and without having given at least two months' notice of his intention to withdraw from such duties to the person authorized to nominate or appoint under Sections 29, 32 and 33 (as the case may be),

or offering any unnecessary personal violence to any person in his custody,

Penalty.—shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment for a period not exceeding three months, or to both.

38. Fines to be credited to such fund as Government appoints.—All fines levied under this Act on village-policeman or road-policeman shall be credited to such fund as the [State Government]⁴⁷ from time to time appoints.

CHAPTER V SUBSIDIARY RULES

39. Power to make rules.—The [State Government]⁴⁸ may from time to time, * * *⁴⁹ make rules consistent with this Act as to—

- (a) the discipline and remuneration of the village and road-police and the regulation of their number, location and duties;
- (b) the disposal of unclaimed property under Act No. V of 1861 (*for the regulation of Police*) Sections 25, 26 and 27;
- (c) public health and conservancy at fairs and other large public assemblies, and the maintenance of a proper watch and ward at such fairs and assemblies;
- (d) imposing * * *⁵⁰ taxes for those purposes only; ⁵¹
- [(e) the keeping and custody of civil, criminal and revenue records.]⁵²

* * * 53

47. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

48. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [Chief Commissioner.].

49. The words [with the previous sanction of the G. G. in C.] *rep.* by S. 5 of Act XIV of 1878.

50. The words [with the previous sanction of the G. G. in C.] *omit.* by the A. O. 1937.

51. For rules, *see* Not. No. 274, d. May 2, 1881, in *Gaz.*, 1881, Pt. I, p. 174.

52. Subs. by the A. O. 1937 for the original cl.

53. Cl. (f) relating to the appointment, duties, punishment and dismissal of certain ministerial officers was *rep.* by the A. O. 1937 in view of S. 241 (2) (b) of the G. of I. Act, 1935; Cl. (g) relating to S. 25 of this Act was *rep.* by U. P. Act IV of 1901; and the proviso that the previous sanction of the G. G. in C. under Cl. (d) shall not be necessary in the case of certain taxes was *rep.* by the A. O. 1937.

40. Publication of rules.—All rules made by the [State Government]⁶⁴ under Section 39, all rules made by the [High Court]⁶⁵ under Section 27, shall be published in the [Official Gazette]⁶⁶ and shall thereupon have the force of law.

41. [Continuance of prior rules as to matters of which rules may be made under the Act.] Rep. by Act XII of 1891.

42. Penalty for breach of rules.—Whoever breaks any rule made or continued under this Act, not being a rule made by the [High Court],⁶⁵ shall on conviction before a Magistrate, be punishable with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to six months, or with both.

CHAPTER VI MISCELLANEOUS *Honorary Civil Jurisdiction*

43. [Power to invest taluqdars with civil jurisdiction] Rep. by Act XIII of 1879.

Honorary Police-officers

44. Honorary Police-officers.—The ⁶⁷[State Government] may, from time to time, confer on any person whom [it]⁶⁸ thinks fit any power which may be exercised by a police-officer under any Act for the time being in force, and withdraw any power so conferred.

Creation and Alteration of Districts and Sub-divisions

45. [Power to create new district. Power to form sub-divisions of district]. Rep. by Act XX of 1890, Section 35.

THE FIRST SCHEDULE *Rep. by Act I of 1938, Section 2 and Schedule*

THE SECOND SCHEDULE (See Section 3)

PART I—BENGAL REGULATIONS

Number and year	Subject	Modifications
XXXIII, of 1902.	Embezzlement by Native Officers.	<p>In Section 1 and in Section 2, clause First, before "sezawals", insert "tahsildars."</p> <p>In Section 2, after the first clause insert "Second.—The responsibility of the sureties of tahsildars extend to the several cases provided for in this Regulation."</p> <p>In Section 3, for "Dewanny Adawlut of the Zillah, the Judge of which Court</p>

54. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

55. Subs. by the A. O. 1950 for [Chief Court] which had been subs. for [Judicial Commissioner] by S. 49 and Sch. I of U. P. Act IV of 1925.

56. Subs. for [local Official Gazette] by the A. O. 1937.

57. Subs. by A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [Chief Commissioner].

58. Subs. for [he] by the A. O. 1937.

Number and year	Subject	Modifications
X of 1804 ⁶¹	Punishment by Courts-martial of certain State offences.	<p>shall detain him." read "District where he shall be detained", for "real or personal," read "movable or immovable;" * * * * * and omit the words and figures "and the rules in Regulation XXVII, 1803, regarding suits so carried on by the Collectors are to be held applicable to it".</p> <p>Omit Section 8.</p> <p>Omit Section 1.</p> <p>In Section 2, for "the British territories subject to the Government of the Presidency of Fort William" read "the territories under the administration of the Chief Commissioner of Oudh".</p> <p>In Section 3, for "real and personal" read "movable or immovable".</p>
XI of 1806	Assistance to troops and travellers passing through districts.	<p>Omit Sections 1, 7, 9 to 20 (both inclusive), and so much of the rest of the Regulation as authorizes Collectors and their Native officers, or Magistrates and their Police-officers, to give their official aid in procuring coolies for the purpose of facilitating the march of troops or the progress of travellers.</p> <p>For "Collectors of Revenue" and "Collector" read "Deputy Commissioner" throughout the Regulation.</p> <p>In Sections 2 and 3, for "the Company's territories" read "Oudh".</p> <p>In Section 2 omit the last sentence.</p> <p>In Section 4, clause Third for "[Central Government]" read "[State Government]".</p> <p>In Section 5, omit "the Company".</p> <p>* * * * *</p> <p>In Section 6, for "Magistrate" read "Deputy Commissioner," and for "on the part of the Collector" read "by the Deputy Commissioner."</p>

59. The words [for 'city' read 'jurisdiction'] and at the end of these modifications to Reg. XXXIII of 1803 the words and figures [In S. 4, omit the words 'or in either the cities of Patna, Dacca and Moorshedabad'] were *Rep.* by Act XII of 1891, Sch. I.
60. The words [for 'Board of Revenue' read 'Commissioner' in the modification to Ben. Reg. XXXIII of 1803] were *Rep.* by Act XX of 1890, S. 35

- supra.*
61. *Rep.* by Act IV of 1922.
75. *Subs.* for [G. G. in C.] by the A. O. 1937.
- 76a. *Subs.* by the A. O. 1920 for [Prov. Govt.] which had been *subs.* by the A. O. 1937 for [Chief Commissioner].
- 76b. The words [and the Board of Revenue read 'Chief Commissioner')] were *rep.* by Act 87 of 1909, S. 35. *supra.*

Number and year	Subject	Modifications
<p>* * *</p> <p>III of 1818⁷⁹ ..</p>	<p>* * * * *</p> <p>State Prisoners</p>	<p>In Section 8, for "the Company's provinces" read "Oudh" * * * *⁷⁷</p> <p>* * * * *</p> <p>In Section 1, omit "Situated within the territories dependent on the Presidency of Fort William." and from "which are to take effect" to the end of the section.</p> <p>In Section 2, clause <i>Third</i>, omit "within territories subject to the Presidency of Fort William".</p> <p>In Section 4, omit clause <i>First</i>. In the same section, clause <i>Second</i>, for "Zillah or City Magistrate" read "Deputy Commissioner," and for "Judge of Circuit" read "Commissioner of Division".</p> <p>In Section 9, for "to the Provincial Court of Appeal and Circuit and to the Sudder Dewanny Adawlut and Nizamut Adawlut" read "and to the Judicial Commissioner."</p> <p>Omit Section 10.</p> <p>* * * * *</p> <p>Omit the whole except Section 38.</p>
<p>* * *</p> <p>XI of 1822⁸¹ ..</p>	<p>Non-liability of Government for errors of a Court of Justice.</p>	<p>Omit the whole except Section 38.</p>
<p>VI of 1825⁸¹ ..</p>	<p>Supply of troops on the march.</p>	<p>In the preamble, omit the last twenty words.</p> <p>In Section 2, omit "in pursuance of Section III, Regulation XI, 1806," and omit "sicca".</p> <p>In Section 4, for "Board of Revenue in whose jurisdiction the district may be situate" and "Board" read "Commissioner".</p> <p>In Section 5, omit "on the stamped paper prescribed for other appeals to the Revenue Board" and for "the proper Board" and "the Board" read "the Commissioner."</p> <p>Omit Section 1.</p>
<p>XI of 1825⁸² ..</p>	<p>Alluvion and Diluvion</p>	<p>Omit Section 1.</p> <p>In Section 3, omit "either" and "or the sea."</p>

77. The words and figures (and omit the word and figures (under the rules prescribed by Reg. V of 1804) and in Reg. XXVII of 1803] were rep. by Act XII of 1891.

78. The entry relating to Ben. Reg. XVII of 1806 was rep. by the Transfer of Property Act, 1882, (Act IV of 1882); the entry relating to Ben. Reg. XX of 1810, by the Cantonment Act, 1889

(Act XIII of 1889), and the entry relating to Ben. Reg. V of 1817 by the Indian Treasure Trove Act, 1878 (Act VI of 1878).

79. Rep. by Act 48 of 1932, S. 2, and Sch. I.

80. The entry relating to Ben. Reg. V of 1819 was rep. by Act XII of 1891.

81. *Supra*.

82. *Supra*.

Number and year	Subject	Modifications
		In Section 4, clause <i>First</i> , omit "whether" and "or of the sea" and for "the provisions of Regulation II, 1819, or of any other Regulation in force," read "any law in force for the time being", clause <i>Third</i> , omit "or in the sea" and "or sea", clause <i>Fifth</i> , omit "or the sea."
		In Section 5, for "Zillah and City Magistrates" read "Deputy Commissioners."
* * *	* * * * *	* * * * * 83

PART II—ACTS OF THE GOVERNOR-GENERAL IN COUNCIL

Number and year	Subject	Miscellaneous
* * *	* * * * *	* * * * * 84
XX of 1856 ⁸³ ..	Chaukidars	In the preamble, after "Bengal" add "and the territories under the administration of the Commissioner of Oudh". Omit the words "of circuit" wherever they occur after "Commissioner". Omit Section 40.
XIII of 1857 ⁸⁶ ..	Opium	In the title, after "the Presidency of Fort William in Bengal" read "and the territories under the administration of the Chief Commissioner of Oudh". * * * 87
* * *	* * * * *	In Section 3, omit "being covenanted servants of the Company". * * * * * 88
XXII of 1871 ⁸⁹ .	Chaukidars	In Section 1, after "Presidency" insert "or territories". In Section 3, omit the words "of circuit". Omit Section 6.

83. The entry relating to Ben. Reg. XX of 1825 was *rep.* by the Criminal Procedure Code, 1882 (Act X of 1882).
84. The entry relating to the Act XIX of 1853 was *rep.* by Act I of 1903.
85. Act XX of 1856 has been *rep.* in the U. P. by the U. P. Act II of 1914, Vol. IV.
86. *Supra*.

87. The portion which related to S. 2 of Act XIII of 1857 here *omit* was *rep.* by Act XII of 1891.
88. The entry relating to the Minors, Act, 1858, (Act XL of 1858) was *rep.* by the Guardians and Wards Act, 1890 (Act VIII of 1890).
89. Act XXII of 1871 was *rep.* in the U. P. by Act XVIII of 1919.

THE SPECIFIC RELIEF ACT, 1877

ARRANGEMENT OF SECTIONS

PREAMBLE

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PART II
OF SPECIFIC RELIEF

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[1. 4. 56]

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19. Power to award compensation in certain cases.
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(c) Of the discretion of the Court

22. Discretion as to decreeing specific performance.

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23. Who may obtain specific performance.

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27. Relief against parties and persons claiming under them by subsequent title.

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28. What parties cannot be compelled to perform.

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29. Bar of suit for breach after dismissal.

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[1. 4. '56]

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- 54. Perpetual injunctions when granted.
- 55. Mandatory injunctions:
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SCHEDULE.—[Repealed.]

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[1. 4. 56]

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THE SPECIFIC RELIEF ACT, 1877

ACT No. 1 OF 1877

An Act to define and amend the law relating to certain kinds of Specific Relief.

[7th February, 1877.]

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits; It is hereby enacted as follows:—

PART I

PRELIMINARY

1. This Act may be called the Specific Relief Act, 1877.

Short title.

It extends to ¹[the whole of India, ²[except the State of Jammu and Kashmir], and] the Scheduled Districts as defined in Act No. 14 of 1874.

Local extent.

And it shall come into force on the first day of May, 1877.

Commencement.

2. [Repeal of enactments.] Rep. by the Repealing and Amending Act, 1891 (12 of 1891).

3. In this Act, unless there be something repugnant in the subject or context,—

Interpretation-clause.

“Obligation” includes every duty enforceable by law:

“Trust” includes every species of express, implied, or constructive fiduciary ownership:

“Trustee” includes every person holding, expressly, by implication, or constructively, a fiduciary character:

Illustrations

(a) Z bequeaths land to A, “not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life”. A accepts the bequest. A is a trustee, within the meaning of this Act, for B, to the extent of the annuity.

(b) A is the legal, medical, or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act, of such advantage.

(c) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

Subs. by the A. O. 1950 for “all the Provinces of India, except”.

Subs. by Act 3 of 1951, s. 3 and Sch., for “except Part B States”.

The Scheduled Districts Act, 1874 (14 of 1874), rep. by the A. O. 1937.

[1, 4, '56]

6

(Part I.—Preliminary.)

(d) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee, within the meaning of this Act, of the renewed lease for those interested in the original lease.

(e) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee, for his co-partners, within the meaning of this Act, of the profit so made.

(f) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(g) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(h) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest.

"settlement" means any instrument (other than a will or codicil as defined by the Indian Succession Act¹) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of :

and all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

Words
defined in
Contract
Act.

Savings.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

- (a) to give any right to relief in respect of any agreement which is not a contract ;
- (b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract ; or
- (c) to affect the operation of the Indian Registration Act² on documents.

Specific relief
how given.

5. Specific relief is given—

- (a) by taking possession of certain property and delivering it to a claimant ;
- (b) by ordering a party to do the very act which he is under an obligation to do ;
- (c) by preventing a party from doing that which he is under an obligation not to do ;

¹ See now the Indian Succession Act, 1925 (39 of 1925).

² See now the Indian Registration Act, 1908 (16 of 1908).

Part I.—Preliminary. Part II.—Of specific relief. Chapter I.—Of recovering possession of property.)

(d) by determining and declaring the rights of parties otherwise than by an award of compensation ; or

(e) by appointing a receiver.

6. Specific relief granted under clause (c) of section 5 is called preventive relief. Preventive relief.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law. Relief not granted enforced by law.

PART II OF SPECIFIC RELIEF

CHAPTER I OF RECOVERING POSSESSION OF PROPERTY

(a) Possession of immovable property

8. A person entitled to the possession of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure.¹ Recovery of specific immovable property.

9. If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit * * *, recover possession thereof, notwithstanding any other title that may be set up in such suit. Suit by person dispossessed of immovable property.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against⁴ [* * * the Central Government * * * or any State Government].

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

² But see as to tenancies in the Punjab, the Punjab Tenancy Act, 1887 (16 of 1887), s. 51.

³ The words "instituted within six months from the date of the dispossession" rep. by Act 12 of 1891.

⁴ Subs. by the A. O. 1937 for "the Govt."

⁵ The words "the Secretary of State" rep. by the A. O. 1948.

⁶ The words "the Crown Representative" rep., *ibid.*

(Part II.—Of specific relief. Chapter I.—Of recovering possession of property.)

(b) Possession of movable property

10. A person entitled to the possession of specific movable property may recover the same in the manner prescribed by the Code of Civil Procedure.¹

Explanation 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations

(a) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(b) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(d) A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.

(e) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

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11. Any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

- (a) when the thing claimed is held by the defendant as the agent or trustee of the claimant;
- (b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;
- (c) when it would be extremely difficult to ascertain the actual damage caused by its loss;
- (d) when the possession of the thing claimed has been wrongfully transferred from the claimant.

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

[1. 4. 56]

(Part II.—Of specific relief. Chapter I.—Of recovering possession of property. Chapter II.—Of the specific performance of contracts.)

Illustrations

of clause (a)—

A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

of clause (b)—

Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause (c)—

A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

CHAPTER II

OF THE SPECIFIC PERFORMANCE OF CONTRACTS

(a) Contracts which may be specifically enforced

12. Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced—

Cases in which specific performance enforceable.

- (a) when the act agreed to be done is in the performance, wholly or partly, of a trust ;
- (b) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done ;
- (c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief ; or
- (d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Explanation.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer movable property can be thus relieved.

Illustrations

of clause (a)—

¹ A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

¹ This illustration is rep. wherever the Indian Trusts Act, 1882 (2 of 1882), is in force—see ss. 1 and 2 of that Act.

(Part II.—Of specific relief. Chapter II.—Of the specific performance of contracts.)

of clause (b)—

A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause (c)—

A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause (d)—

A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contract of which the subject has partially ceased to exist.

13. Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

Illustrations

(a) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made, the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(b) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

Specific performance of part of

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only

[1. 4. 56]

(Part II.—Of specific relief. Chapter II.—Of the specific performance of contracts.)

...a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency. contract where part unperf is small.

Illustrations

(a) A contracts to sell B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belong to A, and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighas and to make compensation to him for not conveying the two remaining bighas; or B may be directed, at the suit of A, to pay to A on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(b) In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the defendant. Specific performance of part of contract where part unperformed is large.

Illustrations

(a) A contracts to sell to B a piece of land consisting of 100 bighas. It turns out that 50 bighas of the land belong to A, and the other 50 bighas to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bighas which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighas to him on payment of the purchase-money.

(b) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

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Specific performance of independent part of contract.

16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Bar in other cases of specific performance of part of contract.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

Purchaser's rights against vendor with imperfect title.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this Chapter) has the following rights :—

- (a) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest ;
- (b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence ;
- (c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee ;
- (d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

Power to award compensation in certain cases.

19. Any person suing for the specific performance of a contract, may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff

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is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation.—The circumstance that the contract has become incapable of specific performance, does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations

of the second paragraph—

A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it, without excuse to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph—

A contracts with B to sell him a house for RS. 1000, the price to be paid and the possession given on the 1st January 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the *Explanation*—

A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the Directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

20. A contract, otherwise proper to be specially enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same. Liquidation of damages not a bar to specific performance.

Illustration

A contracts to grant B an under-lease of property held by A under C, and that he will apply to C for a license necessary to the validity of the under-lease,

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and that, if the license is not procured, A will pay B Rs. 10,000. A refuses to apply for the license and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

(b) *Contracts which cannot be specifically enforced*

Contracts
not speci-
ally
enforceable.

21. The following contracts cannot be specifically enforced :—

- (a) a contract for the non-performance of which compensation in money is an adequate relief ;
- (b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms ;
- (c) a contract the terms of which the Court cannot find with reasonable certainty ;
- (d) a contract which is in its nature revocable ;
- (e) a contract made by trustees either in excess of their powers or in breach of their trust ;
- (f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers ;
- (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date ;
- (h) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the '[Arbitration Act, 1940], no contract¹⁰ of 1940. to refer ²[present or future differences] to arbitration shall be specifically enforced ; but if any person who has made such a contract ³[other than an arbitration agreement to which the provisions of the said Act apply] and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Illustrations

to (a)—

A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent. loan of the Central Government :

¹ Subs. by Act 10 of 1940, s. 49(2) and Sch. IV, for " Code of Civil Procedure and the Indian Arbitration Act, 1899 ".

² Subs. by Act 9 of 1899, s. 21, for " a controversy ".

³ Ins. by Act 10 of 1940, s. 49 (2) and Sch. IV.

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A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest :

A, in consideration of certain property having been transferred by A to B, contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

The above contracts cannot be specifically enforced, for, in the first and second both A and B, and in the third A, would be reimbursed by compensation in money.

to (b)—

A contracts to render personal service to B :

A contracts to employ B on personal service :

A, an author, contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made, A instructs his valuer not to proceed :

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London :

A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease :

A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery :

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend :

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated", even if it is held to have so much certainty that compensation can be recovered for its breach :

A contracts to marry B.

The above contracts cannot be specifically enforced.

to (c)—

A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

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to (d)—

A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

to (e)—

A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The Directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property—and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to (f)—

A company existing for the sole purpose of making and working a railway, contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to (g)—

A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to (h)—

A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(c) Of the discretion of the Court

Discretion
as to decree-
ing specific
performance.

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance :—

-I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant,

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though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations

(a) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(c) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(d) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations

(e) A is entitled to some land under his father's will on condition that if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(f) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(g) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to B unless he waives his claim to the unknown property.

(h) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the

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part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(i) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance :—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration

A sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(d) *For whom contracts may be specifically enforced*

Who may
obtain
specific
performance.

23. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

- (a) any party thereto ;
- (b) the representative in interest, or the principal, of any party thereto : provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed ;
- (c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder ;
- (d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman ;

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- (e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant ;
- (f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach ;
- (g) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;
- (h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.
- (e) For whom contracts cannot be specifically enforced

24. Specific performance of a contract cannot be enforced in favour of a person— Personal bars to the relief.

- (a) who could not recover compensation for its breach ;
- (b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed ;
- (c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract ; or
- (d) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations

to clause (a)—

A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting, not as agent for B, but on his own account. A cannot enforce specific performance of this contract.

to clause (b)—

A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

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A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house, and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner: he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

to clause (c)—

A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

Contracts to
let property
by one who
has no title,
or who is a
voluntary
settler.

25. A contract for the sale or letting of property, whether movable or immovable, cannot be specifically enforced in favour of a vendor or lessor—

- (a) who, knowing himself not to have any title to the property, has contracted to sell or let the same;
- (b) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;
- (c) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Illustrations

(a) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(b) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as, in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(c) A, being in possession of certain land, contracts to sell it to Z. On inquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

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... out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to convey the property to a stranger. A cannot enforce specific performance of the contract so as to override the settlement, and thus prejudice the interests of the persons claiming under it.

(f) For whom contracts cannot be specifically enforced, except with a variation

26. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely):—

Non-enforcement except with variation.

- (a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;
- (b) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff;
- (c) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil;
- (d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce;
- (e) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations

(a) A, B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word "each" was inserted by mistake; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(b) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

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(c) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(d) A and B enter into negotiations for the purpose of securing land for B for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(e) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with B's consent, A pulls it down and erects a new house in its place: B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(g) Against whom contracts may be specifically enforced

Relief
against
parties and
persons
claiming
under them
by subse-
quent title.

27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
- (d) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;
- (e) when the promoters of a public company have, before its incorporation, entered into a contract, the company: provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

Illustrations

to clause (b)—

A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

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A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no inquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts, in consideration of Rs. 1,000, to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract, A becomes a lunatic and C is appointed his committee. B may specifically enforce the contract against C.

to clause (c)—

A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

¹[27A. Subject to the provisions of this Chapter, where a contract to lease immovable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract, though required to be registered, has not been registered, sue the other for specific performance of the contract if,—

- (a) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract; and
- (b) where specific performance is claimed by the lessee, he has, in part performance of the contract, taken possession of the property, or, being already in possession, continues in possession in part performance of the contract, and has done some act in furtherance of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

This section applies to contracts to lease executed after the first day of April, 1930.]

¹ Ins. by Act 21 of 1929, s. 3.

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(h) Against whom contracts cannot be specifically enforced

Parties
not be
compelled
to perform.

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases:—

- (a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;
- (b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;
- (c) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations

to clause (c)—

A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighas of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i) The effect of dismissing of a suit for specific performance

suit
breach
or
al.

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

(j) Awards and directions to execute settlements

Provision
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30. The provisions of this Chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

[1. 4. 56]

(Part II.—Of specific relief. Chapter III.—Of the rectification of instruments.)

CHAPTER III

OF THE RECTIFICATION OF INSTRUMENTS

31. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

Illustrations

(a) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b) By a marriage settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

32. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

34. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

Illustration

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

(Part II.—Of specific relief. Chapter IV.—Of the rescission of contracts.)

CHAPTER IV

OF THE RESCISSION OF CONTRACTS

35. Any person interested in a contract in writing¹ may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely :—

- (a) where the contract is voidable or terminable by the plaintiff ;
- (b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff ;
- (c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustrations

to (a)—

A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to (b)—

A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

36. Rescission of a contract in writing¹ cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

¹ The words "in writing" are rep. wherever the Transfer of Property Act, 1882 (4 of 1882), is in force, see ss. 1 and 2 of that Act.

II.—Of specific relief. Chapter IV.—Of the rescission of contracts. Chapter V.—Of the cancellation of instruments.)

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

Alternative prayer for rescission in suit for specific performance.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Court may require party rescinding to do equity.

CHAPTER V

OF THE CANCELLATION OF INSTRUMENTS

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

When cancellation may be ordered.

If the instrument has been registered under the Indian Registration Act,¹ the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations

(a) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b) A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument, dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act.¹ B may obtain the cancellation of this lease.

(d) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

¹ See now the Indian Registration Act, 1908 (16 of 1908).

(Part II.—Of specific relief. Chapter V.—Of the cancellation of instruments. Chapter VI.—Of declaratory decrees.)

What instruments may be partially cancelled.

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

Illustration

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

Power to require party for whom instrument is cancelled to make compensation.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER VI

OF DECLARATORY DECREES

Discretion of Court as to declaration of status or right.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief :

Bar to such declaration.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations

(a) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(b) A bequeaths his property to B, C and D, "to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children". No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(c) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(d) A alienates to B property in which A has merely a life interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled.

[1. 4. 56]

(Part II.—Of specific relief. Chapter VI.—Of declaratory decrees.
Chapter VII.—Of the appointment of receivers. Chapter VIII.—
Of the enforcement of public duties.)

(e) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime.

(f) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(g) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(h) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

43. A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees. Effect of declaration.

Illustration

A, a Hindu, in a suit to which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII

OF THE APPOINTMENT OF RECEIVERS

44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. Appointment of receivers discretionary.

The mode and effect of his appointment, and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure.¹ Reference to Code of Civil Procedure.

CHAPTER VIII

OF THE ENFORCEMENT OF PUBLIC DUTIES

45. Any of the High Courts of Judicature at ²[Calcutta, Madras and Bombay] may make an order requiring any specific act to be done or forbore, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent Power to order public servants and others to do certain specific acts.

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

² Subs. by The A. O. 1937 for "Fort William, Madras, Bombay and Rangoon".

(Part II.—Of specific relief. Chapter VIII.—Of the enforcement of public duties.)

or a temporary nature, or by any corporation or inferior Court of Judicature :

Provided—

- (a) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act ;
- (b) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character ;
- (c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice ;
- (d) that the applicant has no other specific and adequate legal remedy ; and
- (e) that the remedy given by the order applied for will be complete.

Nothing in this section shall be deemed to authorize any High Court—

- ¹[(f) to make any order binding on ²* * * the Central Government ³* * * or any State Government ;]
- (g) to make any order on any ⁴* * * servant of the Government, as such, merely to enforce the satisfaction of a claim upon the Government ; or
- (h) to make any order which is otherwise expressly excluded by any law for the time being in force.

Application
now made.

Procedure
thereon.

Order in
alternative.

46. Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice and the denial thereof ; and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made.

If, in the last case, the person, Court or corporation complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order,

¹ Subs. by the A. O. 1937 for the original cl.

² The words " the Secretary of State " rep. by the A. O. 1948.

³ The words " the Crown Representative " rep., *ibid.*

⁴ The word " other " rep., *ibid.*

Part II.—Of specific relief. Chapter VIII.—Of the enforcement of public duties. Part III.—Of preventive relief. Chapter IX.—Of injunctions generally.)

signify some reason to the contrary and make an answer thereto on such day as the High Court fixes in this behalf.

47. If the person, Court or corporation to whom or to which such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely. Peremptory order.

48. Every order under this Chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court. Execution of, and appeal from, orders.

49. The costs of all applications and orders under this Chapter shall be in the discretion of the High Court. Costs.

[50. Nothing in this Chapter shall affect the power conferred on a High Court by clause (1) of Article 226 of the Constitution.] Saving of power of High Court to issue mandamus.

51. Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this Chapter; and until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this Chapter. Power to frame rules.

PART III OF PREVENTIVE RELIEF CHAPTER IX OF INJUNCTIONS GENERALLY

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual. Preventive relief how granted.

53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.² Temporary injunctions.

¹ Subs. by the A. O. 1950 for the original section.

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

(Part III.—Of preventive relief. Chapter IX.—Of injunctions generally. Chapter X.—Of perpetual injunctions.)

Perpetual
injunction.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit : the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER X

OF PERPETUAL INJUNCTIONS

Perpetual
injunctions
when
granted.

54. Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely) :—

- (a) where the defendant is trustee of the property for the plaintiff ;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion ;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief ;
- (d) where it is probable that pecuniary compensation cannot be got for the invasion ;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

1* * * * *

Illustrations

(a) A lets certain lands to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(b) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

¹ Explanation omitted by Act 43 of 1958, s. 135 and Sch. (w.e.f. 25-11-1959).

(Part III.—Of preventive relief. Chapter X.—Of perpetual injunctions.)

(e) The directors of a public company are about to pay a dividend¹ out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(f) The directors of a fire and life-insurance company are about to engage marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(g) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(h) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(i) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(j) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(k) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(l) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(m) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(n) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(o) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(p) A, B and C are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(q) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the Official Assignee and enters into possession. A persists in

¹ A Railway Company may, however, pay interest on its paid up share capital out of capital, for a certain period and subject to certain restrictions and conditions: see the Indian Railway Companies Act, 1895 (10 of 1895), s. 3.

(Part III.—Of preventive relief. Chapter X.—Of perpetual injunctions.)

trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(p) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(q) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(r) A and B are in possession of contiguous lands and of the mines underneath them.¹ A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(u) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(v) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(x) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(z) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

Mandatory
injunctions.

