

Wakf Act, 1954

Section 1 - SHORT TITLE, EXTENT AND COMMENCEMENT

WAKF ACT, 1954 WAKF ACT, 1954 29 of 1954 21st May, 1954 STATEMENT OF OBJECTS AND REASONS "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 the 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 (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."- Gaz. of Ind., 1952, Pt. II-Sec. 2, page 285. Amending Act 30 of 1959.- Prior to the reorganisation of States on the 1st November, 1956, the Wakf Act, 1954, was brought into force in certain States only and Boards of Wakfs had also been set up for some of them. The Act was not, however, brought into force in all the States. On account of the reorganisation of States, certain difficulties have arisen in the working of this Act. Some of the Boards established under the Act have, since 1st November, 1956, been functioning in respect of two or more States, while in some other cases there is more than one Board functioning in the same State. This is not a satisfactory arrangement. It is, therefore, necessary to reconstitute such Boards as intra-State bodies. It is accordingly proposed to empower the Central Government to make, wherever necessary, suitable orders for the reconstitution of these Boards and for division of their assets and liabilities. In regard to the composition of the Boards, the Act makes a distinction between Part A States, Part B States and Part C States. This distinction no longer holds good. It is, therefore, proposed to provide that each Board, when it is constituted for any of the States or the Union Territory of Delhi, should have eleven members while the Board for any other Union Territory, should have five members only. 2. In some of the States, the Act is in force in certain parts only and it is proposed to empower the Central Government to bring the Act into force in the remaining part of such States. If, however, for any reason it is not found feasible to bring the Act into force in the remaining part of any such State and establish a Board for the whole of the State, it would at least be desirable to have a Board for such part or parts of the State where the Act is already in force. Under the Act, as it stands at present, it is not permissible for a State Government to form a Board for a part of a State only. It is, therefore, proposed to empower a State Government to establish a Board for a part of a State also in such cases. 3. The present Bill seeks to achieve these objects.-Gaz. of Ind., 3-8- 1959, Pt. II, S. 2, Ext., P. 579. Amending Act 34 of 1964.- The Wakf Act, 1954 was enacted to provide for the better administration and supervision of wakfs. The Act was amended in 1959 for the limited purpose of removing certain difficulties arising out of reorganisation of States. Experience of the working of the Act over the last ten years has revealed certain difficulties. It is, therefore, proposed to amend the Act to remove these difficulties and to ensure better administration of wakfs by mutawallis, 2. The main features of the Bill are: (i) The definition of beneficiary in regard to objects of public utility is being broadened to cover all objects obtained by Muslim law. Endowments made by non-Muslims for support of certain Muslim religious and pious institutions will also come under the purview of the Act. (ii) A Central Wakf Council is proposed to be established. (iii) A provision is being made to enable the establishment of separate Sunni and Shia Boards in any State in which the Shia Wakfs constitute in number more than fifteen per cent. of the total number of wakfs In that State or the income of the property of Shia wakfs in that State or the income of the property of Shia wakfs constitutes more than fifteen per cent. of the

