Rechtspolitisches Forum

Legal Policy Forum

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Religionsrechtliche Normen Indiens

Institut für Rechtspolitik
an der Universität Trier

IRP

Das Institut für Rechtspolitik an der Universität Trier hat die wissenschaftliche Forschung und Beratung auf Gebieten der Rechtspolitik sowie die systematische Erfassung wesentlicher rechtspolitischer Themen im In- und Ausland zur Aufgabe. Es wurde im Januar 2000 gegründet.

Das *Rechtspolitische Forum* veröffentlicht Ansätze und Ergebnisse national wie international orientierter rechtspolitischer Forschung und mag als Quelle für weitere Anregungen und Entwicklungen auf diesem Gebiet dienen. Die in den Beiträgen enthaltenen Darstellungen und Ansichten sind solche des Verfassers und entsprechen nicht notwendig Ansichten des Instituts für Rechtspolitik.

Die Normen wurden im Jahr 2002 zusammengestellt.

Vorwort

Das in Indien geltende Religionsrecht ist ganz überwiegend in staatlichen Kodifikationen normiert, neben die in beschränktem Umfange Normen der verschiedenen Religionsgemeinschaften selbst treten.

Die vorliegende Veröffentlichung möchte einen Überblick über die staatlichen Kodifikationen des indischen Religionsrechtes geben. Diese finden sich in den verschiedensten Rechtsbereichen und liegen teilweise in der Gesetzgebungszuständigkeit der Indischen Union, zum Teil aber auch in der der 28 Einzelstaaten. Eine vollständige Darstellung aller einzelstaatlichen Gesetze war im Umfang dieser Sammlung nicht möglich, doch wurde bei der Zusammenstellung eine möglichst repräsentative Auswahl vorgenommen.

Herzlich bedanken möchte ich mich bei Frau Sylvia Lutz und besonders bei Frau Claudia Lehnen für die oft mühseligen Schreib- und Formatierungsarbeiten.

Lübeck, 8. Juni 2003 *Ira Das*

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Erster Teil: Verfassung

The Constitution of India

[26th January, 1950]

Preamble:

We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens:

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity;

and to promote among them all

Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;

In our Constituent Assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this Constitution:

Part III: Fundamental Rights

Right to Equality

14. Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

16. Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) (…)

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

17. Abolition of Untouchability

"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

Right against Exploitation

23. Prohibition of traffic in human beings and forced labour

(…)

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I: The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II: In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

27. Freedom as to payment of taxes for promotion of any particular religion

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Cultural and Educational Rights

29. Protection of interests of minorities

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

30. Right of minorities to establish and administer educational institutions

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property

is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Part IV: Directive Principles of State Policy

44. Uniform civil code for the citizens

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Fundamental Duties

51 A. Fundamental duties

It shall be the duty of every citizen of India,-

(…)

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of composite culture;

(...)

Part XII: Finance, Property, Contracts and Suits

Chapter I: Finance

Miscellaneous Financial Provisions

290 A. Annual payment to certain Devaswom Funds

A sum of forty-six lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Kerala every year to

the Travancore Devaswom Fund; and a sum of thirteen lakhs and fifty thousand rupees shall be charged on, and paid out of the Consolidated Fund of the State of Tamil Nadu, every year to the Devaswom Fund established in that State for the maintenance of Hindu temples and shrines in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin.

Part XV: Elections

325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex

There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

Part XVI: Special Provisions Relating to Certain Classes

330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People

(1) Seats shall be reserved in the House of the People for-

(a) the Scheduled Castes;

(...)

(2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.

(…)

Explanation: In this article and in article 332, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed as a reference to the 1991 census.

332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, (…), in the Legislative Assembly of every State.

(…)

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

(…)

334. Reservation of seats and special representation to cease after sixty years

Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to-

(a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States;

(...)

shall cease to have effect on the expiration of a period of sixty years from the commencement of this Constitution:

(…)

335. Claims of Scheduled Castes and Scheduled Tribes to services and posts

The claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:

Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.

341. Scheduled Castes

(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public

notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Part XIX: Miscellaneous

366. Definitions

In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

(…)

(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;

(…)

Seventh Schedule

(Article 246)

List I: Union List

(…)

20. Pilgrimages to places outside India.

(...)

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

List II: State List

1. Public order (but not including the use of any naval, military or Air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power).

(…)

7. Pilgrimages, other than pilgrimages to places outside India.

(…)

10. Burials and burial grounds; cremations and cremation grounds.

(…)

32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

(…)

List III: Concurrent List

(…)

5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

(…)

28. Charities and charitable institutions, charitable and religious endowments and religious institutions.

(…)

Zweiter Teil: Einzelne Rechtsgebiete

A. Antidiskriminierungsgesetze

1. The Constitution (Scheduled Castes) Order, 1950

[C.O.19]

In exercise of the powers conferred by clause (1) of article 341 of the Constitution of India, the President, after consultation with the Governors and Rajpramukhs of the States concerned, is pleased to make the following Order, namely:

1. This Order may be called the Constitution (Scheduled Castes) Order, 1950.

2. Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes specified in Parts to [XXII] of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards member thereof resident in the localities specified in relation to them in those Parts of that Schedule.

3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu, the Sikh or the Buddhist religion shall be deemed to be a member of a Scheduled Caste.

4. Any reference in this Order to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division as constituted on the 1st day of May, 1976.

The Schedule
(...)

2. Caste Disabilities Removal Act, 1850

[Act No. 21 of Year 1850, dated 11th April, 1850]

An Act for extending the principle of section 9, Regulation VII, 1832 of the Bengal Code throughout India.

Preamble: Whereas it is enacted by section 9, Regulation VII, 1832, of the Bengal Code, that "whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Muhammadan persuasion, or where one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled"; and whereas it will be beneficial to extend the principle of that enactment throughout India;

It is enacted as follows:

1. Law or usage which inflicts forfeiture of, or affects, rights on change of religion or loss of caste to cease to be enforced

So much of any law or usage now in force within India as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste, shall cease to be enforced as law in any Court.

2. Short title and extent

(1) This Act may be called the Caste Disabilities Removal Act, 1850.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

3. The Protection of Civil Rights Act, 1955

[Act No. 22 of Year 1955, dated 8th May, 1955]

An Act to prescribe punishment for the preaching and practice of "Untouchability" for the enforcement of any disability arising therefrom and for matters connected therewith.

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:

1. Short title, extent and commencement

(1) This Act may be called the Protection of Civil Rights Act, 1955.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions

In this Act, unless the context otherwise requires,-

(a) "civil rights" means any right accruing to a person by reason of the abolition of "untouchability" by article 17 of the Constitution;

(aa) "hotel" includes a refreshment room, a boarding house, a lodging house, a coffee house and a cafe;

(b) "place" includes a house, building and other structure and premises, and also includes a tent, vehicle and vessel;

(c) "place of public entertainment" includes any place to which the public are admitted and in which an entertainment is provided or held.

Explanation: "Entertainment" includes any exhibition, performance, game, sport and any other form of amusement;

(d) "place of public worship" means a place, by whatever name known, which is used as a place of public religious worship or which is dedicated generally to, or is used generally by persons professing any religion or belonging to any religious denomination or any section thereof, for the performance of any religious service, or for offering prayers therein, and includes-

(i) all lands and subsidiary shrines appurtenant or attached to any such place;

(ii) a privately owned place of worship which is, fact, allowed by the owner there of to be used as a place of public worship; and

(iii) such land or subsidiary shrine appurtenant to such privately owned place of worship as is allowed by the owner thereof to be used as a place of public religious worship;

(da) "prescribed" means prescribed by rules made under this Act;

(db) "Scheduled Castes" has the meaning assigned to it in clause (24) of article 366 of the Constitution;

(e) "shop" means any premises where goods are sold either wholesale or by retail or both wholesale and by retail and includes-

(i) any place from where goods are sold by a hawker or vendor or from a mobile van or cart;

(ii) a laundry and a hair cutting saloon;

(iii) any other place where services are rendered to customers.

3. Punishment for enforcing religious disabilities

Whoever on the ground of "untouchability" prevents any person-

(a) from entering any place of public worship which is open to other persons professing the same religion or any section thereof, as such person, or

(b) from worshipping or offering prayers or performing any religious service in any place of public worship, or bathing in, or using the waters of, any sacred tank, well, spring or water course river or lake or bathing at any ghat of such tank, water-course, river or lake in the same manner and to the same extent as is permissible to the other persons professing the same religion or any section thereof, as such person,

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

Explanation: For the purposes of this section and section 4 persons professing the Buddhist, Sikh or Jaina religion or persons professing the Hindu religion in any of its forms or development including Virashaivas, Lingayats, Adivassis, followers of Brahmo, Prarthana, Arya Samaj and the Swaminaryan Sampraday shall be deemed to be Hindus.

4. Punishment for enforcing social disabilities

Whoever on the ground of "untouchability" enforces against any person any disability with regard to-

(i) access to any shop, public restaurant, hotel or place of public entertainment; or

(ii) the use of any utensils, and other articles kept in any public restaurant, hotel, dharmshala, sarai or musafirkhana for the use of the general public or of any section thereof; or

(iii) the practice of any profession or the carrying on of any occupation, trade or business or employment in any job; or

(iv) the use of, or access to, any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, burial or cremation ground, any sanitary convenience, any road, or passage, or any other place of public resort which other members of the public or any section thereof, have a right to use or have access to; or

(v) the use of, or access to, any place used for a charitable or a public purpose maintained wholly or partly out of State funds or dedicated to the use of the general public or any section thereof; or

(vi) the enjoyment of any benefit under a charitable trust created for the benefit of the general public or of any section thereof; or

(vii) the use of, or access to, any public conveyance; or

(viii) the construction, acquisition, or occupation of any residential premises in any locality, whatsoever; or

(ix) the use of any dharmshala, sarai or musafirkhana which is open to the general public, or to any section thereof; or

(x) the observance of any social or religious custom, usage or ceremony or taking part in, or taking out, any religious, social or cultural procession; or

(xi) the use of jewellery and finery,

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

Explanation: For the purposes of this section, "enforcement of any disability" includes any discrimination on the ground of "untouchability".

5. Punishment for refusing to admit person to hospitals, etc.

Whoever on the ground of "untouchability"-

(a) refuses admission to any person to any hospital, dispensary, educational institution or any hostel, if such hospital, dispensary, educational institution or hostel is established or maintained for the benefit of the general public or any section thereof; or

(b) does any act which discriminates against any such person after admission to any of the aforesaid institutions,

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

6. Punishment for refusing to sell goods or reader services

Whoever on the ground of "untouchability" refuses to sell any goods or refuses to render any services to any person at the same time and place and on the same terms and conditions at or which such goods are sold or services are rendered to other persons in the ordinary course of business shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

7. Punishment for other offences arising out of "untouchability"

(1) Whoever-

(a) prevents any person from exercising any right accruing to him by reason of the abolition of "untouchability" under article 17 of the Constitution; or

(b) molests, injures, annoys, obstructs or causes or attempts to cause obstruction to any person in the exercise of any such right or molests, injures,

annoys or boycotts any person by reason of his having exercised any such right; or

(c) by words, either spoken or written, or by signs or by visible representations or otherwise, incites or encourages any person or class of persons or the public generally to practise "untouchability" in any form whatsoever; or

(d) insults or attempts to insult, on the ground of "untouchability" a member of a Scheduled Caste,

shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

Explanation I: A person shall be deemed to boycott another person who-

(a) refuses to let to such other person or refuses to permit such other person, to use or occupy any house or land or refuses to deal with, work for hire for, or do business with, such other person or to render to him or receive from him any customary service, or refuses to do any of the said things on the terms on which such things would be commonly done in the ordinary course of business; or

(b) abstains from such social, professional or business relations as he would ordinarily maintain with such other person.

Explanation II: For the purpose of clause (c) a person shall be deemed to incite or encourage the practice of "untouchability"-

(i) if he, directly or indirectly, preaches "untouchability" or its practice in any form; or

(ii) if he justifies, whether on historical, philosophical or religious grounds or on the ground of any tradition of the caste system or on any other ground, the practice of "untouchability" in any form.

(1A) Whoever commits any offence against the person or property of any individual as a reprisal or revenge for his having exercised any right accruing to him by reason of the abolition, of "untouchability" under article 17 of the Constitution, shall, where the offence is punishable with imprisonment for a term exceeding two years, be punishable with imprisonment for a term which shall not be less than two years and also with fine.

(2) Whoever-

(i) denies to any person belonging to his community or any section thereof any right or privilege to which such person would be entitled as a member of such community or section, or

(ii) takes any part in the ex-communication of such person, on the ground that such person has refused to practice "untouchability" that such person has done any act in furtherance of the objects of this Act,

shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

7A. Unlawful compulsory labour when to be deemed to be a practice of "untouchability"

(1) Whoever compels any person, on the ground of "untouchability", to do any scavenging or sweeping or to remove any carcass or to flay any animal, or to remove the umbilical cord or to do any other job of a similar nature shall be deemed to have enforced a disability arising out of "untouchability".

(2) Whoever is deemed under sub-section (1) to have enforced a disability arising out of "untouchability" shall be punishable with imprisonment for a term which shall not be less than three months and not more than six months and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees.

Explanation: For the purposes of this section, "compulsion" includes a threat of social or economic boycott.

8. Cancellation or suspension of licences in certain cases

When a person who is convicted of an offence under section 6 holds any licence under any law for the time being in force in respect of any profession, trade, calling or employment in relation to which the offence is committed, the court trying the offence may, without prejudice to any other penalty to which such person may be liable under that section, direct that the licence shall stand cancelled or be suspended for such period as the court may deem fit, and every order of the court so cancelling or suspending a licence shall have effect as if it had been passed by the authority competent to cancel or suspend the licence under any such law.

Explanation: In this section, "licence" includes a permit or a permission.

9. Resumption or suspension of grants made by Government

Where the manager or trustee of a place of public worship or any educational institution or hostel which is in receipt of a grant of land or money from the Government is convicted of an offence under this Act and such conviction is not reversed or quashed in any appeal or revision, the Government may, if in its opinion the circumstances of the case warrant such a course, direct the suspension or resumption of the whole or any part of such grant.

10. Abetment of offence

Whoever abets any offence under this Act shall be punishable with the punishment provided for the offence.

Explanation: A public servant who wilfully neglects the investigation of any offence punishable under this Act shall be deemed to have abetted as offence punishable under this Act.

10A. Power of State Government to impose collective fine

(1) If, after an inquiry in the prescribed manner, the State Government is satisfied that the inhabitants of an area concerned in, or abetting the commission of, any offence punishable under this Act, or harbouring persons concerned in the commission of such offence or failing to render all the assistance in their power to discover or apprehend the offender or offenders or suppressing material evidence of the commission of such offence, the State Government may, by notification in the Official Gazette, impose a collective fine on such inhabitants and apportion such fine amongst the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to the State Government's judgment of the respective means of such inhabitants and in making any such apportionment the State Government may assign a portion of such fine to a Hindu undivided family to be payable by it:

Provided that the fine apportioned to an inhabitant shall not be realised until the petition, if any denied by him under sub-section (3), is disposed of.

(2) The notification made under sub-section (1) shall be proclaimed in the area by beat of drum or in such other manner as the State Government may think best in the circumstances to bring the imposition of the collective fine to the notice of the inhabitants of the said area.

(3) (a) Any person aggrieved by the imposition of the collective fine under sub-section (1) or by the order of apportionment, may, within the prescribed period, file a petition before the State Government or such other authority as that Government may specify in this behalf for being exempted from such fine or for modification of the order or apportionment:

Provided that no fee shall be charged for filing such petition.

(b) The State Government or the authority specified by it shall, after giving to the petitioner a reasonable opportunity of being heard, pass such order as it may think fit:

Provided that the amount of the fine exempted or reduced under this section shall not be realisable from any person, and the total fine imposed on the inhabitants of an area under sub-section (1) shall be deemed to have been reduced to that extent.

(4) Notwithstanding anything contained in sub-section (3), the State Government may exempt the victims of any offence punishable under this Act or any person who does not, in its opinion, fall within the category of persons specified in sub-section (1) from the liability to pay the collective fine imposed under sub-section (1) or any portion thereof.

(5) The portion of collective fine payable by any person (including a Hindu undivided family) may be recovered in the manner provided by the Code of Criminal Procedure, 1973 (2 of 1974), for the recovery of fines imposed by a Court as if such portion were a fine imposed by a Magistrate.

11. Enhanced penalty on subsequent conviction

Whoever having already been convicted of an offence under this Act or of an abetment of such offence is again convicted of any such offence or abetment, shall, on conviction, be punishable-

(a) for the second offence, with imprisonment for a term of not less than six months and not more than one year, and also with fine which shall be not less than two hundred rupees and not more than five hundred rupees;

(b) for the third offence or any offence subsequent to the third offence with imprisonment for a term of not less than one year and not more than two years, and also with fine which shall be not less than five hundred rupees and not more than one thousand rupees.

12. Presumption by Courts in certain cases

Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste, the Court shall presume, unless the contrary is proved, that such act was committed on the ground of "untouchability".

13. Limitation of jurisdiction of Civil Courts

(1) No Civil Court shall entertain or continue any suit or proceeding or shall pass any decree or order if the claim involved in such suit or proceeding or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

(2) No Court shall, in adjudicating any matter or executing any decree or order, recognise any custom or usage imposing any disability on any person on the ground of "untouchability".

14. Offences by Companies

(1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent of any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

14A. Protection of action taken in good faith

(1) No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or a State Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

15. Offences to be cognizable and triable summarily

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be cognizable and every such offence, except where it is punishable with imprisonment for a minimum term exceeding three months, may be tried summarily by a Judicial Magistrate of the first class or in a metropolitan area by a Metropolitan Magistrate in accordance with the procedure specified in the said Code.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when any public servant is alleged to have committed the offence of abetment of an offence punishable under this Act, while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence of abetment except with the previous sanction-

(a) of the Central Government, in the case of a person employed in connection with the affairs of the Union; and

(b) of the State Government, in the case of a person employed in connection with the affairs of a State.