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

¹ As to the working of mines under land, the surface of which has been acquired by Government, see the Land Acquisition (Mines) Act, 1885 (18 of 1885).

² Illustration (w) omitted by Act 43 of 1958, s. 135 and Sch. (w.e.f. 25-11-1959.)

(Part III.—Of preventive relief. Chapter X.—Of perpetual injunctions.)

Illustrations

(a) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act,¹ Part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(c) In the case put as illustration (i) to section 54, the Court may also order all written communications made by B, as patient, to A, as medical adviser, to be destroyed.

(d) In the case put as illustration (y) to section 54, the Court may also order A's letters to be destroyed.

(e) A threatens to publish statements concerning B which would be punishable under Chapter XXI of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(f) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(g) In the cases put as illustrations (v) and (w) to section 54 and as illustrations (e) and (f) to this section, the Court may also order the copies produced by piracy, and the trade marks, statements and communications, therein respectively mentioned, to be given up or destroyed.

56. An injunction cannot be granted—

Injunction
when
refused.

- (a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings ;
- (b) to stay proceedings in a Court not subordinate to that from which the injunction is sought ;
- (c) to restrain persons from applying to any legislative body ;
- (d) to interfere with the public duties of any department of ²[the Central Government * * * or any State Government], or with the sovereign acts of a foreign Government ;
- (e) to stay proceedings in any criminal matter ;
- (f) to prevent the breach of a contract the performance of which would not be specifically enforced ;

¹ See now the Indian Limitation Act, 1908 (9 of 1908).

² Subs. by the A. O. 1937 for "the Govt. of India or the L. G."

³ The words "the Crown Representative" rep. by the A. O. 1948.

(Part III.—Of preventive relief. Chapter X.—Of perpetual injunctions.)

- (g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance ;
- (h) to prevent a continuing breach in which the applicant has acquiesced ;
- (i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust ;
- (j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court ;
- (k) where the applicant has no personal interest in the matter.

Illustrations

(a) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(b) A manufactures and sells crucibles, designating them as "patent plumbago-crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

Injunction
to perform
negative
agreement.

57. Notwithstanding section 56, clause (f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations

(a) A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rs. 1,000 but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction

[1. 4. 56]

(Part III.—Of preventive relief. Chapter X.—Of perpetual injunctions.)

to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c) A contracts with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(d) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(e) A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

SCHEDULE.—[Enactments repealed.] Rep. by the Repealing and Amending Act, 1891 (12 of 1891).

THE INDIAN LIMITATION ACT, (ACT IX OF 1908)

An act to consolidate and amend the law for the Limitation of Suits, and for other purposes

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; it is hereby enacted as follows:—

PART I—Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the Indian Limitation Act, 1908.

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

(3) This section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January, 1909.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

(1) “applicant” includes any person from or through whom an applicant derives his right to apply;

(2) “bill of exchange” includes a hundi and a cheque;

(3) “bond” includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(4) “defendant” includes any person from or through whom a defendant derives his liability to be sued;

(5) “easement” includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to or subsisting upon, the land of another;

(6) “foreign country” means any country other than India, but includes also the State of Jammu and Kashmir;

(7) “good faith”; nothing shall be deemed to be done in good faith which is not done with due care and attention;

(8) “plaintiff” includes any person from or through whom a plaintiff derives his right to sue;

(9) “promissory note” means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited or on demand, or at sight;

[(9A) “India” means the territory of India excluding the State of Jammu and Kashmir;]

(10) “suit” does not include an appeal or an application; and

(11) “trustee” does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

PART II.—Limitation of Suits, Appeals and Application

3. Dismissal of suit, etc., instituted, etc., after period of limitation.—Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

4. Where Court is closed when period expires.—Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

5. Extension of period in certain cases.—Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be

admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

6. Legal disability.—(1) When a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

Illustrations.—(a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accrual. He may institute his suit at any time within three years from the date of his attaining majority.

(b) A right to sue accrues to Z during his minority. After the accrual, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

7. Disability of one of several plaintiffs or applicants.—Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Illustrations.—(a) A incurs a debt to a firm of which B, C and D are partners. B is insane and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane and G is a minor. Time will not run against any of them until either E or F becomes sane, or attains majority.

8. Special exceptions.—Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.—(a) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accrual. A has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section an extension of two years will be allowed to him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(b) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accrual A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given to him under section 6 read with this section.

(c) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accrual, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

9. Continuous running of time.—Where once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Suits against express trustees and their representatives.—Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration) for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.

11. Suits on foreign contracts.—(1) Suits instituted in India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.

(2) No foreign rule of limitation shall be a defence to a suit instituted in India on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

PART III.—Computation of period of limitation

12. Exclusion of time in legal proceedings.—(1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application of a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

13. Exclusion of time of defendant's absence from India and certain other territories.—In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from India and from the territories beyond India under the administration of the Central Government shall be excluded.

14. Exclusion of time of proceeding 'bona fide' in Court without jurisdiction.—

(1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance, or in a Court of appeal, against the same party or the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Explanation I.—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III.—For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

15. Exclusion of time during which proceedings are suspended.—(1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

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16. Exclusion of time during which proceedings to set aside execution sale are pending.—In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

17. Effect of death before right to sue accrues.—(1) Where a person, who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub-sections (1) and (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of an hereditary office.

18. Effect of fraud.—Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

19. Effect of acknowledgment in writing.—(1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, 1872 (I of 1872), oral evidence of its contents shall not be received.

Explanation I.—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation II.—For the purposes of this section, "signed" means signed either personally or by an agent duly authorized in this behalf.

Explanation III.—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

20. Effect of payment on account of debt or of interest on legacy.—(1) Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, or by his duly authorised agent, a fresh period of limitation shall be computed from the time when the payment was made.

Provided that, save in the case of a payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the hand-writing of, or in a writing signed by, the person making the payment.

(2) Effect of receipt of produce of mortgaged land.—Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).

Explanation.—Debt includes money payable under a decree or order of Court.

21. Agent of person under disability.—(1) The expression "agent duly authorized in this behalf," in sections 19 and 20, shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorized by such guardian, committee or manager to sign the acknowledgment or make the payment.

(2) Acknowledgment or payment by one of several joint contractors, etc.—Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

(3) For the purposes of the said sections—

(a) An acknowledgment signed, or a payment made, in respect of any liability, by, or by the duly authorized agent of, any widow or other limited owner of property who is governed by the Hindu law, shall be a valid acknowledgment or payment, as the case may be, as against a reversioner succeeding to such liability; and

(b) Where a liability has been incurred by, or on behalf of, a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorized agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

22. Effect of substituting or adding new plaintiff or defendant.—(1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

23. Continuing breaches and wrongs.—In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

24. Suit for compensation for act not actionable without special damage.—In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustrations.—(a) A owns the surface of a field. B owns the sub soil. B digs coal thereout without causing any immediate apparent injury to the surface but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

25. Computation of time mentioned in instruments.—All instruments, shall for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.—(a) A Hindu makes a promissory note bearing a Native date only and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(b) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

PART IV.—Acquisition of ownership by Possession.

26. Acquisition of right to easements.—(1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years.

the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right is claimed under sub-section (1) belongs to the Government that sub-section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

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Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.—(a) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January 1890, to 1st January 1910. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

27. Exclusion in favour of reversioner of servient tenement.—Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.—A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years, C, a Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death, he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

28. Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

PART V.—Savings and Repeals

29. Savings.—(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (IX of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply.

(3) Nothing in this Act shall apply to suits under the Indian Divorce Act (IV of 1869).

(4) Sections 26 and 27 and the definition of "easement" in section 2 shall not apply to cases arising in territories to which the Indian Easements Act, 1882 (V of 1882), may for the time being extend.

30. (Provision for States for which the period prescribed is shorter than that prescribed by any law previously in force in a Part B State).—[Omitted by the Adaptation of Laws (No. 2) Order, 1956.]

30 and 31. [Provision for suits for which the period prescribed is shorter than that prescribed by the Indian Limitation Act, 1877. Provision for suits by certain mortgagees in territories mentioned in the second schedule.]—Repealed by the Repealing and Amending Act, 1930 (8 of 1930), S. 3 and Sch. II.

32. [Repeals]—Repealed by the Second Repealing and Amending Act, 1914 (17 of 1914), S. 3 and Sch. II.

THE FIRST SCHEDULE

(See Section 3)

FIRST DIVISION: SUITS

Description of suit	Period of limitation	Time from which period begins to run
	<i>Part I.—</i> <i>Thirty days</i>	
1. To contest an award of the Board of Revenue under the Waste Lands (Claims) Act, 1863 (XXIII of 1863).	Thirty days	When notice of the award is delivered to the plaintiff.
	<i>Part II.—</i> <i>Ninety days</i>	
2. For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in India.	Ninety days	When the act or omission takes place.
	<i>Part III.—</i> <i>Six months</i>	
3. Under the Specific Relief Act, 1877 (I of 1877), section 9, to recover possession of immoveable property.	Six months	When the dispossession occurs.
4. Repealed by the Repealing and Amendment Act 20 of 1937.		
	<i>Part IV.—</i> <i>One year</i>	
5. Under the summary of procedure referred to in section 128 (2) (f) of the Code of Civil Procedure, 1908 (V of 1908) where the provision of such summary procedure does not exclude the ordinary procedure in such suits and under Order XXXVII of the said Code. (This Article has been repealed for the State of Bombay and a corresponding Article inserted as Art. 64A, by the Bombay Amendment Act, 6 of 1937).	One year	When the debt or liquidated demand becomes payable or when the property becomes recoverable.
6. Upon a Statute, Act, Regulation, or Bye-law, for a penalty or forfeiture.	One year	When the penalty or forfeiture is incurred.
7. For the wages of a household servant, artisan or labourer.	One year	When the wages accrue due.
8. For the price of food or drink sold by the keeper of a hotel, tavern or lodging house.	One year	When the food or drink is delivered.
9. For the price of lodging.	One year	When the price becomes payable.
10. To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	One year	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or where the subject of the sale does not admit of physical possession when the instrument of sale is registered.
11. By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order.	One year	The date of the order.
(1) Order under the Code of Civil Procedure, 1908 (V of 1908), on a claim preferred to or an objection made to the attachment of property attached in execution of a decree.	(For the State of U.P. the words "six months" have been substituted for "one year" by the U.P. Act 24 of 1954).	
(2) Order under section 28 of the Presidency Small Cause Courts Act, 1882 (XV of 1882).		
11A. By a person against whom an order has been made under the Code of Civil Procedure, 1908 (V of 1908), upon an application by the holder of a decree for the possession of immoveable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.	One year	The date of the order.

Description of suit	Period of limitation	Time from which period begins to run
12. To set aside any of the following sales: (a) sale in execution of a decree of a Civil Court; (b) sale in pursuance of a decree or order of a Collector or other officer of revenue; (c) sale for arrears of Government revenue for any demand recoverable as such arrears; (d) sale of a patni taluq sold for current arrears of rent.	One year	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
<i>Explanation.</i> —In this article "patni" includes any intermediate tenure saleable for current arrears of rent.		
13. To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	One year	The date of the final decision or order in the case by a Court competent to determine it finally.
14. To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	One year	The date of the act or order.
15. Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue authorities for arrears of Government revenue.	One year	When the attachment, lease or transfer is made.
16. Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	One year	When the payment is made.
17. Against Government for compensation for land acquired for public purposes.	One year	The date of determining the amount of the compensation.
18. Like suit for compensation when the acquisition is not completed.	One year	The date of the refusal to complete.
19. For compensation for false imprisonment.	One year	When the imprisonment ends.
20. By executors, administrators or representatives under the Legal Representatives' Suits Act, 1855 (XII of 1855).	One year	The date of the death of the person wronged.
21. By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855 (XIII of 1855).	One year	The date of the death of the person killed.
22. For compensation for a malicious prosecution.	One year	When the injury is committed.
23. For compensation for any other injury to the person.	One year	When the plaintiff is acquitted, or the prosecution is otherwise terminated.
24. For compensation for libel.	One year	When the libel is published.
25. For compensation for slander.	One year	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26. For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	One year	When the loss occurs.
27. For compensation for inducing a person to break a contract with the plaintiff.	One year	The date of the breach.
28. For compensation for an illegal, irregular or excessive distress.	One year	The date of the distress.
29. For compensation for wrongful seizure of moveable property under legal process.	One year	The date of the seizure.
30. Against a carrier for compensation for losing or injuring goods.	One year	When the loss or injury occurs.
31. Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	One year	When the goods ought to be delivered.
<i>Part V—</i>		
<i>Two years</i>		
32. Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years	When the perversion first becomes known to the person injured thereby.

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Description of suit	Period of limitation	Time from which period begins to run
33. Under the Legal Representatives' Suits Act, 1855 (XII of 1855) against an executor.	Two years	When the wrong complained of is done.
34. Under the same Act against an administrator.	Two years	Ditto.
35. Under the same Act against any other representative.	Two years	Ditto.
36. For compensation for any malfeasance, misfeasance or negligence independent of contract and not herein specially provided for.	Two years	When the malfeasance, misfeasance or non-feasance takes place.
Part VI.—		
Three years		
37. For compensation for obstructing a way or a watercourse.	Three years	The date of the obstruction.
38. For compensation for diverting a watercourse.	Three years	The date of the diversion.
39. For compensation for trespass upon immoveable property.	Three years	The date of the trespass.
40. For compensation for infringing copyright or any other exclusive privilege.	Three years	The date of the infringement.
41. To restrain waste.	Three years	When the waste begins.
42. For compensation for injury caused by an injunction wrongfully obtained.	Three years	When the injunction ceases.
43. Under the Indian Succession Act, 1925 (XXXIX of 1925), section 360 or section 361 to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Three years	The date of the payment or distribution.
44. By a ward who has attained majority, to set aside a transfer of property by his guardian.	Three years	When the ward attains majority.
45. To contest an award under any of the following Regulations of the Bengal Code:— The Bengal Land-revenue Settlement Regulation, 1822 (VII of 1822). The Bengal Land-revenue Settlement Regulation, 1825 (XI of 1825). The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833 (IX of 1833).	Three years	The date of the final award or order in the case.
46. By a party bound by such award to recover any property comprised therein.	Three years	The date of the final award of order in the case.
47. By any person bound by an order respecting the possession of immoveable property made under the Code of Criminal Procedure, 1898 (V of 1898), or the Mamlatsdars' Courts Act, 1906 (Bom. II of 1906), or by any one claiming under such person, to recover the property comprised in such order.	Three years	The date of the final order in the case.
48. For specific moveable property lost or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Three years	When the person having the right to the possession of the property first learns in whose possession it is.
48-A. To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards brought from the trustee, depositary or pawnee for a valuable consideration.	Three years	When the sale becomes known to the plaintiff.
48-B. To set aside sale of moveable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Three years	When the sale becomes known to the plaintiff.
49. For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Three years	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.

Description of suit	Period of limitation	Time from which period begins to run
50. For the hire of animals, vehicles, boats or household furniture.	Three years	When the hire becomes payable.
51. For the balance of money advanced in payment of goods to be delivered.	Three years	When the goods ought to be delivered.
52. For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Three years	The date of the delivery of the goods.
53. For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Three years	When the period of credit expires.
54. For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Three years	When the period of the proposed bill elapses.
55. For the price of trees or growing crops sold by the plaintiff to the defendant, where no fixed period of credit is agreed upon.	Three years	The date of the sale.
56. For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years	When the work is done.
57. For money payable for money lent.	Three years	When the loan is made.
58. Like suit when the lender has given a cheque for the money.	Three years	When the cheque is paid.
59. For money lent under an agreement that it shall be payable on demand.	Three years	When the loan is made.
60. For money deposited under an agreement that it shall be payable on demand, including money to a customer in the hands of his banker so payable.	Three years	When the demand is made.
61. For money payable to the plaintiff for money paid for the defendant.	Three years	When the money is paid.
62. For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Three years	When the money is received.
63. For money payable for interest upon money due from the defendant to the plaintiff.	Three years	When the interest becomes due.
64. For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Three years	When the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65. For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years	When the time specified arrives or the contingency happens.
*65-A. The text of Art. 5.	Three years	The text of Art. 5.
66. On a single bond, where a day is specified for payment.	Three years	The day so specified.
67. On a single bond, where no such day is specified.	Three years	The date of executing the bond.
68. On a bond subject to a condition.	Three years	When the condition is broken.
69. On a bill of exchange or promissory note payable at a fixed time after date.	Three years	When the bill or note falls due.
70. On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Three years	When the bill is presented.
71. On a bill of exchange accepted payable at a particular place.	Three years	When the bill is presented at that place.
72. On a bill of exchange or promissory note payable at a fixed time after sight of other demand.	Three years	When the fixed time expires.
73. On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years	The date of the bill or note.

Description of suit	Period of limitation	Time from which period begins to run
74. On a promissory note or bond payable by instalments.	Three years	The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment.
75. On a promissory note or bond payable by instalments, which provides that if default be made in payment of one or more instalments, the whole shall be due.	Three years	When the default is made unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76. On a promissory note given by the maker to a third person to be delivered to the payee after certain event should happen.	Three years	The date of the delivery to the payee.
77. On a dishonoured foreign bill where protest has been made and notice given.	Three years	When the notice is given.
78. By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Three years	The date of the refusal to accept.
79. By the acceptor of an accommodation bill against the drawer.	Three years	When the acceptor pays the amount of the bill.
80. Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Three years	When the bill, note or bond becomes payable.
81. By a surety against the principal debtor.	Three years	When the surety pays the creditor.
82. By a surety against a co-surety.	Three years	When the surety pays anything in excess of his own share.
83. Upon any other contract to indemnify.	Three years	When the plaintiff is actually damaged.
84. By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Three years	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
85. For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
86. (a) On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.	Three years	(a) The date of the death of the deceased.
(b) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.		(b) The date of the occurrence causing the loss.
87. By the assured to recover premia paid under a policy voidable at the election of the insurers.	Three years	When the insurers elect to avoid the policy.
88. Against a factor for an account.	Three years	When the account is, during the continuance of the agency demanded and refused or, where no such demand is made, when the agency terminates.
89. By a principal against his agent for moveable property received by the latter and not accounted for.	Three years	When the account is, during the continuance of the agency demanded and refused or, where on such demand is made, when the agency terminates.
90. Other suits by principals against agents for neglect or misconduct.	Three years	When the neglect or misconduct becomes known to the plaintiff.
91. To cancel or set aside an instrument not otherwise provided for.	Three years	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92. To declare the forgery of an instrument issued or registered.	Three years	When the issue or registration becomes known to the plaintiff.
93. To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Three years	The date of the attempt.
94. For property which the plaintiff has conveyed while insane.	Three years	When the plaintiff is restored to sanity, and has knowledge of the conveyance.

LIMITATION ACT

Description of suit	Period of limitation	Time from which period begins to run
95. To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Three years	When the fraud becomes known to the party wronged.
96. For relief on the ground of mistake.	Three years	When the mistake becomes known to the plaintiff.
97. For money paid upon an existing consideration which afterwards fails.	Three years	The date of the failure.
98. To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99. For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	Three years	The date of the payment in excess of the plaintiff's own share.
100. By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Three years	When the right to contribution accrues.
101. For a seaman's wages.	Three years	The end of the voyage during which the wages are earned.
102. For wages not otherwise expressly provided for by this schedule.	Three years	When the wages accrue due.
103. By a Muhammadan for exigible dower (<i>mu'ajjal</i>).	Three years	When the dower is demanded and refused or (where, during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
104. By a Muhammadan for deferred dower (<i>muwajjal</i>).	Three years	When the marriage is dissolved by death or divorce.
105. By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Three years	When the mortgagor re-enters on the mortgaged property.
106. For an account and a share of the profits of a dissolved partnership.	Three years	The date of the dissolution.
107. By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	Three years	The date of the payment.
108. By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Three years	When the trees are cut down.
109. For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Three years	When the profits are received.
110. For arrears of rent.	Three years	When the arrears become due.
111. By a vendor of immoveable property for personal payment of unpaid purchase-money.	Three years	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112. For a call by a company registered under any Statute or Act.	Three years	When the call is payable.
113. For specific performance of a contract.	Three years	The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.
114. For the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115. For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Three years	When the contract is broken, or (when there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
116. For compensation for the breach of a contract in writing registered.	Six years	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
117. Upon a foreign judgment as defined in the Code of Civil Procedure, 1908 (V of 1908).	Six years	The date of the judgment.

Part VII.—
Six years

Description of suit	Period of limitation	Time from which period begins to run
118. To obtain a declaration, that an alleged adoption is invalid, or never, in fact, took place.	Six years	When the alleged adoption becomes known to the plaintiff.
119. To obtain a declaration that an adoption is valid.	Six years	When the rights of the adopted son, as such, are interfered with.
120. Suit for which no period of limitation is provided elsewhere in this schedule.	Six years	When the right to sue accrues.
Part VIII.		
	Twelve years	
121. To avoid incumbrances or under tenures in an entire estate sold for arrears of Government revenue, or in a pathi taluk or other saleable tenure sold for arrears of rent.	Twelve years	When the sale becomes final and conclusive.
122. Upon a judgment obtained in India or a recognisance.	Twelve years	The date of the judgment or recognisance.
123. For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Twelve years	When the legacy or share becomes payable or deliverable.
124. For possession of an hereditary office.	Twelve years	When the defendant takes possession of the office adversely to the plaintiff. <i>Explanation.</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125. Suit during the life of a Hindu or Mohammadan female by a Hindu or Mohammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	Twelve years	The date of the alienation.
126. By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Twelve years	When the alienee takes possession of the property.
127. By a person excluded from joint family property to enforce a right to share therein.	Twelve years	When the exclusion becomes known to the plaintiff.
128. By a Hindu for arrears of maintenance.	Twelve years	When the arrears are payable.
129. By a Hindu for a declaration of his right to maintenance.	Twelve years	When the right is denied.
130. For the resumption or assessment of rent-free land.	Twelve years	When the right to resume or assess the land first accrues.
131. To establish a periodically recurring right.	Twelve years	When the plaintiff is first refused the enjoyment of the right.
132. To enforce payment of money charged upon immoveable property. <i>Explanation.</i> —For the purposes of this article— (a) the allowance and fees respectively called <i>malikana</i> and <i>haggs</i> , and (b) the value of any agricultural or other produce the right to receive which is secured by a charge upon immoveable property, and (c) advances secured by mortgage by deposit of title deeds shall be deemed to be money charged upon immoveable property.	Twelve years	When the money sued for becomes due.
133. (Omitted and re-enacted as Art. 48-A by Act. 1 of 1929.)		
134. To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration.	Twelve years	When the transfer becomes known to the plaintiff.
134-A. To set aside a transfer of immoveable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Twelve years	When the transfer becomes known to the plaintiff.

LIMITATION ACT

Description of suit	Period of limitation	Time from which period begins to run
134-B. By the manager of a Hindu Muhammadan or Buddhist religious or charitable endowment to recover possession of immoveable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	Twelve years	The death, resignation or removal of the transferor.
134-C. By the manager of a Hindu Muhammadan or Buddhist religious or charitable endowment to recover possession of moveable property comprised in the endowment which has been sold by a previous manager for a valuable consideration.	Twelve years	The death, resignation or removal of the seller.
135. Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	Twelve years	When the mortgagor's right to possession determines.
136. By a purchaser at a private sale for possession of immoveable property sold when the vendor was out of possession at the date of the sale.	Twelve years	When the vendor is first entitled to possession.
137. Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Twelve years	When the judgment-debtor is first entitled to possession.
138. Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.	Twelve years	The date when the sale becomes absolute.
139. By a landlord to recover possession from a tenant.	Twelve years	When the tenancy is determined.
140. By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immoveable property.	Twelve years	When his estate falls into possession.
141. Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.	Twelve years	When the female dies.
142. For possession of immoveable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years	The date of the dispossession or discontinuance.
143. Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Twelve years	When the forfeiture is incurred or the condition is broken.
144. For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.
Part IX.— Thirty years		
145. Against a depository or pawnee to recover moveable property deposited or pawned.	Thirty years	The date of the deposit or pawn.
146. Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Thirty years	When any part of the principal or interest was last paid on account of the mortgage-debt.
146-A. By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Thirty years	The date of the dispossession or discontinuance.
147. By a mortgagee for foreclosure or sale.	Thirty years	When the money secured by the mortgage becomes due.
Part X.— Sixty years		
148. Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Sixty years	When the right to redeem or to recover possession accrues. Provided that all claims to redeem arising under instruments of mortgage of immoveable property situate in Lower Burma which had been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that State immediately before the same day.

Description of Appeal	Period of limitation	Time from which period begins to run
149. Any suit by or on behalf of the Central Government or any State Government except a suit before the Supreme Court in the exercise of its original jurisdiction.	Sixty years	When the period of limitation would begin to run under this Act against like suit by a private person.
SECOND DIVISION: APPEALS		
150. Under the Code of Criminal Procedure 1898 (V of 1898), from a sentence of death passed by a Court of Session or by a High Court in the exercise of its original Criminal jurisdiction.	Seven days	The date of the sentence.
150-A. (Omitted by Act 17 of 1949).		
151. From a decree or order of any of the High Courts of Judicature at Fort William, Madras, and Bombay, or of the High Court of Punjab in the exercise of its original jurisdiction.	Twenty days	The date of the decree or order.
152. Under the Code of Civil Procedure, 1908 (V of 1908), to the Court of a District Judge.	Thirty days	The date of the decree or order appealed from.
153. Under the same Code to a High Court from an order of a Subordinate Court refusing leave to appeal to Supreme Court.	Thirty days	The date of the order.
154. Under the Code of Criminal Procedure, 1898 (V of 1898), to any Court other than a High Court.	Thirty days	The date of the sentence or order appealed from.
155. Under the same Code to a High Court, except in the cases provided for by article 150 and article 157.	Sixty days	The date of the sentence or order appealed from.
156. Under the Code of Civil Procedure, 1908 (V of 1908), to a High Court, except in the cases provided for by article 151 and article 153.	Ninety days	The date of the decree or order appealed from.
157. Under the Code of Criminal Procedure, 1898 (V of 1898), from an order of acquittal.	Three months	The date of the order appealed from.
THIRD DIVISION: APPLICATIONS		
158. Under the Arbitration Act, 1940 (10 of 1940) to set aside an award or to get an award remitted for reconsideration.	Thirty days	The date of serving of the notice of filing of the award.
159. For leave to appear and defend a suit under summary procedure referred to in section 128 (2) (f) (or under Order XXXVII) of the Code of Civil Procedure, 1908.	Ten days	When the summons is served.
160. For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days	When the application for a view is rejected.
161. For a review of judgment by a Court of small Causes other than a Presidency Small Cause Court or by a Court invested with the jurisdiction of a Court of Small Causes when exercising that jurisdiction.	Fifteen days	The date of the decree or order.
162. For a review of judgment by any of the following Courts, namely, the High Courts at Calcutta and Madras and the High Courts of Bombay, Madhya Pradesh and Punjab in the exercise of its original jurisdiction.	Twenty day	The date of the decree or order.
163. By a plaintiff, for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.	Thirty days	The date of the dismissal.
164. By a defendant, for an order to set aside a decree passed ex-parte.	Thirty days	The date of the decree or, where the summons was not duly served, when the applicant has knowledge of the decree.

Description of Application	Period of limitation	Time from which period begins to run
165. Under the Code of Civil Procedure, 1908 (V of 1908), by a person dispossessed of immovable property and disputing the right of the decree-holder or purchaser—at a sale in execution of a decree to be put into possession.	Thirty days	The date of the dispossession.
166. Under the same Code to set aside a sale in execution of a decree including any such application by a judgment-debtor.	Thirty days	The date of the sale.
167. Complaining of resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	Thirty days	The date of the resistance or obstruction.
168. For the re-admission of an appeal dismissed for want of prosecution.	Thirty days	The date of the dismissal.
169. For the re-hearing of an appeal heard <i>ex-parte</i> .	Thirty days	The date of the decree in appeal or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.
170. For leave to appeal as a pauper.	Thirty days	The date of the decree appealed from.
171. Under the Code of Civil Procedure, 1908 (V of 1908), for an order to set aside an abatement.	Sixty days	The date of the abatement.
172. Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	Sixty days	The date of the order of dismissal.
173. For a review of judgment except in the cases provided for by article 161 and article 162.	Ninety days	The date of the decree or order.
174. For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	Ninety days	When the payment or adjustment is made.
175. For payment of the amount of a decree by instalments.	Six months	The date of the decree.
176. Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	Ninety days	The date of the death of the deceased plaintiff or appellant.
177. Under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party.	Ninety days	The date of the death of the deceased defendant or respondent.
178. Under the Arbitration Act, 1940, for the filing in Court of an award.	Ninety days	The date of service of the notice of the making of the award.
179. By a person desiring to appeal under the Code of Civil Procedure, 1908 to the Supreme Court for leave to appeal.	Ninety days	The date of the decree appealed from.
180. By a purchaser of immovable property at a sale in execution of a decree for delivery of possession.	Three years	When the sale becomes absolute.
181. Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908 (V of 1908).	Three years	When the right to apply accrues.
182. For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908 (V of 1908).	Three years; or where a certified copy of the decree or order has been registered, six years. (For the State of U.P., the words "six years" have been substituted for "three years", by the U.P. Act 24 of 1954).	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the decree has been amended) the date of amendment, or

Description of Application	Period of limitation	Time from which period begins to run
		5. (where the application next hereinafter mentioned has been made) the date of the final order passed on an application made in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree or order, or
		6. (in respect of any amount, recovered by execution of the decree or order, which the decree-holder has been directed to refund by a decree passed in a suit for such refund) the date of such last mentioned decree or, in the case of an appeal therefrom, the date of the final decree of the appellate Court or of the withdrawal of the appeal,
		7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.
		Explanation I.—Where the decree or order has been passed severally in favour of more persons than one distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.
		Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them or against his or their representatives, shall take effect against them all.
		Explanation II.—“Proper Court” means the Court whose duty it is to execute the decree or order.
		When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right:
		Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revival, payment or acknowledgment or the latest of such revivals, payments or acknowledgments, as the case may be.
183. To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of the Supreme Court.	Six years	

THE SECOND SCHEDULE.—[Territories referred to in Section 31.] Repealed by the Repealing and Amending Act 8 of 1930.

