



*Islamic Development Bank
Islamic Research and Training Institute*

STRATEGIES TO DEVELOP WAQF ADMINISTRATION IN INDIA

Research Paper
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Islamic Development Bank
Islamic Research and Training Institute

**STRATEGIES TO DEVELOP
WAQF ADMINISTRATION
IN INDIA**

BY

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In the canton of Khaibar a piece of land
Had Omar acquired by Allah's firm hand;
Mused he to put it to the best pious use;
So soon the Holy Prophet (Muhammad) did he choose;

Knowing not what to do, he sought his advice
Whose words are ever true and wise;
Declared the Prophet with exquisite grace;
"Tie up the property and devote apace
The usufruct to human beings throughout,
Its produce to thy children, thy kindred devout,

Forgetting not the poor in the way of God;
Not to sell, nor to gift but to vest in Lord".

By S.M. Sulaiman, I.A.S.

FOREWORD

Waqf or Its plural *Awqaf* stands for an important Islamic institution which we have inherited from the past and which possesses immense potential for the reconstruction of social and economic life in the Muslim countries and communities. Making a *Waqf* is considered a virtuous act , an act of spending in the way of Allah, which carries great reward. For this reason, through out Islamic history, and in all lands where Muslims were inhabited, *Awqaf* had a formidable presence. However, in later stages the institution of *Awqaf* has declined in significance and presence both in many Muslim countries and communities. Since it has a great potential to transform the social and economic life, the issues involved in the revival of *Awqaf* and its role in the social and economic development of present day Muslim countries and communities need our attention.

The Islamic Research and Training Institute (IRTI) has been established by the Islamic Development Bank "to undertake research for enabling the economic, financial and banking activities in Muslim countries to conform to *Shari 'ah*" IRTI places special emphasis on basic and applied research in the areas of Islamic economics, banking and finance in its various activities. *Zakah* and *Awqaf* as two important Islamic economic institutions have a prominent position in IRTI `s agenda of work. IRTI discharges its obligations towards these institutions by undertaking various activities such as organization of seminars, training courses for the officers and workers and community leaders active in these areas, publishing conference papers, promoting basic and applied research etc.

The present research work, *Strategies to Develop Waqf Administration in India* by Dr. Hasanuddin Ahmad is also a part of the same effort. It is a research study conducted by Dr. Alunad who is not only a prominent Indian scholar but possess considerable and long experience of *Awqaf* administration in India. The significance of this study also emerges out of the fact that it

studies the *Awqaf* system in India, which is the home of more than 120 million Muslims. India also enjoys the distinction of having the system of Muslim *Awqaf* still intact despite many hurdles. The extent of spread of Muslim *Awqaf* in India may be guessed from the fact that in all states where Muslims live in large numbers, there is a separate Ministry of *Awqaf* in state governments. The Central and State governments have passed separate legislation to deal with *Awqaf*. An elaborate system of administration of *Awqaf* has evolved over time. **Although *Waqf* properties in India also are basically managed by the *Mutawallis* (care takers) of each *Waqf*, in each state there is a State *Waqf* board** which looks after the working of *Awqaf* in the State and performs the function of a liaison agency between the *Waqf* and the government. The *Waqf* Act 1995 has made an attempt to bring some uniformity in the *Waqf* administration in different states. By creating the Central *Waqf* Council, this Act has also succeeded in strengthening the welfare role of *Awqaf*.

The present paper reviews the whole gamut of issues involved in the *Waqf* administration. It is hoped that publication of this volume shall be useful not only for the *Waqf* administration in India, but *Awqaf* departments and *Awqaf* administrators in other countries may also benefit from this experience.

Dr. OMAR ZUHAIR HAFIZ
Acting Director, IRTI

ABOUT THE RESEARCH STUDY

In a multi-religious and developing country like India, the society is divided into various groups and pushed by socioeconomic compulsion into an arena of neck to neck competition for their very existence.

Socioeconomic and educational backwardness of Muslim minority in India has become so proverbial and glaring that they form only a fraction of a unit in the relevant statistical data. Social scientists attribute the situation, inter-alia, to the overall poverty and hunger. A hungry stomach suspends the functional ability of mental faculty and therefore suffers from lack of awareness. The poverty-stricken majority of Muslims marked with a minor group of economically affluent is a painful paradox in itself. The aristocratic expenditure on lighting, illumination and wasteful dinners in a Muslim-marriage, particularly when the ill-fated poor are striving hard for one time meal in the same vicinity, is a criminal negligence on part of the Muslim community. Those who can afford do not bother to care for others who deserve their care most. But some of the philanthropic Muslims of the olden days were not so and they rightly and accurately anticipated the gloomy future of Muslims and took care to contribute their share for the upliftment of the downtrodden. Thus they left behind them a glorious asset of numerous *Waqf* properties worth tentatively much more than 1500 millions of rupees. If managed discreetly and utilized properly, the income generated from the *Waqf* properties can considerably help in uplifting the downtrodden to the considerable heights. Thus the present can draw strength from the past to develop future.

But unfortunately the *Waqf* institution in India is most misunderstood and *Waqf* properties mismanaged. Reasons are many, varied and vicious. Legislative lacunae, administrative lapses, lack of political will, total indifferent attitude of the Muslim community and above all lack of honesty and integrity has given rise to the painful phenomenon that the *Waqf* properties are the chief-attraction of the land-grabbers. Even the graveyards are not spared.

As against this background, colossal and gigantic *Waqf* buildings with tremendous commercial potential, are not even receiving the most needed repairs and maintenance, thus converting such attractive buildings into dilapidated structures and there is a general feeling that *Waqf* property is a cheap commodity available in the commercial market.

Despite all this, much can still be done to protect the *Waqf* properties from future damage and decay provided an object oriented research survey is made, either now or never, to identify the real causes of such a situation and offer certain realistic solutions so that the best use of the *Waqf* properties could be made in order to do justice with the desires of the creator of the *Waqf (wa'qif)* in true spirit and letters, and eventually help Muslim community to grow socially, educationally and economically. Hence this study.

SCOPE OF THE RESEARCH STUDY

There is a serious dearth in India of literature of *Waqf* law, *Waqf* administration and allied matters. During the present research survey, it was noticed that there are very few books available on *Waqf* laws, and mostly they are written from the legalistic point of view to be used by lawyers practicing in the field of *Waqf* litigation. Other literature on *Waqf* matters is found scattered in the form of reports submitted by various inquiry Committees-inquiry Commissions either appointed by Central Government or by a few State Governments with limited and restricted circulation. Most of these reports, being submitted during 1970s, have become outdated and particularly in view of the fact that almost two decades have lapsed since their submission, have lost their social relevance also. Yet another source of information is to be found in the form of annual reports published by very few *Waqf* Board and even this is not regularly forthcoming. There is backlog of at least 2 to 3 years. Central *Waqf* Council is bringing out annual report of its functioning which is entirely confined to the information relating to financial assistance granted by Central *Waqf* Council to various State *Waqf* Boards. Thus the information is restricted and scanty. Now, for an honest researcher to conduct an object-oriented study in the field of *Waqf* administration in India and examine all relevant aspect, it is very difficult to collect on his desk all the literature referred to above since most of the reports of the inquiry Committee or Annual reports of the *Waqf* Board are not easily available to him. No true information can easily be obtained even through field survey or interviews as many of the respondent are subject to various constraints and pressures-official administrative, political, etc. in addition to personal apprehensions. Therefore, to obtain all the relevant material and authentic information about *Waqf*

administration and present it in a discernible and cogent manner in order to enable the reader to understand the problem in a correct perspective was not an arm-chair job. In fact it was a challenging task which gave lot of teething trouble.

Thus, the present research study distinguishes itself in many respects from the rest. In first instance, it offers the entire religion historical background of the evolution of the Islamic concept of *Waqf* commencing from the period of the Holy Prophet of Islam (PBUH), and makes a comparative study of the Islamic concept of *Waqf* with that of trust, endowments and other charitable institutions.

Secondly, the present study furnishes information about the development of *Waqf* institutions in India, right from the pre-British period to the Post-Independence period. Information about the establishment of various important *Waqf* institutions in India is furnished supported by reliable evidence and record.

Thirdly, the present study gives all important and relevant information about the laws of *Waqf* consisting of Central *Waqf* Act, 1954, the Bengal *Waqf* Act, 1934, the Uttar Pradesh *Waqf* Act, 1960, the Bombay Public Trust Act, 1950, the *Waqf* (Amendment) Act 1984, and a host of other relevant laws relating, in one way or the other, to the *Waqf* institutions in India. Incidentally it also refers to some of the old *Waqf* laws like Hyderabad Endowment and Charitable Institution Act, Dastur Amal *Awqaf of* 1349 Fasli, Bihar *Waqf* Act, etc. Although these old enactments are repealed and replaced by the Central *Waqf* Act, 1954, they are referred in order to facilitate an academic comparison of the Old Laws with those of new.

Fourthly, the present study provides a galaxy of case law on *Waqf* decided by the Privy Council of the British period and High Courts and the Supreme Court of India. However, care has been taken to see that this subject is not overburdened by hair-splitting legal gimmick, and, therefore, confined to relevant portions and legal issues decided by Indian Courts.

Fifthly, the present study distinguishes itself in furnishing critical study of administration of various State *Waqf* Boards in India, their functioning contribution and lapses etc. Therefore, Chapter III of the study dealing with State-wise Scenario supplies factual data relating to actual number of *Waqf* institutions registered with various *Waqf* Boards in India their location and

financial value, developmental potential-projects, social, economic and educational schemes, position of litigation on cause-wise basis, statistics of instances of encroachments and land grabbing of the *Waqf* properties in various States, attitudinal analysis of various State Governments in their relation to *Waqf* Board/*Waqf* properties, etc. It also informs about various welfare schemes, financed by Central *Waqf* Council in various States. *Waqf* Boards of Delhi, Assam, Kerala, Madhya Pradesh, Marathwada, Meghalay, Drissa, Rajasthan, Tripura, Andaman and Nicobar also figure in this scenario. Thus, this chapter gives detailed information about the existing State of affairs relating to *Waqf* administration in India.

Sixthly, the study attempts to touch upon briefly on some relevant aspects of *Waqf* administration in the background of the politicized society and made an impact-analysis of political constraints and lack of political-will exhibited in the governmental action.

Lastly, the study draws certain inferences supported by argument and made recommendations. While doing so, recommendations made by various other Committee/Commissions have also been referred, examined and evaluated in order to make them more relevant and object-oriented. If the authors were in agreement with such recommendations, they are endorsed and emphasized accordingly and where the authors differed from them, reasons for such departure are recorded at appropriate places. The entire study is divided into five chapters and paragraphs of each chapter are numbered to facilitate immediate reference and comparison. Lastly the study suggested "Strategies to Develop *Waqf* Administration in India". With this, the research project comes to an end, but in fact suggests a beginning to achieve its object.

CHAPTER I INTRODUCTION

1.1 EVOLUTION OF WAQF INSTITUTION

Waqf is a unique feature of the socioeconomic system of Islam. It may be noted that Islam has not initiated any new economic system or social order. Whatever was prevalent in the society and universally accepted as good (*maruf*) was accepted and allowed to continue. This uniform approach is found in respect of food, dress, customs as well as economic institutions. However, Islam has provided some basic principles and criteria through which the then prevailing customs were substantially improved.

1.2 These basic principles in the field of economics are:

1. Promotion of fellow feeling and generosity. The affluent should be generous to the poor. The indigent and the 'have-no's' have a right to a share in the wealth of the affluent.
2. One should avoid indolence, should follow the occupations of business and trade, cultivation and gardening. The skilled laborer and the craftsman are dear to Allah
3. In trade it should be meticulously observed that the weights and measures are accurate.
4. It was enjoined to establish a *bait-ul-mal* for the common good. Its heads of account and relevant regulations were prescribed (At-Tauba; Verse 60).
5. The affluent should avoid *Isra'af* (spending more than is necessary).

At the same time, Islam has given guidelines and directions through the principles of *fi'qah*, and has identified the *wajiba't* (obligations), *mo 'harrama't* (prohibitions) and *mak'ruha'at* (objectionable practices).

Those and similar doctrines have relevance to the economic thought of Islam in the same way as they do in case of other social organizations in order to guarantee their efficient functioning. These doctrines represent basic values, without which the economic structure cannot function properly.

The economic system in which the general directions of the Qur'an are incorporated can be considered as a specific system of economics thought in Islam.

Islam has also based its cultural ethos and its society as well as its economy on what was prevalent. In other words, the economy is not founded on abstract dicta, but quite obviously, Islam's economic thought is based on the tenets of the Qur'an and the good model (Uswa-e-Hasana) of the Prophet (PBUH).

1.3 Islam strongly supports the idea of mutual help, coordinated and collective efforts and efficient management for the sake of the common good.

Islam has permitted the transfer of property under an individual's possession, to other person through sale, gift or inheritance. At the same time utilization of the property by an individual to his own benefit has also been accepted in principle. However, a person can impose restrictions on the transfer of property both movable and immovable by declaring it as *Waqf* (in etymological sense *Waqf* means to stop or to hold or to detain). Thus, one can transfer the profits accruing from such property from the sphere of limited individual's benefit, to the benefit of a much larger number of people comprising the weaker sections of not only the Muslim Ummah but the entire humanity. The ownership of the property so declared as *Waqf* vests in Allah.

1.4 Although the word *Waqf* is not used in the Qur'an, the very essence of it is found in several verses of the Qur'an dealing with charity, (*Sadaqah*). Moreover, the following verses of the Qur'an among others are relevant. "They ask you what they should give in charity. Tell them: "What you can spare of your wealth as should benefit the parents, the relatives, the orphans, the needy, the wayfarers for Allah is not unaware of the good deeds that you do". (2:215).

"And in their wealth (of those who fear Allah and follow the straight path) there is a due share for the beggar and the deprived" (51:19).

1.5 The origin of the *Waqf* is traced to the Prophet (PBUH). The *Waqf* which directly fulfills the objects of *Waqfs* were created by the Prophet (PBUH) himself in the form of the Quba mosque and the mosque of the Prophet (Masjid-e-Nabavi) at Madina. The *Waqf* which fulfills the object

indirectly was created by the illustrious companion of the Prophet Omar Bin Khattab as per the following directions of the Prophet: "Tie up the property (corpus) and devote the usufruct to the welfare of human beings, and it is not to be sold or made the subject of gift or inheritance. Devote its produce to your children, your kindred, and the poor in the way of Allah". (Bukhari).

1.6 The institution of *Waqf* began to develop in the First Century AH and assumed vivid legal form in the Second Century AH.

1.7 Henry Cattan in his book, "Law in the Middle East", stated that "the institution of Waqf has developed with Islam and there is no evidence that such a complex system of appropriating usufruct as a life-interest to varying and successive classes of beneficiaries existed prior to Islam. Although the separation of ownership from the usufruct was not a new legal concept, the settlement of usufruct or property on successive generations in perpetuity for an immediate or ultimate charitable purpose, is an institution developed by the jurists during the first three centuries of Islam". Henry Cattan further observed that "the close resemblance between "Trust" and "*Waqf*" naturally leads to an enquiry as to whether the English Trust was derived from the Islamic *Waqf*. There is no doubt that the *Waqf* is the earlier of the two institutions. The legal theory of *Waqf* was developed during the eighth and ninth centuries and there are *Waqfs* today that were established more than one thousand years ago. The origin of English Trust or Uses, as they were first called, is of a later date i.e.. the thirteenth-century. It seems reasonable to suggest that the early English uses may have been derived from the Islamic system of *Awqaf*.

1.8 EARLY DOCTRINES OF WAQF 2

Joseph Schacht in his paper, "Early Doctrines of *Waqf*" described, thus:

"The origin of the institution of *waqf* cannot be traced to any single source. It is, as Heffening and Santillana have seen, the result of combinatics of several factors and various elements which were intimately fused during the formative period of Mahammadan Law".

Vol. I, 1995, p.205.

Material drawn from "*Waqf Laws and Administration of India*" by S. Athar Hussain and S. Khalid

¹ Rashid, pp.7-11.

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The early description of *waqf* doctrines is found in Mudanwana of Sahnun (d.240) in which he has collected the opinion of Malik (d. 179), of Ibn Qasim (d.191) and of other early authorities of Madina, the *Kitab Ahkam-al-Waqf* by Hilal (d.245) contains authentic information on the doctrines of Abu Hanifa (d.150), of Abdu Yusuf (d.182) and other early authorities. The *Kitab al-Siyar-el-Kabir* of Shaibani (d. 189) is third and the fourth source is *Kitab-al umm* of Shaffi (d.204).

1.9 There has been a tremendous amount of description by various schools of thought wherein the famous Mohammedan jurists differed in their opinion which mostly related to the reversibility of *Waqf* property to the *Waqif*, the classification of the beneficiaries and the very nature of *Waqf* as distinguished from and compared with *Habs*, *Sadaqa* or *Ma'uquf*. Since the detailed analysis of these schools of thought is bound to overburden the present text, suffice it to describe briefly the doctrines finally evolved under Hanafi School as under:

- 1.10 a) The *Waqf* must possess the requisite capacity to dedicate the property;
- b) The property to be endowed must be tangible; it can be movable or immovable;
- c) The property must be declared "*Waqf*" by the owner. No particular form is necessary and the declaration may be either oral or written;
- d) Declaration of *Waqf* is sufficient and delivery of possession to the *Mutawalli* (the Manager of the *Waqf* property) is not an essential condition of its validity;
- e) The dedication must be irrevocable, unconditional and permanent;
- f) The ownership of the subject matter of *Waqf* is permanently transferred to and vested in Allah the Almighty;
- g) The object of *Waqf* must be charitable, religious or pious and capable of gaining favor with the Almighty;
- h) The charitable purpose of *Waqf* serves as its legal justification and constitutes the basic condition of its validity;

1.11 TYPES OF WAQF

In India there are three types of *Waqf* recognized as under:

- i) *Waqf* by User,

-
- ii) Mashrut-ul-Khidamat
 - iii) *Waqf-al-Al-Aulad*
- i) *Waqf* by user – where any piece of land or portion of a building has been used continuously for any religious or pious purpose the owner had no objection to it or has an intention to allow to continue such practice is called a *Waqf* by user; example Mosque, Madrasah, etc.
 - ii) Mashrut-ul-Khidmat is a Public *Waqf* where the *Waqf* has devoted the property for the general benefit of Muslim community.
 - iii) *Waqf-al Al Aulad* is that unique feature of Islamic law where a property is made *Waqf* for the welfare of the *Waqf*'s own family or his children or children of his children. It is called *Waqf-al A/ Aulad* or *Waqf* for progeny.

1.12 WAQF AND COOPERATIVE MOVEMENT IS DISTINGUISHED

Islam strongly supports the idea of mutual help, coordinated effort and efficient management for the sake of common good. Thus the modern cooperative movement has close affinities with the Islamic concepts and of course, it (Cooperative movement) can be very useful in the healthy development of economy.

1.13 However, the Islamic institution *Waqf* differs from the cooperative movements. Only the members of the cooperative society are the beneficiaries. In the Islamic *Wafq* System the *Waqf* (Investor) transcends his personal interests and dedicates his personal property not for himself but for the welfare of the entire community mostly economically weaker sections of the society.

1.14 On the pattern of cooperative movement various activities can be introduced in *Auqaf* and the scope of *Auqaf* can be extended so as to include a chain of stores, cottage and major industries, hotels, public transport, health clinics, industrial training centres and schools etc. For this purpose the scope of the objects of *waqf* can be expanded and standard *waqf* deeds can be introduced. If this experiment is successfully implemented the high ideals for which the sacred institution of *waqf* stands will be fully achieved. This

experiment will be much better and nobler than that of the corporate movement. If the enterprises as enumerated above are taken up on behalf of *waqf* institutions the spirit of selflessness and an awareness of the benefit of sharing the property with the have-nots will be generated.

1.15 BRIEF HISTORY OF DEVELOPMENT OF MUSLIM *WAQF* IN INDIA

The earliest description of *Waqf* in India are found in a rare book, "Insha-i-Mahru" written by Aynul Mulk Multani, which contains letters written by him primarily to serve as models for elegant official correspondence, nevertheless, it throws light on the social, economic and political life of that period. Letter number sixteen describes *Waqfs* of Multan classified as:

- a) those created by "Salateen-e-Maaziah" i.e. "earlier kings"; and
- b) those created by "Danishmandane Mashaikh" and Um'ara, i.e., men of Wisdom, Saints and nobles³. The author of the book says that Sultan Muizuddin Sam, one of the Ghaurid Sultans, dedicated two villages in favor of Jama Masjid of Multan (1185-95 AD) and handed its administration to the Sahik-al-Islam.

1.16 After the establishment of Delhi Sultanate in 1206 AD many more *waqfs* were created. A description by Ibn Battuta offers evidence as to the mode of administration of *waqf* by *Mutawallis* during the Sultanate period. For the study of development of *waqfs* and Sultan's tendency towards the institution (para 1.17 may be refereed).

1.17 ATTITUDE OF SALATIN OF DELHI TOWARDS MUSLIM *WAQFS* IN INDIA

As already referred to in para 1.16, after the establishment of Sultanate at Delhi many more Muslim *Waqfs* came into existence. With the establishment of Muslim Rule in India large-scale construction of public places like mosques, tombs, madrasahs and graveyards, were destined mostly to become *Waqfs*, for

³ S.K. Rashid, *Waqf* Law and Administration in India, p.14.

Material drawn from *Waqfs* in U.P.: A Socio-historic Perspective, by Ateeque Khan, published in "Islamic Culture" Quarterly, January 1990, pp.39-60.

the benefit of the succeeding generations. The earliest in point of time appears to be the holy dargah of Hadrat Sayyid Shah Ibrahim Mushadi at Jalesar in Etah district of Utter Pradesh. A Persian inscription on the southern doorway of the inner enclosure of Salar Mas'ud's dargah at Bahraich states that Admir Masud was born in 405 AH and died as a martyr in 424 AH at the age of 20 years.⁵

1.18 The grave of Miran Mulhim in Badaun and of Khawja Majd al-Din and others in Bilgram, the dargah of Lal Pir in Azmat Tola at Gopaman, the graveyard on the Bilsa Road in Badaun, the Ganj-i-Shahidan of Asiwan in Unao are the few to mention which were existing in the Pre-Ghurid period.⁶

1.19 During the period of Iltutmish, a magnificent mosque called "Shamsi Mosque" was built at Badaun, under the supervision of Rukn-al-Din Firuz, the son of the Sultan in the year 1230 AD, when he was governor of Badaun.⁷

1.20 Iltutmish is also supposed to have built the Idgah at Badaun. The sultans paid a good deal of their attention in not only preserving the then existing *Waqfs* buildings, but also constructing tombs, water-reservoirs, canals, roads, sarais, cities and educational institutions. Tarikh-e-Firuz Shahi records the details of the establishments, maintenance and repairs of such *Waqf* properties during Sultanate period.⁸

1.21 Another study⁹ described the mode of creation and restoration of *Waqfs* by Delhi sultans in the same book "Tarikh-i-Firuz Shahi by Shams Siraj `Afif

Thus: "It is a custom among kings, while they are on throne, to appropriate villages and lands to religious men in order to provide means for the maintenance and repair of their tombs" Sultan Alauddin carefully repaired all tombs and restored the lands and villages after bringing into cultivation such as had been laid waste.

s The Monumental Antiquities and Inscription in the North-Western Borroness and Qudh, p.292 (Varanasi, 1969).
District Gazetteer, Hardoi, p. 225.
District Gazetteer, Badaun, p.134.
Barani, p. 283.
AS. Hussain and S. Khalid Rasheed, "Way/ Laws and Administration in India". p.15.

1.22 WAJH-I-MA'ASH

The Persian literature relating to Lodhi period placed on record the grants of several lands as Wajh-i-Ma'ash (allowance for subsistence), Wajh-i-Milk, Wazifah (stipend), *Waqf* and *Inam* (grants). These *Waqf*- grants were made for the maintenance of the religious shrines, mosques and tombs, while *Inam* grants were conferred upon the poets and artists attached to the Royal Court. At times, it happened that certain celebrated saints and sufis were given a few villages along with some plots of uncultivated land, specifically mentioned in the Farman, so that the grantee might bring it under plough." Of the two rare documents relating to Lodhi's period, the first document is the "Parwanah of Masnad-i-Ali Mahmud Khan Lodhi issued to Bandagi Miyan Shaykh Chaylda, regarding grant of two villages in the Parganah of Nidra in 899AH. The term used in this Parwana is Wajh-i-Milk. The second document is the Farman of Sultan Ibrahim Lodhi issued in 927AH with regard to land grant, made in terms of bigah, and 300 bigahs of uncultivated land out of the village Gonda was granted to Hasan son of Barkhurdar Husayn.

1.23 MADAD-I-MA'ASH

Akber the Moghul Emperor is reported to have made a generous Madad-I-Ma'ash grant in favor of ancestors belonging to a family famous for its religious learnings and named it as "Farangi Mahal" at Lucknow. The later Moghul Emperors have also bestowed Madad-I-Ma'ash grants and cash allowances for the maintenance of the madarsah.

1.24 SHAH JAHAN AND THE TAJ MAHAL

Shah Jahan, the Moghul Emperor, constructed the beautiful building under supervision of Makramat Khan and Abd-al-Karim in about twelve years time at a cost of the then fifty lakhs of rupees and completed it in the year 1631 AD and named it after his beloved wife as Taj Mahal. He also constructed a mosque "Moti Masjid" and an Ibadat Khana and endowed about 30 villages and a Parganah, both yielding about one lakh of rupees a year. The objects of these *Waqfs* as mentioned in his Parwana are recognized by Muslim law as religious, pious and charitable purposes.

10 "Waih-i-Ma'ash Grants under the Afghan Kings (1451-1555) by I.H. Siddiqui.

11 Proceedings of the Idarah-I-Ma'arif-i-Islamiah, edited by Prof. Muhammed Shafi, p.283.

Mohammad Ali Shah (the Third), a King of Awadh built in 1838, a mosque called, "Husainabad Mubarak" later named as the Husainabad Endowment. In November 1839, he deposited with the East India Company at the Residency in Lucknow, a sum of Rs. 12 lakhs and by a deed of trust dated 23 November 1839, assigned its interest to two specified trustees and agent with a direction that the income therefrom should be devoted to the payment of pensions to a number of persons and to various religious and charitable purposes. The trustees and the agent were king's own servants. Under the deed, they were to hold office generation after generation and in the event of failure of any of these persons the British Resident was to elect a substitute from amongst the pensioners. He further deposited a sum of Rs 24 lakhs in the East India Company securities with the Resident. The securities now held by the Trust are of the face value of Rs. 3,787,500. Certain events, which occurred during the Mutiny of 1857, necessitated appointment of new Superintendents, namely, Nawab Mushin al-Dawlah and Mumtaz al-Dawlah and an agent Sakhawat-Allah Khan and the trust forms were handed over to these new persons in 1860. This was, however, challenged in the Court of Law by the old trustees and the Government of India, therefore, had passed in 1878, in order to stabilize the authority of the new Trustees.¹³

1.26 MUSLIM WAQFS IN BRITISH INDIA ¹⁴

No accurate account of the Muslim *waqf* developed in India during British Rule is available and until 1920 no serious study was made to count the number of Muslim endowments in India. After 1920, several State and Central laws were placed on the Statute Book, which inter-alia, required the custodians of the *waqfs* properties compulsorily to register their endowments with the Government's agencies-Waqf Board, etc. Despite this legal requirement of compulsory registration of *waqf* property, no one seems to have a precise idea

¹² Ateeque Khan, "*Waqf* in U.P.: A Socio-Historic Perspective published in Islamic Culture Quarterly, January 1990, p.57.

¹⁴ Material drawn from Gregory C. Kozlowski, "Muslim Endowments and Society in British India", Cambridge University Press, pp.41-53.

¹³ For details please refer to Mumtaz Qader Mirza N. Safdar Vs. Advocate General, AIR (33), 1946 Oudh 244 at p.245.

of the number of Muslim *waqfs* in India. However, a serious study made in this direction by Prof. S. Khalid Raseed,¹⁵ recorded that about 100,000 *Waqf* properties are registered with the Indian Government. But no details are to be found in one place or one study about these *waqfs* properties. However, Gregory C. Kozlowski made a detail inquiry into a limited number of 40 *waqfs* properties on the basis of the information available in Legal Archives. This study which is confined to 40 *Waqfs* properties can be considered only as suggestive rather than statistically conclusive. The British system of law, land tenure and administration seem to have created hurdles in the way of creation of New *Waqfs* and therefore, the development of *waqfs* during British Rule has been very discouraging and disgusting.

1.27 TOWARDS THE PRESENT STUDY

Since the present study is directed to explore strategies to develop *Waqf* Administration in India, it is bound to examine and report on the present state of affairs, the results of which would be found incorporated at appropriate places in this study. We, therefore, close this chapter accordingly.

15 S. Khalid Rasheed "*Waqf* Administration in India, pp.25-58.

CHAPTER II
LAW RELATING TO WAQF
ADMINISTRATION
IN INDIA

2.1 SCOPE OF THE CHAPTER

At the very outset, it is pertinent to explain the scope of this Chapter in order to determine the parameters within which the law relating to *waqf* is being discussed. Several studies on the subject usually discussed the law relating to *waqf* mainly from the legalistic point of view as to the validity or otherwise of the *waqf* created, or the powers of the *mutawalli vis-a-vis Waqf Board*. Such a technically confined study is bound to centre round the statutory law and the judicial interpretations given to such statutes. But the study relating to administration of *waqf*, the impact of various other enactments on the creation, maintenance and development of *waqf* does form an essential and relevant part of the present study. Since the main thrust of the present research is aimed at the very aspect of administration of *waqf* and strategies to develop it, other legislations, too, find a place of priority with a view to examine as to how far the Indian law in its totality has helped or otherwise restricted the smooth functioning and development of *waqf* 'in India. It, thus, takes us into the area of not only discussing the *waqf* laws, both central and provincial, but a good deal of other legislations like, Income Tax, Code of Civil Procedure, Revenue laws, Public Premises Act, Urban Land Ceiling-Tenancy law, etc. These are also found incorporated in this chapter.

2.2 EVOLUTION OF THE LAW RELATING TO WAQF
ADMINISTRATION

The law relating to *waqf* forms an essential and most important branch of Islamic law. As has already been seen in the preceding chapter, the institution of *waqf* developed considerably during the time of Prophet

Mohammed (PBUH). It further continued during the following periods of the illustrious descendants of the Prophet (PBUH). Ever-since, it continued to enlarge both in size and number during the last fourteen hundred years of Islamic history. The Islamic law of *waqf*, too, developed along with the institution and eventually grew into a full-fledged, complete, exhaustive and settled system of Islamic law. Since it has been in force for the last fourteen hundred years, it developed all over the Muslim countries. In the non-Muslim countries where there is Muslim population it is recognized and practiced as an integral and essential part of the Islamic law and accepted as one of the "Personal laws" of the Muslims. The Islamic law of *waqf* is based on the Quranic injunctions dealing with charity and Sadaqa, and supplemented by the direct instructions from the Prophet (PBUH) himself.

2.3 As discussed earlier in the preceding chapter, during the period of Sultans of Delhi and Moghuls, the institution of *waqf* developed enormously (see para 1.15 to 1.26) but neither the Sultans nor the Moghuls created any separate department for *waqf* administration. The official concerned with *waqf* affairs was the Chief Ecclesiastical Officer Sadr-us-Sudur of the empire, who was directly answerable to the King. According to Hidayat-ul-Rawaid by Hidayatullah Bihari the basic qualification for the post was sound knowledge of *Shariat*, piety, honesty, scholarship, and good family background.

2.4 While the Sadr-us-Sudur was considered to be the chief link between the king and people, at the level of big towns and Parganahs Qazis were appointed who, inter-alia, looked after the *waqf* administration. The Qazi-e-Parganah was vested with powers of a district Qazi, and except hearing appeals, he used to try and dispose of civil, criminal and canon law cases.

2.5 At village level the Mulla (Moazzin) used to maintain *waqf* account in a separate register exclusively meant for this purpose.

2.6 However, in the final analysis *mutawallis* were responsible, as they are still today, to look after the administration of *waqf* under them.

2.7 WAQF ADMINISTRATION AT THE EMERGENCE OF EAST INDIA COMPANY

With the emergence of East India Company on the Indian scene the administrative matters of *waqf* in general, took the form of Statutes and Regulations promulgated for this purpose. By the famous Royal Firman, the Regulation of 1772 was passed which kept the Hindu and Muslim personal laws untouched. Section 27 of this Regulation stated, "in all suits regarding inheritance, succession, marriage, castes and other religious usages or institutions, the laws of the Qur'an with respect to Mohammadans and those of Shastras with respect to Hindus shall be invariable adhered to".

2.8 COMPANY'S INTERFERENCE BEGINS

Up to 1810, the East India Company did not interfere in the *waqf* administration. In 1810, however, its interference began with the promulgation of Regulation XIX of 1810 of Bengal Code, the preamble of which stated, thus;

"Whereas considerable endowments have been granted in land by the preceding governments of this country, and by individuals, for the support of mosques, Hindu temples, colleges and other pious and beneficial purposes, and whereas there are grounds to suppose that the produce of such land is used in many instances contrary to the intentions of the donors and whereas it is an important duty of every Government to provide that all such endowments be applied to the real interest and will of the grantor . The following rules have been framed".

2.9 Ameer Ali dealing with the above Regulation wrote, "as a result of this regulation of the Bengal Code and Regulation VI, of the Madras Code, 1817, the general superintendence was vested in the Board of Revenue and Board of Commission in the several districts subject to the overall control of the Board of Revenue".²

2.10 RELIGIOUS ENDOWMENT ACT, 1863

This Act **brought about a fundamental** change in the policy of the Government regarding responsibility for the protection and preservation of the *waqf* properties. Government of India decided to divest itself of all direct

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Vol. I, p.441(1882 Ed.).

matters concerning the management of *waqf* properties. In pursuance of this Act all properties relating to mosques, temples and other religious establishments under the possession of the Board of Revenue or local agents, too, were transferred to Trustees, managers, or superintendents and local Committees were appointed to exercise the powers of the Board of Revenue.

2.11 CHARITABLE ENDOWMENTS ACT, 1890

In 1890, the British Government passed the Charitable Endowments Act, 1890 covering in its scope charitable endowment relating to education, medical aid, relief to poor and any other object relating to Public utility. However, it did not apply to institutions of a purely religious teaching or worship.

2.12 TRUST AND WAQF DIFFERENTIATED

It is pertinent here to note that the essentials of Islamic law of *waqf* fundamentally differed from the English law of Trust (1:7). Therefore, despite many similarities, *Waqf* and Trust differed in the following points as given in tabulated form by Varma in his Mohammadan laws:

#	<u>Trust</u>	<u>Waqf</u>
1.	No particular motive is necessary	1. It is generally made with a pious religious or charitable motive. The <i>Waqif</i> cannot reserve any right to benefit for himself; except to some extent under Hanafi law. The object
2.	The founder may himself be a beneficiary.	2. must be recognized by Muslim law as pious, religious and charitable and in case of family settlement, the ultimate object must be some benefit to mankind.
3.	It may be for a lawful object.	3. The property vests in God.
4.	The property vests in the Trustee.	4. <i>A Mutawalli</i> is not a manager or Superintendent.
5.	A trustee has got larger powers than <i>a Mutawalli</i> .	5. <i>A Waqf</i> is perpetual, irrevocable and inalienable.
6.	It is not necessary that Trust may be a perpetual, irrevocable or inalienable.	6. The "Cy-pres" doctrine is applied and the property may be applied to some other objects.
7.	It results for the benefit of the founder when it is incapable of execution and the property has not been exhausted.	

Thus, the Islamic law of *waqf* differed substantially from the English law of Trusts. Probably this was the reason apart from religious bias, which persuaded English Courts to pronounce judgements contradictory to or in violation of the Islamic rules of law. Since the English Courts in British India followed the English law, this bent of mind culminated in the most revolutionary and controversial judgement which came in direct conflict with Islamic law of *waqf* in the year 1894. Under the Islamic law, a *waqf* could be created not only for public charity but also for the purpose of benefit to one's own family which is called *Waqf-al Al-Aulad*, whereas the English law knew only of public charity. Thus their Lordships of Privy Council deciding the case of Abul Fatah Mohammad Ishak Vs. Russamoy Dhur Chowdhry³ held that, if the primary object of the *waqf* was the aggrandizement of the family and the gift to charity was illusory whether from its small amount or from its uncertainty and remoteness, the *waqf*, for the benefit of the family was invalid and, thus, has no effect. This decision caused a great furore in the Muslim community as this pronouncement, particularly, paralyzed the power of a Muslim to make a settlement in favor of his family, children and descendants and what is recognized by Islamic law of *Waqf al Al-Aulad*.

2.13 THE RELEVANT SECTIONS OF THE CODE OF CIVIL PROCEDURE, 1908

Although sections 92 and 93 of the Civil Procedure Code of 1908 specifically refer to Public charity they, however, did not successfully apply to Muslim *Waqfs* with all its derivative forms. However, they were applicable to Muslim *Waqfs* also in as much as they contained public purposes within the meaning of section 92. If the reliefs mentioned in the section are claimed with reference to a *waqf* property or its trustee (in Islamic law, *mutawalli*), the section does apply.

Section 92 of the Civil Procedure Code 1908, dealing with "Public Charities" gave crucial power to the Advocate General, or two or more persons having an interest in the trust, with the prior consent of the Advocate General, to invoke the Principal Civil Court of original jurisdiction in the case of any alleged breach of any trust created for public purposes of a charitable or religious nature. In such cases, the direction of the court could be obtained for the purposes of :

³ Cal XVIII, 399, 22.L.A. 76.

- a) removing a trustee;
 - b) appointing a new trustee;
 - c) vesting any property in a trustee; directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
 - d) directing accounts and enquiries;
 - e) declaring what proportion of the trust property or the interest therein shall be allocated to any particular object of the trust;
 - f) authorizing the whole or any part of the trust property to be left, sold, mortgaged or exchanged;
 - g) setting a scheme or in general; and
 - h) granting such orders as the circumstances of the case may demand.
- While the Advocate General was empowered to invoke court under sections 91 and 92 of Civil Procedure Code, within the presidency towns, in the muffasils, the same power under section 93 of Civil Procedure Code with the previous sanction of the State Government, was exercised also by the Collector or by such Officer as the State Government may appoint in this behalf.