15A. Duty of State Government to ensure that the rights accruing from the abolition of "untouchability" may be availed of by the concerned person

(1) Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for ensuring that the rights arising from the abolition of "untouchability" are

made available to, and are availed of by the persons subjected to any disability arising out of "untouchability".

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include-

(i) the provision of adequate facilities, including legal aid, to the persons subjected to any disability arising out of "untouchability" to enable them to avail themselves of such rights;

(ii) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;

(iii) the setting up of special courts for the trial of offences under this Act;

(iv) the setting up of Committees at such appropriate levels as the State Government may think fit to assist the State Government in formulating or implementing such measures;

(v) provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provisions of this Act;

(vi) the identification of the areas where persons are under any disability arising out of "untouchability" and adoption of such measures as would ensure the removal of such disability from such areas.

(3) The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Government under sub-section (1).

(4) The Central Government shall, every year, place on the Table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provision of this section.

16. Act to override other laws

Save as otherwise expressly provided in this Act, the provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom or usage or any instrument having effect by virtue of any such law or any decree or order of any Court or other authority.

16A. Probation of Offenders Act, 1958, not to apply to persons above the age of fourteen years

The provisions of the Probation of Offenders Act, 1958 (20 of 1958), shall not apply to any person above the age of fourteen years who is found guilty of having committed any offence punishable under this Act.

16B. Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

17. Repeal

The enactments specified in the Schedule are hereby repealed to the extent to which they or any of the provisions contained therein correspond or are repugnant to this Act or to any of the provisions contained therein.

The Schedule
(See section 17)

1. The Bihar Harijan (Removal of Civil Disabilities) Act, 1949 (Bihar Act XIX of 1949).

2. The Bombay Harijan (Removal of Social Disabilities) Act, 1946 (Bombay Act X of 1947).

3. The Bombay Harijan Temple Entry Act, 1947 (Bombay Act XXXV of 1947).

4. The Central Provinces and Berar Scheduled Castes (Removal of Civil Disabilities) Act, 1947 (Central Provinces and Berar Act XXIV of 1947).

5. The Central Provinces and Berar Temple Entry Authorisation Act, 1947 (Central Provinces and Berar Act XLI of 1947).

6. The East Punjab (Removal of Religious and Social Disabilities) Act, 1948 (East Punjab Act XVI of 1948).

7. The Madras Removal of Civil Disabilities Act, 1938 (Madras Act XXI of 1938).

8. The Orissa Removal of Civil Disabilities Act, 1946 (Orissa Act XI of 1946).

9. The Orissa Temple Entry Authorisation Act, 1948 (Orissa Act XI of 1948).

10. The United Provinces Removal of Social Disabilities Act, 1947 (U.P. Act XIV of 1947).

11. The West Bengal Hindu Social Disabilities Removal Act, 1948 (West Bengal Act XXXVII of 1948).

12. The Hyderabad Harijan Temple Entry Regulations, 1358 F (No. LV of 1358 Fasli).

13. The Hyderabad Harijan (Removal of Social Disabilities) Regulation, 1358F (No. LVI of 1385 Fasli).

14. The Madhya Bharat Harijan Ayogta Nivaran Vidhan, Samvat 2005 (Madhya Bharat Act No. 15 of 1949).

15. The Removal of Civil Disabilities Act, 1943 (Mysore Act XLII of 1943).

16. The Mysore Temple Entry Authorisation Act, 1948 (Mysore Act XIV of 1948).

17. The Saurashtra Harijan (Removal of Social Disabilities) Ordinance (No. XL of 1948).

18. The Travancore Cochin Removal of Social Disabilities Act, 1125K (Travancore Cochin Act VIII of 1125).

19. The Travancore-Cochin Temple Entry (Removal of Disabilities) Act, 1950 (Travancore-Cochin Act XXVII of 1950).

20. The Coorg Scheduled Castes (Removal of Civil and Social Disabilities) Act, 1949 (Coorg Act 1 of 1949).

21. The Coorg Temple Entry Authorisation Act, 1949 (Coorg Act II of 1949).

4. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

[Act No. 33 of Year 1989, dated 11th September, 1989]

An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of the such offences and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fortieth Year of the Republic of India as follows:

Chapter I: Preliminary

1. Short title, extent and commencement

(1) This Act may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions

(1) In this Act, unless the context otherwise requires,-

(a) "atrocity" means an offence punishable under section 3;

(b) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);

(c) "Scheduled Castes and Scheduled Tribes" shall have the meanings assigned to them respectively under clause (24) and clause (25) of article 366 of the Constitution;

(d) "Special Court" means a Court of Session specified as a Special Court in section 14;

(e) "Special public Prosecutor" means a Public Prosecutor specified as a Special Public Prosecutor or an advocate referred to in section 15;

(f) words and expressions used but not defined in this Act and defined in the Code or the Indian Penal Code (45 of 1860) shall have the meanings assigned to them respectively in the Code, or as the case may be, in the Indian Penal Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not

in force, be construed as a reference to the corresponding law, if any, in force in that area.

Chapter II: Offences of Atrocities

3. Punishments for offences of atrocities

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his promises or neighbourhood;

(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

(vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Sched-

uled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

4. Punishment for neglect of duties

Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term shall not be than six months but which may extend to one year.

5. Enhanced punishment for subsequent conviction

Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

6. Application of certain provisions of the Indian Penal Code

Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter VA, section 149 and Chapter XXIII of the Indian Penal Code (45 of 1860), shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Indian Penal Code.

7. Forfeiture of property of certain persons

(1) Where a person has been convicted of any offence punishable under this Chapter, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the person, which has been used for the commission of that offence, shall stand forfeited to Government.

(2) Where any person is accused of any offence under this Chapter, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the property so attached shall be liable to the extent it is required for the purpose of realisation of any fine imposed under this Chapter.

8. Presumption as to offences

In a prosecution for an offence under this Chapter, if it is proved that-

(a) the accused rendered any financial assistance to a person accused of, or reasonably suspected of committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;

(b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

9. Conferment of powers

(1) Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do,-

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or class or group of cases under this Act, in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).

10. Removal of person likely to commit offence

(1) Where the Special Court is satisfied, upon a complaint or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in ‘Scheduled Area’ or ‘tribal areas’, as referred to in article 244 of the Constitution, it may, by order in writing, direct such person to remove himself beyond the limits of such area, by such route and within such time as may be specified in the order, and not to return to that area

from which he was directed to remove himself for such period, not exceeding two years, as may be specified in the order.

(2) The Special Court shall, along with the order under sub-section (1), communicate to the person directed under that sub-section the grounds on which such order has been made.

(3) The Special Court may revoke or modify the order made under sub-section (1), for the reasons to be recorded in writing, on the representation made by the person against whom such order has been made or by any other person on his behalf within thirty days from the date of the order.

11. Procedure on failure of person to remove himself from area and enter thereon after removal

(1) If a person to whom a direction has been issued under section 10 to remove himself from any area-

(a) fails to remove himself as directed; or

(b) having so removed himself enters such area within the period specified in the order, otherwise than with the permission in writing of the Special Court under sub-section (2), the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

(2) The Special Court may, by order in writing, permit any person in respect of whom an order under section 10 has been made, to return to the area from which he was directed to remove himself for such conditions as may be specified in such order and may required him to execute a bond with or without surety for the due observation of the conditions imposed.

(3) The Special Court may at any time revoke any such permission.

(4) Any person who, with such permission, returns to the area from which he was directed to remove himself shall observe the conditions imposed, and at the expiry of the temporary period for which he was permitted to return, or on the revocation of such permission before the expiry of such temporary period, shall remove himself outside such area and shall not return thereto within the unexpired portion specified under section 10 without a fresh permission.

(5) If a person fails to observe any of the conditions imposed or to remove himself accordingly or having so removed himself enters or returns to such area without fresh permission the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

12. Taking measurements and photographs, etc., of persons against whom order under section 10 is made

(1) Every person against whom an order has been made under section 10 shall, if so required by the Special Court, allow his measurements and photographs to be taken by a police officer.

(2) If any person referred to in sub-section (1), when required to allow his measurements or photographs to be taken resists or refuses to allow his taking of such measurements or photographs, it shall be lawful to use all necessary means to secure the taking thereof.

(3) Resistance to or refusal to allow the taking of measurements or photographs under sub-section (2) shall be deemed to be an offence under section 186 of the Indian Penal Code (45 of 1860).

(4) Where an order under section 10 is revoked, all measurements and photographs (including negatives) taken under sub-section (2) shall be destroyed or made over to the person against whom such order is made.

13. Penalty for non-compliance of order under section 10

Any person contravening an order of the Special Court made under section 10 shall be punishable with imprisonment for a term which may extend to one year and with fine.

Chapter IV: Special Courts

14. Special Court

For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.

15. Special Public Prosecutor

For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Chapter V: Miscellaneous

16. Power of State Government to impose collective fine

The provisions of section 10A of the Protection of Civil Rights Act, 1955 (22 of 1955) shall, so far as may be, apply for the purposes of imposition and

realisation of collective fine and for all other matters connected therewith under this Act.

17. Preventive action to be taken by the law and order machinery

(1) A District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of a Deputy Superintendent of Police may, on receiving information and after such inquiry as he may think necessary, has reason to believe that a person or a group of persons not belonging to the Scheduled Castes or the Scheduled Tribes, residing in or frequenting any place within the local limits of his jurisdiction is likely to commit an offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, declare such an area to be an area prone to atrocities and take necessary action for keeping the peace and good behaviour and maintenance of public order and tranquillity and may take preventive action.

(2) The provisions of Chapters VIII, X and XI of the Code shall, so far as may be, apply for the purposes of sub-section (1).

(3) The State Government may, by notification in the Official Gazette, make one or more schemes specifying the manner in which the officers referred to in sub-section (1) shall take appropriate action specified in such scheme or schemes to prevent atrocities and to restore the feeling of security amongst the members of the Scheduled Castes and the Scheduled Tribes.

18. Section 438 of the Code not to apply to persons committing an offence under the Act

Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

19. Section 360 of the Code or the provisions of the Probation of Offenders Act not to apply to persons guilty of an offence under the Act

The provisions of section 360 of the Code and the provisions of the Probation of Offenders Act, 1958 (20 of 1958) shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this Act.

20. Act to override other laws

Save as otherwise provided in this Act, the provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

21. Duty of Government to ensure effective implementation of the Act

(1) Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for the effective implementation of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such measures may include,-

(i) the provision for adequate facilities, including legal aid, to the persons subjected to enable them to avail themselves of justice;

(ii) the provision for travelling and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial of offence under this Act;

(iii) the provision for the economic and social rehabilitation of the victims of the atrocities;

(iv) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;

(v) the setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures;

(vi) provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provisions of this Act;

(vii) the identification of the areas where the members of the Scheduled Castes and the Scheduled Tribes are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members.

(3) The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Governments under subsection (1).

(4) The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.

22. Protection of action taken in good faith

No suit, prosecution or other legal proceedings shall lie against the Central Government or against the State Government or any officer or authority of Government or any other person for anything which is in good faith done or intended to be done under this Act.

23. Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

B. Strafrecht

1. Indian Penal Code

[Act No. 45 of Year 1860]

Whereas it is expedient to provide a general Penal Code for India;

It is enacted as follows:

Chapter VIII: Of Offences against the Public Tranquillity

153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony

(1) Whoever-

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

(c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Offence committed in place of worship, etc.: Whoever commits an offence specified in sub-section (1) in any place of worship or in any assem-

bly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

153B. Imputations, assertions prejudicial to national-integration

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,-

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall be liable to fine.

Chapter XIV: Of Offences Affecting the Public Health, Safety, Convenience, Decency and Morals

292. Sale, etc., of obscene books, etc.

(…)

(2) Whoever-

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

Exception: This section does not extend to-

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure-

(…)

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in-

(…)

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

Chapter XV: Of Offences Relating to Religion

295. Injuring or defiling place of worship with intent to insult the religion of any class

Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either de-

scription for a term which may extend to two years, or with fine, or with both.

295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

296. Disturbing religious assembly

Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

297. Trespassing on burial places, etc.

Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

commits any trespass in any place of worship or on any place of sculpture, or any place set apart from the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

298. Uttering, words, etc., with deliberate intent to wound the religious feelings of any person

Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places, any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Chapter XVII: Of Offences against Property

Of Mischief

436. Mischief by fire or explosive substance with intent to destroy house, etc.

Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of Criminal Trespass

442. House trespass

Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "House-trespass".

Explanation: The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Chapter XX: Of Offences Relating to Marriage

494. Marrying again during lifetime of husband or wife

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception: This section does not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are with in his or her knowledge.

Chapter XXII: Of Criminal Intimidation, Insult and Annoyance

505. Statements conducting to public mischief

(1) Whoever makes, publishes or circulates any statement, rumour or report,-

(…)

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community;

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Statements creating or promoting enmity, hatred or ill-will between classes: Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3) Offence under sub-section (2) committed in place of worship, etc.: Whoever commits an offence specified in sub-section (2) in any place of worship or in an assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

(…)

2. The Commission of Sati (Prevention) Act, 1987

[Act No. 3 of Year 1988, dated 3rd January, 1988]

An Act to provide for the more effective prevention of the commission of sati and its glorification and for matters connected therewith or incidental thereto.

Whereas sati or the burning or burying alive of widows or women is revolting to the feelings of human nature and is nowhere enjoined by any of the religions of India as an imperative duty;

And whereas it is necessary to take more effective measures to prevent the commission of sati and its glorification;

Be it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:

Part I: Preliminary

1. Short title, extent and commencement

(1) This Act may be called the Commission of Sati (Prevention) Act, 1987.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States.

2. Definitions

(1) In this Act, unless the context otherwise requires,-

(a) "Code" means the Code of Criminal Procedure, 1973;

(b) "glorification", in relation to sati, whether such sati was committed before or after the commencement of this Act, includes, among other things,-

(i) the observance of any ceremony or the taking out of a procession in connection with the commission of sati; or

(ii) the supporting, justifying or propagating the practice of sati in any manner; or

(iii) the arranging of any function to eulogise the person who has committed sati; or

(iv) the creation of a trust, or the collection of funds, or the construction of a temple or other structure or the carrying on of any form of worship or the performance of any ceremony thereat, with a view to perpetuate the honour of, or to preserve the memory of, a person who has committed sati;

(c) "sati" means the act of burning or burying alive of-

(i) any widow along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative; or

(ii) any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the woman or otherwise;

(d) "Special Court" means a Special Court constituted under section 9;

(e) "temple" includes any building or other structure, whether roofed or not, constructed or made to preserve the memory of a person in respect of whom sati has been committed or used or intended to be used for the carrying on of any forms of worship or for the observance of any ceremony in connection with such commission.

(2) Words and expressions used but not defined in this Act and defined in the Indian Penal Code or in the Code shall have the same meanings as are respectively assigned to them in the Indian Penal Code or the Code.

Part II: Punishments for Offences Relating to Sati

3. Attempt to commit sati

Notwithstanding anything contained in the Indian Penal Code, whoever attempts to commit sati and does any act towards such commission shall be punishable with imprisonment for a term which may extend to six months or with fine or with both:

Provided that the Special Court trying an offence under this section shall, before convicting any person, take into consideration the circumstances leading to the commission of the offence, the act committed, the state or mind of the person charged of the offence at the time of the commission of the act and all other relevant factors.

4. Abetment of sati

(1) Notwithstanding anything contained in the Indian Penal Code, if any person commits sati, whoever abets the commission of such sati, either directly or indirectly, shall be punishable with death or imprisonment for life and shall also be liable to fine.

(2) If any person attempts to commit sati, whoever abets such attempt, either directly or indirectly, shall be punishable with imprisonment for life and shall also be liable to fine.

Explanation: For the purposes of this section, any of the following acts or the like shall also be deemed to be an abetment, namely:-

(a) any inducement to a widow or woman to get her burnt or buried alive along with the body of her deceased husband or with any other relative or with any article, object or thing associated with the husband or such relative, irrespective of whether she is in a fit state of mind or is laboring under a state of intoxication or stupefaction or other cause impeding the exercise of her free will;

(b) making a widow or woman believe that the commission of sati would result in some spiritual benefit to her or her deceased husband or relative or the general well being of the family;

(c) encouraging a widow or woman to remain fixed in her resolve to commit sati and thus instigating her to commit sati;

(d) participating in any procession in connection with the commission of sati or aiding the widow or woman in her decision to commit sati by taking her

along with body of her deceased husband or relation to the cremation or burial ground;

(e) being present at the place where sati is committed as an active participant to such commission or to any ceremony connected with it;

(f) preventing or obstructing the widow or woman from saving herself from being burnt or buried alive;

(g) obstructing, or interfering with, the police in the discharge of its duties of taking any steps to prevent the commission of sati.

5. Punishment for glorification of sati

Whoever does any act for the glorification of sati shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.

Part III: Powers of Collector or District Magistrate to Prevent Offences Relating to Sati

6. Power to prohibit certain acts

(1) Where the Collector or the District Magistrate is of the opinion that sati or any abetment thereof is being, or is about to be committed, he may, by order, prohibit the doing of any act towards the commission of sati by any person in any area or areas specified in the order.

(2) The Collector or the District Magistrate may also, by order, prohibit the glorification in any manner of sati by any person in any area or areas specified in the order.

(3) Whoever contravenes any order made under sub-section (1) or sub-section (2) shall, if such contravention is not punishable under any other provision of this Act, be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.

7. Power to remove certain temples or other structures

(1) The State Government may, if it is satisfied that in any temple or other structure which has been in existence for not less than twenty years, any form of worship or the performance of any ceremony is carried on with a view to perpetuate the honour of, or to preserve the memory of, any person in respect of whom sati has been committed, by order, direct the removal of such temple or other structure.

(2) The Collector or the District Magistrate may, if he is satisfied that in any temple or other structure, other than that referred to in sub-section (1), any form of worship or the performance of any ceremony is carried on with a view to perpetuate the honour of, or to preserve the memory of, any person in respect of whom sati has been committed, by order, direct the removal of such temple or other structure.

