



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

MUSLIM MOSQUES AND CHARITABLE
TRUSTS OR WAKFS (AMENDMENT)

ACT, No. 33 OF 1982

[Certified on 23rd September, 1982]

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**Muslim Mosques and Charitable Trusts or Wakfs
(Amendment) Act, No. 33 of 1982**

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L. D.—O. 6/81

**AN ACT TO AMEND THE MUSLIM MOSQUES AND CHARITABLE
TRUSTS OR WAKFS ACT, NO. 51 OF 1956**

BE it enacted by the Parliament of the Democratic Socialist
Republic of Sri Lanka as follows:—

1. This Act may be cited as the Muslim Mosques and
Charitable Trusts or Wakfs (Amendment) Act, No. 33 of
1982.

Short title.

2. The long title of the Muslim Mosques and Charitable
Trusts or Wakfs Act, No. 51 of 1956 (hereinafter referred to
as the "principal enactment") is hereby repealed and the
following long title substituted therefor:—

**Replacement
of the long
title of Act
No. 51 of 1956**

"An Act to provide for the registration of Mosques,
Muslim Shrines and Places of Religious Resort, whether
incorporated or not, to prescribe the powers, duties and
functions of the Trustees of Registered Mosques, Muslim
Shrines, Places of Religious Resort and Muslim Charitable
Trusts or "Wakfs", to establish a Muslim Charities
Fund, to repeal Chapter II of the Muslim Intestate
Succession and "Wakfs" Ordinance and to provide for
matters connected therewith or incidental thereto."

3. The following heading is hereby substituted for the
heading appearing immediately before section 2 of the principal
enactment:—

**Replacement
of
heading
appearing
immediately
before
section 2 of
the principal
enactment.**

"PART I

The Staff, the Board and the Tribunal".

4. The principal enactment is hereby amended by the
substitution for the words "Commissioner", "Deputy Commissioner",
"Deputy Commissioners", and "Commissioner's", wherever those words
appear in that enactment, of the words "Director", "Deputy Director",
"Deputy Directors", and "Director's", respectively.

**Commissioner,
Deputy Commissioner
&c. to be
Director,
Deputy
Directors &c.**

5. Section 3 of the principal enactment is hereby
repealed.

**Repeal of
section 3
of the
principal
enactment.**

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Replacement
of section 4 of
the principal
enactment.

6. Section 4 of the principal enactment is hereby repealed and the following section substituted therefor:—

“Deputy
Directors
may exercise
and perform
Director’s
powers and
duties.”
4. A Deputy Director may, subject to the direction and control of the Director, exercise any of the Director’s powers and perform any of the Director’s duties.”.

Amendment
of section 5 of
the principal
enactment.

7. Section 5 of the principal enactment is hereby amended by the addition at the end of that section, of the following new subsections:—

“(3) The Minister may appoint one of the members, other than the Director, to be the Chairman of the board.

(4) The Minister may remove any member of the board from office if he is satisfied that such member is not discharging his duties in a competent manner. The removal of any member of the board from office by the Minister shall not be called in question in any court.”.

Amendment
of section 8 of
the principal
enactment.

8. Section 8 of the principal enactment is hereby amended as follows:—

(a) by the substitution for paragraph (e) of that section, of the following paragraph:—

“(e) if he is removed from office by the Minister under section 5(4); or”, and

(b) by the addition, immediately after paragraph (e) of that section of the following new paragraph:—

“(f) if he resigns office by writing under his hand addressed to the Minister.”.

Amendment
of section 9 of
the principal
enactment.

9. Section 9 of the principal enactment is hereby amended as follows:—

(a) by the repeal of subsection (1) of that section, and the substitution therefor of the following subsection:—

“(1) The Chairman shall preside at every meeting of the board at which he is present. If the Chairman is absent from any meeting of the board, the members present at the meeting shall elect one from among themselves to preside at the meeting.”; and

(b) by the repeal of subsection (3) of that section, and the substitution therefor, of the following subsection:—

“(3) Where the votes of the members present and voting at any meeting of the board are equally divided in regard to any question, the Chairman or other member presiding at such meeting shall, in addition to his vote as a member, have a casting vote.”

10. The following new sections are hereby inserted immediately after section 9A, and shall have effect as section 9B, section 9c, section 9d, section 9E, section 9F, section 9G, section 9H and section 9J, of the principal enactment:—

Insertion of new sections 9B, 9c, 9d, 9E, 9F, 9G, 9H and 9J in the principal enactment.