THE THIRD SCHEDULE.—[Enactments repealed.] Repealed by the Second Repealing and Amending Act 17 of 1914.

MUSSALMAN WAKF VALIDATING ACT, 1913 [REPEALED]

Preamble 1 - MUSSALMAN WAKF VALIDATING ACT, 1913

THE MUSSALMAN WAKF VALIDATING ACT, 1913

[Act, No. 6 of 1913]

[AS ON 1959]

[7th March, 1913]

PREAMBLE

An Act to declare the rights of Mussalmans to make settlements of property by way of "wakf" in favour of their families, children and descendants.

WHEREAS doubts have arisen regarding the validity of wakfs created by persons professing the Mussalman faith in favour of themselves, their families, children and descendants and ultimately for the benefit of the poor or for other religious, pious or charitable purposes; and whereas it is expedient to remove such doubts; It is hereby enacted as follows:--

Section 1 - Short title and extent

(1) This Act may be called the Mussalman Wakf Validating Act, 1913.

(2) It extends to the whole of India except { Subs. by the Adaptation of Laws (No.2) Order, 1956, for " Part B States " } [the territories which, immediately before the 1st November, 1956, were comprised in Part B States].

Section 2 - Definitions

In this Act, unless there is anything repugnant in the subject or context,--

(1) "Wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable.

(2) "Hanafi Mussalman" means a follower of the Mussalman faith who conforms to the tenets and doctrines of the Hanafi school of Mussalman law.

Section 3 - Power of Mussalmans to create certain wakfs

It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes:--

(a) for the maintenance and support wholly or partially of his family, children or descendants; and

(b) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated:

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character.

Section 4 - Wakfs not to be invalid by reason of remoteness of benefit to poor, etc.

No such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or a permanent nature is postponed until after the extinction of the family, children or descendants of the person creating the wakf.

Section 5 - Saving of local and sectarian custom

Nothing in this Act shall affect any custom or usage whether local or prevalent among Mussalmans of any particular class or sect.

The Mussalman Wakf Validating Act, 1930

*[Act 32 of 1930¹, Repealed by Act 23 of 2016, S. 2 and Sch. I]
[25th July, 1930]*

An Act to give retrospective effect to the Mussalman Wakf Validating Act, 1913

Whereas the Mussalman Wakf validating Act, 1913 (6 of 1913), does not apply to wakfs created before its enactment;

And whereas it is expedient to validate such wakfs without infringing any rights contrary thereto which may have already accrued or been acquired;

It is hereby enacted as follows:—

1. Short title.—This Act may be called the Mussalman Wakf Validating Act, 1930.

2. Act 6 of 1913 to apply retrospectively.—The Mussalman Wakf Validating Act, 1913 (6 of 1913), shall be deemed to apply to wakfs created before its commencement:

Provided that nothing herein contained shall be deemed in any way to affect any right, title, obligation or liability already acquired, accrued or incurred before the commencement of this Act.

¹ This Act has been declared to be in force in the Sonthal Parganas by Notification under Section 3(3)(a) of the Sonthal Parganas Settlement Regulations (3 of 1872), see B & O Gazette, 1931, Part II, p. 903.

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THE MOORSHEDABAD (AMENDMENT) ACT, 1923.

ACT No. XXV OF 1923.¹

[25th July, 1923.]

An Act to modify certain provisions of the Indenture confirmed by the Moorshedabad Act, 1891.

WHEREAS it is expedient to modify certain provisions of the Indenture confirmed by the Moorshedabad Act, 1891 ; It is hereby enacted as follows:— XV of 1891.

Short title.

Modification
of Indenture.

1. This Act may be called the Moorshedabad (Amendment) Act, 1923.
2. The provisions of the Indenture set out in the Schedule to the Moorshedabad Act, 1891, which provide that the Nawab Bahadur of XV of 1891. Moorshedabad shall not, nor shall any of his successors, sell, mortgage, devise or alienate certain properties referred to in the said indenture respectively or any of them otherwise than by lease or demise for a term not exceeding twenty-one years and under a rent without bonus or salamee shall have effect as if for the words " for a term not exceeding twenty-one years and under a rent without bonus or salamee " the following words were substituted, namely:—

" the terms and conditions of which have been previously approved by the ²[Provincial Government of Bengal] " :

Provided that nothing herein contained shall affect anything done, or any right or liability which has accrued or been incurred, under any such lease or demise before the commencement of this Act.

THE MUSSALMAN WAKF ACT, 1923.

ACT No. XLII OF 1923.²

[5th August, 1923.]

An Act to make provision for the better management of wakf

¹ For Statement of Objects and Reasons, see Gazette of India, 1923, Pt. V, p. 235.

² Subs. by the A. O. 1937 for " Governor of Bengal in Council ".

³ For Statement of Objects and Reasons, see Gazette of India, 1921, Pt. V, p. 182 ; and for Report of Select Committee, see *ibid.*, 1923, Pt. V, p. 139.

This Act has been rep. in its application to Bengal by the Bengal Wakf Act, 1934 (Ben. 13 of 1934), s. 82 ; and rep. in part in the United Provinces by the United Provinces Muslim Wakf Act, 1936 (U. P. 13 of 1936) ; and amended in its application to—

Bihar and Orissa by the Bihar and Orissa Mussalman Wakf (Amendment) Act, 1926 (B. & O., 1 of 1926) ; and

Bombay by the Mussalman Wakf (Bombay Amendment) Act, 1935 (Bom. 18 of 1935) ; the Mussalman Wakf, Bombay Public Trusts Registration and Parsi Public Trusts Registration (Amendment) Act, 1944 (Bom. 10 of 1944) and the Mussalman Wakf (Bombay Amendment) Act, 1945 (Bom. 15 of 1945).

(Preliminary.)

property and for ensuring the keeping and publication of proper accounts in respect of such properties.

WHEREAS it is expedient to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties ; It is hereby enacted as follows:—

Preliminary.

1. (1) This Act may be called the Mussalman Wakf Act, 1923 ;
 - (2) It extends to ¹[all the Provinces of India], including ²* * the Sonthal Parganas ;
 - (3) This section shall come into force at once ; and
 - (4) The ³[Provincial Government] may, by notification in the ⁴[Official Gazette], direct⁵ that the remaining provisions of this Act, or any of them which it may specify, shall come into force in the Province, or any specified part thereof, on such date as it may appoint in this behalf.
2. In this Act, unless there is anything repugnant in the subject or context,—
- (a) "benefit" does not include any benefit which a mutwalli is entitled to claim solely by reason of his being such mutwalli ;
 - (b) "Court" means the Court of the District Judge or, within the limits of the ordinary original civil jurisdiction of a High Court, such Court, subordinate to the High Court, as the ³[Provincial Government] may, by notification in the ⁴[Official Gazette], designate in this behalf ;
 - (c) "mutwalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a Court of competent jurisdiction to be the mutwalli of a wakf, and includes a naib-mutwalli or other

Short title,
extent and
commence-
ment.

Definitions.

¹ Subs. by the A. O. 1948 for "the whole of British India".

² The words "British Boluchistan and" rep. by the A. O. 1948.

³ Subs. by the A. O. 1937 for "L. G."

⁴ Subs. by the A. O. 1937 for "local official Gazette".

⁵ Ss. 2 to 5 and 7 to 13 were brought into force in the Punjab with effect from the 14th May, 1924, see Punjab Gazette, 1924, Pt. I, p. 418.

Ss. 2 to 13 were brought into force in the Presidency of Bombay from the 1st June, 1925, see Bombay Government Gazette, 1925, Pt. I, p. 1414.

All provisions of the Act were brought into force in Bihar and Orissa from the 3rd September, 1925, see B. & O. Gazette, 1925, Pt. II, p. 1192.

Ss. 2 to 13 were brought into force in the Presidency of Bengal with certain modifications from the 1st June, 1927, see Calcutta Gazette, Pt. I, p. 1008.

Ss. 2 to 13 were brought into force in Ajmer-Merwara from 1st February, 1928, see Gazette of India, 1928, Pt. II-A, p. 20.

(Preliminary. Statements of Particulars.)

person appointed by a mutwalli to perform the duties of the mutwalli, and, save as otherwise provided in this Act, any person who is for the time being administering any wakf property ;

- (d) "prescribed" means prescribed by rules made under this Act ; and
- (e) "wakf" means 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 wakf, such as is described in section 3 of the Mussalman Wakf Validating Act, 1913, under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any of his family or descendants.

Statements of Particulars.

Obligation
to furnish
particulars
relating to
wakf.

3. (1) Within six months from the commencement of this Act every mutwalli shall furnish to the Court within the local limits of whose jurisdiction the property of the wakf of which he is the mutwalli is situated or to any one of two or more such Courts, a statement containing the following particulars, namely:—

- (a) a description of the wakf property sufficient for the identification thereof ;
- (b) the gross annual income from such property ;
- (c) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or of the period which has elapsed since the creation of the wakf, whichever period is shorter ;
- (d) the amount of the Government revenue and cesses, and of all rents, annually payable in respect of the wakf property ;
- (e) an estimate of the expenses annually incurred in the realisation of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (c) relate ;
- (f) the amount set apart under the wakf for—
 - (i) the salary of the mutwalli and allowances to individuals ;
 - (ii) purely religious purposes ;
 - (iii) charitable purposes ;
 - (iv) any other purposes ; and
- (g) and other particulars which may be prescribed.

(2) Every such statement shall be accompanied by a copy of the deed or instrument creating the wakf or, if no such deed or instrument has been

(Statements of Particulars. Statement of Accounts and Audit.)

executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the mutwalli, of the origin, nature and objects of the wakf.

(3) Where—

(a) a wakf is created after the commencement of this Act, or

(b) in the case of a wakf such as is described in section 3 of the Wakf Validating Act, 1913, the person creating the wakf or any member of his family or any of his descendants is at the commencement of this Act alive and entitled to claim any benefit thereunder,

the statement referred to in sub-section (1) shall be furnished, in the case referred to in clause (a), within six months of the date on which the wakf is created or, if it has been created by a written document, of the date on which such document is executed, or, in the case referred to in clause (b), within six months of the date of the death of the person entitled to such benefit as aforesaid, or of the last survivor of any such persons, as the case may be.

4. (1) When any statement has been furnished under section 3, the Court shall cause notice of the furnishing thereof to be affixed in some conspicuous place in the Court-house and to be published in such other manner, if any, as may be prescribed, and thereafter any person may apply to the Court by a petition in writing, accompanied by the prescribed fee, for the issue of an order requiring the mutwalli to furnish further particulars or documents.

Publication
of parti-
culars and
requisition
of further
particulars.

(2) On such application being made, the Court may, after making such inquiry, if any, as it thinks fit, if it is of opinion that any further particulars or documents are necessary in order that full information may be obtained regarding the origin, nature or objects of the wakf or the condition or management of the wakf property, cause to be served on the mutwalli an order requiring him to furnish such particulars or documents within such time as the Court may direct in the order.

Statement of Accounts and Audit.

5. Within three months after the thirty-first day of March next following the date on which the statement referred to in section 3 has been furnished, and thereafter within three months of the thirty-first day of March in every year, every mutwalli shall prepare and furnish to the Court to which such statement was furnished a full and true statement of accounts, in such form and containing such particulars as may be prescribed, of all moneys received or expended by him on behalf of the wakf of which he is the mutwalli during the period of twelve months ending on such thirty-first

Statement
of accounts.

(Statement of Accounts and Audit. General Provisions.)

day of March or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf;

Provided that the Court may, if it is satisfied that there is sufficient cause for so doing, extend the time allowed for the furnishing of any statement of accounts under this section.

Audit of
accounts.

6. Every statement of accounts shall, before it is furnished to the Court under section 5, be audited—

- (a) in the case of a wakf the gross income of which during the year in question, after deduction of the land-revenue and cesses, if any, payable to the Government, exceeds two thousand rupees, by a person who is the holder of a certificate granted by the ¹[Central Government] under section 144 of the Indian Companies Act, 1913, or is a member of any institution or VII of association the members of which have been declared under that section to be entitled to act as auditors of companies throughout ²[the Provinces]; or
- (b) in the case of any other wakf, by any person authorised in this behalf by general or special order of the said Court.³

General Provisions.

Mutwalli
entitled to
pay cost of
audit, etc.,
from wakf.
funds.

7. Notwithstanding anything contained in the deed or instrument creating any wakf, every mutwalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 3 or section 4 or in respect of the preparation or audit of the annual accounts for the purposes of this Act.

Verification.

8. Every statement of particulars furnished under section 3 or section 4, and every statement of accounts furnished under section 5, shall be written in the language of the Court to which it is furnished, and shall be verified in the manner provided in the Code of Civil Procedure, 1908, for the signing V of 19 and verification of pleadings.

Inspection
and copies.

9. Any person shall, with the permission of the Court and on payment of the prescribed fee, at any time at which the Court is open, be entitled to inspect in the prescribed manner, or to obtain a copy of, any statement of particulars or any document furnished to the Court under section 3 or section 4, or any statement of accounts furnished to it under section 5, or any audit report made on an audit under section 6.⁴

¹ Subs. by the A. O. 1937 for "L. G."

² Subs. by the A. O. 1948 for "British India".

³ In the application of the Act to Bombay, new ss. 6A to 6Q have been inserted here by the Mussalman Wakf (Bombay Amendment) Act, 1935 (Bom. 18 of 1935), s. 5.

⁴ In the application of the Act to Bombay, a new s. 9A has been inserted here by s. 11, *ibid.*

Penalty.

10. Any person who is required by or under section 3 or section 4 to furnish a statement of particulars or any document relating to a wakf, or who is required by section 5 to furnish a statement of accounts, shall, if he, without reasonable cause the burden of proving which shall be upon him, fails to furnish such statement or document, as the case may be, in due time, or furnishes a statement which he knows or has reason to believe to be false, misleading or untrue in any material particular, or, in the case of a statement of accounts, furnishes a statement which has not been audited in the manner required by section 6, be punishable with fine which may extend to five hundred rupees, or, in the case of a second or subsequent offence, with fine which may extend to two thousand rupees.¹

Rules.

11. (1) The ²[Provincial Government] may, after previous publication, by notification in the ³[Official Gazette], make rules to carry into effect the purposes of this Act. Power to make rules.

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

- (a) the additional particulars to be furnished by mutwallis under clause (g) of sub-section (1) of section 3 ;
- (b) the fees to be charged upon applications made to a Court under sub-section (1) of section 4 ;
- (c) the form in which the statement of accounts referred to in section 5 shall be furnished, and the particulars which shall be contained therein ;
- (d) the powers which may be exercised by auditors for the purpose of any audit referred to in section 6, and the particulars to be contained in the reports of such auditors ;
- (e) the fees respectively chargeable on account of the allowing of inspections and of the supply of copies under section 9 ;
- (f) the safe custody of statements, audit reports and copies of deeds or instruments furnished to Courts under this Act ; and
- (g) any other matter which is to be or may be prescribed.

¹ In the application of the Act to Bombay new ss. 10A to 10D have been inserted here by the Mussalman Wakf (Bombay Amendment) Act, 1935 (Bom. 18 of 1935) s. 13.

² Subs. by the A. O. 1937 for "L. G."

³ Subs. by the A. O. 1937 for "local official Gazette".

(Rules.)

Savings.

12. Nothing in this Act shall—

- (a) affect any other enactment for the time being in force in the ¹[the Provinces] providing for the control or supervision of religious or charitable endowments ; or
- (b) apply in the case of any wakf the property of which—
 - (i) is being administered by the Treasurer of Charitable Endowments, the Administrator General or the Official Trustee ; or
 - (ii) is being administered either by a receiver appointed by any Court of competent jurisdiction, or under a scheme for the administration of the wakf which has been settled or approved by any Court of competent jurisdiction or by any other authority acting under the provisions of any enactment.

Exemption.

13. The ²[Provincial Government] may, by notification in the ³[Official Gazette], exempt from the operation of this Act or of any specified provision thereof any wakf or wakfs created or administered for the benefit of any specified section of the Mussalman community.

¹ Subs. by the A. O. 1948 for " British India ".

² Subs. by the A. O. 1937 for " L. G. "

³ Subs. by the A. O. 1937 for " local official Gazette ".

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U. P. Muslim Waqfs Act, 1936.

ACT NO. XIII OF 1936.

[Assented by Governor-General on 8th March, 1937, and published in U. P. Gazette dated March 20, 1937.]

[PASSED BY THE LOCAL LEGISLATURE OF THE UNITED PROVINCES OF AGRA AND OUDH.]

An Act for the better governance, administration and supervision of certain classes of Muslim Waqfs in the United Provinces of Agra and Oudh.

Whereas it is expedient to provide for the better governance and administration of certain classes of waqfs and the supervision of mutawallis' management of them in accordance with the waqfs' directions, in the United Provinces of Agra and Oudh ;

And whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of Section 80-A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :

PRELIMINARY.

1. (1) This Act shall be called "The United Provinces Muslim Waqfs Act, 1936."

Short title, commencement and extent.

(2) This section and Sections 2 to 4 shall come into force at once. The rest of the Act shall not come into force until such date as the Local Government may, by notification in the *Gazette*, appoint in this behalf.

(3) It shall extend to the whole of the United Provinces of Agra and Oudh.

2. (1) Save as herein otherwise specifically stated, this Act shall apply to all waqfs, whether created before or after this Act comes into force, any part of the property of which is situate in the United Provinces.

(2) This Act shall not apply to —

(i) a waqf created by a deed if any, under the terms of which not less than 75 per cent. of the total income after deduction of land revenue and cesses payable to Government of the property covered by the deed of waqf, if any, is for the time being payable for the benefit of the waqf or his descendants or any member of his family.

(ii) a waqf created solely for either of the following purposes:

(a) the maintenance and support of any person other than the waqf or his descendants or any member of his family,

(b) the celebration of religious ceremonies connected with the death anniversaries of the waqf or of any member of his family or any of his ancestors,

(c) the maintenance of private imambaras, tombs and graveyards, or

(d) the maintenance and support of the waqf or for payment of his debts, when the waqf is a Hanafi Muslim; and

(iii) the waqfs mentioned in the schedule:

Provided that if the mutawalli of a waqf to which this Act does not apply wrongfully sells or mortgages,

or suffers to be sold in execution of a decree against himself, or otherwise destroys the whole or any part of the waqf property, the Central Board may apply all or any of the provisions of this Act to such waqf for such time as it may think necessary.

Explanation—A waqf which is originally exempt from the operation of this Act may, for any reason subsequently, become subject to such operation, for example, by reason of a higher percentage of its income becoming available under the terms of the deed for public charities.

3. In this Act, unless there is anything repugnant in the subject or context—

(1) "Waqf" means the permanent dedication or grant of any property for any purposes recognized by the Musalman law or usage as religious, pious or charitable and, where no deed of waqf is traceable, includes waqf by user, and a waqf means any person who makes such dedication or grant.

(2) "Beneficiary" means the person or object for whose benefit a waqf is created and includes religious, pious or charitable objects, and any other object of public utility established for the benefit of the Muslim community or any particular sect of the Muslim community.

(3) "Mutawalli" means a manager of a waqf or endowment and includes an amin, a sajjadanashin, a khadim, naib-mutawalli and a committee of management, and, save as otherwise provided in this Act, any person who is for the time being in charge of or administering, any endowment as such.

(4) "Family" includes—

(a) Parents and grand-parents.

(b) Wife or husband.

(c) Persons related through any ancestor, male or female.

(d) Persons who reside with, and are maintained by, the waqf, whether related to him or not.

(5) Property includes Government securities and bonds, shares in firms and companies, stocks, debentures and other securities and instruments.

(6) "Prescribed" means prescribed by rules made under this Act.

(7) "Court" means, unless otherwise stated either expressly or by implication, the Court of the District Judge or any other Court empowered by the Local Government to exercise jurisdiction under this Act.

(8) "Net income" means the total income minus the land revenue and other cesses payable to Government and to local bodies :

Provided that in the case of land paying land revenue the recorded income shall be deemed to be the total income.

CHAPTER I

SURVEY OF WAQFS AND CENTRAL BOARDS OF WAQFS

4. (1) Within three months of the commencement of this Act the Local Government shall by notification in the *Gazette* appoint for each district a gazetted officer, either by name or by official designation, for the purpose of making a survey of all waqfs in such district, whether subject to this Act or not. Such officer shall be called the "Commissioner of waqfs."

(2) The Local Government may, from time to time when necessary, cancel any appointment under subsection (1) or make a new appointment.

(3) The "Commissioner of waqfs" shall, after making such inquiries as he may consider necessary, ascertain and determine—

(a) the number of all Shia and Sunni waqfs in the district ;

(b) the nature of each waqf ;

(c) the gross income of property comprised in the waqf ;

(d) the amount of Government revenue, cesses and taxes payable in respect of waqf property ;

(e) expenses incurred in the realization of the income and the pay of the mutawalli of each waqf if the waqf is not exempted under Section 2; and

(f) whether the waqf is one of those exempted from the provisions of this Act under Section 2 :

Provided that where there is a dispute whether a particular waqf is Shia waqf or Sunni waqf and there are clear indications as to the sect to which it pertains in the recitals of the deed of waqf, such dispute shall be decided on the basis of such recitals.

(4) In making such inquiries as aforesaid the Commissioner of waqfs shall exercise all the powers of a Civil Court for summoning and examining witnesses and documents, making local inspections, appointing commissioners for examination of witnesses, examining of accounts and making local investigations.

(5) The Commissioner of waqfs shall submit his report of inquiry to the Local Government.

(6) The total cost of carrying out the provisions of this section shall be borne by the mutawallis of all waqfs to which the Musalmans Waqfs Act, 1923, applies in proportion to the income of the property of such waqfs situated in the United Provinces.

(7) Notwithstanding anything in the deed or instrument creating any waqf, any mutawalli may pay from the income of the waqf property any sum due from him under subsection (6).

(8) Any sum due from a mutawalli under subsection (6) may, on a certificate issued by the Local Government, be recovered by the Collector in the manner provided by law for recovery of an arrear of land revenue.

5. (1) The Local Government shall forward a copy of the Commissioner's report to the Commissioner's

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report to each of the Central Boards constituted under this Act. Each Central Board shall as soon as possible notify in the *Gazette* the waqfs relating to the particular sect to which, according to such report, the provisions of this Act apply.

(2) The mutawalli of a waqf or any person interested in a waqf or a Central Board may bring a suit in a Civil Court of competent jurisdiction for a declaration that any transaction held by the Commissioner of waqfs to be a waqf is not a waqf, or any transaction held or assumed by him not to be a waqf is a waqf, or that a waqf held by him to pertain to a particular sect does not belong to that sect, or that any waqf reported by such Commissioner as being subject to the provisions of this Act is exempted under Section 2, or that any waqf held by him to be so exempted is subject to this Act:

Provided that no such suit shall be instituted by a Central Board after more than two years of the receipt of the report of the Commissioner of waqfs, and by a mutawalli or person interested in a waqf after more than one year of the notification referred to in sub-clause (1):

Provided also that no proceeding under this Act in respect of any waqf shall be stayed or suspended merely by reason of the pendency of any such suit or of any appeal arising out of any such suit.

(3) Subject to the final result of any suit instituted under sub-section (2) the report of the Commissioner of waqfs shall be final and conclusive.

(4) The Commissioner of waqfs shall not be made a defendant to any suit under sub-section (2) and no suit shall be instituted against him for anything done by him in good faith under colour of this Act.

6. (1) There shall be established in the United Provinces two separate Boards to be called the "Shia Central Board" and the "Sunni Central

Board" of waqfs. Each such Board shall be a body corporate and shall have perpetual succession and a common seal and shall by its said name sue or be sued. manupatra

(2) All members of the Sunni Central Board shall be Sunnis and all members of the Shia Central Board shall be Shias.

(3) The Shia Central Board shall deal with Shia waqfs and the Sunni Central Board with Sunni waqfs, and everything required or permitted by this Act to be done by the Central Board shall in case of Shia waqfs be done by the Shia Central Board and in case of Sunni waqfs by the Sunni Central Board.

7. The Sunni Central Board shall Constitution of consist of —
S u n n i C e n t r a l
B o a r d

(i) five members to be elected in the manner prescribed by Sunni members of the local legislature,

(ii) four members to be elected in the manner prescribed by the District Waqf Committees.

(iii) three members to be co-opted by the above nine members from persons whom they regard as ulamas, and two members from among mutawallis, and

(iv) the President, if he is not one of the above fourteen members :

Provided that the first Sunni Central Board shall be established by the local Government within three months of the date on which this section comes into force and shall consist of—

(i) five members to be elected, in such manner as the local Government may direct, by the Sunni members of the local legislature ;

(ii) two members to be elected, in such manner as the Local Government may direct, by the Sunni members of Executive Committee of the Provincial Muslim Educational Conference ;

(iii) three members to be co-opted by the above seven members from persons whom they regard as ulamas; and

(iv) three members to be co-opted by the above ten members.

8. (1) The Shia Central Board Constitution of shall consist of —
Shia Central Board.

(i) five members to be elected in the manner prescribed by the Shia members of the local legislature;

(ii) one member to be elected in the manner prescribed by the Executive Committee of the All-India Shia Conference;

(iii) one member to be elected in the manner prescribed by the Board of Trustees of the Shia College, Lucknow;

(iv) three members to be co-opted by the above seven members from persons whom they regard as ulamas; and

(v) the President, if he is not one of the above ten members.

(2) The first Shia Central Board shall be established by the local Government within three months of the date on which this section comes into force, and the election of members for such Board shall be held in such manner as the Local Government may direct.

9. (1) If at any election of members of a Central Board the full number of five members is not elected by the local legislature, the deficiency shall be made up by election of the requisite number of members by the Provincial Muslim Educational Conference in the case of Sunni Central Board, and by the Executive Committee of the All-India Shia Conference in the case of Shia Central Board. In case of the failure of the Provincial Muslim Educational Conference or the All-India Shia Conference to make up the deficiency, the same shall be made up by nomination by the local Government.

(2) If the bodies referred to in clause (ii) of the proviso to Section 7 and clauses (ii) and (iii) in Section 8 fail to return the requisite number of members within such time as may be fixed the deficiency shall be made up by nomination by the local Government.

10. The members of Central Board shall hold office for five years:

Provided that an elected or co-opted member shall notwithstanding the expiration of his term of office, continue to hold office until the vacancy caused by the expiration of the said term has been filled:

Provided also that the members of the first Sunni Central Board established by the local Government shall vacate office as soon as new members are elected under Section 11.

11. After three years of the establishment of the Sunni Board by the local Government under the proviso to Section 7, or, if no District Waqf Committees have been formed by the said Board within three years, then, as soon after the formation of any such District Waqf Committee as possible, a fresh election of members shall be held for the next Central Board according to the constitution laid down in Section 7.

12. After the formation of legislative bodies under the Government of India Act, 1935, the five members of the local legislature referred to in Sections 7 and 8 shall be elected as follows:

(i) four members by the Sunni or Shia members, as the case may be, of the provincial Legislative Assembly.

(ii) one member by the Sunni or Shia members, as the case may be, of the provincial Legislative Council.

13. The offices of the Central Boards shall be at Lucknow.

14. The quorum for a meeting of a Central Board shall be one half of the number of members of the Board.

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15. The decision of the Central Board shall be by a majority of its members present and voting. In case of equal division the President shall have a second or casting vote.

16. (1) Each Central Board shall have a President and a Secretary who shall be Muslims belonging to the Shia sect in the case of the Shia Central Board and to the Sunni sect in the case of the Sunni Central Board :

Provided that no mutawalli of a waqf which is not exempted from the operation of this Act or a Government Treasurer or a whole-time servant of the Government or the servant of any waqf administration shall be elected as President.

(2) Immediately after formation of a Central Board and subsequently whenever it becomes necessary by reason of an existing or anticipated vacancy or otherwise, to appoint a President, the Central Board shall elect one of its members or any other person as President. The President shall be honorary and shall hold office for a term of five years, but if he is a member of the Central Board his term shall expire on the expiry of his term as a member, and in the case of the President of the first Sunni Central Board established by the local Government, his term shall expire on the formation of a new Sunni Central Board.

(3) The Central Board shall appoint a Government gazetted officer as its whole-time Secretary on such pay, allowances and terms and other conditions of service as may be prescribed, provided that if no gazetted officer is available, the Central Board may appoint another person.

17. (1) The Central Board may appoint such staff including superintendents of waqfs, inspectors, auditors, and other officers on such salaries, allowances, and other conditions of service as may be necessary for the

purpose of carrying out the provisions of this Act and for such period as it thinks fit.

(2) All persons appointed under sub-section (1) and the Presidents and Secretaries of the Central Boards shall be deemed to be public servants within the meaning of the Indian Penal Code, 1860.

(3) The Central Board may fine, suspend, dismiss or remove any person appointed by it under sub-section (1) or a Secretary who is not a gazetted Government officer.

18. (1) The general superintendence of all waqfs Function of the Central Board. to which this Act applies shall vest in the Central Board.

The Central Board shall do all things reasonable and necessary to ensure that waqfs or endowments under its superintendence are properly maintained, controlled and administered and duly appropriated to the purposes for which they were founded or for which they exist.