(3) Where any order under sub-section (1) or sub-section (2) is not complied with, the State Government or the Collector or the District Magistrate, as the case may be, shall cause the temple or other structure to be removed through a police officer not below the rank of a Sub-Inspector at the cost of the defaulter.

8. Power to seize certain properties

(1) Where the Collector or the District Magistrate has reason to believe that any funds or property have been collected or acquired for the purpose of glorification of the commission of any sati or which may be found under circumstances which create suspicion of the commission of any offence under this Act, he may seize such funds or property.

(2) Every Collector or District Magistrate acting under sub-section (1) shall report the seizure to the Special Court, if any, constituted to try any offence in relation to which such funds or property were collected or acquired and shall await the orders of such Special Court as to the disposal of the same.

Part IV: Special Courts

9. Trial of offences under this Act

(1) Notwithstanding anything contained in the Code, all offences under this Act shall be triable only by a Special Court constituted under this section.

(2) The State Government shall, by notification in the Official Gazette, constitute one or more Special Courts for the trial of offences under this Act and every Special Court shall exercise jurisdiction in respect of the whole or such part of the State as may be specified in the notification.

(3) A Special Court shall be presided over by a Judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court.

(4) A person shall not be qualified for appointment as a Judge of a Special Court unless he is immediately before such appointment, a Sessions Judge or an Additional Sessions Judge in any State.

10. Special Public Prosecutors

(1) For every Special Court, the State Government shall appoint a person to be a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under this section only if he had been in practice as an advocate for not less than seven years or has held any post for a period of not less than seven years under the State requiring special knowledge of law.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code and the provisions of the Code shall have effect accordingly.

11. Procedure and powers of Special Courts

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) Subject to the other provisions of this Act, a Special Court shall, for the purpose of the trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, so far as may be, in accordance with the procedure prescribed in the Code for trial before a Court of Session.

12. Power of Special Court with respect to other offences

(1) When trying any offence under this Act, a Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial of any offence under this Act it is found that the accused person has committed any other offence under this Act or under any other law, a Special Court may convict such person also of such other offence and pass any sentence authorized by this Act or such other law for the punishment thereof.

(3) In every inquiry or trial, the proceedings shall be held as expeditiously as possible and, in particular, where the examination of witnesses has begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, and if any Special Court finds the adjournment of the same beyond the following date to be necessary, it shall record its reasons for doing so.

13. Forfeiture of funds or property

Where a person has been convicted of an offence under this Act, the Special Court trying such offence may, if it is considered necessary so to do, declare that any funds or property seized under section 8 shall stand forfeited to the State.

14. Appeal

(1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Part V: Miscellaneous

15. Protection of action taken under this Act

No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or authority of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made under this Act.

16. Burden of proof

Where any person is prosecuted of an offence under section 4, the burden of proving that he had not committed the offence under the said section shall be on him.

17. Obligation of certain persons to report about the commission of offence under this Act

(1) All officers of Government are hereby required and empowered to assist the police in the execution of the provisions of this Act or any rule or order made thereunder.

(2) All village officers and such other officers as may be specified by the Collector or the District Magistrate in relation to any area and the inhabitants of such area shall, if they have reason to believe or have the knowledge that sati is about to be, or has been, committed in the area shall forthwith report such fact to the nearest police station.

(3) Whoever contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

18. Person convicted of an offence under section 4 to be disqualified from inheriting certain properties

A person convicted of an offence under sub-section (1) of section 4 in relation to the commission of sati shall be disqualified from inheriting the prop-

erty of the person in respect of whom such sati has been committed or the property of any other person which he would have been entitled to inherit on the death of the person in respect of whom such sati has been committed.

19. Amendment of Act 43 of 1951

In the Representation of the People Act, 1951,-

(a) in section 8, in sub-section (2), after the proviso, the following proviso shall be inserted, namely:-

"Provided further that a person convicted by a Special Court for the contravention of any of the provisions of the Commission of Sati (Prevention) Act, 1987 shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of five years since his release.";

(b) in section 123, after clause (3A), the following clause shall be inserted, namely:-

(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation: For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987.

20. Act to have overriding effect

The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

21. Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

22. Repeal of existing laws

(1) All laws in force in any State immediately before the commencement of this Act in that State which provide for the prevention or the glorification of sati shall, on such commencement, stand repealed.

(2) Notwithstanding such repeal, anything done or any action taken under any law repealed under sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act, and, in particular, any case taken cognizance of by a Special Court under the provisions of any law so repealed and pending before it immediately before the commencement of this Act in that State shall continue to be dealt with by that Special Court after such commencement as if such Special Court had been constituted under section 9 of this Act.

3. Dowry Prohibition Act, 1961

[Act No. 28 of Year 1961]

An Act to prohibit the giving or taking of dowry.

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows:

2. Definition of "dowry"

In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

3. Penalty for giving or taking dowry

(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:

Provided that the court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

(…)

4. The Suppression of Immoral Traffic in Women and Girls Act, 1956

[Act No. 104 of Year 1956]

An Act to provide in pursuance of the International Convention signed at New York on the 9th day of May, 1950, for the suppression of immoral traffic in women and girls.

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:

7. Prostitution in or in the vicinity of public places

(1) Any woman or girl who carries on prostitution, and the person with whom such prostitution is carried on, in any premises which are within a distance of two hundred yards of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or District Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

(2) Any person who-

(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or

(b) being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or

(c) being the owner, lessor or landlord of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is wilfully a party to such use,

shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine which may extend to two hundred rupees.

17. Intermediate custody of girls removed under section 15 or rescued under section 16

(…)

(2) When the girl is produced before the appropriate magistrate he shall, after giving the girl an opportunity of being heard, cause an enquiry to be made as to the correctness of the information received under sub-section (1) of section 16 and the age of the girl and, if satisfied that the information received is correct and the girl is under the age of twenty-one years, he

may, subject to the provisions of the next sub-section make an order that such girl be detained for such period as may be specified in the order, in a protective home or such other custody as he, for reasons to be recorded in writing, shall consider suitable: Provided that such custody shall not be that of a person, or body of persons, of a religious persuasion different from that of the girl.

5. The Unlawful Activities (Prevention) Act, 1967

[Act No. 37 of Year 1967, dated 30th December, 1967]

An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith.

Be it enacted by Parliament in the Eighteenth Year of the Republic of India as follows:

Chapter I: Preliminary

2. Definitions

In this Act, unless the context otherwise requires,-

(…)

(g) "unlawful association" means any association-

(…)

(ii) which has for its object any activity which is punishable under section 153A or section 153B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir.

Chapter II: Unlawful Associations

3. Declaration of an association as unlawful

(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.

(…)

Chapter III: Offences And Penalties

10. Penalty for being members of an unlawful association

Whoever is and continues to be a member of an association declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section, or takes part in meetings of any such unlawful association, or contributes to, or receives or solicits any contribution for the purpose of, any such un-lawful association, or in any way assists the operations of any such unlawful association, shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.

6. Arunachal Pradesh Freedom of Religion Act, 1978

[Act No. 4 of Year 1978]

An Act to provide for prohibition of conversion from one religious faith to any other religious faith by use of force or inducement or by fraudulent means and for matters connected therewith.

Be it enacted by the Legislative Assembly of Arunachal Pradesh in the Twenty-ninth Year of the Republic of India as follows:

1. Short title, extent and commencement

(1) This Act may be called the Arunachal Pradesh Freedom of Religion Act, 1978.

(2) It extends to the whole of the Union Territory of Arunachal Pradesh.

(3) It shall come into force at once.

2. Definitions

In this Act, unless the context otherwise requires-

(a) "Government" means the Government of the Union Territory of Arunachal Pradesh;

(b) "Conversion" means renouncing one religious faith and adopting another religious faith, and "convert" shall be construed accordingly;

(c) "Indigenous faith" means such religious beliefs and practices including rites, rituals, festivals observances, performances, abstinence, customs as have been found sanctioned, approved, performed by the indigenous communities of Arunachal Pradesh from the time these communities have been known and includes Buddhism as prevalent among the Monpas, Membas, Sherdukpens, Khambas, Khamptis and Singphos, Vaishnavism as practised by Noctes, Akas and Nature worships, including worships of Donyi-

polo, as prevalent among other indigenous communities of Arunachal Pradesh;

(d) "Force" shall include show of force or a threat of injury of any kind including threat of divine displeasure or social ex-communication;

(e) "Fraud" shall include the misrepresentation or any other fraudulent contrivance;

(f) "Inducement" shall include the offer of any gift or gratification, either in cash or in kind and shall also include the grant of any benefit, either pecuniary or otherwise;

(g) "prescribed" means prescribed under the rules;

(h) "religious faith" includes any indigenous faith.

3. Prohibition of forcible conversion

No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to any other religious faith by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.

4. Punishment for contravention of the provisions of S. 3

Any person contravening the provisions contained in S. 3 shall, without prejudice to any civil liability, be punishable with imprisonment to the extent of two years and fine up to ten thousand rupees.

5. Intimation of conversion to the Deputy Commissioner and punishment

(1) Whoever converts any person from one religious faith to any other religious faith either by performing himself the ceremony necessary for such conversion as a religious priest or by taking part directly or indirectly in such ceremony shall, within such period after the ceremony as may be prescribed, send an intimation to the Deputy Commissioner of the District to which the person converted belongs, of the fact of such conversion in such form as may be prescribed.

(2) If any person fails without sufficient cause to comply with the provisions contained in sub-S. (1) he shall be punished with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

6. Offence cognizable

An offence under this Act shall be cognizable and shall not be investigated by an officer below the rank of an Inspector of Police.

7. Sanction for prosecution

No prosecution for an offence under this Act shall be instituted except by or with the previous sanction of the Deputy Commissioner or such authority, not below the rank of an Extra Assistant Commissioner as may be authorized by him in this behalf.

8. Power to make rules

The Government may make rules for the purpose of carrying out the provisions of this Act.

7. The Orissa Prevention of Dangerous Activities of Communal Offenders Act, 1993

[Orissa Act 18 of Year 1993]

An Act to provide for preventive detention of communal offenders with a view to preventing their dangerous activities prejudicial to the maintenance of public order and for matters connected therewith or incidental thereto.

Be it enacted by the Legislature of the State of Orissa in the Forty-fourth Year of the Republic of India as follows:

2. Definitions

In this Act, unless the context otherwise requires,-

(…)

(b) "communal offender" means a person who, either by himself or as a member or as a leader of a gang or an organisation, commits or attempts to commit or abets or incites the commission of an offence punishable under Section 153-A or 153-B of the Indian Penal Code, 45 of 1869 or under Chapter XV of the said Code or under sub-section (2) of Section 505 thereof;

(…)

3. Power to make an order detaining communal offenders

(1) The Government may, if satisfied with respect to any communal offender that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order it is necessary so to do, make an order directing that such person be detained.

(…)

C. Versammlungs- und Vereinsrecht

1. Assam Maintenance of Public Order Act, 1947

[Assam Act V of Year 1947]

Received the assent of the Governor on the 27th March, 1947

An Act to enable the Provincial Government to provide for restrictions on movement, imposition of collective fines, control of press and publications, control of meetings and processions and of essential services for the maintenance in Assam of public order and of services essential to the life of the community.

Preamble: Whereas it is expedient to enable the Provincial Government to provide for restrictions on movement, imposition and recovery of collective fines, control of press and publications, control of meetings and processions and of services essential to the life of the community and purposes connected therewith in order to safeguard, prevent and overcome, should it arise, any break-down of law and order;

It is hereby enacted as follows:

6. Control of meetings, processions, etc.

(1) The State Government may, for the purpose of maintaining public order, by general or special order, prohibit, restrict or impose conditions upon the holding of processions, meetings or assemblies by a class of persons or organisations whose activities, in the opinion of the State Government, are subversive of law and order.

(2) If any person contravenes any order issued under this section, he shall be punishable with imprisonment which may extend to two years or with fine or with both.

8 A. Control of use of loud-speakers, megaphones, etc.

(1) The State Government may, for the purpose of preventing activities, which in their opinion undermine the security of, or tend to overthrow the State by general or special order, prohibit, restrict or impose conditions on-

(i) the use or operation in any street, square, public place or any other place of any apparatus for amplifying the human voice, or any reproduction of the human voice, such as a megaphone or an electrically operated loud-speaker;

(ii) the use or operation or driving in any street, square, public place or any other place of any vehicle which carries or has attached to it any apparatus referred to in sub-Cl. (i).

(2) If any person contravenes any order issued under this section, he shall be punishable with imprisonment which may extend to two years or with fine or with both.

(3) The apparatus referred to in sub-Cl. (i) together with the vehicle, if any, to which it may be attached shall be liable to be forfeited to Government if it be used or operated in contravention of an order passed under his section.

2. The Delhi Police Act, 1978

[Act No. 34 of Year 1978, dated 27th August, 1978]

An Act to amend and consolidate the law relating to the regulation of the police in the Union territory of Delhi.

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:

29. Power to give directions to the public

The Commissioner of Police and, subject to the orders, if any, made by the Commissioner of Police, every police officer not inferior in rank to an Inspector, may from time to time as occasion may arise, but not so as to contravene any regulation made under section 28 or any law, rule or bye-law referred to in sub-section (4) of that section, give all such orders either orally or in writing as may be necessary to-

(…)

(c) prevent obstructions-

(…)

(ii) in the neighbourhood of all places of worship during the time of worship; and

(d) keep, order on, and in, all streets, and at, and within, public bathing and washing places, fairs, temples, mosques, gurdwaras, churches and all other places of public resort or public worship;

(…).

34. Maintenance of order at religious or ceremonial display, etc.

(1) In any case of an actual or intended religious or ceremonial or corporate display or exhibition or organised assemblage in any street or public place, as to which or the conduct of, or participation in, which, it shall appear to

the competent authority that a dispute or contention exists, which is likely to lead to grave disturbance of the peace, the competent authority may give such orders as to the conduct of the persons concerned towards each other and towards, the public as it shall deem necessary and reasonable under the circumstances, regard being had to the apparent legal rights and to any established practice of the parties and of the persons interested and all persons concerned shall obey such orders.

(2) Every such order shall be published in the locality or place wherein it is to operate.

(3) Every order under sub-section (1) shall be subject to any judgment, decree, injunction or order made by a court having jurisdiction, and shall be rescinded or altered on its being made to appear to the competent authority that such order is inconsistent with a judgment, decree, injunction or order of such court.

3. The Religious Societies Act, 1880

[Act No. 1 of Year 1880, dated 9th January, 1880]

An Act to confer certain powers on Religious Societies.

Preamble: Whereas it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies;

It is hereby enacted as follows:

1. Short title

This Act may be called the Religious Societies Act, 1880.

Local extent: It shall extend to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States, but nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any persons whom the State Government may from time to time, by notification in the Official Gazette, exclude from the operation of this Act.

2. Appointment of new trustee in cases not otherwise provided for

When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property, and such property has been or hereafter shall be vested in trustees in trust for such body, and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner

hereinafter prescribed, and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed, such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body actually present at the meeting at which the appointment is made.

3. Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting

Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made. Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877 (3 of 1877), section 17.

4. Property to vest in new trustees without conveyance

When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding anything contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

5. Saving of existing modes of appointment and conveyance

Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

6. Provision for dissolution of societies and adjustment of their affairs

Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and, if not, then as such body at such meeting may determine:

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal

Court of original civil jurisdiction of the district in which the chief building of such body is situate; and the Court shall make such order in the matter as it deems fit.

7. Upon a dissolution no member to receive profit

If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same of not be paid to or distributed among the members of such body or any them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

8. Saving of certain provisions of instruments

Nothing in sections 6 and 7 shall be deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property.

9. Questions may be submitted to High Court

When any question arises, either in connection with the matters hereinbefore referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit. Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree. The costs of every application under this section shall be in the discretion of the Court.

4. Societies Registration Act, 1860

[Act No. 21 of Year 1860]

An Act for the registration of literary, scientific and charitable societies.

Whereas it is expedient the provision should be made for improving the legal condition or societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education, or for charitable purposes;

It is enacted as follows:

1. Societies formed by memorandum of association and registration

Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with Registrar of Joint-stock Companies form themselves into a society under this Act.

20. To what societies Act applies

The following societies may be registered under this Act:

Charitable societies,

(…).

D. Erziehung und Bildung

1. The Babasaheb Bhimrao Ambedkar University Act, 1994

[Act No. 58 of Year 1994]

An Act to establish and incorporate a teaching and residential University in the State of Uttar Pradesh and to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:

7. University open to all classes, castes and creed

The University shall be open to all persons of either sex and of whatever caste, creed, race, class, place of domicile and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be appointed as a teacher of the University or to hold any other office therein or be admitted as a student in the University or to graduate thereat or to enjoy or exercise any privilege thereof:

Provided that nothing in this section shall be deemed to prevent the University from making special provisions for the employment or promotion of educational interests of women, physically handicapped or of persons belonging to the weaker sections of the society and, in particular, of the Scheduled Castes and the Scheduled Tribes.

2. The North-Eastern Hill University Act, 1973

[Act No. 24 of Year 1973]

An Act to establish and incorporate a teaching and affiliating University for the hill areas of the North-Eastern region.

Whereas it is expedient to establish and incorporate a teaching and affiliating University for the benefit of the people of the hill areas of the North-Eastern region and to develop the intellectual, academic and cultural background of the said people; and whereas in pursuance of clause (1) of article 252 of the Constitution, resolutions have been passed by the Legislatures of the States of Meghalaya and Nagaland to the effect that the setting up of a Central University for the hill areas of the North-Eastern region shall be regulated by Parliament by law.

Be it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows:

7. University open to all classes, castes and creed

The University shall be open to persons of either sex and of whatever race, creed, caste, or class, and it shall not be lawful for the University to adopt or impose on any person any test whatsoever of religious belief or profession in order to entitle him to be admitted therein, as a teacher or student, or to hold any office therein, or to graduate thereat:

Provided that nothing in this section shall be deemed to prevent the University from making special provisions for admission of students of the weaker sections of the people in the North-Eastern region and, in particular, of the Scheduled Castes and the Scheduled Tribes.

