

# **Jammu and Kashmir Wakafs Act, 2001**

JAMMU & KASHMIR

India

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### **Act 3 of 2001**

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Jammu and Kashmir Wakafs Act, 2001(Act No. 3 of 2001)Last Updated 9th December, 2019An Act to provide to provide for the better administration and supervision of Wakafs in the State.Be it enacted by the Jammu and Kashmir State Legislature in the Fifty-second Year of the Republic of India as follows :-

## **Chapter I Preliminary**

### **1. Short title, extent and commencement.**

(1)This Act may be called the Jammu and Kashmir Wakafs Act, 2001.(2)It extends to the whole of the State of Jammu and Kashmir.(3)It shall come into force from the date of its publication in the Government Gazette.

### **2. Application of the Act.**

(a)Save as otherwise expressly provided, this Act shall apply to all Wakafs whether created before or after the commencement of this Act :Provided that nothing in this Act shall apply to any Shia Wakafs.(b)The provisions of this Act shall apply and shall be deemed always to have applied in relation to any evacuee property within the meaning of clause (d) section 2 of the Jammu and Kashmir Evacuees' (Administration of Property) Act, Samvat 2006 which immediately before it became such evacuee property was a Wakaf property within the meaning of the Act, or any other law applicable to Wakaf heretofore and any person in occupation of the same whether under the orders of Custodian or otherwise shall on demand by the Chairman, Tehsil Committee hand over possession of such property to him.

### 3. Definitions.

- In this Act unless the context otherwise requires,-(a)"Act" means the Jammu and Kashmir Wakafs Act, 2001;(b)"Appellate Authority" means the Chairperson of the State Wakaf Council established under section 7 of the Act ;(c)"Beneficiary" means a person or object for whose benefit Wakaf is created and includes religious, pious and charitable object and any other object of the public utility sanctioned by the Muslim law or usage ;(d)"Council" means the State Wakaf Council established under section 7 of the Act ;(e)"encroachment" includes anything done, prejudicial to the soundness or safety of the property or reducing value thereof or impairing any easement or hereditament or addition to any material structure or excavation of any basement or cellar without first obtaining the permission from the authority ;(f)"List of Wakaf" means list of Wakaf published under section 6 of the Act ;(g)"Manager" means any person appointed by competent authority, to be the manager of the Wakaf under the Act, with the objective of administering, supervising and managing the Wakaf, according to the provisions of the Act and tenets of Islam ;Explanation. - Any person or body of persons appointed orally or under the instrument or deed by which Wakaf has been created as mutawalli, sajjadanasheen, mujawir mohtimim, or by whatever name called, shall cease to be so with the commencement of the Act, and he/ they shall have no right whatsoever in the administration and management of the Wakafs unless appointed under this Act.(h)"prescribed" means prescribed by rules made under section 89 of the Act ;(i)"regulations" means regulations made under section 91 of the Act ;(j)"State Wakaf Fund" means the fund constituted under sub-section (1) of section 64 ;(k)"Tehsil Committee" means a Tehsil Committee constituted under section 21 of the Act ;(l)"Wakaf" means the permanent dedication by a person professing Islam of any property movable or immovable for any purpose recognized by Muslim Law or usage as religious, pious or charitable an includes-(i)a Wakaf by user such as Masjid, Idgah, Durgah, Khankah, Maqbara, Graveyard, Grave, Rouza, Mausoleum, Takia, Saria, Yatimkhana, Madrasa, School, Islamia College, University and Shafakhana ; and(ii)a Wakaf-ul-Aulad-(a)for the maintenance and support, wholly or partially, of his family children or descendants ; or(b)for the maintenance or the Wakaf or for the payments of his debts out of the rents and profits of the property dedicated :Provided the ultimate benefit in such cases, is expressly or impliedly reserved for the poor or for any other purpose recognized by the Muslim Law as a religious, pious or charitable purpose of a permanent character ;(iii)a grant, endowment or dedication of any property movable or immovable, made by the Government or any person or ruler for any of the aforesaid purposes ;(m)"Wakaf Deed" means any deed for instrument by which a Wakaf has been created and include any valid subsequent deed or instrument by which any of the terms of the original delegation have been varied ;(n)"Wakaf property/premies" means and includes, any property,-(i)dedicated for any purpose recognized by Muslim Law or usage, as religions, pious, or charitable ; or(ii)attached to any Mosque, Idgah, Khankah, Durgah Graveyard, Immambara, Roza, Takia, Saria, Maqbara, Yateemkhana, Madrasa, Islamia School, Islamia College, University, Shafakhana, or any other religious institution ; or(iii)declared to be Wakaf property under the provisions of this Act, or under any custom or usage, or any other law for the time being in force.(o)"Unauthorised occupation" in relation to Wakaf property means and includes the occupation by any person of the Wakaf property-(i)without authority for such occupation and includes the continuance in occupation by any person of the Wakaf property after the authority (whether by way of lease, mortgage or any mode of transfer, or otherwise) under which he was

allowed to occupy such property has expired or has determined for any reason whatsoever ; or(ii)in contravention of provisions of the Act.

## **Chapter II**

### **Survey of Wakafs**

#### **4. Preliminary survey of Wakafs.**

(1)The Government may, by notification in the Government Gazette, appoint for the State, one or more Special Officer, as may be necessary, for the purpose of making a survey Wakafs in any area in which the Act is in force.(2)Such appointment may be terminated by the Government at any time for reasons to be recorded.(3)The Special Officer shall, after making such inquiry as he may consider necessary, submit his report to the Government containing the following particulars in respect of Wakafs, namely :-(a)number of Wakafs in the area ;(b)the nature and object of the each Wakaf ;(c)the gross income of the property comprised in each Wakaf ;(d)the amount of land revenue cesses, rates and taxes payable in respect such property of income and the pay or other remuneration of the manager of each Wakaf ;(e)the expenses incurred in the realization of the income and the pay or other remuneration of the manager of each Wakaf ; and(f)such other particulars relating to each Wakaf as may be prescribed.(4)The Special Officers in making such inquiries shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, Samvat 1977 (Act X of Samvat 1977) in respect of the following matters, namely :-(a)summoning and examining witnesses ;(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 witnesses and accounts ;(e)making any local inspection or local investigation ; and(f)other matter which may be prescribed.(5)If during any such inquiry, any dispute arises as to whether a particular Wakaf is a Wakaf within the meaning of the Act and there are clear indications in the deed of Wakaf as to its nature, the dispute shall be decided on the basis of such deed.

#### **5. Decision of the Special Officers.**

(1)The decision of the Special Officer whether a particular property is or is not Wakaf property shall, subject to any order made by the Appellate Authority on appeal, be final.(2)Any person aggrieved by an order of the Special Officer may prefer an appeal to the Appellate Authority within 30 days from the date of the order and there shall be no further appeal.(3)Notwithstanding anything contained in any law for the time being in force and save as otherwise provided in the Act, no Civil Court shall have jurisdictions to settled, decided or dealt with or to be determined by Special Officer.

#### **6. Publication of the list of Wakafs.**

(1)On receipt of a report under sub-section (3) of section 3 of the Government shall, after consulting the concerned Tehsil Committee cause the list of Wakafs published in the Government Gazette or in some local newspapers having wide circulation in the area.(2)The list of Wakafs published under sub-section (1) shall unless it is modified in pursuance of the decision of the Appellate Authority in

appeal, be final and conclusive.

## **Chapter III**

### **State Wakafs Council**

#### **7. Establishment and constitution of the State Wakaf Council.**

(1)The Government may, by notification in the Government Gazette, establish a Council to be called the State Wakaf Council.(2)The State Wakaf Council shall consist of-(i)the Minister Incharge of Haj and Auqaf, who shall also be the ex officio Chairperson of the Council ;(ii)two senior Advocate of eminence of the State Bar Council/Association to be nominated by the Government.(iii)one member of Parliament from State to be nominated by the Government.(iv)"Three members of the State Legislative Assembly and two members of the State Legislative Council to be elected by the Sitting Muslim members of the respective House."(v)two persons who are eminent scholar in Muslims Law to be nominated by the Government ;(vi)two persons of eminence having administration and financial expertise to be nominated by the Government.(vii)four persons to be nominated by the Government representing different Muslim sects/organizations ; and(viii)the Secretary to Government Incharge Haj and Auqaf who shall also be the ex officio Secretary of the Council.(2)The Council shall be a body corporate having perpetual succession and common seal with respect to all the acts purpose of its constitution and may sue or be sued by it corporate name.