(2) Without prejudice to the generality of the provisions of sub-section (1) the powers and duties of the Central Board shall be—

(a) to complete and maintain an authentic record of rights containing information relating to the origin, income, object, and beneficiaries of every waqf in each district;

(b) to prepare and settle its own budget;

(c) to settle and pass budgets submitted by the mutawallis direct to the Board and any budget submitted to, but not approved by, a District Waqf Committee, provided that it is in accordance with the wishes of the waqf and the terms of the deed of waqf;

(d) to settle and pass the annual budgets of the District Waqf Committees;

(e) to institute and defend suits and proceedings in a Court of law relating to—

- (i) administration of waqf,
- (ii) taking of accounts,
- (iii) appointment and removal of mutawallis in accordance with the deed of waqf if it is traceable.
- (iv) putting the mutawallis in possession or removing them from possession,
- (v) settlement or modification of any scheme of management;
- (f) to sanction the institution of suits under Section 92 of the Code of Civil Procedure, 1908, relating to waqfs to which this Act applies;
- (g) to take measures for the recovery of lost properties;
- (h) to settle schemes of management and application of waqf funds in accordance with the doctrine of *cypres* in case of those waqfs, the objects of which are not evident from any written instrument, or in cases in which the objects of which they were created have ceased to exist;
- (i) to enter upon and inspect waqf properties;
- (j) to investigate into the nature and extent of waqfs and waqf properties and call from time to time for accounts and other returns and information from the mutawallis and give directions for the proper administration of waqfs;
- (k) to arrange for the auditing of accounts submitted by the mutawallis;
- (l) to direct the deposit of surplus money in the hands of the mutawalli in any approved bank and to utilize it on the objects of waqf;
- (m) to supervise and control the District Waqf Committees;
- (n) to administer the waqf fund;
- (o) to keep regular accounts of receipts and disbursement and submit the same in the manner prescribed;
- (p) to institute when necessary an inquiry relating to the administration of a waqf.

Provided that in the appointment of mutawallis or in making any other arrangement for the management of waqf property the Central Board shall

be guided as far as possible by the directions of the waqif, if any.

19. The Central Board may delegate any of its duties under this Act to the President or Secretary and may likewise withdraw any such delegation.

20. The Central Board may, by notification in the *Gazette*, remove any member of the Board if he—
 Removal of members of Central Boards and their re-appointment.

(a) refuses to act or becomes incapable of acting as a member of the Board, or

(b) is declared insolvent, or


(c) after his election, co-option, or nomination as member, is convicted of any such offence or is subjected by a criminal court to any such order as, in the opinion of the Central Board, implies that he is unfit to continue to be a member of the Board, or

(d) without excuse, sufficient in the opinion of the Central Board, is absent without the consent of the Board for more than six consecutive meetings of the Board.

21. A member of the Board may resign his office by giving notice in writing to the President and on such resignation being accepted by the Central Board, shall be deemed to have vacated his office.

22. When the place of a member becomes vacant by his removal, resignation or death, a new member shall be elected or co-opted as the case may be in the manner provided in Section 6 and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred:

Provided that no act or order of the Central Board or of its officers shall be deemed to be invalid by reason only that the number of members of the Central Board at the time of the performance of such act or the

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passing of such order was less than the number provided in Sections 7 and 8.

23. The mutawalli of any waqf governed by this Act may apply by petition to the Central Board for its opinion, advice or direction on any question affecting the management or administration of the property of such waqf and the Central Board shall give such opinion, advice or direction :

Provided that the Central Board shall not be bound to give such opinion, advice or direction on any question which is not in its opinion a fit question for summary disposal.

24. The Central Board may grant inspection and copies of its proceedings or other records in its custody on payment of such fees and subject to such conditions as may be prescribed by rules. All copies issued under this section shall be certified by the Secretary of the Central Board in the manner provided in Section 76 of the Indian Evidence Act, 1872.

CHAPTER II

SUNNI DISTRICT WAQF COMMITTEES AND SHIA SUB-COMMITTEES

25. (1) After the survey of waqfs provided for in the preceding Chapter has been complete, the Sunni Central Board may, from time to time, determine the districts in which District Waqf Committees shall be established and shall direct the Collectors of such districts to form such committees :

Provided that the Central Board shall direct that such committees shall be established in districts in which the total net income of properties of Sunni waqfs subject to this Act shall be one lakh of rupees or more.

(2) Whenever the Sunni Central Board directs that in any district a District Waqf Committee shall be established, the Collector shall establish such committee to be called the Sunni District Waqf Committee.

26. (1) The Sunni District Committee shall consist of—
Constitution of District Waqf Committees.

(a) all members for the time being of the local and central legislatures for such district belonging to the Sunni sect ;

(b) five members belonging to the Sunni sect, to be elected in such manner as may be prescribed, by an electoral college composed of all Sunni members of the District Board and the several municipal and cantonment boards, town areas and notified areas in the district ;

(c) one member of the Sunni sect to be co-opted by the remaining members of the committee from persons whom they regard as ulamas ;

(d) one member to be co-opted by the members of the District Committee from amongst the mutawallis of the district ; and

(e) the President, if he is not a member of the committee.

(2) The members of the Sunni District Waqf Committees shall hold office ordinarily for five years :

Provided that an elected or co-opted member of the Sunni District Waqf Committee shall, notwithstanding the expiration of his term of office, continue to hold office until the vacancy caused by the expiration of the said term has been filled.

(3) A person ceasing to be member by reason of the expiration of his office shall be eligible for re-election or for being co-opted again.

27. (1) Every District Waqf Committee shall have a President and a Secretary, who shall be Muslims of the Sunni sect.

(2) Immediately on the establishment of a District Waqf Committee and subsequently whenever it becomes necessary by reason of an existing or anticipated vacancy or otherwise, to appoint a President, the said committee shall elect one of its members or any other person as President. The

President shall be honorary and shall hold office for a term of five years but if he is a member of the committee his term as President shall expire on the expiration of his term as a member.

(3) The Secretary shall be a whole-time salaried officer appointed by the committee on such pay and allowances and on such terms as may be prescribed.

28. (1) Each District Waqf Committee may, with the previous sanction of the Central Board, appoint such staff as may be necessary for carrying out its duties under this Act on such pay, allowances and conditions of service as may be approved by the Central Board.

(2) All persons appointed under sub-section (1) and the President and the Secretary of the District Waqf Committees shall be public servants within the meaning of Section 21 of the Indian Penal Code, 1860.

29. A Sunni District Waqf Committee may fine, suspend, dismiss or remove the Secretary or any other officer or servant of the committee, provided that every such order, except an order of punishment of a menial servant, shall be subject to an appeal to the Central Board preferred by the officer concerned within 30 days of the communication to him of such order.

30. (1) The Sunni District Waqf Committee shall meet at least once in three months.

(2) The quorum for the meetings of the Sunni District Waqf Committee shall be five if it consists of nine or more members, and of four if it consists of less than nine members.

(3) The President shall preside at every meeting of the committee, provided that if he is absent, the members present may elect one of themselves as president for such meeting.

(4) The decisions of the Sunni District Waqf Committee shall be by majority of votes of the members present and voting, and in case of an equal division the president of the meeting shall have a second or casting vote.

31. Subject to the control of the Central Board as hereinbefore provided, the functions of the Sunni District Waqf Committees shall be—

(a) to inquire into and report to the Central Board the manner in which any waqf in the district is administered;

(b) to receive and forward to the Central Board with its opinion—

(i) all applications for registration under Section 38;

(ii) all accounts submitted by the mutawallis under Section 57;

(c) to discuss and pass the budgets submitted by the mutawallis under Section 57, or to reject or amend such budgets and in such cases to report its action to the Central Board;

(d) to protect and supervise all Muslim religious and charitable buildings not in the charge of any mutawalli and get mutawallis of such waqfs appointed through Court, if necessary;

(e) to trace out waqf properties illegally alienated and in the possession of trespassers and file suits for their recovery with the previous sanction of the Central Board;

(f) to make recommendations to the Central Board for the application of funds to such object or objects as it considers desirable in cases of waqfs for charitable or religious purposes in which the object for which the waqf was created is not specified or there is no evidence of user, or in cases in which the object for which the waqf was created has ceased to exist;

(g) to notify to the Central Board every change in the mutawalliship of the waqf property or its income or object or other particulars.

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(k) generally to perform all such duties not inconsistent with this Act as may be entrusted to it by the Central Board;

(l) to depute in order to perform the above functions properly, one or more of its members to enter upon and inspect the local waqf properties, and to institute inquiries into the method of administration of the mutawallis.

32. All expenses of the Sunni District Waqf Committee shall be met from the Sunni waqf fund, and income realized by such committees shall be credited to such fund.

33. (1) Every Sunni District Waqf Committee shall, before the commencement of each financial year, prepare a budget of income and expenditure for such financial year and shall submit the same for approval to the Central Board.

(2) The Central Board shall pass and return the budget after making such modifications as it thinks fit.

(3) If a Sunni District Waqf Committee considers any expenditure not provided for in the budget to be necessary, it may submit a supplementary budget for the approval of the Central Board, but shall not incur any such expenditure without the sanction of the Central Board.

34. (1) A member of a Sunni District Waqf Committee shall be liable to removal by Sunni Central Board for gross dereliction of duty or for having in any manner so flagrantly abused his position as a member of such committee as to render his continuance as a member thereof detrimental to the public interest, or on the ground that he has become insolvent or insane or is convicted of an offence which in the opinion of the Central Board involves moral turpitude.

35. A member of a Sunni District Waqf Committee may resign his office by giving notice in writing to the Central Board, and, on such resignation being accepted by the Central Board, shall be deemed to have vacated his office.

36. When the place of a member becomes vacant by reason of removal, resignation or death, a new member shall be elected or co-opted as the case may be in the manner provided for in Section 26 and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred.

Provided that no act of the Sunni District Waqf Committee or its officers shall be deemed invalid by reason only that the number of the members of the committee at the time of the performance of such act was less than the number provided for in Section 26.

37. The Shia Central Board may, whenever it considers necessary, establish in any district a sub-committee for the supervision of Shia Waqfs in any specified area. The constitution, functions and duties of such sub-committees shall be as determined from time to time by the Shia Central Board.

CHAPTER III

REGISTRATION OF WAQFS

38. (1) Every waqf whether subject to this Act or not and whether created before or after the commencement of this Act shall be registered at the office of the Central Board of the act to which the waqf belongs.

(2) The mutawalli of every such waqf shall make an application for registration within three months of his entering into possession of the waqf property, or in the case of waqfs existing at the time of formation of

the first Central Board, within three months of the formation of such Central Board.

(3) Application for registration may also be made by a waqf or his descendants or a beneficiary of the waqf, or any Muslim belonging to the sect to which the waqf belongs.

(4) An application under this section shall be accompanied by a copy of the deed or deeds of waqf, together with a statement containing the following particulars so far as known to the applicant :

(a) a description of the waqf properties sufficient for the identification thereof ;

(b) the gross annual income from such properties ;

(c) the amount of Government revenue and cesses and of all rents and taxes payable in respect of the waqf properties ;

(d) an estimate of the expenses annually incurred in the realization of the income of the waqf properties ;

(e) the amount set apart under the waqf for—

(i) the salary of the mutawalli and allowances to individuals,

(ii) purely religious purposes,

(iii) charitable purposes, and

(f) any other particulars which may be prescribed.

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

(6) On receipt of an application for registration the Central Board may before registering the waqf make such inquiries as it thinks fit in respect of its genuineness and validity and the correctness of any particulars in the statement filed with the application and when the application is made by any person other than the person holding possession of any property or properties belonging to the waqf, the Central Board shall give notice of the application to the person in

possession and hear him, if he desires to be heard, before passing final orders.

(7) An application for registration may be presented either at the office of the Central Board or at the office of the District Waqf Committee of the district in which any part of the waqf property is situated or may be sent by registered post to the office of the Central Board. If the application is presented at the office of the District Waqf Committee, the committee shall forward it with all annexures to the office of the Central Board.

39. The Central Board shall maintain a register of waqfs of waqfs which shall contain the following particulars in respect of each waqf and shall also contain a copy or copies of the deed or deeds creating the waqf when available :

(a) The names of trustees, mutawallis and other persons connected with the administration of the waqf ;

(b) The rule of succession to the office of the trustee (if any) or mutawallis under the deed of waqf or by custom or by usage ;

(c) Particulars of the scheme of administration and the sale of expenditure at the time of registration ;

(d) Particulars of all property relating to the waqfs and all title deeds and documents relating thereto ; and

(e) Such other particulars as may be prescribed.

40. The Central Board may direct a mutawalli to apply for the registration of a waqf, or to supply any information regarding a waqf, or may itself collect such information and may cause the waqf to be registered or may at any time amend the register of waqfs.

CHAPTER IV

Audit of Accounts

41. (1) The accounts kept by the Central Board, and the accounts submitted by mutawallis under Section 37

shall be audited annually or at such other intervals as may be determined by the Central Board, by the auditors appointed under Section 17.

(2) The auditors shall submit their report—

(a) to the Local Government, in the case of the accounts of the Central Board; and

(b) to the Central Board, in the case of the accounts of a waqf.

(3) The audit report of the auditors shall, among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property or of loss or of waste of money or other property caused by neglect or misconduct of the mutawalli.

42. The Central Board shall examine the auditors' report and after calling for the explanation of any person in regard to any matter mentioned therein shall pass such orders on the report as it thinks fit.

43. Every sum certified to be due from any person by an auditor under Section 41, unless such certificate is modified or cancelled by the Central Board by an order made under Section 42, and every sum due on a modified certificate shall be recoverable from such person by the Central Board.

CHAPTER V

INQUIRY AND SUPERVISION

44. For the purpose of verifying the particulars contained in the statement filed under Section 38 or acting on the report of the auditor submitted under Section 41, the Central Board may enquire into any matter either through any of its officers or any District Waqf Committee.

45. Any member of the community to which the waqf belongs may by an application, supported by an affidavit apply to the Central Board to institute an inquiry relating to the administration of a waqf, and the Central Board may take such action as it may think fit.

46. For the purposes of an inquiry under this chapter, the inquiring officer, the inquiring officer or committee shall have the same power of enforcing the attendance of witnesses and production of documents as the Civil Court has under the Code of Civil Procedure, 1908.

CHAPTER VI

LEGAL PROCEEDINGS.

47. (1) Notwithstanding anything contained in Section 92 of the Code of Civil Procedure, 1908, or any other law for the time being in force, the Central Board may apply to the court for directions in all cases of undisposed waqf funds or where the directions in the deed of waqf are no longer sufficient to carry out the intention of the waqf or where any case for the application of the doctrine of *cypus* arises, and the court may direct that the real intention of the waqf be carried out by such means as in the existing circumstances appear to the court to be most appropriate.

(2) The order of the court giving directions under sub-section (1) shall be appealable to the High Court or the Chief Court, as the case may be.

(3) Subject to an appeal under sub-section (2), the directions of the Court issued under sub-section (1) shall not be questioned in any civil court and shall in all respects be final and conclusive.

48. Notwithstanding anything in the Code of Civil Procedure, 1908, Civil suits relating to waqfs, to the contrary, a suit to obtain any of the reliefs men-

tioned in Section 92 of the said Code relating to any waqf to which this Act applies may be instituted by the Board without obtaining the consent referred to in that section, or by any person interested in the waqf with the previous sanction in writing of the Central Board and without obtaining the consent referred to in that section, provided that if in such suit the validity or propriety of any order or direction passed or made by the Central Board is challenged, a suit may be instituted without previous sanction after giving two months' notice to the Central Board as provided in clause 53.

49. A suit under Section 14 of the Religious Endowments Act, 1863, concerning a waqf to which this Act applies may, notwithstanding anything to the contrary contained in that Act, be instituted by the Central Board without obtaining the leave referred to in Section 18 of that Act, and no such suit shall be instituted by any person without the consent in writing of the Central Board.

50. (1) Save as otherwise provided in this Act, no act done or direction issued by the Central Board, except an order settling the scheme of management of a waqf, shall be questioned in any court.

(2) No suit shall be instituted against the Central Board or any of its members or servants or against any member or servant of a District Waqf Committee for anything done by it or him in good faith under colour of this Act.

51. No suit or proceedings in any Court by or against a mutawalli of a waqf to which this Act applies, and relating to title to waqf property or to the rights of the

mutawalli shall be compromised without the sanction of the Central Board.

52. When any suit relating to title to any waqf property or to the rights of a mutawalli is instituted in any Civil Court, such Court shall give notice of such suit to the Central Board at the costs of the plaintiff.

53. No suit shall be instituted against a Central Board in respect of any act purporting to be done by such Central Board under colour of this Act or for any relief in respect of any waqf, until the expiration of two months next after notice in writing has been delivered to the Secretary, or left at the office of such Central Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

CHAPTER VII.

ADMINISTRATION CHARGES

54. (1) Every waqf to which this Act applies shall contribute annually for meeting the expenses incurred in the administration of this Act such sum not exceeding 5 per cent. of the net annual income of such of its property as is situate in the United Provinces as the Central Board, subject to the sanction of the Local Government, may determine:

Provided that in cases of waqfs, part of the income of which is applied for the benefit of the waqf or his descendants or family or any other private purpose, the aforesaid percentage shall not be levied on such part of the income.

(2) Contributions under this section shall be payable with effect from the date on which this section comes into force.

(3) The Central Board may, in the case of any particular waqf or waqfs, reduce or remit such contributions as it thinks fit.

(4) Such contribution shall, subject to the prior payment of any dues to the Government and any other statutory charge on the waqf property or the income thereof, be a first charge on the income of the waqf.

(5) If a mutawalli or a person in charge of the management or administration of the waqf realizes the income of the waqf and neglects or refuses to pay such contribution he shall also be personally liable for such contribution to the extent of the balance of realizations remaining in his hands after payment of land revenue, cesses and taxes due to Government and local bodies, and this liability may be enforced in the manner aforesaid.

55. The Central Board shall have power, with the previous sanction of the Local Government, to borrow for the purpose of giving effect to the provisions of this Act such amount and on such conditions as the Local Government may determine.

CHAPTER VIII

MUTAWALLIS

56. When there is vacancy in the office of mutawalli of a waqf and there is no one competent to be appointed under the terms of the deed of waqf, or where the right of any person to act as mutawalli is disputed, the Central Board may appoint any person to act as a mutawalli for such period and on such conditions as it may think fit.

57. (1) Every mutawalli shall carry out all directions of the Central Board consistent with the provisions of this Act issued to him by the District Waqf Committee or the Central Board for the proper administration of waqfs. In particular he shall—

(a) supply the details of the waqfs in his charge,

(b) submit within one month after the 31st day of March next following the date on which the waqf has been registered under Section 21 and thereafter within 30 days of the 31st day of March in every year, a full and true statement of accounts in such form and containing such particulars as may be prescribed by the Central Board and verified in manner prescribed by the Code of Civil Procedure, 1908, for verifications of pleadings, of all moneys received or expended by him on behalf of the waqf of which he is the mutawalli in respect of that portion of the waqf property which is situate in the United Provinces during the period of 12 months ending on the 31st day of March preceding the submission of such statement or during that portion of the said period during which the provisions of this Act have been applicable to the waqf.

(2) All the details, accounts and statements mentioned in sub-section (1) shall be submitted to the District Waqf Committee and in districts where there is no such committee, direct to the Central Board. The mutawalli shall, if and when required, further be bound by himself or by his agent to attend at the audit of his accounts and to give all information required relating to his accounts.

58. The Central Board may remove a mutawalli from his office if—
(i) such mutawalli after having once been convicted of an offence punishable under Section 60 is again convicted of any such offence, or

(ii) such mutawalli is convicted of an offence relating to the waqf property or money which in the opinion of the Central Board renders him unfit to continue to be a mutawalli.

59. (1) Whenever the supervision of a waqf is vested in any existing committee appointed by the waqf or any competent court or authority such committee shall, notwithstanding anything in the Act, continue to function until superseded by the Central Board under sub-section (2). Provided that such committee shall be under the control of the Central Board and shall abide by such directions of the Central Board as are not inconsistent with any directions of the waqf or of the Court or authority appointing such committee.

(2) The Central Board may supersede any such committee as aforesaid if it does not in its opinion function properly and satisfactorily, and on such supersession any decree or order of a court or competent authority under which such committee has been constituted shall cease to have any force.

(3) An order passed by a Central Board under sub-section (2) shall be final and shall not be questioned in any court of law.

60. (1) If a mutawalli fails without reasonable cause or excuse, the burden of proving which shall be upon him—

(a) to apply for registration of a waqf as provided in Section 38, or

(b) to submit statements of particulars of accounts and returns as required by this Act, or

(c) to supply information or particulars required by the Central Board or the District Waqf Committee, or

(d) to allow inspection under the provisions of this Act of waqf properties and deeds and documents relating thereto, or

(e) to give assistance in inquiries and investigations when called upon to do so by the Central Board or by a District Waqf Committee, a Shia sub-committee or by superintendents or auditors working under the orders of the Central Board, or

(f) to deliver possession of any waqf property if ordered to do so by the Central Board, or

(g) to deposit any surplus income in his hands in any recognized Bank when directed to do so by the Central Board.

he will, on conviction before a magistrate of the first or second class, be punishable with fine which may extend to Rs. 250 for the first offence, and to Rs. 1,000 for every subsequent offence.

(2) No magistrate shall take cognizance of an offence under sub-section (1) otherwise than on a complaint made by any person duly authorized by the Central Board in this behalf.

CHAPTER IX MISCELLANEOUS

61. (1) The Central Board may, subject to the approval of the local Government, make rules consistent with this Act for the purpose of carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Board shall, with the approval of the local Government, have power to make rules with reference to the following matters:

(a) All matters expressly required or allowed by this Act to be prescribed or done by the Central Board or District Waqf Committee;

(b) The conduct of business by the Central Board;

(c) The grant of travelling allowance to the members of the Central Board;

(d) The custody and investment of the waqf fund;

(e) The books and accounts to be kept at the office of the Central Board and the District Waqf Committee;

(f) The manner in which the accounts of waqfs shall be audited and published, the time or place of such audit, the form and content of the auditor's reports and the scale of remuneration to be paid to the auditors;

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(g) The method of calculating the income of a waqf for the purpose of levying contribution under this Act; and

(h) The fee to be levied on applications before the Central Board, Sunni District Waqf Committees and Shia sub-committees under this Act, or on applications for copies of proceedings or other records of the Central Board or Sunni District Waqf Committees;

(i) The method of election of members and Presidents of the Central Boards and Sunni District Waqf Committees.

(3) All rules framed under this section shall be published in the *Gazette* and shall thereafter have the force of law.

62. The names of the members and Presidents of the Central Boards and District Waqf Committees shall be published in the *Gazette* as soon as possible after their election or cooption as the case may be.

63. A copy of the budget of the Central Boards shall be submitted to the local Government for information. The Central Board shall also give such information and submit such reports, returns and statement as may be called for by the local Government.

64. The Central Board may, if it is satisfied that there is sufficient cause for so doing, extend time within which any act is required or ordered to be done under this Act.

65. All moneys realized under Section 54 and all moneys realized from fees in respect of proceedings before the Central Board or District Waqf Committees and all other

moneys realized under this Act, shall form a fund to be called the "United Provinces Shia Waqf Fund" or the "United Provinces Sunni Waqf Fund", as the case may be. Such fund shall be under the control of the Central Board subject to the general supervision of the local Government and shall be applied to the following expenses which shall be met exclusively from that fund:

(a) repayment of any loan incurred under Section 30 and payment of interest thereon;

(b) payment of the costs of audit of waqf funds;

(c) payment of the salary and allowances of the Secretary and staff of the Central Board and the Secretary and staff of the District Waqf Committees under the Central Board;

(d) payment of travelling allowances to the president, members, Secretary and staff of the Central Board and the District Waqf Committees;

(e) payment of all expenses incurred by the Central Board and the District Waqf Committees in the performance of the duties imposed and the exercise of the powers conferred by this Act.

66. All money that may be available as surplus or surplus and accumulation of the income of waqfs shall be spent on those very waqfs in the manner determined by the Central Board.

67. All fines realized by a magistrate under Section 60 shall be paid to the Central Board and shall be part of the waqf fund.

68. The Government shall not be liable for any expenditure incurred in the administration of this Act.

CHAPTER X

SAVINGS AND REPEAL

69. Nothing in the following Regulations, Acts and provisions shall apply to any waqf to which this Act applies:

(i) Bengal Regulations, XIX of 1810.

(ii) Section 5 of the Religious Endowments Act, 1863.

(iii) The Charitable Endowments Act, 1890.

(iv) The Charitable and Religious Trusts Act, 1920.

(v) Sections 5 to 10 of the Musalman Waqfs Act, 1923.

70. Sections 3 and 4 of the Musalman Waqfs Act, 1923, in their application to the United Provinces of Agra and Oudh are hereby repealed.

71. Every sum recoverable under section 43 and the contribution under section 54 may be recovered by the Central Board by means of distress and sale of movable property belonging to the person liable for payment, in accordance with the rules framed by the local Government in this behalf.

SCHEDULE

1. Waqfs governed by Act XV of 1878.
2. Wazir Begam Trust, Lucknow.
3. Agha Abdu Sahib Trust, Lucknow.
4. Shah Najif Trust, King's side, Lucknow, and Queen's side, Lucknow.
5. Kazmain Trust, Lucknow.

the additional pension at any to which he is entitled under such a Judge has completed not less than seven years of service in a High Court, he shall be entitled to an additional pension in accordance with the following scale :—

	Per annum
For seven completed years of service for pension	100
For eight completed years of service for pension	120
For nine completed years of service for pension	140
For ten completed years of service for pension	160
For eleven completed years of service for pension	180
For twelve or more completed years of service for pension	200

PART III

1. The provisions of this Part apply to a Judge who has held any civil pensionable post under the Union or a State (but is not a member of the Indian Civil Service) and who has not elected to receive the pension payable under Part I.

2. The pension payable to such a Judge shall be—

(a) the pension to which he is entitled under the ordinary rules of his service if he had not been appointed a Judge, his service as a Judge being treated as service therein for the purpose of calculating that pension; and

(b) a special additional pension of Rs. 500 per annum in respect of each completed year of service for pension but in no case such additional pension together with the additional or special pension, if any, to which he is entitled under the ordinary rules of his service, shall exceed Rs. 2,500 per annum.

THE SECOND SCHEDULE (See section 17) INJURY GRATUITIES AND PENSIONS

Officer	Gratuity Rs.	Annual Pension	
		Higher Scale Rs.	Lower scale Rs.
1. Chief Justice	20,000	5,400	4,700
2. Any other Judge	13,500	4,700	4,000

FAMILY GRATUITIES AND PENSIONS A. Widow

Officer	Gratuity Rs.	Annual Pensions Rs.
1. Chief Justice	15,000	5,000
2. Any other Judge	13,500	4,000

B. Children

Officer	Annual Pension	
	If motherless	If not motherless
	Rs.	Rs.
1. Chief Justice	550	320
2. Any other Judge	550	320

The Muslim Wakfs Act, 1954.

The following Act of Parliament received the assent of the President on the 21st May, 1954 and was published in the *Gazette of India*, Extraordinary, Part II Section 1, No. 29, dated the 24th May 1954.

Act No. 29 of 1954

[21st May, 1954]

An Act to provide for the better administration and supervision of wakfs.

Be it enacted by Parliament in the Fifth Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Wakf Act, 1954

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

(3) It shall come into force in a State to which this Act extends on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf for that State : and different dates may be appointed for different States :

Provided that in respect of any of the States of Bihar, Delhi, Uttar Pradesh and West Bengal, no such notification shall be issued except on the recommendation of the State Government concerned.

Notes

Object—“The management of Wakfs though it vests immediately in a Mutawalli, is a subject which requires the supervision of the State. The need for supervision has been felt, and in addition to various enactments dealing with the subject of charitable endowments, the Mussalman Wakf Act, 1923 (No. 42 of 1923) was enacted for the whole of India. This Act merely provides for the submission of audited accounts by the Mutawallis, to the District Judges. This Act did not prove of much practical value. The Mussalman Wakf (Bombay Amendment) Act, 1935 (XVIII of 1935) amended the Mussalman Wakf Act, 1923 (42 of 1923). The Bengal Wakf Act, 1934 (No. XIII of 1934) was enacted to create a machinery for the supervision of wakfs in Bengal. The U. P. followed suit and the United Provinces Muslim Wakfs Act, 1936 (XIII of 1936) was passed creating a Central Wakf Board. Similarly Bihar also passed a legislation almost on the same lines. The working of these Acts has brought out the necessity of some amendments. Further many of the States have got no Act for the purpose. It is therefore necessary, that one uniform and consolidated legislation may be passed by the Centre, which may be adopted as a model Act by the various States. It is with this view that the present Bill is introduced” [Vide Statement of Objects and Reasons, printed in the *Gazette of India*, Part II-Section 2, No. 15, dated the 26th July 1952, page 285.]

Report of the Select Committee—For Report of the Select Committee, see the *Gazette of India*, Extraordinary, Part II-Section 2, No. 9, dated the 4th March 1954.

Extent and commencement—The Act extends to the whole of India except the State of Jammu and Kashmir. The Act shall come into force in any particular State by notification issued by the Central Government. But in the four States, namely, Bihar, Delhi, Uttar Pradesh and West Bengal, the Act shall be applied only on the recommendation of the State Government concerned.

2. *Application of the Act.*—Save as otherwise expressly provided under this Act, this Act shall apply to all wakfs whether created before or after the commencement of this Act :

Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer, to which the Durgah Khawaja Saheb Act, 1936 (XXIII of 1936) and the Durgah Khawaja Saheb (Emergency Provisions) Act, 1950 (XVII of 1950), apply

Notes

Application of the Act—Save as otherwise expressly provided the Act shall apply to all wakfs whether created before or after the commencement of the Act.

The proviso provides that the Act shall not apply to Durgah Khawaja Sahib, Ajmer, as there are special Acts to make better provision for its administration.

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

(a) "beneficiary" means a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects and any other objects of public utility established for the benefit of the Muslim community ;

(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 Wakfs established under section 9 ;

(d) "Commissioner" means a Commissioner of Wakfs appointed under section 4 and includes any additional or assistant commissioner of wakfs ;

(e) "member" means a member of the Board and includes the Chairman ;

(f) "mutawalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a competent authority to be the mutawalli of a wakf and includes any naib-mutawalli, khadim, mujawar, sajjadanishin, 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 or Committee for the time being managing or administering any wakf property as such ;

(g) "net income" means the total income less any revenue, cess, rates and taxes payable to the Government or any local authority ;

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

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

(ii) the wakif and any descendant of the wakif and the mutawalli ;

(i) "prescribed" means prescribed by rules made by the State Government under this Act and includes the regulations made by the Board under this Act ;

(j) "Shia wakf" means a wakf governed by Shia law ;

(k) "Sunni wakf" means a wakf governed by Sunni law ;

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

(i) a wakf by user ;

(ii) mashrut-ul-khidmat ; and

(iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable ;

and "wakif" means any person making such dedication ;

(m) "wakf deed" means any deed or instrument by which a wakf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied.