3. The Delhi School Education Act, 1973

[Act No. 18 of Year 1973, dated 9th April, 1973]

An Act to provide for better organisation and development of school education in the Union territory of Delhi and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows:

Chapter I: Preliminary

2. Definitions

(...)

(o) "minority school" means a school established and administered by a minority having the right to do so under clause (1) of article 30 of the Constitution;

(…)

(x) "unaided minority school" means a recognised minority school which does not receive any aid.

Chapter IV: Terms and Conditions of Service of Employees of Recognised Private Schools

12. Chapter not to apply to unaided minority school

Nothing contained in this Chapter shall apply to an unaided minority school.

Chapter V: Provisions Applicable to Unaided Minority Schools

13. Power to prescribe minimum qualifications for recruitment

The Administrator may make rules regulating the minimum qualifications for, and method of, recruitment of employees of unaided minority schools:

Provided that no qualification shall be varied to the disadvantage of an existing employee of an unaided minority school.

14. Power to prescribe Code of Conduct Contract of services

Every employee of an unaided minority school shall be governed by such Code of Conduct as may be prescribed.

15. Contract of service

(1) The managing committee of every unaided minority school shall enter into a written contract of service with every employee of such school.

(…)

Chapter VII: Taking Over The Management of Schools

20. Taking over the management of schools

(1) Whenever the Administrator is satisfied that the managing committee or manager of any school, whether recognised or not, has neglected to perform any of the duties imposed on it by or under this Act or any rule made thereunder and that it is expedient in the interests of school education to take over the management of such school, he may, after giving the managing committee or the manager of such school, a reasonable opportunity of showing cause against the proposed action, take over the management of such school for a limited period not exceeding three years:

Provided that where the management of a school has been taken over for a period of three years or less, the Administrator may, if he is of opinion that in order to secure proper management of the school it is expedient that such management should continue to be in force after the expiry of the said limited period, he may, from time to time, issue directions for the continuance of such management for such period not exceeding one year at a time as he may think fit, so, however, that the total period for which management is taken over shall not, in any case, exceed five years.

(2) Whenever the management of any school is taken over under subsection (1), every person in charge of the management of such school immediately before its management is taken over, shall deliver possession of the school property to the Administrator or any officer authorized by him in this behalf.

(3) After taking over the management of any school under this section, the Administrator may arrange to manage the school through the Director or any other person authorized by the Director in this behalf (hereinafter referred to as the "authorized officer").

21. Section 20 not to apply to minority schools

Nothing contained in section 20 shall apply to any minority school.

4. Karnataka Education Act, 1983

[Karnataka Act No. 1 of Year 1995]

An Act to provide for better organisation, development, discipline and control of the educational institutions in the State.

Whereas it is considered necessary to provide for the planned development of educational institutions, inculcation of healthy educational practice, maintenance and improvement in the standards of education and better organisation discipline and control over educational institutions in the State with a view to fostering the harmonious development of the mental and physical faculties of students and cultivating a scientific and secular outlook through education;

Be it enacted by the Karnataka State Legislature in the Thirty fourth Year of the Republic of India as follows:

141. Application of the Act to certain institutions

Nothing in this Act or the rules made there under shall apply to any minority educational institution to the extent they are inconsistent with the rights guaranteed under Article 30 of the Constitution of India.

E. Familien- und Erbrecht

1. The Central Provinces Laws Act, 1875

[Act No. *20 of Year 1875]*

5. Rule of decision in cases of certain classes

In questions regarding inheritance, special property of females, betrothal, marriage, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions or any religious usage or institution, the rule of decision shall be the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, except in so far as such law has been by legislative enactment altered or abolished, or is opposed to the provisions of this Act:

Provided that when among any class or body of persons or among the members of any family any custom prevails which is inconsistent with the law applicable between such persons under this section, and which, if not inconsistent with such law, would have been given effect to as legally binding, such custom shall, notwithstanding anything herein contained, be given effect to.

2. The Muslim Personal Law (Shariat) Application Act, 1937

[Act No. 26 of Year 1937, dated 7th October, 1937]

An Act to make provision for the application of the Muslim Personal Law (Shariat) to Muslims.

Whereas it is expedient to make provision for the application of the Muslim Personal Law (Shariat) to Muslims;

It is hereby enacted as follows:

1. Short title and extent

(1) This Act may be called the Muslim Personal Law (Shariat) Application Act, 1937.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Application of Personal Law to Muslims

Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained

under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal law (Shariat).

3. Power to make a declaration

(1) Any person who satisfies the prescribed authority-

(a) that he is a Muslim, and

(b) that he is competent to contract within the meaning of section 11 of the Indian Contract Act, 1872, and

(c) that he is a resident of the territories to which this Act extends

may by declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of the provisions of this section, and thereafter the provisions of section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to the matters enumerated therein adoption, wills and legacies were also specified.

(2) Where the prescribed authority refuses to accept a declaration under sub-section (1), the person desiring to make the same may appeal to such officer as the State Government may, if he is satisfied that the appellant is entitled to make the declaration, order the prescribed authority to accept the same.

4. Rule-making power

(1) The State Government may make rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

(a) for prescribing the authority before whom and the form in which declarations under this Act shall be made;

(b) for prescribing the fees to be paid for the filing of declaration and for the attendance at private residences of any person in the discharge of his duties under this Act; and for prescribing the times at which such fees shall be payable and the manner in which they shall be levied.

(3) Rules made under the provisions of this section shall be published in the Official Gazette and shall thereupon have effect as if enacted in this Act.

5. Dissolution of marriage by Court in certain circumstances

Repealed by the Dissolution of Muslim Marriages Act, 1939.

6. Repeals

The undermentioned provisions of the Acts and Regulations mentioned below shall be repealed in so far as they are inconsistent with the provisions of this Act, namely:

(1) Section 26 of the Bombay Regulation IV of 1827;

(2) Section 16 of the Madras Civil Courts Act, 1873;

(4) Section 3 of the Oudh Laws Act, 1876;

(5) Section 5 of the Punjab Laws Act, 1872;

(6) Section 5 of the Central Provinces Laws Act, 1875; and

(7) Section 4 of the Ajmer Laws Regulation, 1877.

3. The Child Marriage Restraint Act, I929

[Act No. 19 of Year 1929, dated 1st October, 1929]

An Act to restrain the solemnisation of child marriages.

Whereas it is expedient to restrain the solemnisation of child marriages;

It is hereby enacted as follows:

1. Short title, extent and commencement

(1) This Act may be called the Child Marriage Restraint Act, 1929.

(2) It extends to the whole of India except the State of Jammu and Kashmir; and it applies also to all citizens of India without and beyond India.

(3) It shall come into force on the 1st day of April, 1930.

2. Definitions

In this Act, unless there is anything repugnant in the subject or context,-

(a) "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;

(b) "child marriage" means a marriage to which either of the contracting parties is a child;

(c) "contracting party" to a marriage means either of the parties whose marriage is or is about to be thereby solemnized; and

(d) "minor" means a person of either sex who is under eighteen years of age.

3. Punishment for male adult below twenty-one years of age marrying a child

Whoever, being a male above eighteen years of age and below twenty-one, contracts a child marriage shall be punishable with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both.

4. Punishment for male adult above twenty-one years of age marrying a child

Whoever, being a male above twenty-one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.

5. Punishment for solemnising a child marriage

Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine, unless he proves that he had reason to believe that the marriage was not a child marriage.

6. Punishment for parent or guardian concerned in a child marriage

(1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine:

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnized.

7. Offences to be cognizable for certain purposes

The Code of Criminal Procedure, 1973, shall apply to offences under this Act as if they were cognizable offences-

(a) for the purpose of investigation of such offences; and

(b) for the purposes of matters referred to in section 42 of that Code, and (ii) the arrest of a person without a warrant or without an order of a Magistrate.

8. Jurisdiction under this Act

Notwithstanding anything contained in section 190 of the Code of Criminal Procedure, 1973 no Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall take cognizance of, or try, any offence under this Act.

9. Mode of taking cognizance of offences

No Court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.

10. Preliminary inquiries into offences

Any Court, on receipt of a complaint of an offence of which it is authorized to take cognizance, shall, unless it dismisses the complaint under section 203 of the Code of Criminal Procedure, 1973, either itself make an inquiry under section 202 of that Code or direct a Magistrate subordinate to it to make such inquiry.

11. Power to take security from complainant

Repealed by the Child Marriage Restraint (Amendment) Act, 1949.

12. Power to issue injunction prohibiting marriage in contravention of this Act

(1) Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnized, issue an injunction against any of the persons mentioned in sections 3, 4, 5 and 6 of this Act prohibiting such marriage.

(2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show cause against the issue of the injunction.

(3) The Court may either on its own motion or on the application of any person aggrieved rescind or alter any order made under sub-section (1).

(4) Where such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader; and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(5) Whoever knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both:

Provided that no woman shall be punishable with imprisonment.

4. The Special Marriage Act, 1954

[Act No. 43 of Year 1954, dated 9th October, 1954]

An Act to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce.

Be it enact by Parliament in the Fifth Year of the Republic of India as follows:

Chapter II: Solemnization of Special Marriages

4. Conditions relating to solemnization of special marriages

Notwithstanding anything contained in any other law for the time being in force relating to be solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:

(a) neither party has a spouse living;

(b) neither party-

(i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(iii) has been subject to recurrent attacks of insanity or epilepsy;

(c) the male has completed the age of twenty-one years and the female the age of eighteen years;

(d) the parties are not within the degrees of prohibited relationship:

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and

(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.

Explanation: In this section, "custom", in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issue in relation to the members of any tribe, community, group or family, unless the State Government is satisfied-

(i) that such rule has been continuously and uniformly observed for a long time among those members;

(ii) that such rule is certain and not unreasonable or opposed to public policy; and

(iii) that such rule, if applicable only to a family, has not been discontinued by the family.

Chapter III: Registration of Marriages Celebrated in Other Forms

15. Registration of marriages celebrated in other forms

Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872, or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiot or a lunatic at the time of registration;

(d) the parties have completed the age of twenty-one years at the time of registration;

(e) the parties are not within the degree of prohibited relationship:

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

Chapter IV: Consequences of Marriage under this Act

19. Effect of marriage on member of undivided family

The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family.

20. Rights and disabilities not affected by Act

Subject to the provisions of section 19, any person whose marriage is solemnized under this Act shall have the same rights and shall be subject to the same disabilities in regard to the right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 applies.

21. Succession to property of parties married under Act

Notwithstanding any restrictions contained in the Indian Succession Act, 1925, with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act and for the purposes of this section that Act shall have effect as if chapter III of Part V (special Rules for Parsi Intestates) had been omitted therefrom.

21A. Special provision in certain cases

Where the marriage is solemnized under this Act of any person who professes the Hindu, Buddhist, Sikh or Jaina religion with a person who professes the Hindu, Buddhist, Sikh or Jaina religion, section 19 and section 21 shall not apply and so much of section 20 as creates a disability shall also not apply.

Chapter VI: Nullity of Marriage And Divorce

24. Void marriages

(1) Any marriage solemnized under this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if-

(i) any of the conditions specified in clauses (a), (b), (c) and (d) of section 4 has not been fulfilled; or

(ii) the respondent was impotent at the time of the marriage and at the time of the institution of he suit.

(2) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15:

Provided that no such declaration shall be made in any case where an appeal has been preferred under section 17 and the decision of the district court has become final.

27. Divorce

(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent-

(a) has, after the solemnization of he marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code;

(d) has since the solemnization of the marriage treated the petitioner with cruelty; or

(e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation: In this clause,-

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the respondent, and whether or not it requires or is susceptible to medical treatment; or

(f) has been suffering from venereal disease in a communicable form; or

(g) has been suffering from leprosy, the disease not having been contracted from the petitioner; or

(h) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive;

Explanation: In this sub-section, the expression "desertion" means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage and its grammatical variations and cognate expressions shall be construed accordingly.

(1A) A wife may also present a petition for divorce to the district court on the ground,-

(i) that her husband has, since the solemnization of the marriage been guilty of rape, sodomy or bestiality;

(ii) that in suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956, or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (or under the corresponding section 488 of the Code of Criminal Procedure, 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.

(2) Subject to the provisions of this Act and to the rules made thereunder, either party to a marriage, whether solemnized before or after the commencement of the Special Marriage (Amendment) Act, 1970, may present a petition for divorce to the district court on the ground-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

Chapter VIII: Miscellaneous

42. Savings

Nothing contained in this Act shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage.

5. Hindu Marriage Act, 1955

[Act No. 25 of Year 1955, dated 18th May, 1955]

An Act to amend and codify the law relating to marriage among Hindus.

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:

Chapter I: Preliminary

1. Short title and extent

(1) This Act may be called the Hindu Marriage Act, 1955.

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

2. Application of Act

(1) This Act applies-

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation: The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be-

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs; and

(c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

3. Definitions

In this Act, unless the context otherwise requires,-

(a) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy:

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

(b) "district court" means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;

(c) "full blood" and "half blood" -two persons are said to be related to each other by full blood when they were descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives;

(d) "uterine blood" – two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation: In clauses (c) and (d), "ancestor" includes the father and "ancestress" the mother;

(e) "prescribed" means prescribed by rules made under this Act;

(f) (i) "sapinda relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;

(ii) two persons are said to be "sapindas" of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them;

(g) "degrees of prohibited relationship" -two persons are said to be within the "degrees of prohibited relationship"-

(i) if one is a lineal ascendant of the other; or

(ii) if one was the wife or husband of a lineal ascendant or descendant of the other; or

(iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or

(iv) if the two are brother and sister, uncle and niece, aunt and nephew or children of brother and sister or of two brothers or of two sisters;

Explanation: For the purposes of clauses (f) and (g), relationship includes-

(i) relationship by half or uterine blood as well as by full blood;

(ii) illegitimate blood relationship as well as legitimate;

(iii) relationship by adoption as well as by blood;

and all terms of relationship in those clauses shall be construed accordingly.

4. Overriding effect of Act

Save as otherwise expressly provided in this Act-

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect insofar as it is inconsistent with any of the provisions contained in this Act.

Chapter II: Hindu Marriages

5. Conditions for a Hindu marriage

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely,-

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party-

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity

(iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

6. Guardianship in marriage

Repealed by the Child Marriage Restraint (Amendment) Act, 1978, w.e.f. 1-10-1978.

7. Ceremonies for a Hindu marriage

(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

8. Registration of Hindu marriages

(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

(3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.

9. Restitution of conjugal rights

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Explanation: Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

10. Judicial separation

(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

Chapter IV: Nullity of Marriage and Divorce

11. Void marriages

Any Marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

12. Voidable marriages

(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely,-

(a) that the marriage has not been consummated owing to the impotence of the respondent; or

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978), the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage-

(a) on the ground specified in clause (c) of sub-section (1), shall be entertained if-

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied-

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the said ground.

13. Divorce

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation: In this clause-

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment or;

(iv) has been suffering from a virulent and incurable form of leprosy; or

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive,

Explanation: In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground-

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement

or that any other wife of the husband married before such commencement was alive at the time of the solemnisation of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnisation of the marriage, been guilty of rape, sodomy or bestiality; or

(iii) that in a suit under section 18 of Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation: This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).

13A. Alternate relief in divorce proceedings

In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except insofar as the petition is founded on the grounds mentioned in clauses (ii), (vi) and (vii) of sub-section (1) of section 13, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.

13B. Divorce by mutual consent

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a

decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

14. No petition for divorce to be presented within one year of marriage

(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of the marriage:

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before one year has elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of one year from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after expiration of the said one year upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of one year from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said one year.

15. Divorced persons when may marry again

When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.

16. Legitimacy of children of void and voidable marriages

(1) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

17. Punishment of bigamy

Any marriage between two Hindus solemnized after commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code, 1860 (45 of 1860), shall apply accordingly.

18. Punishment for contravention of certain other conditions for a Hindu marriage

Every person who procures marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv), and (v) of section 5 shall be punishable-

(a) in the case of a contravention of the condition specified in clause (iii) of section 5, with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both;

(b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Chapter V: Jurisdiction and Procedure

19. Court to which petition shall be presented

Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction-

(i) the marriage was solemnized, or

(ii) the respondent, at the time of the presentation of the petition, resides, or

(iii) the parties to the marriage last resided together, or

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

20. Contents and verification of petitions

(1) Every petition presented under this Act shall state as distinctly as the nature of the case permits the facts on which the claim to relief is founded and, except in a petition under section 11, shall also state that there is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.

21. Application of Act 5 of 1908

Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

21A. Power to transfer petitions in certain cases

(1) Where-

(a) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same District Court or in a different District Court, in the same State or in a different State,

the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies,

(a) if the petitions are presented to the same District Court, both the petitions shall be tried and heard together by that District Court;

(b) if the petitions are presented to different District Courts, the petition presented later shall be transferred to the District Court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the District Court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the District

Court in which the later petition has been presented to the District Court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.

21B. Special provision relating to trial and disposal of petitions under the Act

(1) The trial of a petition under this Act shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.

(3) Every appeal under this Act shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.

21C. Documentary evidence

Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence in any proceeding at the trial of a petition under this Act on the ground that it is not duly stamped or registered.

22. Proceedings to be in camera and may not be printed or published

(1) Every proceeding under this Act shall be conducted in camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the Court.

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.

23. Decree in proceedings

(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that-

(a) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or

where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and

(c) the petition (not being a petition presented under section 11) is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted,

then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.

(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.

23A. Relief for respondent in divorce and other proceedings

In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner’s adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground; and if the petitioner’s adultery, cruelty or desertion is proved, the court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.

24. Maintenance pendente lite and expenses of proceedings

Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.

25. Permanent alimony and maintenance

(1) Any court exercising jurisdiction under this Act, may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be, secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.

26. Custody of children

In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by

such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may, also from time to time revoke, suspend or vary any such orders and provisions previously made:

Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

27. Disposal of property

In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

28. Appeals from decrees and orders

(1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(2) Orders made by the court in any proceeding under this Act under section 25 or section 26 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a period of thirty days from the date of the decree or order.

