

and eradication of the evil practice. Part 1 of the book deals with importance of child welfare for the future of democracy and gives a brief introduction of constitutional mandate and various initiatives taken and measures adopted by the government. Chapter two under Part I deals with, our international commitment for the child welfare. Part 2 of the book deals with constitutional mandate for eradication of the evil of child labour [Chapter 3] and Supreme Court Directions/guidelines for this purpose [Chapter 4]. Various legislative measures taken by the government are dealt with under Part 3 of the Book. While Chapter 5 does a survey of labour legislations concerning employment of children, Chapter 6 deals with Child Labour Prohibition/Regulation Act and Rules. Chapter 7 takes notice of March of Law and covers latest legislative measures adopted

by the government for welfare of children. Chapters 7 and 8 under Part 4 while analyzing causes for failure of legislative measures, attempt to study ways and means to deal with the problem without having to corner the child labour or offending their dignity as an individual. Part 5, the last part of the Book, comprises of important appendices having bearing on the subject matter of discussion, which include the Juvenile Justice Act, the Human Rights Act and the Prohibition of Child Marriage Act.

The book, it is hoped shall interest all those concerned with the problem of child labour, shall meet the requirements of the Bench and the Bar and cater to the needs of the officers and authorities entrusted with the task of administering the provisions of the child labour prohibition laws.

STATUS OF WAKF BOARDS UNDER WAKF ACT 1995

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Introduction

Islam emphasizes social justice in the society. It imbibes definite guidelines for the fulfillment of this noble cause. It lays down various methods of charities for the service of the mankind. Wakf is one of them. The origin of wakf is to be seen in pursuit of the charitable deeds which are characteristic feature of Islam.

Wakf is an important concept of Islam through which, the rulers, the nobles and the rich dedicate a part of their properties for the alleviation of poverty, amelioration of the down trodden and for doing pious and religious ceremonies. According to

Ameer Ali “the law of Wakf is very important and the most difficult branch of the Mohammedan Law, for it is interwoven with the religious life and social economy of Muslims”¹.

The term “wakf” literally means detention or halt. In Shariat it connotes the tying up of the property in perpetuity so as to prevent it from becoming the property of third person. “According to *Abu Hanifa*, (one of the noted Islamic Jurists) the legal meaning of wakf is the detention of a specific thing in the ownership of the wakf or the appropriator and devoting of its profits or in the charity

1. *Ameer Ali*, Principles of Mohammedan Law, 1908 P.

of poor or other good objects.²² According to *Abu Yusuf* the disciple of *Abu Hanifa* “Wakf is the detention of the things in the implied ownership of God, in such a manner that its profits may be applied for the benefit of the human being, and the dedication when once made is absolute, so that the thing dedicated can neither be sold, nor given nor inherited.”²³

Section 3(r) of the Wakf Act 1995 defines wakf as “permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognized by Muslim Law as pious, religious, or charitable...”²⁴. Once a wakf is validly created it is irrevocable, inalienable and it is perpetual. In other words once a wakf always a wakf. Thus wakf is an unconditional and permanent dedication of property for the benefit of the mankind.

The successive Governments in India have enacted and enforced several laws for the administration of wakf institutions. Prominent among them are Mussalman Wakf Validating Act VI of 1913, charitable and Religious Trusts Act XIV of 1920, Mussalman Wakf Act XLII of 1923, Hyderabad Endowments Regulation Act 1939, Indian Wakf Act (XXIX) of 1954, and the Wakf Act XLIII of 1995.

Incorporation of Wakf Boards

The Wakf Act 1995 under Section 13 provides for the incorporation and establishment of Wakf Boards in every State. The Wakf Boards will be the custodians of the wakf property in their respective states. The Wakf Act 1995 defines Wakf Boards as “a Board of wakf established under sub-section (1), or as the case may be, under sub-section (2) of Section 13 and shall include a common Wakf Board established under Section 106”²⁵.

If there are more than fifteen per cent Shia wakf or if fifteen per cent of the total income from wakfs is from shia institutions in any State, such State Government is empowered to constitute a separate Shia Wakf Board exclusive for the management and administration of Shia wakfs.