2.14 THE MUSSALMAN *WAQF* VALIDATING ACT, 1913

The hardship created by Abul Fatah's case (see para 2.13) was not covered totally by the enactment of *Waqf* Validating Act, 1913 (Act 6 of 1913) as their Lordships of Privy Council, in number of cases, held that the Act had no retrospective effect, therefore, it cannot be construed as validating *waqf* deeds executed prior to the year 1913. Thereupon the Mussalman *Waqf* Validating Act, 1930 (Act XXXIII of 1930) was passed which conferred retrospective operation to the *Waqf* Validating Act, 1913 (Act 6 of 1913).

2.15 BRIEF SURVEY OF LAWS RELATING TO *WAQF* ADMINISTRATION⁴

Since 1913, a good number of Acts have been passed both by Central and State Legislatures to regulate administration of *waqfs*, a brief introduction of these Acts is being furnished hereunder:

⁴ S. Khalid Rasheed, *Waqf* laws and Administration in India, pp.27-37.

2.16 THE OFFICIAL TRUSTEES ACT, 1913

By virtue of section 4 of the Official Trustees Act, 1913, certain persons specified therein, could be appointed as trustee by any person intending to create a *waqf* for a purpose other than the religious purpose.

It covered in its scope *waqfs* created mainly for charitable purposes. The trustees of any such trust, except religious ones, and all beneficiaries of the trust could transfer their charge to the official trustee with his consent.

2.17 THE CHARITABLE AND RELIGIOUS TRUSTS ACT, 1920

This Act provided more purposeful control over the administration of charitable and religious trusts. Although this Act did not provide for any administrative machinery to exercise supervision over the *waqfs*, any interested person could apply to the court of the District Judge to seek information, from the trustee regarding value, condition, management, nature and object of *waqf*. The court direction could be obtained to get the accounts examined and audited. However, this Act applied only to *waqfs* created for public charity, and in particular, it did not apply to private *waqfs*.

2.18 THE MUSSALMAN WAQF ACT, 1923

In 1923, the Mussalman *Waqf* Act was passed requiring *mutawalli* or every *waqf*, except of a *waqf -al A/ Aulad*, to furnish to the court of the District Judge, a statement giving information regarding description of the property, gross annual income, gross income accumulated during previous five years, amount payable as revenue, cess or rents, annual estimate or expenditure incurred, etc. This Act did ensure auditing of the accounts of *mutawallis*, but resulted in causing heavy burden of work of Civil Courts. Since no separate administrative machinery was contemplated for the supervision of *Waqf* administration, the Act could not help improving *waqf* administration.

2.19 THE HYDERABAD ENDOWMENTS REGULATIONS, 1349 (FASLI)

H.E.H. the Nizam of Hyderabad promulgated a Regulation of 1349 F known as Hyderabad Endowment Regulations under which a Nazim Umoor-e-Mazhabi i.e., Director Ecclesiastical Department was appointed to supervise *waqf* administration on behalf of the Government. These Regulations, though brief, provided for every important aspect of the *waqf* administration in the

erstwhile Hyderabad Government. It contained sixteen (16) sections and provided for registration of *waqf* properties, maintenance of "*Kitab-ul-Awqaf* " (*Waqf* register) (S 3 to 11) in the prescribed manner by the Director Ecclesiastical Department. (The present author held this post in the year 1948).

The unique feature of the Hyderabad Endowment Regulations, 1349 F was its secular character which provided for Registration and the supervision of not only the Hindu and the Muslim *Waqfs* but endowments of all religions. Therefore, the rules made under these Regulations were very exhaustive numbering about 525.

The Regulations also laid down procedure for administration of *waqf* property (S.12), Section 13, dealing with the duties of the *mutawalli*, imposed heavy obligation on him, just in two sentences that "it shall be the duty of the *mutawalli* to manage the *waqf* property in accordance with terms and conditions as if it were his own property". And in this regard the rights of the *mutawalli* as per the conditions of *waqf* would be same as are given legally to any trustee. Section 14 of the Hyderabad Endowments Regulations 1349 F was a crucial one providing for restoring/obtaining the possession of a *waqf* property (duly registered with the Registrar of the Ecclesiastical Department) by the First Class Magistrate in the same manner. The order of Director of Ecclesiastical Department was to be executed as if it was a decree issued under the relevant provision of law relating to execution of a court decree. The miscellaneous provisions relating to the power/procedures of the Ecclesiastical Department, appeals and supervision were provided under section 15 to 18. However, in pursuance of Andhra Pradesh Adaptation of laws Order (1 of 1957) the Hyderabad Endowment Regulations ceased to apply to Muslim *Waqfs* with effect from the commencement of the *Waqf* Act of 1954.

2.20 ANOTHER SPADE OF WAQF LAWS

Despite several statutory efforts to improve *Waqf* Administration in India, the grievance about the misappropriation of *awqaf* against the intention of the *Waqf* and the mal-administration in the matters of maintenance of *waqf* properties continued together momentum. Public resentment against all this persuaded enactment of another spade of *waqf* legislations. Thus, the following enactments are Added to the Statute Book:

1. Bihar and Orissa Mussalman *Waqf* Act, 1926.
2. Bengal *Waqf* Act, 1934.

3. Bombay Mussalman *Waqf* Act, 1935.
4. United Provinces Muslim *Waqfs* Act 1936.
5. Delhi Muslim *Waqf* Act, 1943.
6. Bombay Mussalman *Waqf* (Amendment) Act 1945.

2.21 Most of the above Acts were repealed and replaced by the Central *Waqf* Act, 1954, except the State of West Bengal where the Bengal *Waqf* Act, 1934 was applicable, the State of Uttar Pradesh where the Uttar Pradesh Muslims *Waqf* Act, 1960 was applicable. While in Maharashtra, the Central *Waqf* Act was applicable to the Maratwada area, and in Gujarat, it was applicable only to Kutch region. In the rest of the areas of these States, the Bombay Public Trust Act, 1950 was applicable. Thus, there were two systems of *Waqf* administration in the same states.

2.22 THE BENGAL WAQF ACT, 1934

This Act can rightly be considered a pioneer in as much as it introduced for the first time the idea of formation of *Waqf* Board and appointment of *Waqf* Commissioner. It consisted of 93 sections divided into thirteen Chapters.

The Commissioner of *Waqf* had to be a Muslim (S.16) appointed ordinarily for a period of 5 years. He was declared as a whole time Officer (S.17). He could be removed by the State Government, if found guilty of misconduct or neglect, rendering his removal expedient (S.21). He was given the status of a corporate soul having perpetual succession and official seal, with a right to sue or be sued in its corporate name (S.22).

Chapter III enumerated the functions of the Board and the Commissioner. The functions of the Commissioner included inter-alia, investigation and determination of the *waqf* properties, ensuring the proper application of the *waqf* funds in accordance with the *waqif's* intention and to hold in his custody the particulars relating to *Waqf-al Al-Aulad* (S.27(1)).

The functions of the Board included inter-alia, utilization of surplus income of a *waqf*, or in the absence of any direction by the *waqif*, declaring what proportion of the income shall be allocated to a particular object, constituting committees, and generally to advise the Commissioner in exercise of his powers and duties under the Act S. 27 (2).

The Commissioner, or any person authorized by him, was given powers for the purposes of compelling attendance of witnesses and to compel production of documents, for which he was considered a Civil Court constituted under the provision of the Code of Civil Procedure, 1908.

Chapter IV provided for enrolment of *waqf* with all relevant details (S.44).

Chapter V required the submission of *Waqf's* accounts (S.48) duly audited (S. 49).

Chapter VI containing a single section 52, provided for statements of *waqf-al Al Aulad* giving full information regarding its income, expenditure, tax payment, etc.

Chapter VII imposed a bar on transfer of a *Waqf'* property by way of sale, gift, mortgage, exchange or by way of lease for more than 5 years without the previous permission of the Commissioner (S.53). However, transfer for the preservation of *Waqf* property under certification from the Commissioner, and lease for cultivation purposes is excepted (Se. 53, cl (3) & (4).

Chapter VIII death with matters relating to *mutawallis*, the right they can exercise, the penalties which could be imposed upon them and their removal (S.56 to 58).

Chapter IX was concerned with finances, annual contribution payable to the Board (S.5), *Waqf* fund (S.61) application of *Waqf* fund (S. 62) accounts of *Waqf* funds (S. 63) and their audit (S.64). Sums certified due recoverable were declared as "Public demands" and recovered as such (S.66).

Chapter X was an important part of the Act relating to judicial proceedings. The State Government is empowered to make rules for the procedure to be followed in all suits or proceedings relating to any *Waqf* property and not involving any claim by or against a stranger to the *Waqf* (S.67).

Section 74 was important as it stayed any acquisition proceedings under the land Acquisition Act 1894 by the Collector, unless the Commissioner was given an opportunity to appear before the Collector and plead the case as a party. Collector could not pass any order under Section 31 or 32 of Land Acquisition Act, unless the *Waqf* Commissioner was heard. The last three

Chapters XI, XII and XIII dealt with amendments/repeal, Rules/Bye-laws, and miscellaneous matters respectively.

2.23 THE BOMBAY PUBLIC TRUSTS ACT, 1950

As already stated, the Bombay Public Trusts Act, 1950 was the main Act which was applicable to the whole of the State of Maharashtra, except the areas of Marathwada and the Kutch in Gujrat, to which the Central Act of 1954 was applicable.

The Act was applicable to all Public Trusts, whether created for religious, charitable or pious purposes. Thus the Muslim *waqf*, too, were covered within its ambit by including the word "*Waqf*" in the definition of "Public Trust", as given in Section 2, Clause 13. To be more specific in this regard, the Act defined "*Waqf*" in clause 19 of the Section 2, in the same manner as is defined under other enactment's relating to Muslim *Waqfs*, with a crucial exception to the *Waif-al Al Aulad*. Thus the definition of "*Waqf*" under this Act did not include *Waqf* as described in Section 3 of the Mussalman *Waqf* validating Act, 1913 under which a *Waqf-al Al Aulad* was defined. Therefore, in efforts the Bombay Public Trusts Act, 1950, while applicable to Muslim *Waqf* of Public character, did not apply to *Waqf-al Al-Aulad* being in the nature of a Private Character.

By virtue of a magnetic Section 29, the Act pulled in its filed of purview all public Trusts registered under other Acts, and thus declares that "all Public trusts registered under any fo the enactments specified in Schedule "A" and Schedule "AA", shall be deemed to have been registered under this Act". Schedule A included the Mussalman *Waqf* validating Act, 1923 as amended by Bombay Act of 1935.

By and through another important section 85, the Act not only repealed the application of the Religious Endowments Act, 1863, but also given to itself the effect that "on the date of the application of this Act to any of the Public Trust", other enactments as are specified in schedule "A" which apply to such Public Trusts, shall cease to apply to such Public Trusts.

Chapter III of the Act specifies the charitable purposes and validity of certain Public trusts and includes the following within the meaning of "A Charitable Purpose":

1. relief of poverty or distress,
2. education
3. medical relief,
4. the advancement of any other object of general public utility. But does not include a purpose which relates to:
 - a) exclusively to sports, or
 - b) exclusively to religious Teaching or Worship (Section 9).

A Public trust created for such objects as dharma, dharmada or Punyakar, Punyadan is not deemed to be void, only on the ground that the objects for which it is created are unascertained or unascertainable (explanation to See 10).

A Public trust created for purposes some of which are charitable or religious and some are not, shall not be deemed to be void (Sec.11).

Chapter VI, pertained to the control of the Public trusts by the Charity Commissioner who was empowered to inspect and supervise the Public trusts and its accounts etc. (Sections 37 to 41).

Certain special provisions were made in Chapter VII in respects of religious and charitable institutions and endowments, which vests in the State Government (Section 56-C). Other sections of the Chapter provided for the appointments of the Committee of Management's (56-E), terms of Office of the members (56-F), Disqualifications of membership (56-G), and the power of Government to appoint new member (56-H), Meetings and procedures for Committee (56-J), Power of Committee to appoint Sub-Committees (56-K), appointment/terms and conditions of service of Secretary and other servants (S. 56L and 56 M).

Chapter VIII was an important chapter, which provided for the establishment of a fund to be called the Public Trusts Administration Fund (Sec. 57).

Offences and Penalties were provided under Section 66 to 67, constituting the Chapter X.

Chapter XI listed the functions and duties of Charity Commissioner.

Miscellaneous provisions were clubbed together under Chapter XII, from sections 70 to 88 which included provisions for costs, proceedings, court fee, Bar of jurisdiction, Trial of Offences under this Act and provisions for removal of difficulties.

Constitutional Validity of the Act

Although the Bombay Public Trusts Act contained revolutionary provisions, some have been challenged as unconstitutional.

Appointment of Charity Commission as Trustee invalid

It was held that the provisions of section 44 of the Bombay Public Trust Act, 1950 relating to the appointment of the Charity Commissioner as a trustee of any public trust by the Court without any reservation in regard to religious institutions like temple and Mats was unconstitutional and, therefore, void.

Further, clauses 3 to 6 of section 47 of the Act dealing with the appointment of the Charity Commissioner by order to the Court as Trustee of a trust was held unconstitutional.

Diversion of Trusts Fund

It was held that the Article 26 of the constitution has undoubtedly guaranteed a religious sect or denomination to manage its own affairs in matters of religion and this includes the right to spend the Trust property or its income for religion and religious purposes according to the desire of the founder of the trust. Diversion of such funds to any purpose which the Charity Commissioner or the court considers expedient, (Sec. 55, 56), although the original objects of the founder can still be carried out, is an unwarrantable encroachment on the Freedom of Religious institutions. Therefore, clause (3) of Sec. 55 and clause (1) of Section 56 were held void.

2.24 THE UTTAR PRADISH MUSLIM WAQFS ACT, 1960

For better governance, administration and supervision of the *Awqaf* in Uttar Pradesh, the Uttar Pradesh Muslim *Waqfs* Act 1936, was passed. However, the limited powers conferred on the *Waqf* Board did not prove much effective. With the passage of time and in the light of the experience gained the

above Act was repealed and a new comprehensive Act No. XVI of 1960 came into being, which conferred larger powers on *Waqf* Board. Under this Act, the Board could now remove the delinquent *mutawalli* and determine the objects and manner of application of *Waqf* funds where the objects had failed or could not be accomplished or were not defined with precision. Again in 1971, the Act was further amended restricting the transfer of immovable property and recovery of such property transferred without the prior permission of the Board.

Application of the Act

The Uttar Pradesh Muslim *Waqf* Act, 1960 was made applicable to all *Waqfs* whether created before or after the commencement of this Act. It was also extended to bring in its fold the *Waqfs* governed by the Hussainabad Endowment Act, 1878, the Trusts known as King's side and the Queen's side of Shah Najaf Trust, the *Waqfs* known as *Waqf* Abbu Saheb, Rauza Kazmain *Waqf*, and *Waqf* Wazir Begum, Lucknow, and any other endowment, trust of *Waqf* hitherto administered by the Trustees appointed under the Hussainabad Endowment Act (C 1 [1] & [2] of Sec. 2).

Chapter I of the Act provided for the survey of the *Waqf* (Sec. 6) and appointed a Commissioner of *Waqfs* for this purpose (Sec. 4).

Constitution of Sunni and Shia Central Boards

The Act, under Chapter II, provided for the establishment of Central Boards (Sec. 10) separately for Sunni (Sec. 11) and Shia Boards (Sec. 12).

The election/nomination or, as the case may be, co-option of the President (S.15) and appointment of its Secretary (S.17) and other staff of the Board (S.18) forms the subject-matter of this chapter.

Functions of the Board

Section 19 of the Act enumerates the list of the functions assigned to the Board for the general supervision of the *Waqf* properties.

In addition to the above, the Board was further empowered (S.19 [2] [0]), to remove a *mutawalli* or appoint a new *mutawalli* and to put him in possession of the *Waqf* property, provided however, that the Board in this regard shall be guided by the direction of the *Waqif*, as far as possible.

Registration of *Waqfs*

Chapter III containing sections 28 to 33 provided for the registration of *Waqf* properties, which were more or less similar to the corresponding provision of other *Waqf* Acts.

***Mutawallis* and *Waqf* Accounts**

Chapter VI laid down the duties of *Mutawallis* (s.49) which mostly related to follow the direction of the Board, furnish returns, allow inspection and discharge all Public dues.

***Waqf* Tribunal**

This was a special feature of the Act, which provided for the constitution of as many tribunals as may be necessary for the purpose of this Act. The Tribunal consisted of only one person who was to be a judicial officer not below the rank of a Civil Judge (Sec. 70).

2.25 DARGAH KHWAJA MOINUDDIN CHISHTI AJMER

The shrine of Khawja Moinuddin Chishti is the only shrine in India for administration of which a separate Central Legislation is enacted, known as The Dargah Khwaja Sahab'Act, 1955". Before this Act, Dargah Khwaja Sahed Act, 1936 and the Dargah Khwaja Saheb (Emergency provisions) Act, 1950 were enacted, yet mostly the managerial affairs were shared between "Sajjadanashin" and "Khadims" of Dargah and their rights were granted by the Mughal Kings through Royal "Firmans" and "Sanad". One of these rights related to the right of the Khadim (attendant) to receive and appropriate offering "Nazar". In its etymological sense the Dictionary of Islam, defined "Nazar" as meaning "Vow". It is given in the name of God or some Muslim Saint (although against the tenets of Islam).

2.26 The circumstances that led to the passing of the Central Legislation included the addition of Zamindari and Jagirdari system the enforcement of which abolished certain endowments created in perpetuity by the Mughal Kings in favor of the Dargah. The Nizam of Hyderabad was also giving some annual grants which have been abolished. All this led to the financial crises giving rise to the consequential Chaos in the administration of the Dargah. The

5 Dictionary Islam, Thomas Patrick Hughis (London 1930).

Government of India, therefore, appointed in 1949 an "Enquiry Committee under the headship of Justice Ghulam Hasan" to inquire into and report on the administration of Dargah endowment and also to recommend measures for the efficient management and conservation of the Committee. The Dargah Khawaja Saheb Act, 1955 was passed by the Parliament. This Act repealed the previous two pieces of legislation, namely, the Dargah Khawaja Saheb Act, 1936 and the Dargah Khawaja Saheb (Emergency Provisions) Act, 1950. It is therefore, now, pertinent to refer briefly to the salient features of this Act.

2.27 THE DARGAH KHWAJA SAHEB ACT, 1955

Preamble

The Dargah Khwaja Saheb Act, 1955, in its preamble declares that this is an Act to make provisions for the proper administration of the Dargah and the Endowment of the Dargah. Thus, the term "Dargah Endowment" is defined to include in it, the Dargah Khwaja Saheb Ajmer; all buildings and movable property within the boundaries of the Dargah Sharif; Dargah Jagir, including all land, houses and shops and all immovable property wherever situated belonging to the Dargah Shari (Section 2 [d]). Apart from this, an eye-catching provision (Sec. 2 [d] [iv]), expands the concept and include in the term of Dargah endowments, all other property and all income derived from any source whatsoever dedicated to the Dargah or placed for any religious, pious or charitable purposes under the Dargah Administration, including the Jagirdari villages of Hokran and Kishenpur in Ajmer and all such "Nazars" or offering as are received on behalf of the Dargah by the Nazim or any person authorized by him (clause [v] of Section 2[d]).

2.28 COMPOSITION OF THE COMMITTEE

Section 5 of the Act provides for the composition of the Committee, which shall consist of not less than five and not more than nine Hanafi Muslims as members to be appointed by the Central Government do. The members are appointed for a term of five years (Sec. 6). However, during this span of time, the Central Government is empowered to remove any member from his office on the grounds of his being of unsoundmind, insolvent, or convicted or any offence involving moral turpitude, or his absence for a period of consecutive twelve months or his presence in the opinion of the Central Government, would be prejudicial to the interests of the Dargah (sub. Section 2 of Section 6). The Committee also elects its President and Vice President (Section 7).

2.29 POWERS AND DUTIES OF THE COMMITTEE

The Committee is vested with the powers and charged with the duties to administer, control and manage the Dargah Endowment; to upkeep the buildings within the boundaries of the Dargah Sharif in good repair and power order; to receive all moneys and other income of the Dargah Endowment; to ensure proper implementation of the Endowment Fund; to pay salaries etc. and make all other payments due out of, or charged on, the revenues or income of the Dargah Endowment. In addition, the Committee is also responsible to determine the privileges of the "Khadims" and to regulate their presence in the Dargah through licence granted to them to define the powers and duties of the Advisory Committee; to determine the powers and functions, if any, which the Sajjadanashin may exercise in relation to the Dargah. The Committee is also empowered to delegate to the Nazim such of the powers and functions, as the Committee may think fit. In brief, the Committee is expected to do all such things, which are conducive to the efficient administration of the Dargah (Section 11). However, in discharging its duties and exercising its powers the Committee is obliged to follow the Hanaif rules of Muslim law and other rites established by the tenets of Chishti Saint (Sec.15). The Committee, further, has to publish annual report along with audited account in official Gazette (Sec. 19).

2.30 POWER TO SOLICIT "NAZAR" AND "OFFERINGS"

The Act, vide section 14, confers powers on the Nazim or any person authorized by him to solicit and receive on behalf of the Dargah any "nazars" or offering from any person and notwithstanding anything contained in any rule of law or decision to the contrary, no other person can receive any nazar or offering. The contravention of this provision is made punishable through an amendment in 1964, with (i.e., which may extend to one thousand rupees (Sub. Sec. 2 of Sec 14).

2.31 THE BOARD OF ARBITRATION

The Act contains another important provision relating to the resolution of any dispute relating to any right of the Sajjadanashin, Khadim, or any other person, except any right relating to any religious usage or custom, by a Board of Arbitration constituted under Section 16 of the Act. The Board of Arbitration consists of a person who holds or has held the office of a district Judge, to be nominated by the Central Government apart from a nominee of the Committee and a nominee of the other party to the dispute.

2.32 ENFORCEMENT OF FINAL ORDERS

The very useful and effective provision relates to the enforcement of any final order passed by the Committee against any person to directing him to do or to abstain from doing any thing and such orders are executed by the Civil Court of the relevant local limits as if it were a decree or order passed by the Civil Court (Sec. 18).

2.33 THE CONSTITUTIONAL VALIDITY OF THE ACT

The reformatory steps purported by the Act were not appreciated by the Khadims in proper perspective and they challenged the constitutional validity of the Act in *Syed Hashim Ali Vs Dargah Committee*⁶. The High Court of Rajasthan struck down certain sections of the Act as ultra vires the constitution. However, in appeal, the Supreme Court of India reversed the decision of the High Court and gave its verdict in favor of the Dargah Committee regarding the responsibility of the Dargah management and appropriation of Nazar. In fact, by doing so the Supreme Court of India approved the old findings of the Privy Council in *Syed Altaf Hussain Vs Diwan Syed Ali*.⁷

2.34 THE **WAQF** ACT, 1954

The *Waqf* Act, 1954 was the Central Legislation which governed the entire field of *Waqf* 'Administration in the length and breadth of the country up to 1955 except the areas covered by certain other enactment, namely: The Bengal *Waqf* Act, 1934, the Bombay Public Trust, Act, 1950, the Uttar Pradesh Muslim *Waqfs* Act, 1960, and the Dargah Khawja Saheb Act, 1955 (see para 2.22 to 2.60. The State of Jammu and Kashmir was also excepted by the *Waqf* Act, 1954.

2.35 **WAQF** INQUIRY COMMITTEE

The *Waqf* Act, 1954, was aimed at providing for better administration and supervision of *Waqfs*. However, it did not yield the desired results and the condition of the *Waqf* properties throughout the country was deplorable. The working of the *Waqf* Boards established under the Act was also not satisfactory and in many cases received public criticism. This attracted the attention of the Central Government and a Paramilitary Committee known as the *Waqf* Industry

⁶ AIR 1959 Rajasthan, 177.
⁷ AIR 1938, PC 71.

Committee was constituted in the year 1969 with Mr. Ghulam Rasool as its Secretary for the purpose of evaluating the working of the Act and for making an inquiry into the administration of *Waqf* at all levels. The *Waqf* Inquiry Committee made a larger number of recommendations envisaging a through restructuring of *Waqf* administration designed to improve the financial position of the *Waqf* institutions and to plug the loop holes noticed in the working of the Act. The Committee submitted its interim report in 1973 and the final report in mid seventies and suggested elaborate amendments in the Central *Waqf* Act. The Report of the *Waqf* Inquiry Committee was examined by the Central Government in consultation with the State Government, the Central *Waqf* Council, Chairmen of *Waqf* Boards, Muslim Members of Parliament and Minorities Commission. Various views and different shades of opinion on the subject were expressed at different forums. In the year 1984, the *Waqf* (Amendment) Act 1984 was passed, which thoroughly restructured the original Act by amending many crucial, legal provisions of the Act. However, there was a strong opposition to the proposed amendment Act and it was felt that in case it was extend to the States it will create problems. As a result these amendments, although received the assent of the President on 10.10.1984, were not brought into force and notification was not published in the Official Gazette by the Central Government. Therefore, except section 66-G and 66-H, the entire gamut of amendment remained as dead letter on the Statute Book. However, this Act has its own academic value and therefore, the salient features of the Amendment Act 1984 are being discussed.

2.36 THE **WAQF** (AMENDMENT) ACT 1984:⁸ SALIENT FEATURES

Under the Amendment Act 1984 the Definition of *Waqf* has been modified to include a dedication made by a non-Muslim which would, however, be void if on the death of the donor the dedication is opposed by his legal representatives (Section 3).

The definition of *mutawalli* is expended to include any person who is a *mutawalli* of a *Waqf* by virtue of any custom; and any person, Committee or corporation for the time being managing or administering any *Waqf*. The Tribunal constituted under Section 55 has been empowered to entertain applications relating to the disputes arising out of the list of the *Waqf* properties

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Statement of objects and reasons as reprinted in Laws of *Waqf* by Istafa Husain, P.XVIII to XXIV.

published in the Official Gazette. However, if any matter is dealt with by Civil Court then the Tribunal's jurisdiction is barred to entertain such matters (Section 6-A). *Waqf* Board is given wider power to reorganize its administrative set up if felt necessary to improve better administration of the *Waqf* in the State (Section 9). The mode of constituting the *Waqf* Boards, too, undergone a change to make it partly by appointment and partly by election (Section 10). The Chairman of the *Waqf* Board is to be elected from amongst themselves, but the *Waqf* Commissioner shall not be elected as Chairman (Section 10 [30]). Disqualification of a person to be appointed as member or to continue as a member of the *Waqf* Board included conviction for an offence involving moral turpitude; or such conviction has not been reversed or pardoned; or he has been removed previously from his office as *member/mutawalli* by order of the Court or Tribunal.

Power to Develop Urban Land of *Waqf* Property

Section 15-A empowered the Board to under take development of Urban land belonging to *Waqf* property subject to various specified conditions. This is a very significant and beneficial provision, but due to the non-application of the management Act, 1984 the desired objet suffered badly. Section 15-B empowered the *Waqf* Commissioner to inspect movable or immovable *Waqf* properties. Section 15-C and 15-D prescribed the procedure for the recovery of money of *Waqf* property from the concerned *mutawalli*.

New section 26-A empowers the *Waqf* Commissioner to appoint Executive Officer for every *Waqf* 'having a gross annual income of not less than fifty thousand rupees. The Excessive Officer has to discharge his functions under the direction, supervision and control of the *Waqf* Commissioner (Sub-section 2). The Executive Officer shall not interfere with any religious duties or any usage or custom of the *Waqf* sanctioned by the Muslim law (Sub-section 3).

Section 36-C imposed restriction on purchase of property on behalf of the *Waqf* and lays down that notwithstanding anything contained in a *Waqf* deed, no immovable property shall be purchased for or on behalf of any *Waqf* from the funds of any *Waqf* except with the prior sanction of the *Waqf* Commissioner. Further the *Waqf* Commissioner is required not to accord permission unless he considers such purchase or acquisition necessary or beneficial to the *Waqf* and that the price proposed to be paid is adequate and reasonable. Before such sanction is accorded the particulars relating to the proposed transaction are published in the Official Gazette inviting objections/suggestions with respect thereto.

The *Waqf* Commissioner is also empowered to take necessary steps for the removal of encroachments from the *Waqf* property according to the procedure laid down in Section 36-D. If the *Waqf* Commissioner is satisfied that the property has been encroached, he may by an order, require the encroacher to remove such encroachment and deliver the possession of the land, building, space or other property encroached. Such orders of the *Waqf* Commissioner are enforced through the Sub-Divisional Magistrate within the local limits of whose jurisdiction the *Waqf* property is situated.

Any lease of the *Waqf* property exceeding three years is declared void and of no effect notwithstanding anything contained in the *Waqf* deed or the law time being in force. However, a lease or sub-lease for a period of less than three years with the sanction of the *Waqf* Board subject to certain conditions is permissible under Section 36-F.

The *Waqf* (Amendment) Act, 1984, widened Section 43-A, provided for the assumption of direct management of certain *Waqf* properties where no suitable person is available for appointment as *mutawalli* or where the Board is satisfied, for reasons to be recorded in writing, that filling up of the vacancy in the office of *mutawalli* is prejudicial to the interest of the *Waqf*. In such a case the Board by notification in the Official Gazette may assume direct management of the *Waqf*. The correctness, legality or propriety of such notification of the Board may be examined by the State Government on its own motion or on application from any person interested in the *Waqf*. New Sub-Section (3) and (1) are added in 1984.

Under certain conditions specified in Section 43-A, the Government may exercise its powers to appoint or remove *mutawalli*. Section 43-C provides for suppression of the Committee of management appointed by the *Waqf* Commissioner under specified circumstances. Under Section 43-E *mutawalli* or the Committee of management is required to deliver the possessions of the *Waqf* property along with records, accounts including cash to the successor. The *Waqf* Commissioner is empowered to frame scheme for the administration of *Waqf* (Section 43-F).

New Section 46-A empowered the *Waqf* Commissioner to direct banks or other persons with whom any money belonging to the *Waqf* is deposited, to pay out of such money, the contribution payable by such *Waqf* to the *Waqf* Board.

Judicial Proceedings

Amended Section 55 provided for the appointment, powers and jurisdiction of tribunal by notification in Official Gazette for the determination of any dispute, question or other matter relating to the *Waqf*. The tribunal consists of one person from the State Judicial services holding a rank not below that of a District and Session Judge or of a Civil Court to exercise certain powers of a Civil Court constituted under the provisions of Civil Procedure Code 1908. Other matter relating to judicial proceeding include that the Tribunal shall hold proceedings as expeditiously as possible and furnish copies of its decision to the parties (Section 55-A). Amendment of decision (Section 55-B), Bar of Jurisdiction of Civil Court in respect of matters determined by the Tribunal (Section 55-C) and appointment of receiver in certain cases (Section 55-D) are the other matters included in this chapter. The decision of the Tribunal is declared as final and binding on the parties and shall have the force of a decree made by a Civil Court (Section 55 clause 7). No appeal shall lie against any decision or order given by the Tribunal, however, the High Court may on its accord or on application of the Board or any person aggrieved, call for the record and examine any question relating to any dispute etc. The High Court can confirm, modify or reverse the orders of the Tribunal (Section 55 clause 9).

Secular Activities of Waqf

For the purposes of regulating secular activities of the *Waqf*, the Central Government has the powers to lay down general principles and policies of *Waqf* Administration so far as they relate to the secular activities. It may coordinate the functions of the Central *Waqf* Council, the *Waqf* Commissioner and the Board in so far as they relate to secular activities (Section 62). The State Government may, from time to time, give such directions as it deem fit to the Board for the performance of its function and the *Waqf* Board is obliged to comply with any such direction.

On application of the *Waqf* (Amendment) Act, 1984, Sections 92 and 93 of the Code of Civil Procedure cease to apply to any *Waqf* (Section 69 Clause 3-A). It may be seen from the brief study of the salient features of the *Waqf* (Amendment) At, 1984 made above, that it contained many provisions which were beneficial to the *Waqf* Administration but except the sections 66-G and 66-H, no other amendment of 1984 was applied and no such notification was issued.. Thus many crucial provisions of the *Waqf* Act remained silent and inapplicable from 1984 to 1995.

2.37 THE **WAQF** ACT, 1995

Preliminary

The *Waqf* Act, 1955 consists of 113 sections divided into nine Chapters aimed to provide for the better administration of *Waqf* in India and for matters connected there with or incidental thereto. In case of *Waqf-al-Al Aulad*, the Act applies to the extent the property is dedicated to pious religious or charitable purposes (see 3[r] [iii]).

CERTAIN IMPORTANT DEFINITIONS UNDER THE ACT 2.38

DEFINITION OF **WAQF**

The *Waqf* Act, 1995 under Section 3 [r] defined the term "*Waqf*" as meaning the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes:

- i) a *Waqf* by User
- ii) grants (including mashrut-ul-Khidmat) for any purpose recognized by the Muslim Law as pious, religious or Charitable; and
- iii) a *Waqf-al Al Aulad* to the extent to which the property is dedicated for any purpose recognized by Muslim Law as pious, religious or charitable.

2.39 CREATION OF **WAQF BY** NON-MUSLIM

For creation of *waqf*, it is not necessary that the settler should be a Muslim. A non-Muslim can also create under the Muslim Law a *Waqf*, provided the object of the *waqf* is one which is recognized by Muslim Law as pious, religious, or charitable and his own religion treats the object in the same manner. However, the words "professing Islam" in clause [r] of Section 3 have been remained purposely for otherwise all charitable and many pious endowments created by other communities would have come within the purview of the *Waqf* Act, 1995 because the purposes for which they are crated, are also regarded as Charitable or pious under the Muslim Law. The *Waqf* (Amendment) Act, 34 of 1964 incorporated Section 66-C enlarging the applicability of the *Waqf* Act to all properties, movable or immovable, given or donated by persons not professing Islam for the support or an already existing

waqf being a mosque, idgah, imambara, dargah, Khankah or maqbara, a Muslim Graveyard, a choultry or a musafir khana. All such properties donated by non-Muslims shall be deemed to be comprised in that waqf and be dealt with in the same manner as the *Waqf* in which it is so comprised. However, the definition of *waqf* under gone another amendment in 1984 and included the words "or any other person" in order to include *a waqf* created by a non-Muslim also. But this Amendment was not brought into force. Section 104 of the Waqf Act 1955 has retained the provisions of Section 66-C of the Waqf Act 1954.

2.40 DEFINITION OF *MUTAWALLI*

Under Section 3 clause (I) *mutawalli* is defined as any persons appointed either verbally or under any deed or instrument by which *a waqf* has been created or by a competent authority to be the *mutawalli* of a *waqf* by virtue of any custom or who is *a naib-mutawalli*, Khadim, Mujawar, Sajjadanashin, amin or other person appointed by *a mutawalli* to perform the duties of a *mutawalli* and, save as otherwise provided in this Act, any person, or committee or Corporation for the time being managing or administering any waqf property as such.

2.41 DEFINITION OF BENEFICIARY

Section 3 clause (a) defines beneficiary as a person or object for whose benefit *a waqf* is created and includes religious, pious and charitable objects and any other object of Public utility sanctioned by the Muslim Law. In *Zain Yar Jung Vs. Director of Endowment*,⁹ the Supreme Court of India explained that the definition like any other word in a statute has to be read in the light of the context having regard to the scheme of the Act and that if the scope of the enactment and in context in which the defined term is used have provided only for a limited operation, such definition could only have that limited meaning. In other words, wide, as the term "*Waqf*" is, its meaning should be correlated to the term beneficiary under the Act, for there can be no waqf without a beneficiary or an object. From the terms of the definition of the latter term it is fairly evident that Public utilities are not under the Act, for there can be no waqf without a beneficiary or an object. From the terms of the definition of the latter term it is fairly evident that Public utilization are not under the Act intended to be comprehended by the words religious, pious and charitable as they are specifically and separately referred to therein. Therefore, public utility

⁹ AIR 1963 SC 985.

charities can come under the Act, i.e., if they are intended for Muslims alone because section 3(a) says that a public utility in order to constitute a valid object within the Act should be intended exclusively for the Muslim community.

2.42 SURVEY OF WAQFS

Chapter II of the Act containing sections 4 to 8 provides for the survey of the *waqf* properties by a special officer called Commissioner of *waqfs*. He is charged with the duty to submit his report, after making inquiry, in respect of *waqfs* existing at the date of commencement of this Act in the State or any part thereof, to the State Government. The Commissioner shall furnish information regarding the number of *waqfs* in the State showing Shia *Waqfs* and Sunni *Waqfs* separately, the nature and objects of each *waqf*, the gross-income of the *waqf* property, the amount of land revenue, cesses, rates and taxes payable, the expenses incurred and the remuneration of the *mutawa//i* of each *waqf* and such other particulars as may be prescribed (Section 4, sub-section 3 clauses [a] to [f]). While making such inquiries the Commissioner has the same powers as are vested in a Civil court under the Code of Civil Procedure for the purposes of summoning and examining any witness, compelling discovery and production of any documents or public records from any court or Office, issuing Commissions for the examination of any witnesses or accounts, and making local investigation (Section 4 clause 4). On receipt of the report from the Commissioner of *waqfs*, the State Government shall forward the copy of the same to the *Waqf* Board. The *Waqf* Board shall examine the report and should publish the same in the Official Gazette (Section 5). If any dispute arises with regard to the very nature of *waqf* or whether a *waqf* specified in such list is a Shia *Waqf* or Sunni *Waqf*, the Board or the *mutawalli* of the *waqf* or any person interested therein may institute a suit in a Tribunal whose decision shall be final (Section 6). The Act further provides that the total cost of making survey including the cost of publication of the list or lists of *waqfs* under this Chapter shall be borne by all the *mutawallis* of the *waqfs* whose net income exceeds rupees five hundred annually. Such cost is recoverable as arrears of land revenue (Section 8).