28A. Enforcement of decrees and orders

All decrees and orders made by the court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being are enforced.

Chapter VI: Saving and Repeal

29. Saving

(1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto be-

longed to the same gotra or pravara or belonged to different religions, castes or sub-divisions of the same caste.

(2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be null and void or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this Act, and any such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954, (43 of 1954) with respect to marriages between Hindus solemnized under that Act, whether before or after the commencement of this Act.

30. Repeal

Repealed by Repealing and Amending Act, 1960 (58 of 1960), w.e.f. 26-12-1960.

6. The Indian Christian Marriage Act, 1872

[Act No. 15 of Year 1872, dated 18th July, 1872]

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

Whereas it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion;

It is hereby enacted as follows:

Preliminary

1. Short title and extent

This Act may be called the Indian Christian Marriage Act, 1872.

It extends to the whole of India except the territories which, immediately before the 1st. November, 1956, were comprised in the States of Travancore-Cochin, Manipur and Jammu and Kashmir.

2. Enactments repealed

Repealed by the Repealing Act, 1938.

3. Interpretation-clause

In this Act unless there is something repugnant in the subject or context,-

"Church of England" and "Anglican" mean and apply to the Church of England as by law established;

"Church of Scotland" means the Church of Scotland as by law established;

"Church of Rome" and" "Roman Catholic" means and apply to the Church which regards the Pope of Rome as its spiritual head;

"Church" includes any chapel or other building generally used for public Christian worship;

"India" means the territories to which this Act extends;

"minor" means a person who has not completed the age of twenty-one years and who is not a widower or a window;

the expression "Christians" means persons professing the Christian religion;

and the expression "Indian Christians" includes the Christian descendants of natives of India converted to Christianity, as well as such converts;

"Registrar General of Births, Deaths and Marriages" means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886.

4. Marriages to be solemnized according to Act

Every marriage between persons, one or both of whom is or are a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

5. Persons by whom marriages may be solemnized

Marriages may be solemnized in India-

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland;

(3) by any Minister of Religion licensed under this Act to solemnize marriages;

(4) by, or in the presence of, a Marriage Registrar appointed under this Act;

(5) by any person licensed under this Act to grant certificates of marriage between Indian Christians.

6. Grant and revocation of licenses to solemnize marriages

The State Government, so far as regards the territories under its administration; may, by notification in the Official Gazette, grant licenses to Ministers of Religion to solemnize marriages within such territories and may, by a like notification, revoke such licenses.

7. Marriage Registrar

The State Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration.

Senior Marriage Registrars

Where there are more Marriage Registrars than one in any district, the State Government shall appoint one of them to be the Senior Marriage Registrar.

Magistrate when to be Marriage Registrar

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the district shall act as, and be, Marriage Registrar thereof during such absence, illness, or temporary vacancy.

8. Marriage Registrars in Indian States

Repealed by the A.O. 1950.

9. Licensing of persons to grant certificates of marriage between Indian Christians

The State Government may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Indian Christians.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the Official Gazette.

10. Time for solemnizing marriage

Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening:

Exceptions

Provided that nothing in this section shall apply to-

(1) A Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

(2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized or from such person as the same Bishop has authorized to grant such license, or

(3) a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of the Church of Scotland.

11. Place for solemnizing marriage

No Clergyman of the Church of England shall solemnize a marriage in any place other than a church where worship is generally held according to the forms of the Church of England,

unless there is no such church within five miles distance by the shortest road from such place, or

unless he has received a special licence authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

Fee for special license

For such special license, the Registrar of the Diocese may charge such additional fee as he said Bishop from time to time authorizes.

Part III: Marriages Solemnized by Ministers of Religion Licensed under this Act

12. Notice of intended marriage

Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act-

One of the persons intending marriage shall give notice in writing, according to the form contained in the First Schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein-

(a) the name and surname, and the profession or condition, of each of the persons intending marriage,

(b) the dwelling-place of each of them,

(c) the time during which each has dwelt there, and

(d) the church or private dwelling in which the marriage is to be solemnized:

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

13. Publication of such notice

If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

Return or transfer of notice

But if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

14. Notice of intended marriage in private dwelling

If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the district, who shall affix the same to some conspicuous place in his own office.

15. Sending copy of notice to Marriage Registrar when one party is a minor

When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

16. Procedure on receipt of notice

The Marriage Registrar or Senior Marriage Registrar, as he case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

17. Issue of certificate of notice given and declaration made

Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under

his hand a certificate of such notice having been given and of such declaration having been made:

Proviso

Provided-

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister;

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue; and

(3) that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf.

18. Declaration before issue of certificate

The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration-

(a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage,

and when either or both of the parties is or are a minor or minors

(b) that the consent or consents required by law has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

19. Consent of father, or guardian, or mother

The father, if living, of any minor or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

20. Power to prohibit by notice issue of certificate

Every person whose consent to a marriage is required under section 19, is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

21. Procedure on receipt of notice

If any such notice be received by such Minister, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting

the marriage has no lawful authority for such prohibition, or until the said notice is withdrawn by the person who gave it.

22. Issue of certificate in case of minority

When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the consent of the person whose consent to such marriage is required by section 19 has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

23. Issue of certificates to Indian Christians

When any Indian Christian about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such Indian Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such Indian Christian into some language which he understands.

24. Form of certificate

The certificate to be issued by such Minister shall be in the form contained in the Second Schedule hereto annexed, or to the like effect.

25. Solemnization of marriage

After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt:

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

26. Certificate void if marriage not solemnized within two months

Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void,

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid.

Part IV: Registration of Marriages Solemnized by Ministers of Religion

27. Marriages when to be registered

All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except marriages solem-

nized under Part V or Part VI of this Act, shall be registered in manner hereinafter prescribed.

28. Registration of marriages solemnized by Clergymen of Church of England

Every Clergyman of the Church of England shall keep a register of marriages and shall register therein, according to the tabular form set forth in the Third Schedule hereto annexed, every marriage which he solemnizes under this Act.

29. Quarterly returns to Archdeaconry

Every Clergyman of the Church of England shall send four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized at any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate.

Contents of returns

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty first day of December, of each year, respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified.

The said Registrar upon receiving the said returns shall send one copy thereof to the registrar General of a Births, Deaths and Marriages.

30. Registration and returns of marriages solemnized by Clergymen of Church of Rome

Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized, and such person shall forward quarterly to the Registrar General of Births, Deaths and Marriages returns of the entries of all marriages registered by him during the three months next preceding.

31. Registration and returns of marriages solemnized by Clergymen of Church of Scotland

Every Clergyman of the Church of Scotland shall keep a register of marriages, and shall register therein, according to the tabular form set forth in the Third Schedule hereto annexed, every marriage which he solemnizes under this Act, and shall forward quarterly to the Registrar General of Births, Deaths and Marriages, through the Senior Chaplain of the Church of

Scotland, returns, similar to those prescribed in section 29, of all such marriages.

32. Certain marriages to be registered in duplicate

Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall immediately after the solemnization thereof, be registered in duplicate by the person solemnizing the same; (that is to say) in a marriage-register-book to be kept by him for the purpose, according to the form contained in the Fourth Schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

33. Entries of such marriages to be signed and attested

The entry of such marriage in both the certificate and marriage-register-book shall be signed by the person solemnizing the marriage, and also by the persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

34. Certificate to be forwarded to Marriage Registrar, copied, and sent to Registrar General

The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register-book and send it, within one month from the time of the solemnization, to the Marriage Registrar of the district in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall cause such certificate to be copied into a book to be kept by him for that purpose, and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the Registrar General of Births, Deaths and Marriages.

35. Copies of certificates to be entered and numbered

Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate

36. Registrar to add number of entry to certificate, and send to Registrar General

The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the Registrar General of Births, Deaths and Marriages.

37. Registration of marriages between Indian Christians, by persons referred to in clauses (1), (2) and (3) of section 5

When any marriage between Indian Christians is solemnized by any such person, Clergyman or Minister of Religion as is referred to in clause (1), clause (2), or clause (3) of section 5, the person solemnizing the same shall, instead of proceeding in the manner provided by section 28 to 36, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

Custody and disposal of register-book

Whoever has the control of the book at the time when it is filled, shall send it to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the Registrar General of Births, Deaths and Marriages, to be kept by him with the records of his office.

Part V: Marriages Solemnized by, or in the Presence of a Marriage Registrar

38. Notice of intended marriage before Marriage Registrar

When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the First Schedule hereto annexed, or to the like effect, to any Marriage Registrar of the district within which the parties have dwelt, or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district, and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them, the time during which each has dwelt therein, and the place of which the marriage is to be solemnized:

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

39. Publication of notice

Every Marriage Registrar shall, on receiving any such notice, cause a coy thereof to be affixed in some conspicuous place in his office.

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

40. Notice to be filed and copy entered in Marriage Notice Book

The Marriage Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the State Government, and to be called the "Marriage Notice Book"; and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

41. Certificate of notice given and oath made

If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made:

Proviso

Provided-

that no lawful impediment be shown to his satisfaction why such certificate should not issue;

that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf by this Act;

that four days after the receipt of the notice have expired, and further;

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

42. Oath before issue of certificate

The certificate mentioned in section 41 shall not be issued by any Marriage Registrar until one of the parties intending marriage appears personally before such Marriage Registrar, and make oath-

(a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(b) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his or her usual place of abode within the district of such Marriage Registrar, and, where either or each of the parties is a minor,

(c) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in India authorized to give such consent, as the case may be.

43. Petition to High Court to order certificate in less than fourteen days

When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay, and are desirous of being married in less than fourteen days after the entry of each notice as aforesaid, they may apply by petition to a Judge of the High Court, for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section 41.

Order on petition

And on sufficient cause being shown, the said Judge may, in his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required.

And the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

44. Consent of father or guardian

The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor.

Protest against issue of certificate

And any person whose consent to such marriage would be required thereunder may enter a protest against the issue of he Marriage Registrar’s certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized.

Effect of protest

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it.

45. Petition where person whose consent is necessary is insane, or unjustly withholds consent

If any person whose consent is necessary to any marriage under this Part is of unsound mind, or if any such person (other than the father) without just cause withholds his consent to the marriage, the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if he is not resident within any of the said towns, then to the District Judge.

Procedure on petition

And the said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way; and, if upon examination such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall declare the marriage to be proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage; and if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate has not been forbidden.

46. Petition when Marriage Registrar refuses certificate

Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge.

Procedure on petition

The said Judge of the High Court, or district Judge, as the case may be, may examine the allegations of the petition in a summary way, and shall decide thereon.

The decision of such Judge of the High Court or district Judge, as the case may be, shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

47. Petition when Marriage Registrar in Indian State refuses certificate

Repealed by the A.O. 1950.

48. Petition when Registrar doubts authority of person forbidding

Whenever a Marriage Registrar, acting under the provisions of section 44, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition, where his district is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district be not within any of the said towns, then to the District Judge.

Procedure on petition

The said petition shall state all the circumstance of the case, and pray for the order and direction of the Court concerning the same, and the said Judge of the High Court or District Judge, as the case may be, shall examine into the allegations of the petition and the circumstances of the case, and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such Judge of the High Court or District Judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid, and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden.

49. Liability for frivolous protest against issue of certificate

Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate, on grounds which such Marriage Registrar, under section 44, or a Judge of the High Court or the District Judge, under section 45 or 46, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered.

50. Form of certificate

The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the Second Schedule to this Act annexed or to the like effect, and the State Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

51. Solemnization of marriage after issue of certificate

After the issue of the certificate of the Marriage Registrar,

or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts, marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect:-

"I do solemnly declare that I know not of any lawful impediment why I, A.B., may not be joined in matrimony to C. D."

And each of the parties shall say to the other as follows or to the like effect:

"I call upon these persons here present to witness that I, A.B., do take thee, C.D., to be my lawful wedded wife (or husband)."

52. When marriage not had within two months after notice, new notice required

Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section 40, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be void; and no person shall proceed to solemnize the marriage, not shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

53. Marriage Registrar may ask for particulars to be registered

A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

54. Registration of marriage solemnized under Part V

After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate; that is to say, in a marriage-register-book, according to the form of the Fourth Schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

The entry of such marriage in both the certificate and the marriage-register-book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

55. Certificates to be sent monthly to Registrar General

The Marriage Registrar shall forthwith separate the certificate from the marriage-register-book and send it, at the end of every month, to the Registrar General of Births, Deaths and Marriages.

Custody of register-book

The Marriage Registrar shall kept safely the said register-book until it is filled, and shall then send it to the Registrar General of Births, Deaths and Marriages, to be kept by him with the records of his office.

56. Officers to whom Registrars in Indian States shall send certificates

Repealed by the A.O. 1950.

57. Registrars to ascertain that notice and certificate are understood by Indian Christians

When any Indian Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Indian Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Indian Christian into a language which he understands; or the Marriage Registrar shall otherwise ascertain whether the Indian Christian is cognizant of the purport and effect of the said notice and certificate.

58. Indian Christians to be made to understand declarations

When any Indian Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Indian Christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such Indian Christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act.

59. Registration of marriages between Indian Christians

The registration of marriages between Indian Christians under this Part shall be made in conformity with the rules laid down in section 37 so far as they are applicable, and not otherwise.

Part VI: Marriage of Indian Christians

60. On what conditions marriages of Indian Christians may be certified

Every marriage between Indian Christians applying for a certificate, shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise-

(1) the age of the man intending to be married shall not be under twenty-one years, and the age of the woman intending to be married shall not be under eighteen years;

(2) neither of the persons intending to be married shall have a wife or husband still living;

(3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to be other-

"I can upon these persons here present to witness that I, A. B., in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, C.D., to be my lawful wedded wife (or husband)" or words to the like effect.

61. Grant of certificate

When, in respect to any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and, on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed persona; and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

62. Keeping of register-book and deposit of extracts therefrom with Registrar General

Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the State Government by which he was licensed may from time to time prescribe, a register-book of all marriages solemnized under this Part in his presence, and shall deposit in the office of the Registrar General of Births, Deaths and Marriages for the territories under the administration of the said State Government, in such form and at such intervals as that Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.

63. Searches in register-book and copies of entries

Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section 62, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of any entry therein.

64. Books in which marriages of Indian Christians under Part I or Part III are registered

The provisions of sections 62 and 63, as to the form of the register-book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, mutatis mutandis apply to the books kept under section 37.

65. Part VI not to apply to Roman Catholics. Saving of certain marriages

This Part of this Act, except so much of sections 62 and 63 as are referred to in section 64, shall not apply to marriages between Roman Catholics. But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V of Act No. 25 of 1864, previous to the twenty-third day of February, 1865.

Part VII: Penalties

66. False oath, declaration, notice or certificate for procuring marriage

Whoever, for the purpose of procuring a marriage or licence of marriage, intentionally,-

(a) where an oath or declaration is required by this Act, or by any rule or custom of a Church according to the rites and ceremonies of which a marriage is intended to be solemnized, such Church being the church of England or of Scotland or of Rome, makes a false oath or declaration or,

(b) where a notice or certificate is required by this Act, signs a false notice or certificate,

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine.

67. Forbidding, by false personation, issue of certificate by Marriage Registrar

Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or

not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code.

68. Solemnizing marriage without due authority

Whoever, not being authorized by section 5 of this Act to solemnize marriages, solemnizes or professes to solemnize, in the absence of a Marriage Registrar of the district in which the ceremony takes place, a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years, and shall also be liable to fine.

69. Solemnizing marriage out of proper time, or without witnesses

Whoever knowingly and wilfully solemnizes a marriage between persons, one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Saving of marriages solemnized under special licence

This section does not apply to marriages solemnized under special licences granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special licence in that behalf mentioned in section 10.

Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites, ceremonies and customs of the Church of Scotland.

70. Solemnizing, without notice or within fourteen days after notice, marriage with minor

Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

71. Issuing certificate, or marrying, without publication of notice

A Marriage Registrar under this Act who commits any of the following offences:-

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act;

Marrying after expiry of notice

(2) after the expiration of two months after the copy of the notice has been entered as required by section 40 in respect of any marriage, solemnizes such marriage;

Solemnizing marriage with minor within fourteen days, without authority of Court, or without sending copy of notice

(3) solemnizes, without an order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to be Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior Marriage Registrar;

Issuing certificate against authorized prohibition

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof,

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

72. Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition

Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of two months after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section 166 of the Indian Penal Code.

73. Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome)

Whoever, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England solemnizing a marriage after due publication of banns, or under a licence from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that church,

Issuing certificate, or marrying, without publishing notice or after expiry of certificate

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him;

Issuing certificate for, or solemnizing, marriage with minor, within fourteen days after notice

or knowingly and wilful issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the district;

Issuing certificate forbidden

or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue;

Solemnizing marriage authorizedly forbidden

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same,

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

74. Unlicensed person granting certificate pretending to be licensed

Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Whoever, being licensed to grant a certificate of marriage under Part VI of this Act, without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part shall be punished with fine which may extend to one hundred rupees.

75. Destroying or falsifying register-books

Whoever, by himself or another, wilfully destroys or injures any register book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

76. Limitation of prosecutions under Act

The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

Part VIII: Miscellaneous

77. What matters need not be proved in respect of marriage in accordance with Act

Whenever any marriage has been solemnized in accordance with the provisions of sections 4 and 5, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely:-

(1) any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law;

(2) the notice of the marriage;

(3) the certificate or translation thereof;

(4) the time and place at which the marriage has been solemnized;

(5) the registration of the marriage.

78. Corrections of errors

Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

And, in case such certificate has been already sent to the Registrar General of Births, Deaths and Marriages, such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

79. Searches and copies of entries

Every person solemnizing a marriage under this Act, and hereby required to register the same,

and, every Marriage Registrar or Registrar General of Births, Deaths and Marriages having the custody for the time being of any register of marriages, or of any certificate, or duplicate, or copies of certificate, under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate, or duplicate or copies, and give a copy under his hand of any entry in the same.

80. Certified copy of entry in marriage register, etc., to be evidence

Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate, or duplicate, or of any entry therein, respectively, or of such copy.

