

Kazis Act, 1880

Section 21 - extract from report of select committee "It has been urged by some of the authorities consulted that the Act should

KAZI'S ACT, 1880 KAZI'S ACT, 1880 "Under the Muhammadan Law the Kazi was chiefly a Judicial Officer. His principal powers and duties are stated at some length in the Hedaya, Book XX. He was appointed by the State, and may be said to have corresponded to our Judge or Magistrate, In addition, however, to his functions under the Muhammadan law, the Kazi in this country, before the advent of British rule, appears to have performed certain other duties, partly of a secular and partly of a religious nature. The principle of these seems to have been preparing attesting and registering deeds of transfer of property, celebrating marriages and performing other rites and ceremonies. It is not apparent that any of these duties were incumbent on the Kazi as such. It is probable that the customary performance of them by him arose rather from his being a public functionary and one known by official position to be acquainted with the law, than from his having, as Kazi, a greater claim to perform them than any one else. Such was the position of the Kazi in this country under Native Government. On the introduction of the British rule Judges and Magistrates took the place of Kazis, and the Kazi in his judicial capacity disappeared; but the British Government, though no longer recognising the judicial functions of the Kazi, did not abolish the office. By certain Regulations passed from time to time, the appointment of Kazi-ul-Kuzaat and Kazis by the State was provided for, and the performance of their non-judicial duties was recognised by law. In the case of Bengal, indeed, certain additional duties were imposed on them. The duties of the Kazi under these Regulations comprised some or all of the following, viz.:- (1) preparing and attesting deeds of transfer and other law-papers; (2) celebrating marriages and presiding at divorces; (3) performing various rites and ceremonies; (4) superintending the sale of distrained property and paying charitable and other pensions and allowances. In the course of subsequent legislation, the first and last of the above duties devolved on officers specially appointed for the purpose, and there remained nothing to be performed by the Kazi but the second and third, which were purely ceremonial. Under these circumstances it appeared no longer necessary that the Government should appoint these officers. Accordingly, in 1864, Act 11 of that year, all the Regulations relating to the appointment of Kazis by Government and the duties to be discharged by them were repealed, but in order that it might be clear that no interference with the ceremonial functions of these officers was intended, a section was added to that Act as follows:- "Nothing contained in this Act shall be construed so as to prevent a Kazi-ul-Kuzaat or other Kazi from performing, when required to do so, any duties or ceremonies prescribed by the Muhammadan law (see section 2 of Act 11 of 1864). Certain of his duties having thus survived the passing of Act 11 of 1864, that Kazi is still a functionary of considerable importance in the Muhammadan community. What was originally in some sense an accidental adjunct of his judicial office has become his principal and only duty, and in some parts of the country at least, the presence of a Kazi at certain rites and ceremonies appears now to be considered by Muhammadans essential from their point of view. Act XI of 1864 has, however, raised, a difficulty of a sort which was not anticipated at the time it was passed. As mentioned above, the Kazi was, under Muhammadan law, appointed by the State, and it has been held by the High Courts, both of Bombay and Madras, that the appointment cannot be made except by the State. But as by Act 11 of 1864, the State divested itself of the power of appointment, the preamble of that Act declaring that it was inexpedient that such appointment should be made by Government, it would seem that no valid nomination to the office can now be made. The inconvenience resulting to Muhammadans from this state of things, has been brought to the notice of Government on several occasions by members of that community, and more particularly by the Muhammadans of Madras Presidency. It is considered that the grant of the relief that is sought, viz., that Government should once more undertake the appointment of Kazis, is but a reasonable concession to the wants of the Muhammadan population. With this object the present Bill has been prepared. It extends in the first instance to Madras only, where the want of duly appointed Kazis appears chiefly to have been felt, but it contains a clause empowering any other Local Government to extend its provisions to the territories

administered by it, should the Muhammadans in those territories hereafter request its extension. It confers no legal rights or duties on Kazis. It simply, in order to satisfy the wants of the Muhammadan community, provides for the appointment of Kazis by Government, leaving the position and duties of the Kazis, whatever these may be, as they now are. To prevent any possible misapprehension on this point, a saving clause has been added to the effect that nothing in the Bill confers any judicial or other powers on a kazi, or makes his presence necessary at any marriage or other ceremony at which his presence is not now necessary."- Gazette of India, 1880, Pt. V, p. 21. extract from report of select committee "It has been urged by some of the authorities consulted that the Act should define the duties of the Kazis to be appointed under it, and should give them an exclusive right to perform those duties. Any attempt to do this would, we consider, be altogether outside the scope of the Bill as introduced and referred to us, and would, moreover, give a weight, which they have not at present, to the objections that have been taken to the Bill on the ground that it would practically force upon many persons the services of Kazis whom they did not care to employ. We may add that in many places, owing to the way in which the Muhammadan population is split into sects, not always well defined, it would be almost impracticable to confer upon one or more persons a monopoly of the office. We think it is clear that the Bill should be carefully confined to its original object, namely, that of providing a Kazi appointed by the Government for those who desire to avail themselves of the services of such a Kazi; and, as it has been suggested to us that a Kazi appointed under the Bill as originally framed might possibly be held to have an exclusive claim to perform the duties of a Kazi and to have a right to restrain others from performing those duties in the local area for which he was appointed we have added a clause to section 4 to make it clear that he will not. The result of the Bill as it now stands will be that there will be a Kazi appointed by the Government for those who choose to avail themselves of his services, but that those who prefer to employ any other so called Kazi will be at liberty to do so. -Gazette of India, 1880, Pt. V, p.

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