Wakf Board a Body Corporate.

The Wakf Board is a body corporate having perpetual succession and a common seal empowered to acquire and hold properties and to transfer any such property subject to such conditions and restrictions as may be prescribed. *Ramanatha Iyer's Law Lexicon* says “A corporation is an artificial being invisible, intangible and existing only in contemplation of law. Being the mere creator of law it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as supposed best calculated to effect the object for which it was created. Among the most important ones, immortality and if the expression may be allowed individuality; properties by which a perpetual succession of many persons are considered as the same and may act as a single individual. They enable a corporation to manage its own affairs and to hold property without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purposes of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession with these qualities and capacities that, corporations were invented and are in use. By these means a perpetual succession of individuals are acting for the promotion of the particular object like one immortal being.”²⁶.

In the early fifties it was realized to have Wakf Boards for the managements in administrations of the wakf institutions and the properties attached to them. Accordingly

2. Ibid Page 195

3. Ibid.

4. *Abmedulla Khan*, Commentaries on the Law of Wakf in India, 2000. P

5. *S.A. Kader*, The Law of Wakfs-An analytical and critical study, 1999, P.24.

6. *Ramanatha Iyer Law Lexicon*, 1940, P.247

it was provided in the Wakf Act 1954 for the constitutions of Wakf Board in every state. Prior to the Act of 1954 every state or the princely states had its own system of administration of the wakf properties. In the erstwhile Hyderabad State all religious matters including endowments and wakf institutions were being administered and controlled by the Dept. of Ecclesiastical Affairs known as Umoore – Mazhabi. The department was headed by a Commissioner assisted by 2 Deputy Commissioners, one exclusively meant for Muslim religious affairs and Wakf. The then *Raj Pramukh* established a Board to look – after the affairs of Wakf under the name and style of Muslim Wakf Board by notification No.90, dated 13.1.1955 published in Hyderabad Government Gazette which became operational on 15th Jan' 1955.

Section 13 of the Wakf Act 1995 is an enabling section which confers powers on the State Government to establish a Board of Wakf with effect from such date as may be appointed by the State Government by notification in the Official Gazette. The State Government is also competent to constitute separate Wakf Board each for Sunni Wakfs and Shia Wakfs, provided the number of the Shia Wakfs in any State is more than fifteen per cent of all the Wakfs in the State or the income of the properties of Shia Wakfs in the State is more than fifteen per cent of the total income of properties of all the Wakfs in the State. The name of such Boards can also be specified by the State Government in the Official Gazette.

By virtue of its establishment under the Wakf Act 1995, the Wakf Board becomes a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

Wakf Board – A Religious Denomination or Conglomerate

Whether the Wakf can be regarded as religious denomination or a body representing the Muslim Community had come up for consideration before the High Court of Kerala in *Syed Pookoya Thangal v. Union of India*,⁷.

The Muslim Women (Protection of Rights on Divorce) Act, 1986 Under Section 4(2) provides that where a Muslim divorced woman is unable to maintain herself and she has no parents or relatives with enough means to pay the maintenance ordered by the Magistrate the Magistrate may direct the State Wakf Board to pay such maintenance as determined by him. One *Jameela Bibi* who was divorcee by her husband did not have the means to maintain herself. Her parents and relatives were also incapable of maintaining her and hence the Judicial Magistrate directed the Kerala State Wakf Board to pay maintenance to her Rs.250 per month. The petitioner *Syed Fazal Pookoya Thangal* who was the Chairman of the Kerala Wakf Board challenged the Constitutional validity of Section 4(2) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and the order Passed by the Judicial Magistrate as violative of Article 26(b) and (d) of the Constitution of India. The learned Judge of the High Court of Kerala pointed out the right conferred under Article 26 was on a denomination or a section thereof. After referring to the definition of denomination given by the Supreme Court in *Commissioner, Hindu Religious and Charitable Endowments v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*,⁸ the Court observed :

The wakf board is not a conglomeration of individuals. It is not even akin to company where a number of individuals join together to constitute it. It is a statutory body pure and simple. It is not a representative body

7. AIR 1993 Ker. 398

8. AIR 1954 SC 282

of a Muslim Community. It has no soul and no faith except the faith of dutiful performance of its functions and duties under Act. It is not a collection of individuals or a sect or body with common faith which alone will make it a denomination for the purpose of Article 26. If it is not a denomination it has no rights under Article 26, liable to be violated by Section 4(20) of the Act Article 26 is therefore out of operation so far as Wakf Board is concerned... There is no substance in the challenge that Section 4(2) is violative of Articles 25 and 26.”