Notes

Section 3 contains definitions of the various terms and phrases. The

definition of "mutawalli" was redrafted by the Select Committee so as to include committees appointed for the purposes of managing or administering wakfs.

Wakf—Apart from the usual definition of wakf, it has been defined to include a wakf by user, *mashrut-ul-khidmat* and *wakf-alal-aulad* to the extent to which the property is dedicated for any pious, religious or charitable purposes.

CHAPTER II

SURVEY OF WAKFS

4. *Preliminary survey of wakfs.*—(1) The State Government may, by notification in the Official Gazette, appoint for the State a Commissioner of Wakfs and as many additional or assistant commissioners of wakfs as may be necessary for the purpose of making a survey of wakf properties existing in the State at the date of the commencement of this Act.

(2) All additional and assistant commissioners of wakfs shall perform their functions under this Act under the general supervision and control of the Commissioner of Wakfs.

(3) The Commissioner shall, after making such inquiry as he may consider necessary, submit his report to the State Government containing the following particulars, namely:—

(a) the number of wakfs in the State, showing the Shia wakfs and Sunni wakfs separately;

(b) the nature and objects of each wakf;

(c) the gross income of the property comprised in each wakf;

(d) the amount of land revenue, cesses, rates and taxes payable in respect of such property;

(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and

(f) such other particulars relating to each wakf as may be prescribed.

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

(a) summoning and examining any witness;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record from any court or office;

(d) issuing commissions for the examination of any witness or accounts;

(e) making any local inspection or local investigation;

(f) any other matter which may be prescribed.

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

Notes

Section 4 empowers the Commissioner of Wakfs to make a preliminary survey of wakfs existing in the State at the date of the commencement of the Act and prepare a report and submit it to the State Government. The report shall contain the various particulars as are stated in sub-section (3).

5. *Publication of list of wakfs.*—(1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-

section (1) and publish, in the Official Gazette, a list of wakfs existing in the State containing such particulars as may be prescribed.

5. *Disputes regarding wakfs.*—(1) If any question arises whether a particular property is wakf property or not or whether a wakf is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a civil court of competent jurisdiction for the decision of the question and the decision of the civil court in respect of such matter shall be final:

Provided that no such suit shall be entertained by the civil court after the expiry of one year from the date of the publication of the list of wakfs under sub-section (2) of section 5.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf 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 Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder.

(4) The list of wakfs published under sub-section (2) of section 5 shall, unless it is modified in pursuance of a decision of the civil court under sub-section (1), be final and conclusive.

7. *Recovery of costs of survey.*—(1) The total cost of making a survey under this Chapter shall be borne by all the mutawallis in proportion to the income of the property of the wakfs situated in the State, such proportion being assessed by the 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.

8. *Chapter II not to apply to certain States.*—The provisions of this Chapter shall not apply to any State where a survey of wakf properties existing in the State has, before the commencement of this Act, been made under any law in force in that State.

Notes

This section provides that where a preliminary survey of wakfs has already been made under any State law, it would not be necessary to make such survey over again under the provisions of this Act.

CHAPTER III

ESTABLISHMENT OF BOARDS AND THEIR FUNCTIONS

9. *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 Wakfs under such name as may be specified in the notification.

(2) The said 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.

Notes

Chapter III, consisting of sections 9 to 24, provides for the establishment of Boards of Wakfs and their Functions.

10. *Composition of the Board.*—(1) The Board shall consist of—

(a) eleven members in the case of each of the States specified in Part A of the First Schedule to the Constitution ;

(b) seven members in the case of each of the States specified in Part B of the First Schedule to the Constitution ; and

(c) five members in the case of each of the States specified in Part C of the First Schedule to the Constitution ;

Provided that any State Government may, by notification in the Official Gazette, vary the number of members in the Board and fix such number, not exceeding eleven members, as it thinks fit and in such a case, the Board shall consist of the number of members specified in the notification.

(2) There shall be a Chairman of the Board who shall be elected by the members from amongst themselves.

11. *Appointment of members.*—The members of the Board shall be appointed by the State Government, by notification in the Official Gazette, from any one or more of the following categories of persons, namely :—

(a) members of the State Legislature and members of Parliament representing the State ;

(b) persons having special knowledge of Muslim law and representing associations such as State Jamiat-ul-Ulama-i-Hind (whether such persons are Hanafi, Ahle-Hadis or Shafai) or State Shia Conference ;

(c) persons having special knowledge of administration, finance or law ;

(d) mutawallis of wakfs situate within the State :

Provided that in no case more than one mutawalli shall be appointed to the Board ;

Provided further that in determining the number of Sunni members or Shia members in the Board, the State Government shall have regard to the number and value of Sunni wakfs and Shia wakfs to be administered by the Board.

12. *Term of office.*—The members of the Board shall hold office for five years :

Provided that a member shall, notwithstanding the expiration of his term of office, continue to hold office until the appointment of his successor is notified in the Official Gazette.

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

(a) if he is not a Muslim and is less than twenty-one years of age ;

(b) if he is found to be a person of unsound mind ;

(c) if he is an undischarged insolvent ;

(d) if he has been convicted of an offence involving moral turpitude ;

(e) if he has on any previous occasion, been removed from the office of a member or has been removed by order of a competent court from any position of trust either for mismanagement or corruption.

14. *Meetings of the Board.*—(1) The Board shall meet for the transaction of business at such times and places as may be prescribed.

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

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

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15. Functions of the Board.—(1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established for the State ; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended :

Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the Muslim law.

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

- (a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every wakf ;
- (b) to ensure that the income and other property of wakfs are applied to the objects and for the purposes for which such wakfs were created or intended ;
- (c) to give directions for the administration of wakfs ;
- (d) to settle schemes of management for a wakf :

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

(e) in any case where the objects of the wakf are not evident from any written instrument or the objects for which they were created have ceased to exist, to direct in what manner the income of the wakf or the surplus income thereof shall be utilised ; but no such direction shall be given without giving the parties affected an opportunity of being heard.

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

- (i) in the case of a Sunni wakf, by the Sunni members of the Board only ; and
- (ii) in the case of a Shia wakf, by the Shia members of the Board only :

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

(f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of accounts of wakfs ;

(g) to appoint and remove mutawallis in accordance with the provisions of this Act ;

(h) to take measures for the recovery of lost properties of any wakf ;

(i) to institute and defend suits and proceedings in a court of law relating to wakfs ;

(j) to sanction leases of property for more than three years or mortgage or exchange properties according to the provisions of Muslim law :

Provided that no such sanction shall be given unless at least three-fourths of the members of the Board vote in favour of such a transaction ;

(k) to administer the Wakf Fund ;

(l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the wakf property as the Board may, from time to time, require ;

(m) to inspect, or cause inspection of, wakf properties, accounts or records or deeds and documents relating thereto ;

(n) to investigate and determine the nature and extent of wakfs and wakf property ; and to cause, whenever necessary, a survey of the wakf properties ;

(o) generally do all such acts as may be necessary for the due control, maintenance and administration of wakfs.

(3) Where the Board has settled any scheme of management under clause (d) of sub-section (2) or given any direction under clause (e) of sub-section (2), any person interested in the wakf or affected by such settlement or direction may institute a suit in a civil court of competent jurisdiction for setting aside such settlement or directions and the decision of the civil court thereon shall be final.

16. Committees of the Board.—(1) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of wakfs.

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

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

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

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

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

(a) is or becomes subject to any disqualifications specified in section 13 ; or

(b) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the wakfs ; or

(c) fails, without excuse sufficient in the opinion of the Board, to attend three consecutive meetings of the Board.

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

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

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

21. Secretary and other officers of the Board.—(1) There shall be a Secretary to the Board who shall be a Muslim and shall be appointed by the State Government, in consultation with the Board.

(2) The Secretary shall be the Chief Executive Officer of the Board and shall be under its administrative control.

(3) The Board may appoint such other officers and servants as it may consider necessary for the efficient performance of its functions under this Act.

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22. *Delegation.*—The Board may, by a general or special order in writing, delegate to the Chairman or any other member or to the Secretary or any other officer or servant of the Board, subject to such conditions and limitations (if any) as may be specified in the order, such of its powers, and duties under this Act as it may deem necessary.

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

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

24. *Prevention of disqualification for membership of Parliament.*—It is hereby declared that the offices of Chairman and members of a Board shall not disqualify, and shall be deemed never to have disqualified, the holders thereof for being chosen as, or for being, members of Parliament.

CHAPTER IV

REGISTRATION OF WAKFS

25. *Registration.*—(1) Every wakf whether created before or after the commencement of this Act shall be registered at the office of the Board.

(2) Application for registration shall be made by the mutawalli :
Provided that such applications may be made by the wakif or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.

(3) An application for registration shall be made in such form and manner and at such place as the Board may prescribe and shall contain the following particulars, so far as possible—

(a) a description of the wakf properties sufficient for the identification thereof ;

(b) the gross annual income from such properties ;

(c) the amount of land revenue and cesses, and of all rates and taxes annually payable in respect of the wakf properties ;

(d) an estimate of the expenses annually incurred in the realisation of the income of the wakf properties :

(e) the amount set apart under the wakf for—

(i) the salary of the mutawalli and allowances to individuals ;

(ii) purely religious purposes ;

(iii) charitable purposes ; and

(iv) any other purposes ;

(f) any other particulars prescribed by the Board.

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

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

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

(7) On receipt of an application for registration, the Board may, before the registration of the wakf, make such inquiries as it thinks fit in respect of the genuineness and validity of the application and the correct-

ness of any particulars therein and when the application is made by any person other than the person administering the wakf property, the Board shall, before registering the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.

(8) In the case of wakfs created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of wakfs created after such commencement, within three months from the date of the creation of the wakf.

Notes

Chapter IV, consisting of sections 25 to 30, provides of registration of wakfs.

26. Register of wakfs.—The Board shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds, when available and the following particulars, namely :—

- (a) the class of the wakf ;
- (b) the name of the mutawalli ;
- (c) the rule of succession to the office of mutawalli under the wakf deed or by custom or by usage ;
- (d) particulars of all wakf properties and all the title deeds and documents relating thereto ;
- (e) particulars of the scheme of administration and the scheme of expenditure at the time of registration ;
- (f) such other particulars as may be prescribed.

27. Decision if a property is wakf property.—(1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf, it may, after making such inquiry as it may deem fit, decide the question.

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

Notes

This section empowers the Board to make an inquiry in relation to any property which it has reason to believe to be wakf property, and if the Board finds that the property is wakf property it may cause it to be registered. The decision of the Board shall, subject to any decision of the civil court on the question, be final.

28. Power to cause registration of wakf and to amend register.—The Board may direct a mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may itself cause the wakf to be registered or may at any time amend the register of wakfs.

29. Notification of change in registered wakfs.—(1) In the case of any change in the management of a registered wakf due to the death or retirement or removal of the mutawalli, the incoming mutawalli shall forthwith, and any other person may, notify the change to the Board.

(2) In the case of any other change in any of the particulars mentioned in section 25, the mutawalli shall, within three months from the occurrence of the change, notify such change to the Board.

30. Savings.—Notwithstanding anything contained in this Chapter, where any wakf has been registered before the commencement of this Act under any law for the time being in force, it shall not be necessary to

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register the wakf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act.

CHAPTER V

MUTAWALLIS AND WAKFS ACCOUNTS

31. Budget.—Every mutawalli of a wakf shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and submit it to the Board for approval.

Notes

Chapter V, consisting of sections 31 to 45, deals with Mutawallis and wakf accounts.

32. Submission of accounts of wakfs.—Before the 1st day of May next following the date on which the application referred to in section 25 has been made and thereafter before the 1st day of May in every year, every mutawalli of a wakf shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be prescribed by the Board, of all moneys received or expended by the mutawalli on behalf of the wakf during the period of twelve months ending on the 31st day of March or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf :

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

33. Audit of accounts of wakfs.—(1) The accounts of wakfs submitted to the Board under section 32 shall be audited and examined annually or at such other intervals as the Board may determine by an auditor appointed by the Board.

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

The costs of the audit of the accounts of a wakf shall be paid from the Wakf Fund.

34. Board to pass orders on auditor's report.—The Board shall examine the auditor's report, and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit.

35. Sums certified due recoverable as arrears of land revenue.—(1) Every sum certified to be due from any person by an auditor in his report under section 33 unless such certificate is modified or cancelled by an order of the Board made under section 34, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Board.

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

36. Duties of mutawallis.—It shall be the duty of every mutawalli—

- (a) to carry out the directions of the Board ;
- (b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board ;
- (c) to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto ;
- (d) to discharge all public dues ; and
- (e) to do any other act which he is lawfully required to do by or under this Act.

Notes

This section specifies the duties of Mutawallis.

37. Mutawalli entitled to pay certain costs from income of wakf property.—Notwithstanding anything contained in the wakf deed, every mutawalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 25 or any accounts under section 32 or any information or documents required by the Board or for the purpose of enabling him to carry out the directions of the Board.

38. Power of the Board to pay dues in case of default by mutawalli.—

(1) Where a mutawalli refuses to pay or fails to pay any revenue, cess, rates or taxes due to the Government or any local authority the Board may discharge the dues from the Wakf Fund and may recover the amount so paid from the wakf property and may also recover damages not exceeding twelve and a half per cent. of the amount so paid.

(2) Any sum of money due under sub-section (1) may, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

39. Creation of reserve fund.—For the purpose of making provision for the payment of rent and of revenue, cess, rates and taxes due to the Government or any local authority, for the discharge of the expenses of the repair of the wakf property and for the preservation of the wakf property, the Board may direct the creation and maintenance, in such manner as it may think fit, of a reserve fund from the income of a wakf.

40. Extension of time.—The Board may, if it is satisfied that it is necessary so to do, extend the time within which any act is required to be done by the mutawalli under this Act.

41. Penalties.—(1) If a mutawalli fails—

- (a) to apply for the registration of a wakf ;
- (b) to furnish statements of particulars or accounts or returns as required by this Act.
- (c) to supply information or particulars as required by the Board ;
- (d) to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto ;
- (e) to deliver possession of any wakf property, if ordered by the Board or the court ;
- (f) to carry out the directions of the Board ;
- (g) to pay the contributions payable under section 46 ;
- (h) to discharge any public dues ; or
- (i) to do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the court that there was reasonable cause for his failure, be punishable with fine which may extend to one thousand rupees.

(2) No court shall take cognizance of an offence punishable under

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this Act save upon complaint made by the Board or an officer duly authorised by the Board in this behalf.

(3) No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

Notes

This section provides penalties for defaults of the mutawalli. Sub-section (3) provides that no court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

42. *Power to appoint mutawallis in certain cases.*—When there is a vacancy in the office of the mutawalli of a wakf and there is no one to be appointed under the terms of the deed of the wakf, or where the right of any person to act as mutawalli is disputed, the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit.

43. *Removal of mutawallis.*—(1) Notwithstanding anything contained in any other law or the deed of wakf, the Board may remove a mutawalli from his office if such mutawalli—

(a) has been convicted more than once of an offence punishable under section 41; or

(b) has been convicted of an offence of criminal breach of trust or any other offence involving moral turpitude.

(2) Where a committee is appointed by the Board to act as mutawalli for managing or administering any wakf property and the committee, in the opinion of 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, the Board may supersede the committee and appoint any other person or committee to act as the mutawalli of the wakf property.

(3) For the removal of doubts it is hereby declared that the removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the wakf property either as a beneficiary or in any other capacity or his rights, if any, as a sajjadanishin.

(4) No action shall be taken by the Board under sub-section (1) or sub-section (2), unless it has held an inquiry into the matter in the prescribed manner and the decision has been taken by a majority of not less than three-fourths of the members of the Board.

(5) Where a mutawalli has been removed from his office under sub-section (1) or sub-section (2), the Board may, by order, direct the mutawalli to deliver possession of the wakf property to the Board or any officer thereof duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the wakf property; and the order of the Board shall be deemed to be a decree of a civil court and shall be executed by the civil court as if it had passed the decree.

Notes

Section 43 provides for the removal of Mutawallis by the Board of Wakfs. A Mutawalli can be removed by an executive order of the Board only if such mutawalli has been convicted more than once of an offence punishable under section 41 or has been convicted of an offence of criminal breach of trust or any other offence involving moral turpitude. Where a Committee of Management has been appointed by the Board for performing the functions of a Mutawalli, the Board has been empowered to supersede the committee, if the committee does not properly perform its functions. Before taking any action for the removal of a mutawalli the

Board must hold an inquiry into the matter and the decision shall be taken by a majority of not less than three-fourths of the members of the Board.

Sub-section (5) empowers the Board to direct the removed mutawalli to deliver possession of the wakf property to the Board or any officer duly authorised by the Board. If the mutawalli fails to deliver possession under the orders of the Board, the order of the Board shall be executable as a decree of civil court.

44. *Application for inquiry.*—Any person interested in a wakf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, it shall take such action thereon as it thinks fit.

45. *Inquiry by the Board.*—(1) The Board may, either on an application received under section 44 or on its own motion, institute an inquiry into any matter relating to a wakf and shall hold the inquiry in such manner as may be prescribed or authorise any person in this behalf to hold the inquiry.

(2) For the purposes of any inquiry under this Act, the Board or any person authorised by it in this behalf shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) for enforcing the attendance of witnesses and production of documents.

CHAPTER VI

FINANCE OF THE BOARD

46. *Annual contributions payable to the Board.*—(1) The mutawalli of every wakf shall pay annually to the Board such contribution not exceeding five per cent. of the net annual income of such of its property as is situate in the State as the Board may, subject to the sanction of the State Government, from time to time, determine:

Provided that no such contribution shall be payable by the mutawalli of a wakf of which the net annual income does not exceed one hundred rupees.

(2) The Board may in the case of any particular wakf reduce or remit such contribution for such time as it thinks fit.

(3) The mutawalli of a wakf may realise the contributions payable by him under sub-section (1) from the various persons entitled to receive any pecuniary or other material benefits from the wakf, but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion as the value of the benefits receivable by such person bears to the entire net annual income of the wakf:

Provided that if there is any income of the wakf available in excess of the amount payable as dues under this Act, other than as the contribution under sub-section (1), and in excess of the amount payable under the wakf deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub-section (1) in respect of a wakf shall, subject to the prior payment of any dues to the Government or any local authority or of any other statutory first charge on the wakf property or the income thereof, be a first charge on the income of the wakf and shall be recoverable, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, as an arrear of land revenue.

(5) If a mutawalli realises the income of the wakf and refuses to pay or does not pay such contribution, he shall also be personally liable for such contribution which may be realised from his person or property in the manner aforesaid.

47. *Power of the Board to borrow.*—For the purpose of giving effect to the provisions of this Act, the Board may, with the previous sanction of the State Government, borrow such sum of money and on such terms and conditions as the State Government may determine and the Board shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.

48. *Wakf Fund.*—(1) All moneys received by the Board under section 46 and all other moneys realised by the Board under this Act shall form a fund to be called the Wakf Fund.

(2) Subject to any rules that may be made by the State Government in this behalf, the Wakf Fund shall be under the control of the Board.

(3) The Wakf Fund shall be applied to—

(a) repayment of any loan incurred under section 47 and payment of interest thereon ;

(b) payment of the cost of audit of the Wakf Fund and the accounts of wakfs ;

(c) payment of the salary and allowances of the Secretary and staff of the Board ;

(d) payment of travelling allowances to the Chairman, members, Secretary and staff 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.

(4) If any balance remains after meeting the expenditure referred to in sub-section (3), the Board may use any portion of such balance for the preservation and protection of wakf properties or for such other purposes as it may deem fit.

49. *Budget of the Board.*—The Board shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and forward a copy of the same to the State Government.

50. *Accounts of the Board.*—The Board shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be prescribed.

51. *Audit of accounts of the Board.*—(1) The accounts of the Board shall be audited and examined annually by such auditor as may be appointed by the State Government.

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

(3) The cost of the audit shall be paid from the Wakf Fund.

52. *State Government to pass orders on auditor's report.*—The State

Government shall examine the auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit.

53. *Sums certified due recoverable as arrears of land revenue.*—(1) Every sum certified to be due from any person by an auditor in his report under section 51 unless such certificate is modified or cancelled by an order of the State Government made under section 52, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the State Government.

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

54. *No financial liability of Government.*—The State Government shall not be liable for any expenditure incurred in connection with the administration of this Act.

CHAPTER VII

JUDICIAL PROCEEDINGS

55. *Institution of suits under section 14 of the Religious Endowments Act, 1863 and section 92 of the Code of Civil Procedure, 1908.*—(1) A suit to obtain any of the reliefs mentioned in section 14 of the Religious Endowments Act, 1863 (XX of 1863) and in section 92 of the Code of Civil Procedure, 1908 (Act V of 1908), relating to any wakf may, notwithstanding anything to the contrary contained in those Acts, be instituted by the Board without obtaining the leave or consent referred to in those Acts.

(2) No suit to obtain any of the reliefs referred to in sub-section (1) relating to a wakf shall be instituted by any person or authority other than the Board without the consent in writing of the Board :

Provided that no such consent shall be required for the institution of a suit against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules or orders made thereunder.

56. *Notice of suits by parties against the Board.*—No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims ; and the plaint shall contain a statement that such notice has been so delivered or left.

57. *Notice of suits, etc., by courts.*—(1) In every suit or proceeding relating to a title to wakf property or the right of a mutawalli, the court shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any wakf property is notified for sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates or taxes due to the Government or any local authority, notice shall be given to the Board by the court, collector or other person under whose order the sale is notified.

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

(4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the court or other authority under whose order the sale was held.

58. *Proceedings under the Land Acquisition Act, 1894.*—(1) If, in the course of proceedings under the Land Acquisition Act, 1894 (I of 1894) it appears to the Collector before an award is made that any property under acquisition is wakf property, a notice of such acquisition shall be served by the Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.

(2) Where the Board has reason to believe that any property under acquisition is wakf property, it may at any time before the award is made appear and plead as a party to the proceeding.

(4) When the Board has appeared under the provisions of sub-section (1) or sub-section (2), no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894 (I of 1894) without giving an opportunity to the Board to be heard.

(4) Any order passed under section 31 or section 32 of the Land Acquisition Act, 1894 without giving an opportunity to the Board to be heard shall be declared void, if the Board, within one month of its coming to know of the order, applies in this behalf to the authority which made the order.

59. *Board to be made a party to a suit or proceeding regarding a wakf on its application.*—In any suit or proceeding in respect of a wakf or any wakf property by or against a stranger to the wakf or any other person, the Board may appear and plead as a party to the suit or proceeding.

60. *Bar to compromise of suits by or against mutawallis.*—No suit or proceeding in any court by or against the mutawalli of a wakf relating to title to wakf property or the rights of the mutawalli shall be compromised without the sanction of the Board.

61. *Power to make application to the court in case of failure of mutawalli to discharge his duties.*—(1) Where a mutawalli is under an obligation to perform any act which is recognised by Muslim law as pious, religious or charitable and the mutawalli fails to perform such act, the Board may apply to the court for an order directing the mutawalli to pay to the Board or to any person authorised by the Board in this behalf the amount necessary for the performance of the act.

(2) Where a mutawalli is under an obligation to discharge any other duties imposed on him under the wakf and the mutawalli wilfully fails to discharge such duties, the Board or any person interested in the wakf may make any application to the court and the court may pass such order thereon as it thinks fit.

CHAPTER VIII MISCELLANEOUS

62. *Directions by the Central Government.*—(1) The Central Government may call for any report or information from the Government of any State with respect to the functioning of the Board in that State and after considering such report or information, the Central Government may issue such directions on questions of policy to be followed by the Board as it may think fit.

(2) In the performance of its functions under this Act, the Board shall be guided by the directions issued under sub-section (1).

63. Directions by the State Government.—Subject to any directions on questions of policy issued under section 62, the State Government may, from time to time, give to the Board such general or special directions as the State Government thinks fit and in the performance of its functions, the Board shall comply with any such directions.

64. Power to supersede the 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, the State Government may, by notification in the Official Gazette, supersede the Board for such period as may be specified in the notification :

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.

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

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

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

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

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

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

(b) reconstitute the Board in the manner provided in section 10 and section 11.

65. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the Board or the 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.

66. The Commissioner, auditor, etc., to be deemed to be public servants.—The Commissioner, every auditor, every officer and servant of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

67. Power to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(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 particulars which a list of wakfs published under sub-section (2) of section 5 may contain ;

(b) the conditions and restrictions subject to which the Board may transfer any property ;

(c) the regulation of the functions of the Board ;

(d) the terms and conditions of service of the Secretary of the Board ;

(e) the manner in which any inquiry may be held under this Act ;

(f) the powers vested in a civil court which may be exercised by the Board or the Commissioner or any other person while holding an inquiry under this Act ;

(g) the form in which a register of wakfs may be maintained and the further particulars which it may contain ;

(h) the form in which, and the time within which, the budget of the Board may be prepared and submitted by the Board and approved by the State Government ;

(i) the manner in which the accounts of the Wakf Fund may be kept and audited and the contents of the auditor's report ;

(j) the payment of moneys into the Wakf Fund, the investment, custody and disbursement of such moneys ;

(k) the circumstances under which, and the terms and conditions on which, the Board may be allowed to borrow ;

(l) the circumstances in which, and the conditions subject to which, the Board may reduce or remit the contribution payable in respect of a wakf ;

(m) the procedure to be followed in the recovery of any sum due under this Act as an arrear of land revenue ;

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

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

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

(a) the time and place of the meetings of the Board and the number of members required to form a quorum at its meetings ;

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

(c) the constitution and functions of committees of 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 Chairman or members of the Board or members of committees ;

(e) terms and conditions of service of the officers and servants of the Board ;

(f) the form of application for registration of wakfs, further particulars to be contained therein and the manner and place of registration of wakfs ;

(g) further particulars to be contained in the register of wakfs ;

(h) the books to be kept at the office of the Board ;

(i) the form in which, and the time within which, the budgets of wakfs may be prepared and submitted by the mutawallis and approved by the Board ;

(j) the manner in which the accounts of wakfs may be kept and audited and the contents of the auditor's report ;

(k) the method of calculating the income of a wakf for the purpose of levying contributions under this Act ;

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

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

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

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

69. Repeal and savings.—(1) The following enactments, namely :—

(1) The Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810 (Ben. Regulation XIX of 1810) ;

(2) Section 5 of the Religious Endowments Act, 1863 (XX of 1863) ;

(3) The Charitable Endowments Act, 1890 (VI of 1890) ;

(4) The Charitable and Religious Trusts Act, 1920 (XIV of 1920) ;

(5) The Mussalman Wakf Act, 1923 (XLII of 1923) ;

shall not apply to any wakf to which this Act applies.

(2) 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 [other than an enactment referred to in sub-section (1)] that corresponding law, shall stand repealed :

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

The Salaries and Allowances of Members of Parliament Act, 1954.

The following Act of Parliament received the assent of the President on the 22nd May, 1954 and was published in the *Gazette of India*, Extraordinary, Part II-Section 1, No. 30, dated the 24th May 1954.

Act No. 30 of 1954

[22nd May, 1954]

An Act to provide for the salaries and allowances of Members of Parliament.

BE it enacted by Parliament in the Fifth Year of the Republic of India as follows :—

1. *Short title and commencement.*—(1) This Act may be called the Salaries and Allowances of Members of Parliament Act, 1954.

(2) It shall come into force on the first day of June, 1954.

Notes

Object—“Under Article 106 of the Constitution Members of Parliament are entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of the Constitution applicable in the case of members of the Constituent Assembly.

Parliament has not enacted any law so far with the result that Members have continued to receive allowances at rates which applied to the Members of the Constituent Assembly despite certain changes which have since occurred in the classification of accommodation on railways. This Act establishes the basis on which salary and allowances should be drawn by Members of Parliament. [Vide Statement of Objects and Reasons, printed in the *Gazette of India*, Extraordinary, Part II-Section 2, No. 26, dated the 8th May 1954.]

2. *Definitions.*—In this Act,—

(a) ‘committee’ means a Committee of either House of Parliament, and includes a Joint Committee of both Houses ;

THE UTTAR PRADESH MUSLIM WAKFS ACT, 1960¹

[U.P. ACT No. XVI OF 1960 AS AMENDED BY U.P. ACTS
25 OF 1963, 26 OF 1966, 3 OF 1970, 28 OF 1971,
18 OF 1972 AND 11 OF 1974]

(As passed by Uttar Pradesh Legislature)

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1. For Statement of Objects and Reasons, please see Uttar Pradesh Gazette (Extraordinary), dated February 24, 1960.

Passed in Hindi by the Uttar Pradesh Legislative Council on April 6, 1960, and by the Uttar Pradesh Legislative Assembly on April 28, 1960.

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An Act to provide for better governance, administration and supervision of certain classes of wakfs in Uttar Pradesh

Whereas it is expedient to provide for better governance, administration and supervision of certain classes of wakfs in Uttar Pradesh ;

It is hereby enacted in the Eleventh Year of the Republic of India as follows :

Preliminary

1. **Short title, extent and commencement.**—(1) This Act may be called the Uttar Pradesh Muslim Wakfs Act, 1960.

(2) It shall extend to the whole of Uttar Pradesh.

(3) It shall come into force at once.

Constitutionality of the Act.—The Act is not hit by Article 14 of the Constitution of India on the ground that its provisions are different to the Central Waqf Act (Act No. 29 of 1954). *Hafiz Mohd. Zafar Ahmad v. U.P. Sunni Central Board of Waqf*, AIR 1965 All 333.