2.43 GENERAL WAQF COUNCIL

For the purpose of advising the Central Government, the Act, provides for the establishment of a Central *Waqf* Council constituting of one Chairman who shall be the Union Minister in charge of *Waqfs* and other members not

exceeding twenty in number to be appointed by the Central Government from amongst representatives of Muslim Organizations, experienced administrators, Member of Parliament, Chairpersons of State *Waqf* Boards, retired judges of Supreme Court or High Courts, Advocates *mutawallis*, and scholars in Muslim Law. The Central *Waqf* Council is financed by contributions from every *Waqf* Board as is equivalent to one percent of the aggregate of the net annual income. In addition to this, all moneys received by the Council as donations, beneficiaries, and grants forms a fund called the Central *Waqf* Fund.

2.44 ESTABLISHMENT OF WAQF BOARDS AND THEIR FUNCTIONS

The *Waqf* Act, 1995 provides for the establishment of State *Waqf* Boards with effect from such date as may be notified by the relevant State Government for the purposes of exercising supervision over the administration of *waqf* properties in the State (Section 13[1]). There is a provision for the constitution of a separate Shia *Waqf* Board in any State if the Shia *Waqfs* therein constitute in number more than fifteen percent of all the *waqfs* in the State or if the income of the properties of the Shia *Waqfs* in the State constitutes more than fifteen percent of the total income of the properties of all the *waqfs* in the State. In such a case the State Government may, by notification in the Official Gazette establish a Board of *Waqfs* each for Sunni *Waqfs* and for Shia *Waqfs* under such name as may be specified in the notification (Section 13[2]). The *Waqf* Board shall be 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 (Section 13[3]).

2.45 COMPOSITION OF THE BOARD

The *Waqf* Boards for the State and for the Union Territory of Delhi shall have not less than (7) and not more than (13) members of which such persons as are elected from amongst Muslim members of Parliament, Muslim members of State Legislatures, Muslim members of the Bar Council in State and the *mutawallis* of *waqf* having annual income of rupees one lakh and more. The nominated members will be from the eminent Muslim Organizations theology and one representative of the State Government not below the rank of Deputy Secretary. The Board consists of three to five members in case of other union territories (Section 14).

The Chairperson of the Board is to be elected by the members from amongst themselves. Section 14 (8).

The members are to be appointed by the State Government by notification in the official gazette. Section 14 (9).

In any State where there is no Shia *Waqf* Board at least one of the Members shall be a Shia Muslim Section 14 (5). In determining the number of Shia member or Sunni member of the Board the State Government shall have regard to the number and value of Shia *Waqfs* and Sunni *Waqfs*. Section 14 (6).

2.46 **DISQUALIFICATIONS OF THE MEMBERS**

Section 16 lays down the disqualifications of the person for being appointed or for continuing as a member of the Board:

- a) if he is not a Muslim and is less than twenty one years of age;
- 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 has, on any previous occasions, been removed from his office as a member or as a *mutawalli* or has been removed by order of a competent court or Tribunal from any position of trust either for mismanagement or corruption.

2.47 **TERM OF OFFICE**

The term of office of the members of the Board is fixed as five years (Section 15).

The proviso to Section 12 of the *Waqf* Act 1954 under which a member was allowed to continue until the appointment of his successor is notified in the official gazette, is not incorporated under Section 15 of the Act of 1995.

In the *waqf* Act 1954, the Secretary of the *Waqf* Board was to be the Chief Executive Officer of the Board. Both the functions "Superintendence" and "Administration" vested with the Board. The *Waqf* Inquiry Committee 1976 recommended to appoint a *Waqf* Commissioner. In the *Waqf* Act 1995,

the Secretary or the *Waqf* Commissioner in designated as Chief Executive Officer. Powers have been distributed between the *Waqf* Board as the Chief Executive Officer who would be the subordinate to the *Waqf* Board. Under Section 23 of the *Waqf* Act 1995, the Chief Executive Officer shall be a Muslim to be appointed by the State Government in consultation with the Board by a notification in the official gazette.

Under Section 26 of the *Waqf* 'Act 1995, the Chief Executive Officer is vested with the powers in respect of orders or regulations of the Board.

If any order of the *Waqf* Board has not been passed in accordance with the law, or is in excess of powers or which is likely to cause financial loss to the Board, breach of peace or if it is not beneficial to the Board, the Chief Executive Officer may place the matter before the Board for its reconsideration and if such order or resolution is not confirmed by a majority of votes of the members present the Chief Executive Officer may refer the matter to the State Government along with the objections and the decision of the State Government shall be final (Section 26).

2.48 POWERS AND FUNCTIONS OF THE BOARD

Section 32 of the *Waqf*' Act 1995 enumerates the list of the functions the Board is required to discharge under the Act. It lays down that subject to any rules made under this Act, the general superintendence of all *waqf* in a State shall vest in the Board established for the State and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the *waqfs* under its superintendence are properly maintained, controlled and administered and the income there of is duly applied to the objects and the purposes for which such *waqfs* were created or intended. However, in exercising its powers under this Act in respect of any *waqf*, the Board shall act in conformity with the directions of the *waqf*, the purposes of the *waqf* and any usage or custom of the *waqf* sanctioned by the School of Muslim Law to which the *waqf* belongs.

2.49 The *Waqf* Board has to maintain a record containing information relating to the origin, income, object and beneficiaries of every *waqf*. It should ensure proper application of the income to the objects and for the purposes for which such *waqf* is created or intended. Other functions of the Board, inter alia, include:

1. to give direction for the administration of *waqf*;

2. to settle schemes of management for a Waqf;
3. to direct the utilization of the surplus income of a waqf consistent with the objects of a waqf; in what manner the income of a waqf shall be utilized or in case where any object of the *waqf* has ceased to exist or has become incapable of achievement then how much income of such *waqf* should be applied to similar objects. However, for the purposes of this clause (32[2] [e]) the powers of the Board shall be exercised, in case of Summit Waqf, by the Sunni members only, and in case of the Shia waqf by the Shia members of the Board only.

2.50 Further the Board has in discharged following functions:

1. scrutinize and approve the budgets submitted by *mutawallis* (clause f);
2. to appoint and remove *mutawallis* in accordance with the provisions of this Act, (clause [g]);
3. to make measures for the recovery of the lost properties of any *waqf*, (clause [h]);
4. to institute and defend suit and proceedings relating to *Waqf* (clause [i]);
5. to sanction any transfer of immovable property of a *waqf* by way of sale, gift, mortgage, exchange or lease, in accordance with the provisions of this Act (Clause J);
6. to administer *waqf* fund (clause [k]);
7. to call for such return, statistics, accounts and other information form the *mutawallis* with respect to the *Waqf* 'property (clause {¹});
8. to inspect or cause inspection of *waqf* properties, accounts or deeds and documents relating hereto (clause [m]);
9. to investigate and determine the nature and extent of *waqfs* and *waqf* properties (clause [n]).

2.51 REGISTRATION OF WAQFS

Section 36 of the *Waqf* Act, 1995 provides that every *waqf*, whether created before or after the commencement of this Act shall be registered with

the Board. An application for registration shall be made in the prescribed manner and shall contain the following particular, so far as possible:

- a) a description of the *waqf* properties sufficient for identification thereof;
- b) the gross annual income from such properties;
- c) the amount of land revenue and cesses, and all taxes annually payable in respect of the *waqf* properties;
- d) estimate of annual expenses and realization of the income;
- e) the amount set apart for the payment of the salary of the *mutawalli*, allowances to individuals, and the amount set apart for purely religious, charitable or any other purposes.
- f) Any other particulars provided by the Board by Regulations.

In case of *Waqf* created before the commencement of this Act, every application for registration shall be made within three months from such commencement and in case of *waqfs* created after such commencement, within three months from the date of the creation of the *Waqf*. (Section 36 [8]). All such registrations are required to be incorporated in a special register of *waqfs* with specified particulars (Section 37).

2.52 MUTA WALLIS AND WAQF ACCOUNTS

Every *mutawalli* of a *waqf* is required to prepare annual budget, in the prescribed form, for the next financial year showing the estimated receipts and expenditures during that financial year and submit it to the Board for approval. (Section 44).

2.53 SUBMISSION AND AUDIT OF ACCOUNTS

Under Section 46 of the Act, every *mutawalli* is required to prepare and furnish to the Board before first day of May every year, a full and true statement of accounts containing such particulars as may be provided by the Regulations of all moneys received or expended by the *mutawalli* on behalf of the *waqf* during the period of twelve months ending on the 31st day of March. The accounts of *waqf* submitted to the Board shall be audited and examined annually (Section 47) by an auditor appointed by the Board Section 47[1].

2.54 DUTIES OF MUTAWALLIS

Section 50 of the Act enumerates the duties of every *mutawalli* to carry out the direction of the Board; to furnish such returns and supply such information as may be required by the Board; to allow inspection of *waqf* properties, accounts or records or **deeds and documents** and to discharge all public dues and to do any other act which he is lawfully required to do under the Act of 1955.

Alienation of Waqf Property

Under Section 51 any transfer of immovable property without the permission of the Board is rendered invalid and therefore, it is laid down that notwithstanding anything likely contained in *waqf* deed, any sale, gift, mortgage or exchange, shall be void unless it is with the prior permission of the Board.

If the *waqf* property is alienated in contravention of Section 51 of the Act, the Board has been empowered under Section 52 to recover it through the Collector.

Removal of encroachment From Waqf Property

Whenever the Chief Executive Officer consider that there has been an encroachment on *any waqf* 'property, he shall serve a show cause notice on the encroacher under Section 54(1) of the Act.

If after considering the objections and after conducting inquiry Chief Executive Officer is satisfied, he may require the encroacher to deliver possession of the property to the *mutawalli* of the *waqf*, Section 54(3). If the encroachment is not removed the Chief Executive Officer may apply to the Sub-Divisional Magistrate. The Sub-Divisional Magistrate shall make an order directing the encroacher to remove the encroachment (Section 55).

Nothing prevents any person aggrieved by the order of the Chief Excessive Officer to institute a suit in a Tribunal. Section 54 (4).

2.55 Section 57 authorizes the *mutawalli* to pay from the income of the *waqf* property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 36 or any accounts under Section 46 or any information or documents required by the

Board. Section 58 empowers the Board to pay dues in case of default by *mutawalli*. Thus where the *mutawalli* refuses to pay or fails to pay any revenue, cess, rates of taxes due to Government or any local authority, the Board may discharge the dues from the *Waqf* Fund and may also recover damages not exceeding 12 1/2% of the amount so paid. For the purposes of payment of dues to the Government or local authority, the Board may direct the creation and maintenance of a reserve fund from the income of the *waqf* (Section 59).

2.56 If *mutawalli* fails to apply for the registration of a *waqf*, or to furnish statements of particulars or accounts; or to allow inspection of *waqf* properties or to comply with the directions of the Board or refuses to deliver possession of any *waqf* property if ordered by the Board or Tribunal, or to discharge any public dues, then he is liable to be punished with fine which may extend to eight thousand rupees (Section 61[1]). However no court shall take cognizance of offence punishable under this section unless complaint is made by the Board or an Officer authorized by the Board. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any such Offence. Section 61 [3 and 4].

2.57 POWER TO APPOINT MUTAWALLI IN CERTAIN CASES

Under Section 63, the Board is authorized to appoint any person as *mutawalli* where there is a vacancy in the office of *mutawalli* of a *waqf* and there is no one to be appointed or where such appointment is disputed.

2.58 REMOVAL OF MUTAWALLIS

Section 64 of the *Waqf* Act, 1955 lays down that notwithstanding any thing contained in any other law or deed of *waqf*, the Board may remove a *mutawalli* from his office if such *mutawalli*:

- a) has been convicted more than once of an offence punishable under Section 61; or
- b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude; and such conviction has not been reversed.
- c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a *mutawalli*; or

-
- d) is an undischarged insolvent.
 - e) is proved to be addicted to drinking liquor.
 - f) is employed as a paid legal practitioner against the *waqf*.
 - g) has failed to maintain or submit, without reasonable excuse, for two consecutive years, the statements of accounts as required under Sub-section (2) or Section 46.

Sub-section 3 of Section 64 lays down that a *mutawali* shall not be removed without holding inquiry in a prescribed manner. However, a *mutawali* aggrieved by an order passed under any of the clauses (c) to (g) of Sub-section (1) or under sub-section (2) may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final. Under Sub-Section 5 the Board is empowered to suspend the *mutawalli* until the conclusion of the inquiry. Where the *mutawali* is removed, the Board may, by order, direct the *mutawalli* to deliver possession of the *waqf* property to the Board or any Officer duly authorized in this behalf or to any person or committee appointed to act as the *mutawalli* of the *waqf* property. A *mutawalli* once removed from his office shall not be eligible for appointment as *mutawali* of that *waqf* for period of five years from the date of such removal.

2.59 INQUIRY BY THE WAQF BOARD

Any person interested in a *waqf* may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the *waqf* and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the *waqf* are being mismanaged, it shall take such action as it thinks fit (Section 70). The Waqf Board, either on an application received under Section 73 or on its own motion, may hold an inquiry in prescribed manner or authorize any person in this behalf to hold inquiry. For the purposes of any inquiry the Board or any person authorized in this behalf shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents.

2.60 FINANCE OF THE WAQF BOARD

Under Section 72, the *mutawalli* of every *waqf* the net annual income of which is not less than five thousand rupees shall pay annually to the Board

such contribution not exceeding seven percent of such annual income as may be prescribed to the Boar for the service rendered by the Board to the *waqf*. Under Section 75 the *Waqf* Board may with the previous sanction of the State Government, borrow such sum of money on such terms and conditions as the State Government may determine.

2.61 **WAQF FUND**

Section 77 lays down that all moneys received or realized by the Board under this Act and all other moneys received as donations, benefactions or grants by the Board shall form a fund to be called the *Waqf* Fund. The *Waqf* Fund shall be applied to repayment of any loan incurred under Section 75, or payment of the cost of audit or the *Waqf* Fun, or payment of the salary and allowances to the Secretary and other staff or payment of travelling allowances to the chairperson, members, officers and staff of the Board or payment of all expenses incurred by the Board in the performance of the duties imposed and the exercise of the powers conferred by or under this Act. If any balance is remained after meeting the expenditure mentioned above, the Board may use any portion of such balance for the preservation and protection of *waqf* properties or for such other purposes as it may deem fit.

2.62 **JUDICIAL PROCEEDINGS**

In Chapter VIII containing Sections from 83 to 95, the scheme for resolution of *Waqf* litigation by Tribunals has been provided. The State Government is empowered to constitute as many Tribunals as it thinks necessary. Any *mutawalli* or any person interested in a *waqf* may approach a Tribunal for the determination of any dispute relating to *waqf*. The tribunal constituted under the Act shall have the same powers as are vested with the Civil Court. Decision of the Tribunal is made final and it shall have the force of a decree made by a Civil Court (Sub Section 7 of Section 83).

It is laid down in Section 85 that no suit shall lie in any Civil Court in respect of any dispute which is required under the *waqf* Act 1995 to be determined by a Tribunal. Section 87 bars the enforcement of any right on behalf of unregistered *waqf* and it is laid that no suit or appeal on behalf of any unregistered *waqf* shall be tried or decided by any Court.

2.63 NOTICE OF SUITS

Section 89 lays down that no suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act, until the expiration of two months next after notice in writing has been delivered to or left at the office of the Board stating the cause of action, the name, description and description and place of residence of the plaintiff and the relief which he claims. Under Section 90 it is laid down that in every suit relating to a little to *waqf* property or the right of a *mutawa//i* or beneficiary the Court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceedings. Similar notice is required to be given to the Board whenever any *waqf* property is notified for sale in execution of a decree of a Civil Court or for recovery of any revenue, cess, rates or taxes due to the Government or any local authority (Section 90 [2]).

2.64 PROCEEDINGS UNDER THE LAND ACQUISITION ACT, 1894

If in the course of proceedings under the Land Acquisition Act, 1894, it appears to the Collector, before an Award is made, that any property under acquisition is *waqf* property, a notice of such acquisition shall be served by the Collector on the Board and any further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceedings at any time within three months from the date of the receipt of such notice (Section 91). The *Waqf* Board has to be made a party to a suit in respect of a *Waqf* property (Section 92).

2.65 BAR TO COMPROMISE

Section 93 of the Act lays down that no suit or proceeding in any court by or against the *mutawalli* of a *waqf*, relating to title to *waqf* property or the rights of the *mutawalli* shall be compromised without the sanction of the Board.

2.66 CENTRAL **WAQF** COUNCIL

Origin and History of the Council¹⁰

On the recommendations of the Inter-State *Waqf* conference held at Delhi in December 1969, the Central Covenant vide resolution No. 4(136),60-M. W., dated 19th September 1961, constituted the Central *Waqf* Council in consultation with State Government and appointed the Minister for Irrigation and Power, Hafiz Mohammad Ibrahim as its Chairman. The Council, to start with, was set up for a period of three years. Its functions included the review of the administration of *waqf* in the country and to recommend measures for their better administration. Secondly the Council was also obliged to review the working of the State *Waqf* Boards and recommend measures for their efficient working.

2.67 Later when the subject of *Waqfs* was transferred from Ministry of Irrigation and Power to the Ministry of Scientific Research and Cultural Affairs, the Council was reconstituted on 21st October 1963 and the concerned Minister Prof. Humayun Kabir became its Chairman. The strength of members was also raised to 18. In view of its effective functioning and efficient monitoring over the State *Waqf* Boards, the Central *Waqf* Council was conferred statutory composition and powers by including it under the provisions of the *Waqf* Amendment Act, 1964. A new Chapter II — A was inserted in the *Waqf* Act, 1954. In the *Waqf* Act 1995 provision is made for establishment and constitution of Central *Waqf* Council in Chapter the details of which are furnished below:

2.68 ESTABLISHMENT AND CONSTITUTION OF THE CENTRAL **WAQF** COUNCIL

For the purpose of advising it on matters concerning the working of Boards and the due administration of *Waqf*, the Central Government has been authorized to establish, by notification in the Official Gazette, a Council to be called the Central *Waqf* Council. Section 9(1). It consist of a Chairperson, who shall be the Union Minister incharge of *Waqfs* and such other members not exceeding twenty in number, as may be appointed by the Central Government from amongst Muslims namely:

¹⁰ Reference drawn from Dr. S.K. Rashid, "Waqf Laws and Administration in India" pp.96-97.

-
- i) three persons from all India Muslim Organizations.
 - ii) Four persons of national eminence of whom two shall be from those having administrative and financial expertise.
 - iii) three members of Parliament (two from House of People and one from Council of States).
 - iv) Chairpersons of three Boards by rotation.
 - v) Two persons who have been judges of the Supreme Court
 - vi) Two advocates of national eminence.
 - vii) One *mutawalli* or *waqf* having income of rupees five lakhs and above.
 - viii) three eminent scholars in Muslim Law Section 9(2).

The term of office of and the procedure to be followed by the Central *Waqf* Council in the discharge of its functions shall be such as prescribed by rules made by the Central Government Section 9(3);

And it is laid down that a member of the Council shall hold office for a period of five years from the date of his appointment and shall be eligible for reappointment.

2.69 FINANCE OF THE COUNCIL/CENTRAL *WAQF* FUND

The activities of the Council are financed out of an annual contribution from every State *Waqf* Board which is required to pay its *Waqf* Fund such contribution as is equivalent to one percent of the aggregate of the net annual income of the *Waqfs* in respect of which contribution is payable under Sub-section (1) of Section 10 of the *Waqf* Act, 1995. However, it is to be noted that this contribution of one per cent to the Council by the *Waqf* Board is to a charge on their own fund as they are authorized to collect 7% contribution form the respective *waqf* properties as against 6% previously prescribed. Thus the *Waqf* Boards are now required to collect 7% instead of 6% and pass on the additional income of 1% to the Central *Waqf* Council. All moneys received by the Council as one per cent contribution by the *Waqf* Boards and all other moneys received by it as donation, benefactions and grants form a fund called "The Central *Waqf* Fund". Section 10(2).

2.70 ACCOUNTS AND AUDIT

The accounts of the Council are required to be maintained in such books of account and other books in such form and in such manner as is prescribed by rules made by the Central Government. The accounts of the Council are examined and audited annually in the prescribed manner (Section 11 [2]). For carrying out the purposes of Chapter III, the Central Government is authorized to make rules under Section 12.

2.71 FUNCTIONS OF THE CENTRAL WAQF COUNCIL

As regards contribution made by the Central *Waqf* Council to the development of *waqf* administration in India, Dr. S.K. Khalid Rashid recorded thus; "Although the status of the Council was non-statutory up to 1965, it did useful work by making some recommendations of far reaching consequences. For example, it recommended the replacement of the Delhi Muslim *Waqf* 'Act, 1943, by the *Waqf* Act, 1954; the fixation of annuity instead of compensation in case of acquisition of *waqf* properties in West Bengal; the annual publication of information by the Central Government regarding the working of *Waqf* Boards; the grant of educational scholarships by the *Waqf* Boards; the removal of Junk Shops in the vicinity of Jama Masjid, Delhi; and the amendment of *Waqf* Act, 1954. All these recommendations were accepted by the Central Government and were implemented by proper authorities".

2.72 DEVELOPMENT OF URBAN WAQF PROPERTIES

The present author as the Officer on Special Duty for *Waqf* Government of India formulated a comprehensive scheme in 1973 to grant loan for the development of Urban *Waqf* properties and prepared guidelines regarding the terms and conditions. In the year 1987 Rules were framed for the release of such loans. It prescribed the eligibility for loan (Rule 4); mode of application (Rule 5); examination of the scheme by the *Waqf* Development Committee (Rule 6); approval of the scheme (Rule 7); mode of payment (Rule 8). The loan is repayable to the Central *Waqf* Council ordinarily in twenty half-yearly installments, the first of such installment falling due on the completion of two and half years after the date of release of the loan (Rule 9).

2.73 CREATION AND UTILIZATION OF EDUCATIONAL FUND

. The donation of 6% per annum received by the Council from the loanee is pooled together to constitute an "Educational Fund" which is a separate head of account under the *Waqf* Fund and is utilized for educational purposes (Rule 15).

2.74 CREATION AND UTILIZATION OF "REVOLVING FUND"

The amount received by the Council as repayment installments of loan forms a "Revolving Fund" which is accounted for under a separate head of account under the *Waqf* Fund and is utilized for the development of other Urban *Waqf* properties (Rule 16).

2.75 DETAILED INFORMATION FURNISHED

The detailed information about the number of schemes and actual financial assistance guaranteed by the Central *Waqf* Council to various State *Waqf* Boards is incorporated in Chapter III of this study under the State-wise Scenario.

2.76 WAQF DEVELOPMENT CORPORATION

While the Central *Waqf* Council contributed substantially to develop urban *waqf* properties, it was considered viable to have the similar funding agencies at State level for extending financial assistance to respective *Waqf* Board for the similar developmental activities. It was noticed that thousands of *Waif* properties in the shape of open land with tremendous commercial potential are just lying useless for want of necessary finances. Loans from Bank, Life Insurance Corporation or other funding agencies were not easily forthcoming for want of security. Thus, such gold *waqf* properties, being ignored, soon became a target of land-grabbers. In view of this, it was considered necessary to create a funding agency in the form of "*Waqf* Development Corporation" for the purposes consistent with the objects enumerated in the *Waqf* Act, 1954.

2.77 The then officer on Special Duty for *Waqf*, Government of India (incidentally the present author was holding the post of O.S.D. at that time) initiated the matter in the year 1973. It was suggested by him that instead of

having a Uniform set up of the proposed corporations, it would be proper to leave the modalities to the respective State Governments and the State *Waqfs* Boards. All the State Governments and the State *Waqf* Boards were requested to start *Waqf* Development Corporation in their respective State. This is how the idea of *Waqf* Development Corporation Originated. However, it is unfortunate the state that except in Karnataka and Utter Pradesh the idea could not be implemented due to the lack of interest on part of the Sate Government to sanction grant-in-aid to such corporations. Even in the States where the Government sanctioned the grants-in-aid to State *Waqf* Board for the establishment of *Waqf* Development Corporation, the same was defeated by the vested political interest at crucial point of progress. However, the State of Karnataka and the State of Utter Pradesh succeeded in establishing the *Waqf* Development Corporation, which are functioning effectively to develop *Waqf* properties under the various schemes/projects in their respective State.

2.78 On the suggestions of the then officer on Special Duty (*Waqf*) the Chairman, Karnataka Board of *Waqf* sent a proposal to the State Government vide his DO letter dated 19.9.1977 for the formation of a *Waqf* Development Corporation with (9) Directors to be registered under the Indian Companies Act. The Objects of the proposed Corporation were enumerated in the proposal which is brief, were to finance the individual *waqfs* for development of their properties by taking them form the *Waqf* Board on lease.

The Government of Karnataka vide their order dated 8.9.1978 approved the proposal with certain conditions and with the specific understanding that the financial assistance by the State Government would be made available only. after fully satisfying the conditions made out by the Government.

2.79 **CERTAIN OTHER LAWS RELEVANT TO THE WAQF ADMINISTRATION**

After making a study of the Central *Waqf* Act, 1995, it would be both useful and pertinent to refer briefly to certain other enactments, some of whose provisions are relevant to the *Waqf* properties/*Waqf* Administration. The foremost among them is the one, which extends the period of limitation to file a suit to recover a *waqf* property from the adverse possession of the defendant.

2.80 THE PUBLIC WAQFS (EXTENSION OF LIMITATION) ACT, 1963 NOT APPLICABLE

After the partition of the country in 1947, thousands of *waqf* properties went into adverse possession. The conditions then prevailing did not allow the *Waqf* Boards to institute suits for recovery of such *waqf* properties within the limitation period of 12 years. The period of limitation was coming to a close in 1958. Due to the special interest evinced by the then Prime Minister Jawaharlal Nehru and Moulana Abdul Kalam Azad (before his demise in 1958) the Public *Waqfs* (Extension of Limitation) Act 1959 was promulgated.

This is the most brief but at the same time most useful enactment relating to *Awqaf*. The Act consists of 4 sections of which Section 3 contained crucial provision. Section 3 of the Act laid down that if a person has been dispossessed at any time after the 14th day of August 1947 and before the 7th day of May 1954 and the possession of the defendant in such a suit has become adverse then notwithstanding anything contained in the said Act (of 1908) the period of limitation in respect of such a suit shall extend up to 31st day of December 1970.

The period of limitation was further extended from time to time by various state amendments for enabling the *waqfs* to institute suits for recovery of *waqf* properties against adverse possession.

The *waqf* inquiry committee 1976 recommended exempting the *waqf* properties permanently from the Law of Limitation on the lines of Section 52(a) of the Bombay Public Trust Act of 1950. This provision had stood the test of time and, therefore, there was every reason to incorporate similar provision in the *Waqf* Act. Thus, the *Waqf* Act 1995 has granted total exemption to the *Waqf* properties from the Law of Limitation.

It is laid down in Section 107 of the Act that nothing in the Limitation Act of 1963 shall apply to any suit for taking possession of immovable *waqf* property.

2.81 EXEMPTION UNDER INCOME TAX ACT, LAND CEILING, RENT CONTROL AND OTHER STATE LAWS

The exemption granted to income from *waqf* properties under Income Tax Act by the Central Government and exemption from other laws like Land

ceiling, Rent control, Land grabbing and Revenue granted by various State Governments is discussed in Chapter III dealing with State-wise Scenario and also incorporated at appropriate place in concluding Chapter V.

CHAPTER III
WAQF ADMINISTRATION IN INDIA -
A STATEWISE SCENARIO

3.1 In order to obtain a representative picture of State of affairs prevailing in India with regard to the administration of *waqf* properties, it appears pertinent to present a state-wise scenario of *Waqf* Administration. Although in almost every nook and corner there exists a *Waqf* in India, it is not practically feasible to cover every such institution in this study. Indian is a vast country. Innumerable and scattered are the *waqfs*. However, an objective study of selected states, serves as a sample representative enough for the rest of India. With the exception of the State of Uttar Pradesh, West Bengal and parts of Maharashtra and Kutch in Gujrat, in all the rest parts of the country the Central *Waqf* Act, 1954 was applicable. Therefore, problems too, are almost similar in nature. Hence it is suggested to study the *waqf* administration in State of Andhra Pradesh, Bihar, Uttar Pradesh, Karnataka, Tamil Nadu, West Bengal and Central Province of Delhi. A brief reference to other *Waqf* Boards in India is also included herein.

3.2 WAQF ADMINISTRATION IN ANDHRA PRADESH STATE

As far as *Waqf* Administration in the State of Andhra Pradesh is concerned it owes its origin to the Political legacy of the erstwhile Sate of Hyderabad which has undergone a significant change after the merger of the princely State of Hyderabad in Indian Union in 1948 and the subsequent reorganization of States in 1956. It is relevant to refer briefly to the origin and growth of *waqf* administration in this State.

3.3 ORIGIN, HISTORY AND GROWTH

In the erstwhile Hyderabad Sate all religious matters including Muslim *Waqfs*, Hindu endowments, Christian religious trusts etc. Were administered and controlled by a full-fledged Government Department called "Mahkama-e-

Umooor-e-Madhhabi" i.e., the Ecclesiastical Department. It was headed by a Nazim (Director) assisted by four Assistant Directors. Of these, one was exclusively meant for Non-Muslim Religious Affairs. The *waqf* properties were administered under the Hyderabad *Waqf* Regulations, *Dasturul Amal Awqaf* of 1349 Fasli (1939 AD) (See Para 2.19). Under these regulations which distinctly contained a secular character and a vast body of rules numbering 525 were framed. However, after the enactment of the Central *Waqf* Act, 1954, the Act was extended to Hyderabad on 15th January 1955, and to Andhra area on 1st April 1955.

3.4 HYDERABAD MUSLIM WAQF BOARD

Nizam the VI-I of Hyderabad, as Rajpramukh by Notification No. 90¹ dated 13-1-1955 established Hyderabad Muslim *Waqf* Board. Eleven members were appointed by Notification No. 91 dated 13-1-1955.

The above Board, started functioning from 2nd March 1955. The Hyderabad Government ordered² that such of the Muslim Institutions which were being managed by the Government in the capacity of the *mutawalli*, shall be managed by the Muslim *Waqf* Board and as such the said Board shall act as *mutawalli* on behalf of the Government. All the Muslim *Waqf* Institutions, except the historical Makkah Masjid and the Public Garden Mosque, were separated from the Endowment Department and handed over to the Muslim *Waqf* Board. However, in respect of the Makkah Masjid and Public Garden Mosque³ was issued that status quo in regard to the administration and control of the two mosques should continue to be maintained by the Commissioner of Endowment Department. In the year 1955 when the Board started functioning, one Chief Inspector for Telangana area and another Executive Officer for Andhra area were appointed to supervise the work.

3.5 ANDHRA PRADESH STATE WAQF BOARD

Consequent upon the Reorganization of States, new States of Andhra Pradesh, Maharashtra and Karnataka came into existence. Some of the districts of erstwhile Hyderabad State, as a result of Reorganization, were excluded from the jurisdiction of the Hyderabad Muslim *Waqf* Board and Andhra

1 Notification No. 90 dated 13.3.1955, published in Hyderabad Government Gazette.

2 G.O. Ms. No. 5/B4/Endowment/187/54, dated 21/7/1955.

3 G.O. Ms. No. 14/Home/Waqf, dated 4/1/1968.

Districts were included therein. Therefore, the Hyderabad Muslim *Waqfs* Board (Dissolution) order, 1961⁴ was issued by the Governor of Andhra Pradesh, dissolving thereby the Muslim *Waqf* Board and a new *Waqf* Board under the provisions of the Central *Waqfs Act*, 1954, came into existence, styled as Andhra Pradesh *Waqf* Board". This Board has its jurisdiction over the entire area of the State of Andhra Pradesh.

3.6 FURTHER LEGISLATIVE PROTECTION IN STATE OF ANDHRA PRADESH

The *Waqf* properties in the State of Andhra Pradesh are provided protection/exemption under certain State Laws, a brief reference to which would be found useful.

3.7 THE ANDHRA PRADESH (TELANGANA AREA) ABOLITION OF JAGIRS REGULATION OF 1358 FASLI

Under Section 16 of these Regulations provision was made for granting annuities in respect of Jagirs, which were granted to a temple, mosque or other religious institutions.

3.8 THE ANDHRA PRADESH (ANDHRA AREA) ESTATES ABOLITION ACT, 1948

Under Section 38 of this Act, provision was made for the payment of "Tasdiq Allowance" and conditional compensation to the religious, educational and charitable institution, to which an estate belonged before is abolition. Under Section 38-A further provision was made for the payment of allowance to the religious and charitable institutions.

3.9 THE PUBLIC WAQF (EXTENSION OF LIMITATION) ACT, 1959

As already mentioned (Para 2.80), under Section 3 of the Act, the period of limitation was extended in the State of Andhra Pradesh up to 31' December 1986.

4 G.O. Ms. NO. 456/457, Home (Endowment IV) dated 4/3/1961.

3.10 THE ANDHRA PRADESH BUILDING (LEASE, RENT AND EVICTION) CONTROL ACT, 1960

Under the direction from the Ministry of Law (*Waqf* Section) Government of India exercising its power under section 26 of the Act, the State Government, vide its notification⁵ exempted all buildings, belonging to religious and charitable institutions including *waqf* buildings from all the provisions of the above cited Act.

3.11 THE URBAN LAND (CEILING AND REGULATIONS) ACT 1976

Under Section 19 of the Act, the Government has exempted land belonging to any Public Charitable and Religious Trust including *waqfs* from the Urban land (Ceiling and Regulations) Act, 1976.

3.12 THE ANDHRA PRADESH LAND GRABBING (PROHIBITION) ACT, 1982

Under clause (2) of Section 2 of the Act, lands belonging to religious and charitable institutions, endowments, including *waqfs* are provided protection from the land grabbing.

3.13 THE ANDHRA PRADESH PUBLIC PREMISES (EVICTION OF UNAUTHORIZED OCCUPANTS) ACT, 1961.

Hindu religious properties are defined as Public premises. The same status is not given to *waqf* properties. The *waqf* Inquiry Committee proposed to extend the same facilities to *waqf*. Under Section 52 of the *Waqf* Act 1995, however, the *Waqf* Board is empowered to recover *waqf* property from unauthorized occupation.

3.14 SURVEY OF **WAQF** PROPERTIES IN ANDHRA PRADESH

There are 35,703⁶ *waqf* properties situated in the State. The total monetary value of movable and immovable properties has been estimated s Rs.

⁵ G.O. Ms. No. 622, G.A. (Accommodation B) Department, dated 4/5/1960).

⁶Report of the A.P..S *Waqf* Board for the year 1992-93.

13,850 millions. Out of 35,703 *waqf* properties the Andhra Pradesh *Waqf* Board has been managing 385 *waqf* institutions including (7) Big Dargahs under Director Management Scheme.

3.15 The *Waqf* institutions have attached landed property of about 133,209 Acres and 30 Guntas. Survey is still in progress.

3.16 **ADMINISTRATION OF ANDHRA PRADESH WAQF BOARD**

Administration of the Andhra Pradesh *Waqf* Board, since its inception in the year 1961, does not present a rosy picture. During the short span of 4 years, from 4th March 1961 to 28th November 1963 at least four Chairmen were changed. Further the Board was superseded by the Andhra Pradesh Government and an retired I.A.S. Officer was appointed as its administrator who was vested with the powers of the Board under Section 62 (2) (b) of the *Waqf* Act, 1954. We are tempted to describe the administration of this *waqf* Board rather in detail for two reasons. Firstly the mal-administration by the *Waqf* Board owing to politically motivated interference by the Government is indicative of the reason as to how the *Waqf* administration is subject to vested interests, secondly, these circumstances are more or less identical to *waqf* administration in other states too. Therefore, it is representative of problems peculiar to *waqf* administration in India.

For these two reasons, the place on record the following details. The circumstances which led to the supersession of the Board, inter alia, included the dissatisfaction of the State Government which served a Show Cause Notice on the Board leveling the following charges:

1. Collusive compromise entered into by the *Waqf* Board with the plaintiff in the suit relating to the Dargah Hizt-Jahangir Peeran Sahib;
2. Improper utilization of surpluses of the *waqf* institutions under direct management of the Board;
3. Deficient-Budget of the Board;
4. According to permission for construction of unauthorized private house of *waqf* **land situated at Mahraj Gunj**;

5. Advancing of loans to *Mutawallis*;
6. Failure of Board to perform its statutory sanction against *mutawallis* for failure to register *waqf* property under Section 25, non-submission of Annual Budget under Section 31 and failure to pay contribution under Section 46.

3.17 Thus, on the above ground the Board was superseded with effect from 29/11/1965⁸, and I.A.S., Retired Officer was appointed ad Administrator. The Government also appointed a One-man Commissions to inquire into and suggest means to improve *Waqf* Administration its financial resources and income etc.

3.18 SYED HASHIM ALI COMMISSION

Syed Hashim Ali Commission reported number of irregularities in the *Waqf* administration including serious misconduct of staff, misappropriation of funds, lack of systematic office procedure, illegal sale of *waqf* properties with the connivance of the Board's Staff, non-repayment of advance obtained etc. Correspondingly the Commission made certain recommendations for improving *waqf* administration. During this period the supersession of the *Waqf* Board, initially effective up to 3rd March 1966 was further extended, from time to time, by the government.

3.19 As per the recommendation of Syed Hashim Ali Commission, the Regional Scheme creating three Regional Officers for the regions of Circar, Rayalaseema and Telangana was implemented with a view to obtain effective supervision and control over the *waqf* administration.

3.20 RECONSTITUTION OF THE *WAQF* BOARD

The supersession of the *Waqf* Board continued for 3 years during which the Administrators continued to function. However, against the *Waqf* Board was reconstituted⁹ with effect form 1/10/1968. Unfortunately, the tenure of this *Waqf* Board, too was not congenial. The Employees Union submitted 37 demands, most of them wee not conceded by the Board and it did not even recognize the Employees Union. Being aggrieved by this, the employees went

⁸ G.O.Ms. No. 2389/ (Endowment IV) Dept., dated 27/11/1965.