Constitutional Validity of the Wakf Board :

The basic question relating to the validity of the powers of the Wakf Board to control and supervise Wakf Administration, regulate the powers of mutawallis insofar as it relates to manage the Wakf properties under various Sections of the Act was challenged in *Usman Ali Khan v. Faezullah* as unconstitutional. It was contended that such wide powers of the Wakf Board are violative of the fundamental right of the mutawallis or any person to manage their own affairs in matter or religion guaranteed under Article 26(b) of the Constitution of India which states thus; Article 26 : “*Subject to public order, morality and health, every religious denomination or any section thereof shall have the right :*

(a) to manage its own affairs in matter of religion”

But the Court rejected the argument and said that “In view of the general scheme and purpose of the Act, it is futile to contend that the question regarding Wakf, insofar as it related to the properties composed therein and the right of mutawalli or any person to manage the same property falls under Article 26(b) of the Constitution. If falls under Article 26(d) of the Constitution and as such is subject to the law made by

the Parliament. The Legislative competence of the Parliament therefore to make the aforesaid, cannot be questioned. There is nothing in the impugned sections which deprive the religious denomination, namely Muslims, of their right of administration or administering properties owned and acquired by it.”

“Article 25 of the Constitution guarantees to every person and not merely to the citizens of India, the freedom of conscience and the right freely to profess, practice and propagate religion. This is subject, in every case, to public order, health, and morality. Further exceptions are engrafted upon this right by clause (2) of the Article. Sub-clause (a) of Clause (2) saves the power of the State to make law regulating or restricting and economic, financial political or other secular activity which may be associated with religious practice and sub-clause (b) reserves the State’s power to make laws providing for special reforms and social welfare even though they might interfere with religious practices. Thus subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward act in pursuance of religious belief, is as stated above, subject to state regulation imposed to secure order, public health and morals of the people.”

Now in the light of the above scope of Articles 25 and 26 of the Constitution, the Court examined the argument of the petitioner as to whether the provisions of Wakf Act, 1995 are really violative of those

Articles of the Constitution or not and said, thus :

“The scheme of the Act does not in any way show the interference of the State in the matters of religion thus allegedly violating the guarantee as provided under Articles 25 and 26 of the Constitution. The writ petition appears to have been filed upon unfounded apprehensions and concocted grounds. The allegation made in the petition is based upon hypothesis, which has nothing to do with the reality.”

Composition of the Wakf Board :

The State Government used to prepare a panel of members for the Constitution of Wakf Board under the Wakf Act 1954. But the Wakf Act 1995 has democratized structure and Composition of Wakf Boards.

Section 14 of the Wakf Act 1995 provides for electoral colleges which will elect the members. For example the Muslim Members of Bar Council of the State will elect atleast one member, the Muslim members of the State Legislative Assembly and Muslim members of Parliament will elect atleast one member. Similarly the Mutawallis of the wakf institution having an income of more than Rupees one one Lakhs shall form another electoral college which will elect atleast two members and the State Government concerned will nominate atleast four eminent Muslim scholars and personalities to the Board. All these members will elect a Chairperson. The Wakf Board for a State and the Union Territory of Delhi shall consist of the following as per the Wakf Act 1995.

- (a) a Chairperson
- (b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of—
 - (i) Muslim Members of Parliament

from the State or, as the case may be, the Union Territory of Delhi

- (ii) Muslim Members of the State Legislature,
- (iii) Muslim Members of the Bar Council of the State, and
- (iv) Mutawallis of the Wakfs having an annual income of rupees one lakh and above;
- (c) one and not more than two members to be nominated by the State Government representing eminent Muslim Organisations;
- (d) one and not more than two members to be nominated by the State Government, each from recognized scholars in Islamic Theology;
- (e) an officer of the State Government not, below the rank of Deputy Secretary.