#### **8. Term of Office.**

- The members of the Council shall hold office for a period for five years from the date of selection or nomination as may the case be :Provided that a member notwithstanding the expiry of his term shall hold the office till the appointment of his successor or for a period of six months whichever is earlier and shall also be eligible for reelection/re-nomination ; provided further that no person elected/appointed as a member other than the ex officio members of the Council shall hold the office for a continuous period exceeding 10 years :Provided that the term of a member of the Council specified in clauses (iii) and (iv) of sub-section (2) of section 7 shall cease as soon as he ceases to be the member of Parliament or the State Legislative Assembly/Legislative Council as the case may be.

#### **9. Function of the Council.**

(1)The administration, management, governance and control of the Wakafs and Wakafs Fund shall vest in the Council.(2)It shall be lawful for the Council to so reorganise its administrative set up in the State as to ensure better administration of the Wakafs in the State.

#### **10. Disqualification for being appointed or for continuing as a member of the Council.**

- A person shall be disqualified for being elected/appointed/nominated or for continuing as a

member of the Council-(a)if he is not a Muslim ;(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 is less than twenty-one years of age ; or(f)if he has any pecuniary interest directly or indirectly in the Wakaf or Wakaf property.

## **11. Functions of the Council.**

- Without prejudice to the generality of the powers of the Council, the functions of the Council shall be to-(a)maintain a record containing information relating to the origin income object and beneficiaries of each and every Wakaf ;(b)ensure that the income and other property of a Wakaf is applied to the objects and for the purposes for which a wakaf was created or intended ;(c)give directions for the administration of Wakafs ;(d)direct :-(i)the utilization of the surplus income of a Wakaf consistent with the objects of the Wakaf ;(ii)in what manner the income of Wakaf be utilized, the objects of which are not evident from any written instrument ;(e)ensure that Wakafs under it are properly maintained and administered in accordance with the provisions of the Act and the objects of the Wakafs ;(f)prepare the schemes for the management of Wakaf ;(g)prepare its own budget and budgets of all Wakafs within its jurisdiction ;(h)make the regulations for appointment and removal of managers and their conditions of service in accordance with the provisions of the Act ;(i)take measures for recovery of such properties of Wakafs which have been unauthorisedly occupied or encroached upon or are in occupation of the person who has become the unauthorised occupant on account of the termination of the lease or after the expiry of the termination of the lease or after the expiry of the period of lease or is in dispute and shall hold and utilize the same subject to the provision of the Act ;(j)institute and defend suits and proceedings in a court of law or other authority or tribunal relating to Wakafs ;(k)sanction leases of properties belonging to Wakafs ;(l)call for such returns, statistics, accounts, and other information from managers with respect to Wakafs property as it may consider fit from time to time ;(m)inspect or cause inspection of Wakaf properties, accounts or records of deed and documents, relating thereto ;(n)investigate and determine the nature and extent of Wakafs and Wakaf properties to cause wherever necessary survey of Wakaf properties ; and(o)do all such acts as may be necessary, for the maintenance and administration of Wakafs.

## **12. Funds of the Council.**

- All the offerings whether in cash or kind or in shape of ornaments or in any kind or form or any donation, whatsoever, of each Wakaf shall under proper receipt be deposited monthly with the Chairman, Tehsil Committee or in the bank account of the Tehsil Committee as per his direction and same will form the funds of the Council.

## **13. Committees of the Council.**

(1)The Council 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 Wakaf.(2)The constitution, functions and duties and the terms of such office of such committees shall be determined from time to time by the Council :Provided that it shall not be necessary for the

members of Committees to be members of the Council.

#### **14. Officers of the Council.**

(1) Subject to other provisions of the Act, the following shall be the officers of the Council, namely (i) The Chairperson ; (ii) The Secretary of the Council ; (iii) such other officers as may be declared by the Regulations to be the officers of the Council. (2) The appointment of the officers (other than the ex officio officers) and other employees, their term of office and conditions of service shall be such, as may be provided by the Regulations.

#### **15. Powers and duties of the Chairperson.**

(1) The Chairperson shall be the Head of the Council and shall ensure that the Act and the Regulations made thereunder are strictly observed and shall have all the powers necessary for the purpose. (2) The Chairperson may at any time and shall at least once in three months or on receipt of a requisition, signed by not less than 1/3 of the total number of the members of the Council, stating the business to be brought before the Council, call a meeting of the council, and he shall cease to be the member of the Council on the acceptance of his resignation. (3) The Chairperson shall have the power to seek a review of previous decision or decisions.

#### **16. Resignation of members.**

- Any member may resign his office in writing under his hand, addressed to the Chairperson of the Council, and he shall cease to be the member of the Council on the acceptance of his resignation.

#### **17. Removal of members.**

- The Chairperson of the council may, by notification in the Government Gazette, remove a member of the Council if he- (a) has attained any disqualifications specified in section 10 ; or (b) refuse to act or is incapable of acting or acts in a manner which the Council considers to be prejudicial to the interests of the Wakaf, provided that an opportunity or being heard is provided to him before he is removed ; or (c) falls, without sufficient reasons, to attend three consecutive meetings of the Council.

#### **18. 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, if such vacancy had not occurred.

#### **19. Vacancies amongst members or defect in the constitution not to invalidate acts or proceedings of the Council.**

- No act or proceeding of the Council shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

## **Chapter IV**

### **Wakaf Committee**

#### **20. Wakaf Committee and its incorporation.**

(1)The Government may, by notification in the Government Gazette, establishment or more Wakaf Committees in each Tehsil for the purpose of the Act :Provided that any committee established under any law for the time being in force immediately before the commencement of the Act for any area or for one or more Wakafs in an area shall continue to function as such till a new Committee for Tehsil is constituted under the Act :Provided further that the Government may at any time before the Committee for Tehsil is constituted under the Act, dissolve the Committee referred to in the preceding proviso and thereupon-(a)all powers and duties of the Committee, so dissolved shall until the Committee for Tehsil is constituted be exercised and performed by the such person as the Government may appoint in that behalf and the person so appointed shall be called the Administrator of the Tehsil Committees ; and(b)all properties managed by the Committee shall, until the Committee for Tehsil is constituted, be managed by the Administrator :Provided also that if on the date of commencement of the Act there is no Committee or Administrator in respect of any Wakaf the Government may appoint any person as an Administrator who shall exercise all the powers and perform all the duties of Tehsil Committee with respect to the said Wakaf and the appointment so made shall be subject to clause (a) of the preceding proviso.(2)The Administrator appointed under clause (a) sub-section (1) may at any time be removed by the Government and a new Administrator may be appointed in his stead.(3)Notwithstanding anything contained in sub-section (1), if before the commencement of this Act, any Wakaf is governed, managed for administered by any trust deed created in respect of that Wakaf in any area, the managing body, by whatever name called, of each such Wakaf shall be deemed to be the Tehsil Wakaf Committee for such Wakaf for the purpose of the Act.(4)Notwithstanding contained in the Act, it shall be lawful for a Tehsil Committee to affiliate any Wakaf with the all Jammu and Kashmir Muslim Auqaf Trust and thereupon the provisions of the Act shall apply to such Wakaf in the same manner as they apply to any other Wakaf covered by such Trust.(5)The Tehsil Committee, shall be a body corporate having perpetual succession and common seal with power to acquire and hold the property notwithstanding anything contained to the contrary in any law for the time being in force and shall by the said name sue and be sued.