81. Certificates of certain marriages to be sent to Central Government

The Registrar General of Births, Deaths and Marriages shall, at the end of every quarter in each year, select, from the certificates of marriages forwarded to him, during such quarter, the certificates of the marriages of which the Government by whom he was appointed may desire that evidence shall be transmitted to England, and shall send the same certificates, signed by him to the Central Government.

82. State Government to prescribe fees

Fees shall be chargeable under this Act for-

receiving and publishing notice of marriages;

issuing certificates for marriage by Marriage Registrars, and registering marriages by the same;

entering protests against, or prohibitions of, the issue of certificates for marriage by the said Registrars;

searching register-books or certificates, or duplicates, or copies thereof;

giving copies of entries in the same under sections 63 and 79.

The State Government shall fix the amount of such fees respectively, and may from time to time vary or remit them either generally or in special cases, as to it may seem fit.

83. Power to make rules

(1) The State Government may by notification in the Official Gazette make rules in regard to the disposal of the fees mentioned, in section 82, the supply of register-book, and the preparation and submission of returns of marriages solemnized under this Act.

(2) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before the State Legislature.

84. Power to prescribe fees and rules for Indian States

Repealed by the A.O. 1950.

85. Power to declare who shall be District Judge

The State Government may, by notification in the Official Gazette, declare who shall, in any place to which this Act applies, be deemed to the District Judge.

86. Powers and functions exercisable as regards Indian States

Repealed by the A.O. 1950.

87. Saving of Consular marriages

Nothing in this Act applies to any marriage performed by any Minister, Consul, or Consular Agent between subjects of the State which he represents and according to the laws of such State.

88. Non-validation of marriages within prohibited degrees

Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.

7. The Anand Marriage Act, 1909

[Act No. 7 of Year 1909]

An Act to remove doubts as to the validity of the marriage ceremony common among the Sikhs called Anand.

1. Short title and extent

(1) This Act may be called The Anand Marriage Act, 1909; and

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Validity of Anand marriages

All marriages which may be or may have been duly solemnized according to the Sikh marriage ceremony called Anand shall be, and shall be deemed to have been with effect from the date of the solemnization of each respectively, good and valid in law.

3. Exemption of certain marriages from Act

Nothing in this Act shall apply to-

(a) any marriage between persons not professing the Sikh religion, or

(b) any marriage which has been judicially declared to be null and void.

4. Saving of marriages solemnized according to other ceremonies

Nothing in this Act shall affect the validity of any marriage duly solemnized according to any other marriage ceremony customary among the Sikhs.

5. Non-validation of marriages within prohibited degrees

Nothing in this Act shall be deemed to validate any marriage between persons who are related to each other in any degree of consanguinity or affinity which would, according to the customary law of the Sikhs, render a marriage between them illegal.

8. The Arya Marriage Validation Act, 1937

[Act No. 19 of Year 1937, dated 14th April, 1937]

An Act to recognise and remove doubts as to the validity of inter-marriages current among Arya Samajists.

Whereas it is expedient to recognise and place beyond doubt the validity of inter-marriages of a class of Hindus known as Arya Samajists;

It is hereby enacted as follows:

1. Short title and extent

(1) This Act may be called the Arya Marriage Validation Act, 1937.

(2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States and applies also to citizens of India wherever they may be.

2. Marriage between Arya Samajists not to be invalid

Notwithstanding any provision of Hindu Law, usage or custom to the contrary no marriage contracted whether before or after the commencement of this Act between two persons being at the time of the marriage Arya Samajists shall be invalid or shall be deemed ever to have been invalid by reason only of the fact that the parties at any time belonged to different castes or different sub-castes of Hindus or that either or both of the parties at any time before the marriage belonged to a religion other than Hinduism.

9. The Parsi Marriage and Divorce Act, I936

[Act No. 3 of Year 1936, dated 23rd April, 1936]

An Act to amend the law relating to marriage and divorce among Parsis.

Whereas it is expedient to amend the law relating to marriage and divorce among Parsis;

It is hereby enacted as follows:

I. Preliminary

1. Short title, extent and commencement

(1) This Act may be called the Parsi Marriage and Divorce Act, 1936.

(2) It extends to the whole of India except the State of Jammu and Kashmir:

Provided that the Central Government may, in respect of territories which, immediately before the 1st November, 1956, were comprised in Part B States by notification in the Official Gazette, direct that the provisions of this Act relating to the constitution and powers of Parsi Matrimonial Courts and to appeals from the decisions and orders of such Courts shall apply with such modifications as may be specified in the notification:

Provided further that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions

In this Act, unless there is anything repugnant in the subject or context,-

(1) "Chief Justice" includes senior Judge;

(2) "Court" means a Court constituted under this Act;

(3) to "desert" together with its grammatical variations and cognate expressions, means to desert the other party to a marriage without reasonable cause and without the consent, or against the will, of such party;

(4) "grievous hurt" means-

(a) emasculation;

(b) permanent privation of the sight of either eye;

(c) permanent privation of the hearing of either ear;

(d) privation of any member or joint;

(e) destruction or permanent impairing of the powers of any member or joint;

(f) permanent disfiguration of the head or face; or

(g) any hurt which endangers life;

(5) "husband" means a Parsi husband;

(6) "marriage" means a marriage between Parsis whether contracted before or after the commencement of this Act;

(7) a "Parsi" means a Parsi Zoroastrian;

(8) "priest" means a Parsi priest and includes Dastur and Mobed; and

(9) "wife" means a Parsi wife.

3. Requisites to validity of Parsi marriages

(1) No marriage shall be valid if-

(a) the contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in Schedule I; or

(b) such marriage is not solemnized according to the Parsi form of ceremony called "Ashirvad" by a priest in the presence of two Parsi witnesses other than such priest; or

(c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.

(2) Notwithstanding that a marriage is invalid under any of the provisions of sub-section (1), any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate.

4. Remarriage when unlawful

(1) No Parsi (whether such Parsi has changed his or her religion or domicile or not) shall contract any marriage under this Act or any other law in the lifetime of his or her wife or husband, whether a Parsi or not, except after his or her lawful divorce from such wife or husband or after his or her marriage with such wife or husband has lawfully been declared null and void or dissolved, and, if the marriage was contracted with such wife or husband under the Parsi Marriage and Divorce Act, 1865, or under this Act, except after a divorce, declaration or dissolution as aforesaid under either of the said Acts.

(2) Every marriage contracted contrary to the provisions of sub-section (1) shall be void.

5. Punishment of bigamy

Every Parsi who during the lifetime of his or her wife or husband, whether a Parsi or not, contracts a marriage without having been lawfully divorced from such wife or husband, or without his or her marriage with such wife or husband having legally been declared null and void or dissolved, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife.

6. Certificate and registry of marriage

Every marriage contracted under this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in Schedule II. The certificate shall be signed by the said priest, the contracting parties and two witnesses present at the marriage; and the said priest shall thereupon send such certificate together with a fee of two rupees to be paid by the husband to the Registrar of the place at which such marriage is solemnized. The Registrar on receipt of the certificate and fee shall enter

the certificate in a register to be kept by him for that purpose and shall be entitled to retain the fee.

7. Appointment of Registrar

For the purposes of this Act a Registrar shall be appointed. Within the local limits of the ordinary civil jurisdiction of a High Court, the Registrar shall be appointed by the Chief Justice of such Court and without such limits, by the State Government. Every Registrar so appointed may be removed by the Chief Justice or State Government appointing him.

8. Marriage register to be open for public inspection

The register of marriages mentioned in section 6 shall, at all reasonable times, be open for inspection, and certified extracts therefrom shall, on application, be given by the Registrar on payment to him by the applicant of two rupees for each such extract. Every such register shall be evidence of the truth of the statements therein contained.

9. Copy of certificate to be sent to Registrar-General of Births, Deaths and Marriages

Every Registrar, except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall, at such intervals as the State Government by which he was appointed from time to time directs, send to the Registrar-General of Births, Deaths and Marriages for the territories administered by such State Government a true copy certified by him in such form as such State Government from time to time prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals.

10. Registration of divorces

When a Court passes a decree for divorce, nullity or dissolution, the Court shall send a copy of the decree for registration to the Registrar of Marriages within its jurisdiction appointed under section 7; the Registrar shall enter the same in a register to be kept by him for the purpose, and the provisions of Part II applicable to the Registrars and registers of marriages shall be applicable, so far as may be, to the Registrars and registers of divorces and decrees of nullity and dissolution.

11. Penalty for solemnizing marriage contrary to section 4

Any priest knowingly and wilfully solemnizing any marriage contrary to and in violation of section 4 shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

12. Penalty for priest's neglect of requirements of section 6

Any priest neglecting to comply with any of the requisitions affecting him contained in section 6 shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

13. Penalty for omitting to subscribe and attest certificate

Every other person recurred by section 6 to subscribe or attest the said certificate who shall wilfully omit or neglect so to do, shall, on conviction thereof, be punished for every such offence with a fine not exceeding one hundred rupees.

14. Penalty for making, etc., false certificate

Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false, shall be punished with simple imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees, or with both: and if the act amounts to forgery as defined in the Indian Penal Code then such person shall also be liable, on conviction thereof, to the penalties provided in section 466 of the said Code.

15. Penalty for failing to register certificate

Any Registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

16. Penalty for secreting, destroying or altering register

Any person secreting, destroying, or dishonestly or fraudulently altering the said register in any part thereof shall be punished with imprisonment of either description as defined in the Indian Penal Code for a term which may extend to two years or if he be a Registrar for a term which may extend to five years and shall also be liable to fine which may extend to five hundred rupees.

17. Formal irregularity not to invalidate marriage

No marriage contracted under this Act shall be deemed to be invalid solely by reason of the fact that it was not certified under section 6, or that the certificate was not sent to the Registrar, or that the certificate was defective, irregular or incorrect.

III. Parsi Matrimonial Courts

18. Constitution of Special Courts under the Act

For the purpose of hearing suits under this Act, a Special Court shall be constituted in each of the Presidency-towns of Calcutta, Madras and Bombay, and in such other places in the territories of the several State Governments as such Governments respectively shall think fit.

19. Parsi Chief Matrimonial Courts

The Court so constituted in each of the Presidency-towns shall be entitled the Parsi Chief Matrimonial Court of Calcutta, Madras or Bombay, as the case may be. The local limits of the jurisdiction of a Parsi Matrimonial Court shall be coterminous with the local limits of the ordinary original civil jurisdiction of the High Court. The Chief Justice of the High Court, or such other Judge of the same Court as the Chief Justice shall from time to time appoint, shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by five delegates, except in regard to-

(a) interlocutory applications and proceedings;

(b) alimony and maintenance, both permanent as well as pendente lite;

(c) custody, maintenance and education of children; and

(d) all matters and proceedings other than the regular hearing of cases.

20. Parsi District Matrimonial Courts

Every Court so constituted at a place other than a Presidency-town shall be entitled the Parsi District Matrimonial Court of such place. Subject to the provisions contained in section 21, the local limits of the jurisdiction of such Court shall be coterminous with the limits of the district in which it is held. The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and in the trial of cases under this Act he shall be aided by five delegates, except in regard to-

(a) interlocutory applications and proceedings;

(b) alimony and maintenance, both permanent as well as pendente lite;

(c) custody, maintenance and education of children; and

(d) all matters and proceedings other than the regular hearing of cases.

21. Power to alter territorial jurisdiction of District Courts

The State Government may from time to time alter the local limits of the jurisdictions of any Parsi District Matrimonial Court, and may include within such limits any number of districts under its government.

22. Certain districts to be within jurisdiction of the Chief Matrimonial Court

Any district which the State Government, on account of the fewness of its Parsi inhabitants, shall deem it inexpedient to include within the jurisdiction of any District Matrimonial Court, shall be included within the jurisdiction of the Parsi Chief Matrimonial Court for the territories under such State Government where there is such a Court.

23. Court seals

A seal shall be made for every Court constituted under this Act, and all decrees and orders and copies of decrees and orders of such Court shall be sealed with such seal, which shall be kept in the custody of the presiding Judge.

24. Appointment of delegates

(1) The State Governments shall, in the Presidency-towns and districts subject to their respective Governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act, after giving the local Parsis an opportunity of expressing their opinion in such manner as the respective Governments may think fit.

(2) The persons so appointed shall be Parsis, their names shall be published in the Official Gazette and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and in districts beyond such limits, not more than twenty.

25. Power to appoint new delegates

The appointment of a delegate shall be for ten years; but he shall be eligible for reappointment for the like term or terms. Whenever a delegate shall die, or have completed his term of office, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or cease to be a Parsi, or be convicted of an offence under the Indian Penal Code or other law for the time being in force involving moral turpitude, or be adjudged insolvent, then and so often the State Government may appoint any person being a Parsi to be a delegate in his stead; and the name of the person so appointed shall be published in the Official Gazette.

26. Delegates to be deemed public servants

All delegates appointed under this Act shall be considered to be public servants within the meaning of the Indian Penal Code.

27. Selection of delegates under sections 19 and 20 to be from those appointed under section 24

The delegates selected under sections 19 and 20 to aid in the adjudication of suits under this Act, shall be taken under the orders of the presiding

Judge of the Court in due rotation from the delegates appointed by the State Government under section 24:

Provided that each party to the suit may, without cause assigned, challenge any two of the delegates attending the Court before such delegates are selected and no delegate so challenged shall be selected.

28. Practitioners in Matrimonial Courts

All legal practitioners entitled to practise in a High Court shall be entitled to practise in any Court constituted under this Act, and all legal practitioners entitled to practise in a District Court shall be entitled to practise in any Parsi District Matrimonial Court constituted under this Act.

29. Courts in which suits to be brought

(1) All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit or where the marriage under this Act was solemnized.

(2) When the defendant shall at such time have left the territories to which this Act extends such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together.

(3) In any case, whether the defendant resides in the territories to which this Act extends or not, such suit may be brought in the Court at the place where the plaintiff resides or at the place where the plaintiff and the defendant last resided together, if such Court, after recording its reasons in writing, grants leave so to do.

IV. Matrimonial Suits

30. Suits for nullity

In any case in which consummation of the marriage is from natural causes impossible, such marriage may, at the instance of either party thereto, be declared to be null and void.

31. Suits for dissolution

If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years, and shall not have been heard of as being alive within that time by those persons who would have naturally heard of him or her, had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be dissolved.

32. Grounds for divorce

Any married person may sue for divorce on any one or more of the following grounds, namely:-

(a) that the marriage has not been consummated within one year after its solemnization owing to the wilful refusal of the defendant to consummate it;

(b) that the defendant at the time of the marriage was of unsound mind and has been habitually so up to the date of the suit:

Provided that divorce shall not be granted on this ground, unless the plaintiff (1) was ignorant of the fact at the time of the marriage, and (2) has filed the suit within three years from the date of the marriage;

(bb) that the defendant has been incurably of unsound mind for a period of two years or upwards immediately preceding the filing of the suit or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the plaintiff cannot reasonably be expected to live with the defendant.

Explanation: In this clause,-

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia,

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the defendant, and whether or not it requires or is susceptible to medical treatment;

(c) that the defendant was at the time of marriage pregnant by some person other than the plaintiff:

Provided that divorce shall not be granted on this ground, unless (1) the plaintiff was at the time of the marriage ignorant of the fact alleged, (2) the suit has been filed within two years of the date of marriage, and (3) marital intercourse has not taken place after the plaintiff came to know of the fact;

(d) that the defendant has since the marriage committed adultery or fornication or bigamy or rape or an unnatural offence:

Provided that divorce shall not be granted on this ground, if the suit has been filed more than two years after the plaintiff came to know of the fact;

(dd) that the defendant has since the solemnization of the marriage treated the plaintiff with cruelty or has behaved in such a way as to render it in the judgment of the Court improper to compel the plaintiff to live with the defendant:

Provided that in every suit for divorce on this ground it shall be in the discretion of the Court whether it should grant a decree for divorce or for judicial separation only;

(e) that the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or,

where the defendant is the husband, has compelled the wife to submit herself to prostitution:

Provided that divorce shall not be granted on this ground, if the suit has been filed more than two years (i) after the infliction of the grievous hurt, or (ii) after the plaintiff came to know of the infection, or (iii) after the last act of compulsory prostitution.

(f) that the defendant is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code:

Provided that divorce shall not be granted on this ground, unless the defendant has prior to the filing of the suit undergone at least one year's imprisonment out of the said period;

(g) that the defendant has deserted the plaintiff for at least two years;

(h) that an order has been passed against the defendant by a Magistrate awarding separate maintenance to the plaintiff, and the parties have not had Marital intercourse for one year or more since such decree or order;

(i) that the defendant has ceased to be a Parsi by conversion to another religion:

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact.

32A. Non-resumption of cohabitation or restitution of conjugal rights within one year in pursuance of a decree to be ground for divorce

(1) Either party to a marriage, whether solemnized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act, 1988, may sue for divorce also on the ground,-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

(2) No decree for divorce shall be granted under sub-section (1) if the plaintiff has failed or neglected to comply with an order for maintenance passed against him under section 40 of this Act or section 488 of the Code of Criminal Procedure, 1898 or section 125 of the Code of Criminal Procedure, 1973.

32B. Divorce by mutual consent

(1) Subject to the provisions of this Act, a suit for divorce may be filed by both the parties to a marriage together, whether such marriage was solem-

nized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act 1988, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved:

Provided that no suit under this sub-section shall be filed unless at the date of the filing of the suit one year has lapsed since the date of the marriage.

(2) The Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act and the averments in the plaint are true and that the consent of either party to the suit was not obtained by force or fraud, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

33. Joining of co-defendant

In every such suit for divorce on the ground of adultery, the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and in any such suit by the husband the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

34. Suits for judicial separation

Any married person may sue for judicial separation on any of the grounds for which such person could have filed a suit for divorce.