(2) Election of the members specified in/ clause (b) of sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed :

Provided that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board :

Provided further that where there are no Muslim Members in any or the categories mentioned in sub-clauses (i) to (iii) of Clause (b) of sub-section (1) the ex-Muslim Members of Parliament, the State Legislature or ex-members of the State Bar Council, as the case may be, shall constitute the Electoral College.

(1) Notwithstanding anything contained in this section, where the State Government is satisfied for reasons to be record in

writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.

(2) The number of elected members of the Board shall, at all times be more than the nominated members of the Board except as provided under sub-section (3).

(3) Where there are Shia Wakfs but if no separate Shia Wakfs Board exists, at least one of the members from the categories listed in sub-section (1), shall be a Shia Muslim.

(4) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia Wakfs and Sunni Wakfs to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

(5) In the case of the Union Territory other than Delhi, the Board shall consist of not less than three and not more than five members to be appointed by the Central Government from amongst the categories of persons specified in sub-section (1) :

Provided that there shall be one mutawalli as the member of the Board.

(6) Whenever the Board is constituted or reconstituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

(7) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.

Thus the Wakf Act 1995 has demarcated the process of Constitution of Wakf Board having provided elections under different segments. Previously under the Wakf Act 1954 the Government used to prepare a panel and the panel used to elect the Chairperson.

Term of Office

Section 15 of the Wakf Act 1995 prescribes that the term of office of the board or its members shall be five years.

Powers of Central Government to constitute common Boards :

If the Muslim population or the number of wakf institution in some of the States is minimal and the Central Government feels that it is not expedient to constitute separate wakf boards for each State it can constitute a common Wakf Board for such States by notification in the Official Gazette. Common Board for such States as it may deem fit, and may, by the same or any subsequent notification specify the place at which the principal office of such common Board shall be located.

But such common Wakf Boards shall be constituted in consultation with the State Governments concerned. Section 106 of the Wakf Act states as under :

1. Where the Central Government is satisfied that by reasons of so—

- i. the smallness of the Muslim population in two or more States,
- ii. the slender resources of the Wakfs in such States, and
- iii. the disproportion between the number and income of the Wakfs and the Muslim population in such States,

2. Every common Board established under sub-section (1) shall, as far as practicable, consist of the persons specified in sub-section (1) or, as the case may be, sub-section (7) of Section 14.

3. Whenever any Common Board is established under sub-section (1)

(13)(a) all powers vested in the State Government under any deed of Wakf or any provision of law for the time being in force relating to Wakfs, shall stand transferred to, and vested in, the Central Government and, thereupon, references in such deed of Wakf or law to the State Government shall be construed as references to the Central Government :

Provided that while establishing a common Board for two or more States, the Central Government shall ensure that at least one representative of each of the concerned States is included as a member of the Board;

(b) References in this Act to a State shall be construed as references to each of the States for which the Common Board has been established.

(c) The Central Government may, without prejudice to any rule applicable to a Board in a State, make, by notification in the Official Gazette, rules regulating the conduct of business by and affairs of, the common Board.

4. The common Board shall be a body corporate, with objects not confined to one State, having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property, subject to such conditions and restrictions as may be specified by the Central Government, and shall by the said name sue or be sued.

Establishment of Wakf Board for part of a State

When the Wakf Act provides for establishment of one common Wakf Board for some of the federal States, it empowers the State Governments for establishment of

more than one board for a single state as per Section 103 of the Wakf Act, 1995.

Supersession of Wakf Boards :

While the Wakf Act empowers the Central Government to constitute a common Wakf Board for several States and the State Governments to constitute one or more Wakf Boards in their respective State Jurisdictions, it also empowers the State Governments to supersede the Wakf Boards.