⁹ Vide G.O. Ms. No.1560, Home (*Waqf*) Dept., dated 26.9.1968.

on strike in the month of May 1970, which continued for a period of 52 days. Subsequently the Chairman, who was even prevented from attending the meeting on 16/12/1970, had to resign. Ultimately another member of the Board was elected as the Chairman.

3.21 The *Waqf* Board on expiry of its term was reconstituted¹⁰ by the Government. The question of streamlining the *waqf* administration and efficient working of the Board attracted the attention of the Government quite for some time. As such, the Government appointed Mr. M.A. Abbasi, I.A.S., retired¹¹ to conduct a detailed study of the *waqf* administration and to suggest necessary improvements to establish an efficient, clean and effective *Waqf* Board.

3.22 An "Informal Consultation Committee", consisting of selected legislators, was constituted¹² by the Government with a view to provide a forum for discussion and to advise it on matters of policy relating to administration of *waqf* under the *Waqf* Act, 1954.

3.23 **WAQF BOARD RUNS INTO ROUGH WEATHER**

Although various steps were taken to improve the *waqf* administration, there were several complaints against the *Waqf* Board which, inter-alia, related to the deterioration in administration, and corrupt practices in financial matters. This led to the resignation of the Chairman which was accepted by the Government¹³. Yet another person was appointed as Chairman. The *Waqf* Board ran into rough weather once again. The Show Cause Notice¹⁴ issued by the State Government specified reasons as to why the Board should not be dissolved in view of certain serious allegations involving mismanagement, misappropriation, indiscriminate sale of *Waqf* properties, tempering of official record, improper maintenance of accounts, and growing corruption among the staff of the *Waqf* Board. The Board filed a writ against the notice in the High Court of Andhra Pradesh which was dismissed by the High Court. Thus the

¹⁰ Vide G.O. Ms. No. 982, Revenue (*Waqf*) Department, dated 5/10/1974.

¹¹ Vide G.O. Ms. No. 1428, Revenue (*Waqf*) Department, dated 31/10/1977.

¹² Vide G.O. Ms. No. 1754, Revenue (**Waqf**) Department, dated 17/10/1978.

¹⁴

¹³ Vide Lr. No.1589/ *Waqf*, dated 28/8/1978. Vide Memo No. 1798/Waqf178-3, dated 4/1/1979.

Waqf Board was once again superseded¹⁵ for a period of one year and an I.A.S. Officer as an Administrator was appointed.

3.24 After the expiry of the period of super session, the *Waqf* Board was once again reconstituted with effect from 28/10/1980¹⁶, duly appointing the same Administrator as its member, who was in turn, elected by the *Waqf* Board as its Chairman.

3.25 Zonal Offices for Rayalaseema and Circar area with headquarters at Kurnool and Vijayawada were set up.

3.26 A Zonal Advisory Committee was also constituted to advise Zonal Officers.

3.27 **WAQF EDUCATIONAL SOCIOECONOMIC AND CULTURAL ORGANIZATION**

In 1980, Shaikh Saad Hussain (IAS) the then Chairman of the AP *Waqf* Board formed an organization named *Waqf* Educational, Socioeconomic and Cultural Organization (WESCO) with four sub-committees to develop, to increase *waqf* income and to provide opportunities for economic development of the Muslim community in general. The formation of WESCO was opposed by various sections of Muslims on the following grounds among others:

1. The *Waqf* Act 1954 which was then in force did not contemplate the constitution of any society.
2. If it was construed that the Committee were to be constituted under Section 16 of the *Waqf* Act 1954, they could be constituted for the supervision of *waqfs* and not for any purpose other than the specific objects of the concerned *waqfs*. The proposed Committees could not, therefore, discharge all the functions as envisaged in the aims and objects of WESCO.
3. Since the *Waqf* Board was a creature of the *Waqf* Act it could not permit the location of a public society within its office premises.
4. It was envisaged that all the members of the *Waqf* Board would be the members of WESCO. It was quite possible that the

¹⁵ Vide G.O. Ms. No. 1132, Revenue/*Waqf* Department, dated 12/9/1979.

¹⁶ Vide G.O. Ms. No. 4667, Revenue (*Waqf*) Department, dated 27/10/1980.

successor members of the *Waqf* Board may or may not accept the membership of WESCO or its various organs. In case the *Waqf* Board was superseded there would be a gap which would not be filled.

In view of the above valid criticism, the entire scheme of WESCO was dropped by the successor Board.

3.28 Despite these efforts, the programs envisaged lost their efficacy when put into practice. Again the working of the Board was subject of criticism and Government again served a Show Cause Notice¹⁷ for supersession. The notice was challenged in a Write petition before the High Court of Andhra Pradesh only to be dismissed, and the Government superseded the *Waqf* Board for a period of 3 months¹⁸. Joint secretary-general Administration Department was appointed as Administrator in addition to his normal duties. The new Administration abolished the Zonal Offices.

3.29 The *Waqf* Board was again constituted¹⁹ after a short spell of supersession of 5th of October 1983. The *Waqf* Board, under its new body, took drastic action and cancelled many schemes approved by the previous Board. Poultry Farm Scheme was dropped, appointment of technical advisor on remunerative basis was deferred, formation of *Waqf* Academy was put to an end, and establishing of WESCO was wound up. The Board under the Chairmanship of Brigadier, exhibited extra zeal to introduce stricter discipline 'which created resentment in the mind and hearts of some persons. This resulted in the appointment of the Secretary of the Board without consulting the Board which action was in contravention to the statutory provision of the *Waqf* Act as contained in Section 21 of the Act and Rule 14 of the Andhra Pradesh *Waqf* Rules. The Chairman filed a writ in the High Court of Andhra Pradesh. This event was a turning point in the relationship between the Board and the Government which no longer remained cordial. Therefore, a Show Cause Notice²⁰ was served directing to show as to why the Board should not be superseded for abusing financial and administrative powers, failure to perform duties under the *Waqf* Act, acting hostile and flouting the orders of the Government.

17 Vide G.O. Ms. No. **818**, Revenue (*Waqf*) Department, dated 17/5/1983.

18 Vide G.O. Ms. No. 973, Revenue (*Waqf*) Department, dated 28/6/1983.

19 Vide G.O. Ms. No. 1344, Revenue (*Waqf*) Department, dated 5/10/1983. **20**
Vide Memo No. 1407/Wagf/85/Rev. (*Waqf*) Department, dated **13/11/1985**.

3.30 The Chairman submitted reply to the Show Cause notice which was approved by the Board²¹. It was explained in the reply that the Chairman did not abuse financial or administrative powers nor passed orders without jurisdiction or competence. The charge of hostility towards the Government or flouting its orders was also denied. The Board requested the Government to withdraw the show cause notice and that in future also, the Board shall cooperate with the Government. However, it appears, that all these unhappy developments aggrieved the Chairman who ultimately resigned and some how, the Board managed to escape supersession. The vacancy of the Chairman was filled in with effect from 30.11.1985.

3.31 The Board under the new Chairman developed good rapport with the Government. For the first time in the history of the *Waqf* Board, remuneration and other perks were granted²² by the Government to the new Chairman, or par with the President, Andhra Pradesh Urdu Academy. He was granted Honorarium of Rs 1500, House Rent Allowance of Rs. 2500, Petrol charges for city at the rate of Rs. 1000 T.A./D.A. as per government rules, sitting fees as per provisions applicable to a Chairmen of State Government Corporations, one Special Grade Steno as P.A., residential telephone with S.T.D. facility, and two residential peons. But all this was at the cost of the *Waqf* Board.

3.32 Meanwhile an important statutory change. took place. The Inam Abolition Act, 1955, which originally excluded from its preview the lands held by or for the benefit of Charitable and religious institutions, was amended in 1985 to include them back under the Act. As the result of this amendment the lands burdened with religious services were being granted Patta in the name of their occupants against the interest of the *waqf*. Therefore, the *Waqf* Board filed a write petition challenging the amendment. The High Court of Andhra Pradesh stayed all further proceedings under the Inam Abolition Act, 1955, including all proceedings for the grant of Ryotwari Patta in respect of *waqf* land²⁴.

3.33 On expiry of its term, the *Waqf* Board was reconstituted²⁵ with new members drawn on it and the Member of Parliament as its Chairman. Once

²¹ Vide Resolution No. 209/85 dated 19/11/1985.

²² Vide G.O. Mt. No. 1685/Rev.(**Waqf**) Department, dated 21/12/1987.

²³ W.P. No. 19775/8

²⁵ G.O. Ms. No. 599/Revenue, (*Waqf*), dated 17/6/1989.

again the Board ran into troubles. The Government issued a Show Cause notice²⁶ directing the *Waqf* Board to show cause within 15 days as to why it should not be superseded for contravening the direction of the Government, not obtaining prior approval of the Government for constituting *Waqf* Committees; finalizing auction of offerings of Dargahs; failing to discharge legitimate duties and obstructing the development of *Waqf* etc.

3.34 Being aggrieved by the Show Cause notice, one of the members of the Board, filed a write petition²⁷ and obtained stay order against the operation of the Government's order. The High Court of Andhra Pradesh vacated the stay order on 19/4/1991 with a direction to represent to the Government. Thereupon, the Government superseded²⁸ the *Waqf* Board for a period of one year and appointed Mr. Shaikh Saad Husain, I.A.S. as Special Officer, who on previous occasions also was appointed as Chairman and Administrator. His appointment order²⁹ vested in him the power and duties of the *Waqf* Board. Both the Government's order No. 631 and 632 were challenged in the High Court of Andhra Pradesh, but the High Court disposed of the write on 14/9/1991 with the directive that the Special Officer will remain incharge of the day today administration and affairs of *Waqf* Board and that the Board can, however, meet for the limited purpose of discussing the supersession. The *Waqf* Board preferred an appeal before the Division Bench of the High Court against this direction. Thereupon the Chief Justice ordered on 12/11/1991 that the Secretary should convene a meeting of the Board exclusively for preparation of reply of the Show Cause notice. Accordingly the Board meeting was convened on 3rd January 1992 which could not transact the only item on the agenda for want of quorum. Meanwhile, the supersession continued and was further extended for one more year with effect from 18/7/1992³⁰

During this extended period, the Special Officer was replaced and Mr. Laikh Ali, IPS, Managing Director, Andhra Pradesh Minorities Finance Corporation was entrusted with the additional charge of the post of Special Officer, who assumed charge on 3/3/1993. The period of supersession was further extended for one year with effect from 17/7/1993³¹

26 Vide G.O.Ms.No. 51, Revenue (*Waqf*) Department, dated 23/1/1993.

²⁸ 27 W.P.H.P. No. 1864/91, dated 13/2/1991.

²⁹ G.O. Ms. No. 631/Rev. (*Waqf*) Department, dated 19/7/1991.

³⁰ G.O.Ms. No.760/Rev. (*Waqf*) Department, dated 18/7/1992.

³¹ G.O. Ms. No. 632/Rev. (*Waqf*) Department, dated 17/7/1993.

3.35 *Waqf* Board was reconstituted by the congress Government at the fag end of its tenure and Mr. Yousuf Quraishi took charge as Chairman on 11/9/1994. Muslim intellectuals, scholars and opinion leaders were not consulted before the constitution. General feelings of unhappiness were expressed about the nomination of unsuitable persons as members of the Board. Against the constitution a writ was filed by one Mr. Jamaluddin Dakhni. The succeeding Telugu Desham Government supported the contention of Mr. Jamaluddin and conceded that the selection of members of the Board was not done properly and that the Government would like to reconstitute the *Waqf* Board. The single bench held the nomination of all the members as invalid except of one member who was a member of Legislative Assembly. Since reconstitution was not possible before the end of the term of the existing Board, the Board was Superseded and Mr. Mohd Ali Rafaath, Director Andhra Pradesh Minorities Finance Corporation was entrusted with the additional charge of the post of Special officer who assumed charge of 10/4/1995. The Chairman of the superseded *Waqf* Board filed a write petition. A voluntary organization, Muslim Minorities first contested the case in support of the Special Officer. The Government also supported their contention. The matter came before the Chief Justice Andhra Pradesh High Court who called for a list of nominees from both the contending parties (voluntary organization and the Chairman of the Superseded *Waqf* 'Board) and appointed a Receiver Committee consisting of two members and one Member Secretary (a senior in-service member of the Judiciary) the present author was appointed by the High Court as Chairman. The Receiver Committee took charge on 12/2/1996. The High Court decided the write appeal in favor of Mr. Yousuf Quraishi who took over as Chairman on 13/3/1996. When the *Waqf* Act 1995 was extended to Andhra Pradesh the *Waqf* Board was reconstituted under the New *Waqf* Act. Mr. Yousuf Ali was elected as Chairman and assumed charge on 9/7/1996.

3.36 Thus form the above record it may be noticed that the Government has served Show Cause notifies on at least .five occasions and the Board was superseded, from time to time, for a total period of seven years, during a span from 29/11/1965 to date.

3.37 LITIGATION/LAND GRABBING/UNAUTHORIZED OCCUPATION

As has been mentioned earlier, there are 35,703 *waqf* properties with a total value of Rs. 1,385 Crores situated in the State of Andhra Pradesh (see Para 3.14). These *Waqf* Institutions have their attached landed property of about 133,209 Acres and 30 Guntas. However, it is painful to note that there

are, at least, 296 cases of land grabbing and action is initiated against the grabbers under the provisions of land grabbing (Prohibition) Act, 1982. Out of 296 cases only (8) cases have so far been decided in favor of *Waqf* Board.

3.38 The District-wise details of land, Grabbing cases are as follows:

Sl.#	Name of the District	NO. of Cases
1.	Hyderabad	130
2.	Warangal	51
3.	Ranga Reddy District	3
4.	Guntur	66
5.	Visakhapatnam	5
6.	Vijayanagaram	1
7.	Anantapur	3
8.	Nellore	2
9.	Mahboobnagar	35
Total		296

Source: Report of the Andhra Pradesh *Waqf* Board.

3.39 The District-wise details of unauthorized/illegal occupation are furnished below. There were 202 such cases. Of these necessary action was initiated against 79 as shown below:

Sl.#	Name of the District	No. of Cases
1.	Hyderabad	15
2.	Ranga Reddy District	2
3.	Medak	2
	Nalgonda	42
5.	Warangal	3
6.	Khamman	1
7.	Nizamabad	4
8.	Adilabad	3
9.	Mahaboobnagar	7
Total:		79

Andhra and Coastal Area

SI. #	Name of the District	No. of Cases
1.	Visakhapatnam	4
2.	Vijayanagaram	5
3.	East Godawari	3
4.	West Godawari	4
5.	Krishna	6
6.	Guntur	8
7.	Prakasham	6
Total:		36

Rayalaseema Districts

SI. #	Name of the District	No. of Cases
1.	Kurnool	29
2.	Cuddapah	21
3.	Ananthapur	25
4.	Chittoor	6
5.	Nellor	6
Total:		87

Grand Total 79+36+87+ = 202

Source: Report of the Andhra Pradesh Waqf Board.

3.40 There are 133 cases pending in the Civil Courts for the recovery of the waqf land from unauthorized and illegal occupants. Details are as follows:

Telangana Area

SI. #	Name of the District	No. of Cases
1.	Hyderabad	20
2.	Ranga Reddy District	3
3.	Medak	1
4.	Nalgonda	22
5.	Warangal	3
6.	Khammam	2
7.	Nizamabad	5
8.	Adilabad	2
Total:		58

Andhra and Coastal Area

SI. #	Name of the District	No. of Cases
1.	Visakhapatnam	12
2.	Vijayanagaram	15
3.	East Godawari	2
4.	West Godawari	4
5.	Krishna	4
6.	Guntur	20
7.	Prakasham	6
Total:		63

Rayalaseema Districts

SI. #	Name of the District	No. of Cases
1.	Kurnool	4
2.	Cuddapah	3
3.	Ananthapur	1
4.	Chittoor	2
5.	Nellor	2
Total:		12

Grant Total: 58+63+12 = 133

Source: Report of the Andhra Pradesh *Waqf* Board.

3.41 The Number of litigation is indicative of the prevailing state of affairs. There are as many as 1015 cases pending in various Courts in which Andhra Pradesh *Waqf* Board is a party.

Sl. #	Name of the District	No. of Cases
1:	Supreme Court of India	9
2.	High Court of Andhra Pradesh	275
3.	City. Civil Court, Hyderabad	230
4.	Telangana Region	70
5.	AndhralRayalaseema	260
6.	Land Acquisition cases	171
Total:		1015

3.42 REVENUE OF ANDHRA PRADESH STATE **WAQF** BOARD

The sources of Revenue of the *Waqf* Board include the following:

1. **Waqf** Fund
2. Qaza'at Revenue
3. Rents
4. Haq-e-Intezam (Management, Charges).

The receipts and payments during the month of March 1993 to June 1993 were as follows:

Receipts	Rs. 197,008.61
Payments	Rs. 190,439.38
Receipt towards Waqf Fund	Rs. 441,206.36

The amount received out of auction of the offering of various dargahs during 1993-94 was as follows:

1.	Dargah Saa'dullah Hussaini Nizamabad Dist	1,575,000	1,676,500	101,500
2.	Dargah Jahangir Peeran Mahboobnagar District	1,937,000	2,215,000	278,000
3.	Dargah Yakoob Shaheed Annaram Shareef, Warangal	752,000	781,000	29,000
4.	Dargah Jan Pak Shaheed, Nalgonda	550,000	660,000	110,000
5.	Dargah Kareemullah Shah Quadri Kasmur, Nellore	635,000	850,000	215,000
Total		5,449,000	6,182,500	733,500

From the above statement an increase of Rs 733,500 during the period of 1993-1994 is obvious comparing to the previous year of 1992-93.

3.43 GRIEVANCE CELL

A grievance cell was started with effect from 1st of May 1993, for receiving grievances/complaints/representations and the receipt of such

representations was acknowledged immediately. Arrangements were made to dispose of the cases, if no litigation was involved therein, within a period of one month. However, an interim reply was required to be sent within 15 days. It is reported that the Cell was working properly.

3.44 THE QAZA'ATH SECTION

One of the main sources of income of the AP *Waqf* Board is through the Qaza'ath which the Board is supervising under power delegated by the State Government through administrative order. At this stage, it is necessary to furnish some details regarding the background of Qaza'ath System. Prior to 1950 in the erstwhile, state of H.E. the Nizam of Hyderabad, there was a government department named Sadaratul Aaliya. The Director Ecclesiastical Department was also the Head of Sadaratul Aaliya. While the Ecclesiastical Department functioned on secular lines, Sadaratul Aaliya was exclusive for certain affairs of the Muslim Community. After 1857 Civil Courts were established in British India. On the same pattern Civil Court were established in Hyderabad state and the Qazis were diverted of powers to adjudicate Civil Cases. When the administration of *waqfs* was entrusted to the Ecclesiastical Department the Qazis were left with matters pertaining to performance of Nikah (marriage), Talaq and Kula (Dissolution of marriage). All the Qasim were under the administrative control of Sadaratul Aaliya. This department functioned mostly as "Registrar of Marriages".. The Qasim were hereditary. Jurisdiction of every Qazi was fixed by Sadaratul Aaliya and they were assisted by several Naib Qazi who functioned under respective Qazis. A regular syllabus was prescribed for them and examinations were conducted. The Qazis as well as the Naib Qazis were required to pass these tests. The Qazis were supplied with Siyahas (Performa of registration of marriage). The original was to be kept with the Qazi, duplicate with the Naib Qazi, the triplicate was to be sent to Sadaratul Aaliya and the quadruplicate to the Central Record Office to be preserved as permanent record. The Department of Sadarat ul Aaliya was abolished vide G.O. No.37, dated 2nd September 1950. At this juncture a unique service was rendered by Qazi Waheeduddin Siddiqi who formed Anjuthan-e-Qaza'ath (Association of the Qazis) and formulated a scheme to continue the Qazaath system on voluntary basis in coordination with the *Waqf* Board. The State Government accepted the scheme and entrusted the supervision of the Qazis to the *Waqf* Board Vide G.O. Rt. No. 1360, dated 7-4-65. Thus the Qazaath Section was started in the *Waqf* Board. Siyahas were published and supplied to the Qazis. By the sale of the Siyahas there was additional income to the *Waqf* Board.

The annual income of the **Waqf Board through Qazaat** which was **Rs. 67,936** during the year 1973-74 increased as follows during the last three years:

1994-95	Rs. 1,472,516
1995-96	Rs. 1,578,994
1996-97	Rs. 1,605,289

3.45 INVESTMENT OF SURPLUS FUNDS

There are several *waqf* institutions which are under the direct management of the Andhra **Pradesh State Waqf Board**. Surplus funds (to a tune of about 4 crores) of these institutions were invested with the scheduled banks. These funds formed the corpus and were to be kept in tact. Only the income there of was to be spent on the objects of *waqf* as per the behests of respective *waqfs*.

It is the primary duty of the *waqf* Board to preserve these funds and to employ these funds in the best possible manner keeping in view the safety as well as remunerative value of these funds.

Due to the devaluation of the currency and the inflationary trend during the past few years the value of these corpus funds was fast deteriorating.

The best way of preserving these funds would have been to purchase buildings which are free of encumbrances and which are well situated. Similarly these funds could have been utilized for the development of *waqf* properties. In view of the exclamation of prices of the properties, the corpus could have been easily multiplied four fold or more during the past one decade. There is no denying the fact that investment with commercial banks is not proper from Islamic point of view. However, in view of the difficulties and risks involved in utilizing these funds for the purpose of buildings or development of *waqf* properties, it was not safe to undertake such investment for the present. The matter required detailed scrutiny. The investment in the banks ' was fetching interest @ 10% per annum. There are other safe investments which can fetch more interest per annum which may perhaps be considered.'

The present author who was appointed as Receiver Chairman of the Waqf Board by the Andhra Pradesh High Court in February 1996, (Incidentally, this was the first time in the history of waqf administrative in India that the Chairman of a Waqf Board was pointed by the Court), invested

the surplus funds of the *waqfs* with the banks under "Certificates of Deposit" bearing 17% per annum as against 10% under "Fixed Deposit Receipts".

3.46 **WAQF ADMINISTRATION IN BIHAR STATE**

The *Waqf* administration in the State of Bihar is bifurcated into two separate *Waqf* Boards, each for Sunni and Shia sects. Therefore, functioning of both the Boards would be separately studied.

BIHAR STATE SUNNI WAQF BAOD

3.47 **ORIGIN, HISTORY AND GROWTH**

Under the provisions of Bihar *Waqf* Act, 1947, A Sunni *Majlis-e-Awqaf* was created for the protection and administration of *waqf* properties and also for achieving the objectives of dedication of *waqf* properties. This Act was, however, replaced by the Central *Waqf* Act, 1954, which came into force in the State of Bihar on 12th of April 1973. Under the old Bihar *Waqf* Act, 1947, there was a provision for appointment of a "Sadar" and a "NazIr" for running the administration of *Majlis-e-Awqaf* whereas under the Central *Waqf* Act, 1954, *Majlis-e-Awqaf* was replaced by the *Waqf* Board and the posts of "Sadar" and "Nazir" were transformed into Chairman and Secretary respectively.

3.48 **ADMINISTRATION OF SUNNI WAQF BOARD**

During the period from its inception under Bihar *Waqf* Act, 1947, the *Majlis-e-Awqaf* appears to have worked smoothly without any external interference till 1973 for about 24 years. But during the period of 15 years from 1973 to 1989, the Board had to be reconstituted for six times. From the date of application of Central *Waqf* Act, 1954, the *Waqf* Board has been superseded for five times. Each time when it was reconstituted followed by supersession, it worked only for a short span of two to three years and never completed its statutory tenure of 5 years. Once the Board worked only for a short period of four months. The reasons for the frequent supersession and reconstitution of the *Waqf* Board is attributed to the Political changes in the Ministry, particularly, after each Assembly Elections in Bihar. "The (State) Government have been putting all sorts of illegal, impediments in the way of working of the Board and its Chairman, directly as well as through the thoroughly incompetent and impertinent Secretary, Mr. Warsi who was appointed by the Government as the **Secretary of the *Waqf* Board** on purely

political grounds. (Letter No. 548, dated 7/3/1992 from the Chairman Bihar State Sunni *Waqf* Board addressed to Chairman Minorities Commission, Patna, Bihar). As a result, the *Waqf* Board could not achieve the objective for which it was constituted. The reasons for this were many as discussed in paras 3.49 to 3.58.

3.49 SURVEY OF THE WAQF PROPERTIES HAMPERED

The Central *Waqf* Act, 1954 was enforced with effect from April 1973, but even during this long period of two decades the Survey of the *Waqf* properties has not been completed, as is required under Section 4 of the Act. In the absence of any Survey Report, the correct number of *Waqf* properties existing in the state could not be determined. The *Waqf* Act provides for the appointment of a *Waqf* Commissioner and other Officers by the Government of Bihar for conducting Survey of the *Waqf* properties. The Government appointed the Commissioners twice, but due to various reasons, they were withdrawn before the work of survey could be completed and whatever little work was done it remained incomplete and defective. The survey could not be successfully undertaken because of the reason that it required a larger team of competent and dedicated Officers. But such staff was not provided to the *Waqf* Commissioner. Thus, in the absence of any such authentic record of survey, it is claimed that there are atleast 2,000 *Waqf* properties under this Board.

3.50 FINANCIAL SICKNESS OF THE BOARD

The financial difficulties of the Board are quite obvious and attributable to the non-completion of the Survey of the *Waqf* properties. Since the correct number of the *Waqf* properties existing in the State is not known the collection of *waqf* contribution @ 6% could not be made which is the main source of income for any *Waqf* Board. Of the 2000 *waqf* Board, about 500 *Waqfs* are such which have no income at all. Out of the net income from each of the *waqf* estate, 5% is collected by the *Waqf* Board as *waqf* fund. The total income from *waqf* fund is **about Rs 3 lakhs per annum**, whereas the total annual expenditure of the Sunni *Waqf* Board is estimated at Rs 8 lakhs. At present the Board requires a sum of Rs 27 lakhs for repayment of different loans, other encumbrances and repayment of arrears to the Central *Waqf* Council. Government of Bihar has allotted Rs 460,000 only, which was spent for *Waqf* properties. Since the correct number of the *Waqf* properties existing in the State is not known the collection of *waqf* contribution @ 6% could not be made which is the main source of income for any *Waqf* Board. Of the 2000 *waqf* properties registered with the *Waqf* Board, about 500 *Waqfs* are such which have no income at all. Out of the net income from each of the *waqf* estate, 5%

is collected by the *Waqf* Board as *waqf* fund. The total income from *waqf* fund is about Rs 3 lakhs per annum, whereas the total annual expenditure of the Sunni *Waqf* Board is estimated at Rs 8 lakhs. At present the Board requires a sum of Rs. 27 lakhs for repayment of different loans, other encumbrances and repayment of arrears to the Central *Waqf* Council. Government of Bihar has allotted Rs. 460,000 only, which was spent for the payment of salary of the Office Staff for the period of one year. Subsequently after the year 1990-91 a sum of Rs 960,000 and Rs 500,000 for the year 1991-92 was released as grant-in-aid by the State Government.

3.51 NON-FIXATION OF ANNUITY

Consequently upon the abolition of Zamindari system, the annuity is required to be fixed by the Government in respect of the *waqf* estates. A long period of about 35 years has elapsed, but the annuity of the Zamindari has not yet been fixed by the government; this amount is estimated by the Board at Rs 15 lakhs which would have definitely improved the financial condition of the Board.

3.52 NON-EXEMPTION UNDER OTHER LAWS

In several states, the *waqf* properties are exempted from the purview of the laws relating to land ceiling rent control, etc. But in the State of Bihar no such exemption to the *Waqf* properties is granted under ceiling Act, Bataidari Act and Income Tax Act.

3.53 RECORD OF RIGHTS (KHATIYAN)

It is brought to the notice that during the general survey of the *waqf* properties conducted by the Revenue Department frequently the *waqf* properties are frequently recorded in the names of the private individuals in the record of rights (Khatiyani). This serious lapse has damaged considerably the *waqfs*. This also led to the involvement of the *Waqf* Board into litigation.

3.54 ILLEGAL POSSESSION OF THE **WAQF** PROPERTIES

It was detected that a large number of *waqf* properties were in illegal possession of different persons, institutes and even organizations. Since no *Waqf* Commission was posted no action could be initiated to remove the encroachment.

3.55 It was also found that most of the *wagfs* buildings were let out on pitifully low rents and even such meager amounts were not regularly collected from tenants.

3.56 STATUTORY POWERS OF THE BOARD WITHDRAWN

Constant interference by the government in day today matters of the *Waqf* Board is also not unknown. This is obvious from the fact that under Section 21(3) of the Act, read with section 14 of the *Sunni Waqf Regulations 1973*, the Board had full powers to create posts and make appointments of the necessary staff. But this power, it is complained, has been withdrawn by the State Government with the result that certain important and essential posts are falling vacant and administration of the *Waqf* Board has suffered badly.

3.57 Similarly under Section 43-C of the *Waqf Act 1954* the Board had the powers to dissolve *Waqf* Committees. But the government, by its order, withdrew this power of the Board.

3.58 NO SECRETARY OR WAQF COMMISSIONER APPOINTED

The Bihar State *Sunni Waqf* Board is functioning without any Secretary or *Waqf* Commissioner since none of them has not so far (7-3-1992) been appointed by the state government.

3.59 DEVELOPMENTAL SCHEMES

The developmental schemes undertaken with the financial assistance from the Central *Waqf* Council, and their progress is as follows:

Sl. #	Name of the Project	Central <i>Waqf</i> Council's Assistance	Progress of Work
1.	Kacheri Peepal Patri <i>Waqf</i> Estate, Buxer	559,000	Fully completed
2.	Safri <i>Waqf</i> State Bihar Shareef	1,200,000	Reaching completion
3.	Ninsar Ali <i>Waqf</i> Muzzafatpur	764,000	Almost completed, but involved continuation
4.	Ma' an Shahi <i>Waqf</i> Estate, Katihar	150,000	Work will commence soon
5.	khalifabagh Bhagalpur <i>Waqf</i> Estate.	127,000	Under progress work continued
6.	Peemur <i>Waqf</i> Estate, Chapter	200,000	Completed.

3.60 AN IMPORTANT JUDGEMENT OF THE SUPREME COURT OF INDIA

The state of affairs in the Bihar State Sunni *Waqf* Board probably cannot be placed in a more accurate and authentic way than by referring to an important judgement of the Supreme Court of India in an appeal³² preferred by the *Waqf* Board. The entire Judgement is self-explanatory. The Supreme Court has very objectively examined the extent of the government's extraneous action motivated by political consideration in superseding the *Waqf* Board more frequently, leveling false charges against the Board, interfering into the day to day functioning of the Board etc. The Supreme Court also examined certain important provisions of the Central *Waqf* Act, 1954. Therefore, a brief reference to it is very relevant and pertinent. Excerpts from the Supreme Courts judgement are as follows: .

"...It has been alleged in the Writ petition that soon after the change of the government, fabrication of charges and the grounds for supersession of the Board and removal of the Chairman started on extraneous and political consideration..." In paragraph (45), the Petitioners (i.e., *Waqf* Board) have categorically enumerated the circumstances and instances to show how consistently illegal and unwarranted interference in day to day affairs of the Board have been carried out by the respondents (i.e., the State Government), such as:

- (a) The Secretary, Law Department had directed the Board not to dissolve the Committee of any *Waqf* when the Government have no authority or jurisdiction in the matter under Section 16 and 43(2) of the *Waqf* *Act, the Power of the formation and dissolution of the Committee of any *Waqf* lies with the Board.

3.61 The Law Department again directed the Board to furnish explanation on the representation of the (*mutawalli*)³³ who had been removed from the post of *mutawalli* of waqf No. 915. Without any jurisdiction, the government raised this matter when an appeal preferred by the said (*mutawalli*) before the government had already been lost and the writ petition filed against the same

Civil Writ Jurisdiction Case No. 6642 of 1990 dated 21/9/1991.

³³ The names of the *Mutawalli*, or for that matter of other persons appearing in the judgement have been omitted and referred by their posts by us for obvious reasons.

also remained unsuccessful. Even the representation filed before Government for his reappointment to the post of *mutawalli* **has been entertained** by the State whereas under Section **46(6)** of the Act, a member once removed cannot be reappointed for a period of five years..."

3.62 "On the basis of these facts, it was contended that on some pretext or the other, baseless allegations were made and undue interference was caused by the respondents (i.e., the State Government) in day to day affairs of the Board. In about a period of fifteen years the Board has been superseded twelve times on one plea or the other and it has not been given adequate and proper opportunity to put its own House in order so as to efficiently manage and administer the functioning of more than 2000 *Waqf* Estates within the State of Bihar".

3.63 "While this writ petition was pending, on 5/11/1990, the Law Department issued a notification superseding the Board. A subsequent notification of the same date was also issued stating that the Law Secretary has been appointed as the Special Officer of the *Waqf* Board. and Petitioner No. 2 is required to hand over the charge of the post of Chairman of the Board to respondent No. 3

3.64 Thus' the important paragraphs of the writ Petition of the *Waqf Board* were reproduced by the Supreme Court in the above manner. Then the Supreme Court turned back to refer to the stand taken by the respondent (i.e., State Government) in the Counter Affidavit in pars 9 of the judgement, excerpts from which follows:

3.65 "The Stand taken in the Counter-affidavit and as suggested by the Advocate General that providing fund for the Board is at the mercy of the State Government. Creation of fund for the Board is not an obligation upon the State Government. This has been controverted by the Petitioners and it has been submitted that the Government of all the States have been providing massive grants and aids to the *Waqf* Boards in respective States except the State of Bihar which has been providing only meager amounts occasionally. It is asserted by the Petitioners that no relation of the Petitioner No. 2 was appointed to any post of the Board. One (member) who is step-brother of Petitioner No. 2 has been nominated as the Member of the Soghra *Waqf* Committee which is one among 2000 *Waqf* Estates and such appointments were not contrary to the *waqf* rules. Nomination of any distant relation as a Member to any *Waqf* Committee would not by itself be illegal and cannot be a ground for supersession of the Board. In paragraphs 7, 8 and 9 of the rejoinder, the

allegations made in the Counter Affidavit reiterating the charges, have again been refuted. It has been categorically stated that no sale or lease of a single such of any *Waqf* property has been made by the present Board".

3.66 Thereafter the Supreme Court evaluated and examined the contention of both the *Waqf* Board and of the State Government and said.

3.67 "...It is now relevant to notice the provisions of section 64 of the *Waqf* Act, 1954 which reads:

"Power to Supersede the Board

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, the State Government may, by notification in the *Official Gazette*, supersede the Board for such period as may be specified in the notification;

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..."

"On plain reading of the said provision, it would be obvious that the opinion of the State Government to supersede the Board is not a subjective opinion. It has to be based on objective findings and for the reasons to be recorded in writing. The persistent default in the performance of the duty imposed on it **cannot be gathered by a solitary instance of irregularity or illegality**, (Emphasis added by us)".

3.68 "While considering the true scope of Section 64 and expressions used therein such as "persistent default" and "excess or abuse of power", the Kerala High Court in the case of Kerala *Waqf* Board and another Vs. State of Kerala and another (AIR 1984 Kerala 57) held:

"One or two isolated cases of failure to act will not amount to persistent default within the meaning of Section 64.... Even a single act of disobedience of the direction may, added to certain continuing circumstances,

depending upon the gravity of the matter, indicate persistence on the part of the defaulter".

3.69 In the decisive part of the verdict, the Supreme Court thus said:

"...On correct interpretation of Section 64, it has to be held that the opinion has to be based on consideration of the explanations submitted in regard to the charges leveled against it and that must be considered by a reasoned order. The fact of the present case presents a peculiar feature. Each and every allegation leveled against it (i.e., Board) were categorically repelled and refuted. They were of trivial nature on which no reasoned opinion could have been formed that the Board persistently defaulted in the performance of its duties imposed under the Act. On the other hand, the facts enumerated above would disclose that there was persistent effort on behalf of the respondents (i.e., the State Government) and its authorities to interfere with the day to day administration of the Board and it has been brought on record that in a period of 15 years the Board was superseded 12 times. It has also been demonstrated that the same charges, more or less, were leveled for claiming supersession. The Board had no adequate and proper opportunity to put its own house in order. No sooner the present Chairman had taken over the assignment, the notice to Show cause was issued within four months on the allegations which have been shown to be palpably baseless. Even now the charges have not been established by any cogent evidence. No document in support of the allegation has been brought on record on behalf of the respondent (i.e., the State Government. "It has, therefore, been alleged that the Show cause notice to supersede the Board was influenced by political consideration and was based on extraneous considerations. It may be pointed out that such statutory authorities must have a free hand in performing its day to day public duty and undue frequent interference on some false pretext or the other will not be conducive to the interest of the people or the *Waqf*. I find that the Show cause in question contained in Annexes 18 and 19 are based on no reason. Neither any reason has been so assigned nor any evidence or material has been disclosed justifying such act. Supersession of statutory body is a serious matter. It is governed by the Statute and the provisions contained there in must be strictly followed **Section 64 does not give a blanket power to supersede the Board as and when the respondents and its authorities wished to do so and for any reason whatsoever** (Emphasis added by Us).

3.70 "In the facts and circumstances of this case, I have reason to hold that the order of Supersession contained in Annexes 18 and 19 and the show cause notice contained in Annex 6 were based on extraneous considerations and were passed arbitrarily with oblique motive".

3.71 "In the result, the notification contained in Annexes 18 and 19, as also the notice contained in Annex 6 are quashed and this application (of the Waqf Board) is allowed. There shall, however, be no order as to cost".

3.72 WELFARE/EDUCATIONAL ACTIVITIES

The **annual report of the Bihar Sunni Waqf Board** is not prepared since long. As it is **obvious** from the state of affairs prevailing in this Board that it was mostly **passing through a period of turmoil and tribulations due** to frequent supersession and lack of Government grant. **Probably** this is the reason that the **Bihar Sunni Waqf Board** does not **appear to have undertaken** any welfare or educational activities. However, the report of the Central *Waqf* Council for the year 1991-92 with regard to the construction activities of this Board records, thus "the *Waqf Board* has taken up no such activities out of its own funds. All that has been done or being done is from the financial help received from the Central *Waqf* Council.