#### **21. Constitution of a Tehsil Committee.**

(1)Subject to the provisions of sub-section (3) of section 19, a Tehsil Committee shall consist of nine members, who shall be nominated by the Government in accordance with the provisions of the Act and the rules made thereunder.(2)The members required to be nominated for a Tehsil Committee shall be nominated in the prescribed manner by the Government from amongst the elected Muslim members of-(i)Municipal Council ;(ii)Notified Area Committee(iii)Town Area Committee

;(iv)Panchayats ; and(v)The State Legislature, hailing from the Tehsil for which Committee is to be constituted.(3)The names of the members nominated for Tehsil Committee shall be notified in the Government Gazette.(4)There shall be Chairman and Vice-Chairman of each Tehsil Committee who shall be elected by the members thereof from amongst themselves.

## **22. Term of Office.**

- A members of a Tehsil Committee shall hold office for five years and the provisions of section 8 of the Act shall mutatis mutandis apply for determining the term of a member.

## **23. Provisions not applicable to trust.**

(1)The provisions of sections 3, 7, 19, 20, 21, 26, 27, 28, 30, 31 and 73 of the Act shall not apply to a Committee or members of Managing Body of any Wakaf referred to in sub-section (2).(2)The terms and conditions of office, procedure for election, the nomination, appointment or removal of members, and the function of the Committee or members of any Managing Body or the method or manner of achieving the objects of any Wakaf shall be regulated in accordance with the provisions of the Trust Deed under which it is created and or the rules and the constitution if any, thereof notwithstanding anything to the contrary contained in this Act.

## **24. Disqualification.**

- A person shall not be qualified to be nominated or to continue as a member of Tehsil Committee-(a)if he is not a Muslim ;(b)if he is less than 21 years of age ;(c)if he is found to be a person of unsound mind ;(d)if he is undischarged insolvent ;(e)if he has been on any previous occasion removed from the office of a member or has been removed by the order of the competent court from any position either for mismanagement, embezzlement misappropriation of funds or other misconduct ;(f)if he has been convicted of any offence involving moral turpitude or misconduct ;(g)if he has directly or indirectly any pecuniary interest in the Wakaf or Wakaf property.

## **25. Meeting of the Tehsil Committee.**

(1)A Tehsil Committee shall meet for the transaction of business at such time and place it may determine :Provided that the Committee shall meet at least once in a month.(2)The Chairman or Vice-Chairman when the former is not present, or in case of absence of both, any member chosen by the members from amongst themselves, shall preside at a meeting of the Tehsil Committee.(3)Subject to the provisions of this Act, all questions which may come before any meeting of a Tehsil Committee shall be decided by a majority of votes of the members of the committee 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.



## **26. Functions of the Tehsil Committee.**

(1) Subject to superintendence and control of the Council a Tehsil Committee shall-(a) ensure that Wakafs under it are properly maintained and administered in accordance with the provisions of the Act and may for that purpose, if it considers necessary, appoint a sub-committee for any local area in such manner and for carrying out such functions as may be prescribed ;(b) maintain a record containing information relating to the origin, income, object and beneficiaries of every Wakaf ;(c) ensure that the income and other properties of the Wakafs are applied to the objects and for the purposes for which such Wakafs were created or intended ;(d) propose to the Council schemes of the management for a Wakaf ;(e) prepare its own budget and budgets of all Wakafs within its jurisdiction and to submit the same to the Council for its approval ;(f) propose to the Council appointment and removal of Manager in accordance with the provisions of this Act ;(g) take measures for the recovery of the lost properties of any Wakaf ;(h) institute and defend suits and proceedings in a Court of Law relating to Wakaf ;(i) call for such returns, statistics, accounts and other information from the managers with respect to Wakaf property as it may, from time to time, require ;(j) inspect or cause inspection of Wakaf properties, accounts or records of deeds and documents relating thereto ;(k) investigate and determine the nature and extent of Wakafs and Wakaf properties and to cause wherever necessary, survey of the Wakaf properties ; and (l) generally do all such acts as may be necessary for the maintenance and administration of Wakaf.

## **27. Resignation of the Chairman and the member.**

(1) Chairman, Vice-Chairman or any member of a Tehsil Committee may resign his office by writing under his hand addressed to the Chairperson of the Council and shall cease to be such Chairman, Vice-Chairman or the member, as the case may be, on acceptance of his resignation.

## **28. Removal of the Chairman and the members.**

(1) The Government may remove the Chairman or Vice-Chairman of a Tehsil Committee or any members thereof, if he-(a) is or becomes subject to any disqualification specified in section 23 ; or (b) fails without excuse to attend three consecutive meetings of the Tehsil Committee ; or (c) refuses to act or is incapable of acting or acts in a manner which the Government after hearing any explanation that he may offer, considers to be prejudicial to the interests of the Wakafs. (2) Where the Chairman or a Vice-Chairman of a Tehsil Committee is removed under sub-section (1), he shall also cease to be member of the committee.

## **29. Filling of a vacancy.**

- When the seat of a member becomes vacant by his removal resignation, death or otherwise a new member shall be nominated, in his place in accordance with the provisions of the Act, and in the case of a committee or managing body under a trust, by that body 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.

### **30. Vacancies amongst members or defect in the constitution to invalidate acts or proceedings of the Tehsil Committee.**

- No act or proceeding of a Tehsil Committee shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

### **31. Secretary of the Committee.**

- The Naib-Tehsildar of the Niabat wherein the office of the Tehsil Committee is situated shall be the ex officio Secretary of the Committee.

### **32. Delegation of powers.**

- A Tehsil Committee 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 Tehsil Committee, subject to the such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under the Act as it may deem necessary.

### **33. Prevention of disqualification of membership of Legislature.**

- It is hereby declared that the Office of Chairman, Vice-Chairman, Member-Secretary any other official of the Tehsil Committee, Committee of Trustees or Managing Body referred to in section 22 shall not disqualify the holders thereof for being chosen as for being, members of the State legislature.

### **34. Functions of Tehsil Committee.**

(1) Subject to the provisions of the Act and the rules made thereunder and the control of the Council, the functions of the Chairman of a Committee shall includes, -(a) investigating the nature and extent of Wakaf and Wakafs properties and a calling whenever necessary an inventory of Wakaf properties and calling from time to time, for accounts, returns and information from managers ;(b) inspecting and causing inspection of Wakaf properties and accounts, record, deed or document relating thereof ;(c) doing generally of such acts or may be necessary for the control, maintenance and superintendence of Wakaf ; and (d) making the leases of Wakaf properties for a period not exceeding eleven months at a time or making simple mortgage in favour of any Bank or Financial Institution to raise a loan for purposes of the Act, after obtaining the prior approval in writing of the council.

### **35. Powers of inspection by Chairman or person authorised by him.**

(1) With a view to examining whether, by reason of any failure or negligence on the part of a manager in the performance of his duties, any loss or damage has been caused to any Wakaf property, the Chairman, or any other person authorized by him in writing in this behalf, may inspect all or any movable and/or immovable Wakaf properties, and all records, correspondence, plans, accounts and

other documents relating thereto :Provided that such inspection shall be made at least twice a year, in relation to every Wakaf.(2)Whenever any such inspection as is referred to under subsection (1) is made, the concerned manager and all officers and other employees working under him and every person concerned with the administration of Wakaf shall read to the person making such inspection, all such assistance and facilities as may be necessary and reasonably required by him to carry out such inspection and also produce for inspection any moveable property or documents relating to the Wakaf as may be called of by the person making the inspection and furnish to him such information relating to the Wakaf as may be required by him.(3)Where after any such inspection, it appears that the concerned manager or any officer or other employee who is working under him or had been working under him had misappropriated misapplied or fraudulently retained any money or other Wakaf property, or had incurred irregular, unauthorized or improper expenditure from the funds of the Wakaf, the Chairman may, after giving the manager or the person concerned a reasonable opportunity of being heard, make an order directing such person to make payment of the amount so determined from his personal funds, or to restore the property aforesaid to the Wakaf within such time not exceeding fifteen days as may be specified in the order and in case he fails to deposit or refuses to make the payment, the Chairman shall recover the same as an arrear of land revenue from that person. The Chairman shall have all the powers of collector under the Land Revenue Act, Samvat 1996 to effect the recovery of the property so retained or misappropriated.