“Power of board to summon witnesses &c. 9B. The Chairman of the board and if the Chairman is not presiding at any meeting of the board, the Chairman of that meeting shall, for the purpose of the consideration and determination of any matter, have the power—

- (a) to summon and compel the attendance to witnesses.
- (b) to compel the production of documents, and
- (c) to administer any oath or affirmation to witnesses.

Application to the board. 9c. An application to the board under this Act shall be in the manner prescribed.

Wakfs Tribunal. 9d. (1) There shall be appointed by the Judicial Service Commission for the purposes of this Act a Wakfs Tribunal or such number of Tribunals as may be determined by the Minister from time to time, each of which shall consist of three persons who are Muslims.

(2) The Commission shall appoint one of the members to be the Chairman of the Tribunal.

(3) Two members of the Tribunal shall form a quorum. No matter shall be heard by the Tribunal unless a quorum is present.

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(4) The decision of a majority of the members of the Tribunal who are present at the hearing of any matter shall for all purposes be deemed to be the decision of the Tribunal.

General
powers of
the Tribunal.

9E. (1) The powers of the Tribunal under this Act shall include the power to hear and determine any application made in respect of a Muslim charitable trust or *wakf* for an order providing for all or any of the following purposes :—

- (a) removing from office any trustee of the trust or *wakf* ;
- (b) appointing where necessary, a trustee or trustees for the trust or *wakf* ;
- (c) directing the submission of statements of accounts to the Tribunal or the board ;
- (d) declaring what proportion of the property of the trust or *wakf* or of the interest therein shall be allocated to any specified object of the trust or *wakf* ;
- (e) settling a scheme for the management of the trust or *wakf* ;
- (f) directing the specific performance of any act by the trustee or trustees of the trust or *wakf* ;
- (g) declaring any trustee of the trust or *wakf* guilty of any misfeasance, breach of trust or neglect of duty ;
- (h) ordering the payment by any trustee of the trust or *wakf* of any sum to the funds of the trust or *wakf* by way of damages in respect of any misfeasance, breach of trust or neglect of duty ; and
- (i) granting such further or other relief arising from the matters specified in paragraphs (a) to (h).

(2) Subject to the provisions of subsection (3), every application in respect of a Muslim charitable trust or *wakf* shall be made by the

Director upon a direction given by the board in that behalf, or any five or more persons interested in that trust or wakf.

(3) No application, other than an application made by the Director, shall be entertained by the Tribunal under this section unless the application is accompanied by a certificate under the hand of the Director that the application has been approved by the board.

(4) Where five or more persons interested in a Muslim charitable trust or wakf have made an application under subsection (1), the withdrawal of one or more than one such person from the application shall not prevent the Tribunal from hearing and determining the application so long as at least one person who made the application continues to be a party.

Power of Tribunal to summon witnesses, &c.

9F. The Chairman of the Tribunal and if the Chairman is not presiding at any meeting of the Tribunal, the Chairman of that meeting shall for the purposes of the consideration and determination of any matter, have all the powers of a District Court—

- (a) to summon and compel the attendance of witnesses;
- (b) to compel the production of documents; and
- (c) to administer any oath or affirmation to witnesses.

Proceedings before Tribunal.

9G. In any proceedings under this Act, the Tribunal shall follow the procedure of a District Court, and in the execution of its orders and judgments, shall have all the powers of a District Court and the provisions of the Civil Procedure Code, relating to the procedures and powers of execution of a District Court, shall, *mutatis mutandis*, apply to and in relation to the procedures and powers of execution of the Tribunal.

Appeals to Tribunal from orders, &c. of board.

9H. (1) Any person aggrieved by any order or decision made by the board may within thirty days of the date of such order or

based on the decision appeal in writing to the Tribunal against such order or decision.

(2) For the purpose of hearing and determining any appeal made under subsection (1), the Tribunal shall have the following powers:—

(a) to call for the record of any proceedings before the board and any documents in the possession of the board; and

(b) to make such inquiries as may be necessary for the purpose of the appeal and, if it thinks fit, to admit or call for any evidence, whether oral or documentary.

(3) After the hearing of an appeal, the Tribunal shall make order confirming, setting aside or varying the order or decision of the board, or make such other order thereon as it may think fit.

9j. The jurisdiction exercisable by the Tribunal in respect of matters relating to Muslim charitable trusts or *wakfs* shall be exclusive and any matter falling within that jurisdiction shall not be tried or inquired into by any court or tribunal of first instance.”

Amendment
of section
14 of
the principal
enactment.