3.73 MAINTENANCE OF MOSQUES, MAQBARAS, ETC.

The Bihar Sunni *Waqf* by **the financial assistance of** the Board. Each mosque, *maqbara* has its own Committee or *mutawalli* who maintains the mosque, *maqbara*, etc.

3.74 BIHAR STATE SHIA WAQF BOARD

The Bihar State Shia Waqf Board was duly **constituted** by the State Government, vide its notifications ³⁵, with effect from June 1985. Under the provisions of the Central Waqf Act, 1954 ³⁶if the Shia *Waqfs* in any state constitute in number more than fifteen percent of all the *Waqf* in the State of if the income of the properties of the Shia *Waqfs* in the State constitute more than fifteen per cent of the total income of the properties of all the *Waqfs* in the State, the State Government may establish a Board of *Waqfs* each for Sunni *Waqfs* and for Shia *Waqfs*. **Thus**, in the State of Bihar a separate Shia *Waqfs* Board is **established**. **The** term of **the** Shia *Waqf* Board expired on 31st May 1990 and a fresh Board is not yet constituted. Further the State Government has created a new Department named as "Minority Welfare Department" to

³⁴ *Waqf Welfare Activities 0 1990/91, Published by Central Waqf Council, New Delhi, page 9.*

³⁵

Government Memo No. 3230/J, Dated 1/6/1985.

³⁶ Section 9, **Sub-Section (1-A)** inserted with effect from 1964.

place the *Waqf Board* under this department. However, till the final establishment of this Minority Department, the *Waqf Board* is continuing with the Law Department

3.75 FINANCIAL POSITION OF THE SHIA WAQF BOARD

The fiscal year **1987-88** was very hard and difficult for the **Board**. No Government grant was given to the Board. The *Waqf* contributions due against the *mutawallis*, which are the main source of income of the Board, were not realized up to the mark. Besides this, the number of litigation increased in order to take action for illegal sale of valuable *Waqf* property called "Rizwan" appertaining to the Hasan Imam *Waqf* Estate. The total income and expenditure of the Board for the year 1987-88 was Rs 24,445.30 which was totally spent on salaries to the Office Staff, legal and contingency expenditure, advocate's fee, T.A., telephone, advertisement, Office rent etc. However, for the year 1989-90 the total income of the Board from all sources was Rs. 235,487.56, which included a loan of Rs. 195,000 from the Bank and other sources. The corresponding expenditure for that year recorded as Rs. 228,985.80. Again for the year 1990-91, the income was estimated at Rs. 451,125.89 and expenditure at Rs. 245,359.82.

3.76 LITIGATION

About forty cases are being contested by the Board in different courts at Patna, Patna City, Hazri Bagh, Ranchi etc., and the nature of such cases, according to their subject, would probably, give an idea of the circumstances which compel the Board to enter into the arena of limitation.

Sl No.	Nature of Cases	Total No. of Cases Pending Before Various Courts
1.	Revision/Miscellaneous	2
2.	Insolvency	1
3.	Title Suit	14
4.	Title (Eviction) Suit	4
5.	Miscellaneous Cases	4
6.	M.J.C.	6
7.	Complaint Cases	1
8.	Criminal Misc.	2
9.	Title Appeal	1
10.	Money Suit	
11.	Title-cum-Partition Suit	

" Letters from the Secretary, Bihar State *Waqf* Boards, dated 3/3/1992.

To streamline *waqf* administration, the Board has constituted various committees. Such committee includes Finance Committee consisting of 3 members of the Board authorized to deal with financial matters, apart from preparing Annual Budget of *Waqf* Board, and scrutinizing the Budget of the various *Waqf* Estates. The Selection Committee, too, consists of 3 members including the Chairman. The Committee is responsible for making various appointments in the Office of the Board.

3.78 District *Waqf* Committee has been constituted for the District of Patna, Muzafferpur, Siwan, Saran, Gaya, Purnea, Munger, Bhagalpur, Rohtas, Bhojpur, Champaran, etc. The term of each Committee is 3 years. Their functioning in the matters of improving *waqf* administration in various *Waqf* Estate, watching the affairs of the *Waqf* Estate, and also to ensure protection of the concerned *Waqf* Estate, has been claimed to be satisfactory.

3.79 **ADMINISTRATIVE COMMITTEE FOR SETTLEMENT OF DISPUTES**

. In order to resolve the disputes relating to the *Mutawalliship* of a *Waqf* Estate, the Board has developed system of constituting an Administrative Committee consisting of 5 to 7 members drawn from the locality concerned to look after and administer the *Waqf* Estate and solve the disputes relating to *Mutawalliship*. If any, presently about 11 such Committees have been constituted.

3.80 **NON-FIXATION OF FINAL ANNUITY AND PAYMENT OF AD-INTERIM ANNUITY**

The greatest financial problem of the *Waqf* Board is related to the fact that although 37 years have lapsed since the Abolition of Zamindari in the State, the Government has not yet fixed the final annuity of the *Waqf* Estates. However, with a view to enable the *mutawallis* to carry on their management, the State Government has sanctioned an Ad-interim pending final fixation of Annuity. But unfortunately, this Ad-interim annuity is also not paid regularly to the concerned *mutawallis*. In most of the cases, it is reported, that the payment of such Ad-interim Annuity has been totally stopped by the Local

Revenue Authorities for the last 10-15 years, inspite of the Government instruction issued to all District Officers. The Land Reforms Commissioner in his letter³⁸ issued instruction for making immediate payments.

3.81 The non-payment of Ad-interim annuity to the *mutawallis* of various *Waqfs* has **seriously** affected the **source** of income of **the** *Waqf* Board, as well as Central *Waqf* Council which they used to get by way of *Waqf* contribution payable by the *mutawallis* to the *Waqf* Board under section 46 of the Act.

3.82 As regards, fixation of the final annuity, the concerned departments of the State Government have not yet initiated the actin to verify the details of properties vested with the Government. As a result of abolition of Zamindari, there is no hope of such verification in the near future. Consequently, the fixation of final annuity is also held up.

3.83 Keeping in view the all round financial crisis which poses threat to the very existence of the *Waqf* Board, some concrete suggestions were made by the Additional Secretary, Ministry of Welfare, Government of India in his letter³⁹ addressed to the Chief Secretaries of all the states. One of such suggestions appearing as item No. 10 of the said suggestions stated, thus "The State Government should give regular grant-in-Aid to the State *Waqf* Boards for meeting their administrative expenses:.

3.84 WELFARE/EDUCATIONAL AND OTHER ACTIVITIES OF THE BOARD

The Bihar State Shia *Waqf* Board, as a part of its welfare activities issued direction to all the *Waqf* Estates under its jurisdiction to spend a sizable amount, out of their annual income, on the Welfare of the Community. Accordingly some of the *Waqf* Estates paid attention to the direction and made allocation of :

- a) *I'anat-e-Ghoraba* and *Masakeen*,
- b) *I'anat-e-Musaffareen*,
- c) *I'anat-e-Bewagan*,
- d) *I'anat-e-Hajatmand*,

³⁸ Letter No. 880/Rev., dated 6/9/1986.

³⁹ D.O. Lr. No. 7(8)/86, dated 24/9/1986.

e) I'arfat-e-Tajbeeز-o-Takfeen, etc.

A total sum of Rs 16,305 was utilized towards these Welfare Activities during the year 1989-90.

3.85 EDUCATIONAL ACTIVITIES

The amount of *Waqf* income utilized by some of the *Waqf* Estates on grant of scholarship to needy and deserving students during the year 1989-90 amounted to Rs 27,141. Apart from this, the *Waqf* Board has awarded scholarships amounting to Rs. 5,400 received from the Central *Waqf* Council..

3.86 DEVELOPMENTAL/CONSTRUCTIONAL ACTIVITIES

Two developmental schemes, namely, the Badshah Nawab Market at Patna City and Guest House of Mir Hasan Askari *Waqf* Estate at Arrah are functioning satisfactorily. The multistoried Complex at Badshah Nawab *Waqf* Estate at Patna City is under construction. Other two schemes, each at Patna and Muzzaffarpur, are under preparation.

3.87 MAINTENANCE OF THE MOSQUES/MAQBARAS

The Board is reported to have watch upon the maintenance of mosques/maqbara etc. ensuring extension of facilities like Electricity, Water supply and white washing etc.

3.88 FENCING OF THE GRAVEYARD - AN INDICATOR

It is interesting to note that the Ministry of Welfare of the Central Government was kind enough to make suggestion regardign the construction of Brick Walls around the Grave-yards to protect them from encroachment. It was recommended that the State Government may consider extending necessary financial assistance in this behalf to the *Waqf* Boards concerned from the funds of IRDP to NREP Programs". The Law Department of the Government of Bihar, under whom the *Waqf* Boards are functioning, called for the estimates of constructing Brick-wall around the Grave-yards. By the time the work of estimation was completed having spent some money to engage technical staff for this purpose, the Law Department issued another letter, this time calling estimate of wire-fencing around the Grave-yards instead of Brick-

wall. Against instructions were issued to the *Waqf* Boards to get trees planted on the boundaries of the Grave-yard to protect them from the encroachment.

WAQF ADMINISTRATION IN STATE OF WEST

BENGAL 3.89 EARLY HISTORY

Prior to 1934, there was no government control over *Waqf* Estates in Bengal, except for the authority of the Gazi. With the abolition of the Office of the Qazi, the authority of the Qazi was **substituted** by the Civil Courts. As far as Public *Waqfs* were concerned, they were subject to the Control of the Principal Civil Court of the District namely, the District Judge.

3.90 In 1934, the Bengal *Waqf* Act was created with the object of providing **proper administrative** control over *Waqf* Estates **in general within West Bengal**. **This being a special Act, its provisions were applicable to *Waqf* Estates in Bengal only. After partition, the provisions continued to be applicable to all *Waqf* Estates in West Bengal.**

3.91 CONSTITUTION OF WAQF BOARD

The first *Waqf* Board in Bengal was formed in the years 1936. The Board was constituted under Section 8 of the Bengal *Waqf* Act, 1934 consisting of 11 members, out of which 5 members are appointed by the State Government of whom one is a Shia and two are *mutawallis*, 3 members are elected by the West Bengal Legislative Assembly from amongst the M.L.A's and other 3 Shia member are appointed by the State Government of whom one is from Dawoodi Bohra Community. The commissioner of *Waqfs* is the President of the Board. The Shia members act only in respect of Shia property, therefore, in respect of all other properties the Board is consisting of 8 members only.

3.92 OFFICE ESTABLISHMENT

There is a Commissioner and a Deputy Commissioner for running day to day business of the Board. Normally they are appointed by the State Government from time to time from the I.A.S., W.B.C.S. or other services. There are 48 other employees also who are, Board's own appointees. There is one official *mutawalli* **appointed** by the Board under provision of Law who holds a separate office of his own situated in the same premises. A good

number of *Waqf* Estates have been placed under his management for convenience. The only qualification of a member of the Board, Commissioner or Deputy commissioner is that he must be a person professing the Islamic faith.

3.93 SURVEY OF THE **WAQF** PROPERTIES

In West Bengal, there are 7,337 *Waqf* properties registered up to 31' March 1987. Out of these 33 are registered as Shia properties and remaining 7,304 properties are Sunni properties.

3.94 ANNUAL INCOME OF THE **WAQF** PROPERTIES

Net Annual income of all the registered Sunni *Waqf* Properties is calculated at Rs. 4,594,993.42 and that of all Shia properties Rs 203,287.10, making an aggregate annual income Rs. 4,798,280.52.

3.95 FINANCES OF THE BENGAL **WAQF** BOARD

As per the Bengal *Waqf* Act, 1934, it is obligatory for *a mutawalli* to get his *Waqf* enrolled **and furnish** annual accounts of the income and expenditure thereof before the 15th Day of July in every year being counted from 1' April to 31st March or from 1' Baisak to the last date of Chaitra of the Bengali year. Every *mutawalli* is bound *to pay waqf* contribution under Section 59 of the Act, at the rate of 6% per annum **and** 2% per annum of the net income towards Education Fund Contribution. This is in addition to the Grant-in-Aid from the State Government for the administration of *Waqf* Board. A glance at the following table would give an idea about the financial position of the *Waqf* Board:

INCOME

	Source	Amount
1.	<i>Waqf</i> contribution @ 6% per annum	473,358.87
2.	Education Fund contribution @ 2% per annum	113,387.66
3.	Grant-in-Aid from State Government for payment of Salaries to the Office Staff and establishment	982,065.00
4.	Capital grant from State Government for construction of Muslim Girl's Hostel at Calcutta.	500,000.00
5.	House Rent	52,769.00
6.	Miscellaneous receipts	33,417.13
	TOTAL	2,154,997.66

Source: Annual Report of the Administration of the Bengal *Waqf* Act, 1934 for the period 1986-87

Out of this income, an expenditure of Rs, 2,013,895.37 was incurred leaving behind a surplus of Rs. 141,102.29. The expenditure included surrender of unutilized Governments Grant-in-Aid of Rs.. 34,593.46.

The *Waqf* income for the year **1989-90** was as follows:

Income	Rs. 7,056,664.95
Expenditure	Rs. 6,813,882.96 3.96

A BOTTLENECK

In recent years a unique situation is experienced in the matter of administration of *waqf* property unauthorizedly occupied by refugees. During the partition of Bengal and in the post partition period as well a huge number of *waqf* properties were unlawfully occupied by the refugees. These refugees even turned a considerable number of mosque into dwelling houses and some grave-yards were encroached upon. It is a striking fact that most of such mosques are still situated in the City of Calcutta. Both the State Government and the Central Government were duly informed of this but the situation remained the same. The Government are of the view that the recovery of those mosques is not possible unless suitable rehabilitation measures are taken for the refugees. Years have passed but to the utter surprise of the Muslim Citizens the solution of this bottleneck is yet to be found out. It is further reported that at least 54 *waqf* properties including mosques have been occupied by the refugees who removed doors and windows and converted these properties into shops running lucrative business. Even cows are stabled inside, hotels are opened, and roofs are used as their dwellings. Awfully some shrines are demolished and three storied buildings are constructed and Jewelry shops are opened.

3.97 FUNCTIONING OF THE WAQF BOARD

It is now common knowledge that the present members of *Waqf* Board, instead of trying to utilize the assets of the various *waqf* estates to set up educational institutions, Medical Centers and other institutions of public use and benefit, appear to be more interested in granting sanctions for transfer of *waqf* properties by way of sale or lease. Practically there is no attempt to encourage development of *waqf* properties on commercial lines in order to fetch more benefits. It may not be out of place to mention that during the last Ministry, the Minister-in-Charge of *Waqf* Affairs imposed an Executive ban on transfer of *waqf* property by way of sale or long-term lease, with the intention

of preventing *waqf* properties from being transferred to third parties. The immediate reaction of the Board, it is learnt, was to discontinue holding of meetings till the said ban was withdrawn. It is, therefore, obvious where the interests of the Board Members lie. It is complained that the members of the Board are misusing the powers vested in them for their personal gains. This inference is evident from the following instances:

- 3.98 a) The *waqf* estate comprising 17, Gariahat Road, Calcutta, is being sought to be leased out for a pittance, although the value of the property comprising about one Bigha of land in the heart of Gariahat will not be less than Rupees one crore.
- b) Hectic negotiations are going on for striking a deal to lease out a property on Gurusaday Dutt Road, comprising about one Bigha of land, for half of its market value. Active interest is being taken by one particular member of the Board in the matter.
- c) The same member of the Board, got himself appointed as *mutawalli* of the *waqf* estate comprising premises No. 135, Park Street, Calcutta. The property is extremely valuable and fetches a lucrative income. The very appointment of the Board member as *mutawalli* of a *waqf* estate is unprecedented which has invited criticism from various quarters.
- d) A Girls' Hostel for Muslim Girls is under construction at 43, Dilkusha Street, Calcutta. The project was held upon several occasions, it is learnt that there is dispute among the members of the Committee constituted for the purpose of completing the construction work.
- e) There is an Imambra at Anwer Shah Road in Tolly Gunge. The Imambra is surrounded by some land on which there are a few tenants. The entire plot including the land on which Imambra is situated has been leased out with the sanction of the *Waqf* Board. It is learnt that the lessee intends to construct a building on the said land including the Imambra itself.
- f) Corrupt and unscrupulous persons have been allowed to remain in management of *waqf* estates, despite orders of the courts. The decision of the Commissioner of *waqfs* at least on two occasions, has been sought to be overridden by the Board, without any legal authority in the case of the *waqf* estate comprising the Hafiz Jamaluddin *Waqf* estate at 151, Rabindra Sarani, Calcutta. The *Waqf* Estate which comprises a Mosque has been converted into a

market, **and** the rooms within the **compound** of the mosque, meant for the use of the beneficiaries belonging to the *waqfs* family, have **been converted into Godowns**. The persons responsible for the trespass, despite **being** rejected by the Commissioner of *Waqf* and the High Court, are **now being favored** by the **Board** to remain in **unlawful** possession of the *waqf* properties.

- g) A *Waqf* Estate situated at Tolly Gunge circular road, known as Zohra Begum *Waqf* Estate **has** been leased out, with the sanction of the **Board**, for a **period** of 50 years with a further option of 25 years. The monthly rent has been leased out, with the sanction of the Board, for a period of 50 years with a further option of 25 years. The monthly rent has been fixed at Rs 2050. It is learnt that the value of the land itself is **about one and a half crores**, and the **lease given in virtually a sale**.
- h) It is reported that the Official *mutawalli* appointed by the Board, was found to have tampered with official files and the official notes made by the former Commissioner of *Waqfs*. After due enquiry, the Commissioner of *waqfs*, West Bengal recommended that the Official *mutawalli*. should be removed and his tenure of appointment should not be renewed. But in spite of the said order, his term was extended by the present members of the Board. It is obvious that he enjoys the patronage of **an** influential section of the Board.

3.99 VESTING OF **WAQF** PROPERTIES — A HANDICAP

The liquidation of *waqf* properties under the Estates Acquisition Act, West Bengal **Land Revenue Act**, **Calcutta, Thika** Tenancy Act and Enemy Properties Act, etc. must indeed be a matter of greatest concern to those interested in these **benefaction**. In some cases it is painfully noted that the Revenue Officers have gone even up to vesting of the *waqf* properties within the Ceiling limit. The process of this **disintegration** is a **continuing** one. This practice cannot, therefore, be viewed with equanimity either by the State or by the community. Owing to insufficient material **available** the complete picture of such loss will **perhaps never be drawn**. **Whatever meager details are available show the loss over the years has been very great indeed**. **Never the less** at least a dozen of such cases have been identified which have been **unjustifiedly vested with the government**.

3.100 NON-ENROLMENT

There are huge numbers of *waqf* estates, which have not been enrolled yet. The *mutawallis* are not coming forward for enrollment. In the initial phase after commencement of the Bengal *Waqf* Act, 1934, a survey was conducted by the Special Officer appointed by the State Government who by making extensive tours in the undivided Bengal tried to organize Public opinion. As a result during the period of 14 months about 4,000 interested persons voluntarily applied for enrolment. Now together with the *waqfs* alienated by partition of Bengal the latest number is 14,915. Thus, during the last 50 years the figure rose from 4,000 to 14,915.

3.101 LITIGATION

A good number of *waqf* estates are involved in litigation on matters of title and nature etc. These litigations are in process for a long time, in some cases even for a few years. In most of the cases the estates involved are big ones. The collection of *waqf* contribution, therefore, suffers to a great degree. The extent of such litigation is obvious from the following table:

Sl. No.	Name of the District	Name of the Court	No of Stilts	Total Nos.
1	2	3	4	5
1.	Burdwan	Burdwan	14	14
2.	24-Parganas	Alipor D. Harbour Barasat Barinpur	33 5 6 3	47
3.	Birbhum	Suri Rampurhat	3 1	4
4.	Bankura	Bishnupur	1	1
5.	Malda	Malda	6	6
6.	West Dinaipur	Balurghat	5	5
7.	Murshidabad	Lalbagh Berhampure Kandi	4 2 1	7
8.	Hoogly	Arambag Chuchurah Serampore	8 8 3	19
9.	Howrah	Howrah Anita Ullobing	12 1 2	15
10.	Midnapore	Tamluk Midnanore	5 1	6
11.	Calcutta	High Court City Civil Court Sealdah	48 16 9	73
Total				197

Source: Annual Report on the working of the West Bengal *Waqf* Act, 1934, p.9

3.102 A VITAL COMPLAINT

One of the vital complaints often made by the *mutawallis*, is that Revenue Officers of the Land Reforms Department are making orders of vesting *waqf* properties at random. In many cases, they are not adhering to the ceiling laws. Requests from the *Waqfs Board* to record *waqf* properties as *waqf* with names of respective *mutawallis* also fell flat upon them whereby many complications arose ensuring loss to the *waqf* properties. Under the West Bengal *Waqf Act, 1934*, there is a clear provision that any question whether a particular property is *waqf* property or not shall be decided by the Commissioner whose decision, unless revoked or modified by a competent court, shall be final. The Honorable High Court also confirmed this view vide C.R. NO. 11357(W) of 1976, thus the could laid down:

"...His Lordship held that any question that whether a particular property was a *waqf* property or not can be decided by the Commissioner of *waqfs* and his decision, unless revoked or modified by a competent Court, shall be final. Therefore, once the Commissioner of *waqfs* has decided the lands in question as *waqf* properties, the Revenue Officer cannot entertain that question, nor an be 'decide that the said properties were not the *waqf* property but personal property of the Petitioner. His Lordship accordingly, was pleased to make the rule absolute and quashed the impugned proceedings started by the Revenue Officer, Mogra..."

3.103 WELFARE ACTIVITIES

Following five Muslim Girls Hostels are under construction:

			Amount Spent (Rs.)
1.	Muslim Girls'	Hostel, Calcutta	1,525,000
2.		Hostel, Burdwan	100,000
3.		Hostel, Suri Birbhum	700,000
4.		Hostel, Berhampur	– 600,000
5.		Maldah	500,000

3.104 EDUCATIONAL ACTIVITIES

A sum of Rs. 90,000 was disbursed to the poor and meritorious students as stipend during the year 1989-90.

THE WAQF ADMINISTRATION IN THE STATE OF KARNATAKA

3.105 ORIGIN AND HISTORY

In the old Mysore State, two Boards known as Mysore Board of *Waqfs*, and the Coorg Muslim *Waqf* Board were set up. After reorganization of the States, the two *Waqf* Boards were abolished and a Mysore Board of *waqfs* was constituted on 3rd March 1961, for the entire Mysore State.

3.106 The present Board is the Seventh Board constituted in Karnataka which has been functioning from 27/7/1988.

3.107 REGISTRATION OF WAQF PROPERTIES

There are 20,939 *waqf* properties registered with the *Waqf* Board which include mosques, Dargahs, Qabrastans, Idgahs, Ashur Khanas, etc. Another 456 Muzrai *Waqf* Institutions are transferred to the Board from the Endowment Department. Of these institutions, the Board is directly managing 42 *Waqf* Institutions.

3.108 DARUL AWQAF

It is to the credit of the Karnataka Board of *Waqfs* that its office is based in its own building called "Darul *Awqaf*". The *Waqf* Board is situated in the ground floor while the other three floors of this building have been leased out to a Tata Firm and the Board is getting a rental income of Rs. 1,030,960.20 per annum.

3.109 BOARDS' ADMINISTRATION

The administration of the *Waqf* Board is being handled by a Secretary, Additional Secretary, two Assistant Secretaries and one Muzrai Officer who are officers from Karnataka Administrative Service. The Karnataka *Waqf* Board is also availing the services of an Accounts Officer and a Manager from the State Government services. The Board is carrying out its activities in the districts with the help of 21 District *Waqf* Committees, which are functioning as regular offices. Executive and non-executive officers have their own function and duties.

3.110 FINANCES OF THE BOARD

The Karnataka Board of *Waqfs* is supported financially by the maintenance grants, which are given by the State Government. The State Governments Grant-in-aid was given to the Board as follows:

Year	Amount of Grant
1988-89	2,000,000
1989-90	3,000,000
1990-91	3,000,000

111. Apart from the above, the Board is also receiving grants for repairs and renovation of *waqf* institutions all over the State. The grant released by the Government for the said purpose was as follows:

Grant for Repairs/Renovation

Year	Amount Released
1988-89	6,000,000
1989-90	4,025,000
1990-91	5,000,000 (Budget Provision)

Source: The Secretary, Karnataka *Waqf* Board

3.112 The contribution of statutory 6% *waqf* contribution from the *Waqf* Institutions to the *Waqf* Board was more than double of Rs 7.14 lach in the year 1985-86 to nearly Rs.15 lakhs in the year 1989-90. The Board is taking assistance of the Deputy Commissioners in the Districts for recovery of *waqf* contribution in respect of the defaulting *mutawallis*. Consequent to the record collection of 6% *waqf* contribution by the Board, the 1-6^t contribution payable to the Central *Waqf* Council has also increased. Put together, the Board has paid a total amount of Rs. 245,921.75 to the Central *Waqf* Council during the year 1989-90.

3.113 A UNIQUE PROGRAM "JAMABANDI"

The Karnataka *Waqf* Board embarked upon a Unique Program called "Jamabandi Program", for obtaining the annual accounts of the *Waqf* Institutes and fixing the *Waqf* contribution demand. In this program, Table-wise meetings

were held with the *mutawallis* wherein, apart from the settlement of the accounts, discussions were held with the *mutawallis* to exchange views and comprehend the problems faced by them. The program ensured inter-action of the District- *Waqf* Committee with *mutawallis* for solving many problems faced by the *waqf* institutions.

3.114 **MUTAWALLIS CONFERENCE**

The Chairman, Karnataka Board of *Waqfs*, also conducted *mutawallis* conference in many Districts so as to enlighten the *mutawallis* about their functions and duties and the programs of the Board. Due to the close rapport established by the Board with the *mutawallis*, a huge amount of grants, which was lying with the Board unreleased for many years, was released to the *Waqf* Institutions. A record amount of Rs. 70 lakhs was released to nearly 600 *Waqf* Institutions during the year 1989-90. The total of nearly 400 institutions was registered during the year 1989-90, which are an all time high performances.

3.115 **A SIGNIFICANT ACHIEVEMENT**

One significant achievement is the formation of an exclusive record-room in the Board's Office for proper maintenance and preservation of valuable records on scientific lines. The records have been maintained methodically-district-wise and subject-wise and are being preserved by chemical treatment at regular intervals to prevent their spoiling from the Silver-fish and termites. The need for preservation of the valuable *Waqf-deeds*, property documents, Survey records, Courts' Judgements, etc. requires no emphasis. Old, unwanted and time-barred records accumulated for more than 20 years have been destroyed to provide space for the fresh records.

3.116 **UNAUTHORIZED OCCUPATION**

The Government of Karnataka is assisting the Board in the removal of unauthorized occupations and encroachment of the *Waqf* properties. The Government has been good enough to review the progress made by the Revenue Officers in each District and Division by conducting reviews meetings. As a result, encroachments have been removed in 23 cases and matter is being pursued in respect of another 148 cases. Similarly the Government of Karnataka is giving full support to the Board to up date the record of Rights in respect of the *waqf* properties. The Government has been issuing strict instructions to the Revenue Officers to up date the records so as to

bring the properties in the name of the *waqf* institutions. The Government is also making efforts to take up fencing of atleast 2 burial grounds in each Taluk under the NREP/Jawahar Rozgar Yojana Scheme. This will go a long way in protecting the burial grounds from unauthorized encroachment. The Government has also granted land for burial-ground in 64 Towns and villages of Karnataka. Above all the Government is issuing circulars repeatedly to its Field Officers to identify and grant land for Qabrastans.

3.117 TASDIQ ALLOWANCE

The Karnataka Board of *Waqfs* is getting active assistance of the Government. Action is also taken with regard to receipt of compensation in respect of *waqf* lands acquired by the State Government and the receipt of Tasdiq Allowance/Annuity in respect of the lands confirmed in favor of tenants under the Land Reforms Act, Inams Abolition Act, etc.

3.118 DEVELOPMENTAL ACTIVITIES

The main thrust of the activities of the Board is towards the development of *waqf* properties. The development of urban properties particularly aim at making the *waqf* institutions self-sufficient financially. It also helps in making them viable vehicles for social welfare and charitable activities for the benefit of the poor members of society. It is to be acknowledged that the Central *Waqf* Council has given tremendous boost to the Board in pursuing this objective. The loans from the Central *Waqf* Council have been effectively utilized on many projects. In fact some institutions have been so successful in their projects that they have already gone and taken a second loan. A on date 27 institutions have already availed loan from the Central *Waqf* Council amounting to Rs. 25,178,000. Of these, the projects of 12 institutions are already completed, while the projects of 15 institutions are under progress. Further, 11 proposals submitted by the Board are at various stages of sanction with the Central *Waqf* involving a total amount of Rs. 17,358,000. A list of the projects completed, projects under way, and the projects under sanction, is as follows:

3.119 THE COMPLETED PROJECTS

1. Hazrath Hameed Shah Shopping Complex, Cubbanpet, Bangalore.
2. Hazrath Madar Shah Shopping complex, Facing Ashoka Road, Tumkur.

-
3. Dar-us-Salam complex, Queen's Road, Bangalore.
 4. Madina Building *Waqf*, Gulbarga.
 5. Anjuman-e-Islam Building Projects, Dharwad.
 6. Karnatak *Waqf* Complex, Darul *Awqaf*, Cunningham Road, Bangalore.
 7. Khawaja Banda Nawaz Complex, Gulbarga, I-Phase.
 8. Anjuman-e-Islam, Hubli.
 9. Rifah Commercial Complex, Mysore.
 10. Haji Ismail Sait Mosque Complex Froner Town, Bangalore.
 11. Darus Suroor Complex, Dickenson Road, Bangalore.
 12. Jamia Masjid Shopping Complex, Shroff Bazar, Raichur.

3.120 ONGOING PROJECTS

1. Hameed Shah Complex, Cubbenpet, Bangalore, II-Phase.
2. Madar Shah complex, II-Phase.
3. Khawaja Banda Nawaz (Khwaja Nagri Shopping Complex).
4. Shopping Complex at Shah Inayath & Jamia Masjid Gowribidnur, Kolar.
5. Shopping Complex at Jamia Masjid, Honnavar, Utter Kannada.
6. Student Hostel in the premises of Sherchan Jamia Masjid, Belgaum.
7. Jamia Masjid Shopping Complex, Humsagi, Gulbarga.
8. Rifah Commercial Complex, II-Phase.
9. Manor Ali Memorial, Kerur, Bijapur.
10. Anjmane-Islam Kollegal, Mysore.
11. Haji Ismail Sait Mosque Complex, II-Phase.
12. Hostel-cum-Shopping Complex at Anjumane Ansarus Suffa, Gulbarga.
13. Shopping Complex at Masjid-e-Rahmania, Gulbarga.

14. Shopping Complex at Lateefa Band Dargah, Kolar.
15. Jalal Mohammed Dargah, Gokak,

Belgaum.. 3.121 PROJECTS UNDER SANCTION

1. Dargah Syed Murtaza Shah Quadri, Bijapur.
2. Beruni Abadi Mosque, Gangavathi, Raichur.
3. Masjid-e-Ala, Mandya District.
4. Masjid-e-Ahle Sunhat-al-Jamath, Mandya.
5. Tanzimul Muslimeem Fund Association, Devanagae, Chitradurga.
6. Jamai Masjid, Honaror (for additional Loan).
7. Madina Building, Gulbarga, II-Phase.
8. Muslim Shadi Mahal Committee, Bellargy
9. Jamia Masjid, Ashoor Khana, Mandya.
10. Idgah Committee, Gadag, Dharwar.
11. Jamia Masjid, Islampur, Raichur.

3.122 CHARITY MEDICAL CENTRE

Under the banner of the **Karnataka Board** of *Waqfs*, Charity Medical Centre is being opened to provide free treatment to poor Muslims by the Hameed Shah Dargah Committee. The Medical Centre will have inpatient facility with 20 beds to start with. The Medical Centre will also have a blood bank clinical laboratory and will function round the clock, one of the most purposeful programs of the Medical Centre is mobile immunization program by which the Centre's Ambulance will visit slums in different parts of the City. Free drugs, Vitamin tablets and tonics will be made available to under-nourished women and children in particular.

3.123 AMENITIES TO PILGRIMS

The *Waqf* Board is taking steps to provide good amenities to the Pilgrims of various Shrines in the State. A Guest House with 26 rooms is being constructed at the premises of Hazarat Fakhi Shah Vali Dargah, Murugmalla at a total cost of Rs 5.90 lakhs. This work is under progress. Similarly a Dormitory-cum-Guest House in front of **Gumbaz-e-Shahi** at Sreerangapatnam

is being considered to cater the needs of the visitors. This project is estimated at Rs. 20 lakhs.

3.124 **VOCATIONAL TRAINING**

Many *Waqf* Institutions in the State are conducting free tailoring classes for Muslim Women, providing scholarship to the needy students and performing mass-marriages, etc. Many Hostels have been established in different parts of the State for the Students.

WAQF ADMINISTRATION IN THE STATE OF PUNJAB

3.125 **ORIGIN AND HISTORY**

The Punjab *Waqf* Board is a premier *Waqf* Board established on 2nd September 1960 under Section 9 of the *Waqf* Act, 1954 with jurisdiction over the entire State of Punjab. It existed prior to its reorganization in the year 1966. The Board continues to retain its name and jurisdiction even after the trifurcation of the State of Punjab into three States, namely, Haryana, Punjab and such district of Himachal Pradesh which earlier formed part of the erstwhile Punjab i.e., Simla, Una, Kangra and Kullu. The Board serves as a common link in respect of *Waqf* administration in these three states including the Union territory of Chandigarh. Being an interstate *Waqf* Board, it continues to function under the Government of India in the Ministry of Welfare. The Board is under supersession since 11/11/1981 and the affairs of *waqf* are being administered through Administrators appointed by the Government of India.

3.126 **IMPACT OF PARTITION**

As a result of almost total migration of Muslim from this part of Punjab in the wake of partition of the country, the *Waqf* properties came under the control of the Custodian. As there was no means to verify at that stage of utter confusion as to which of the properties left over by Muslims were their personal and which of such properties were *Waqfs*, the custodian started allotting such properties to refugees from Pakistan at very nominal rents, mostly based on possession. This situation continued for a long time, with the result that along with personal properties of Muslims, the *Waqf* properties also went under the possession of the refugees at very nominal rents. It was only after enactment of the *Waqf* Act, 1954 and establishment of the Punjab *Waqf* Board in 1960 that a vigorous and sustained exercise was initiated to identify

Muslim *Waqf* properties s distinct from Muslim evacuee properties so as to enable the Government to transfer such properties to the Board of *Waqfs* constituted under the Act for the erstwhile State of Punjab. This exercise took considerable time, from 1963 to 1969. After a great deal of deliberations and extensive survey of the *Waqf* properties by a *Waqf* Commissioner appointed by the government such of these evacuee properties which could be identified as *Waqfs* were transferred to Punjab *Waqf* Board, mostly with tenants. It was under such a situation that the Punjab *Waqf* Board could assume supervision and control over such of Muslim *Waqf* properties identified and transferred to the Board. The rents fixed by the custodian in respect of such properties were extremely low. The revenue derived from these *waqf* properties which came under the purview of the Board was insignificant and was not at all commensurate with the value of the properties so transferred.

3.127 SPECIAL FEATURES

It is pertinent to refer to a certain special feature and which is peculiar to this Board. It is the only Board in India with jurisdiction over Three States and one Union territory. Being the inter-State Board the Central Government assumed the position of the State Government. Under the Provision of the *Waqf* Act, 1954, *Waqf* Administration in each State functioned on a "Two-tire" basis, viz., while the Board of *Waqf* was to be in over all charge of ensuring that income derived from *waqfs* is properly utilized as per the obejcts of *waqfs* the actual work of maintaining and developing, each *waqfs* was entrusted to *mutawallis*. The *mutawallis* are totally responsible for managing the *waqfs* with obligation to pay the *waqf* fund to the Board. The rest of the income is retained with them for maintenance, up keep and development of *Waqfs*. Under exceptional circumstances where *mutawallis* fail to perform their duties satisfactorily, the Board steps into assume direct management of such properties according to the provisions of the *Waqf* Act.

But in case of Punjab *Waqf* Board, however, the situation is entirely different. In the wake of partition of the country in 1947, bulk of Muslim population from the erstwhile Composite State of Punjab migrated of Pakistan along with *mutawallis* of various *waqf* properties. Due to this historic reason, the Punjab *Waqf* Board had the stupendous task of assuming direct responsibility in respect of almost all *Waqf* properties coming under its purview right from the date of its inception. The administration of all such *waqf* properties is vested with the Board and such properties are directly controlled by it. But unfortunately about 40% of these *waqf* properties have undergone unauthorized occupation owing to factors over which the Board had little

control due to historic reasons. Such properties, which are under litigation for title of ownership, have no income. Unlike other *Waqf* Boards in the country, Punjab *Waqf* Boards in the country, Punjab *Waqf* Board has thus, a unique feature of maintaining a large contingent of staff. Thus, about 30% of the Board's income is spent on establishment.

3.129 NUMBER OF **WAQF** PROPERTIES

The following statement shows the state-wise number of *waqf* properties under the purview of Punjab *Waqf* Board:

Sl. #	Name of the State	No. of <i>Waqf</i> Properties;
1.	Punjab	23,350
2.	Haryana	11,200
3.	Himachal Pradesh	587
4.	Union Territory of Chandigarh	11
Total		35,148

Source: Annual Report of Punjab *Waqf* Board for the year 1988-90

1.130 SOURCES OF REVENUE

Although the Board has under its purview as many as 35,148 *Waqfs*, the revenue derived therefrom has been comparatively low due to historic reasons already explained (Paras 3.127 to 3.129). Therefore, the Government of India enacted the Administration of Evacuee Property Act, 1950 and appointed a Custodian for such properties. The custodian started allotting these properties on nominal rents to the refugees who migrated to India from Pakistan. After the enactment of the *Waqf* Act, 1954. The *waqf* properties were identified as distinct from the evacuee properties and transferred to *Waqf* Board. Such transferred *waqf* properties carried with them the tenants of nominal rents. However, by a slow and gradual process the Board could enhance its revenue to a limited extent. Thus, the sources of revenue of this Board comprise of amount derived from Urban *Waqf* properties by way of rents and lease money of rural *waqf* properties. Other miscellaneous income like interest on investment, grants received for educational institutions etc. constitute the regular source of income to the Board.