### **36. Powers in relation to Wakafs which have ceased to exist.**

(1)The Chairman of a Tehsil Committee shall, if he is satisfied that the objects or any part thereof, of a Wakaf have ceased to exist, hold an inquiry in the prescribed manner, to ascertain the properties and funds pertaining to such Wakaf and after doing so shall pass an order-(a)specifying the property and funds pertaining to the Wakaf and for the recovery of such property or funds so specified ;(b)directing that any property or funds pertaining to the Wakaf which have been recovered shall be applied or utilized for the renovation of any Wakaf property and where there is no need for making any such renovation or where utilization of the funds for such renovation is not possible, be appropriated after obtaining the approval of the Council to any other purpose.(2)The Chairman may, if he has reason to believe that any property, building or other place was/is a Wakaf property and has not been acquired under any law for the time being in force relating to acquisition of land or is not under any process of acquisition under any such law or has not vested in the Government under any law for the time being in force relating to land reforms, and which was being used for religious purpose or for charity has, ceased to be used for that purpose may, after making such inquiry as he thinks fit, make an order,-(a)directing the recovery of such property, building or place from any person who may be in unauthorized possession thereof ; and(b)directing that such property, building or place be used for religious purpose or instruction as before, or if such use is not possible be utilized for any other purpose specified in the Act.

### **37. General powers of the Chairman.**

- The Chairman of a Tehsil Committee or any person duly authorized by him in this behalf shall,-(a)subject to such conditions and restrictions as may be prescribed and without payment of any fees as may be leviable under any law for the time to inspect in any public office any record,

register or other documents relating to a Wakaf or movable or immovable properties which are Wakaf properties or claimed to be Wakaf properties ;(b)frame schemes for the administration of Wakaf ;(c)where any person is in arrears of any sum payable in respect of any Wakaf property under the Act, or under the Act, or under any other law for the time being in force, by order require that person to pay the same within such time and in such installments as may be specified in the order and if such person refuse or fails to pay the arrears of sum or any installment thereof within the time specified in the order relating thereto, the Chairman shall then proceed to recover the same as an arrears of land revenue in the manner as provided in the Land Revenue Act, and for that purpose shall have all powers of the Collector under the Land Revenue Act, Samvat 1996.(d)immediately after the period of lease has expired unless the same is renewed or extended by the Council in the manner provided under the Act, or where the lease has been terminated by the Council for any reasons to be recorded, without any notice enter into the Wakafs premises and take possession of the same and for that matter he-(i)may take such police assistance and use such for as may be required ; and(ii)shall have all the powers of a Civil Court which are exercised by the later in the execution decrees.(e)appoint, remove and transfer the Imams, Khatib etc. of Mosque, Dargah or Khankah ; and(f)have the power to remove encroachments on and take over possession of the Wakaf property in the manner provided under the Act, or the rules framed thereunder.

### **38. Power to decide if property is Wakaf property.**

(1)A Tehsil Committee may on its own motion or on an application made to it collect information regarding any property which it has reason to believe to be a Wakaf property and if any question arises whether a particular property is Wakaf property or not it may after making such inquiry as may deem fit decide the question.(2)The decision of Tehsil Committee on any question under subsection (1) shall, unless revoke or modified by the Government in appeal within sixty days of the date of decision, be final.

### **39. Delegation.**

- Save as otherwise expressly provided in the Act, the Chairman of a Tehsil Committee shall exercise such other powers and performs such other duties as may be assigned to him by the Government or delegated to him by the Council under the Act.

### **40. Inspection of records.**

(1)The Chairman of a Tehsil Committee may allow inspection of its proceedings or such other records which are not privileged and are in its custody and issue the 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 Secretary or the Chairman of the Tehsil Committee in the manner provided in section 76 of the State Evidence Act, Samvat 1977.

#### **41. Register of the Wakafs.**

- A Tehsil Committee shall maintain a register of the Wakafs which shall contain in respect of each Wakaf, copies of the deeds when available and the following particulars, namely :-(a)the nature of the Wakaf ;(b)the name of the Manager ;(c)particulars of Wakafs properties and the deeds and documents relating hereto ;(d)particulars of the scheme of administration ; and(e)such other particulars as may be prescribed.

#### **42. Delegation of powers by the Council.**

- The Council may, by a general or special order, in writing, delegate to the Chairman, the Secretary of the Council or any other officer or member of the Council, or on any Tehsil Committee subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under the Act, as it may deem necessary.

#### **43. Prohibition regarding the permanent alienation of Wakaf property.**

(1)Notwithstanding anything contained in any law for the time being in force or in any wakaf deed transfer of any immovable property by way of sale, gift, exchange or mortgage other than simple mortgage without possession of the leasehold rights in favour of any Bank or Financial Institution or any alienation of Wakaf property by act of parties, or a decree or order of a court or of a Revenue Officer shall be void ab initio :Provided that transfer by way of lease or simple mortgage or leasehold rights may be effected with the prior sanction of the Council :Provided further that the leases of Wakaf properties shall be effected by public auction and shall be subject to confirmation by the Council.Explanation. - A sub-lease or partnership by a lessee wherein lessee has less than 50% share in the profit and loss in the partnership business and/or parting with the physical possession of the lease property, shall be deemed to be the alienation within the meaning of the Act.(2)The utilization or the investment of the amount realized by such lease of any Wakaf property shall be made by the Chairman, Tehsil Committee either personally or through any other person appointed in this behalf by him subject to the approval of the Council and where any amount has been raised by mortgage of any such property, the chairman, Tehsil Committee or such other person who has been appointed by him in this behalf, shall make repayment of the mortgage debt and obtain a discharge of the mortgage debt from the mortgage within such reasonable time as the Council may specify.(3)Every approval given under sub-section (2) by the Council shall be communicated to the Government and shall also be published in the prescribed manner.

#### **44. Recovery of Wakaf property transferred in contravention of the Act and the rules made thereunder.**

- Where the Council, Chairman, Tehsil Committee, as the case may be, is satisfied after making an inquiry in such manner as may be prescribed that any immovable property of a Wakaf has been in unauthorised occupation of any person, or in contravention of provisions of the Act, or has been sublet in any manner or has been in occupation without authority includes the continuance, by any

person of the Wakaf property after the authority (whether by way of lease, grant or any other mode of transfer under which he was allowed to occupy the Wakaf premises/ property) has expired or has been determined for any reason whatsoever, or after inquiry declared as a Wakaf property not previously declared so, it or he may take such step as may be necessary recovery of the possession of the property to him or it.

## **Chapter V**

### **Procedure for eviction**

#### **45. Issue of notice to show cause against order of eviction.**

(1) If a Chairman, Tehsil Committee is of the opinion that any person is in unauthorized occupation of any Wakaf premises/property and that he should be evicted, the Chairman, Tehsil Committee shall issue in the manner hereafter provided a notice in writing calling upon such person concerned to show cause why an order of eviction not be made. (2) The notice shall, - (a) specify the grounds on which the order of eviction is proposed to be made ; and (b) require, all persons concerned, that is to say all persons who are, or may be, in occupation of or claim interest in the Wakaf property, - (i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days and not more than twelve days from the date of issue thereof ; and (ii) to appear before the Chairman, Tehsil Committee on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired. (3) The Chairman, Tehsil Committee shall cause the notice to be served by having it affixed on the outer door of some other conspicuous part of the Wakaf premises, and in such other manner as he may deem fit, whereupon the notice shall be deemed to have been duly given to all persons concerned. (4) Where the Chairman, Tehsil Committee has reason to believe that any person or persons is/are in occupation of the Wakaf premises, then, without prejudice to the provision of a sub-section (3) he shall cause the copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as he may deem fit.