income of all the wakfs in the State. (iv) To check mutawallis from alienating wakf properties, a specific provision is being made to clarify that alienations without the sanction of the Board will be invalid. As a further step in this direction, it is also being provided that where mutawallis illegally alienate properties already determined as wakf properties, the Board can recover possession by issuing certificates to Collector. A right of appeal to the district Court against the order of the Collector is also being provided for. (v) Authority is being conferred on the Board to remove mutawallis on some additional grounds not mentioned in section 43 and to assume direct management of wakfs for a period not exceeding five years in cases where no suitable mutawallis are available. 3. The notes on clauses explain in detail the various changes proposed to be made, -Gaz. of Ind., D/- 22-4-1964, Pt. II, S. 2, Ext., P. 317. Amending Act 38 of 1969.- Chapter II of the Wakfs Act, 1954, provides for the survey of wakf properties existing in a State at the date of the commencement of the Act. The survey of all wakfs existing in a State takes quite a long time with the result that the finalisation of the list of all wakfs in a State takes several years. The whole object of the said chapter is to provide for an authoritative list of wakfs in a State and to provide for speedy and final disposal of all disputes relating to the character of such wakfs or to the property of such wakfs. On a strict reading of the provisions of Chapter II of the Wakf Act, 1954, it would however appear that the provisions of the Chapter do not permit the publication of more than one list of wakfs in respect of a State. This would mean that where two or more lists are published in a State, such lists are invalid in law. Unless, therefore, such lists are validated, the entire survey work accomplished in the State concerned may become infructuous. It is, therefore, proposed to amend the Act to permit the publication of different lists of wakfs in respect of different parts of a State and to validate all previous cases of publication of different lists of wakfs in respect of different parts of a State. At the same time, in order to ensure that such validation does not prejudicially affect any person, it is proposed to confer on the persons concerned a right to institute within a period of one year from the date of commencement of the proposed legislation. suits for modification of the lists so validated. 2. It is proposed to avail of the present opportunity to give effect to certain amendments which were sought to be made in the Act by the Wakf (Amendment) Bill, 1965, which was passed by the Rajya Sabha in 1966, but which lapsed on the dissolution of the Third Lok Sabha. These are explained below:- (i) Under the Wakf Act, 1954, the contribution payable by Mutawallis and others to the State Board of Wakfs has to be calculated with reference to the net annual income of the wakfs. Section 3(9) of the Act provides that net income means "the total income less any revenue, cess, rates and taxes payable to the Government or any local authority." The intention has always been that in computing net annual income, no deductions other than those expressly provided for in the definition of net income should be permitted. But a contrary view was taken by the Kerala High Court. Further doubts have been expressed as to whether donations and offerings made to a wakf form part of its income. It has thus become necessary to make the position clear and to validate the contribution already realised. Accordingly, it is proposed to substitute a new definition of "net annual income" for the definition of "net income" contained in the said Section 3 (9). (ii) Wakfs whose annual income does not exceed Rs. 100 are, under section 46 of the Act, exempt from the liability to pay any contribution to the State Board of Wakfs. It is proposed to amend section 7 of the Act suitably to exempt such wakfs from the liability to share the cost of survey of wakfs, also. 3. The Bill seeks to achieve the above objects.-Gaz. of Ind., 17-5-1969, Pt. II, S. 2, Ext" P. 492. Amending Act 69 of 1984:- The Wakf Act, 1954 (29 of 1954) provides for the better administration and supervision of wakfs. The working of the Wakf Boards established under the Wakf Act is, however, not satisfactory and in most cases these Boards have failed to achieve the very purpose for which they have been established. Further, the financial position of most of these Boards is also not happy. The question of toning up the administration of wakfs so as to protect and properly manage wakf properties by taking necessary measures including legislation, has been engaging the attention of the Central Government, A Committee known as the Wakf Inquiry Committee was accordingly constituted by the Central Government for the purpose of evaluating the working of the Wakf Act and for making an inquiry into the administration of wakfs at all levels in respect of States to which the provisions of the Wakf Act are applicable. 2. The Wakf Inquiry Committee made a large number of recommendations which envisage a thorough restructuring of wakf administration designed to improve the financial position of the wakf institutions and to plug the loopholes noticed in the working of the Wakf Act. The Report of the Wakf inquiry Committee was examined by the Central Wakf Council. Chairman of the Wakf Boards, Muslim M.Ps, and Minorities Commission. Various views and different shades of opinion on the subject were expressed at different forums. The Bill, which is mainly based on the recommendations of