3.131 WAQF FUND

Notwithstanding the fact that 99% of *waqf* properties coming under the purview of this Board are being managed directly by the Board, as statutory obligation in terms of the *Waqf* Act, which requires *mutawallis of waqf* to make 7% contribution to the Board. The arrangement is being adhered to. Out of the collections made from the properties managed directly known as "*Awqaf*". 7% contribution is made to the "*Waqf* Fund" of the Board. For this there is a separate section in the Head Office of the *Waqf* Board, whose salaries are paid from "*Waqf* Fund". The secretary of the *Waqf* Board has been nominated as Ex-Officio *mutawalli* in respect of all "*Awqaf*" properties. 7% contribution received from other *mutawallis*, who entered on the rolls later, also goes to this fund. The total amount transferred "*Awqaf* Fund" to "*Waqf* Fund" during the year 1986-87 was Rs 593,836 while during the year 1989-90 Rs. 925,000 were transferred to the "*Waqf* Fund" from the '*Awqaf* Fund'. Subsequently the income of the "*Waqf* Fund" increased to Rs. 1,387,000 in the year 1989-90. The total account of *Waqf* Fund and *Awqaf* Fund put together was as follows for the year 1989-90.

7% Contribution+	Interest on <i>Deposit</i>	<i>Rent/Lease</i> + <i>Awqaf Fund</i>	Interest on <i>Deposit</i>
Waqf Accounts			
924,820	+	462,360	+
		2,637,468	+
	=	1,387,180	=
			29,743,446

Grand Total Rs. 31,130,626

Source: Annual Report of Punjab *Waqf* Board for the year 1989-90. Appendix I.

3.132 SALARIES TO IMAMS, MUZZINS ETC. —A CHARGE ON WAQF BOARD

The Punjab *Waqf* Board is required to spend considerable amount each year to meet its commitments towards salaries to the Imams, Muazzins, Caretakers and other staff working in about 472 mosques and Shrines managed by the Board. The aggregate expenditure on this account is around Rs 747,971 per year. During 1989-90, 98 mosques and Dini Maktabs, schools and colleges received Ad-hoc grant ranging from Rs 3,000 to Rs 60,000 in each case. In addition, 186 Dini Madrasa are getting monthly grant of Rs 200 to Rs 3,000 from Punjab *Waqf* Board.

3.133 MAINTENANCE OF MOSQUES

Expenditure on periodical repairs/maintenance, electricity, water charges, etc. is also one of the significant items of expenditure met from "*Awqaf* Fund" which amounted to Rs. 394,109.

3.134 PENSION TO WIDOWS AND DESTITUTES

Payment of monthly pensions to widows and destitute women formed one of the major items of Board's expenditure on Welfare activities. About 276 Pensioners were on the rolls of the Board receiving monthly pensions ranging from Rs. 75 to Rs 300. Total expenditure incurred by the Board on this head annually summed up to Rs 133,115.

3.135 OTHER WELFARE ACTIVITIES

The Board has undertaken a long range of welfare activities. These included the direct management of the Islamia High School, Malerkotla and its six subsidiaries, providing educational facilities to Muslim boys and girls with an additional expenditure of Rs. 711,706. Grant given to other colleges, schools and Dini Maktabas amounted Rs. 605,377 Ad-hoc, non-recurring grants to Muslim Institutions for new construction and conducting functions on religious occasions like Moharrum, Ramzan, Idul-Fitr, Idul Azha, Milad-un-Nabi, etc. amounted to Rs 99,433. Scholarships to deserving Muslim students numbering about 339 amounting to Rs 165,520 were released.

3.136 DEVELOPMENT OF URBAN **WAQF** PROPERTIES

The Board has embarked upon an ambitious program for developing Urban *Waqf* properties with a view to deriving more income for utilizing on various social and religious activities. For the first time in the history of the Board, loan facilities which are made available under the scheme were formulated by the Central *Waqf* Council. During the year 1986-87 three schemes sanctioned by the Central *Waqf* Council with a total outlay of Rs 42 lakhs are now under process of completion.

3.137 EDUCATIONAL ACTIVITIES

The most significant advancement made in the activities of the Board was in the field of education. During the year 1990-91 the Punjab *Waqf* Board directly **established 2 Senior Secondary Schools, 3 High Schools, 8 Primary**

Schools, 8 Vocational Training Centres and 7 Computer Centres for College education and uplift of the poor and downtrodden in the backward areas. Separate vocational training centre for girls were also started. The Board has provided audio-visual facilities to its 18 aided Madrasas. The Board has also prepared a scheme for establishment of a Tibbya College in the backward region of Mewat.

3.138 PROBLEMS AND DIFFICULTIES

As the Board is working under the supervision and control of the Central Government and has to look after *Waqf* properties in 3 States of Haryana, Punjab and Himachal Pradesh, it faces a lot of peculiar problems and difficulties. Most important of them are indicated as under:

- i) Need for bringing all *Waqf* properties under the ambit of Public premises Act.
- ii) Exemption of *Waqf* properties from the purview of the Rent Control Act in Himachal Pradesh (although such-exemption is already granted in Haryana and Punjab.
- iii) Need for amending Village Common Lands (Regulation) Act 1961.

- iv) Exemption from the Land Ceiling Act.

3.139 CERTAIN LAPSES

Although the above mentioned details of the functioning of the Punjab *Waqf* Board reveal a satisfactory picture to emulate, at the same time certain serious lapses on the part of the Board cannot be ignored. Financial management always has been a serious matter wherein the act is more important than the intention. The audit reports of the Board pertaining to period from 1986-87 to 1991-92 revealed certain serious lapses in financial dealings on part of the Board. For. example huge amounts of advances in the name of *Waqf* officers remained unsettled for a longer time. Even in certain cases it is not possible to recover the amount from the Officers as most of them have either left the job or died. Despite auditors suggestion to initiate action to recover the amount from concerned Legal heirs of the deceased Officers, the Board did not take any action. Secondly, certain investments made through Fixed Deposit Receipts amounting to Rs. 21,300, Rs. 100,000, Rs. 35,000, and Rs.10,000 respectively were due for maturity on 3/3/1997, 12/7/1976, 19/4/1977 and 12/2/1978 respectively. But the same have not been renewed

for more than a decade ending 1987-88, during which period the above investment might have multiplied at least 100 times but for the carelessness of the Board. Further, an amount of Rs. 58,750 earmarked for financial assistance under scholarship scheme has been mis-utilized for which no convincing reply is available. Other lapses include the non-availability of Office records in certain cases, missing of likes, procedural irregularities for purchases, deliberate failures in matters of lease and collection of rents, etc.

WAQF ADMINISTRATION IN STATE OF TAMIL NADU

3.140 ORIGIN AND HISTORY

As in other States, the history of Tamil Nadu *Waqf* Board too is marked by a series of suppression of the Board between 1963 and 1993.

The first Board was constituted in February 1958 and the second Board in April 1963. The second *Waqf* Board continued in office until it was superseded by the Government on 21/11/1967 and a Senior I.A.S. Officer was appointed as Special Officer. Again the *Waqf* Board was reconstituted for the third time on 24/5/1971 followed by the fourth Board constituted on 19/10/1976. The fourth Board was again superseded by the Government till the fifth Board constituted on 7/7/1978 only to be superseded on 18/9/1980. The Sixth Board was constituted on 18/10/1981. Due to resignation of a member of the Board, the Seventh Board was constituted on 2/12/1983. This Board completed its term of Office on 19/10/1986, but continued to function for a further period of 3 years till the next Board was constituted on 9/6/1989. This Board was superseded by the Tamil Nadu Government on 16/3/1992 and an I.A.S. Officer was appointed as Special Officer for a period of one year, on the expiry the Board was constituted for a period of 5 years with effect from 30/3/1993. The present Chairman of the *Waqf* Board is Mr. M.A. Latheef, M.L.A.

3.141 WAQF PROPERTIES

There are 6,149 *Waqfs* in Tamil Nadu. Out of these 5,895 relates to notified *Waqfs*. 2,542 *Waqf* have been registered with the Board up to 30/3/1993. There are 53 Shia *Waqfs* in the State.

3.142 FINANCES

The only source of income of Tamil Nadu *Waqf* Board is the 6% (7% as per the *Waqf* Act 1995) contribution collected on the net annual income of the *Waqf* institution as required under Section 46 of the *Waqf* Act, 1954. Out of this 7% contribution, 1% has to be paid to the Central *Waqf* Council at New Delhi as its contribution and 1 1/2% is payable to the Local Fund Audit Department as Audit fee for auditing the accounts of the *Waqf* institutions whose income exceeds Rs. 5,000 per annum. Besides this, the Board has to incur legal charges towards the cases filed in various courts in the State. Thus remaining income alone is to be utilized for the administration of the *Waqf* Board. The collection of contribution for the year 1992-93 was Rs 3,519,000. The *Waqf* Board owes a large amount as arrears payable to the Central *Waqf* Council to the tune of Rs. 1,475,566.60. Out of this a sum of Rs. 1,110,559.84 has been paid up to 31/3/1993.

3.143 LITIGATION

Under the extension of Limitation Act, 1969, the Board filed a batch of 11,000 suits in various Courts in the State during the year 1967-68 for the recovery of alienated *Waqf* properties from the encroachers as well as the purchasers of such properties, of these, 1936 suits filed by the *Waqf* Board are still pending as on 31/3/1992. The *mutawallis* have also filed suits against the Board. 1,217 such cases are pending as on 31/3/1993.

3.144 RENOVATION GRANT BY THE TAMIL NADU GOVERNMENT

The Tamil Nadu Government has been sanctioning with effect from 1973-74 a considerable annual grant for the renovation of the Poor and needy *Waqf* institutions which is distributed by the *Waqf* Board to them. The details are as follows:

Year	Amount sanctioned for Renovation	No. of Waqfs benefited
1973-74	100,000	23
1974-75	300,000	73
1975-76	300,000	68
1976-77	300,000	70
1977-78	300,000	60
1978-79	300,000	60
1979-80	400,000	161
1980-81	500,000	.41
1981-82	500,000	159
1982-83	500,000	93
1983-84	5,000,000	1,026
1984-85	5,000,000	538
1989-90	300,000	30
1990-91	300,000	26
1991-92	300,000	25
1992-93	300,000	25
Total	Rs. 14.700.000	2.418

DEVELOPMENT LOAN BY THE TAMIL NADU GOVERNMENT

The Government of Tamil Nadu has so far sanctioned and released a sum of Rs. 46.0 lakhs towards loan under the scheme of "Development of Urban *Waqf* Properties" to augment the sources of income of the *Waqf* properties during the period from 1976-77 to 1987-88. The entire amount is **disbursed by the *Waqf* Board** to 43 *Waqf* institutes in the State. But the Government has not subsequently sanctioned any such loan.

3.146 DEVELOPMENT LOAN BY THE CENTRAL WAQF COUNCIL

The Central *Waqf* Council, New Delhi has so far sanctioned and released a sum of Rs. 2.25 Crores towards Development loan to 21 *waqf* institutions in the State of Tamil Nadu for the development of Urban *Waqf* properties. The loan is recoverable in 20 half-yearly installments with 6% contribution for the loan availed. As some of the loanee *Waqf* failed to pay back the loan amounting to Rs. 6,185,393, the Central *Waqf Council* temporarily imposed ban on loan to new schemes for the last two years.

3.147 SCHOLARSHIPS

The Central *Waqf* Council has sanctioned a sum of Rs 15,000 for awarding scholarship to the needy students during the year 1989-90. A similar matching grant of Rs. 15,000 was sanctioned by the Tamil Nadu *Waqf* Board for this purpose. Thus, a total sum of Rs. 30,000 has been awarded to 82 Muslim students studying in various technical diploma courses including I.T.I. and High Secondary and Islamic Education Madrasas. Similar grants for the year 1991-92 has also been awarded amounting to Rs. 30,000 to 61 students at the rate of Rs. 550 per student. The Central *Waqf* Council too has awarded a scholarship of Rs 2,400 per annum to the Engineer/Medical students for the year 1992-93.

3.148 WELFARE FUND

The Tamil Nadu *Waqf* Board has started a Welfare Fund Scheme to help poor and needy Muslims for charitable purposes, such as Marriage aid, Medical aid and aid on other humanitarian grounds. More than 409 persons have so far been benefited by the scheme.

3.149 ENCROACHMENTS

39 cases encroachment on the *Waqf* properties in Tamil Nadu State were brought to the notice of the Board. The concerned District Collectors have been approached to take action to evict the encroachers under the provisions of the *Waqf Act*, 1954.

3.150 GOVERNMENT LOAN TO **WAQF** BOARD

The Tamil Nadu Government granted a loan of Rs. 550,000 to the Tamil Nadu *Waqf* Board for administrative purposes for 1968-1972. A sum of Rs. 120,000 towards legal charges in the year 1983, and Rs. 307,692 for purchase of land for office building in 1981 has also been given as loan. But, subsequently the Government has ordered to treat 50% of the total loan as grant and the remaining 50% as interest free loan.

3.151 M.S.S. **WAQF** BOARD COLLEGE

The Tamil Nadu *Waqf* Board is running a college at Madurai named as "M.S.S. *Waqf* Board College" which was established in 1968. The Tamil Nadu Government allotted 28 acres of land in North Madurai village for the construction of the college building and hotel. The College building has been constructed by raising donations. The strength of the college is 1,100 students studying in B.A (3 Majors), B. Sc. (3 Majors), B.Com., M.A., M. Coin. Courses. The *Waqf* Board has also given a loan of Rs. 1,000,000 to the College for maintenance out of which a sum of Rs.400,000 has so far been repaid by the College.

3.152 A SPECIAL RESOLUTION

The *Waqf* Board **voided** its resolution dated 14/6/1990, **has** decided **that** no person **should be associated with** *Waqf* Administration whose relative is occupying any of the *Waqf* buildings as tenants. This is a welcome decision of the Board, which would help improve the efficiency, as the vested interests would not be able to hamper the *Waqf* administration in any manner. This special resolution of the Board is in consonance with the principles of natural justice that one cannot be judge in his own cause, similarly one cannot be both a lessor and a lessee simultaneously.

3.153 **WAQF** PROPERTIES EXEMPTION FROM RENT CONTROL ACT

The *Waqf* properties in Tamil Nadu are exempted by the Government from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 with effect from 12/18/1974.

WAQF ADMINISTRATION IN STATE OF UTTER PRADESH

3.154 ORIGIN AND HISTORY

The Utter Pradesh Sunni *Waqf* Board came into being in the year 1942 under the Utter Pradesh Muslim *Waqfs* Act, 1936. With the passage of time and in the light of the experience gained, this Act was repealed and a new comprehensive Act of 1960 was passed which gave more powers to the Board. Against in 1971 the Act was amended to impose restriction on the transfer of immovable *Waqf* properties and to recover such properties if transferred without the permission of the Board. The detailed study of this' State Legislation a be referred to in para 2.24. According to Section 11 of the Utter Pradesh Muslim *Waqfs* Act, 1960, the Utter Pradesh Sunni *Waqf* Board is the highest policy making authority for all the *Waqfs* in the State of Utter Pradesh.

3.155 REGISTRATION OF A WQAF PROPERTIES

In 1942 the number of *Awqaf* in Utter Pradesh was only 6,000 which number rose to 16,099 as on 31/3/1988. The details are as follows:

WaqfAlal Khair	11,009
Waqf Alal-Aulad	1,347
Exempted	2,346
Exempted list	1,397
Total	16,099

However, thousands of *Waqfs* have been discovered during the survey operations by the Staff of the *Waqf* Commissioner of Utter. According to a rough estimate the number of *Waqf* properties covered by survey operations is 1.25 lakhs. The staff of the *Waqf* Board, being in sufficient could not administer the *Waqf* properties with any degree of efficiency in relation to the existing number of *Waqf* properties.

3.156 FINANCES

The income of the Board mainly depends upon the contributions realized under Section 34 of the Utter Pradesh Muslim *Waqfs* Act, 1960. The

total income of the Board during the year 1987-88, including other negligible sources, was of the order of Rs. 1,310,800 as per details given below:

i)	Contribution under Section 34	Rs. 1,075,000
ii)	Registration, Copying and Application fee	30,800
iii)	Interest on Fixed Deposit	166,700
iv)	Rent of Buildings	9,500
v)	Miscellaneous	<u>28,800</u>
	Total	Rs. <u>1,310,80</u>

3.157 GOVERNMENT'S GRANT-IN-AID

A non-recurring grant-in-aid of Rs. 24.01 lakhs was sanctioned by the State Government to this Board at the fag end of the financial year 1984-85, i.e., 29/3/1985.

3.158 WELFARE ACTIVITIES

An amount of Rs. 11,000 was sanctioned as financial assistance to poor and destitute Muslim Women from the "Sunni *Waqf* Welfare Fund" during the year 1987-88. A further sum of Rs. 6,900 was spent for providing relief to the Muslim Widows.

3.159 SCHOLARSHIPS

A sum of Rs. 5,200 was sanctioned as scholarship to the deserving students during the year 1987-88.

3.160 DEVELOPMENT OF WAQF PROPERTIES

The Uttar Pradesh *Waqf* Board with a view to developing *waqf* properties conducted a preliminary survey of the *Awqaf*, which have potential for development. As a result of this 20 districts have been earmarked for such development. Ambitious plans to construct shopping complex, Musafir Khanas, Auditorium, Dispensaries, Poly Techniques and Residential Colonies have been discussed at various levels but nothing has been materialized. However, a minor scheme pertaining to *Waqf* No. 17-A, Jaunpur has been

processed in the Central *Waqf* Council has provided a sum of Rs. 3.60 lakhs for minor scheme.

3.161 RECEIPT REGISTER

There was no system of proper diarising of receipts or marking movements of files in the Boar's Office. This led to loss of files and receipts due to which it was not possible to assess the accumulation of arrears. To safeguard against this irregularity a regular Receipt-Register has been introduced in which daily Dak is entered and passed on to the concerned staff for disposal.

3.162 LITIGATION

There has been a tremendous increase in the number of litigation. Presently, the Board is pursuing as many as 2,428 cases in the lower courts and High Court. The Board on account of inadequacy of staff has not been able to pursue these cases promptly. Owing to this shortfall numerous cases of important *Waqfs* have been decided against the Board. Therefore, the State Government has been approached to set up three Regional *Waqfs* Tribunal in order to enable the Board to pursue the cases more effectively.

3.163 IMPORTANT WAQFS AND THEIR CONTRIBUTIONS - DARGAH PIRAN-E-KALIYAR SHARIF, SAHARANPUR

This is a four-century-Old *Waqf*. Emperor Shahjahan dedicated hundreds of villages for the maintenance of this Dargah. Special feature of this Dargah is the arrangement of LANGAR twice a day round the year with an expenditure of Rs. 3 lakhs per annum. Due to mismanagement of the affairs of Dargah, the Utter Pradesh *Waqf* Board took it over under its direct management on 1/1/1975 and appointed an Administrator. At the time of taking over the management, loans amounting to Rs. 50,000 were outstanding against the Dargah and its annual income was only Rs. 1 lakh. The Board not only paid back the loan but succeeded in providing various facilities for supply of drinking water, Electricity, Musafir Khana, etc. The annual income of the Dargah is, thus increased to Rs. 1,041,900.

3.164 DARGAH SHARIF JALESAR, ETAH

Dargah Hazrat Ibrahim Shaheed is situated on the western side of the Jalesar town. The Dargah was brought under the direct management of the *Waqf* Board about 24 years ago. Since then the Mazar-e-Sharif is reconstructed mosque and Madrasa have been renovated and a tube well provided. Most of the income of this Dargah is derived from the "Cattle Fair", in addition to the income from Orchards and landed property attached to it. The Langar is arranged on the occasion of annual Urs and about 10 to 15 thousands devotees visit the Dargah. 23 new shops have been constructed at the site of the Dargah, which are yielding substantial income to the Dargah.

3.165 ANJUMAN-E-NUSRATUL ISLAM, DEHRADUN

There is a good number of *Waqf* properties under the Anjuman-e-Nusratul Islam which have been taken under direct management of the *Waqf* Board. The income derived from the *Waqf* Board. The income derived from the *Waqf* properties is spent on mosque, Qabrastan and Musafir Khana. The Anjuman has established two schools for Muslims, which have produced good results as compared to other educational institutions in the district.

3.166 **WAQF** IMAMBARA AND IMAMBARA ESTATE, GORAKHPUR

At one time about half of the Gorakhpur was included in the Imambara Estate. But due to Abolition of Zamindari in 1952, all the *Waqf* properties were lost and the *Mutawallis* had to do with the Annuity Rolls and Stock Certificates. The *Waqf* gets an annual Annuity of Rs. 29,900. The *Waqf* is running an Imambara Girls' Degree College and contributes a sum of Rs. 5,000 annually to the Utter Pradesh *Waqf* Board for grant of scholarships to the needy students.

3.167 **WAQF** NAWAB AZMAT ALI KHAN, MUZAFFARNAGAR

This is a charitable trust created on 25/8/1908, by Rukun-ud-Daula Nawab Bahadur Mohammed Azmat Ali Khan. The *waqf* property spreads from Muzaffarnagar in Utter Pradesh to Karnal in Harayana. It is spread over 30 villages around Muzaffarnagar. The *waqf* created this *waqf* for the development of the Islamic Studies and like charitable purposes. There are 16 beneficiaries of this *Waqf*. They include several religious institutions and

Dargahs, in addition to Madrasa Islamia, Deoband, Nadwat-ul-Ulema, Lucknow, Aligarh Muslim University and Dargah Khawja Moinuddin Chishti and others. The property of the *waqf* consists of 128 shops, 81 houses quarters and some garages. The *Waqf* has set up a Girls School within its premises to cater to the long felt need of girls'.

3.168 **ENCROACHMENT OF THE WAQF PROPERTIES**

As many as 408 cases of unauthorized occupation of the *Waqf* properties have been reported to the District Magistrates. The proceeds of inquiry and issue of certificates to the District Collectors get delayed due to inadequacy of the *Waqf* Staff. The main trespasser and encroacher, it is complained, is the Utter Pradesh Avas Vikas Parishad and local bodies which are carrying out unauthorized construction on the *Waqf* properties. Such encroachment and unauthorized constructions are reported to have been carried out on *Waqf* Masjid and Sarai Shah Dana, Masjid and Maqbara, Nadan Mahal Road, Lucknow, Qabrastan Chitwapur, Takia at Golaganj, Lucknow, Qabrastan Noida Ghaziabad, *Waqf* Mahmood Hussain, Lucknow, Qabrastan, Mohibullahpur, etc.

3.169 **PROBLEMS AND DIFFICULTIES**

Some of the problems faced by the Utter Pradesh Sunni *Waqf* Board, in addition to above, include the payment of annuity to Board. The *Waqf* properties are not exempted from the purview of the Utter Pradesh Rent Controller Act and Land Ceiling Act.

WAQF ADMINISTRATION IN DELHI WAQF BOARD

3.170 **ORIGIN AND HISTORY**

In the olden days, *Waqfs* were administered by individual *Mutawallis*, Anjumans and other loosely organized Mohulla Committees. However, there was no single point at which the activities of *Mutawallis* and other could be controlled. As the first step, certain important Committees were formed under agreement with the Government for looking after major *Awqafs* in Delhi. The Jama-e-Masjid Committee was formed in 1862, the Fateh Puri Committee in 1877 and the Anjuman Moidul Islam in 1893. These three Committees took over the responsibility of looking after a large number of mosques and

graveyards along with other *Waqf* properties. There was, however, no Central control. A large number of properties were either taken care of or were being mismanaged by *mutawallis*. With the enactment of Delhi Muslim *Waqf* Act, 1943, the three main Committees, namely, the Jama-e-Masjid Committee, the Fateh Puri Committee and Anjuman Moidul Islam were dissolved and the Sunni-Majlis-e-Awqaf was constituted. All Sunni *Awqaf* came under the supervision and superintendence of this Majlis. For the control and management of Shia *Waqf* a Shia Majlis-e-Awqaf was also set up. Sunni Majlis and Shia Majlis continued to function right up to September, 1962.

3.171 ESTABLISHMENT OF DELHI WAQF BOARD

In order to ensure better administration of *Waqf* properties in the country the Government of India passed the *Waqf* Act, 1954, which came into force in Delhi on 1st October 1962. Under the new law, the Delhi Muslim *Waqf* Act, 1943 was repealed and the Shia Majlis and Sunni Majlis were replaced by the Delhi *Waqf* Board. Thus, the first Delhi *Waqf* Board was established in October 1962. The first Board worked for a period of six years and the Second *Waqf* Board was set up in 1968. The Third *Waqf* Board was constituted in 1973, which continued up to 1978. The Fourth Board came into existence in August, 1978 and functioned up to November 1983. The Fifth Board assumed Office in November 1983 and continued up to March 1989. Thereafter the Sixth Board was constituted which is functioned with the same Chairman reelected.

3.172 SURVEY OF THE WAQF PROPERTIES

As provided in the *Waqf* Act and the Rules made thereunder, the *Waqf* properties are Surveyed by the Commissioner of *Waqfs* who is appointed by the Delhi Administration. The *Waqfs* Commissioner submits his report to the Revenue Secretary, Delhi Administration who after scrutiny forwards the statement of properties incorporated in the Survey Report to the Delhi *Waqf* Board. The *Waqf* properties surveyed by the *Waqf* Commissioner up to 1987 are published in the form of a Directory containing very important eight columns. The total number of *Waqf* properties incorporated in the Director is 1,886. For the convenience of management, the *Waqf* properties are divided into thirty groups with ward number and total number of *waqf* properties situated in each of such wards.

3.173 It appears that the **report** of the **Waqf Commissioner brings** out entries of **unauthorized** occupations and **encroachments** as well. **These seems to have been published** in the Gazettes. But strongly **enough** the **Board** on its own recognized the possession of encroachers and unauthorized persons. At the same time, remedial action was not taken to omit a large number of such cases. However, the *Waqf* Directories do give names of *mutawallis* and Managing Committee.

3.174 FUNCTIONING OF THE DELHI WAQF BOARD

The Delhi *Waqf Board* has adopted for itself a scientific system of functioning. Details thereof are published in the form of the "Delhi *Waqf* Board Manual" containing fourteen booklets on almost all the important aspects of the day to day functioning of the Board. The Booklets on "General Procedures" incorporates the functions, duties **and** powers of all the important officers of the Board. The rules so made therein also provide a guideline to be followed by such Officers. The Rent and property sanction of the Delhi *Waqf* Board is under the overall charges of the Assistant Secretary. A *mutawalli* Branch deals with all the matters relating to *mutawallis*. There is a distinction between a Managing Committee appointed on the recommendations of the Masajid and Qabrastan Committee and the Managing Committee, which is to be treated as *mutawalli*. The Masajid and Qabrastan Committee is authorized to recommend only provisional. Committees which cannot be treated as *mutawallis*. Managing Committees which can be treated as *mutawallis* can only be appointed by the Delhi *Waqf* Board under a specific resolution or by the competent authority to whom the powers have been delegated under section 22 of the *Waqf* Act. "Land Record Branch" checks the correctness of entries of the revenue records about title and area of the *Waqf* land, situation of the site **with demarcation, etc.**

3.175 CENTRAL RECORDS SECTION

It is of utmost importance that all the Records of *Waqfs* must be maintained under well-defined procedure. As for the effectiveness of decisions and efficiency in the management of these *Waqfs* it would depend on the quality and quantity of information that would be available in these records. This would also serve to be a source of information for statistical data necessary for future planning for proper utilization of the *waqf* properties. The Delhi *Waqf* Board has the responsibility to manage all *Waqfs* situated in the Union Territory of Delhi. Therefore, taking into consideration the present day

administrative and legal requirements a simple procedure is laid down for "Central Records Section". This section preserves in safe-custody all-important records of the Board such as *Waqf* names, Agreement Deed, Ownership Deeds, Wills; Trust files, Legal documents, Rent Agreements, etc. A full-fledged separate Accounts Section is maintained under the Supervision of the Accounts Officer. About thirty types of the registers relating to various account matters are maintained in the Accounts section.

3.176 OWNERSHIP OF THE MOSQUES AND THE BURNEY REPORT

It is a very unique feature of certain *Waqf* properties in Delhi, which leaves one in utter surprise. The present author who was then working as Deputy Secretary (*Waqfs*) in the Ministry of Law, Government of India, and also happened to be a member of the Burney Committee, came across an interesting matter relating to repairs of a Minaret of a mosque on Rajpath near Rashtrapathi Bhavan New Delhi. The work was held up for want of necessary sanction from the Ministry of Housing.

The present author was surprised to know that more than two hundred *waqf* properties in Delhi, most of them mosques were under the ownership of the Government of India. *Waqf* is a property given in the ownership of Allah the Almighty on permanent and perpetual basis and no other authority can assume the ownership of such *waqf* properties, which are inalienable. But the reason for such a situation has got its own history. In the year 1911, Government of India shifted its Capital from Calcutta to Delhi. The entire area of Delhi was then consisting of more than a hundred villages. In almost every village, there was a mosque. The Government of India acquired these villages under Land Acquisition in 1911 for the purpose of developing a new city. In pursuance, the construction work of the Vice Regal lodge (Present Rashtrapathi Bhavan) and Connought Place was started on the appurtenant land. Since the land was acquired under the provision of the law of Land Acquisition, the Government of India proposed to pay the compensation amount for the land acquired by it, including the mosques built on it. But the same was refused by the Local Muslims as it was irreligious for them to receive the purchase money of the *waqf* property as it almost amounted to sale of mosques and other *waqf* properties which, according to Islamic law of *waqf* belonged permanently to Allah the Almighty. Thus the compensation amounting to Rs. 40,000 was deposited with to the Government. The British rulers acquired the ownership of the *Waqf* properties including Mosques, but they did not demolish the mosques

as Nazam was regularly offered there and is continuing even today. Then the Government prepared a formula according to which the mosque would continue under the ownership of the Government. However, Muslims would be allowed to offer their prayers. One of the clauses of this formula laid down that no repair or construction work would be carried without the permission of the Government. It was under these strange circumstances that the repairs to the Minaret of the mosque could not be taken up. Dr. Hasanuddin Ahmed the present author brought this matter to the notice of Sri Fakruddin Ali Ahmed who was then the Minister for *Waqfs*. A meeting of the lieutenant Governor of Delhi and the Minister of Housing was convened by Mr. Fakruddin Ali Ahmed and it was decided to appoint a Committee, to enquire into the entire matter for the purpose of a solution. Mrs. Muzafar Hussain Burney was appointed to head the Committee, which included on it the Joint Secretary Housing, representative of the Delhi Development Authority (DDA) and Dr. Hasanuddin Ahmed as its members. The Committee after due enquiry recommended that the *Waqf* properties along with mosque should be transferred to the Delhi *Waqf* Board. Some of the recommendations of the Burney Committee were accepted. But before any action could be initiated, the change of Government in the year 1977 resulted in total abeyance of the progress in this regard.

3.177 WELFARE ACTIVITIES

During the year 1990-91, the Board has spent a sum of Rs. 781,843.25 on the following Welfare Activities:

a) Aid to Widows	Rs.	438,580.00	
b) Mobile Homeopath Dispensary		164,243.00	
c) Marriage Subsidy		13,000.00	
d) Free distribution of Quilts		46,150.00	
e) Urs and Religious Functions		22,058.25	
O Aid to the needy and the poor		30,444.00	
g) Medical treatment grant		3,405.00	
h) Disposal of unclaimed Muslim dead bodies		59,958.00	
		<u>4,000.00</u>	Total: Rs
i) Loan to the poor		781,843.25	

3.178 EDUCATIONAL ACTIVITIES

The Delhi *Waqf* Board is engaged in educational activities. It spent a sum of Rs. 532,885.40 during the year 199C-91 as per the following details:

a) Fateh Puri Public Library	Rs.	91,300.00
b) Scholarships		9,950.30
c) Salary to staff of the Madrasa Alia		400,748.10
d) Diniyat Teacher		28,800.00
e) Grant-in-Aid to Religious Institutions		<u>2,087.00</u>
Total	Rs.	<u>532,885.40</u>

3.179 CONSTRUCTION ACTIVITIES

A sum of Rs. 613,283.84 was spent in developing the Qabrastan-e-Jadeed at Ring Road, New Delhi.

3.180 MAINTENANCE OF MOSQUES/MAQBARAS, ETC.

There are approximately 133 mosques under the direct management of the Delhi *Waqf* Board which spent a sum of Rs.1,112,515.07 on their repairs, salaries to Imams and Muazzins, etc. A sum of Rs. 172,875.40 was also spent on Masjid Fateh Puri, Delhi. Further the Board incurred an expenditure of Rs. 227,744 on the maintenance of other *waqf* properties.

3.181 INCOME AND EXPENDITURE

During the year 1990-91, the income and expenditure of the Delhi *Waqf* Board was as follows:

Income	Rs. 2,813,139.01
Expenditure	Rs. 4,645,432.51

3.182 ACTIVITIES OF FEW OTHER **WAQF** BOARDS IN INDIA

As the scope of this research is confined to certain *Waqf* Boards, which represent a general picture of *Waqf*'Administration in India, a detailed study of all the *Waqf* Boards is neither feasible nor desirable. However, under this

caption information about some of the State *Waqf* Boards is being furnished for a general appraisal of the situation obtained in the country.

3.183 ASSAM **WAQF** BOARD

i) **Welfare Activities**

The helpless widows were given financial assistance of Rs. 6,000.

ii) **Educational Activities**

Seven students, two from Technical Diploma Courses, four from Higher Secondary Classes and one from Islamic Madrasa, were awarded scholarship from the Grant of Rs. 5,000 received from the Central *Waqf* Council.

iii) **Construction Activities**

One building is constructed in L.A. Masjid *Waqf* Estate Silchar.

iv) **Income and Expenditure**

Income Rs. 110,011.00

Expenditure Rs. 95,966.40

3.184 KERALA **WAQF** BOARD i)

Welfare Activities

Financial Aid was given to the poor and helpless Muslim Scholars in Arabic literature and culture, teachers, Imams, Khadims, etc. Besides this, the Board has sanctioned financial assistance for educational purposes, medical treatment, self-employment, loan-Scholarship to the students of Professional courses. Details are as follows:

1.	Scholarship in Arabic languages, culture etc. to 15 persons @ Rs. 150 per head for 12 months	Rs. 27,000
2.	Teachers/Imams, 98 persons @ Rs. 100 per head for 12 months	237,600
3.	Khadims, 454 persons @ Rs. 75 per head for 12 months.	417,300
4.	Educational Aid to 480 persons.	268,700
	Total:	Rs.950,600

In addition to the above, Rs. 1,000 were given to a person for seeking self-employment. A sewing machine was given to a girl and Rs. 1,750 were given to two persons for medical treatment. Rs. 10,000 were given to Board's former Secretary for a major operation of his daughter and Rs 500 to a member of the Staff who met with an accident.

ii) Educational Activities		Amount Released
1.	Loan Scholarship for 28 Medical Students @ Rs. 150 per 10 months	Rs. 42,000
2.	Loan scholarship for 15 Engineering Students @ Rs. 100 for 10 months	15,000
3.	Grant of Scholarship to 5 Students	4,475
4.	Financial aid utilizing the matching grant to 3.0 students @ Rs. 500	15,000
5.	Grant of Scholarship for higher studies to a Muslim Girl who stood first in B.A. Degree Examination	3,000
Total:		Rs. 79,475

During the year 1990-91, remission of contribution was allowed to three *Waqfs* aggregating to a sum of Rs. 37,665.80.

iii) Income and Expenditure		Amount Released
1	Income	Rs.1,738,118.97
2	Expenditure	1,239,720.83

3.185 MADHYA PRADESH WAQF BOARD

i) Welfare Activities		Amount Released
a)	Lump sum Financial Assistance to 91 widows and destitutes	Rs. 18,560
b)	Monthly financial assistance to 45 widows and destitutes	31,440
c)	Sewing machines, one each to 3 widows for earning livelihood	2,000
d)	50 Quilts distributed to poor persons	5,100

ii) Educational Activities

	Scholarship for prosecuting studies for Primary to	Rs. 60,419
a)	Medical Engineering	
b)	Scholarship from Obaidullah Khan Scholarship Trust	7,800
c)	Lump sum grant to poor students for books/fee	3,600

iii) Construction Activities

Development of Urban *Waqf* properties under the scheme of Central *Waqf* Council.

- a) 4 Projects at the cost of Rs.494,000 completed
- b) 3 Projects at the cost of Rs. 1,093,000 nearing completion.
- c) 1 Project of Madrasa Riyazul Islam with an estimated cost of Rs.610,000 started.
- d) 4 Projects with estimated cost of Rs. 2,526,640 are under construction.