#### **46. Eviction of unauthorised occupants.**

(1) if, after considering the cause, if any shown by any person in pursuance of a notice under section 44 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (2) of section 44 the Chairman, Tehsil Committee is satisfied that the Wakaf premises/property is in unauthorised occupation, he shall make an order of eviction, for reason to be recorded therein, directing that the Wakaf premises shall be vacated on such date as may be specified in the order by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conscious part of the Wakaf premises/property. (2) If any person refuses or fails to comply with the order of eviction on or before the date specified in the said order or within 10 days of the date of order under sub-section (1), whichever is later, the Chairman, Tehsil Committee or any other officer duly authorized by him in this behalf may after the date so specified or after expiry of the periods aforesaid, whichever is

later, evict that person from and take possession of the Wakaf premises/property and may, for that purpose take such police assistance and use such force as may be necessary.

#### **47. Powers to remove unauthorized construction, etc.**

(1) No person possessing or occupying any Wakaf property whether as an allottee, lessee or otherwise, shall, except in accordance with the authority under which he was allowed to occupy such premises, - (a) erect or re-erect or raise any building or place any movable or immovable structure or fixture on ; or (b) display or spread any goods on ; or (c) bring or keep any cattle or other animal, on, or against, or in front of any Wakaf premises, without the sanction in writing of Council or Chairman, Tehsil Committee. (2) Where any building or other immovable structure or fixture has been erected ; placed or raised on any Wakaf premises in contravention of the provision of sub-section (1), the Chairman, Tehsil Committee may serve upon the person erecting such building or to show cause why shall not remove such building or other structure or fixture from Wakaf premises within such period, not exceeding seven days, as he may specify in the notice and remove such building or other structure or fixture from the Wakaf premises, or where the cause shown is not, in the opinion of the Chairman, Tehsil Committee, sufficient, the Chairman, Tehsil Committee may by order, remove or cause to be removed the building or other structure or fixture from the Wakaf premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue. (3) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought or kept, or any Wakaf premises, in contravention of the provisions of sub-section (1) by any person, the Chairman, Tehsil Committee may, by order, remove or cause to be removed without notice, such structure, fixture, goods, cattle or other animal, as the case may be, from the Wakaf premises and recover the cost of such removal from such persons as an arrear of land revenue. (4) Where any building is erected or re-erected without the sanction referred to in sub-section (1) or in contravention of any condition subject to which such sanction has been granted or erected or re-erected portion of the building shall be deemed to the Wakaf property under this Act, and, the person erecting, re-erecting, possessing or occupying the property whether as an allottee or otherwise shall have no right or claim for the ownership of such erected or re-erected portion or any compensation in lieu thereof. (5) Notwithstanding anything contained in the Act or in any other law for the time being in force, any construction raised with the permission of the Council or Chairman, Tehsil Committee, on the Wakaf property, shall on the expiry of the lease or allotment or on termination of the lease before it expires, for any reason whatsoever, be deemed to be the Wakaf property under the Act and any person who has raised such construction, or structure, or is in possession or in occupation of such property as an allottee, or lessee, licensee or otherwise shall have no right title, interest, or claim in respect of such construction of structure raised by him on such Wakaf property or any compensation in lieu thereof. Explanation. - In this section "building" means and includes any shop, house, shed, hut, out-house, superstructure and stable whether used for the purpose of human habitation or otherwise and whether masonry, bricks, wood, metal or any other material whatever and includes a wall and well.

#### **48. Power of Chairman, Tehsil Committee to take possession of Wakaf property.**

- If any person in possession of any Wakaf property refuses or fails on demand to surrender possession thereof to the Chairman, Tehsil Committee or to any person duly authorized by him in this behalf, the Chairman, Tehsil Committee may use such force as is necessary for taking possession of such property and may, for this purpose after giving reasonable warning and facility to any women not appearing in public to withdraw remove or break open any lock, bolt or any door or do any other act necessary for the said purpose.

#### **49. Order of demolition of unauthorized construction.**

(1)Where the erection of any building or execution of any work has been commenced or is being carried on, or has been completed on any Wakaf premises, by any person in occupation of such Wakaf premises under an authority, and such erection of building or execution of work is in contravention of or the authorized by such authority, then, the Chairman, Tehsil Committee may suo moto or on the application of any person authorized by him in this behalf, in addition to any other action that may be taken under the Act or in accordance with the terms of the authority, aforesaid, make an order for reasons to be recorded therein, directing that such erection or work shall be demolished by that person at whose instance the erection or work has been commenced, or is being carried on, or has been completed, within such period as may be specified in the order :Provided that no order under this sub-section shall be made unless the person concerned has been given, by means of a notice of not exceeding seven days a reasonable opportunity of showing cause why such order should not be made.(2)Where the erection or work has not been completed, the Chairman, Tehsil Committee may by the same order or by a separate order, whether made at the time of the issue of the notice under the proviso to sub-section (1) or at any other time, direct the person at whose instance the erection or work has been commenced, or is being carried on to stop the erection or work until the expiry of period within which an appeal against the order of demolition, if made may be preferred under section 53 of the Act.(3)The Chairman, Tehsil Committee shall cause every order made under sub-section (1), or as the case may be under subsection (2), to be affixed on the outer door, or some other conspicuous part of the Wakaf premises.(4)Where no appeal has been preferred against the order of demolition made by the Chairman, Tehsil Committee under sub-section(3)or wherein an order of demolition made by the Chairman, Tehsil Committee under that sub-section has been confirmed in appeal, whether with or without variation, the person against whom the order has been made, shall comply with the order within the period specified therein, or as the case may be within the period, if any, fixed by the appellate authority in appeal, and on the failure of the person to comply with the order within such period, the Chairman, Tehsil Committee or any other officer authorised by Chairman, Tehsil Committee in this behalf, may cause the erection or work to which the order relates, demolished.(5)Where an erection or work has been demolished, the Chairman, Tehsil Committee, may, by order, require the person concerned to pay the expenses of such demolition within such time and in such member of installments as may be specified in the order.



## **50. Power to seal unauthorised construction.**

(1) It shall be lawful for the Chairman, Tehsil Committee at any time, before or after making the order of demolition under section 48, to make an order directing the sealing of such erection or work or of the Wakaf premises in which such erection or work has been commenced or is being carried on or has been completed in contravention to the provisions of the Act or for preventing any dispute as to the nature and extent of such erection or work. (2) Where any erection or work of any Wakaf premises in which any work or erection is carried on has been sealed the Chairman, Tehsil Committee may, for the purpose of demolishing such erection or work in accordance with the provision of the Act, order such seal to be removed. (3) No person shall remove the seal except, - (a) under an order made by the Chairman, Tehsil Committee under sub-section (2) ; or (b) under an order of appellate authority made in an appeal under this Act.

## **51. Disposal of the property left on Wakaf premises by unauthorised occupants.**

(1) Where any person has been evicted from any Wakaf premises or where any building or other work has been demolished, the Chairman, Tehsil Committee may, after giving ten days notice to the person from whom the possession of the Wakaf premises has been taken and after publishing the notice in at least one newspaper having wide circulation in the locality, remove or cause to be removed or dispose of by public auction any property remaining in such Wakaf premises. (2) Notwithstanding anything contained in sub-section (1), the giving or publication of any notice referred to therein shall not be necessary in respect of any property which is subject to speedy and natural decay and the Chairman, Tehsil Committee may, after recording such evidence/reasons as he may think fit, cause such property to be sold or otherwise dispose off in such manner as he may think fit. (3) Any amount due to the Council/Tehsil Committee from any person whether by way of arrears of rent or damage or cost of removal or any other cost or costs shall, after the death of the person be payable by his heirs or legal representatives. Explanation. - The expression costs referred to in sub-section (3) shall include the cost of renewal recoverable under section 46 and the cost of demolishing under section 48.

## **52. Power to require payment of rent or damages in respect of Wakaf premises.**

(1) Where any person is, or has at any time been in unauthorised occupation of any Wakaf premises, the Chairman, Tehsil Committee may, having regard to such principles of assessments of damages as may be prescribed, assess the damages on account of use and occupation of such Wakaf premises and may by order, require that person to pay the damage within such time and in such installments as may be specified in the order. (2) While making an order under sub-section (1), the Chairman, Tehsil Committee may direct that the damages shall be payable with the simple interest at rate not exceeding 12 per cent per annum. (3) No order under sub-section (1) shall be made against any person until after the issue of the notice in writing to the person calling upon him to show cause within such time not later than ten days as may be specified in the notice, why such order should not

be made, and until his objections, if any, have been considered by the Chairman, Tehsil Committee.