2. **Application of the Act.**—(1) Save as herein otherwise specifically stated, this Act shall apply to all wakfs, whether created before or after the commencement of this Act, any part of the property comprised in which is situate in Uttar Pradesh, and to all the wakfs which at the time of the coming

into force of this Act were under the superintendence of the Sunni Central Board or the Shia Central Board constituted under the U.P. Muslim Wakfs Act, 1936 (U. P. Act XIII of 1936).

²[(2) This Act shall also apply to the endowments hitherto governed by the Husainabad Endowment Act, 1878, the trusts known as King's side and the Queen's side of Shahnajaf Trust, the *Wakfs* known as *Wakf Abbu Saheb*, Rauza Kazmani *Wakf* and *Wakf Wazir Begum*, Lucknow and any other endowment, trust or *wakf* hitherto administered by the Trustees appointed under the said Husainabad Endowment Act; and all these endowments, trusts and *wakfs* shall be deemed to be *wakfs* for the purpose of this Act :

Provided that the State Government shall have the power to make, by notification, in the Official Gazette, such adaptation, whether by way of modification, addition or omission, not affecting the substance of the provisions of this Act, as it may deem fit, in its application to the aforesaid endowments, trusts and *wakfs*.]

(3) ³[***]

Sub-section (3)(i)—Interpretation of.—For determining 75% of the total income, only that amount is to be taken into account which the beneficiaries are entitled to receive as such. The amounts received by them in any other capacity, for illustration, an amount payable to a beneficiary in his capacity as mutawalli of the waqf, will not be counted towards the requirement of 75%. *Sheikh Karim Ullah v. Central Sunni Waqf Board*, 1971 AWR (HC) 224.

Moreover, the amount which has essentially to be spent for the purposes of the waqf, for instance expenditure on construction and repairs of the waqf property, will not form part of the said 75% of the total income. *Sheikh Karim Ullah v. Central Sunni Waqf Board*, 1971 AWR (HC) 224.

Badrul Islam v. Sunni Central Board, 1954 AWR 287; *Mohammad Shah v. Fasihuddin Ansari*, AIR 1956 SC 713, relied on.

3. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

- (1) "beneficiary" means a person or object for whose benefit a *wakf* is created and includes religious, pious or charitable objects and any other object of public utility established for the benefit of the Muslim community or any sect thereof ;
- (2) "Board" means the Sunni Central Board or the Shia Central Board constituted under this Act ;

2. Subs. by U.P. Act XXV of 1963, w.e.f. 3-9-1960.

3. Omitted by Act 28 of 1971.

- (3) Commissioner means a Commissioner of wakfs appointed by the State Government under Section 4 ;
- (4) "family" includes—
 - (i) parents and grand-parents ;
 - (ii) wife and husband ; and
 - (iii) persons related through any ancestor, male or female ;
- ⁴[(5) 'Mutawalli', means any person appointed either verbally or under any deed or instrument by which a wakf, has been created or by a competent authority to be the mutawalli of a wakf, and includes any naib-mutawalli, khadim, majawar, sajjadannishin, 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 or Committee for the time being managing or administering any wakf property as such ;] ;
- (6) "net income" means the total income less revenue, cess, rates, taxes or surcharge payable to the Government or to any local authority ;
- (7) "property" includes Government Securities and bonds, shares in firms and companies, stocks, debentures and other securities and instruments, and cash and other commodities ;
- (8) "prescribed" means prescribed by bye-laws or rules made under this Act ;
- (9) "sub-committee" means a sub-committee appointed for any local area under Section 27 ;
- (10) "Tribunal" means a Tribunal constituted under Section 70 ;
- (11) "Wakf" means the permanent dedication or grant of any property for any purpose recognized by the Muslim Law or usage as religious, pious or charitable, and includes wakfs-alal-aulad ^{4a}[to the extent to which the property is dedicated or granted for any such purpose as aforesaid] and wakf by user ; and "wakif" means the person who makes such dedication or grant ;
- (12) "Wakf property" includes offerings made at a shrine or tomb or imambara ; and

4. Subs. by U.P. Act 28 of 1971.

4a. Subs. by U.P. Act 28 of 1971.

(13) "State Government" means the Government of Uttar Pradesh.

Waqf-Alal-Aulad.—Waqf-Alal-Aulad is waqf under Section 3(11). However not the entire properties of such waqf but only the properties dedicated for purposes religious, pious or charitable come within the control of the Board. If the entire property is dedicated for such purposes and also for secular purposes and it is not possible to determine the extent to which the properties were dedicated for each purpose the entire property will be deemed to be dedicated to God and subject matter of the waqf and will come under the general superintendence of the Waqfs Board under Section 19. *U.P. Central Board of Waqfs v. Hasan Jehan Begum*, AIR 1977 All 18.

Sub-section (5)—Mutawalli and Mahant—Contrast.—See *Hafiz Mohammad Zafar Ahmad v. U.P. Sunni Central Board of Waqf*, AIR 1965 All 333.

CHAPTER I SURVEY OF WAKFS

4. Appointment of Commissioner of Wakfs and Additional or Assistant Commissioners of Wakfs.—The State Government may, from time to time, by notification in the Official Gazette, appoint a Commissioner of *Wakfs* and as many Additional Commissioners of *Wakfs* or Assistant Commissioners of *Wakfs* as may be necessary for the purpose of making a survey of all *wakf* properties in the State or in specified areas thereof whether the *wakfs* be subject to this Act or not.

5. An Additional Commissioner of *Wakfs* or an Assistant Commissioner of *Wakfs* shall exercise all the powers and perform all the duties which under this Act have been conferred or enjoined upon the Commissioner.

6. Survey of wakfs.—(1) The Commissioner shall apportion the work of survey of *wakfs* between himself and the Additional and Assistant Commissioners in such manner as he may think proper, and shall generally supervise and control their work.

(2) The Commissioner of *Wakfs* shall, after making such inquiries as he may consider necessary, ascertain and determine—

- (a) the number of all *wakfs* in the area showing the Shia *wakfs* and Sunni *wakfs* separately ;
- (b) the nature and objects of each *wakf* ;
- (c) the gross income of the property comprised in each *wakf* ;
- (d) the amount of revenue, cesses, rates, taxes and

surcharge payable to the Government or the local authority in respect of each *wakf* property ;

- (e) expenses incurred in the realization of the income and the pay or other remuneration of the *mutawalli* of each *wakf* ;
- (f) 4b[* * *].
- (g) such other particulars relating to each *wakf* as may be prescribed :

Provided that where there is a dispute as to whether a particular *wakf* is a Shia *wakf* or Sunni *wakf* and there are clear indications in the recitals of the deed of *wakf* as to the sect to which it pertains, such dispute shall be decided on the basis of such recitals.

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

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

(4) The Commissioner, the Additional Commissioner of *Wakfs* or Assistant Commissioner of *Wakfs* shall submit his report of enquiry, containing the particulars mentioned in sub-section (2) above, to each of the Boards and the State Government and the State Government shall, as soon as possible, notify in the Official Gazette the *wakfs* relating to particular sect, to which, according to such report, the provisions of this Act apply.

Applicability.—By virtue of Section 9(2), no fresh survey under Section 6, is necessary in cases where the report of the Commissioner of *Waqfs* has become final under the Muslim *Waqfs* Act, 1936. *Hafiz Mohd. Zafar Ahmad v. U.P. Sunni Central Board of Waqf*, AIR 1965 All 333.

4b. Omitted by U.P. Act 28 of 1971.

7. **Recovery of cost of survey.**—(1) The total cost of making a survey under this chapter, shall where the survey is State-wide be borne by all the *mutawallis* in proportion to the income of the property of the *wakfs* in the State, and where the survey is confined to a particular area, by the *mutawallis* of the *wakfs* situate in that area in proportion to the income of the property of the *wakfs* in that area.

(2) Notwithstanding anything contained in the deed or instrument creating any *wakf*, any *mutawalli* may pay from the income of the *wakf* property 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 in the manner provided in Section 83.

8. (1) If any dispute arises whether a particular property is *wakf* property or not or whether a *wakf* is a Shia *wakf* or Sunni *wakf*, the Board concerned or the *mutawalli* of the *wakf* or any person interested therein, may, in accordance with the provisions of this Act, refer the dispute for adjudication to the Tribunal :

Provided that no such dispute shall be entertained by a Tribunal after the expiry of one year from the date of the publication of the list of *wakfs* under sub-section (4) of Section 6.

(2) The Commissioner, Additional Commissioner of *Wakfs* and Assistant Commissioner of *Wakfs* shall not be made a party to any proceeding under sub-section (1).

9. (1) The provisions of this chapter shall not apply to the proceedings of any survey of *wakf* properties started before the commencement of this Act, and such survey shall be completed in accordance with the provisions of the U.P. Muslims Wakfs Act, 1936 (U.P. Act XIII of 1936).

(2) Nothing in this chapter shall affect the finality of the decisions of the Chief State Commissioner of *Wakfs* or of any State Commissioner of *Wakfs* or Commissioner of *Wakfs* in cases in which prior to the commencement of this Act the report of such Commissioner has become final.

Sub-section (2).—Under this sub-section, the Act is applicable to cases where the report of the Commissioner of *Wakfs* had become final under the provisions of the U.P. Muslim Waqfs Act, 1936, even though no fresh survey was done under Section 6. *Hafiz Mohd. Zafar Ahmad v. U.P. Sunni Central Board of Waqf*, AIR 1965 All 333.

CHAPTER II

ESTABLISHMENT OF BOARDS AND THEIR FUNCTIONS

10. Establishment of Central Boards.—(1) There shall be established in Uttar Pradesh two separate Boards to be called the “Sunni Central Board” and the “Shia Central Board” of *Wakfs*. Each Board shall be a body corporate and shall have perpetual succession and a common seal and shall by its said name sue or be sued :

Provided that the Boards which were constituted under the U.P. Muslim Wakfs Act, 1936 (U.P. Act XIII of 1936), and were functioning at the time of the commencement of this Act shall be deemed to have been constituted under the provisions of this Act and shall continue to function till the expiry of their term under the U.P. Muslim Wakfs Act, 1936.

(2) Anything required or permitted by this Act to be done by the Board shall in case of Sunni *wakfs* be done by the Sunni Central Board and in case of Shia *wakfs* by the Shia Central Board :

Provided that the control and superintendence of the Shia Board over the ⁵[*wakfs*, endowments and trusts referred to in sub-section (2) of Section 2] shall be subject to such directions as may be issued by the State Government from time to time.

11. Constitution of Sunni Central Board.—(1) The Sunni Central Board shall consist of the following Sunni Muslims, elected [* * *]^{5a} or [co-opted or nominated, as hereinafter indicated]⁶ :

^{6a}[(i) six members, of whom at least one shall be a member of the State Legislative Council, to be elected from amongst themselves by Sunni members of the State Legislature ;

⁶[(ii) two Sunni Advocates enrolled with the Uttar Pradesh State Bar Council, to be elected by Sunni members of the High Court Bar Association, Allahabad and Avadh Bar Association, Lucknow ;] ;

(iii) one member to be elected from amongst themselves

5. Subs. by U.P. Act XXV of 1963, S. 4 (w.e.f. 3-9-1960).

5a. Omitted by U.P. Act 11 of 1974.

6. Subs. by U.P. Act 11 of 1974.

6a. Subs. by U.P. Act 18 of 1972.

by members of the Working Committee of the Provincial Jamiat-ul-Ulema, U. P. ;

- ⁷[(iv) two members, one of whom shall have knowledge or practical experience in respect of finance and the other in respect of administration, to be nominated by the State Government ;
- (v) one member to be co-opted by the above [eleven]⁷ members from amongst *mutawallis* of *wakfs* to which this Act applies having each an annual income of not less than ^{7a}[rupees three thousand];
- (vi) the President, if he is not one of the above [twelve]⁷ members.

^{7b}[(2) The election and co-option under sub-section (1) shall be held and made within such time and in such manner as the State Government may by general or special order direct, and any question or dispute relating to any such election or co-option, shall be referred to the State Government whose decision shall be final.]

12. Constitution of Shia Central Board.—(1) The Shia Central Board shall consist of the following Shia Muslims elected ^{7c}[* * *] ⁷[or nominated or *ex officio*] or hereinafter indicated :

- ⁷[(i) all Shia members of the State Legislature] ;
- (ii) one member to be nominated by the State Government ; and
- (iii) one member to be elected by the Board of Trustees of the Shia College, Lucknow from amongst its members ;
- ⁸[(iv) three members, one of whom shall be a *mutawalli* of a *Wakf* to which this Act applies having an annual income of not less than ^{8a}[rupees three thousand] one shall have knowledge or practical experience in respect of finance and administration, and the third shall be an Alim, to be co-opted by [the members referred to in the foregoing clauses]⁸.

7. Subs. by U.P. Act 18 of 1972.

7a. Subs. by U.P. Act 28 of 1971.

7b. Subs. by U.P. Act 14 of 1974.

7c. Omitted by U.P. Act 11 of 1974.

8. Subs. by U.P. Act 3 of 1970.

8a. Subs. by U.P. Act 28 of 1971.

8b. Subs. by U.P. Act 18 of 1972.

(v) the President, if he is not one of ^{8c}[the members referred to in the foregoing clauses].

^{8d}[(2) The election and co-option under sub-section (1) shall be held and made within such time and in such manner as the State Government may, by general or special order direct, and any question or dispute relating to any such election or co-option shall be referred to the State Government whose decision shall be final.]

^{8e}13. **Nomination in certain cases.**—If any of the bodies referred to in clause (iii) of sub-section (1) of Section 11 and ^{8f}[clause (iii) of sub-section (1) of Section 12] ^{8g}[does not exist or is unable or fails to return the requisite number of members] ^{8f}[within such time as may be specified by the State Government in that behalf] the deficiency shall be made good by nomination of a Sunni Muslim or Shia Muslim, as the case may be, by the State Government.

14. Term of the Board.—(1) Subject to the provisions of Section 23 the term of the members of the Board shall be five years ^{8h}[from the date of the notification of its constitution.] :

Provided that the State Government may, by notification in the Official Gazette, extend the said period by a further period not exceeding one year :

⁹[Provided further that except as provided in sub-section (2), the outgoing members of the Board (including its President) shall, notwithstanding the expiration of their term, continue to hold office as members and President respectively until the constitution of the new Board is notified by the State Government in the Official Gazette.]

^{9a}[(2) Where as a result of any interim order of any Court either the State Government is unable to issue a notification of due constitution of the new Board or after such notification is issued the new Board is unable to function the State Government may for the duration of such order appoint a Sunni Muslim or a Shia Muslim, as the case may be, as Controller of the Board, and such Controller shall perform, exercise and discharge the function, powers and duties of the Board as well as of its President and members.]

8c. Subs. by U.P. Act 11 of 1974.

8d. Ins. by *Ibid.*

8e. Subs. by U.P. Act 3 of 1970.

8f. Subs. by U.P. Act 18 of 1972.

8g. Subs. by U.P. Act 28 of 1961.

9. Ins. by U.P. Act 3 of 1970 (w.e.f. 5-12-1969).

9a. Subs. by U.P. Act 3 of 1970.

Sub-section (2).—The Controller of the Wakf Board, appointed under this sub-section, is competent to dissolve the management committee of a wakf. *Mohammad Mustakhan v. U.P. Sunni Central Board of Wakfs*, (1981) 3 SCC 121 : 1981 ALJ 1024 : AIR 1981 SC 1739.

15. Election etc., of the President.—(1) Immediately after ^{9b}[the election, co-option, or nomination, as the case may be, ~~of~~ all the members other than the President] and subsequently whenever it becomes necessary by reason of an existing or anticipated vacancy or otherwise, to appoint a President, the Secretary of the Board shall convene ^{9c}[a meeting of such members] to elect a President. The members may elect either a person from among themselves or any other person as President :

Provided that a *mutawalli* of a *wakf* to which this Act applies or a Government Treasurer or a whole-time servant of the Government or of any *wakf* administration shall not be elected as President.

(2) The President shall be honorary.

16. Conduct of Business.—(1) The office of the Board shall be at Lucknow and the Board shall meet for the transaction of business at such times and place as may be prescribed.

(2) The quorum for a meeting of the Board shall be one-half of the total number of members of the Board :

Provided that where a meeting is adjourned for want of quorum, the quorum required for the first meeting after such adjournment shall be one-third of the total number of members of the Board, and where the meeting is again adjourned for want of quorum, no quorum shall be required for the second and subsequent adjourned meetings.

(3) The decision of the Board shall be by a majority of its members present and voting. In case of equal division the President shall have a casting vote.

17. Appointment etc., of Secretary.—The Board shall appoint a person to be its whole-time Secretary possessing such qualifications and on such pay, allowances and terms and other conditions of service as may be prescribed :

9b. Subs. by U.P. Act 26 of 1966.

9c. Subs. by U.P. Act 18 of 1972.

Provided that the Secretary shall be a Muslim belonging to the Sunni sect in the case of Sunni Central Board and to the Shia Sect in the case of Shia Central Board.

18. Staff of Central Board.—(1) The Board may appoint such staff and officers as may be necessary for the purpose of carrying out the provisions of this Act on such salaries, allowances and other conditions of service as may be prescribed.

19. Functions of the Board.—(1) The general superintendence of all *wakfs* to which this Act applies shall vest in the Board. The Board shall do all things reasonable or necessary to ensure that the *wakfs* ¹⁰[* * *] under its superintendence are properly maintained, controlled and administered and the income thereof is duly appropriated to the purposes for which they were founded or for which they exist.

(2) Without prejudice to the generality of the provisions of sub-section (1), the powers and duties of the Board shall be—

- (a) to maintain a complete and authentic record containing information relating to the origin, income, objects and beneficiaries of every *wakf* in each district ;
- (b) to prepare and settle its own budget ;
- (c) to settle and pass the budgets submitted by the *mutawallis* to the Board ;
- (d) to settle and pass the annual budgets of the sub-committees ;
- (e) to take measures for the recovery of lost properties of any *wakf* ;
- (f) to settle or modify schemes of management of a *wakf* other than the ¹¹[*wakfs*, endowments and trusts referred to in sub-section (2) of Section 2] :

Provided that where the Board has settled any scheme of administration under this clause, any person interested in the *wakf* and affected by such settlement may within 90 days from the date of the order of such settlement refer the matter to a Tribunal which shall give its decision thereon ;

10. Deleted by U.P. Act XXV of 1963, w.e.f. 3-9-1960.

11. Subs. by U.P. Act XXV of 1963 w.e.f. 3-9-1960.

^{11a}[(ff) to direct—

- (i) the utilization of the surplus income of a *wakf* consistently with the objects of the *wakfs* ;
- (ii) in what manner the income of a *wakf*, the objects of which are not evident from any instrument, shall be utilized ;
- (iii) in any case where any object of a *wakf* has ceased to exist or has become incapable of achievement, that so much of the income of the *wakf* as was previously applied to that object shall be applied to any other object that may be specified, which shall be similar, or as nearly as practicable similar, to the original object :

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

- (g) to inspect or cause inspection of *wakf* properties, accounts or records or deeds and documents relating thereto ;
- (h) to investigate into the nature and extent of *wakfs* and *wakf* properties and call, from time to time, accounts and other returns and information from the *mutawallis* and give directions for the proper administration of *wakfs* ;
- (i) to arrange for the auditing of accounts submitted or required to be submitted by the *mutawallis* ;
- (j) to direct the deposit of surplus money in the hands of a *mutawalli* in any approved bank ^{11b}[or in a post office] ^{11c}[* * *] ;
- (k) to administer the *Wakf* Fund ;
- (l) to keep regular accounts of the receipts and disbursement and submit the same to the State Government in the manner prescribed ;
- (m) to institute when necessary an inquiry relating to the administration of a *wakf* ;
- (n) to sanction, on the application of the *mutawalli* or a person interested in the *wakf* or on its own motion, a lease, mortgage or other transfer of

11a. Subs. by U.P. Act 28 of 1971.

11b. Subs. by *Ibid.*

11c. Omitted by *Ibid.*

property of the *wakf* of its conversion into another property :

Provided that no such lease, mortgage, transfer or conversion shall be sanctioned unless the proposal is approved by at least two-thirds of the total number of members of the Board :

Provided further that any objection made by any person interested in the *wakf* property, against such lease, mortgage, transfer or conversion within such time and manner as may be prescribed, shall be considered and decided before such lease, mortgage, transfer or conversion is completed ;

(o) to remove a *mutawalli*, or appoint a *mutawalli* and to put the *mutawalli* so appointed in possession of the *wakf* property under the provisions of this Act :

Provided that in the appointment of *mutawallis* or in making any other management of *wakf* property, the Board shall be guided, as far as possible, by the directions of the *wakif*, if any ;

(p) to issue directions under the provisions of this Act to a *mutawalli* of a committee of management or committee of supervision ; and

(q) to institute and defend suits and proceedings in a court of law relating to *wakfs*.

Constitutionality.—The Section is not hit by Article 26 of the Constitution of India. *Hafiz Mohd. Zafar Ahmaa v. U.P. Sunni Central Board of Waqf*, AIR 1965 All 333.

Scope—Right of Mutawallis to administer wakf property has not been taken by Section 19.—Section 19 defines the functions of the Board. These include powers to appoint or remove a *mutawalli* (Section 19(2)(O)), provided that the Board shall be guided by the directions of the *wakif* if any. *Hafiz Mohammad Zafar v. U.P. Sunni Central Board of Waqf*, AIR 1965 All 333.

General superintendence.—The power of general superintendence under sub-section (1) enables the Board to see that the waqf property is not mismanaged, wasted or wrongfully alienated. It empowers the Board to issue necessary directions in this respect to the *Mutawalli*. Where the waqf property was being sold for unreasonably low amount, it was held, the Board could direct the *Mutawalli* to sell the same by auction to get a higher price. *U.P. Sunni Central Board of Waqf v. Hasan Jehan Begum*, AIR 1977 All 18. The power of general superintendence does not enable the Board to suspend a *Mutawalli*. *U.P. Sunni Central Board of Waqf v. Hasan Jehan Begum*, AIR 1977 All 18.

Committees constituted under Act 20 of 1863 are now subject to the control of wakf Boards and not courts.—The present proceedings relate to the famous Dargah of Hazrat Saleem Chisti at Fatehpur Sikri

in the district of Agra. The Dargah came to be administered by the Act 20 of 1863 and a managing Committee was formed in 1927. The term of four members of Committee expired in 1962 and as the vacancies were not filled in by election, the President of the appellant Board filled in the vacancies. The District Judge held that he had the power to reconstitute the Committee. The Supreme Court observed :

“The entire Scheme of the (U.P. Muslim Wakf) Act shows that the control and supervision over the *wakf* is that of the Board constituted under Section 10. It is the Board that has full powers with regard to inspection of accounts, their auditing, administration of the *wakf* funds and all such matters It is barely possible to envisage the independent existence of a committee constituted under Act 20 of 1863 only for the purpose of having custody of the books of account The District Judge had no jurisdiction or power to fill in vacancies on the committee constituted under the provisions of Act 20 of 1863.” *U.P. Sunni Central Wakf Boards v. Mohd. Alim.*, AIR 1971 SC 1396.

20. Delegation of powers.—Subject to such conditions and limitations as may be specified, the Board may delegate to the President or to the Secretary or any other servant of the Board or to any member, such of its powers and duties under this Act, as it may deem necessary, and may likewise withdraw any such delegation.

21. Disqualifications and removal of members.—(1) A person shall be disqualified for being appointed, or for continuing as, a President or member of the Board if he—

- (a) is a non-Muslim ;
- (b) is less than twenty-one years of age ;
- (c) is a person of unsound mind ;
- (d) is an undischarged insolvent ;
- (e) has been convicted of an offence involving moral turpitude ; or
- (f) has, on any previous occasion, been removed from the office of a member or has been removed by order of a competent court from any position of trust either for mismanagement of corruption.

(2) The Board may remove any of its members, if he—

- (a) is or becomes subject to any disqualifications specified in sub-section (1) ; or
- (b) refuses to act or is incapable of acting or acts in a manner which the Board, after hearing any explanation that he may offer, considers to be prejudicial to the interest of the *wakfs* ; or

(c) absents himself from five consecutive meetings of the Board, without permission of the Board or without sufficient excuse.

(3) The removal of any member under sub-section (2) shall be notified in the Official Gazette.

22. Resignation of President and members.—The President or any member of the Board may resign his office by writing to the Board, and on such resignation being accepted by the Board, he shall be deemed to have vacated his office.

^{11d}[**22-A. Cessation of Membership.**—A person who is a member of the Board in his capacity as a member of the State Legislature or as an Advocate or as a *Mutawalli* or as a representative of any other body shall cease to be member of the Board on his ceasing to hold that capacity.]

23. Filling of vacancy.—On the seat of a member becoming vacant by his removal, resignation, death or otherwise, a new member shall be [elected co-opted, or nominated]¹² as the case may be, in his place, in the manner provided in this Act, and such member shall hold office so long as the member whose place he fills would have been entitled to hold office, if such vacancy had not occurred.

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

25. Opinion of the Board.—The *mutawalli* of any *wakf* may apply by petition to the Board for its opinion, advice or direction on any question affecting the management or administration of the property of such *wakf* and the Board shall give its opinion, advice, or direction thereon :

Provided that the Board shall not be bound to give such opinion, advice or direction on any question which is not in its opinion a fit question for summary disposal, or where the Board for any other reason to be recorded in writing, considers it inappropriate to do so.

26. Inspection of records and issue of copies.—^{12a}[(1)] The Board may allow inspection of and issue copies of, its pro-

11d. Ins. by U.P. Act 11 of 1974.

12. Subs. by U.P. Act 26 of 1966.

12a. The said S. 26 is renumbered as sub-section (1) by U.P. Act 28 of 1971.

ceedings or other records in its custody on payment of such fees and subject to such conditions as may be prescribed. All copies issued under this section shall be certified by the Secretary of the Board ^{12b}[or such other office of the Board as the Secretary may by general or special order authorise in that behalf] in the manner provided in Section 76 of the Indian Evidence Act, 1872 (Act I of 1872) ^{12c}[and shall be received as *prima facie* evidence of the proceeding or record and be admitted as evidence of the matter or transaction therein recorded in every case where, and to the same extent, as, the original proceeding or record would, if produced, have been admissible to prove the matter or transaction].

^{12c}[(2) No member, officer or servant of the Board shall, in any legal proceeding to which the Board is not a party, be required to produce any register or document, the contents of which can be proved under sub-section (1) by a certified copy, or to appear as a witness to prove the matter or transaction recorded therein, unless the court, for reasons to be recorded, considers it necessary to make such an order].

27. Sub-committees.—(1) The Board may whenever it considers necessary, establish in any local area sub-committee for the supervision of any *wakf*, or *wakfs* generally, in that area.

(2) The constitution, functions and duties of the sub-committee shall be such ^{12d}[as may from time to time be determined] by the Board.

CHAPTER III

REGISTRATION OF WAKFS

28. Savings.—A *wakf* registered before the commencement of this Act under the U. P. Muslim Wakfs Act, 1936 (U. P. Act XIII of 1936), shall be deemed to have been registered under the provisions of this Act.

Applicability of the Act.—The Act is Applicable to those wakfs also which were registered under the U.P. Muslim Wakfs Act, 1936. *Hafiz Mohammad Zafar Ahmad v. U.P. Sunni Central Board of Wakf*, AIR 1965 All 333.

12b. *Ins.* by U.P. Act 28 of 1971.

12c. *Ins.* by *Ibid.*

12d. *Subs.* by *Ibid.*

Competing claims.—Registration of wakf properties obtained by one sect under Section 38 of Muslim Wakfs Act, 1936, would prevail over any subsequent registration obtained by another sect under Section 29 of this Act. *Ghulam Abbas v. State of U.P.*, (1981) 1 SCC 71 : AIR 1981 SC 2198.

29. Registration.—(1) Every other wakf, whether subject to this Act or not and whether created before or after the commencement of this Act, shall be registered at the office of the Board of the sect to which the wakf belongs.

(2) Application for registration shall be made by the *mutawalli* within three months of his entering into possession of the wakf property :

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

(3) The application for registration shall be made in such form and manner and at such place as the Board may prescribe and shall contain the following particulars, as far as possible—

- (a) a description of the wakf properties sufficient for the identification thereof ;
- (b) the gross annual income from such properties ;
- (c) the amount of land revenue, cesses, and rates and taxes annually payable in respect of the wakf properties ;
- (d) an estimate of the expenses annually incurred in the realization of the income of the wakf properties ;
- (e) the amount set apart under the wakf for—
 - (i) the salary of the *mutawalli* and allowances to individuals ;
 - (ii) purely religious purposes ;
 - (iii) charitable purposes ; and
 - (iv) any other purpose ; and
- (f) any other particulars prescribed by the Board.

(4) Every such application shall be accompanied by a copy of the *Wakf Deed* or, if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakf.

(5) Every application made under sub-section (2) shall be

signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908), for the signing and verification of pleadings.

(6) The Board may require the applicant to supply such other particulars or information as it may consider necessary.

(7) On receipt of an application for registration, the Board may, before the registration of the *wakf*, make such inquiries as it thinks fit in respect of the genuineness and validity of the application and the correctness of any particular therein, and, when the application is made by any person other than the person administering the *wakf* property, the Board shall, before registering the *wakf*, give notice of the application to the person administering the *wakf* property and shall, after affording him a reasonable opportunity of being heard, pass such orders as it may deem fit.

(8) Any person aggrieved by an order of the Board under sub-section (7) may, by application within 90 days from the date of that order, refer the dispute to the Tribunal which shall give its decision thereon.

Sub-section (8)—Scope.—Under this sub-section a reference can be made to the Tribunal only against an order passed under sub-section (7) and not against an order passed under any other provision of the Act. Therefore, reference against deletion of a *waqf* from the register of *waqfs* could not be made under this sub-section. *Naqshe Ali v. U.P. Sunni Central Waqf Board*, 1970 ALJ 815.