11. Section 14 of the principal enactment is hereby amended as follows:—

(a) by the repeal of subsection (1) of that section and the substitution therefor, of the following subsection:—

“(1) As soon as may be, after a mosque has been registered under section 13, the board—

(a) shall confirm and appoint a person or persons to be a trustee or trustees who is or have been selected or nominated according to the practices, rules, regulations or other arrangements in force for the administration of the mosque;

(b) if no trustee or trustees is or are appointed under paragraph (a), the board may appoint a person or persons to be a trustee or trustees from among registered members of the *jama'ath* of the mosque;

(c) may appoint a special trustee or trustees for a particular period if the board considers necessary for the proper administration of the mosque.”;

(b) by the repeal of subsection (2) of that section and the substitution therefor, of the following subsection:—

“(2) Every person appointed as a trustee by the board shall—

(a) officiate as trustee for such period as provided for by the practices, rules, regulations or other arrangements in force for the administration of the mosque; or

(b) officiate as such trustee for such period as may be specified in the instrument of appointment unless he vacates his office under section 15 or his appointment as trustee is revoked by the board or tribunal;”;

(c) by the insertion, immediately after subsection (3) of that section, of the following new subsection:—

“(3A) It shall be the duty of the trustee or trustees of a mosque to submit to the Directors—

(a) a duly certified copy of the practices, rules, regulations or other arrangements in force for the time being for the administration of the mosque; and

(b) a copy of the list of registered members for the time being of the *jama'ath* of the mosque.”; and

(d) by the repeal of subsection (4) of that section.

12. Section 15 of the principal enactment is hereby amended in subsection (1) of that section as follows:—

(a) By the relettering of paragraph (f) of that subsection as paragraph (g) of that subsection; and

Amendment
of section
15 of
the principal
enactment.

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(b) by the insertion, immediately before relettered paragraph (g) of that subsection, of the following new paragraph:—

“(f) if whilst he is a trustee of a *Jumma* mosque, holds office as a trustee of another *Jumma* mosque;

Provided, however, that where more than one *Jumma* mosque is administered by a common Board of Trustees according to long usage or custom in a particular area, a trustee of a *Jumma* mosque may hold the office of trustee on another *Jumma* mosque; or”.

Amendment
of section 15A
of the
principal
enactment.

13. Section 15A of the principal enactment is hereby amended in subsection (5) of that section, by the addition, at the end of that subsection, of the following new paragraph:—

“(c) Notwithstanding the provisions of any other law, the execution of an order made by a Magistrate's Court under subsection (3) shall not be stayed in any manner by means of any appeal or other step taken or proposed to be taken in any court with a view to varying or setting aside such order.”.

Amendment
of section
18 of
the principal
enactment.

14. Section 18 of the principal enactment is hereby amended by the substitution for the words “sanction of the board”, of the words “sanction of the Director, or a Deputy Director or an authorized officer,”.

Insertion of
new section
20A in the
enactment.

15. The following new section is hereby inserted immediately after section 20, and shall have effect as section 20A, of the principal enactment:—

“Authorized
officers and
their
functions.

20A. (1) The Director may in writing authorize such number of officers as may be necessary to be authorized officers for the purposes of this Act.

(2) Upon being instructed by the Director in that behalf, an authorized officer, shall—

(a) ascertain whether any person has contravened any provisions of this Act, or any regulation made thereunder;

(b) make application to the board under section 21, section 22, section 25 and section 29;

(c) institute and defend any action or proceeding as may be necessary in the board, the Tribunal or in any court;

(d) investigate and report or bring to the notice of the board, the Director or any Deputy Director any allegation of fraud or misuse of property by any trustee or trustees of a registered mosque.”

16. Section 21 of the principal enactment is hereby amended as follows :—

(1) by the repeal of subsection (2) of that section ;

(2) by the renumbering of subsection (1) of that section as section 21 ; and

(3) by the substitution in that section for the words “to direct the trustee or trustees of that mosque”, of the words “to direct an authorized officer”.

17. Section 22 of the principal enactment is hereby amended as follows :—

(1) in subsection (3) of that section, by the substitution for the words “to direct the trustee or trustees of that mosque”, of the words “to direct an authorized officer” ; and

(2) by the repeal of subsection (4) of that section.

18. Section 25 of the principal enactment is hereby amended as follows :—

(a) in subsection (1) of that section, by the substitution for the words “The trustee or trustees of a registered mosque”, of the words “An authorized officer or the trustee or trustees of a registered mosque” ;

(b) by the repeal of subsection (2) of that section, and the substitution therefor, of the following subsection :—

“(2) The trustee of a registered mosque or an authorized officer, whether he is the plaintiff or defendant in an action, shall not be personally liable in costs for any act bona fide done by such trustee or authorized officer in the exercise of the powers or the performance of the duties of such trustee or authorized officer” ; and

Amendment
of section
21 of
the principal
enactment.