### **53. Powers of the Chairman, Tehsil Committee.**

(1)The Chairman, Tehsil Committee shall for the purpose of the holding any enquiry under this Act have the same powers as are vested in a civil court under the Code of Civil Procedure, Samvat 1977, when trying a suit in respect of the following matters, namely :-(a)summoning and enforcing the attendance of any person and examining him on oath ;(b)requiring the discovery and production of documents ; and(c)any other matter which may be prescribed by the Government.(2)The order in any case passed by Chairman, Tehsil Committee under this Act, shall be deemed to be decree of the Civil Court within the meaning of section 2 (2) of the Code of Civil Procedure, Samvat 1977.

### **54. Appeals.**

(1)An appeal shall lie from an order of the Chairman, Tehsil Committee made in respect of any Wakaf premises to the appellate authority within 30 days of the order.(2)No order of the Chairman, Tehsil Committee shall be stayed by appellate authority without providing opportunity of being heard to the Chairman of that Tehsil Committee.(3)Every appeal under the section shall be disposed off by the appellate authority within ninety days from the date of appeal. In case the appeal is not decided within ninety days the stay order, if any, passed by such appellate authority, shall automatically stand vacated and it shall be open to the Chairman, Tehsil Committee to execute the order passed by him in the manner prescribed.

### **55. Cost of appeal.**

- The cost of the appeal under this section shall be in the discretion of the appellate authority.

### **56. Finality of order.**

- Save as otherwise expressly provided in this Act, every order made by the Chairman, Tehsil Committee or appellate authority under the Act shall be final and shall not be called in question in any original suit, application or execution proceedings and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

## **Chapter VI**

### **Restrictions etc.**

### **57. Restriction on purchase or property on behalf of the Wakaf.**

- Notwithstanding anything contained in a Wakaf deed, no immovable property shall be purchased for or on behalf of any Wakaf from the funds of any Wakaf except with the prior sanction of the

Council, and the Council shall not accord such sanction unless it considers that the acquisition of such property is necessary for or beneficial to the Wakaf and that the price proposed to the paid therefor is adequate and reasonable.

## **58. Restriction on the powers to grant lease of Wakaf property.**

(1) No lease of land or other immovable property belonging to any Wakaf shall be valid, notwithstanding anything contained in the deed or instrument of Wakaf or in, any other law for the time being in force, unless previous permission of the Council has been obtained in writing. (2) The Council may make lease of any Wakaf property in favour of any beneficiary on such terms and conditions as may be prescribed : Provided that the maximum period of lease shall not exceed 40 years. Provided further that in case of lease for agricultural purpose, the initial period shall not exceed one year and may be renewed after the expiry of the initial period but in no case renewal shall exceed one year at a time : Provided also that lease of Wakaf property for commercial purposes shall be made only on payment of premium equivalent to market value plus ground rent as may be determined by the Council : Provided also that initial period of lease for commercial purpose shall not exceed 5 years that may be renewed after the expiry of the initial term but in no case renewal shall exceed ten years at a time. (3) A leave or sub-lease or transfer of possession in any manner whatsoever of Wakaf property in favour of any person who is not a beneficiary under the Act shall be void. Explanation. - For the purpose of this section entering into a partnership wherein the lessee has less than 50% share in profit and the business of the partnership and parting with possession in the property, shall be deemed to be transfer of possession by the lessee within the meaning of this section ; will be deemed to be in unauthorised occupation and shall be liable for eviction : provided that no partnership whatsoever shall be entered into with any person who is not a beneficiary under the Act. (4) The Council shall in granting sanction for the making or renewal of lease under this section review the terms and conditions on which the lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.

## **59. Appointment of staff.**

(1) The Council may, with the prior approval of a Minister Incharge Haj and Auqaf Department appoint such officers and employees as may be required for carrying out the purposes of this Act. (2) The method of recruitment and conditions of service of the officers and employees appointed under sub-section (1) shall be such as may be provided in the Regulations.

## **60. Abolition of rights of Anwaridars/Mujawires Muttawallies and other persons.**

(1) All rights of Anwaridars/Mujawires, Sajjadanasheens, Muttawallies or other persons called by whatever name to solicit donations, Hediya, Khairat or any other benefit in any Dargah, Khanaqah, Maqbara, Rauza, Graveyard, Mausoleum, Takia etc. shall stand extinguished and abolished from the date of commencement of this Act. Explanation. - The word "Anwaridars Mujawire" used

hereinabove shall include, a khadim, sajjadanashen, amin, doa-go and other names suggesting the existence of personal rights or interest for soliciting donation, gift, Hedy, Khairal ; Alms or any benefits, at a Durgah, Mausoleum, Rouza, Graveyard or Takia.

## **61. Inquiry by the Council.**

(1)The Chairperson of the Council may, either on his own motion or on an application of any person interest -(a)hold an enquiry in such manner as may be prescribed ; or(b)authorize any person in this behalf to hold an inquiry, into any matter relating to a Wakaf and administration thereof and if he is satisfied that there are reasonable ground for believing that the affairs of the Wakaf are being mismanaged, shall take such action thereon as he thinks fit.(2)For the purpose of any inquiry under this Act, the Chairperson of the Council or any person authorized by him in this behalf shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, Samvat 1977 for enforcing the attendance of witnesses and production of documents.(3)The Chairperson of the Council while holding any inquiry under sub-section (1) shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, Samvat 1971.

## **62. Bar on jurisdiction of Civil Courts.**

- Notwithstanding anything contained in any other law for the time being in force, no suit or other legal proceedings shall lie in any Civil Court or tribunal in respect of any dispute, question or other matter relating to the title of any Wakaf or Wakaf property or any other matter which is required by, or under, this Act to be determined by the authorities under the Act.

# **Chapter VII**

## **Penalties**

## **63. Penalty for contravention of any lawful order.**

(1)If any person contravenes any provision of, any lawful order passed under the Act, or the rules made thereunder, or obstructs Chairman, Tehsil Committee or his nominee from lawful taking possession of any property being to Wakaf under any provision of the Act of rules made thereunder, he shall be punished by Chairman, Tehsil Wakaf Committee with fine which may extend up to Rs. 1000/- but shall not be less than Rs. 500/- per day for the period of contravention.(2)Any person, who pays to or receives from any other person any sum of money in respect of any property which he knows or has reason to believe to be Wakaf property or is likely to be declared to be Wakaf property within the meaning of this Act, shall be punished by the Chairman, Tehsil Committee with fine which shall not be less than sum of money paid to or received by him from such other person.(3)The Chairman, Tehsil Committee shall, before imposing punishment under sub-section (1) or sub-section (2), provide such person a reasonable opportunity of being heard.(4)Any punishment imposed under sub-section (1) or subsection (2) upon any person shall not protect such person from any other criminal or civil liability under any other law for the time being in force.

## **Chapter VIII**

### **Wakaf Fund and Audit**

#### **64. State Wakaf Fund.**

(1) All monies received by the Council from all the Wakafs of the State and all other monies received by it as donation, beneficinations, zakat, grants and aids shall form the funds of the Council to be called the State Wakaf Fund. (2) All monies received by the Council as donations, beneficinations and grants shall be deposited and accounted for under separate subheads. (3) Subject to any rule that may be made by the Government in this behalf, State Wakaf Fund shall be under the control of the Council and may be applied for such purpose as the Council may deem fit for exercising powers or discharging its functions under the Act.

#### **65. Submission of account of Wakafs to the Chairman, Tehsil Committee.**

- Every manager of the Wakaf shall keep the regular account and before 1st day of May every year shall prepare and furnish to the concerned Chairman, Tehsil Committee a full and true statement of accounts in such form and containing such particulars as may be prescribed by the Council of all moneys received or spent by the manager relating to Wakaf during the period of twelve months ending on the 31st day of March of previous year or, as the case may be, during that portion of the said period during which the provisions of this Act have been made applicable to the Wakaf : Provided that the date on which the annual accounts are to be closed may be varied at the discretion of the Council.