35. Decrees in certain suits

In any suit under section 30, 31, 32 32A or 34, whether defended or not, if the Court be satisfied that any of the grounds set forth in those sections for granting relief exist that none of the grounds therein set forth for withholding relief exist and that-

(a) the act or omission set forth in the plaint has not been condoned;

(b) the husband and wife are not colluding together;

(c) the plaintiff has not connived at or been accessory to the said act or omission;

(d) (save where a definite period of limitation is provided by this Act) there has been no unnecessary or improper delay in instituting the suit; and

(e) there is no other legal ground why relief should not be granted;

then and in such case, but not otherwise, the Court shall decree such relief accordingly.

36. Suit for restitution of conjugal rights

Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife, or where a wife shall have deserted or without lawful cause ceased to cohabit with her husband, the party so deserted or with whom cohabitation shall have so ceased may sue for the restitution of his or her conjugal rights and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

37. Counterclaim by defendant for any relief

In any suit under this Act, the defendant may make a counterclaim for any relief he or she may be entitled to under this Act.

38. Documentary evidence

Notwithstanding anything contained in any other law for the time being in force, no document shall be inadmissible in evidence in any proceeding at the trial of a suit under this Act on the ground that it is not duly stamped or registered.

39. Alimony pendente lite

Where in any suit under this Act, it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the suit, it may, on the application of the wife or the husband order the defendant to pay to the plaintiff the expenses of the suit, and such weekly or monthly sum, during the suit as, having regard to the plaintiffs own income and the income of the defendant, it may seem to the Court to be reasonable:

Provided that the application for the payment of the expenses of the suit and such weekly or monthly sum during the suit, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.

40. Permanent alimony and maintenance

(1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on an application made to it for the purpose by either the wife or the husband, order that the defendant shall pay to the plaintiff for her or his maintenance and support, such gross sum or such monthly or periodical sum, for a term not exceeding the life of the plaintiff as having regard to the defendant’s own income and other property, if any, the income and other property of the plaintiff, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the movable or immovable property of the defendant.

(2) The Court if it is satisfied that there is change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just.

(3) The Court if it is satisfied that the party in whose favour, an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he had sexual intercourse with any woman outside wedlock, it may, at the instance of the other party, vary, modify or rescind any such order in such manner as the Court may deem just.

41. Payment of alimony to wife or to her trustee

In all cases in which the Court shall make any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court or to a guardian appointed by the Court and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee or guardian, if for any reason it, shall appear to the Court expedient so to do.

42. Disposal of joint property

In any suit under this Act the Court may make such provisions in the final decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife.

43. Suits to be heard in camera and may not be printed or published

(1) Every suit filed under this Act shall be tried in camera and it shall not be lawful for any person to print or publish any matter in relation to any such case except a judgment of the Court printed or published with the previous permission of the Court.

(2) If any, person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.

44. Validity of trial

Notwithstanding anything contained in section 19 or section 20, where in the case of a trial in a Parsi Matrimonial Court not less than three delegates have attended throughout the proceedings, the trial shall not be invalid by reason of the absence during any part thereof of the other delegates.

45. Provisions of Civil Procedure Code to apply to suits under the Act

The provisions of the Code of Civil Procedure, 1908, shall, so far as the same may be applicable, apply to proceedings in suits instituted under this Act including proceedings in execution and orders subsequent to decree:

Provided that the presiding Judge shall read out to the delegates the relevant sections of this Act, and may, if he consider it necessary so to do, explain the same:

Provided further that a verbatim record shall be made of what the presiding Judge reads out or explains to the delegates.

46. Determination of questions of law and procedure and of fact

In suits under this Act all questions of law and procedure shall be determined by the presiding Judge, but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried:

Provided that, where such delegates are equally divided in opinion, the decision on the facts shall be the decision of the presiding Judge.

47. Appeal to High Court

(1) An appeal shall lie to the High Court from-

(a) the decision of any Court established under this Act, whether a Chief Matrimonial Court or District Matrimonial Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground; and

(b) the granting of leave by any such Court under sub-section (3) of section 29:

Provided that such appeal shall be instituted within three calendar months after the decision appealed from shall have been pronounced.

(2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court.

48. Liberty to parties to marry again

When the time limited for appealing against any decree granting a divorce or annulling or dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal a divorce has been granted or a marriage has been declared to be annulled or dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again.

V. Children of the Parties

49. Custody of children

In any suit under this Act, the Court may from time to time pass such interim orders and make such provisions in the final decree as it may deem just and proper with respect to the custody, maintenance and education of the children under the age of eighteen years, the marriage of whose parents is the subject of such suit, and may, after the final decree upon application, by petition for this purpose, make, revoke, suspend or vary from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such final decree or by interim orders in case the suit for obtaining such decree were still pending:

Provided that the application with respect to the maintenance and education of such children during the suit, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

50. Settlement of wife's property for benefit of children

In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of any part of such property, not exceeding one half thereof, for the benefit of the children of the marriage or any of them.

VI. Miscellaneous

51. Superintendence of High Court

The High Court shall have superintendence over all Courts constituted under this Act subject, to its appellate jurisdiction in the same manner as it has over other Courts under article 227 of the Constitution, and all the provisions of that article shall apply to such Courts.

52. Applicability of provisions of the Act

(1) The provisions of this Act shall apply to all suits to which the same are applicable whether the circumstances relied on occurred before or after the passing of this Act, and whether any decree or order referred to was passed under this Act or under the law in force before the passing of this Act, and where any proceedings are pending in any Court at the time of the commencement of this Act, the Court shall allow such amendment of the pleadings as may be necessary as the result of the coming into operation of this Act.

(2) A Parsi who has contracted a marriage under the Parsi Marriage and Divorce Act, 1865, or under this Act, even though such Parsi may change his or her religion or domicile, so long as his or her wife or husband is alive and so long as such Parsi has not been lawfully divorced from such wife or husband or such marriage has not lawfully been declared null and void or dissolved under the decree of a competent Court, under either of the said Acts, shall remain bound by the provisions of this Act.

10. The Married Women's Property Act, 1874

[Act No. 3 of Year 1874, dated 24th February, 1874]

An Act to explain and amend the law relating to certain married women, and for other purposes.

Whereas it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January, 1866, and for insurances on lives by persons married before or after that day:

And whereas by the Indian Succession Act, 1865 (10 of 1865), section 4 it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done, if unmarried.

And whereas by force of the said Act all women to whose marriages it applies are absolute owners, of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives;

It is hereby enacted as follows:

I. Preliminary

2. Extent and application

It extends to the whole of India except the State of Jammu and Kashmir.

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the State Government may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom it may consider it impossible or inexpedient to apply such provisions.

4. Married women's earnings to be their separate property

The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband,

and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill,

and all savings from and investments of such wages, earnings and property, shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property.

III. Insurances by Wives and Husbands

6. Insurance by husband for benefit of wife

(1) A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall ensure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the State in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. XVII of 1864 to constitute an office of Official Trustee, section 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

(2) Notwithstanding anything contained in section 2, the provisions of subsection (1) shall apply in the case of any policy of insurance such as is referred to therein which is effected-

(a) by any Hindu, Muhammadan, Sikh or Jain-

(i) in Madras, after the thirty-first day of December, 1913, or

(ii) in any other territory to which this Act extended immediately before the commencement of the Married Women's Property (Extension) Act 1959, after the first day of April, 1923, or

(iii) in any territory to which this Act extends on and from the commencement of the Married Women's Property (Extension) Act, 1959, on or after such commencement;

(b) by a Buddhist in any territory to which this Act extends, on or after the commencement of the Married Women's Property (Extension) Act, 1959:

Provided that nothing herein contained shall affect any right or liability which has accrued or been incurred under any decree of a competent court passed-

(i) before the first day of April, 1923, in any case to which sub-clause (i) or sub-clause (ii) of clause (a) applies; or

(ii) before the commencement of the Married Women's Property (Extension) Act, 1959 (61 of 1959), in any case to which sub-clause (iii) of clause (a) or clause (b) applies.

11. The Converts' Marriage Dissolution Act, 1866

[Act No. 21 of Year 1866, dated 2nd April, 1866]

An Act to legalize under certain circumstances, the dissolution of marriages of Converts to Christianity.

Whereas it is expedient to legalize, under certain circumstances, the dissolution of marriages of Converts to Christianity deserted or repudiated on religious grounds by their wives or husbands;

It is enacted as follows:

1. Short title

This Act may be cited as the Converts' Marriage Dissolution Act, 1866.

2. Commencement of Act

Repealed by the Repealing Act, 1874.

3. Interpretation-clause

In this Act-

"Husband" – husband shall mean a married man domiciled in India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew:

"Wife" – wife shall mean a married woman domiciled in India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan nor a Jewess:

"Personal law" – Personal law shall mean any law, or custom having the force of law, of any persons domiciled in India other than Christians, Muhammadans and Jews:

"Month" and "year" – Month and year shall respectively mean month and year according to the British calendar:

4. When convert deserted by his wife may sue for conjugal society

If a husband changes his religion for Christianity, and if in consequence of such change his wife, for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society.

5. When convert deserted by her, husband may sue

If a wife change her religion for Christianity, and if in consequence of such change her husband, for the space of six continuous months, desert or repudiate her, she may sue him for conjugal society.

6. Court in which suit shall be brought

If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature, the suit shall be commenced in such Court; otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the district in the defendant shall reside at the commencement of the suit.

7. Suit to be commenced by verified petition

The suit shall be commenced by a petition in the form in the First Schedule to this Act, or as near thereto as the circumstances of the case will allow.

The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints; and the petition may be amended by permission of the Court.

8. On service of petition, citation to respondent

A copy of the petition shall be served upon the respondent, and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge.

9. Form of citation

In ordinary cases the citation shall be in the form in the Second Schedule to this Act, or as near thereto as the circumstances of the case will allow.

But where the respondent is exempt by law from personal appearance in Court, or where the Judge shall so direct, the citation shall be in the form in the Third Schedule to this Act, or as near thereto as the circumstances of the case will allow.

10. Service of citation

A copy of the citation sealed with the seal of the Court shall be served on the respondent; and the provisions of the Code of Civil Procedure (5 of 1908) as to the service and endorsement of summonses shall apply, mutatis mutandis, to citations under this Act.

11. Penalty on respondent not obeying citation

If the respondent shall not obey such citation, and comply with every other requirement made upon her or him under the provisions of this Act, she or he shall be liable to punishment under section 174 of the Indian Penal Code (45 of 1860).

12. Points to be proved on appearance of petitioner

On the day fixed in the citation the petitioner shall appear in Court, and the following points shall be proved:-

(1) the identity of the parties;

(2) the marriage between the petitioner and the respondent;

(3) that the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years;

(4) the desertion or repudiation of the petitioner by the respondent;

(5) that such desertion or repudiation was in consequence of the petitioner's change of religion;

(6) and that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

13. First interrogation of respondent

The respondent, if such points be proved to the satisfaction of the Judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal.

In ordinary cases such interrogation and every other interrogation prescribed by this Act shall be made by the Judge, but when the respondent is exempt by law from personal appearance in Court, or when the Judge shall,

in his discretion, excuse the respondent from such appearance, the interrogations shall be made by Commissioners acting under such commission as hereinafter mentioned.

14. Interrogations by Judge may be public or private

Every interrogation mentioned in this Act and made by the Judge may, at the discretion of the Judge, take place in open court or in his private room.

If any such interrogation takes place in open Court, the Judge may, so long as it shall continue, exclude from the Court all such persons as he shall think fit to exclude.

15. Procedure when female respondent refuses to cohabit with petitioner Adjournment for a year. Interview

If the respondent be a female, and in answer to the interrogatories of the Judge or Commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall make an order adjourning the case for a year, and directing that, in the interim, the parties shall, at such place and time as he shall deem convenient, have an interview of such length as the Judge shall direct, and in the presence of such person or persons (who may be a female or females) as the Judge shall select, with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

16. Procedure on expiration of adjournment. Interrogation of respondent

At the expiration of such adjournment the petitioner shall again appear in Court and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to; and if the points mentioned in section 12 and this section of this Act shall be proved to the satisfaction of the Judge, and if the respondent on being interrogated by the Judge or Commissioners, as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner,

Decree

And the Judge shall, by a decree under his hand and scaled with the seal of his Court, declare that the marriage between the parties is dissolved.

17. Decree in case of male respondent refusing to cohabit on grounds of petitioner's change of religion

If the respondent be a male, and in answer to the interrogatories of the Judge or Commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers

and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year.

At the expiration of such adjournment, the petitioner shall again appear in Court; and if the respondent on being interrogated by the Judge or Commissioners, as the case may be, again refuse to cohabit with the petitioner, the Judge shall thereupon pass such a decree as last aforesaid:

Proviso

Provided that if the petitioner shall so desire (but not otherwise), the proceedings in the suit shall, mutatis mutandis, be the same as in the case of a female respondent.

18. Decree if respondent so refuse in case of unconsummated marriage, either party being impubes at time of marriage

Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated; and if, in answer to the interrogatories made pursuant to section 13 of this Act, the respondent shall refuse to cohabit with the petitioner, and allege, as the ground for such refusal, that the petitioner has changed his or her religion, the Judge shall thereupon pass such a decree as last aforesaid.

19. Liberty to parties to marry again

When any decree dissolving a marriage shall have been passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such re-marriage shall be legitimate, any personal law to the contrary notwithstanding:

Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act, or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person.

20. Judge to order commission to issue for examination of exempted persons

In suits instituted under this Act, the Judge shall order a commission to issue to such persons, whether males or females or both, as he shall think fit, for the examination on interrogatories or otherwise of any persons so exempt as aforesaid.

The provisions of the Code of Civil Procedure (5 of 1908) shall, so far as practicable, apply to commissions issued under this section.

21. Proof of marriage and desertion or repudiation of petitioner in consequence of conversion

At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner, after his or her change of religion and after knowledge thereof by the respondent, shall be sufficient evidence of the respondent's desertion or repudiation of the petitioner, and shall also be sufficient evidence that such desertion or repudiation was in consequence of the petitioner's change of religion, unless some other sufficient cause for such desertion or repudiation be proved by the respondent.

22. Civil Procedure Code applied

The provisions of the Code of Civil Procedure (5 of 1908) as to the summoning and examination of witnesses shall apply in suits instituted under this Act.

23. Dismissal of suit if either party under age required by Act, or if parties cohabiting, or respondent willing to cohabit

If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, or that the petitioner and the respondent are cohabiting as man and wife, or if the Court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

24. Revival of suit after such dismissal

If at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent; and upon proof of the former decree and of such renewed repudiation or desertion, the suit shall recommence at the stage at which it had arrived immediately before the passing of such decree; and, after the proofs, interrogations, interview and adjournment which may then be requisite under the provisions hereinbefore contained, the Judge shall pass a decree of the nature mentioned in section 16 of this Act.

25. Petitioner's cruelty or adultery to bar suit

If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner's cruelty or adultery, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

A suit dismissed under this section shall not be revived.

26. Male petitioner's cohabitation with one of several wives to bar suit

If the petitioner, being a male, has at the time of the institution of the suit two or more wives, he shall make them all respondents; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

The provisions as to revival contained in section 24 of this Act shall apply, mutatis mutandis, to a suit dismissed under this section.

27. Dissolution of marriage not to affect status or right of children

A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent’s children (if any) by the petitioner of their status as legitimate children, or of any right or interest which they would have had, according to the personal law applicable to them, by way of maintenance, inheritance, or otherwise, in case the marriage had not been so dissolved as aforesaid.

28. Power to Court to award alimony

If a suit be commenced under the provisions of this Act, and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself suitably to her station in life and to prosecute or defend the suit, the Court may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit, and also for her maintenance pending the suit.

If the suit be brought by a husband against a wife, the Court may by the decree order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall think just, and having regard to the condition and station in life of the parties.

Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

29. No appeal under Act; but Judge may state case raising question whether conversion has dissolved marriage

No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if, at any stage of the suit, the respondent shall allege by way of defense that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defense, shall, either of his own motion or on the application of

the respondent, state the case and submit it with own opinion thereon for the decision of the High Court.

30. Case to state necessary facts and documents, and suit to be stayed

Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

31. Case to be decided by three Judges

Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the presidency-towns; and the petitioner and respondent may appear and be heard in the High Court in person or by advocate or vakil.

32. High Court may refer case to Judge for additions or alterations

If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

33. High Court may decide question raised, and Judge shall dispose of case accordingly

It shall be lawful for the High Court, upon the hearing of any such case, to decide the questions raised thereby, and to deliver its judgment thereon containing the grounds on which such decision is founded;

and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment.

34. Saving of Roman Catholic marriage

Nothing contained in this Act shall be taken to render invalid any marriage of a convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies and customs of the Roman Catholic Church.

35. Extent of Act

This Act extends to the whole of India except the State of Jammu and Kashmir and the Union territory of Manipur.

12. The Dissolution of Muslim Marriages Act, 1939

[Act No. 8 of Year 1939]

An Act to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.

Whereas it is expedient to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie;

It is hereby enacted as follows:

1. Short title and extent

(1) This Act may be called the Dissolution of Muslim Marriages Act, 1939.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Grounds for decree for dissolution of marriage

A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:-

(i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;

(v) that the husband was impotent at the time of the marriage and continues to be so;

(vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;

(vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years:

Provided that the marriage has not been consummated:-

(viii) that the husband treats her with cruelty, that is to say,-

(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

(b) associates with women of evil repute or leads an infamous life, or

(c) attempts to force her to lead an immoral life, or

(d) disposes of her property or prevents her exercising her legal rights over it or

(e) obstructs her in the observance of her religious profession or practice, or

(f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Koran;

(ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim law:

Provided that-

(a) no decree shall be passed on ground (iii) until the sentence has become final;

(b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorized agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and

(c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

3. Notice to be served on heirs of the husband when the husband's whereabouts are not known

In a suit to which clause (i) of section 2 applies-

(a) the names and addresses of the persons who would have been the heirs of the husband under Muslim law if he had died on the date of the filing of the plaint shall be stated in the plaint,

(b) notice of the suit shall be served on such persons, and

(c) such persons shall have the right to be heard in the suit:

Provided that paternal uncle and brother of the husband, if any, shall be cited as party even if he or they are not heirs.

4. Effect of conversion to another faith

The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage:

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section 2:

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

5. Rights to dower not to be affected

Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.