Total expenditure Rs. 43,236,400

This expenditure relates to the year 1990-91 and it was incurred out of the loan obtained from the Central *Waqf* Council.

iv) Maintenance of Mosque/Maqbara etc.		Amount Released
a)	Amount sanctioned for the repair of Masjid/Shrines	Rs. 65,200
b)	37 Imams and Muazzins of Masjid who have no income were given financial assistance	44,800

V) Income and Expenditure

a)	Income	Rs. 1.389.530
b)	Expenditure	1.309.714

3.186 MARATHWADA WAQF BOARD i) Welfare Activities

The Board provided financial assistance to the extent of Rs.500 for medical treatment to one poor lady. The Board has been providing utensils to the

visitors of the Dargah Hazrat Syed Alauddin. An amount of Rs. 23,313 was spent on Copper utensils.

ii) Educational Activities

Nil

iii) Contribution Activities

A sum of Rs. Rs.70,611 was spent on the construction activities as under:

1.	Institution of Iron Khoka	Rs. 4,541
2.	Baitul Musafir	300
3.	White wash to Idgah	3,599
4.	Repair to Dargah Shahnoor Hamvi	10,000
5.	Repair of Panchakki Walls and Canal Drainage	30,671
6.	Construction of Masjid Isarwadi	15,000
7.	Addition to construction work Azam Gunj	6,500
Total		Rs.70,611

iv) Dargah Turabul Haque

The Board spent a sizeable amount of Rs. 110,000 on arranging industrial exhibition on the occasion of the Urs (death anniversary) of the saint Turabul Haque. The Board got an income of Rs. 125,000 from the exhibition.

v) Income and Expenditure

1. Income	Rs. 3,129,491
2. Expenditure	Rs. 3,556,459

3.187 MANIPUR WAQF BOARD

1. Welfare Activities	Nil
2. Educational Activities	Nil
3. Construction Activities	Nil

3.188 MEGHALAYA **WAQF** BOARD

i) Welfare Activities

A sum of Rs. 500 was paid as a financial help to a physically handicapped persons.

ii) Educational Activities

5 students were awarded scholarships @ Rs. 833 to each of the students in two installments. A total sum of Rs. 3,832 was spent for this purposes.

iii) Construction Activities

Nil

iv) Income and Expenditure

Income	Rs. 60,037.13
Expenditure	Rs. 46,497.65

3.189 ORISSA **WAQF** BOARD

i) Welfare Activities

The Board has been extending financial assistance to the tune of Rs. 2,000 per annum to Muslim Youth Cultural Association, Cuttack, which runs a charitable Dispensary.

ii) Educational Activities

The Board has sanctioned Rs. 15,000 towards financial assistance to poor and meritorious students. During the year 1990-91, a sum of Rs.5,000 was paid to 13 students as scholarship. The Central Waqf Council also provided matching grant of 50% to different educational institutions as under:

1.	Madrassa Imadia Sainso	Rs. 10,000
2.	Jameatul Banat	RS.10,000
3.	Madrassa Furqania	Rs. 10,000
4.	Junior/Senior Madrassa Binjharpur and Cuttack	Rs. 10,000
5.	Madrassa Jamia Islamia Bahrul Uloom, Cuttack	Rs. 5,000

iii) Construction Activities

- a) The Board has constructed a Shopping Complex at Janglipeer Asthana, at a cost of Rs. 400,000 which has been let out to different tenants.
- b) A shopping complex on the land of Angal Mosque at a cost of Rs. 220,000 and a commercial building of Y.M.C., Cuttack at a cost of Rs. 420,000 was constructed with the assistance from the Central *Waqf* Council. Another housing complex of 24 flats at a cost of Rs. 2,410,240 on the *Waqf* land of Tatar Khan Mosque, Cuttack was undertaken. Another shopping-cum-official complex is under construction on Capital Mosque land, Bhubaneshwar at a cost of Rs. 2,300,000.
- c) A sum of Rs. 491,000 was sanctioned by the Central *Waqf* Council to Ujala Khan Mosque for construction of commercial complex at Cuttack. A sum of Rs. 360,000 was also sanctioned by Central *Waqf* Council to Baba Bokhan of Jaipur, Cuttack for construction of Shopping Complex.

iv) Maintenance of Mosque/Magbaras, etc.

The State Government sanctioned a sum of Rs. 300,000 during the year 1990-91 to the **Board** of *Waqfs* as subsidy for repair/renovation and reconstruction of *Waqf* Institutions.

v) Income and Expenditure

Income	Rs. 146,174.25
Expenditure	Rs. 253,734.70

3.190 RAJASTHAN MUSLIM WAQFS BOARD

i)	Welfare Activities	Nil
ii)	Educational Activities	Nil
iii)	Construction Activities	Nil
iv)	Income and Expenditure – Information not furnished	

TRIPURA WAQF BOARD**i) Welfare Activities**

• Financial Assistance of Rs. 100,000 was given to poor Muslim patients for blood transfusion, etc. and furniture for Rs. 8,000 was supplied to Muslim Rest House at Khailasahatra.

ii) **Educational Activities** Nil

iii) Maintenance of Mosques/Maqbaras, etc.

An amount of Rs. 307,000 was spent on repairs and renovation of mosques, Idgahs, graveyards, etc.

iv) Income and Expenditure

Income	Rs. 1,018,797
Expenditure	Rs. 477,977

3.192 ANDAMAN AND NICOBAR ISLANDS WAQFS BOARD

i) **Welfare Activities** Nil

ii) Educational Activities

During the year 1990-91, the Central Waqf Council gave an amount of Rs. 5,000 for giving scholarships to the eligible students.

iii) **Construction Activities** Nil

iv) Income and Expenditure

Income	Rs. 142,000
Expenditure	Rs. 142,000

CHAPTER N
WAQF ADMINISTRATION AND THE
POLITICIZED SOCIETY

4.1 Politics is the science of exigencies and, therefore, to quote R.T. Ely¹, "every political question is becoming a social question, and every social question is becoming a religious question". Probably the same is applicable to the present day society but in a reverse order thus, 'every religious question is becoming a social question and every social question' is becoming a political question, one cannot, therefore, deny that the modern society is the offspring of politics. Advertently or inadvertently, people are more exposed to and influenced by politics.

4.2 This has given rise to the politicized society in which religious question soon become political question. The last decades of the nineteenth century saw an expansion of several political forums open to Indian participants. Therefore, it can be easily noticed that the early law relating to Waqf and its administration in India was subsequently influenced by political consideration which necessitated the passing of the Mussalman *Waqf* Validating Act, 1913 to nullify the decision of the judges committed to their' British loyalties, in the famous case of Abul Fatah. A detailed account of this period is authentically recorded by an expert on the subject, Gregory C. Kizlowski in his celebrated book on *waqfs*². This account does not form a platitudinous part of the history but *offers* many lessons to learn.

4.3 WAQF LAWS AND THE POLITICIZED SOCIETY

The Islamic law of *Waqf-al- Al Aulad* was drastically affected in the Abul Fatah, case. Where few British law lords turned their attention to and declared *Waqf-al-Al Aulad* as of no consequence or legal enforceability. This

¹"New Dictionary of Thoughts', p. 476.

² Muslim Endowments and Society in British India, p. 157.

was considered by the leaders of Muslim community as a direct interference with their personal law. Before doing so, their Lordships did not choose to meet the parties involved and produced a decision based on lower court records. Their Lordships' knowledge of Islamic system of *Waqf* was limited to what could be learned from a few translations or few law textbooks. Despite these obvious deficiencies, the law lords had no hesitation to declare the judgement binding on all Muslims living in India and the rest of the British Empire.

4.4 The Abut Fatah case served as an eye-opener and a large number representations, expressing their wide spread resentment were submitted by leading Muslims to the Viceroy and to Her Majesty's Government and the political pressure influenced the passing of the Mussalman *Waqf* Validating Act, 1913 which restored the validity of the Islamic Law of *Waqf-al- Al-Aulad*. Thus the hardship created by their Lordships was rectified by Hr. Majesty.

4.5 Despite this, Lordship held in number of cases, that this enactment had no retrospective effect, therefore, the *Waqf* deeds executed before 1913 cannot be validated. In other words, the political will of Her Majesty's Government to give relief to the Muslim population was nullified in retrospect. This necessitated the enactment of the Mussalman *Waqf* Validating Act, 1930 which conferred retrospective effect to the *Waqf* Validating Act, 1913.

4.6 IMPACT OF POLITICAL CHANGE

After India became an Independent country and the foreign rule was replaced by self-Government and the change in the form of Government naturally brought about a tremendous change in the policies of the Government also. Now it was easier for Muslim community to obtain necessary legislative protection of its *waqf* institutions. With the initiative and personal interest evinced by the then Education Minister, Moulana Abdul Kalam Azad a bill was introduced in the parliament. Moulana Azad prepared the scheme and policies. However, the legal shape was given to it by Mr. Kazmi and therefore, the bill is known as "the Kazmi Bill". Muslims all over the country demanded statutory protection of the *Waqf* properties. Thus to satisfy the demands of this major minority, the Government of India enacted the Central Legislation in the form of the *Waqf* Act, 1954 which governed the entire field of *Waqf* administration in India by replacing other provincial laws, except certain Acts applicable in some States which are kept outside the scope of the Central Legislation (for details see para 2.35). The *Waqf* Act, 1954 was a full-fledged and comprehensive legislation providing for all aspects of *waqf* administration in India including the survey and registration of *waqf* properties.

4.7 LEGISLATIVE CONCESSIONS AND THE POLITICAL WILL

Some of the legislative concessions offered to the *Waqf* properties in India are indicative of the sympathetic consideration of the Government manifested in the form of exemption of *Waqf* properties from the purview of certain other laws for time being enforced. For example, the *Waqf* properties have been exempted by Centre and various other State Governments from the application of the Town Planning Law, Land Ceiling Act, Rent Control Act, Land Acquisition Act and Income Tax Act. Most important legislative concession is given in the form of much needed exemption from the Limitation Act. Thus, in order to save the *Waqf* properties from adverse possession the Public *Waqfs* (Extension of Limitation Act, 1959) was passed and the statement of Objects and Reasons stated, thus,

"Following the partition of the country in August, 1947, a number of *waqf* properties passed into unauthorized hands. Many of the *mutawallis* who were in charge of these properties had migrated to Pakistan and the few who stayed behind could not for various reasons institute civil proceedings for the recovery of possession of these properties. The result is, that ever since the partition, a large number of these *waqf* properties has been in the possession of unauthorized occupants. Under the law as it stands at present the title of the true owners would be extinguished if the properties are in adverse possession for twelve years or more. It is, therefore, proposed to extend the period of limitation up to the 15th August 1967, in respect of suits for the recovery of possession of any immovable property forming part of a public *waqf* in any case where the dispossession has taken place at any time between the 15 August 1947 (the date of partition) and the 7 May 1954 (the date from which power to declare any property as evacuee property under the Administration of Evacuee Property Act, 1950, ceased). This would enable the *Waqf* Boards constituted under the *Waqf* Act and other interested persons to institute such suits.

Since the period of limitation in some cases would expire in August 1959, an Ordinance was promulgated for making the necessary alteration in the law of limitation. The present Bill seeks to replace the Ordinance by an Act of Parliament".

4.8 IMPACT OF MERGER OF PRINCELY STATES

As an essential consequence of the Independence, certain princely States were merged into Indian Union and thus India emerged as a composite administrative unit. This political change, too, had its impact not only on the

geographical existence but also on other socio-political aspects of the Princely States. With it came a change in some of the *Waqf* legislations applicable immediately before such merger. Simultaneously some other provincial enactments were also replaced. Thus, the Hyderabad Endowments Regulations of 1349 Fasli, Bihar and Orissa Mussalman *Waqf* Act, 1926, Bombay Mussalman *Waqfs* Act 1936, Delhi Muslim *Waqf* Act, 1943, and the Bihar *Waqf* Act, 1954 were repealed and replaced by the Central *Waqf* Act, 1954. This change in the political will brought about a change in the *Waqf* law and practice relating to *Waqf* administration in India.

4.9 WAQF ADMINISTRATION AND THE POLITICIZED SOCIETY

As has been mentioned earlier (para 4.1 and 4.2) the politicization of the society would influence the minds and deeds of the people living therein and they would be subject to various likes and dislikes and personal prejudices. In turn, such prejudices, advertently or inadvertently, are reflected in their actions. In addition to this, some times, certain action becomes inevitable being compelled, by political change. For example, the partition of the country created unique situation in certain areas, which materially affected the interest of the *Waqf* properties/ *Waqf* administration. Therefore, the political impact of partition on the administration of *Waqf* properties deserves a special reference.

4.10 IMPACT OF THE PARTITION

In the wake of partition of the country in 1947, bulk of Muslim population from the erstwhile composite state of Punjab migrated to Pakistan along with *mutawallis* of various *Waqf* properties. As a result of the total migration of Muslims from this part of the country, a large number of properties were left behind them and at that stage it was not easily possible to identify as which of the properties left over by Muslims were their personal properties and which of such properties were *waqf* properties. The Custodian Evacuees properties who took over the control of all such properties started allotting them to the refugees from Pakistan at every nominal rents, mostly based on the then existing possession. Thus, along with personal properties, the *Waqf* properties also went under the possession of the refugees at very nominal rent defeating thereby the very purpose for which such properties were endowed. However, subsequently the **Waqf Board established under the *Waqf* Act, 1954** and taken up the tremendous task of identification of such properties, details to which are found incorporated in this study vide paras 3.125 to 3.127. Similar situation was

also created by the partition of Bengal where the refugees occupied several mosques and unauthorizdly converted them into dewelling houses, by removing minarets and mimbars.

4.11 OWNERSHIP OF THE MOSQUES

Political changes sometimes create unique situation. In the year 1911, Government of India shifted its capital form Calcutta to Delhi. The entire areas of Delhi was then consisting of more than a hundred villages. In almost every village there was a mosque. The Government of India acquired these villages under Land Acquisition and, therefore, proposed to pay the compensation for the land acquired by it including mosques built on it. But the same was refused by Sunni Majlise *Awqaf* as it was irreligious for them to receive the compensation of the mosques as the ownership of mosque, under the Islamic Law, belonged permanently to the Almighty. The British rulers acquired the ownership of the *waqf* properties including mosques but did not demolish the mosques as *salat* (prayer) was regularly offered there which is continuing even today. Under the pressure of political agitation by the Muslim League, which was then in power in Delhi, the Government of India prepared a formula under which it was claimed that the mosques would continue under the ownership of the Government, however, Muslims were allowed to offer their prayers. One of the clauses of the formula laid down that no repair or construction work would be carried out without the permission of the Government. It was under thee strange circumstances that the present author the then Officer of Special Duty (*Waqf*) brought this matter to the notice of Mr. Fakruddin Ali Ahmed, the then Minister for *Waqfs*. Thus, a Committee was appointed under the Chairmanship of Mr. Muzzafar Hussain Burney to enquire into the matter and suggest solution. The Committee after due inquiry recommended that the *Waqf* properties along with mosques should be transferred to Delhi *Waqf* Board. The recommendations of the Burney Committee were accepted in principle but before any action could be initiated, the change of Government in the year 1977 resulted in total abeyance of the progress in this regard. Thus, the political-change altered the situation and the solution was converted back into a problem.

4.12 FREQUENT SUPERSESSION OF WAQF BOARDS

Under the provisions of the *Waqf Act*, 1954, the *Waqf* Board is charged with the duty of supervising the administration of *Waqf* properties and in certain cases to take over the administration under its direct control assuming thereby the position of a *mutawalli*. Keeping in view the nature of duty assigned to it, in the composition of the *Waqf* Board representation is given to persons having

knowledge of Muslim law and other laws, administrative experience including the members of State Legislature and Parliament and the *mutawallis* of *Waqf* properties situated in the concerned State. From this composition, it is obvious, that the *Waqf* Board was expected to work in a democratic manner and the collective will was preferred over the individual will in the decision making process of the *Waqf* Board. But unfortunately, barring few justifiable supersessions, most of the *Waqf* Boards in the country under one pretext or the other were superseded by Special Officers appointed by the State Government. Thus, through the Special Officer, the functioning of the *Waqf* Board is virtually taken up by the State Government since, in most of the cases, the Special Officer functions not as an independent Officer discharging the 'functions of the *Waqf* Board, but as a representative of the State Government. Thus, the individual will of the Special Officer replaces the Collective will. Probably this was the reason that such supersession of the *Waqf* by Special Officer was criticized by all concerned. Again it is painful to note that such supersessions had become more frequent. For example, in the case of Andhra Pradesh *Waqf* Board, it was superseded atleast on five occasions for a total period of more than six years (for details see paras 3.16 to 3.33).

4.13 SUPREME COURT CRITICIZES SUPERSESSION

How, far the supersession of *Waqf* Board by the State Government by appointing Special Officer would be based on justified reasons and how far it is motivated by political considerations is quite obvious from a judgement of the Supreme Court of India delivered in the case of Bihar *Waqf* Board. Details of the supersession of this particular *Waqf* Board are enumerated in paras 3.61 to 3.71. Suffice it to quote here the relevant passage from the Original Judgement of the Supreme Court; thus, "It has, therefore, been alleged that the show cause notice to supersede the Board was influenced by political consideration and was based on extraneous consideration. It may be pointed out that such statutory authorities must have a free hand in performing its day to day public duty and undue frequent interference on some false pretext or the other will not be conducive to the interest of the people or the *Waqf*. I find that the show cause in question contained in Annexes 18 and 19 are based on no reason. Neither any reason has been so assigned nor any evidence or material has been disclosed justifying such action. Supersession of statutory body is a serious matter. It is governed by the statute and the provisions contained therein must be strictly followed. Section 64 does not give a blanket power to supersede the Board as and when the respondent (i.e., the State Government) and its authorities choose to do so for any reason whatsoever. In the facts and circumstances of this case, I have reason to hold that the order of supersession contained in Annexes 18 to 19

and the show cause notice contained in Annex 6 were based on extraneous considerations and were passed arbitrarily with oblique motive". The extent of such arbitrary action of the Government can be measured by the fact that the Bihar *Waqf Board* was superseded twelve times in a period of fifteen years.

4.14 SELECTION OF PERSONS ON *WAQF* BOARD

Another example where the action was influenced by political consideration was in the matter of selection of the persons who were appointed as members of the *Waqf* Board. In most of the cases the Government was obliged to nominate as members of the Board such persons who might be politically helpful to it but were otherwise unsuited to the nature of job assigned to them. Neither they had any knowledge of Muslim law nor any appreciation of the importance of the *Waqf* Institutions. Such persons being appointed by the political consideration, were bound to be politically motivated affecting thereby the smooth functioning of the *Waqf* Board. In certain cases they hampered the proceedings of the *Waqf* Board by campaigning adversely or by resigning from the membership at crucial time. Instances are not rare where such members joined hands with the *mutawallis* and jeopardized the decisions of the Board.

4.15 CONSTITUTION OF *WAQF* DEVELOPMENT CORPORATION HAMPERED

Probably the circumstances that led to defeat the formation of *Waqf* Development Corporation in the State of Andhra Pradesh offer best example to indicate the extent of impact of the politicization and prejudice. The Andhra Pradesh Minorities Commission in its official report pertaining to the year 1990-91 recorded; thus, "Andhra Pradesh *Waqf* Board submitted a fresh scheme for establishment of A.P. *Waqf* Development Corporation. This was examined by the Government and it was decided at the Cabinet level to constitute the corporation and also it was decided to extend the financial help to the corporation by giving a sum of Rs. One Crore as loan repayable in five years.

4.16 No condition was stipulated by the Government that the A.P. State *Waqf* Board and *Waqf* institutions will contribute share capital. It was necessary to take similar steps as were taken when the A.P. Minorities Financial Corporation was established i.e., to appoint an Officer to chalk out the details regarding the establishment of the *Waqf* Development Corporation. No such steps were taken and no details were worked out.

4.17 The Joint Secretary to Government Revenue (*Waqf*) Department in his D.O. letter No. 1694/ *Waqf* (1)/87 dated 20/6/1990 asked the Secretary, A.P. *Waqf* Board that the *Waqf* Board should contribute share capital of Rs. One crore (One lakh share of Rs. 100 each). He further requested the Secretary to obtain a resolution of the A.P. State *Waqf* Board to this effect and also to obtain letters of consent from the *mutawallis* of major *Waqf* institutions.

4.18 It was indicated in the **above-cited D.O.** letter that further **action** will be taken in consultation with the Commissioner of Public Enterprises

4.19 The A.P. Minorities Commission examined this matter in detail. The Commission observed with regret that an important decision of the Government which was in concrete and final **shape and** which was a **commendable** decision, was side tracked and a fresh issue of contributing share capital was raised. The poor **Waqf Board** was asked .to raise Rs. One Crore. If the **Waqf Board** could raise Rs. One Crore, there was no necessity for the **Waqf Board** to **approach** the Government for constituting *Waqf* Development Corporation. The very fact that the Government sanctioned Rs. One crore as loan shows the **incapacity** of the **Waqf Board** to **raise** the **required** huge **amount** for **development** of *Waqf* properties" (Page 32 of the Report of the A.P. Minorities Commission 1990-91. Incidentally the present author was then the Chairman of the Minorities Commission).

4.20 It is very clear that, "the action taken by the Revenue Department in asking for institutional finances was not positive in the sense that the Revenue Department has not taken into consideration the practical difficulties of the State *Waqf* Board. As a result a very good decision taken by the State Government was practically shelved" (page 34 of the report).

4.21 Thus, it may **be noted** as to **how** an **unwarranted** condition of **contributing** a matching grant of Rs. One Crore **imposed by the Revenue** Department jeopardized and **defeated the original intention** of the. State **Government** to **help** the **Waqf Board** to **establish** *Waqf* Development Corporation which was achieved after a long administrative battle. Obviously the action of the Revenue Department is indicative of its inherent prejudice **particularly** when no such condition was imposed by the State Government.

4.22 VESTED INTERESTS AND CORRUPTION

Corruption is the Child of politics. Therefore, in a politicized society, corruption is bound to exist in one form or the other. The **functioning** of the

Waqf Boards and administration of *Waqf* properties by their respective *mutawallis* is no exception. In some cases the corruption in *Waqf* Board and vested interest in the functioning of the *mutawallis* is a well-known and established fact. This is also endorsed by various inquiry Committees and inquiry Commissions appointed by various Governments from time to time to enquire into the mal-administration of *Waqf* Boards. To quote a few instances, the report of inquiry Commissions headed by Mr. Syed Hashim Ali, Mr. Khader Ali Khan and Mr. M.A. Abbasi may be referred to. These Commissions have furnished detailed information and causes for such corruption and in strong words condemned such unethical and demoralized atmosphere prevailing at that time in the A.P. State *Waqf* Board. However, the State Government recently appointed Mr. Abdul Kareem Khan a retired I.A.S. Officer as consultant to the Government to suggest measure for the improvement in the *Waqf* administration. But, once again, the suggestions made did not receive due attention of the Government for implementation. Similar reports relating to other *Waqf* Boards are also indicative of the existence of corruption, prejudice and vested interest in one form or the other, in one measure or the other.

CHAPTER V
**STRATEGIES TO DEVELOP WAQF
ADMINISTRATION IN INDIA**

5.1 From the study of the *Waqf* administration presented in the preceding chapters, at least one point is clear that the problems of managing the *Waqf* properties efficiently and honestly, is a complex one. So is the solution. Therefore, by suggesting changes or reforms in one or two aspects of the *Waqf* administration the problem cannot be solved. The solution is bound to be multifaceted and multi-pronged, requires to be implemented in a phased manner. The *Waqf* administration in India, probably like any other developing country, is subject to various factors, which directly influence the whole system. Legislative reforms are to be brought about the administrative strategies worked out for which, strong political will becomes inevitably essential. It does not, however, mean that for the defective *Waqf* administration, the Government alone is responsible. In fact the whole society in general and those connected with the *Waqf* administration in particular have to be more responsive towards *Waqf* administration and that alone would influence the political will of the Government is supposed to be of the people, by the people, and for the people. Therefore, an overall change in the popular perspective or part of the public with regard to the *Waqf* institution is inevitable. They should be educated to appreciate the scope and importance of this unique institution of the economic system of Islam. All concerned, whether *mutawallis* or the beneficiaries, Government or Public have to realize at large that the *Waqf* property directly belongs to Allah the Almighty and the ownership permanently vests with Him and any interference with the *Waqf* property would mean interfering with the Allah's ownership. Again, it should be understood that the general welfare of the Muslim community and the social and economical upliftment of this section of society at least to some extent depend on the efficient management of the *Waqf* matters. If the *Waqf* properties are fully developed and the income thereof is properly utilized, the economic and educational standards of the Muslim community and be improved to a reasonable extent. Keeping in view the above aspects of the problem, following

ingredients of the solution are offered to put *Waqf* administration on the roads of speedy growth so that the *Waqf* properties yield the best of results.

5.2 LEGISLATIVE REFORMS

The *Waqf* Act, 1954, being a Central Legislation was expected to bring about an improvement in *Waqf* administration. Accordingly, the Act provided for comprehensive legal provisions to entrust the supervision, protection and improvement of the *Waqf* administration in the country. But, by the passage of time, it was experienced that there are certain Lacunae in the legislative framework of the Act. Therefore, the Government of India appointed in February 1972, a Parliamentary Committee called 'Central *Waqf* Inquiry Committee' to examine the working of the Act, and suggest suitable amendments to render this institution more efficient and effective. Thus, the Central *Waqf* Inquiry Committee critically examined the functioning of the *Waqf* Act, 1954, as amended up to 1969. It reported in the year 1976 that the Act needs a thorough change, and made certain crucial recommendations. Unfortunately, these recommendations were not implemented by the Central Government in toto. However the 1954 Act was further amended in the year 1984 and many useful provisions based on recommendations of the Central Inquiry Committee were inserted. In fact, the 1984 amendment was brought about after due consideration and in consultation with the State Governments, Law Ministers and also Muslim leaders and scholars. Although the 1984 amendment did not reflect the true desires of the consultants, it did contain many useful provisions. On the whole the Act was substantially improved upon. But again, due to various pressures visible and perhaps invisible the Government did not implement these amendments except Section 66-G & 66-H, by deferring to fix a date for its implementation by the notification in the Official Gazette. Thus whatever good was intended remained for a long time only as a dead letter on the Statute Book .

5.3 Thereafter various State Governments were compeed to appoint Inquiry Committee/Commissions to suggest measure for the better administration of *Waqf* properties, including the changes, if any, in the *Waqf* Act, 1954. Similarly the question came up for consideration in some states whether to have a separate *Waqf Act* for respective states. Despite several modifications and changes suggested by the Committees/Commissions, situation continued to remain the same. Under these circumstances, certain strategies to improve *Waqf* administration and the Central *Waqf* Act, 1954 are being suggested as under.

5.4 DEFINITION OF *WAQF*

There is no equivalent word or expression in English to convey the Islamic concept and meaning of *Waqf* in true sense of the term. However, the definition of *Waqf* as given in the Central *Waqf* Act, 1955, as amended includes only a dedication by a person professing Islam. A *Waqf* dedicated by a Non-Muslim (in their individual capacity or as rulers) for the purposes recognized by Islamic law. For example, Maharaja of Patiala constructed several mosques for Muslims and all such mosques are treated as *Waqf* properties under section 66-C of the Act of 1954. Since the Courts held that section 66-C of the Act 1954 has a restricted application, in general, would not include *Waqfs* created by Non-Muslim for the purposes of the Act, the definition of *Waqf* was amended in the year 1984 whereby the words "or any other person" were inserted to include a *Waqf* dedication by a Non-Muslim also.

In the *Waqf* Act of 1995, the useful and crucial provision is not incorporated. The Words "or any other person" should have been added and also the following explanation to Section 3 of the Act.

"Explanation: A *Waqf* created by a Non-Muslim shall not cease to be a *Waqf* if it had become a *Waqf* by user".

5.5 Similarly the definition of *Waqf* as defined originally included 'a *Waqf* by user' under Sub-clause (i) of Clause (1) of Section 3 of the Act. In 1984 the words, "but such *Waqf* shall not cease to be *Waqf* by reason only of the user having ceased irrespective of the period of such cessor", were added to this sub-clause. In the *Waqf* Act 1995 also the above words were added.

5.6 *WAQF-AL AL AULAD*

It is pertinent to note that the definition of *Waqf* as given in the *Waqf* Act, 1954, includes *Waqf-al-al-Aulad* only "to the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious or charitable". Thus it did not include a *Waqf-al-Al-Aulad* created for the Welfare or maintenance of the family of the *Wa'qif* whereas such *Waqf* is fully recognized by the principles of Muslim Law. Further there could be such *Waqfal-Al-Aulad*, which are created, to begin with, for the welfare of the *Waqif's* family but in the event of extinction of the line of descent, ultimately the property goes to Public Charity. Therefore, in such a case there is a possibility that a *Waqf-al-Al-Aulad* originally created for the maintenance and welfare of

the

Waqifs family ultimately becomes a Public *Waqf*. Thus the *Waqf* Board would naturally have an inherent interest in such *Waqf* properties. Therefore, it was necessary to bring *Waqf-al-Al-Aulad* of such private nature within the ambit of the legal provisions of the *Waqf* Act, 1954. There is yet another argument in favor of such inclusion. It is contended that taking advantage of the definition of *Waqf-al-Al-Aulad* as now appearing in the Act of 1995 *Mutawallis* of such *Waqf's* submit accounts to the *Waqf* Board only with respect to Charitable and religious purpose. They may withhold the rest, and the 7% contribution is also restricted to such an extent, affecting thereby, the income of the Board. Therefore, there was a dire necessity of including all *Waqfs-alAl-Aulad* along with the one made for the maintenance or welfare of the *Waqf's* family. It should not be restricted only to the purpose recognized by Muslim Law as pious, religious or charitable. Therefore, in view of the above, it is suggested that all the words appearing after the words *Waqf-al-Al-Aulad* in sub-clause (iii) of Clause (1) of Section 3 of the Act, be deleted. It is painful to note that such a useful amendment already brought in the year 1984 was not incorporated in the *Waqf* Act of 1995.

5.7 DEFINITION OF MUTAWALLI

Under the Act of 1954 a person appointed by the *Waqf*, either verbally or through a deed of *Waqf* or instrument, was recognized as *mutawalli*, which is in consonance with the principles of *Shariat*. Another person who assumes the position of a *mutawalli* by virtue of any custom or usage is so far not recognized. Therefore, in 1984, the words, "and includes any person who is *mutawalli* of a *Waqf* by virtue of any custom..." were added. The same words are added in the Act of 1995. It may, however, be noted that if a person holds the position of a *mutawalli* only by custom, he should not be recognized against the intention of the *Waqf* expressed either verbally or through a deed of *Waqf*. Therefore, it is suggested that the existing definition of *mutawalli* may include a person who is a *mutawalli* by any custom or usage unless such person or custom is repugnant to the intention or desire of the *Waqif*, whether expressed verbally or through a *Waqf* deed or instrument. Thus a defacto *mutawalli* be recognized as de jure *mutawalli* also provided it is not repugnant to the desire of the *Waqif*.

5.8 NET ANNUAL INCOME

The computation of 'net annual income' for the purpose of determining the *Waqf* contribution of 6% to the *Waqf* Board, as per the Act of 1954,

excluded only land revenue, cess, taxes and other donations made specifically to the Corpus of the *Waqf* property. But the net annual income did not exclude thereof certain other inevitable expenditures incurred for the like purposes of repairs and maintenance, irrigation, seeds or seedlings, manure, purchase of agriculture implements, maintenance of cultivation or wages for ploughing, watering, sewing, transplantation, harvesting or threshing etc. Since all such expenditure is necessary for the very existence and development of the *Waqf* property it-self, the 1984 amendment Act granted rebate towards the above mentioned items and incorporated them in explanation to clause (1) of the Section 46 of the Act. The Act of 1995 under explanation 1 of Section 72 also granted rebate towards the same items.

5.9 POWERS OF THE WAQF COMMISSIONER

Under section 4 of the Act of 1954 a *Waqf* Commissioner was appointed by the State Government for the purpose of making a survey of the *Waqf* properties in order to register them as such. His powers were enumerated in clause (4) of Section (4) for making any inquiry for this purpose he was given certain powers as are vested with the Civil Court constituted under the Code of Civil Procedure, 1908. The provision of the Act of 1954 have been incorporated in the Act of 1995 almost without any change. The Survey Commissioner is not, specifically bound, as per the Act of 1995 to give an opportunity to all the affected parties of hearing their point of view. Therefore, it is suggested that the following words may be added to clause (4) of Section (4), thus :

"Provided that all the parties affected should be given an opportunity of being heard".

This would satisfy the demands of the principles of natural justice and make the action of the Commissioner perfect and legal.

5.10 COMPOSITION OF WAQF BOARD

Section 14 of the Act describes in detail the procedure, for appointing members from various fields and also the proportion in which such members are to be appointed. It has since long been criticized that the Government is not selective in the matter of choosing the suitable persons but is led by its own political convenience and interest and therefore such persons might be helpful to the Government but not be efficient working of the *Waqf* Boards. Therefore

it is suggested that while making such appointments, Government should necessarily examine the suitability of such persons having regard to the nature of responsibility they are going to discharge, and, in particular, the persons of renown honesty, dignity and integrity should be preferred. For this, the best procedure would be to first constitute Mosques *Waqf* Committees to be elected by the "Mussalies" i.e., persons who are regularly offering prayers in the mosque. Then, from among the Mosque Committees, suitable persons can be elected to the 'Taluka committees' and from 'Taluka Committee' members can be elected to the "District *Waqf* Committee".. Then finally from District Committees, suitable persons may be drawn to be appointed as members of the *Waqf* Board. This channalized procedure would ensure selection of devoted persons who acquire good experience having worked on various Committees from root-level to the Board-level. It is also recommended by some Inquiry Committees and Commissions for prefer persons with knowledge of law, revenue and administration. It is, therefore, suggested to amend Section 14 suitably to incorporate the same.

5.11 DISQUALIFICATION OF MEMBERS

Section 16 of the *Waqf* Act 1995 renders a person disqualified under certain conditions for being appointed or to continue as the member of the Board. To the list of such disqualifications in 1954 Act following clause was added to section 13 by 1984 amendment:

"If the has been convicted of an offence involving moral turpitude and such conviction has not been reversed or has been granted full pardon in respect of such offense".

In the *Waqf* Act of 1995 the same clause is added.

5.12 QUORUM OF THE BOARD'S MEETING

There is a glaring lacunae in the *Waqf* Act of 1995 which does not prescribe any quorum for the meeting of the *Waqf* Board, the quorum may be prescribed as five and incorporated the same in Section 17 of the Act.

5.13 FUNCTIONS OF THE BOARD

The functions of the *Waqf* Board, are enumerated under Section 32 of the *Waqf* Act 1995. The *Waqf* Inquiry Committee appointed by the Central

Government recommended for the appointment of the *Waqf* Commissioner having higher Official rank in the State Government as Executive Officer of the Board and accordingly suggested certain exhaustive functions such as maintenance of record containing information relating to the Origin, income object and beneficiaries of every *Waqf*, scrutiny and approval of budget submitted by the *mutawalli*, appointment and removal of *mutawallis*, taking measures for the recovery of lost property etc. to be transferred from *Waqf* Board to the Executive Officer i.e., the *Waqf* Commissioner to be appointed under Section 21, in order to avoid delay and to achieve efficacy of work. Accordingly the Act was amended in 1984 and these powers were given to the *Waqf* Commissioner. As a result of this amendment, sub-clauses d, f, h, l, m and of clause (2) were deleted from Section 15 of the Act. But as mentioned earlier, this amendment was not given effect to. In the *Waqf Act* 1995 the powers are retained with the *Waqf* Board.

5.14 Whether such powers are exercised by the *Waqf* Commissioner as Executive Officer of the Board or by the Secretary of the Board, the mere change in the designation of the post does not make any difference. In fact it is the ability of the person placed in such a position to conduct his Office efficiently and objectively.

Therefore, it is suggested that whatever the name such person is called with, he should be clothed with all such powers which are necessary for him to discharge his duties effectively and promptly. The procedure for recovery of *Waqf* property lost should be less cumbersome and capable of restoring back the lost property without loss of time. The powers of *Waqf* Commissioner under section 21-C to 21-F as amended in 1984. In the *Waqf Act* 1995 these powers have been assigned to the *Waqf* Board.

5.15 DEVELOPMENT OF URBAN WAQF PROPERTY

Development of urban *Waqf* properties has, since long, remained a crucial problem. The Central *Waqf Act*, 1954 made a provision for the utilization of the surplus funds for the purposes allied to the original object of the *Waqf* in case where the object of *Waqf* become extinct. This includes development of *Waqf* becomes extinct. This includes development of *Waqf* properties as well. But there is no specific provision or a comprehensive scheme for the development of the urban *Waqf* properties keeping pace with the trends of modern times. As has been mentioned earlier in para 2.76 of this study, thousands of urban *Waqf* properties with tremendous commercial

potential are just lying unused for want of necessary finances and proper schemes. Loans from Banks, Life Insurance Corporation or other funding agencies are not easily forthcoming for want of security. Such golden Waqf properties, if ignored, would soon become target or unauthorized possession by Land-grabblers.

5.16 Various Inquiry Committee/Commissions, whether appointed by Central Government or State Governments, are unanimous in their recommendations to develop urban *Waqf* properties and have, therefore, suggested different schemes and projects. The *Waqf* Act, 1954, as mentioned earlier, did not envisage development of *Waqf* properties and thus did not contain any specific provision for such development. Due to the lack of finance and legal provisions the *Waqf* Boards are not in a position to take any steps in this direction. It has now come to stay that unless Boards are suitably empowered to take over such development prone urban *Waqf* properties, *Waqf* properties would never acquire strength and stability. It should also be realized that increase in the income of *Waqf* properties means increase in the income of the *Waqf* Board. Therefore, *Waqf* Boards have their inherent interest in such developmental programs. All the calls for inclusion of legislative provision in the *Waqf* Act and allied laws were unheard. Rules presently in force do provide only for the temporary acquisition of such urban *Waqf* property by *Waqf* Board, and for a full-fledged development scheme. Several such schemes have been worked out by various Inquiry Committees/Commissions procedure provided for serving a notice by the Board on the concerned *mutawalli* requiring him to convey his decision within a period of less than 60 days, as to whether he is willing to undertake such development scheme. In case the *mutawalli* declines or expresses his inability, the Board itself, with the prior approval of the state Government may take over the property. It is authorized to clear any building structure thereon and execute the work from its finances. In case of paucity of funds the finances may be raised on the security of concerned *Waqf* properties under either situations the construction work has to be done under Board's supervision and control and manage the *Waqf* property till such time as all expenses incurred by the Board in this regard together with interest thereon are recovered from the income derived from the property. During the period of such construction, however, the Board is required to compensate the *mutawalli* annually to the extent of average net annual income derived from the property during the three years immediately preceding the taking over of the property by the *Waqf* Board. Before all this is done, the *mutawalli* should be given an opportunity of being heard as to why such action should not be taken. Establishment of *Waqf* Development Corporation is also

recommended for this purpose where it can take up such developmental schemas on behalf of *mutawalli* or *Waqf* Board or even extend loan facilities.