the Wakf Inquiry Committee, takes into consideration the various views expressed in this behalf. 3. The Bill seeks to make, inter alia, amendments to the Wakf Act 1954, in relation to the following matters, namely:- (i) to ensure uniformity of the wakf legislation throughout India and in particular, in the State or part of the State in which the Act is not in force; (ii) The Wakf Board shall consist of eleven members, of which two shall be members of Parliament to be elected from amongst themselves by the Muslim members elected to Parliament from that State, two shall be elected by the Muslim members of the State Legislature from amongst themselves, the Wakf Commissioner, who shall be the ex officio Member-Secretary, and six other Muslim members to be nominated by the State Government from amongst the different categories of persons specified in section 10. The Chairman of the Wakf Board shall be elected by the members thereof from amongst themselves. The Wakf Commissioner shall not, however, be elected as the Chairman; (iii) to provide for the appointment of Wakf Commissioners in the States from amongst persons professing Islam, who are holding any post in the Government of the concerned State in the senior scale of the Judicial Service of the State or any post in the senior scale of any Administrative Service in the State. (iv) to enlarge the powers of the State Government with regard to the control and supervision of Wakfs; (v) to strengthen the provisions of accounting and audit of the accounts of the mutawallis and to make it obligatory for the Wakf Commissioner to carry out at least once in two years a detailed inspection of the wakfs in the State having an annual income of not less than twelve thousand rupees; (vi) to impose restrictions with regard to the alienation of wakf property; (vii) to provide for the appointment of Tribunals for the speedy determination of the disputes, question or other matters relating to wakfs: every such Tribunal is to consist of one person who shall be a member of the State Judicial Service holding a rank not below than that of a District Judge or of a Civil Judge, First Class; (viii) to bring all wakfs alal-aulad within the purview of the Act, and to provide that a wakf by user shall not cease to be a wakf by reason of non-user for any length of time; (ix) imposing restriction on the powers of mutawallis to grant leases of immovable properties of the wakf. It has been provided that no lease or sub-lease of any immovable property for any period exceeding three years shall be made and that lease or sub-lease exceeding a period of one year but not exceeding a period of three years shall be void unless it is made with the previous sanction of the Board; (x) Wakf Commissioner shall be empowered to frame schemes for the proper administration of Wakfs and to take over, in certain cases, the direct management of wakfs; (xi) The Central Government is also being empowered- (a) to lay down general principles and policies of wakf administration in so far as they relate to the secular activities of the wakfs; (b) to coordinate the functions of the Central Wakf Council, the Wakf Commissioners and the Boards, in so far as they relate to their secular functions of the wakf; (c) to review administration of the secular activities of the wakfs generally and to suggest improvements, if any; The other amendments proposed in the Bill are of a minor, incidental and consequential nature, 4. The Notes on clauses appended to the Bill explain in detail the various amendments proposed therein and the background under which those amendments have been proposed,-Gaz. of India, 10-5-1984, Pt. II, S. 2, Ext., P. 62 (No. 34). 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:- 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 notification² in the Official Gazette, appoint in this behalf for that State; and different dates may be appointed for different States: 3["Provided that, as soon as may be, after the commencement of the Wakf (Amendment) Act, 1984, the Central Government may, by notification in the Official Gazette, appoint a date on which the provisions of this Act, as amended by the Wakf (Amendment) Act, 1984, shall come into force in the States of Uttar Pradesh and West Bengal and in those parts of the States of Gujarat and Maharashtra in which the provisions of this Act do not apply, and different dates may be appointed for different States or for different areas, and for the different provisions of this Act, as so amended, and, on and from the date so appointed, the corresponding law, applicable to wakfs, in force in that State or in any part thereof, or, as the case may be, in such area, shall cease to operate, and, on such cesser, such corresponding law shall be deemed to have been repealed by an Act enacted by the Legislature of that State, but such cesser shall not affect the previous operation of such corresponding law and subject thereto, anything done or any action taken in exercise of any power conferred by or under any such corresponding law shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act, as amended by the Wakf (Amendment) Act, 1984, as if this Act, as so amended, were in force on the date on which such thing was done or action was taken:"] 4[Provided further that where on account of

the territorial changes brought about by the State Reorganisation Act, 1956-, this Act is, as from the 1st day of November, 1956, applicable only to a part of a State, the Central Government may, by notification in the Official Gazette, bring this Act into force in the remaining part of that State with effect from such date as may be specified in the notification.]

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