30. Register of wakfs.—The Board shall maintain a register of *wakfs* which shall contain in respect of each *wakf* copies of the *wakf* deeds, when available, and the following particulars, namely :

- (a) the class of the *wakf* ;
- (b) the name of the *mutawalli* ;
- (c) the rule of succession to the office of *mutawalli* under the *wakf* deed or by custom or by usage ;
- (d) particulars of all *wakf* properties and all title deeds and documents relating thereto ;
- (e) particulars of the scheme of administration and the scheme of expenditure at the time of registration ; and
- (f) such other particulars as may be prescribed.

31. Power to cause registration of wakf and to amend register.—The Board may direct a *mutawalli* to apply for the

registration of a *wakf*, or to supply any information regarding a *wakf* or may itself collect information and cause the *wakf* to be registered or may at any time amend the register of *wakf*.

32. Notification of change in registered wakfs.—(1) In the case of any change in the management of a registered *wakf* due to the death or retirement or removal of the *mutawalli*, the incoming *mutawalli* shall forthwith, and any other person may, notify the change to the Board.

(2) In the case of any other change in any of the particulars mentioned in Section 29, the *mutawalli* shall, within three months from the date of occurrence of the change, notify such change to the Board.

33. Decision if a property is wakf property.—(1) The Board may collect or cause to be collected information regarding any property which it has reason to believe to be a *wakf* property and if any question arises whether a particular property is *wakf* property or not, it may, after making such inquiry as it may deem fit, decide the question.

(2) Any person aggrieved by the decision of the Board under sub-section (1) may by application within 90 days from the date of such decision refer the dispute to the Tribunal which shall give its decision thereon.

Sub-section (2)—Scope.—An order deleting a waqf from the register of waqfs is not an order under Section 33 but under Section 31. Hence, no reference can be taken to the Tribunal against such order by virtue of this sub-section. *Nagshe Ali v. U.P. Sunni Central Waqf Board*, 1970 ALJ 815.

Constitutionality.—In *Hafiz Mohd. Zafar Ahmad v. U.P. Sunni Central Board of Waqf*, AIR 1965 All 333 the Court found it unnecessary to decide as to whether this Section was hit by Articles 14, 25 or 26 of the Constitution of India but observed that it was not hit by Article 14.

CHAPTER IV

FINANCE OF THE BOARDS

34. Annual contributions by wakfs.—(1) The *mutawalli* of every *wakf* to which this Act applies shall pay annually to the Board such contribution, not exceeding six per cent of the net annual income of such of its property as is situate in Uttar Pradesh, as the Board may, subject to the sanction of the State Government, determine from time to time :

Provided that in the case of a *wakf* part of the income whereof is applied for the benefit of the *wakif* or his descendants or family or any other private purpose, the aforesaid contribution shall not be levied on such part of the income.

(2) The contribution under this section shall be payable with effect from the date on which this Act comes into force, and the contribution due from any *wakf* for any period preceding the commencement of this Act shall be deemed to be a contribution levied under this Act and be recoverable in the manner provided in this Act or the rules framed thereunder.

(3) The Board may, in the case of any class of *wakfs*, reduce or remit, from time to time, such contribution for a specified period provided that it shall be within the power of the Board to re-impose the contribution reduced or remitted either under this Act or under the U. P. Muslim Wakfs Act, 1936 (U. P. Act XIII of 1936).

(4) The contribution payable under sub-section (1) shall, subject to the prior payment of any dues to the State Government or any local authority or of any other statutory charge on the *wakf* property or the income thereof, be a first charge on the income of the *wakf* and shall, on a certificate issued by the Board after giving the *mutawalli* of the *wakf* concerned an opportunity of being heard, be recoverable in the manner provided in Section 83.

(5) If a *mutawalli* realises the income of the *wakf* and refuses or neglects to pay such contribution, he shall also be personally liable for such contribution and it may be realised from his person or property in the manner provided in sub-section (4).

(6) The *mutawalli* of a *wakf* may realise the contributions payable by him under sub-section (1) from persons entitled to receive any pecuniary or other material benefits from the *wakf*, but the sum realisable from any one of such persons shall bear to the total contribution the same proportion as the value of the benefits receivable by such person bears to the entire net annual income of the *wakf*.

35. ¹³[(1) Where any *wakf* is entitled to be paid any annuity on account of rehabilitation grant under Section 99 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, any contribution payable by such *wakf* under Section 34 to the extent of six per cent of the aggregate of the said annuity and of the interest payable to the *wakf* on Zamindari Abolition Compensation Bond Stock Certificates issued under the rules made under the said Act, may be paid by the State Government out of such annuity on production by the Secretary of the Board of a certificate in the prescribed form.]

13. Subs. by U.P. Act 26 of 1966.

(2) Any sum paid by the State Government under and in accordance with sub-section (1) shall be full discharge of the State Government to the extent of the amount so paid.

36. For the purpose of giving effect to the provisions of this Act, the Board may, with the previous sanction of the State Government, borrow such sums of money and on such terms and conditions as the State Government may determine.

37. (1) All moneys received by the Board under Section 34 and all other moneys realised by the Board under this Act shall form a fund to be called the "Uttar Pradesh Shia *Wakf* Fund" or the "Uttar Pradesh Sunni *Wakf* Fund" as the case may be.

(2) The *Wakf* Fund shall, subject to the control of the Board, be applied to—

- (a) repayment of any loan incurred under Section 36 and payment of interest thereon ;
- (b) payment of the cost of audit of the *Wakf* Fund ;
- (c) payment of the salary and allowances of the Secretary and staff of the Board and the salary and allowances of the staff of a sub-committee, if found necessary, by the Board ;
- (d) payment of travelling allowance to the President, members, Secretary and staff of the Board and of a sub-committee, if any ;
- (e) payment of all expenses incurred by the Board and a sub-committee, if any, in the performance of the duties imposed, and in exercise of the powers conferred, by or under this Act.

(3) If any surplus or accumulation out of the income of the Board remains after meeting the expenditure referred to in sub-section (2) the Board may use such surplus or accumulation or any portion thereof, for the preservation and protection of *wakf* properties or for such religious, pious or charitable purposes as the Board may deem fit.

38. **Budget of the Board.**—The Board shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next year showing the estimated receipts and expenditure during that year, and forward a copy thereof to the State Government.

39. Accounts of the Board.—(1) The Board shall cause to be maintained such books of account in such form and manner as may be prescribed.

(2) The accounts of the Board shall be audited and examined annually by the chartered accountants appointed by the Board.

(3) The report of the auditors shall, *inter alia* specify all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property or of loss, and the report shall also contain the name of any person who, in the opinion of the auditors, is responsible, by his neglect or misconduct, for such expenditure or failure or loss.

40. Government to pass orders on audit report.—The auditors appointed under Section 39 shall submit their report to the State Government who shall examine the report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit.

41. Recovery of sums due.—Every sum certified in the audit report to be due from any person, unless such certificate is modified or cancelled by an order of the State Government made under Section 40 and every sum due on such modified certificate, shall be paid by such person within a reasonable time to be fixed by the Board ; and if payment is not made in that time, the sums payable may, after affording the person concerned an opportunity of being heard, be recovered in the manner provided in Section 83.

CHAPTER V

SPECIAL POWERS OF THE STATE GOVERNMENT

42. General supervision by the State Government.—The State Government—

(i) shall exercise general supervision over the Board and may call for any document, record or information from the Board ;

(ii) may further require the accounts of the Board to be audited by an auditor to be appointed by it.

43. Power of the State Government to issue directions.—The State Government may, from time to time, give to the Board such general or special directions as the State Government thinks

fit and in the performance of its functions the Board shall comply with such directions.

44. Supersession of the Board.—In case of gross mismanagement and persistent dereliction of duty by the Board or when, in the opinion of the State Government, the Board has so flagrantly abused or exceeded the powers vested in it by law that its continuance is likely to prove detrimental to the public interest, the State Government may, by notification in the *Official Gazette*, supersede the Board after affording it an opportunity to explain the charges against it and after taking into consideration the explanation, if any, submitted by it.

Opportunity of Hearing.—Before suspending the Board, the State Government must give hearing to the Board otherwise the suspension order would be void. *Muzaffar Hasan v. State of U.P.*, 1982 ALJ 909.

45. State Government to take over functions of the Board.

(1) Where the Board is superseded under the provisions of Section 44, the State Government shall appoint an Administrator, who shall be a Sunni in the case of the Sunni Central Board and a Shia in the case of the Shia Central Board, to carry out the functions of the Board.

(2) Upon the publication of a notification under Section 44 superseding the Board—

- (a) all the members of the Board shall, as from the date of supersession, vacate their offices ;
- (b) all the powers and duties which may, under the provisions of this Act, be exercisable or performable by or on behalf of the Board, shall, during the period of supersession, be exercised and performed by the Administrator and such Administrator shall be deemed to be the Board for all purposes.

46. Formation of and transfer of administration of wakfs to the new Board.—Where the Board is superseded under the provisions of Section 44, a new Board shall be constituted within one year of the date of supersession, in accordance with the provisions of this Act.

(2) As soon as a new Board is constituted under subsection (1), the State Government shall, by notification in the *Official Gazette*, transfer the administration of the wakfs to such Board and thereupon the Administrator appointed by the State Government shall cease to exercise the functions of the Board from the date of the publication of such notification.

47. Administration of properties of the Husainabad and affiliated Wakfs.—(1) The State Government shall settle the scheme of administration regarding the ¹⁴[wakfs, endowments and trusts referred to in sub-section (2) of Section 2].

(2) The State Government may in consultation with the Shia Central Board amend or modify the scheme of administration settled under sub-section (1) and State Government may issue directions from time to time to remove any doubt or difficulty in the administration of these ¹⁵[wakfs, endowments and trusts.]

CHAPTER VI

MUTAWALLIS AND WAKF ACCOUNTS

¹⁶[**48. Emergency powers of Board when office of Mutawalli of wakf vacant.**—Without prejudice to the generality of the powers conferred by clause (o) of sub-section (2) of Section 19, the Board may, where there is a vacancy in the office of the *mutawalli* of a *wakf*—

- (a) appoint any person to act as *mutawalli* for such period and on such conditions as it thinks fit ; or
- (b) by notification in the Official Gazette, assume direct management of the *wakf* for ^{16a}[such period not exceeding five years as may be specified in the notification] :

Provided that in the case of a *wakf* created by a deed, the Board may act under this section only if there is no one competent to be appointed as *Mutawalli* under the terms of such deed.

Scope.—Where the erstwhile mutawalli had duly nominated mutawallis, it was held that the Waqfs Board had no power to appoint mutawalli under Section 48, *Hashim Husain v. Ahmad Raza*, AIR 1974 All 305. Where the appointment of a de facto mutawalli was not challenged by the Board for six years, Section 48 was inapplicable. Hence no other mutawalli could be appointed in his place unless he was given a hearing and was removed from the office, *Barkatullah v. Committee of Management of Waqf Hussain Baksh*, 1966 ALJ 454.

This section does not confer upon the Board unfettered power to appoint 'any' person as mutawalli, because the proviso to Section 19(2)(o) requires the Board to be guided by the directions of the waqif in this regard, *Hafiz Mohd. Zafar Ahmed v. U. P. Sunni Central Board of Waqf*, AIR 1965 All 333.

14. Subs. by U.P. Act XXV of 1963, w.e.f. 3-9-1960.

15. Subs. by U.P. Act XXV of 1963, S 6. (w.e.f. 3-9-1960).

16. Subs. by U.P. Act 26 of 1966.

16a. Subs. by U.P. Act 28 of 1971.

49. Duties of mutawallis.—It shall be the duty of every *Mutawalli*—

- (a) to carry out all directions, consistent with the provisions of this Act, issued to him by the Board or, with the previous approval of the Board, by the sub-committee constituted under Section 27 ;
- (b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board or the sub-committee ;
- (c) to allow inspection of *wakf* property, accounts or records or deeds and documents relating thereto ;
- (d) to discharge all public dues ; and
- (e) to do any other act which he is lawfully required to do by or under this Act.

^{16b}[49-A. **Transfer of immovable property of wakfs.**—Notwithstanding anything contained in the deed or instrument, if any, by which the *wakf* has been created, on transfer by way of—

- (i) sale, gift, mortgage or exchange ; or
- (ii) lease for a period exceeding three years in the case of agricultural land, or for a period exceeding one year in the case of non-agricultural land or building—

of any immovable property of the *wakf* shall be valid without the previous sanction of the Board.

49-B. Recovery of wakf property transferred in contravention of Section 49-A.—(1) If the Board is satisfied after making an inquiry in such manner as may be prescribed that any immovable property entered as property of a *wakf* in the register of *wakfs* maintained under Section 30, has been transferred without the previous sanction of the Board in contravention of the provisions of Section 49-A, it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

(2) On receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.

^{16b}. Subs by U.P. Act 28 of 1971.

(3) Every order passed under sub-section (2) shall be served—

- (a) by giving or tendering or by sending it by post to the person for whom it is intended ; or
- (b) if such person cannot be found, by affixing it on some conspicuous part of his last known place of abode or business, or by giving or tendering it to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates :

Provided that where the person on whom the order is to be served is a minor, service upon his guardian or upon any adult member or servant of his family shall be deemed to be service upon the minor.

(4) Any person aggrieved by an order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the Court of the District Judge within whose jurisdiction the property is situate.

(5) The District Judge may either dispose of the appeal himself or may transfer it to the Court of any Additional District Judge or Civil Judge under his administrative control and may also withdraw any such appeal and either dispose of the same or transfer it to any other Court of Additional District Judge or Civil Judge under his administrative control, and in every case the decision of the court shall be final.

(6) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without any appeal having been preferred or the appeal, if any, preferred within that time has been dismissed the Collector shall obtain possession of the property in respect of which the order has been made using such force as may be necessary, for the purpose, and then deliver it to the Board.

(7) In exercising his functions under this section the Collector shall be guided by such rules as may be made in that behalf by the State Government.]

Mutawalli cannot take refuge in Articles 19(1)(f), 25 or 26 of the Constitution, *Hafiz Mohammad Zafar v. U.P.S. C.B. of Wakf*, AIR 1965 All 333.

50. Budget and Accounts of Wakfs to be submitted by mutawallis.—In particular and without prejudice to the generality of the duties prescribed in Section 49, every *mutawalli* of a *wakf*

shall—

- (a) prepare, in every year, a budget for the next financial year showing in such form as may be prescribed the estimated receipts and expenditure during that year, and submit it before the 31st March of the year to the Board for approval ;
- (b) submit to the Board before the 1st day of May in every year, a full and true statement of accounts, in such form and containing such particulars as may be prescribed, and verified in the manner prescribed by the Code of Civil Procedure, 1908 (Act V of 1908), for verification of pleadings, of all moneys received and expended by the *mutawalli* on behalf of the *wakfs* during the period of twelve months ending on the 31st day of March preceding the submission of such statement or during that portion of the said period during which the provisions of this Act have been applicable to the *wakf* ;

Provided that in respect of a *wakf-alal-aulad* the statement of accounts required to be submitted by the *mutawalli* shall relate only to such portion of the income as is specified or set apart for religious or charitable purposes.

Proviso—Effect of.—The waqfs Board could not direct the Mutawalli to submit accounts in respect of the entire income from the properties of waqf-alal-aulad but could direct the submission of accounts only in respect of the income which was specified in the waqf deed to be set apart or utilised for religious, pious or charitable purposes. *U. P. Sunni Central Board of Waqf v. Hasan Jehan Begum*, AIR 1977 All 18.

51. Audit of accounts of wakfs.—(1) The accounts of *wakfs* submitted to the Board under Section 50 shall be audited and examined annually or at such other intervals as the Board may determine, by an auditor appointed under Section 18.

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

(3) The costs of the audit of the accounts of a *wakf* shall be paid from the *Wakf* Fund.

52. Board to pass order on Audit Report.—The Board shall examine the auditor's report, and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit.

53. Recovery of dues.—(1) Every sum certified by an auditor in his report under Section 51 to be due from any person, unless such certificate is modified or cancelled by an order of the Board made under Section 52 and every sum due on a modified certificate, shall be paid by such person within sixty days after the service of notice of demand for the same issued by the Board.

(2) If such payment is not made within the period mentioned above, the sum payable may, on a certificate issued by the Board after affording the person concerned an opportunity of being heard, be recovered in the manner provided in Section 83.

54. Penalties.—(1) If a *mutawalli* fails without reasonable cause or excuse, the burden of proving which shall be upon him—

- (a) to apply for registration of a *wakf* as provided in Section 29, or
- (b) to submit statements of particulars or of accounts and returns and to have the accounts audited as required by this Act, or
- (c) to supply information or particulars required by the Board or a sub-committee, or
- (d) to allow inspection, under the provisions of this Act, of *wakf* properties and deeds and documents relating thereto, or
- (e) to give assistance in enquiries and investigations when called upon to do so by the Board or by a sub-committee or by a Superintendent, Inspector, Auditor or any other person working under the orders of the Board, or
- (f) to deliver possession of any *wakf* property if ordered to do so by the Board, or
- (g) to deposit any surplus income in his hands in any recognized bank when directed to do so by the Board, or
- (h) to carry out the directions given by the Board or a

sub-committee consistent with the provisions of this Act, or

- (i) to do any other act which he is by or under this Act, required to do,

he shall be liable to pay such penalty, not exceeding rupees fifty for the first contravention and rupees two hundred and fifty for every subsequent contravention, as the Board may determine.

(2) The State Government may *suo motu* or on the application of the person aggrieved, call for the record of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the order imposing penalty under sub-section (1) and may pass such orders as it deems fit.

55. Removal of mutawallis.—(1) The Board may, after affording him an opportunity of being heard, remove a *mutawalli* other than a Managing Committee from his office if he—

- (i) is fined on more than one occasion under Section 54, or
- ^{16c}[(i-a) has failed to pay, without reasonable excuse, for two consecutive years, the contribution payable by him under Section 34 ; or],
- (ii) is convicted of an offence relating to the *wakf* property or money which, in the opinion of the Board renders him unfit to continue as *mutawalli*, or
- (iii) is convicted of an offence involving moral turpitude or is required to furnish security under Section 109 or Section 110 of the Code of Criminal Procedure, 1898 (Act V of 1898), or
- (iv) wrongly destroys or alienates any *wakf* property, or
- (v) is adjudged insolvent, or
- (vi) is, in the opinion of the Board, unfit to discharge the duties of a *mutawalli* owing to any physical or mental disability, or moral delinquency, or
- (vii) is guilty of misappropriation or gross mismanagement of *wakf* property, or has persistently neglected to comply with the directions given by the Board for the proper management of the *wakf*.

(2) Any person aggrieved by an order of removal under sub-section (1) may, by an application, refer the matter to the

^{16c}, Subs. by U.P. Act 28 of 1971.

Tribunal within 90 days of the date of communication of the order of removal.

Constitutionality.—The Section is not arbitrary and is not hit by Article 14, 25 or 26 of the Constitution of India. *Hafiz Mohammad Zafar Ahmad v. U. P. Sunni Central Board of Waqf*, AIR 1965 All 333.

Sections 55 and 64.—See the note under Section 64.

Scope.—This Section does not empower the Waqfs Board to suspend a Mutawalli. *U. P. Sunni Central Board of Waqf v. Hasan Jehan Begum*, AIR 1977 All 18.

Writ petition—Maintainability.—Where the Board started proceedings against Mutawalli under this Section, it was held that writ of prohibition could not be issued unless the petitioner had suffered some injury. A notice issued under this Section cannot be quashed. *U. P. Sunni Central Board of Waqf v. Hasan Jehan Begum*, AIR 1977 All 18.

Jurisdiction of Civil Courts.—The Civil Court has jurisdiction to fill up the vacancies amongst members of a Managing Committee. 1965 All LJ 1170.

CHAPTER VII

SPECIAL POWERS OF THE BOARD

56. Application for enquiry.—A beneficiary or any person interested in a *wakf*, may make application to the Board supported by an affidavit to institute an enquiry relating to the administration of the *wakf*, or for the examination and audit of the accounts thereof, and the Board may make or cause to be made through its own officer, or through a sub-committee constituted under Section 27, such enquiry, examination or audit as it may deem fit.

57. Enquiry by the Board.—If, after enquiry made on an application under Section 56, or made by the Board *suo motu*, the Board is of opinion that the *mutawalli* or the Committee of management has acted otherwise than in accordance with the terms and conditions of the *wakf*, it may direct the *mutawalli* or the Committee of management to take such action as the Board may deem expedient.

^{16d}**57-A. Recovery of possession of wakf property from unauthorised occupants.**—(1) If the Board is satisfied after making an inquiry in such manner as may be prescribed that any person is in unauthorised occupation of any immovable property entered as property of a *wakf* in the register of *wakfs* maintained

16d. Ins. by U.P. Act 28 of 1971.

under Section 30 it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

(2) The provisions of sub-sections (2),(3),(4), (5), (6) and (7) of Section 49-B shall *mutatis mutandis* apply in relation to a requisition under sub-section (1) as they apply in relation to a requisition under sub-section (1) of that section.]

Show cause notice and personal hearing necessary.—Before sending requisition to Collector for recovering possession of immovable waqf property, the Board must make inquiry in the perscribed manner. Rule 8 of U. P. Muslim Waqfs (Recovery of Waqf property) Rules, 1972 provides for a show cause notice being given to the person in un-authorised occupation. Rule 9(2) provides for a further opportunity of personal hearing being given to him. Hence, if no show cause notice is issued or no personal hearing is given, issue of requisition order would be in contravention of Section 57-A and Rules 8 and 9(2) and therefore illegal. *Haji Nizamuddin v. State of U. P.*, AIR 1978 All 271.

58. Power of enquiring authority.—For the purposes of an inquiry under this ^{16c}[Act], the inquiring officer or committee shall have the same power of enforcing the attendance of witnesses and production of documents as the civil court has under the Code of Civil Procedure, 1908 (Act V of 1908).

59. Determination of the object of a wakf whose object does not exist, etc.—(1) Where the object of any *wakf* has ceased to exist or cannot be accomplished, then notwithstanding anything contained in Section 92 of the Code of Civil Procedure, 1908 (Act V of 1908), or any law for the time being in force, the Board may, on its own motion or on the application of a member of the sect to which the *wakf* belongs, determine the object to which the funds, property or income of the *wakf*, or part thereof, shall be applied :

Provided that before such determination of the object the Board shall give notice to the *mutawalli* of the *wakf*, and to such other persons as may appear to the Board to be interested therein and shall make such enquiry as it may deem necessary :

Provided further that the object so determined by the Board shall be similar, or as nearly similar as may be practicable, to the object for which the *wakf* was created.

(2) The *mutawalli* or any other person interested in the *wakf*, may, within 90 days from the date of the order under sub-section (1) refer the matter to a Tribunal.

16c. Subs. by U.P. Act 28 of 1971.

60. Direction where the object of wakf is not evidenced.—

(1) If in any case the object of a *wakf* is not defined with precision, the Board shall direct the manner in which the funds, property or income of the *wakf*, or any surplus thereof, shall be utilized :

Provided that no such direction shall be given without first affording to the persons affected an opportunity of being heard.

(2) Any person affected by the direction of the Board under sub-section (1) may, within 90 days from the date of such direction, refer the matter to a Tribunal in accordance with the provisions of this Act, but pending the decision of the Tribunal on such reference, the direction of the Board shall be complied with.

61. Exercise of certain powers given in the deed etc., to a Judge or other authority.—Whenever the deed of a *wakf*, or any decree or order of a court or the scheme of management of the *wakf* provides that a Judge or any other authority may appoint or remove a *mutawalli* or settle or modify the scheme of management or otherwise exercise superintendence over the *wakf*, the powers exercisable by the Judge or such other authority shall, notwithstanding anything in the deed of *wakf*, decree, order or scheme, be exercisable by the Board as far as may be in accordance with the directions contained in the deed of *wakf*, decree, order or scheme, as the case may be.

62. Powers to secure discharge of obligations.—(1) Where a *mutawalli* is under an obligation to perform any act which is recognized by Muslim law as pious, religious or charitable and the *mutawalli* fails to perform such act, the Board may direct the *mutawalli* to pay to the Board or to any person authorized by the Board in this behalf, the amount necessary for the performance of the act and the Board or the person so authorized shall perform such act.

(2) Where a *mutawalli* refuses to pay or fails to pay any revenue, cess, rates or taxes due to the State Government or any local authority, the Board may pay the dues from the *Wakf* Fund and may recover the amount so paid from the *wakf* property.

(3) Any sum of money due under sub-section (2) may, on a certificate issued by the Board after giving the *mutawalli* concerned an opportunity of being heard, be recovered in the manner provided in Section 83.

63. Committees of supervisions and Board's power to supersede them.—(1) Whenever the supervision or management of a *wakf* is vested in any committee appointed by the *wakif* or any competent court or authority, such committee shall, notwithstanding anything in the Act, continue to function until superseded by the Board under sub-section (2) :

Provided that such committee shall be under the control of the Board and shall abide by such directions of the Board as are not inconsistent with any directions of the *wakif* or the court or authority appointing such committee.

(2) Notwithstanding anything contained in the Act, the Board may supersede any such committee as aforesaid if it does not, in its opinion to be recorded in writing, function properly and satisfactorily and on such supersession, any decree or order of a court or competent authority under which such committee has been constituted, shall cease to have any force in so far as it relates to the constitution of such committee.

(3) An order passed by the Board under sub-section (2) shall be final and shall not be questioned in any court of law :

Provided that any party aggrieved by an order under sub-section (2) may, within 90 days from the date of the order, refer the matter to a Tribunal for adjudication.

(4) Where the Board supersedes a committee by an order under sub-section (2), it may either appoint a new committee of supervision or management, or may assume direct management of the *wakf*.

(5) Where in a case in which the Board has assumed direct management of a *wakf* or appointed a *mutawalli* of a committee of management and the Board or the *mutawalli* or committee so appointed, is prevented from taking possession of the property of the *wakf* or of any title deeds or other deeds or other documents relating thereto ; ^{16f}[the Board may by order direct the *mutawalli* to deliver possession of the *wakf* property and title deed or the documents relating thereto to the Board or any officer thereof duly authorised in that behalf or to any person or committee appointed to act as the *mutawalli* of the *wakf* property, and the order of the Board shall be forwarded to the Court of Munsif, or where there is no Munsif, the Court of Civil Judge, within whose territorial jurisdiction the said property is situate or the said *mutawalli* resides, and the court shall thereupon execute the order as if it were a decree made by itself in a suit].

16f. Subs. U.P. Act 28 of 1971.

(6) The Board may instead of superseding any committee under sub-section (2) remove any member thereof if the Board is satisfied that the member has flagrantly abused his position as such or has knowingly acted in a manner prejudicial to the interest of the *wakf*. The order of removal shall be duly served on the member concerned :

Provided that no order for removal of the member shall be made unless an opportunity has been afforded to him of being heard :

Provided further that an appeal shall lie within 30 days from the date of service of the order of removal, to the State Government and the order of the State Government, on appeal, shall be final and be not questioned in any court of law.

Sub-Section (3).—An order dissolving the management committee of a *waqf* must discuss the facts and circumstances set out in the report of the Inspector in the light of the cause shown by the Committee and then set out the reasons for issuing the order, otherwise, the order is liable to be quashed by the Court. *Mohammad Mustakhan v. U. P. Sunni Central Board of Waqf*, (1981) 3 SCC 121 : 1981 ALJ 1024 : 1981 AIR SC 1739.

Tribunal has powers of Civil Court in appointing a receiver.—The sole question before us is whether the order of the Civil Judge acting as a Tribunal appointing the receivers of a Dargah pending dispute between the Managing Committee and the Wakf Board, is a proper order. *Sunni Central Wakf Board v. Sirajul Haq.*, AIR 1963 All 537.

CHAPTER VIII

CERTAIN SUITS OR PROCEEDINGS RELATING TO WAKFS BY, OR AGAINST, THE BOARD OR BY OTHERS

64. Institution of suits under Section 14 of the Religious Endowments Act, 1863 and Section 92 of the Code of Civil Procedure, 1908.—(1) A suit to obtain any of the reliefs mentioned in Section 14 of the Religious Endowments Act, 1863 (Act XX of 1863), and in Section 92 of the Code of Civil Procedure, 1908 (Act V of 1908), relating to any *wakf* may, notwithstanding anything to the contrary contained in those Acts, be instituted by the Board without obtaining the leave or consent referred to in those Acts.

(2) No suit to obtain any of the reliefs referred to in sub-section (1) relating to a *wakf* shall be instituted by any person or authority other than the Board without the consent in writing of the Board ¹⁷[and where the board has given such consent,

17. Subs. by U.P. Act 26 of 1966.

it shall not be necessary further to obtain the leave or consent referred to in the said Acts].

Applicability.—The Section applies to the cases of Mutawallis not covered by Section 55, where disputes arise regarding their right to manage waqf property. *Hafiz Mohd. Zafar Ahmad v. U. P. Sunni Central Board of Waqf*, 1965 AIR All 333.

65. Notice of suits by parties against the Board.—No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months, next after notice in writing, has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

Scope.—The word 'suit' in this Section does not include a 'reference' to the Tribunal under Section 63(3). Therefore, in respect of such reference notice need not be given to the Board. *Sheikh Mohammed Yamin v. U. P. Sunni Central Board of Waqfs*, 1973 AWR 174.

66. Notice of suits etc., by court.—(1) In every suit or proceeding relating to the title to *wakf* property or the right of a *mutawalli*, the court shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any *wakf* property is notified for sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates or taxes due to the Government or any local authority, notice shall be given to the Board by the Court, Collector or other person under whose order the sale is notified.

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

(4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its becoming aware of the sale, applies in this behalf to the court or other authority under whose order the sale was held.

