

WAKF LAWS
and
ADMINISTRATION
in
INDIA

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WAKF LAWS AND ADMINISTRATION IN INDIA

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Preface



In India there are lakhs of *Wakfs* valued at over Rs. 150 crores which are dedicated for religious purposes and for the relief and uplift of the poorer sections of the Society. Properly administered they can become strong instruments not only for preservation of religious and chairtable institutions but also for educational and economic uplift of the people. Ever since the Mughal period it has been the endeavour of the Government to ensure proper administration of *Wakfs*. In the British period and after attainment of Independence, a number of enactments were made towards this end. Under the local Acts of some States a Central Act, 1954, supervisory body in the shape of State Boards have been set up.

There are a number of treatise on Mohammadan Laws which deal with the legal aspects of *Wakfs* but no book dealing with administrative side of the matter has been hitherto written. The administration of *wakfs* by *mutawallis* and supervision over them by the Boards are be set with numerous difficulties. No attempts have been made till now to evaluate these difficulties, to analyse their causes and to suggest possible solutions or to indicate the measures adopted by the Central and State Governments and the State wakf Boards to give a healthier tone to the administration of *wakfs* in the country. This book discusses in a masterly way both the legal and the administrative side of *wakfs*. Part I deals with administration. To give it a historical setting, the origin, history and development of *wakfs* has been traced. It discusses the impact of other laws on *wakfs* and other religious and charitable endowments, the functions and powers of State Boards and Committees thereof, the duties of *mutawallis*, the direction in which the Boards are trying to reorientate the activities of *wakfs* to the extent legally permissible, the beneficial activities statred and the difficulties which are yet to be overcome. It also explains in a simple manner the implications of *wakf* Acts to make them easily understandable by the *mutawallis* and others interested in *wakf* administration. Part

II of the Book deals with the substantive law of *wakfs* and cites all the important rulings of High Courts, Privy Council and the Supreme Court.

The book thus presents a comprehensive picture of *wakfs* administration in India. It is first of its kind and should be highly useful for State Boards and their Committees and members, *mutawallis* and others interested in *wakf* administration as well as members of the legal profession.

There was such a big demand for this book that the first edition ran out in a short space of time and necessity arose for bringing out second edition. Opportunity has been taken to incorporate all the amendments in the various *wakf* Acts which were enacted as also all the case law that appeared in this period. Some chapters have also been enlarged and revised. It is hoped that this edition will prove of greater use for all concerned.

—ATHAR HUSAIN

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STATUTES

(1)

UTTAR PRADESH MUSLIM WAQFS (AMENDMENT) ACT, 1974¹

[U. P. ACT No. 11 OF 1974]

(As passed by the Uttar Pradesh Legislature)

An Act further to amend the Uttar Pradesh Muslim Waqfs Act, 1960

It is hereby enacted in the Twenty-fifth Year of the Republic of India as follows :—

1. Short title.—This Act may be called the Uttar Pradesh Muslim Waqfs (Amendment) Act, 1974.

2. Amendment of Section 11 of U. P. Act No. XVI of 1960.—In Section 11 of the Uttar Pradesh Muslim Waqfs Act, 1960, hereinafter referred to as the principal Act—

(a) in sub-section (1), in the opening paragraph, the words “in the manner prescribed” shall be *omitted*;

(b) in sub-section (1), for clause (ii), the following clause shall be *substituted*, namely :—

“(ii) two Sunni Advocates enrolled with the Uttar Pradesh State Bar Council, to be elected by Sunni members of the High Court Bar Association, Allahabad and Avadh Bar Association, Lucknow;”;

(c) for sub-section (2), the following sub-section shall be *substituted*, namely :

“(2) The election and co-option under sub-section (1) shall be held and made within such time and in such manner as the State Government may by general or special order direct, and any question or dispute relating to any such election or co-option, shall be referred to the State Government whose decision shall be final.”

1. Received the assent of the Governor on June 24, 1974, published in U. P. Gazette, Extra., dated 26th June, 1974, pp. 3-4.

3. Amendment of Section 12.—In Section 12 of the principal Act—

(a) in sub-section (1), in the opening paragraph, the words “in the manner prescribed” shall be *omitted*;

(b) in sub-section (1), in clause (v), for the words “the above ten member”, the words “the members referred to in the foregoing clauses” shall be *substituted*;

(c) after sub-section (1), the following sub-section shall be *inserted*, namely :

“(2) The election and co-option under sub-section (1) shall be held and made within such time and in such manner as the State Government may, by general or special order direct, and any question or dispute relating to any such election or co-option shall be referred to the State Government whose decision shall be final.”

4. Amendment of Section 13.—In Section 13 of the principal Act, for the words and figures “clauses (i) to (iii)”, the word and figure “clause (iii)” shall be *substituted*, and for the words “within such time as may be prescribed”, the words “within such time as may be specified by the State Government in that behalf” shall be *substituted*.

5. Amendment of Section 15.—In Section 15 of the principal Act, in sub-section (1), for the words “a meeting of the members”, the words “a meeting of such members” shall be *substituted*.

6. Insertion of new Section 22A.—After Section 22 of the principal Act, the following section shall be *inserted*, namely :

“22A. *Cessation of Membership.*—A person who is a member of the Board in his capacity as a member of the State Legislature or as an Advocate or as a *Mutawalli* or as a representative of any other body shall cease to be member of the Board on his ceasing to hold that capacity.”

7. Amendment of Section 79.—In Section 79 of the principal Act, in sub-section (2), clause (a) shall be *omitted*.

8. Omission of Sections 7 and 8 of U. P. Act No. III of 1970.—Sections 7 and 8 of the Uttar Pradesh Muslim Waqfs (Amendment) Act, 1970 shall be *omitted*.

9. Transitory provisions.—Notwithstanding anything contained in the principal Act, or in any judgment, decree or order of any court—

(i) the nominations of members for the Sunni Central Board of Waqfs and the Shia Central Board of Waqfs made by the State Government by G. O. No. 40(70)-68, dated August 12, 1969 and both G. Os. bearing No. 40(11)-69, dated January 13, 1970, shall stand rescinded;

(ii) any election made or purporting to have been made under clause (i) or clause (iii) of sub-section (i) of Section 11 or under clause (iii) of sub-section (1) of Section 12 of the principal Act before the commencement of the Uttar Pradesh Muslim Waqfs (Amendment) Ordinance, 1974 shall stand cancelled;

(iii) any co-options made or purporting to have been made under clause (v) of sub-section (i) of Section 11 or under clause (iv) of sub-section (1) of Section 12 of the principal Act before the commencement of the Uttar Pradesh Muslims Waqfs (Amendment) Ordinance, 1974, shall stand cancelled ;

(iv) the State Government shall reconstitute each Board by notification under Section 14 of the principal Act as soon as may be after its members and the President are elected, nominated or co-opted, as the case may be.

10. Power to remove difficulty.—If any difficulty arises in regard to the reconstitution of the Sunni Central Board of Waqfs or the Shia Central Board of Waqfs in accordance with the principal Act as amended by this Act, the State Government may by order make such provision or give such direction as appears to it to be necessary or expedient for removing the difficulty :

Provided that no order shall be made under this section after the expiration of one year from the commencement of this Act.

11. Repeal and saving.—(1) The Uttar Pradesh Muslim Waqfs (Amendment) Ordinance, 1974 (U. P. Ordinance No. 7 of 1974), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act, as if this Act were in force at all material times.