#### **66. Accounts and Audit.**

(1) The Council shall cause to be maintained such books of accounts and other books in relation to its account in such form and in such manner as may be prescribed. (2) The accounts of the Council and accounts of Tehsil Committee shall be audited annually by such auditor as may be appointed by the Government. (3) The Council, Chairman, Tehsil Committee and their authorized person shall at all times have access to all the books, accounts, documents, papers, securities, cash and other properties belonging to, or in custody of a Tehsil Committee or the managers of the Wakaf and may summon any person in possession or responsible for the custody of any such books, accounts, documents, papers, securities, cash or other properties, to produce the same at any place as the Council of the Chairman, Tehsil Committee or the person authorised may direct. (4) Every person who is, or has at any time been, an officer or employee of the Auqaf shall furnish information in regard to the transactions and working of the Auqaf as Chairman, Tehsil Committee or person authorized by him may require. (5) The Government may in consultation with the Accountant General of the State, at any time issue directions to the auditor requiring them to report to it upon the adequacy of measure taken by the Council/Tehsil Committee for protection of its properties/funds and upon sufficiency of their procedure in auditing the affairs of Auqaf and may enlarge or limit the scope of audit or direct that different procedure in audit be adopted, or that any other examination be made by the auditors if in its opinion public interest so requires, the

Chairman, Tehsil Committee shall send a copy of report of the auditors to the Accountant General of the State at least one month before it is placed before the Council.(6)Notwithstanding any thing contained in this preceding subsection, the Accountant General of the State may either on his own motion or on a request received in this behalf from the Government undertake such audit and at such times as he may consider necessary.(7)Every audit report shall be forwarded to the Council and the Government.

## **67. Communication of defects in audit to the Wakafs.**

- If the result of the audit held under section 66 discloses any defect in the working of the Auqaf, the auditor may bring such defect to the notice of the Council.

## **68. Council to pass orders on auditor report.**

(1)The Council shall examine the report of the auditor according to the rules or regulations and may call for the explanation of any person in regard to any matter mentioned therein, and the Council shall pass such order on the report as it may think fit, including orders for the recovery of the certified by the auditor, from the person concerned.(2)The manager or any other person aggrieved by any order made by the Council under sub-section (1) may within ten days of the receipt by him of the order apply to the Government and the Government may after hearing the Secretary of the Council, confirm or modify the order or remit the amount so certified either in whole or in part and may also make such order as to costs as it may think appropriate in the circumstances of the case.(3)No application made under sub-section (1) shall be entered by the Government unless the amount certified by the auditor has first been deposited with the Chairman, Tehsil Committee or the Chairperson of the Council and opportunity of being heard is granted to the Chairman, Tehsil Committee.(4)The order made by the Government under sub-section (2) shall be final.(5)For purposes of this section the Minister Incharge Haj and Auqaf in the State shall be the Government.(6)Every amount for the recovery of which any order has been made under sub-section (1) or sub-section (2), shall where such amount remains unpaid be recoverable as an arrears of land revenue by the Chairman, Tehsil Committee who shall have the powers of Collector under the Land Revenue Act, Samvat 1996 for such purpose.

## **69. Inspection of books of the Wakafs.**

- The Chairman, Tehsil Committee may either on his own motion or on an application of any person, inspect or direct any person authorised by him by order in writing to inspect the books of any Wakaf and the person so authorised shall have all the powers of Chairman, Tehsil Committee while holding the inspection.

## **70. Power of the Council to borrow.**

- For the purpose of given effect to the provision of the Act the Council may with the previous sanction of the Government in the Wakaf Department borrow such sum of money and on such

terms and conditions as the Government may determine for furthering the aims and objects of any Wakaf.

## **Chapter IX**

### **Miscellaneous**

#### **71. Registration of instruments.**

- Notwithstanding anything contained in the Registration Act, Samvat 1977 and the Stamp Act, Samvat 1977, any instruments, executed in favour of the Council any Tehsil Committee or any other person empowered by any of the provision of the Act shall be exempted from stamp duty and registration fee.

#### **72. Limitation.**

(1)Notwithstanding anything contained in the Limitation Act, Samvat 1995 or any other law for the time being in force in the State there shall be no period of limitation for recovery of possession, rent, profit or any sum due under this Act or enforcement of any right or interest in the Wakaf property.(2)No interest, right or title shall be created in favour of any person, notwithstanding anything contained in any other law for the time being in force, on account of his being in possession of Wakaf property whether authorized or not and there shall be no adverse possession in respect of Wakaf property.

#### **73. Restriction on leasehold rights.**

- Notwithstanding anything contained in the Transfer of Property Act, Samvat 1977, or any other law for the time being in force, the lease of any immovable property in favour of any person by the Council or any Tehsil Committee under the Act or any instrument of Wakaf to manage and supervise any Wakaf shall not create any tenancy rights in the property in favour of such person.

#### **74. Act to override other laws.**

- The provisions of this Act, and the rules and orders made thereunder shall have the overriding effect notwithstanding anything to the contrary contained in any other law or any instrument having force, by virtue of such other law.

#### **75. Contracts.**

- All contracts made in exercise of powers conferred upon the Council under the Act shall be expressed to be made by the Council and all such contracts and assurances made shall be executed on behalf of the Council by its Secretary.

## **76. Exemption from taxes, fee, duties and charges and not-application of certain Acts to Wakaf property.**

(1) Nothing contained in the Jammu and Kashmir Houses and Shops Rent Control Act, 1966, Jammu and Kashmir Big Landed Estates Abolition Act, Samvat 2007, Jammu and Kashmir Agrarian Reforms Act, 1976, Jammu and Kashmir Town Area Act, Samvat 2011, Jammu and Kashmir Municipal Act, 1970 and Jammu and Kashmir Tenancy Act, Samvat 1980 shall apply to any property to which this Act applies. (2) All the properties whether moveable or immovable belonging to any Wakaf shall be exempted from payment of Land Revenue and all types of fee, taxes, cess, rates, duty or charge, of the State or local authority, and any fee payable under any law relating to registration of documents and stamp duty, or grant of permission for raising construction etc.

## **77. Power to evict.**

(1) If at any time it appears to the Chairman, Tehsil Committee that any Wakaf land or building let out to any tenant is required for the purpose of the Wakaf itself or for the development of the said land or building may, by an order in writing require the tenant to vacate such land or building within fifteen days of the date of receipt of such order. (2) On receipt of an order under sub-section (1), such tenants shall forthwith vacate such land or building, as the case may be and handover possession thereof to such Chairman.

## **78. Bar to challenge the validity of any notification etc.**

- Save as otherwise expressly provided in this Act, no notification or order or decision made, proceedings or action taken by the Government or Council under this Act or any rule made thereunder shall be questioned in any Civil Court.

## **79. Notice of suit etc. by Court.**

(1) In every suit or legal proceeding relating to title to, or possession of a Wakaf property or the rights of a manager or beneficiary the court or appellate authority, as the case may be, shall not entertain the suit or other legal proceeding without issuing first a notice to the Chairman, Tehsil Committee at the cost of the party instituting such suit or proceedings. (2) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be void, ab initio. (3) Where any Wakaf property is or has been notified for sale in execution of a decree of a Civil Court or for the recovery of any revenue, cases, rates or taxes due to the Government or any local authority, before the commencement of the Act, the execution shall abate and the revenue, cases, rates or taxes shall be deemed to have been exempted, and decree discharged, at the commencement of the Act.