5.17 A FEASIBLE AND SELF-FINANCED SCHEME

In this connection it is pertinent to refer to the details of a self-financed developmental scheme which appears to be feasible. In fact, such a scheme is already in progress at Nabi Khana Moulvi Akbar *Waqf*, which has a hundred percent potential being situated at a very busy commercial area of Pathar Gatti, Hyderabad, Andhra Pradesh. According to this scheme, the construction work of commercial complex is given to the local professional builders of good repute, to be completed within a period of five years. During this time the builders will complete the construction work wholly from their own finances, let out the shops to prospective tenants by entering into with tern tenancy agreements on fixed rents enjoy rents of such developed property for the remaining period of five years and ultimately at the end of the period of five years hand over the developed property to the *mutawalli*. During the transitory period of five years, however, the *mutawalli* Committee would receive an agreed amount of Rs. one lakh per annum from the builders to carry out usual functions. For all this naturally the builders would be confident of making such income out of the project as is sufficient not only to meet out all these expenses but yield profit also. In the preparation of such developmental scheme, the builders calculate not only the expenditure on the construction, but fetch potential of the commercial complex to be built by them. Of course they get a sizeable lump sum amount from the prospective tenants in consideration to secure the place on rent depending upon the value and demand of the business centre.

5.18 REGISTRATION OF WAQF PROPERTIES

Registration of *Waqf* properties with the *Waqf* Board is directly linked with the protection of such properties. It is for the simple reason that the necessary legislative protection under the provisions of the *Waqf Act*, 1954, was available only to such *Waqfs* which are registered with the *Waqf* Board under Section 26 of the Act. As such a *Waqf* Board cannot have powers in respect of unregistered *Waqfs*. Thus the *Waqf* Commissioner under Section 4 of the Act is entrusted with the duty of making survey of such properties which he has reason to believe that the properties are *Waqf* properties. After due inquiry and hearing, he registers such properties as *Waqfs* in the register maintained by him under Section 26 of the Act. It is found that in many States the work of survey has not been carried on satisfactory lines. Where such survey is made,

they have not been notified as such in the Gazette for want of necessary finances. The delay on part of the Commissioner to trace out such hidden *Waqf* Properties owing to lack of necessary funds for their publication not only affected the protection of such properties but also resulted in financial loss of 6% statutory contribution payable to the *Waqf* Boards by such un-notified *Waqf* properties. For example, in the State of Andhra Pradesh alone, around 16,000 *Waqf* properties have been surveyed by the *Waqf* Commissioner but the same could not be notified due to lack of finances. Thereby huge financial loss is caused to the Andhra Pradesh *Waqf* Board. **Therefore**, money has to be spent to earn money. Due to avoiding investment a vicious circle is formed. This needs to be broken down by the State Government by providing necessary funds for this task.

5.19 DECISION IF A PROPERTY IS A *WAQF* PROPERTY

As it stands today, Section 40 of the *Waqf* Act gives powers to the Board to trace out any *Waqf* property which it has reasons to believe that such property is a *Waqf* property or not or whether a *Waqf* is a Sunni *Waqf* or a Shia *Waqf* for this purpose, the Board may collect information and, after making such inquiry as it may deem fit, decide the question. The decision of the Board shall be final, unless however, reversed or modified by a Civil Court of competent jurisdiction. Under 1984 amendment, clause 3 and 4 were added to Section 27, which are of no avail being not notified. In this connection, it is suggested that since the Civil Courts usually take inordinately long time to decide such issues, it would be more appropriate if such question, in case of dispute, is decided by the *Waqf* Tribunal which was proposed to be constituted under Section 55 as amended in 1984. Therefore, establishment of *Waqf* Tribunal under Section 83 of the *Waqf* Act 1995 is a proper step in right direction.

5.20 AUDIT OF ACCOUNTS OF THE *WAQF* INSTITUTIONS AND ITS COST

Auditing of the *Waqf* account is a matter of prime importance and therefore provision is made in the *Waqf* Act to require *mutawalli* of every *Waqf* to submit annually the audited accounts to the *Waqf* Board Section 46, the cost of *Waqf* Board audit is charged, as per clause (3) of the Section 80 to the *Waqf* Fund of the Board. It is argued that the auditing fee fixed at the rate of 1 1/2% of the income of the *Waqf* is a financial burden on the *Waqf* Board in addition to 1% payable by the Board to the Central *Waqf* Council. In effect, it means that

out of a total income of 7% received by the Board from the *Waqf* property as statutory contribution, 1% is paid to Central *Waqf* Council and 1/2% to the auditor towards the audit fee whereby only remaining of 1/2% is retained by the *Waqf* Board. Moreover, the audit fees fixed @ 1/2% is not at all realistic. Therefore, it was suggested to charge the audit fee to the income of the *Waqf* property instead of *Waqf* Fund of the *Waqf* Board. Earlier subsection 3 of Section 33 was amended in 1984 to provide for the payment of cost of audit to the funds of that *Waqf* which such audit pertains to. But this amendment, too, was not enforced. Therefore, with a view to improve the financial position of the *Waqf* Board, the cost of audit required to be met out from the funds of the respective *Waqf* institutions.

5.21 TRANSFER OF IMMOVABLE PROPERTY OF WAQF

Section 36-A of the *Waqf* Act, 1954, laid down that notwithstanding anything contained in the *Waqf* deed, no transfer of any immovable property of a *Waqf* by way of sale, gift, mortgage or exchange or lease for a period exceeding 3 years in the case of agricultural land, or for a period exceeding one year in the case of non-agricultural land or building, shall be valid without the previous sanction of the Board. It is noticed that some *mutawallis* try to defeat the provision of Section 51 by leasing out the *Waqf* property for the period permissible under the law and then renewing the lease again to the same tenants. Thus such tenants, being confident of permanently getting the lease, construct pucca buildings on the *Waqf* land. To remedy this situation, it was suggested that the lease should be given only through a public auction. Any lease made otherwise than by public auction should be treated as null and void. Section 51 of the *Waqf* Act 1995 almost the same provisions have been incorporated.

5.22 Another problem relating to the leasing of the *Waqf* properties deserves a serious consideration. It is complained by several *mutawallis* that there have been cases where the *Waqf* property was given on lease before the commencement of the *Waqf* Act, 1954, on very nominal rents. Such lease continued thereafter, irrespective of the fact that the property could fetch higher rents depending upon the prevailing market value. To save the income of such *Waqf* properties from being affected, the Amendment Act 1984 included a provision of Section 36-F declaring all such leases entered into for any period exceeding 3 years null and void, "unless reviewed and approved by the Board". But as said earlier, this amendment is not enforceable for want of notification. Therefore, approval by the *Waqf* Board has been made compulsory in all such

cases with the specific powers to review and enhance the rents. (Section 51 of the *Waqf* Act 1995).

5.23 RECOVERY OF WAQF PROPERTY ILLEGALLY TRANSFERRED

Encroachment, trespass, unauthorized occupation and land-grabbing have become a common feature of the *Waqf* properties. Lacunae in *Waqf* Legislation, dishonesty on part of some *mutawallis* and encouragement of the land-grabbers are the usual causes of such encroachments. It is examined and found that Section 36-B of the *Waqf* Act 1954 was restricted only to the cases of transfers in contravention to Section 36-A by a person on whom *Waqf* Board has control. It has no application to the encroachment. In case of trespass by a stranger, action can alone be initiated under Section 447 of the Indian Penal Code. Taking stock of the situation, the Central *Waqf* Inquiry Committee was appointed in 1972. The Committee recommended in its Interim Report of 1973 that the definition of 'Public Premises' in the Central Public Premises (Eviction of unauthorized occupants) Act, 1971, and in other similar State Acts, may be broadened to include the premises belonging to any Public *Waqf* or trust of all religious, pious and charitable institution serving a Public purpose. It is interesting to note that Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, and Sections 75 and 76 of the Andhra Pradesh Hindu Religious and Charitable Endowments Act, 1966, contain comprehensive provisions to deal with encroachments. Similarly an effective provision was also made in the Central *Waqf* Act, 1954, by amendment in 1984 wherein Section 36-D and 36-E put together provided for effective removal of such encroachments. Under the provisions of Section 52 of the *Waqf* Act 1995, the *Waqf* Board is empowered to recover illegally transferred *Waqf* property. The *Waqf* Board has to send a requisition to the concerned Collector to obtain and deliver the possession of the *Waqf* property to it. The Collector shall pass an order directing the person in possession of the property to deliver it to the Board. Any person aggrieved by the order of the Collector may go in appeal to the Tribunal.

5.24 BURDEN OF PROOF

As per existing practice in case of encroached *Waqf* property, the burden of proof lies on the *Waqf* Board to prove the existence of *Waqf*. Usually *Waqf* is proved by the production of *Waqfnama*, or by providing circumstances leading to an inference in favor of *Waqf* or by immemorial user. Where there is a *Waqfnama*, it is easy to prove the existence of *Waqf*. But where *Waqfnama* is

not made or is not available, it is proved by evidence of circumstances. However, the attitude of the Courts appears to be reluctant to accept such proof. In case of immemorial user, if it is in a unequivocal nature that it can only lead to an inference of *Waqf*, it is proved beyond doubt. For example, immemorial use of a place as Qabarstan or grave yard and its entry in the settlement register is a proof beyond doubt that it is a *Waqf* by user.

5.25 However, in case where *Waqfnama* is not available and the *Waqf* property is wrongfully and illegally held by encroacher, it would be just if burden of proof is imposed on such encroacher to prove his legal title instead of requiring the *Waqf* Board to prove it. This shifting of burden of proof from *Waqf* Board to the ostensible owner would go along way in protecting *Waqf* properties from illegal occupations. The Land Grabbers and illegal occupants would be discouraged to engage themselves in such 'criminal offences. They would realize that although possession is nine-points in Law, nevertheless they have to furnish proof and establish their title beyond doubt. This position itself can serve as deterrent for recurrence of such criminal trespass.

5.26 SOCIOECONOMIC AND EDUCATIONAL UPLIFTMENT OF THE COMMUNITY

It is an admitted fact that the Muslim community is lagging behind every other community in almost every walk of life. The cause of such socioeconomic backwardness is usually attributed, inter alia, to the low educational level of the Muslims. No one, perhaps, disagrees with this as the social status is measured by the economic strength and economic strength is linked with educational awareness. Therefore, for a decent and respectable life, socioeconomic and educational attainment is an essential pre-requisite. Probably this was the reason which persuaded various Inquiry Committees and Commissions strongly to recommend for the suitable allocation of the *Waqf* income to achieve this goal. Therefore, once it is agreed in principle, working out of modalities would not be very difficult. In fact, there are certain *Waqfs* in India which are running Minorities Educational Institutions for the community. Bibi Raza College of Engineering and Education at Gulbarga in Karnataka State is one such example to quote which is managed by the Khwaja Garib Nawaz Trust. If Individual *Waqfs* can take up such activity, there would be lot of advantage. In case such action is centralized by the *Waqf* Board and a suitable percentage, say between 3% to 5% of annual income is contributed considerable amounts would be realized. In addition, Central *Waqf* Council has been granting sanction of various sums to several *Waqf* Boards for social,

economic and educational assistance, details of which are already incorporated elsewhere in this study vide Chapter III relating to State-wise Scenario. This would serve more for the uplift of the Community.

5.27 DISQUALIFICATIONS OF *MUTAWALLIS*

Section 43 of the *Waqf* Act, 1954 prescribed certain conditions under which a *Waqf* Board is entitled to remove a delinquent *mutawalli* subject to the condition that such decision is taken by a majority of not less than three-fourths of the members of the Board. Since the requirement to achieve consent of 3/4th of the members was practically difficult, it was by an amendment in 1984, reduced to 2/3rd. Further, certain new clauses were added to this Section to include some more grounds for the removal of the *mutawalli*, viz.: if he is an undischarged insolvent or he is an addict of drinking liquor or other spirituous preparation or is addict of taking any narcotic drugs, or he commits any malfeasance, misfeasances, misapplication of funds or breach of trust etc. However, these useful amendments, not being enforced, have already lost their efficacy.

5.28 Under Section 64 of the *Waqf* Act 1995, certain new grounds have been added to the recommendations of the *Waqf* Inquiry Committee 1976, on the basis of which a *mutawalli* can be removed by the *Waqf* Board. Under subsection (3) of Section 64 it laid down that the decision to remove a *mutawalli* shall be taken by a majority of not less than 2/3rd of the members of the Board. However, no grounds have been specifically provided in the Act as disqualification to prevent a person from being appointed as *mutawalli* ab initio. Under Clause (g) of Subsection 2 of section 32 the *Waqf* Board is empowered to appoint and remove *mutawallis*. No doubt, for all practical purposes, no *Waqf* Board can dare to appoint such person as *mutawalli* who is known to the Board as an addict of drug or drink or is an undischarged insolvent or is guilty of any offence involving moral turpitude, but at the same time there is no obligation on part of the *Waqf* Board to inquire into and ascertain whether such person is disqualified or not. For this, if a separate section is included in the Act to provide for disqualification of any person to be appointed or to continue as *mutawalli*, the *Waqf* Board would be under a legal obligation to examine his candidature on the basis of such disqualification before any action is taken in this regard. Similar provision to made under Section 16 of the Act relating to "disqualification for being appointed, or for continuing as a member of the Board. No such corresponding provision is made in the *Waqf* Act 1995 for a person to be appointed as *mutawalli*.

5.29 AUDIT OF ACCOUNTS OF THE **WAQF** BOARD

Audit of account of the *Waqf* Board is essential not only for the purpose of checking the financial accounts of the Board but is also inevitable to ascertain the accountability of the Board in the discharge of its functions. Therefore, auditing is very essential to ensure proper functioning of the Board within the framework of the Act. But, unfortunately, it is found that *Waqf* Boards of several States have not complied strictly with this statutory requirement. In case of certain State Boards auditing has not been done for a very long period. One main difficulty is expressed in cases where audit has not been done for the past twenty years or more. It is contended that since the old records, Books of accounts and vouchers are not traceable, the correct figures of receipts and expenditure or balance are not available. Therefore, in absence of old figures and accounts it is difficult to conduct audit. As a remedial measure, it was suggested that Government may require the auditors, by administrative orders, to conduct audit in the following manner: (a) audit should be taken up, in the first instance, in respect of the last 3 to 5 years (independently), (b) simultaneous audit should be taken up for the previous years. Another reason for such default, it is argued, that the cost of the audit which has to be paid by the *Waqf* Board from the *Waqf* Fund as laid down under sub-section (3) of Section 80. Since the *Waqf* Boards are already facing the serious problem of lack of finances, the expenditure towards the fees of the auditors becomes an additional burden. It is therefore suggested that the cost of auditing of the accounts of the *Waqf* Board should either be borne by the concerned State Government or at least, the responsibility of audit may be entrusted to the State Examiner of Local Fund instead of Chartered Accountant whose fees is usually exorbitant.

5.30 **WAQF** TRIBUNALS

General awareness of their legal rights on part of the Public made them more litigant in the present day society. This has resulted in enormous increase in the litigation. Consequently, the Courts of Law have become overburdened and give rise to mounting arrears of cases. The limited number of Courts in the country cannot keep pace with the ever increasing litigations. The delay in the administration of justice, in fact, amounts to denial of justice. Government, being responsible for administration of justice, was to find out new methods of speedy justice. This led to the evolution of the concept of tribunals as an alternative forum for the Civil Courts. The very idea of providing tribunal is based on providing professional expertise, expeditious disposal and cheaper remedy of dispute. The new concept of tribunal is more acceptable to the public

for it is manned by persons specially skilled in the nature of disputes they are required to resolve. This usually satisfies the litigants because it not only saves time and money but also ensures efficiency apart from the fact that the opportunity to go in appeal to the High Court/Supreme Court is still available to them. Thus the industrial tribunal for the settlement of industrial disputes, administrative tribunal for administrative and service disputes, Income Tax tribunal for disputes arising out of Income Tax Act, and many other similar tribunals for respective fields of litigation have come into existence. Thus, the tribunals as an effective alternative for administration of justice became popular. One, therefore, cannot deny the positive role of the tribunals.

5.31 For these obvious reasons, the *Waqf* Act, 1995 provided a full-fledged scheme for the establishment of '*Waqf* Tribunal' under Section 83 of the Act for the settlement of disputes arising out of the *Waqf* Act.

5.32 PROTECTION UNDER OTHER RELEVANT LAWS The

Public *Waqfs* (Extension of Limitation) Act, 1954

As already mentioned in para 2.80 of this study, the period of limitation under the Indian Limitation Act has been extended, from time to time, up to 1986 in respect *Waqfs* properties for the purposes of recovering the *Waqf* properties from the adverse possession of the defendant. In 1984 by inserting a new section 66-G, to the *Waqf* Act, 1954, such period of limitation for recovery of *Waqf* properties has been extended for a period of 39 years from the date on which the possession of the defendant becomes adverse to the plaintiff. Although other amendments made in 1984 have not been brought into force, Section 66-G and 66-H were applied in toto. Nevertheless, it was suggested that the *Waqf* properties should be permanently exempted from the purview of the Indian Limitation Act in order to protect *Waqf* properties on permanent basis. The *Waqf* Act 1995 granted total exemption to the *Waqf* properties from the law of limitation Act (36) of 1963 shall not be applicable to the *Waqf* properties.

5.33 EXEMPTION UNDER INCOME TAX ACT, 1961

As originally enacted, Section 11 and 13 of the Income Tax Act provided exemption to the *Waqf* properties being in the nature of trusts for religious, pious or charitable purposes. But by an amendment certain new provisions were introduced under Section 13 of the Act providing that if the

trust or institution is created for the benefit of any particular religious community or caste, such exemption from Income Tax would not be available under Section 11 of the Act to such religious institution.¹ "Nevertheless, the Ministry of Finance (Department of Revenue) subsequently clarified that a trust for religious purposes is not intended to be brought within the scope of Section 13 (b) and such a trust will continue to enjoy exemption under Section religious purposes is not intended to be brought within the scope of Section 13 (b) and such a trust will continue to enjoy exemption under Section".² However, *Waqf al-Al-A ulad* is not exempted from the Income Tax under the Income Tax Act. Now as per the existing provisions of the Income Tax Act there is no mention in unmistakable terms to draw a clear inference that the trust created for the benefit of a particular religious community are straight away exempted. This point is open to debate the intention of the Parliament contained under Section 11 of the Act read with Section 13. Therefore, it is suggested that the exemption should be granted in clear terms to all types of trusts whether created for a particular religious community or public at large, since any religious community also forms a part and parcel of the Public.

On the same analogy, *Waqf-al Al-Aulad* would also fall within the ambit of Charitable endowments. Although confined to particular class of descendants, it is essentially based on the element of 'Charity' which is the essence of *Waqf*. Moreover, in the event of extinction of the line of descendants, the *Waqf-al-Al Aulad* becomes a Public Charity. Therefore, *Waqfal-Al-Aulad* should also be exempted under the Income Tax Act, 1961.

5.34 EXEMPTION UNDER LAND CEILING/REVENUE/RENT CONTROL/LAND GRABBING LAW, ETC.

As already noticed in Chapter III of this study relating to State-wise Scenario, the exemption to *Waqf* properties is not uniform under various State laws relating to Land-ceiling, Revenue Cess, Rent Control, etc. It varies from State to State. Therefore, there is a need to evolve a uniform policy by the Central Government and grant exemption to *Waqf* properties from all such State Laws by making a provision in the Central *Waqf* Act. There would be no administrative or legal difficulty in doing so as the *Waqf* is a subject of concurrent list of the Constitution. In case of any conflict between the Central

S.K. Rashid, *Waqf Laws and Administration in India*, p.85. ²
S.K. Rashid, *Waqf Laws and Administration in India*, p. 85.

and the State Laws, the Central Law would prevail over the State Laws for which it has constitutional sanction.

5.35 PROTECTION UNDER LAND GRABBING (PROHIBITION) ACT, 1982

State of Andhra Pradesh has enacted a very useful Act called the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 to protect Government land from the interference by the Land Grabbers. Cases of Land Grabbing of *Waqf* properties are also filed under this Act by the *Waqf* Board. But there is no specific inclusion of *Waqf* properties in the coverage of similar laws in other States. Therefore, for obvious reasons, similar protection under relevant laws of other States should be extended to *Waqf* properties against Land Grabbing.

5.36 ADMINISTRATIVE REFORMS

Since amending the Legislation is a time consuming process and in most of the cases, it is not easily forthcoming, certain administrative reforms are most needed for the development of the *Waqf* administration. Various Inquiry Committee and Commissions either appointed by Central Government or State Governments, have pointed out to certain administrative lapses, the nature of such lapses being common to almost all the *Waqf* Board/State Governments. Therefore, it is pertinent to make a brief observation of such recommendations in order to suggest administrative reforms.

- b) It is reported that the *Waqf* Board usually exceeds its powers in innumerable cases and adopts several resolutions which are not legal and incurred expenditure.
- c) Board has generally failed to supervise efficiently the activities of its officers; and behavior of some staff members is most objectionable.
- d) Board has failed to check illegal transfer of funds from one *Waqf* institution to the other without any hope of repayment.
- e) Boards in some states have to their staff without ensuring repayment behaving like a money-lending agency. In most of the cases, such advances are not recovered and now they cannot be recovered since many of such employees to whom huge advances were made, died, retired or are not traceable.

5.37 The above description of administrative lapses on part of the *Waqf* Board is indicative of the fact that the persons appointed in the *Waqf* Board and its office are not suitable. Therefore, the State Government should take action on following lines:

- i) Weeding out unsuitable staff/officer.
- ii) Dismissal and prosecution of those involve in criminal misappropriation.
- iii) Selection of suitable staff. **5.38**

SELECTION OF SUITABLE PERSONS

As already mentioned, the Government is not selective in the matter of appointing members of the *Waqf* Board or even Administrator/Special Officer in case of supersession. In many cases suitable persons of good reputation and administrative achievements refuse to serve on *Waqf* Boards as they consider it a mess of affairs. For selection of members of the *Waqf* Board the Government is led by its political convenience instead of suitability, efficiency and honesty of the persons. Therefore, Government should evolve some criteria and establish good convention by appointing the most suitable persons for *Waqf* administration.

5.39 PERFORMANCE AUDIT OF THE *WAQF* BOARD

It is suggested that the State Government should make arrangements for the performance Audit of the *Waqf* Board and issue administrative orders for the regular submission of the Annual Report, in prescribed manner, of accounts and functioning of the *Waqf* Board. The audit should also indicate financial/administrative lapses and fix responsibility on the delinquent staff. The annual report of the accounts and functioning of the *Waqf* Board should be carefully examined by the Government for taking necessary corrective steps or disciplinary action. This work can be entrusted to a senior IAS, IPS, or IFS Officer who can be appointed as Advisor to the Government in *Waqf* matters. This performance audit of the *Waqf* Board would caution it to be careful in future and conduct its functions diligently.

5.40 COLLECTION OF RENT/DUES, ETC.

It is every body's knowledge that the rents of the *Waqf* properties are very nominal and even such nominal rents are not regularly collected. In many

cases, persons appointed by the *Waqf* Board to collect rent have to travel a long distance and, eventually, their travelling expenses are more than the rent collected. Similarly the arrears of *Waqf* Fund due to the *Waqf* Board are also not collected promptly. It was, therefore, suggested that the *Waqf* Board prepares a list of demands and send it to the Collector for collection. Collection charges be paid to the Revenue Staff. Under Section 49 of the *Waqf* Act 1995 amounts certified to the due are recoverable as arrears of land revenue. It is expected that this procedure would ensure 100% collection of arrears/dues etc., and eventually reduce the expenditure for such realization considerably.

5.41 DETERMINATION OF COMPENSATION UNDER LAND ACQUISITION ACT

It is a common observation that whenever Government acquires land or properties under the Land Acquisition Act for the purpose of developmental projects, establishment of factories or even for widening of roads etc., it is obliged under the Act to pay compensation to the owners of effected properties. However, it is noticed that the determination of compensation never satisfies the owners. They claim that the compensation is calculated at very nominal rate ignoring the market value. This results in litigation against the land acquisition authorities and further delays even in payment of such meager compensation. In case of *Waqf* properties, compensation is always determined at very nominal rates causing tremendous financial loss. Further it becomes difficult for *mutawallis* or *Waqf* Board to go in appeal against the Acquisition Officers.

5.42 As for the *Waqf* properties under the management of the *mutawallis*, the Land Acquisition Officers are extra-careful to fix compensation at lower rates. This is so done for the reason that if higher rates are allowed for such determination there would be criticism of malafide and corruption on part of the Officers who would entail disciplinary proceedings against them. Thus to avoid such complications they usually determine lesser compensation. It is, therefore, suggested that suitable guidelines should be issued to Officers, ensuring fair determination and payment of compensation in respect of *Waqf* properties.

5.43 DECLARATION OF *WAQF* PROPERTIES AS SLUMS

Another serious problem faced by the *Waqf* properties relates to the **encroachment by unauthorized persons** on **open *Waqf* lands** in urban areas, who construct their dwellings in their own humble way and form associations to approach Government authorities claiming electricity, water supply and other

Civic amenities. Since such facilities are essential for the existence of human life, they are usually extended. Next, the unauthorized encroachers are tend to produce electricity and water bills in their names as evidence to claim ownership. Therefore, it is suggested that in such cases where the *Waqf* Board or *mutawallis* give notice to the authorities of concerned departments such facilities should not be sanctioned without investigating the ownership of slum dwellers. Low Cost Housing Schemes can, however, be undertaken on such *Waqf* Lands.

5.44 In some incidents under Slum Clearance Schemes such encroached *Waqf* properties were declared as 'Slums' threatening thereby, the very title of the *mutawalli* or *Waqf* Board. Mahmood Bagh *Waqf* situated in a thickly populated area in Hyderabad is one such example to quote. The *Waqf* Land of Mahmood Bagh was even given on pattas to the occupants by the Collector. Slum Clearance Scheme is expected to clear slums and not to perpetuate slums. Therefore, it is suggested that the Government should issue administrative orders to the authorities in charge of Slum Clearance to ascertain ownership. particularly when it happens to be a *Waqf* property, before making any declaration.

5.45 SMALL WAQFS SHOULD BE MERGED TOGETHER

There are numerous small *Waqfs* created for specific religious, pious or charitable purposes whose income, being meager, is insufficient for any useful utilization. Therefore, all such small *Waqfs*, which in their individual capacity are not able to contribute positively, should be merged together, subject however to the desire of the *Waqfs* to form a major *Waqf* so that the meager incomes of various small *Waqfs* are pooled together for proper utilization and useful purposes.

5.46 CO-OPERATIVE WAQF— A NOVEL SUGGESTION

There are several pious and philanthropic Muslims who have an inherent desire to do something good in their own humble way for their community. But due to lack of imagination, they spend lot of money in an unwise manner. The *Waqf* Board can play an important role to bring all such people together on a common platform and suggest a cooperative scheme for creating a common *Waqf*. Various individuals/groups/associations can , contribute, according to their capacity and wish, and form a common *Waqf* fund which can be invested/used to establish a permanent *Waqf* for the use of

specified activities being pious, religious or charitable. Therefore, out of the contributions of various *Waqifs*, a "Cooperative *Waqf*" can be created. Thus insignificant individual contributions can give rise to a significant cooperative *Waqf* fund. However, it is pertinent to note the essential difference between a cooperative society and the proposed "Cooperative *Waqf*" as under:-

5.47 COOPERATIVE SOCIETY AND COOPERATIVE **WAQF** DISTINGUISHED

In a cooperative society contributors or share holders do have individual material interest in the form of monetary gain or profit, with all powers to withdraw from the society and take back their contribution as the ownership of their contribution vests always with the contributors. Such society would be registered under the Co-operative Societies Act, the purpose of such cooperative may not be pious, religious or charitable but rather a purely commercial one. Whereas, the proposed 'Co-operative *Waqf*' would differ, in almost all respects specified above, from a cooperative society. In case of a cooperative *Waqf*; contributors would have no power to withdraw any contribution which shall be non-refundable, as ownership of such contributions would continue to be in the name of Allah. The purpose of the 'Co-operative *Waqf*' would necessarily be pious, religious, or charitable in the eye of Islamic Law and, in particular, it would never be used for any personal gain or commercial purpose. Further this would not be registered under cooperative societies Act, but registered as '*Waqf*' with the *Waqf* Board under the *Waqf* Act, 1995. Therefore, the "Cooperative *Waqf*" resembles a cooperative society in as much as its mode of constitution is concerned but essentially differs from it as far as its purpose, utilization and functioning are concerned.

5.48 STANDARDIZED *WAQFNAMA*

Since the knowledge of *Waqf*/Law and its consequences are not well-known to common man, the *Waqf* Board should prepare standardized *Waqfnamas* in prescribed forms with all necessary information and make them available, to all the interested persons. *Waqfnamas* with a wide range of objectives will serve as a guidance and at the same time will stir the imagination of persons who are financially in a position to create *Waqfs*. The availability of properly prepared *Waqfnamas* which meet the legal and *Shari 'ah* requirements will be of great help to the prospective *Waqifs*. Easy availability of such necessary legal information along with model *Waqfnamas* would be helpful and probably encourage creation of new *Waqfs*.

5.49 DISPLAY OF PLAQUES

Plaques or stone tablets should be fixed on every *Waqf* building indicating that it is a *Waqf* property. Such plaques would also warn the general public against any misuse, damage or encroachment. Although such plaques may have a little or not impact on the habitual grabber/encroacher, eventually it would attract the attention of the responsible and law abiding citizen who may inform the *Waqf* Board or the Police about any encroachment. Action therefore may be initiated at appropriate time to protect such *Waqf* properties from falling in **the hands of grabbers/encroachers.**

5.50 PUBLIC AWARENESS/USE OF ELECTRONIC AND MASS-MEDIA

As mentioned earlier, *Waqf* administration is a complex problem and cannot be tackled by any isolated action. The solution has to be multi-faceted and multi-pronged. In this direction, public awareness is essential. Public in general has to be educated about the pious purpose and public nature of *Waqf* institution. Unless a general awareness is inculcated among the public about their rights and duties towards *Waqf*, probably *Waqf* administration/ *Waqf* institutions cannot improve on long term basis. This task can as well be entrusted to a Public Relation Officer of the *Waqf* Board. Periodical liaison-meeting with the responsible members of the society, annual conference of the *mutawallis*, display of signboards, coining of suitable slogans, utilization of electronic and mass-media, making of short documentary films etc., can be adopted as usual means to create Public awareness. Psychological impact and educative value of this aspect should neither be under-estimated, nor altogether rejected.

5.51 SUMMARY OF STRATEGIES AND RECOMMENDATIONS

To sum up, the strategies and recommendations made in this Chapter, following important points may be considered:-

1. The problem of managing the *Waqf* properties on efficient and honest lines is a complex one so also is the solution. (Pam 5.1).
2. Reforms, being multi-faceted and multi-pronged, have to be brought about in phased-manner. (Para 5.1).

3. L
Legislative reforms, administrative strategies and public awareness are the essential ingredients of the solution (5.1).
4. The *Waqf Act*, 1954 needed several changes, some of them brought about by an amendment in 1984, but were not enforced by withholding notification in Official Gazette. Most of the useful amendments remained as a dead-letter till the promulgation of *Waqf Act* 1995. (5.2).
5. Since the amendments of 1984 were not enforced the *Waqf Act*, 1954, as amended up to 1969 was the existing law in force till 1995.
6. De - facto *mutawalli* can be recognized as de - jure *mutawalli* also, provided it is not repugnant to the intention/desire of the *Wa'qif*.
7. *Waqf* Commissioner/Survey Commissioner should give opportunity of being heard to all affected parties before declaring a property as *Waqf* property. Therefore, Section 4 (4) of the *Waqf* Act 1995 should include a proviso to this effect. (5.9).
8. Functions of *Waqf* Board should include socioeconomic and educational functions.
9. Persons to be appointed as members of *Waqf* Board, should be selected on the basis of their suitability, honesty, efficiency and integrity and not on the basis of political convenience. (5.10).
10. Development of Urban *Waqf* properties is essential for improvement. Suitable schemes should be worked out. A feasible self-financed scheme is suggested for consideration. (5.15 to 5.17).
11. Socioeconomic and educational activities should be taken up by the *Waqf* Board and a suitable percentage, say between 3% to 5% of annual income should be allocated for this purpose. (5.26).
12. A separate section should be provided prescribing "Disqualification for appointment or continuance as *mutawalli*". Similar provision exists under section 16 of the *Waqf Act* 1995 relating to members of the *Waqf* Board, while no such corresponding section is made for, relating to *mutawallis* (5.28).
13. Audit of accounts of the *Waqf* Board should be regularly conducted fixing responsibility on the delinquent employee of the *Waqf* Board. Cost of such audit should be borne by State Government. (5.29).

14. Sections 11 and 13 of the Income Tax Act should grant exemption in clear **and unmistakable** terms and such exemption **should** be extended to all *Waqfs* even if it is for a particular section of religious community as well as *Waqf-al-Al Aulad* of all types should **also** be exempted. (5.33).
15. Central Government should evolve a uniform policy to grant exemption to *Waqf* properties from certain State Laws, like Land Ceiling, Revenue, Rent Control, **Land-Grabbing** etc. (5.34).
16. *Waqf* properties should be included within the purview of Land Grabbing (Prohibition) Act. (5.35).
17. The nature of administrative lapses/mal-administration/ failure of efficient supervision/exceeding powers etc. are common to almost all *Waqf* Boards. This should be eliminated by initiating action on suggested lines. (5.36, 5.37).
18. The Government should be selective in matter of choosing persons to be appointed as members of *Waqf* Board or , as special officer/administrator etc. Such selection should be based on honesty, efficiency and integrity of the persons and it should not be motivated by political considerations. (5.38).
19. "Performance Audit of *Waqf* Board" should be conducted as a new method of checking performance and functioning of the *Waqf* Board. This can be entrusted to a Senior I.A.S., I.P.S., or I.F.S., Officer having experience in *Waqf* matters. (5.39).
20. To ensure 100% collection of rents and dues, help from the Collector can be obtained who can use his Revenue Staff on payment of collection fee. (5.40).
21. Determination of compensation for the *Waqf* property acquired under Land Acquisition Act should be made at the market rates prevailing in the locality and paid expeditiously. (5.41 and 5.42).
22. No *Waqf* property should be declared as 'Slum' under Slum Clearance Scheme (5.43 and 5.44).
23. Small *Waqfs* should be merged together for useful utilization. (5.45).
24. "Cooperative *Waqf*" is a novel method proposed for creating *Waqf* out of contribution from intending persons. 'Cooperative *Waqf* and "Cooperative Society" is distinguished. (5.46 and 5.47).

25. "Standardized *Waqfnama*" in prescribed format should be **prepared** by the *Waqf* Board and made available to Public. (5.48).
26. Suitable 'Plaques' specifying nature of *Waqf* and Penal provision under relevant laws should be displayed on all *Waqf* land/*Waqf* properties. (5.49).
27. Public awareness about the nature and purpose of *Waqf* properties is very essential. Its educative value and psychological impact should not be underestimated. (5.50).

5.52 To conclude, an urgent action on the lines suggested above is the need of the hour not only to save the *Waqf* properties from rest of the damage but to put *Waqf* administration on the road of speedy growth to yield the best of results.

CORRIGENDUM

Page	Line	Instead of	Please Read views
2	11	view'	
70	2	Boar	
178	22	b)	a)
178	25	c)	b)
178	27	d)	c)
178	29	e)	d)

ISLAMIC DEVELOPMENT BANK (IDB)

Establishment of the Bank

The Islamic Development Bank is an international financial institution established in pursuance of the Declaration of Intent by a Conference of Finance Ministers of Muslim countries held in Jeddah in Dhul Qa'da 1393H (December 1973). The Inaugural Meeting of the Board of Governors took place in Rajab 1395H (July 1975) and the Bank formally opened on 15 Shawwal 1395H (20 October 1975).

Purpose

The purpose of the Bank is to foster the economic development and social progress of member countries and Muslim communities individually as well as jointly in accordance with the principles of *Shari'ah*.

Functions

The functions of the Bank are to participate in equity capital and grant loans for productive projects and enterprises besides providing financial assistance to member countries in other forms of economic and social development. The Bank is also required to establish and operate special funds for specific purposes including a fund for assistance to Muslim communities in non-member countries, in addition to setting up trust funds.

The Bank is authorized to accept deposits and to raise funds in any other manner. It is also charged with the responsibility of assisting in the promotion of foreign trade, especially in capital goods among member countries, providing technical assistance to member countries, extending training facilities for personnel engaged in development activities and undertaking research for enabling the economic, financial and banking activities in Muslim countries to conform to the *Shari'ah*.

Membership

The present membership of the Bank consists of 53 countries. The basic condition for membership is that the prospective member country should be a member of the Organization of the Islamic Conference and be willing to accept such terms and conditions as may be decided upon by the Board of Governors.

Capital

The authorized capital of the Bank is six billion Islamic Dinars. The value of the Islamic Dinar, which is a unit of account in the Bank, is equivalent to one **Special Drawing Right (SDR)** of the **International Monetary Fund**. The subscribed capital of the Bank is **3,654.78** million Islamic Dinars **payable** in freely **convertible** currency acceptable to the Bank.

Head Office

The Bank's headquarters is located in Jeddah, Saudi Arabia and it is authorized to establish agencies or branches elsewhere.

Financial Year

The Bank's financial year is the Lunar Hijra year.

Language

The official language of the Bank is Arabic, but English and French are additionally used as working languages.

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A renowned author and 'experienced administrator, Dr. Hasanuddin Ahmad (b. 1923) belongs to a distinguished family in ' India. He holds a Ph.D. degree from Jamia Millia Islamia, New Delhi: Dr. Ahmad joined prestigious public service in India known as Indian Administrative Service (IAS).

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