Sub-Section (3)—Scope.—This sub-section is equally applicable to a decree or order whether passed in a suit or in a proceeding. Therefore, a stay order passed by the Court without issuing the necessary notice under sub-section (1) was void. *Sheikh Ahmad Raza v. Shia Central Board of Waqfs*, 1967 ALJ 1022. Such order being a nullity, was of no consequence, even if it had been upheld in appeal. *Ibid.*

67. Proceeding under the Land Acquisition Act, 1894.

—(1) If, in the course of proceedings under the Land Acquisition Act, 1894 (Act 1 of 1894), it appears to the Collector before an award is made that any property under acquisition is *wakf* property, a notice of such acquisition shall be served by the Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.

(2) Where the Board has reason to believe that any property under acquisition is *wakf* property, it may, at any time before the award is made, appear and plead as a party to the proceeding.

(3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2), no order shall be passed under Section 31 or Section 32 of the Land Acquisition Act, 1894 (Act I of 1894), without giving an opportunity to the Board of being heard.

(4) Any order passed under Section 31 or Section 32 of the Land Acquisition Act, 1894 (Act I of 1894), without giving an opportunity to the Board of being heard, shall be declared void if the Board, within one month of its becoming aware of the order, applies in this behalf to the authority which made the order.

Land acquisition.—*Waqf* property can be the subject matter of land acquisition. *Mohammad Ali Khan v. Special Land Acquisition Officer, Lucknow Nagar Mahapalika*, AIR 1978 All 280.

68. Board to be made a party to a suit or proceeding regarding a wakf on its application.—In any suit or proceeding in respect of a *wakf* or any *wakf* property by or against a stranger to the *wakf* or any other person, the Board may appear and plead as a party to the suit or proceeding.

69. Bar to compromise of suits by or against mutawallis.—No suit or proceeding pending in any court by or against the *mutawalli* of a *wakf* relating to title to *wakf* property or the rights of the *mutawalli* shall be compromised without the sanction of the Board.

^{17a}**[69-A. Bar of suit etc., for certain reliefs.**—No suit or other proceeding shall be instituted by the Board in a civil court for any relief which may be obtained by proceedings under Section 49-B or Section 57-A].

17a. Ins. by U.P. Act 28 of 1971.

CHAPTER IX
TRIBUNALS—THEIR CONSTITUTION, POWERS
AND FUNCTIONS

70. Constitution of Tribunals.—(1) The State Government may, by notification in the *Official Gazette*, constitute as many Tribunals as may be necessary for the purposes of this Act. Each Tribunal shall have jurisdiction over such areas in the State as may be specified.

(2) A Tribunal shall consist of one person only, who shall be a judicial officer of the State Government, not below the rank of a Civil Judge, and who may be appointed as such either by name or by official designation.

71. References of disputes etc., to Tribunals.—Any dispute, question or matter, which may under this Act be referred to a Tribunal, shall be referred to a Tribunal having jurisdiction over the area in which the property to which such dispute, question or matter relates is situate or if such property is situate in areas under the jurisdiction of more than one Tribunal, then to any of them, and the Tribunal of competent jurisdiction shall adjudicate upon such dispute, question or matter in accordance with the provisions of this Act :

Provided that no proceedings under this Act in respect of any *wakf* shall be stayed or suspended merely by reason of the pendency of any such dispute, question or matter before a Tribunal.

Proviso.—The Tribunal can, for good cause, suspend the proceedings before the Board. ILR (1967) 2 All 928 (FB). See also *Mohammad Abdullah Khan v. Sunni Central Board of Waqfs*, U. P., 1964 ALJ 1145.

72. Procedure before Tribunals.—(1) Subject to the provisions of this Act, and any rule that may be made in this behalf, a Tribunal shall follow the same procedure as is provided in the Code of Civil Procedure, 1908 (Act V of 1908), in regard to suits.

(2) The provisions of the Indian Evidence Act, 1872 (Act I of 1872), shall be deemed to apply in all respects to the adjudication of disputes by a Tribunal.

73. Awards by Tribunals.—(1) When a dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, as soon as practicable on the conclusion thereof, give its award in writing under its signature.

(2) A Tribunal may, either of its own motion or on the application of any party to the dispute, correct any clerical or arithmetical mistake in the award, or error arising therein from any accidental slip or omission.

(3) A copy of the award and whenever a correction is made in the award as aforesaid a copy of the order shall be handed over to each of the parties to the dispute, or if any party is not present before the Tribunal at the time of the award or order, as the case may be, a copy of it shall be sent by registered post to the address of such party.

74. Powers of Tribunals.—The Tribunal shall be deemed to be a civil court and shall have the same powers as are vested in such a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit or executing a decree or order.

75. Bar to suits in matters to be decided by Tribunals.—No person shall institute any suit or other proceeding in any civil court with respect to any dispute or question or matter which is required or permitted under this Act to be referred to a Tribunal for adjudication.

Scope of Sections 75 and 76—Tribunal's order appointing Receiver is appealable—No revision by High Court during the pendency of reference before the Tribunal—No appeal against even an interim order of the Tribunal.—While Section 76 of the Act makes the award of the Tribunal final and conclusive and clearly says that no appeal would lie against it in any court of law; it could be said that Section 76 does not pointedly say that no appeal shall lie from an order passed by the Tribunal during the pendency of reference before it. Section 76 however bars the institution of any suit or proceeding in any Civil Court with respect to any dispute or question or matter referred to a Tribunal for adjudication. It may be that there is no express bar against an appeal from an order appointing a receiver by the Tribunal and in the absence of any such bar the provisions of Order XLIII of the Code of Civil Procedure would be applicable and since an order appointing a receiver is an appealable order, an appeal from an order of the Tribunal appointing receivers would be maintainable. *Sunni Central Wakf Board v. Sirajul Huq*, AIR 1963 All 537.

76. Award not appealable.—The award of a Tribunal shall be final and conclusive and binding upon the parties concerned and the award shall have the force of decree and it shall neither be questioned nor appealed against in any court of law:

Provided that the High Court may, in its discretion, at any time *suo motu* or on the application of the Board or of any person aggrieved, call for and examine the record of any case

for the purpose of satisfying itself as to the correctness, legality or propriety of any award made under this Act, and pass such orders as it deems fit.

The decision of the preliminary issue of its jurisdiction by the Tribunal, being not a final award, no revision lies from such decision under the proviso to this Section, nor would revision lie under Section 115 of the Civil Procedure Code, 1908 as the Tribunal is not a court subordinate to the High Court. *Naqshe Ali v. U. P. Sunni Central Waqf Board*, 1970 ALJ 815. The power of the High Court under the proviso being discretionary, can not be treated as a remedy alternative to one under Article 227 of the Constitution of India. *Ibid.*

Where a de facto Mutawalli continued to hold office for Six years without being removed, the Board cannot remove him.—

Where a person is functioning as *de facto mutawalli* of certain property, the presumption is that he is the *de jure mutawalli* and is entitled to appoint his successor under the will. In order to oust such a *mutawalli* from office and in the absence of any provision in the U.P. Muslim Wakf Acts of 1936 and 1960 to this effect, a suit has to be instituted within a period of six years. Where such a suit has not been instituted within the period, the *de facto mutawalli* cannot be removed on the ground that there was some difficulty in his nomination or selection. *Barkatullah v. Committee of Management*, 1966 All LJ 454.

77. Removal of difficulties.—(1) The State Government may, for the purpose of removing any difficulties in regard to the implementation of the provisions of Sections 70 to 76 of this Act, direct, by order published in the *Official Gazette*, that these provisions shall during such period as may be specified, take effect subject to such adaptations, whether by way of modification, addition or omission, as it may deem to be expedient or necessary :

Provided that no such order shall be made after twenty-four months from the date of the commencement of this Act.

(2) No order, made under sub-section (1), shall be questioned in any court of law, on the ground that no difficulty as is referred to in the said sub-section existed or was required to be removed.

CHAPTER X

MISCELLANEOUS

78. Power to make rules.—(1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of this Act.

(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 manner in which reference shall be made to a Tribunal ; and
- (b) the procedure and time-schedule to be followed by a Tribunal.

(3) All rules, made under this Act, shall be published in the Official Gazette, and shall unless some later date is appointed, come into force on the date of such publication.

(4) All rules shall be laid for not less than fourteen days before the State Legislature as soon as they are made and shall be subject to such modifications as the Legislature may make during the session in which they are so laid.

79. Board's power to make bye-laws.—(1) The Board may, subject to the previous approval of the State Government, make bye-laws consistent with this Act for carrying out its functions and the provisions of this Act.

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

- (a) ^{17b}[****]
- (b) the time and place of the meetings of the Board ; their procedure and conduct of business ;
- (c) the qualifications, emoluments, terms and conditions of service of the Secretary and the staff of the Board ;
- (d) fees and conditions for the grant of inspection and copies of the Board's proceedings or records ;
- (e) the constitution, functions, procedure and conduct of business of the sub-committee ;
- (f) the form and manner of making applications for registration of *wakfs* ;
- (g) the particulars to be contained in, and the form of, the register of *wakfs* ;
- (h) the method of calculating the income of a *wakf* for the purpose of levying contribution under this Act ;

17b. Omitted by U.P. Act 11 of 1974.

of the foregoing power, such rules may provide for all or any of the following matters, namely—

- (a) the manner in which reference shall be made to a Tribunal ; and
- (b) the procedure and time-schedule to be followed by a Tribunal.

(3) All rules, made under this Act, shall be published in the Official Gazette, and shall unless some later date is appointed, come into force on the date of such publication.

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- (a) 17b[****]
- (b) the time and place of the meetings of the Board ; their procedure and conduct of business ;
- (c) the qualifications, emoluments, terms and conditions of service of the Secretary and the staff of the Board ;
- (d) fees and conditions for the grant of inspection and copies of the Board's proceedings or records ;
- (e) the constitution, functions, procedure and conduct of business of the sub-committee ;
- (f) the form and manner of making applications for registration of *wakfs* ;
- (g) the particulars to be contained in, and the form of, the register of *wakfs* ;
- (h) the method of calculating the income of a *wakf* for the purpose of levying contribution under this Act ;

- (i) the form and manner of preparation of the annual budget and accounts of the Board and of each *wakf* ;
- (j) the form and manner of submission of various returns required by the Board in respect of any or each *wakfs* ;
- (k) the custody and investment of the *Wakfs* Fund ;
- (l) the grant of travelling allowance to the President or members of the Board ;
- (m) the books and accounts to be kept at the office of the Board and of the sub-committee, if any ;
- (n) the manner of keeping, auditing and publishing of the accounts of *wakfs*, the form and content of the auditor's report and the scale of remuneration to be paid to the auditors ;
- (o) the fee to be paid on applications before the Board or the sub-committee ;
- (p) persons by whom any order or decision of the Board may be authenticated ; and
- (q) any other matter which is required or allowed by this Act to be prescribed by the Board.

80. Rules, bye-laws and names of members and President to be notified.—(1) All rules and bye-laws framed under this Act, shall be published in the *Official Gazette* and shall thereafter have the force of law.

(2) The names of the members and Presidents of the Boards shall be published in the *Official Gazette*.

81. Protection of actions taken in good faith.—No suit or other legal proceeding shall lie against the State Government or the Board or the 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.

(2) The Commissioner, the Additional Commissioner of *Wakfs*, the Assistant Commissioner of *Wakfs*, every auditor, every officer and servant of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or rules or orders made thereunder, shall be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code (Act XLV of 1860).

82. Surplus and accumulation.—All money that may be available as surplus or accumulation out of the income of *wakfs* shall be spent on such charitable or religious objects recognized by the Muslim law as such, as may be determined by the Board. Such money may be given as loan, with the approval or the Board, by one *wakf* to another on such terms and conditions as may be prescribed.

83. Recovery of dues by distress.—The contribution payable under Section 34 and every sum recoverable under this Act may be recovered by the Board by means of distress and sale of movable or immovable property belonging to the person liable for payment, or by the appointment of a receiver of *wakfs* property in accordance with rules framed by the State Government in this behalf.

84. Repeals and savings.—The State Government shall not be liable for any expenditure incurred in connection with the administration of this Act.

85. (1) Nothing in any other enactment, which is inconsistent with the provisions of this Act, shall apply to any *wakfs* to which this Act applies.

(2) The U. P. Muslim Wakfs Act, 1936 (Act XIII of 1936), as amended from time to time, and the Husainabad Endowment Act, 1878 (Act XV of 1878) are hereby *repealed* :

^{17c}[The following enactments are also hereby repealed in their application to any *wakf* to which this Act applies—

(1) the Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810 (XIX of 1810) ; (2) the Religious Endowments Act, 1863 (XX of 1863) ; (3) the Charitable Endowments Act, 1890 (VI of 1890) ; (4) the Charitable and Religious Trusts Act, 1920 (XIV of 1920)] :

Provided that this repeal shall not affect the operation of those Acts in regard to any suit or proceeding pending in any court or to an appeal or an application in revision against any order that may be passed in such suit or proceeding and subject thereto, anything done or any action taken in exercise of powers conferred by or under those Acts shall, unless otherwise expressly required by any provision of this Act, be deemed to have been done or taken in exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken.

7

THE ACQUISITION OF CERTAIN AREA AT AYODHYA ACT, 1993

No. 33 OF 1993

[3rd April, 1993.]

An Act to provide for the acquisition of certain area at Ayodhya and for matters connected therewith or incidental thereto.

WHEREAS there has been a long-standing dispute relating to the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, situated in village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh;

AND WHEREAS the said dispute has affected the maintenance of public order and harmony between different communities in the country;

AND WHEREAS it is necessary to maintain public order and to promote communal harmony and the spirit of common brotherhood amongst the people of India;

AND WHEREAS with a view to achieving the aforesaid objectives, it is necessary to acquire certain areas in Ayodhya;

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

CHAPTER I

PRELIMINARY

Short
title and
com-
mence-
ment.

1. (1) This Act may be called the Acquisition of Certain Area at Ayodhya Act, 1993.

(2) It shall be deemed to have come into force on the 7th day of January, 1993.

Defini-
tions.

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

(a) "area" means the area (including all the buildings, structures or other properties comprised therein) specified in the Schedule;

(b) "authorised person" means a person or body of persons or trustees of any trust authorised by the Central Government under section 7;

(c) "Claims Commissioner" means the Claims Commissioner appointed under sub-section (2) of section 8;

(d) "prescribed" means prescribed by rules made under this Act.

CHAPTER II

ACQUISITION OF THE AREA IN AYODHYA

3. On and from the commencement of this Act, the right, title and interest in relation to the area shall, by virtue of this Act, stand transferred to, and vest in, the Central Government.

Acquisition of rights in respect of certain area.

4. (1) The area shall be deemed to include all assets, rights, leaseholds, powers, authority and privileges and all property, movable and immovable, including lands, buildings, structures, shops of whatever nature or other properties as were immediately before the commencement of this Act in the ownership, possession, power or control of any person or the State Government of Uttar Pradesh, as the case may be, and all registers, maps, plans, drawings and other documents of whatever nature relating thereto.

General effect of vesting.

(2) All properties aforesaid which have vested in the Central Government under section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them and any attachment, injunction, decree or order of any court or tribunal or other authority restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of such properties shall cease to have any effect.

(3) If, on the commencement of this Act, any suit, appeal or other proceeding in respect of the right, title and interest relating to any property which has vested in the Central Government under section 3, is pending before any court, tribunal or other authority, the same shall abate.

5. (1) The Central Government may take all necessary steps to secure possession of the area which is vested in that Government under section 3.

Duty of person or State

(2) On the vesting of the area in the Central Government under section 3, the person or State Government of Uttar Pradesh, as the case may be, in charge of the management of the area immediately before such vesting shall be bound to deliver to the Central Government or the authorised person, all assets, registers and other documents in their custody relating to such vesting or where it is not practicable to deliver such registers or documents, the copies of such registers or documents authenticated in the prescribed manner.

Govern-ment in charge of the manage-ment of the area to deliver all assets etc.

6. (1) Notwithstanding anything contained in sections 3, 4, 5 and 7, the Central Government may, if it is satisfied that any authority or other body, or trustees of any trust, set up on or after the commencement of this Act is or are willing to comply with such terms and conditions as that Government may think fit to impose, direct by notification in the Official Gazette, that the right, title and interest or any of them in relation to the area or any part thereof, instead of continuing to vest in the Central Government, vest in that authority or body or trustees of that trust either on the date of the notification or on such later date as may be specified in the notification.

Power of Central Government to direct vesting of the area in another authority or body or trust.

(2) When any right, title and interest in relation to the area or part thereof vest in the authority or body or trustees referred to in sub-section (1),

such rights of the Central Government in relation to such area or part thereof, shall, on and from the date of such vesting, be deemed to have become the rights of that authority or body or trustees of that trust.

(3) The provisions of sections 4, 5, 7 and 11 shall, so far as may be, apply in relation to such authority or body or trustees as they apply in relation to the Central Government and for this purpose references therein to the Central Government shall be construed as references to such authority or body or trustees.

CHAPTER III

MANAGEMENT AND ADMINISTRATION OF PROPERTY

Management of property by Government.

7. (1) Notwithstanding anything contained in any contract or instrument or order of any court, tribunal or other authority to the contrary, on and from the commencement of this Act, the property vested in the Central Government under section 3 shall be managed by the Central Government or by a person or body of persons or trustees of any trust authorised by that Government in this behalf.

(2) In managing the property vested in the Central Government under section 3, the Central Government or the authorised person shall ensure that the position existing before the commencement of this Act in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Jamma Bhumi-Babri Masjid, stood in village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh is maintained.

CHAPTER IV

MISCELLANEOUS

Payment of amount.

8. (1) The owner of any land, building, structure or other property comprised in the area shall be given by the Central Government, for the transfer to and vesting in that Government under section 3 of that land, building, structure or other property, in cash an amount equivalent to the market value of the land, building, structure or other property.

(2) The Central Government shall, for the purpose of deciding the claim of the owner or any person having a claim against the owner under sub-section (1), by notification in the Official Gazette, appoint a Claims Commissioner.

(3) The Claims Commissioner shall regulate his own procedure for receiving and deciding the claims.

(4) The owner or any person having a claim against the owner may make a claim to the Claims Commissioner within a period of ninety days from the date of commencement of this Act:

Provided that if the Claims Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of ninety days, the Claims Commissioner may entertain the claim within a further period of ninety days and not thereafter.

9. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act or any decree or order of any court, tribunal or other authority.

Act to override all other enactments.

10. Any person who is in charge of the management of the area and fails to deliver to the Central Government or the authorised person any asset, register or other document in his custody relating to such area or, as the case may be, authenticated copies of such register or document, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees or with both.

Penalties.

11. No suit, prosecution or other legal proceeding shall lie against the Central Government or the authorised person or any of the officers or other employees of that Government or the authorised person for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

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

Power to make rules.

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

13. (1) Subject to the provisions of sub-section (2), the Acquisition of Certain Area at Ayodhya Ordinance, 1993, is hereby repealed.

Repeal and saving.

Ord. 1993.

(2) Notwithstanding anything contained in the said Ordinance,—

(a) the right, title and interest in relation to plot No. 242 situated in village Kot Ramchandra specified against Sl. No. 1 of the Schedule to the said Ordinance shall be deemed never to have been transferred to, and vested in, the Central Government;

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(b) any suit, appeal or other proceeding in respect of the right, title and interest relating to the said plot No. 242, pending before any court, tribunal or other authority, shall be deemed never to have abated and such suit, appeal or other proceeding (including the orders or interim orders of any court thereon) shall be deemed to have been restored to the position existing immediately before the commencement of the said Ordinance;

(c) any other action taken or thing done under that Ordinance in relation to the said plot No. 242 shall be deemed never to have been taken or done.

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

THE SCHEDULE

[See section 2(a)]

DESCRIPTION OF THE AREA

Sl. No.	Name of Village/ Pargana/Tehsil/ District/State	Revenue (Khasra) Plot Nos.	Area to be acquired		
			Bigha	Biswa	Biswansi
(1)	(2)	(3)	(4)	(5)	(6)
	Village Kot Ram-	143	0	9	0
	Chandra, Pargana	144	0	7	0
	Hayat Avadh, tehsil	145	0	8	0
	Faizabad Sadar,	146	1	6	0
	District Faizabad,	147	5	8	0
	Uttar Pradesh.	158	0	4	0
		159	0	13	8
		160	5	13	0
		161	0	18	0
		162	1	8	7
		168	1	2	0
		169	1	7	0
		170	0	8	0
		171	1	7	0
		172	2	7	0
		173	0	18	0
		174	0	3	0
		175	0	6	0
		176	1	2	0
		177	0	16	0
		178	0	10	0
		179	0	14	0
		180	0	14	5
		181	0	13	10
		182	0	7	5
		183	0	7	5
		184	0	6	9

(1)	(2)	(3)	(4)	(5)	(6)
		185	0	7	5
		186	0	6	10
		187	0	7	0
		188	0	18	15
		189	0	14	0
		190	0	4	0
		191	4	6	14
		192	0	7	0
		193	0	12	0
		194	4	19	0
		195	0	5	0
		196	0	5	0
		197	0	5	0
		198	0	3	0
		199	0	12	0
		200	2	0	0
		204	0	3	0
		(part)			
		Bounded by plot No. 222 on South, plot No. 205 on West and plot No. 231 on East.			
		205	0	10	0
		206	0	5	0
		207	0	19	0
		208	0	5	0
		209	1	11	0
		210	0	8	0
		211	0	13	0
		212	0	4	14
		213	1	19	15
		214	0	6	0
		215	0	2	5
		216	0	6	0
		217	0	11	0
		218	0	3	0
		219	1	6	5
		220	0	12	0
		221	1	2	15
		222	0	5	

(1)	(2)	(3)	(4)	(5)	(6)
		223	5	6	0
		224	1	0	0
		225	0	11	15
		226	0	10	5
		227	0	7	5
		228	0	5	0
		229	0	11	10
		230	0	2	10
		231	1	1	10
		232	0	2	0
		233	0	2	0
		234	1	12	0
		235	0	10	0
		236	0	4	0
		237	0	1	0
		238	1	6	0
		239	2	1	0
		244	0	14	10

(part)

Bounded on the North partly by plot No. 240 and partly by plot No. 243, on the West partly by plot No. 239 and partly by plot No. 240 and on the South by plot No. 246.

246
(part)

0 18 0

Bounded by plot No. 238 on the South, plot No. 239 on the West and plot No. 244 on the North.

			75	14	7
2.	Village Avadhkhas,	1104	0	11	17
	Pargana Haveli	1105	0	7	14
	Avadh, tehsil Faiza-	1106	0	6	2
	bad Sadar, District	1107	0	14	14
	Faizabad, Uttar	1108	0	4	3
	Pradesh.	1109	0	3	0
		1110	0	4	5
		1111	0	12	15

(1)	(2)	(3)	(4)	(5)	(6)
		1112	0	5	8
		1113	0	5	10
		1114	0	0	10
		1115	0	1	10
		1116	0	3	10
		1117	0	9	12
		1118	1	1	17
		1119	0	7	14
		1120	0	13	15
		1121	0	3	0
		1122	0	8	0
		1123	0	8	0
		1124	0	9	10
		1125	0	6	6
		1126	0	4	15
		1127	0	11	4
		1128	1	12	6
		1129	0	5	9
		1130	0	5	0
		1132	1	3	5
		1133	0	4	15
		1134	0	4	0
		1135	0	1	0
		1136	0	9	0
		1143	0	4	5
		1144	0	5	15
		1145	0	0	15
		1146	0	3	0
		1147	0	5	0
		1148	0	7	15
		1149	0	6	10
		1166	0	6	0
		(part)			
		Bounded by plot No. 1203 on East, plot No. 1151 on West and plot No. 1167 on South.			
		1206	0	7	9
		1210	0	1	5
		1211	0	2	5

(1)	(2)	(3)	(4)	(5)	(6)
		1212	0	11	5
		1213	0	2	10
		1214	0	7	0
		1215	0	0	15
		1216	0	0	15
		1217	0	3	5
		1218	0	4	10
		1219	0	5	0
		1220	0	7	5
		1221	0	11	10
		1222	0	4	0
		1223	0	1	15
		1225	0	12	15
		1226	0	8	10
		1227	0	7	15
		1228	0	4	15
		1229	0	1	0
		1230	0	13	5
		1231	0	7	5
		1232	0	1	0
		1233	0	4	15
		1234	0	7	5
		1235	0	1	6
		1236	0	2	5
		1237	0	9	10
		1238	0	1	18
		1239	0	1	10
		1240	0	8	15
		1241	0	1	10
		1242	0	1	15
		1243	0	2	0
		1247	0	5	0
		(part)			
		Bounded by plot No. 1248 on North, plot No. 1246 on South and plot No. 1291 on East/Road.			
		1248	1	7	10
		1249	0	0	13

or 1993]

Acquisition of Certain Area at Ayodhya

137

(1)	(2)	(3)	(4)	(5)	(6)
		1250	0	7	7
		1251	0	8	0
		1252	0	9	0
		1253	0	12	10
		1254	0	4	0
		1255	0	2	0
		1256	0	2	0
		1257	0	2	10
		1258	0	2	5
		1259	0	1	10
			27	00	11

3. Village Jalwanpur,
Pargana Haveli
Awadh, tehsil
Faizabad Sadar,
District Faizabad,
Uttar Pradesh.

1	0	3	5
2	1	1	0
3	0	0	5
4	1	9	15
5	0	0	10
6	0	19	0
7	0	2	15
8	0	4	15
9	0	10	10
10	0	0	10
11	0	3	0
12	0	14	5
13	0	10	0
14	0	0	10
15	0	15	15
16	0	8	15
17	0	3	15
18	0	6	5
19	0	7	5
20	1	6	0
	9	7	15

THE ESSENTIAL COMMODITIES (SPECIAL PROVISIONS) AMENDMENT ACT, 1993

No. 34 OF 1993

[3rd April, 1993.]

An Act further to amend the Essential Commodities (Special Provisions) Act, 1981 and to make special provisions by way of amendment to the Essential Commodities Act 1955.

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

Short
title
and com-
mence-
ment.

1. (1) This Act may be called the Essential Commodities (Special Provisions) Amendment Act, 1993.

(2) It shall be deemed to have come into force on the 27th day of August, 1992.

Amend-
ment of
pream-
ble.

2. In paragraph 2 of the preamble to the Essential Commodities (Special Provisions) Act, 1981 (hereinafter referred to as the principal Act), for the words "ten years", the words "fifteen years" shall be substituted.

18 of 1981.

Amend-
ment of
section
1.

3. In section 1 of the principal Act, in sub-section (3), for the words "ten years", the words "fifteen years" shall be substituted.

Insertion
of new
section
9A.

4. After section 9 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
10AA.

'9A. In the Essential Commodities Act, 1955, after section 10A, the following section shall be inserted, namely:—

10 of 1955.

Power
to arrest.

"10AA. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no officer below the rank of an officer in charge of a police station or any police officer authorised by him in this behalf in writing shall arrest any person accused of committing an offence punishable under this Act."

2 of 1974.

Repeal
and
saving.

5. (1) The Essential Commodities (Special Provisions) Amendment Ordinance, 1993 is hereby repealed.

Ord. 1
of 1993.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

THE PASSPORTS (AMENDMENT) ACT, 1993

No. 35 OF 1993

[13th April, 1993]

AN ACT further to amend the Passport Act, 1967.

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

1. (1) This Act may be called the Passports (Amendment) Act, 1993.

Short title
and com-
mence-
ment.

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

15 of 1961

2. In section 5 of the Passports Act, 1967 (hereinafter referred to as the principal Act), in sub-section (1), for the words "a fee of rupees fifty", the following words shall be substituted, namely:—

Amend-
ment of
section
5.

"such fee as may be prescribed to meet the expenses incurred on special security paper, printing, lamination and other connected miscellaneous services in issuing passports and other travel documents".

3. For section 8 of the principal Act, the following section shall be substituted, namely:—

Substi-
tution
of new
section
for sec-
tion 8.

"8. Where a passport is issued for a shorter period than the prescribed period under section 7, such shorter period shall, unless the passport authority for reasons to be recorded in writing otherwise determines, be extendable for a further period (which together with the shorter period shall not exceed the prescribed period) and the provisions of this Act shall apply to such extension as they apply to the issue thereof."

Exten-
sion of
period of
passport.

4. In section 10 of the principal Act, in sub-section (3), after clause (b), the following proviso shall be inserted, namely:—

Amend-
ment of
section
10.

"Provided that if the holder of such passport obtains another passport the passport authority shall also impound or cause to be impounded or revoke such other passport."

1. 1-7-1993 vide Notifications Ni. G.S.R. 434(E), dated 1.7.1993.

Amend-
ment of
section
11.

5. In section 11 of the principal Act, in sub-section (4), for the words and brackets "by such fee (if any) not exceeding rupees twenty-five as may be prescribed", the words "by such fee as may be prescribed for meeting the expenses that may be incurred in calling for relevant records and for connected services" shall be substituted.

Amend-
ment of
section
12.

6. In section 12 of the principal Act,—

(a) in sub-section (1), for the words "six months or with fine which may extend to two thousand rupees", the words "two years or with fine which may extend to five thousand rupees" shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Whoever, not being a citizen of India,—

(a) makes an application for a passport or obtains a passport by suppressing information about his nationality, or

(b) holds a forged passport or any travel document, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees."

(c) in sub-section (2), for the word, brackets and figure "sub-section (1)", the words, brackets, figures and letter "sub-section (1) or sub-section (1A)" shall be substituted.

Amend-
ment of
sections
13 and 14

7. In section 13, in sub-section (1) and in section 14, in sub-section (1) of the principal Act, for the words "officer of police", the words "officer of police or emigration officer" shall be substituted.

Omission
of section
8 and 26.

8. Sections 18 and 26 of the principal Act shall be omitted.

Amend-
ment of
section
23.

9. In section 23 of the principal Act, for the words and figures "the Emigration Act, 1922", the words and figures "the Emigration Act, 1983" shall be substituted.

For 1922.
31 of 1983.

Amend-
ment of
section
24.

10. In section 24 of the principal Act, in sub-section (2), in clause (f), for the words "any application for the issue or renewal of a passport", the words, figures and brackets "any application for the issue of a passport under sub-section (1) of section 5 or issue of a passport" shall be substituted.

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