## **80. Proceeding under the Land Acquisition Act.**

(1) If, in the course of proceedings under the Land Acquisition Act, Samvat 1990 or under any other law for the time being in force relating to the acquisition of land or other property it appears to the Collector before an award is made that any property under acquisition is a Wakaf property, a notice of such acquisition shall be served by the Collector on the Chairman, Tehsil Committee, and further proceedings shall be stayed to enable him to appear and state this right, interest, title of property or objection to such acquisition at any time within two months from the date of the receipt of such notice. (2) When the Chairman, Tehsil Committee has appeared under provisions of sub-section (1) no order shall be passed under section 31 or section 32 of the Land Acquisition Act, Samvat 1990 or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Council of being heard. (3) Notwithstanding anything contained in the Land Acquisition Act, Samvat 1990 or the rules made thereunder the Collector shall make utmost endeavour not to acquire the Wakaf property, and in case it becomes inevitable, for any public purpose to acquire the same, he shall provide the alternate land of same value preferably in the same locality or somewhere else as the Council may agree : Provided, however, that under no circumstances whatsoever, any graveyard, or burial ground shall be acquired under the Land Acquisition Act, Samvat 1990 or any other corresponding law for the time being in force in the State and any acquisition made in contravention of this Act, shall be void. (4) Notwithstanding anything contained in any law or the time being in force no tenant, lessee, or occupant of the Wakaf property under acquisition shall be entitled to any compensation whatsoever and the whole compensation if any shall be payable to the Chairman, Tehsil Committee exclusively.

## **81. Bar to compromise of suits by or against managers.**

- No suit or proceeding in any court by or against the manager of the Wakaf relating to title to Wakaf property or the rights of the manager shall be compromised without the prior sanction of the Council.

## **82. Inquiries and proceeding to be judicial proceedings.**

- All inquiries and proceedings before the Council, Tehsil Committee, Appellate Authority or any other authority appointed under the Act or the rules or regulations made thereunder shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Ranbir Penal Code, Samvat 1989 and such Council, Officer or authority shall be deemed to be Civil Court within the meaning of sections 176 and 480 of Code of Criminal Procedure, Samvat 1989.

## **83. Application of Islamic Law.**

- The provision of Islamic Law shall be applicable for administering, supervising and managing the Wakaf and Wakaf properties in all other matters not dealt under the Act.

#### **84. Power of Government to regulate the activities of Wakaf.**

(1) For the purpose of regulating the secular activities of Wakafs, the Government shall have the following powers and functions, namely :-(a) to lay down general principles and policies of Wakaf administration ;(b) to co-ordinate the functions of the Council, and the Tehsil Committee ; and(c) to review administration of the secular activities of Wakafs generally and to suggest improvements.(2) In exercising its powers and functions under sub-section (1), the Government may call for any periodic or other reports from the Council or Tehsil Committee and may issue to the Council or Tehsil Committee such directions, as it may think fit and in the performance of their functions, the Council and the Tehsil Committee shall comply with such directions.

#### **85. Annual report by the Government.**

- As soon as may be after the close of the financial year, the Government shall cause a general annual report on the working and administration of the Council and the administration of Wakafs in the State during that year to be prepared and laid before each House of the State Legislature and every such report shall be in such form and shall contain such matters as may be prescribed.

#### **86. Protection of action taken in good faith.**

- No suit or other legal proceeding shall lie against the Council or Chairman, Tehsil Committee or any other person duly appointed under this Act in respect of anything done or intended to be done in good faith.

#### **87. Members, officers and employees of the Council/Tehsil Committee/Auqaf to be public servant.**

(1) The Chairman of the Council, the Chairman/Vice-Chairman of the Tehsil Committee and all members officers and employees of the Council, Tehsil Committee, auditors, persons duly appointed to discharge any duties imposed on them by this Act, or any rule or order made thereunder shall be deemed, when acting or purporting to act in pursuance of any of the provision of the Act, to be public servant within the meaning of section 21 of the Ranbir Penal Code.(2) Every manager of a Wakaf, and every person holding any office in a Wakaf shall also be deemed to be public servant within the meaning of section 21 of Ranbir Penal Code.

#### **88. Special provision for establishment of separate Committee.**

- Notwithstanding anything contained in the Act, it shall be lawful for the Government to establish a District Council separately subject to the control of the Council for any class of beneficiaries governed by a particular school of Muslim Law in the State, if the Government deems it expedient to do so and where the same is established the provisions of this Act, would mutatis mutandis apply to such District Council.

## **89. Power of the Government to make rules.**

(1)The Government may, by notification in the Government Gazette, make rules to carry out the purposes of the Act.(2)In particular and without prejudice to the generality of foregoing power such rules may provide for all or any of the following matters, namely :-(i)the particulars which a list of Wakaf published under subsection (1) of section 5 may contain ;(ii)the conditions and restrictions subject to which the Council may transfer any property ;(iii)the regulation of the function of the Council and for Tehsil Committee ;(iv)the manner in which any inquiry may be held under the Act(v)The power vested in a civil court which may be exercised by the Chairman of the Council or Chairman, Tehsil Committee or any other person, while holding an inquiry under this Act ;(vi)the form in which register of Wakafs may be maintained and the further particulars which it may contain ;(vii)the form in which and the time within which, the budget of the Council may be prepared and submitted ;(viii)the manner in which the accounts of the Wakaf Fund may be kept and audited and the contents of the auditor's report ;(ix)the payment of money into the Wakaf Fund, the investment, custody and disbursement of such money ;(x)the circumstances under which and the terms and conditions on which, the Council may be allowed to borrow sums ;(xi)the procedure to be followed in the recovery of any sum due under the Act as an arrear of land revenue ;(xii)the scale of pay allowance and other conditions of service of persons engaged by the Council, and the Imams of the mosques, the conditions and restrictions subject to which the Chairman, Tehsil Committee and any authorised officer of the Council may inspect any record, register or other document in a public office ;(xiii)the manner in which an inquiry may be held by the Chairman, Tehsil Committee with regard to Wakafs which appear to have ceased to exist or in relation to buildings, or other places which were being used for religious purposes or institution or for charity, and have ceased to be used for that purpose ;(xiv)the manner in which notices may be given ;(xv)the intervals at which accounts of Wakafs may be audited ;(xvi)the form and manner in which the accounts of the Council, may be maintained ;(xvii)person by whom order and decisions of the Council or the Tehsil Committee may be authenticated ;(xviii)regulating the procedure for election of Chairman and Vice-Chairman, including the mode recording votes and method of setting disputes or question arising from such election ; and(xix)any other matter which is required to be prescribed under the Act.

## **90. Protection of action taken by the persons appointed under this Act.**

- No suit or prosecution or other legal proceeding shall lie against any person appointed under this Act, or the Government Authority in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or order made thereunder.

## **91. Power to make regulations.**

(1)The Council may, with the previous sanction of the Government, make regulation not inconsistent with this Act, or the rule made thereunder for carrying out the 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 Council ;(b)the procedure and conduct of business at the time of the council

meetings ;(c)the allowance or fees to be paid to the Chairman or members of the Council or members of the Committee ;(d)the terms and conditions of service of the persons engaged by Auqaf ;(e)the form of application for registration of Wakafs, further particulars to be contained therein and manner and place of registrations of Wakaf ;(f)other particulars to be contained in the register of Wakafs ;(g)the form in which and the time within the budgets of Wakafs may be prepared and approved by the Council ;(h)the books to be kept at the office of the Council ;(i)the manner in which the accounts of Wakaf may be kept audited and the contents of the auditor's report ;(j)the method of calculating the income of the Wakaf ;(k)the fees payable for inspection of proceedings and records of the Council/Committee or for issue of copies of the same ; and(l)any other matter which may be prescribed.(3)All regulations made under this section shall be published in the Government Gazette and the regulation shall have effect from the date of such publication.

## **92. Power to remove the difficulty.**

- If any difficulty arises in giving effect the provisions of the Act, the Government may, by order, give such directions not inconsistent with the provisions of this Act, as may appear to be necessary or expedient for removal of the difficultyProvided that no such order shall be passed after the expiry of two years from the commencement of the Act.

## **93. Adjustment of staff.**

- The staff which may be rendered surplus, on this Act coming into force, may be adjusted by the Government in any other department without prejudice to their service or other interest therein.

## **94. Repeal and savings.**

(1)The Jammu and Kashmir Wakaf Act, 1978 is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the said Act, shall be deemed to have been done or taken under the corresponding provisions of this Act.