Section 99 of the Wakf Act 1995 states as under :

(1) If the State Government is of opinion that the board is unable to perform or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully and without sufficient cause failed to comply with any direction issued by the Central Government under Section 96 or the State Government under Section 97, or if the State Government is satisfied on consideration of any report submitted after annual inspection, that the Board's continuance is likely to be injurious to the interests of the wakfs in the State, the State Government may, by notification in the official Gazette, supersede the Board for a period not exceeding six months :

Provided that before issuing a notification under this sub-section, the State Government shall give a reasonable time to the Board to show-cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of notification under sub-section (1) superseding the Board,—

(a) all the members of the Board shall, as from the date of Supersession, vacate their offices as such members;

- (b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the board shall, during the period of Supersession, be exercised and performed by such person or persons as the State Government may direct; and
 - (c) all property vested in the Board shall, during the period of supersession vest in the State Government.
- (3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government may—
- (a) extend the period of supersession for such further period as it may consider necessary; or
 - (b) reconstitute the board in the manner provided in Section 14.
- business at the meetings of such committees;
 - d. the allowances or fees to be paid to the Chairperson or members of the Board or members of committees;
 - e. the terms and conditions of service of the offices and other employees of the Board under sub-section (2) of Section 24;
 - f. the forms of application for registration of Wakfs further particulars to be contained therein and the manner and place of registration of Wakfs under sub-section (3) of Section 36;
 - g. further particulars to be contained in the Register of Wakfs under Section 37.
 - h. the form in which, and the time within which, the budgets of wakfs may be prepared and submitted by the mutawalli and approved by the Board under sub-section (1) of Section 44;
 - i. the books of accounts and other books to be maintained by the Board under Section 79;
 - j. fees payable for inspection of proceedings and records of the Boards or for issue of copies of the same;
 - k. persons by whom any order or decision of the Board may be authenticated; and
 - l. any other matter which has to be, or may be, provided by regulations.

Powers to make regulations by the Board :

1. The Wakf Board may with the previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made thereunder, for carrying out its functions under this Act.
2. In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely—
 - a. the time and places of the meeting of the Board under sub-section (1) of Section 17;
 - b. the procedure and conduct of business at the meetings of the Board;
 - c. the constitution and functions of the committees and the Board and the procedure for transaction of
3. All regulations made under this section shall be published in the Official Gazette and shall have effect from the date of such publication.

Rules and Regulations to be placed before State Legislature :

Every rule made under Section 109 and every regulation made under Section 110 shall be laid, as soon as may be after it is made, before the State Legislature.

Thus, while the Wakf Boards are established for the protection of wakfs they are also curtailed for misuse of powers. However just use of powers either by the Wakf Boards or by the Governments is always in the interest of the wakf institutions and the wakf properties.

LIABILITY OF DIRECTORS OF A COMPANY FOR THE OFFENCE OF CHEQUE BOUNCING UNDER NEGOTIABLE INSTRUMENTS ACT - A CRITICAL STUDY

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The provisions of the Negotiable Instruments Amendment Act 1988 with its best of the intentions and objectives were incorporated and came into effect from 1st April 1989. This amendment added a new chapter to the Act containing a set of provisions imposing punishment for “Bouncing of Cheque.”

These specific provisions dealing with what is popularly called “Bouncing of Cheque” in reality have been bouncing from one Court to other Court including that of High Courts and the Supreme Court. The bouncing of cheques has become a storm difficult to control and even the judicial process is too painful and too prolonged and taxing the victims. The decisions of the Courts and their interpretations in the matters of bouncing of a cheque vastly varied depending on various aspects of the issue.

This variance and uncertainty was taken advantage by unscrupulous persons and are using the different Court rulings at different points of time and at different levels of judiciary to slip out of the clutches of law.

Section 141 of the Negotiable Instruments Act clearly provides that in case a cheque bounces, the liability rests only on such persons who are responsible to the company for the conduct of the business, though such a person can defend himself by showing that the offence was committed without his knowledge or that he had exercised due diligence to prevent the offence from being committed. Even when a person is not in charge of a company's affairs but is occupying the position of a director, manager, secretary or other officer, he would also be liable if it can be shown that the offence was committed with his consent or connivance or is attributable to him. According to Amendment Act 2002, where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not liable for prosecution for the offence in the event of dishonour of the cheque.