Amendment
of section
22 of
the principal
enactment.

Amendment
of section
25 of
the principal
enactment.

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(c) by the substitution for the marginal note to that section, of the following marginal note :—

“Authorized officer,
or trustee or
trustees of
registered mosque,
may sue.”

Amendment
of section 26
of the
principal
enactment.

19. Section 26 of the principal enactment is hereby amended in paragraph (c) of that section, by the substitution for the words “by the board”, of the words “by the board or by an authorized officer”.

Amendment
of section
29 of
the principal
enactment.

20. Section 29 of the principal enactment is hereby amended as follows :—

(1) in subsection (6) of that section, by the substitution for the words “may without joining as plaintiff any other person so interested, institute an action against a trustee of that mosque in the District Court having jurisdiction in the place in which that mosque is situated, to obtain a decree”, of the words “may as against a trustee of that mosque, make an application to the Tribunal for an order”;

(2) by the repeal of subsection (7) of that section and the substitution therefor, of the following subsection :—

“(7) No application, other than an application made by the Director, shall be entertained by the Tribunal under this section unless the application is accompanied by a certificate under the hand of the Director that the application has been approved by the board.”; and

(3) by the repeal of subsection (9) of that section and the substitution therefor, of the following subsection :—

“(9) Where five or more persons interested in a mosque have made an application under subsection (6), the withdrawal of one or more than one such person from the application shall not prevent the Tribunal from hearing and determining the application so long as at least one person who made the application continues to be a party.”

21. Section 37 of the principal enactment is hereby amended by the substitution for the words "by the board", of the words "by the board or by any authorized officer".

Amendment
of section 37
of the
principal
enactment.

22. Section 39 of the principal enactment is hereby amended as follows:—

Amendment
of section
39 of
the principal
enactment.

(a) in subsection (1) of that section by the substitution for all the words from "for all or any of the following purposes:—", to the end of that subsection of the following:—

"for both or either of the following purposes:—

(a) enumerating the properties comprised in the trust or wakf; and

(b) granting such further or other relief as the circumstances of the case may require."; and

(b) by the repeal of subsection (6) of that section.

23. Section 40 of the principal enactment is hereby amended as follows:—

Amendment
of section
40 of
the principal
enactment.

(a) by the substitution for the words "the court", wherever those words occur in that section, of the words "the Tribunal"; and

(b) by the substitution, in the marginal note to that section, for the words "Court's powers", of the words "Tribunal's powers".

24. Section 41 of the principal enactment is hereby amended by the substitution for the words "the court", of the words "the Tribunal".

Amendment
of section
41 of
the principal
enactment.

25. Section 47 of the principal enactment is hereby amended as follows:—

Amendment
of section
47 of
the principal
enactment.

(a) by the substitution for all the words and figures from "Where any action is instituted" to "for all or any of the following purposes:—", of the following:—

"Where any application is made to the Tribunal under section 29, the Tribunal may provide in its order, in addition to the matters which may be provided for in such order under section 29, for all or any of the following purposes:—"; and

(b) by the substitution for the marginal note to that section, of the following marginal note:—

"Additional powers
of Tribunal in
regard to appli-
cations under
section 29."

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Repeal of
sections 48
and 49 of
the principal
enactment.

26. Sections 48 and 49 of the principal enactment are hereby repealed.

Repeal of
section 51 of
the principal
enactment.

27. Section 51 of the principal enactment is hereby repealed.

Amendment
of section
53 of
the principal
enactment.

28. Section 53 of the principal enactment is hereby amended as follows:—

- (a) by the repeal of subsection (2) of that section; and
- (b) by the repeal of subsection (3) of that section and the substitution therefor of the following subsection:—

“(3) Every person guilty of an offence under this Act shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding two thousand rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment.”.

Amendment
of section
54 of
the principal
enactment.

29. Section 54 of the principal enactment is hereby amended as follows:—

- (a) by the substitution, in paragraph (c) of subsection (2) of that section, for the words “or of trustees of a mosque.”, of the words “or the Tribunal or of trustees of a mosque.”;

- (b) by the repeal of subsections (3) and (4) of that section and the substitution therefor of the following subsections:—

“(3) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(4) Every regulation shall as soon as convenient after publication in the *Gazette* be brought before Parliament for approval and upon such approval, shall have the same force and effect as a provision in this Act. Any regulation which is not so approved shall be deemed to be rescinded from the date of its disapproval but without prejudice to anything previously done thereunder.”; and

- (c) by the addition immediately after subsection (4) of that section of the following subsection:—

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"(5) Notification of the date on which any regulation made by the Minister is deemed to be rescinded shall be published in the Gazette."

30. The following new sections are hereby inserted immediately after section 55, and shall have effect as section 55A and section 55B, of the principal enactment:—

Insertion of
new sections
55A and 55B
in
the principal
enactment.

"Appeals.

55A. Every order made by the Tribunal shall be deemed to be an order made by a District Court and the provisions of the Civil Procedure Code governing appeals from orders and judgments of a District Court shall, *mutatis mutandis*, apply to and in relation to appeals from orders of the Tribunal.

Contempt
proceedings.

55B. For the purposes of dealing with offences of contempt against the authority of the Tribunal, the Tribunal shall have the powers of a District Court, and accordingly the provisions of section 55 of the Judicature Act, No. 2 of 1978, shall, *mutatis mutandis*, apply as though the references therein to a District Court were references to the Tribunal."

31. Section 57B of the principal enactment is hereby amended by the substitution for the words "religious resort, notwithstanding anything in any other written law," of the words "religious resort, whether incorporated or not, notwithstanding anything in any other written law or any order made by a court of law as regards the administration of any mosque, Muslim shrine or place of religious resort,".

Amendment
of section
57B of
the principal
enactment.

32. The following new section is hereby inserted immediately after section 57B, and shall have effect as section 57c, of the principal enactment:—

Insertion of
new section
57c in
the principal
enactment.

"Procedure
for the
recovery
of penalties
and fines.

57c. Any fine or penalty imposed by the Tribunal or Court of Appeal may in case of default be recovered on an application made by an authorized officer to the Magistrate having jurisdiction in the area where the person liable to pay such penalty or fine is for the time being resident notwithstanding any limits imposed by any other law."

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Amendment
of section
58 of
the principal
enactment.

33. Section 58 of the principal enactment is hereby amended as follows:—

(a) by the insertion, immediately before the definition of “board”, of the following new definition:—

“authorized officer” means an officer authorized to act as such for the purposes of this Act;’;

(b) by the substitution for the definition of “jama’ath”, of the following definition:—

“jama’ath”, in relation to a mosque, means the persons who ordinarily worship at, or participate in the religious or customary rites and ceremonies of, that mosque and whose names appear on the register of members of the mosque for the time being;’;

(c) by the substitution for the definition of “member”, of the following definition:—

“member” means a member of the board or the Tribunal, as the case may be;’;

(d) by the insertion, immediately after the definition of “member”, of the following new definition:—

“Minister” means the Minister in charge of the subject of Muslim Affairs;’;

(e) by the substitution for the definition of “mosque”, of the following definition:—

“mosque” means any place of exclusive Muslim worship, whether of or for any sect or jama’ath and whether incorporated or not, and includes any *thakkiya* or *zavia* whether affiliated or unaffiliated to any mosque;’;

(f) by the insertion immediately after the definition of “Muslim shrines and places of religious resort”, of the following new definition:—

“person or persons who immediately prior to the date of such appointment had in any capacity whatsoever the possession, custody or control” means any person who, contrary to the provisions of any trust, deed or document, possesses, occupies, alienates, acquires or commits trespass upon, in any manner whatsoever notwithstanding any other law, any property, movable or immovable belonging to, or in any way appertaining to or appropriated to the use of that mosque;’;

- (g) in the definition of "prescribed", by the substitution for the words "under this Act; and", the words "under this Act;";
- (h) in the definition of "registered mosque", by the substitution for the words "registered under this Act.", of the words "registered under this Act; and"; and
- (i) by the insertion, immediately after the definition of "registered mosque", of the following definition:—
" "Tribunal" means the *Wakfs Tribunal* established under this Act. '.

34. The First Schedule to the principal enactment hereby amended as follows:—

Amendment
of the First
Schedule to
the principal
enactment.

- (a) by the repeal of rule 1 of that Schedule and the substitution therefor of the following rule:—

"1. The rate of contribution for any year in respect of a registered mosque, Muslim charitable trust or *wakf* to the Muslim Charitable Fund, shall be six *per centum* of the net income in that year." ; and

- (b) in rule 2 of that Schedule by the substitution for the figures and words "25 *per centum*", of the figures and words "10 *per centum*".

35. All matters, suits and proceedings pending on the day preceding the date of commencement of this Act in any court in respect of any matter which by the principal enactment, as amended by this Act, is within the exclusive jurisdiction of the *Wakfs Tribunal*, save and except any appeal pending in the Court of Appeal or Supreme Court from any judgment or order in respect of any such matter, shall stand removed with effect from the date of commencement of this Act to the *Wakfs Tribunal* to be heard and determined or continued and completed.

Transitional
provision.