13. Indian Divorce Act, 1869

[Act No. 4 of Year 1869, dated 26th February, 1869]

An Act to amend the law relating to Divorce and Matrimonial Causes.

Whereas it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain courts jurisdiction in matters matrimonial;

It is hereby enacted as follows:

I. Preliminary

1. Short title, commencement of the Act

This Act may be called the Divorce Act, and shall come into operation on the first day of April, 1869.

2. Extent of Act

This Act extends to the whole of India except the State of Jammu and Kashmir.

Extent of power to grant relief generally, and to make decrees of dissolution, or of nullity-

Nothing hereinafter contained shall authorise any court to grant any relief under this Act except where the petitioner or respondent professes the Christian religion,

or to make decrees of dissolution of marriage except where the parties to the marriage are domiciled in India at the time when the petition is presented,

or to make decrees of nullity of marriage except where the marriage has been solemnized in India and the petitioner is resident in India at the time of presenting the petition,

or to grant any relief under this Act, other than a decree of dissolution of marriage or of nullity of marriage, except where the petitioner resides in India at the time of presenting the petition.

3. Interpretation clause

In this Act, unless there be something repugnant in the subject or context,-

"High Court"

(1) "High Court" means with reference to any area,-

(a) in a State, the High Court for that State;

(b) in Delhi, the High Court of Delhi;

(c) in Manipur and Tripura, the High Court of Assam;

(d) in the Andaman and Nicobar Islands, the High Court of Calcutta;

(e) in Lakshadweep, the High Court of Kerala;

(ee) in Chandigarh, the High Court of Punjab and Haryana;

and in the case of any petition under this Act, "High Court" means the High Court for the area where the husband and wife reside or last resided together;

"District Judge"

(2) "District Judge" means a Judge of a principal civil court of original jurisdiction however designated;

"District Court"

(3) "District Court" means, in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act the marriage was solemnized, the husband and wife reside or last resided together;

"Court"

(4) "Court" means the High Court or the District Court, as the case may be;

"Minor Children"

(5) "minor children" means, in the case of sons of native fathers, boys, who have not completed the age of sixteen years, and, in the case of daughters of native fathers, girls who have not completed the age of thirteen years; in other cases it means unmarried children who have not completed the age of eighteen years;

"Incestuous adultery"

(6) (repealed);

"Bigamy with adultery"

(7) (repealed);

"Marriage with another woman"

(8) "marriage with another woman" means marriage of any person, being married, to any other person, during the life of the former wife, whether the second marriage shall have taken place within India or elsewhere;

"Desertion"

(9) "desertion" implies an abandonment against the wish of the person charging it; and

"Property"

(10) "property" includes in the case of a wife, any property to which she is entitled for an estate in remainder or reversion or as a trustee, executrix or administrator; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administrator.

4. Matrimonial jurisdiction of High Courts to be exercised subject to Act – Exception

The jurisdiction now exercised by the High Courts in respect of divorce a mensa et toro, and in all other causes, suits and matters matrimonial, shall be exercised by such court, and by the District Courts subject to the provisions in this Act contained, and not otherwise: except so far as relates to the granting of marriage-licenses, which may be granted as if this Act had not been passed.

5. Enforcement of decrees or orders made heretofore by Supreme Court or High Court

Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras or Bombay sitting on the ecclesiastical side, or of any of the said High Courts sitting in the exercise of their matrimonial jurisdiction, respectively, in any cause or matter matrimonial, may be enforced and dealt with

by the said High Courts, respectively, as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Court so enforcing or dealing with the same.

6. Pending suits

All suits and proceedings in causes and matters matrimonial, which when this Act comes into operation are pending in any High Court, shall be dealt with and decided by such court, so far as may be, as if they had been originally instituted therein under this Act.

7. Court to act on principles of English Divorce Court

(repealed)

8. Extraordinary jurisdiction of High Court

The High Court may, whenever it thinks fit, remove and try and determine as a court of original jurisdiction any suit or proceeding instituted under this Act in the court of any District Judge within the limits of its jurisdiction under this Act.

Power to transfer suits: The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the court of any other such District Judge.

9. Reference to High Court

When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon, the court may, either of its own motion or on the application of any of the parties, draw up a statement of the case and refer it, with the court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference, and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

10. Grounds for dissolution of marriage

(1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the District Court either by the husband or the wife, be dissolve on the ground that since the solemnization of the marriage, the respondent-

(i) has committed adultery; or

(ii) has ceased to be Christian by conversion to another religion; or

(iii) has been incurably of unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(iv) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy; or

(v) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form; or

(vi) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive; or

(vii) has wilfully refused to consummate the marriage and the marriage has not therefore been consummated; or

(viii) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent; or

(ix) has deserted the petitioner for at least two years immediately preceding the presentation of the petition; or

(x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

(2) A wife may also present a petition for the dissolution of her marriage on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.

10A. Dissolution of marriage by mutual consent

(1) Subject to the provisions of this Act and the rules made thereunder, a petition for dissolution of marriage may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Indian Divorce (Amendment) Act, 2001, on the ground that they have been living separately for a period of two years or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn by both the parties in the meantime, the Court shall, on being satisfied, after hearing the parties and making such inquiry, as it thinks fit, that a marriage has been solemnized and that the averments in the petition are

true, pass a decree declaring the marriage to be dissolved with effect from the date of decree.

11. Adulterer or adulteress to be co-respondent

On a petition for dissolution of marriage presented by a husband or wife on the ground of adultery, the petitioner shall make the alleged adulterer or adulteress a co-respondent, unless the petitioner is excused by the Court from so doing on any of the following grounds, namely:

(a) that the wife, being the respondent is leading the life of a prostitute or the husband, being respondent is leading an immoral life and that the petitioner knows of no person with whom the adultery has been committed;

(b) that the name of the alleged adulterer or adulteress is unknown to the petitioner although the petitioner has made due efforts to discover it;

(c) that the alleged adulterer or adulteress is dead.

12. Court to be satisfied of absence of collusion

Upon any such petition for the dissolution of a marriage, the court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also enquire into any countercharge which may be made against the petitioner.

13. Dismissal of petition

In case the court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed, or find that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents, then, and in any of the said cases the court shall dismiss the petition.

14. Power to court to pronounce decree for dissolving marriage

In case the court is satisfied on the evidence that the case of the petitioner has been proved, and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

the court shall pronounce a decree declaring such marriage to be dissolved:

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery, or if the petitioner has, in the opinion of the court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

Condonation: No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

15. Relief in case of opposition on certain grounds

In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty, or desertion, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty or desertion, the court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such adultery, cruelty or desertion.

16. Decrees for dissolution to be nisi

Every decree for dissolution of marriage made by a High Court shall, in the first instance, be a decree nisi, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court, by general or special order from time to time, directs.

Collusion: During that period any person shall be at liberty, in such manner as the High Court by general or special order from time to time direct, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the court.

On cause being so shown, the court shall deal with the case by making the decree absolute, or by reversing the decree nisi, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the costs of counsel and witnesses and otherwise arising from such cause being shown, to be paid by the parties or such

one or more of them as it thinks fit, including a wife if she has separate property.

Whenever a decree nisi has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

17. Power of High Court to remove certain suits

During the progress of the suit in the Court of the District Judge, any person suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the Court shall thereupon, if it thinks fit, remove such suit and try and determine the same as a court of original jurisdiction, and the provisions contained in section 16 shall apply to every suit so removed; or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary, to enable him to make a decree in accordance with the justice of the case.

IV. Nullity of Marriage

18. Petition for decree of nullity

Any husband or wife may present a petition to the District Court praying that his or her marriage may be declared null and void.

19. Grounds of decree

Such decree may be made on any of the following grounds,-

(1) that the respondent was important at the time of the marriage and at the time of the institution of the suit;

(2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;

(3) that either party was a lunatic or idiot at the time of the marriage;

(4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the District Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

20. Confirmation of District Judge's decree

(repealed)

21. Children of annulled marriage

Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

V. Judicial Separation

22. Bar to decree for divorce a mensa et toro but judicial separation obtainable by husband or wife

No decree shall hereafter be made for a divorce a mensa et toro, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion for two years or upwards, and such decree shall have the effect of a divorce a mensa et toro under the existing law, and such other legal effect as hereinafter mentioned.

23. Application for separation made by petition

Application for judicial separation on any one of the grounds aforesaid, may be made by either husband or wife by petition to the District Court; and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

24. Separated wife deemed spinster with respect to after-acquired property

In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in a case she dies intestate, go as the same would have gone if her husband had been then dead:

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

25. Separated wife deemed spinster for purposes of contract and suing

In every case of a judicial separation under this Act, the wife shall whilst so separated, be considered as an unmarried woman for the purpose of contract, and wrongs and injuries, and suing and being sued in any civil proceedings; and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted or incurred by her during the separation:

Provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use:

Provided also that nothing shall prevent the wife from joining at any time during such separation, in the exercise of any joint power given to herself and her husband.

26. Decree of separation obtained during absence of husband or wife may be reversed

Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at anytime thereafter, present a petition to the court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

The court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof.

VI. Protection-Orders

27. Deserted wife may apply to court for protection

Any wife to whom section 4 of the Indian Succession Act, 1865, (10 of 1865) does not apply, may, when deserted by her husband, present a petition to the District Court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

28. Court may grant protection order

The court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earning and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

29. Discharge or variation of orders

The husband or any creditor of, or person claiming under him, may apply to the court by which such order was made for the discharge or variation thereof, and the court, if the desertion has ceased, or if for any other reason it thinks fit so to do, may discharge or vary the order accordingly.

30. Liability of husband seizing wife's property after notice of order

If the husband, or any creditor of, or person claiming under the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

31. Wife’s legal position during continuance of order

So long as any such order of protection remains in force the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act, if she obtained a decree of judicial separation.

VII. Restitution of Conjugal Rights

32. Petition for restitution of conjugal rights

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either wife, or husband may apply by petition to the District Court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

33. Answer to petition

Nothing shall be pleaded in answer to a petition for restitution of conjugal rights, which would not be ground for a suit for judicial separation or for a decree for nullity of marriage.

VIII. Damages and Costs

34. Husband may claim damages from adulterer

(repealed)

35. Power to order adulterer to pay costs

(repealed)

IX. Alimony

36. Alimony pendente lite

In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband; and the court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:

37. Power to order permanent alimony

Where a decree of dissolution of the marriage or a decree of judicial separation is obtained by the wife, the District Court may order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties.

Power to order monthly or weekly payments: In every such case the court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part as to the court seems fit.

38. Court may direct payment of alimony to wife or to her trustee

In all cases in which the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the court, and may impose any terms or

restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the court expedient so to do.

X. Settlements

39. Power to order settlement of wife's property for benefit of husband and children

(repealed)

40. Inquiry into existence of ante-nuptial or post-nuptial settlements

The District Court may, before passing a decree for dissolution of the marriage or a decree of nullity of marriage, inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or the children (if any) of the marriage, or of both children and parents, as to the court seems fit:

Provided that the court shall not make any order for the benefit of the parents or either of them at the expense of the children.

XI. Custody of Children

41. Power to make orders as to custody of children in suits for separation

In any suit for obtaining a judicial separation the court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the said court.

42. Power to make such orders after decree

The court, after a decree of judicial separation, may upon application (by petition) for this purpose make, from time to time, all such orders and provisions, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending.

43. Power to make orders as to custody of children in suits for dissolution or nullity

In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in a District Court, the Court may from time to time before making its decree, make such interim orders as it may deem proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the suit, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the court.

44. Power to make such orders after decree or confirmation

Where a decree of dissolution or nullity of marriage has been passed, the District Court may, upon application by petition for the purpose, make from time to time all such orders and provisions, with respect to the custody, maintenance and education of the minor children, and the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said court, as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

XII. Procedure

45. Code of Civil Procedure to apply

Subject to the provisions herein contained all proceedings under this Act between the party and party shall be regulated by the Code of Civil Procedure, 1908 (5 of 1908).

46. Forms of petitions and statements

The forms set forth in the Schedule to this Act, with such variation as the circumstances of each case require, maybe used for the respective purposes mentioned in such Schedule.

47. Stamp on petition-Petition to state absence of collusion

Every petition under this Act for a decree of dissolution of marriage, or of nullity of marriage, or of judicial separation shall state that there is not any collusion or connivance between the petitioner and the other party to the marriage.

Statements to be verified: The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

48. Suits on behalf of lunatics

When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody.

49. Suits by minors

Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Such undertaking shall be filed in court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

50. Service of petition

Every petition under this Act shall be served on the party to be affected thereby, either within or without India, in such manner as the High Court by general or special order from time to time directs:

Provided that the court may dispense with such service altogether in case it seems necessary or expedient so to do.

51. Mode of taking evidence

The witnesses in all proceedings before the court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witness:

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the court, be subject to be cross-examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

52. Competence of husband and wife to give evidence as to cruelty or desertion

On any petition presented by a husband or a wife, praying that his or her marriage may be dissolved by reason of his wife or her husband, as the case may be, having been guilty of adultery, cruelty or desertion, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

53. Power to close doors

The whole or any part of any proceeding under this Act may be heard, if the court thinks fit, with closed doors.

54. Power to adjourn

The court may, from time to time, adjourn the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do.

55. Enforcement of, and appeal from, orders and decrees

All decrees and orders made by the court in any suit or proceeding under this Act shall be enforced and may be appealed from, in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the laws, rules and orders for the time being in force:

No appeals as to costs – provided that there shall be no appeal on the subject of costs only.

56. Appeal to the Supreme Court

Any person may appeal to the Supreme Court from any decree (other than a decree nisi) or order under this Act of a High Court made on appeal or otherwise,

and from any decree (other than a decree nisi) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court,

when the High Court declares that the case is a fit one for appeal to the Supreme Court.

XIII. Re-Marriage

57. Liberty to parties to marry again

Where a decree for dissolution or nullity of marriage has been passed and either the time for appeal has expired without an appeal having been presented to any court including the Supreme Court or an appeal has been presented but has been dismissed and the decree or dismissal has become final, it shall be lawful for either party to the marriage to marry again.

58. English clergyman not compelled to solemnize marriages of persons divorced for adultery

No clergyman in Holy Orders of the Church of England shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit,

penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

59. English Minister refusing to perform ceremony to permit use of his Church

When any minister of any Church or Chapel of the said Church refuses to perform such marriage-service between any person who but for such refusal would be entitled to have the same service performed in such Church or Chapel, such minister shall permit any other minister in Holy Orders of the said Church, entitled to officiate within the diocese in which such Church or Chapel is situate, to perform such marriage service in such Church or Chapel.

XIV. Miscellaneous

60. Decree for separation or protection-order valid as to persons dealing with wife before reversal

Every decree for judicial separation or order to protect property, obtained by a wife under this Act, shall, until reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife.

No reversal, discharge or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order, and of the reversal, discharge or variation thereof.

Indemnity of persons making payment to wife without notice of reversal or decree or protection-order. All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued, unless, at the time of payment, transfer or other act, such persons had notice of the reversal, discharge or variation of the decree or order or of the cessation or discontinuance of the separation.

61. Bar of suit for criminal conversation

After this Act comes into operation, no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife.

62. Power to make rules

The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same:

Provided that such rules, alterations and additions are consistent with the provisions of this Act and the Code of Civil Procedure, 1908 (5 of 1908).

All such rules, alterations and additions shall be published in the Official Gazette.

14. The Muslim Women (Protection of Rights on Divorce) Act, 1986

[Act No. 25 of Year 1986, dated 19th May, 1986]

An Act to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Thirty-seventh year of the Republic of India as follows:

1. Short title and extent

(1) This Act may be called the Muslim Women (Protection of Rights on Divorce) Act, 1986.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions

In this Act, unless the context otherwise requires,-

(a) "divorced woman" means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim law;

(b) "iddat period" means, in the case of a divorced woman,-

(i) three menstrual courses after the date of divorce, if she is subject to menstruation;

(ii) three lunar months after her divorce, if she is not subject to menstruation; and

(iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;

(c) "Magistrate" means a Magistrate of the First class exercising jurisdiction under the Code of Criminal Procedure, 1973 in the area where the divorced woman resides;

(d) "prescribed" means prescribed by rules made under this Act.

3. Mahr or other properties of Muslim woman to be given to her at the time of divorce

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to-

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according of Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorized by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that-

(a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her,

make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or,

as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973, and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defense and the said sentence being imposed according to the provisions of the said Code.

4. Order for payment of maintenance

(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the iddat period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by

such other relatives under the second proviso to sub-section (1), the Magistrate may, by order, direct the State Wakf Board established under section 9 of the Wakf Act, 1954, or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

5. Option to be governed by the provisions of sections 125 to 128 of Act 2 of 1974

If on the date of the first hearing of the application under sub-section (2) of section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of sections 125 to 128 of the Code of Criminal Procedure, 1973, and file such affidavit or declaration in the court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation: For the purposes of this section, "date of the first hearing of the application" means the date fixed in the summons for the attendance of the respondent to the application.

6. Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules or carrying out the purposes of this Act.

(2) In particular and without prejudice to the foregoing power, such rules may provide for-

(a) the form of the affidavit or other declaration in writing to be filed under section 5;

(b) the procedure to be followed by the Magistrate in disposing of applications under this Act, including the serving of notices to the parties to such applications, dates of hearing of such applications and other matters;

(c) any other matter which is required to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

7. Transitional provisions

Every application by a divorced woman under section 125 or under section 127 of the Code of Criminal Procedure, 1973 pending before a Magistrate on the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of section 5 of this Act, be dispose of by such Magistrate in accordance with the provisions of this Act.

15. Births, Deaths and Marriages Registration Act, 1886

[Act No. 6 of Year 1886, dated 8th March, 1886]

Chapter III: Registration of Births and Deaths

11. Persons whose births and deaths are registrable

(1) The person whose births and deaths shall, in the first instance, be registrable under this Chapter are the following, namely:-

(a) In the territories to which this Act extends the members of every race, sect or tribe to which the Indian Succession Act, 1865 (10 of 1865) applies, and in respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion;

(2) But the State Government, by notification in the Official Gazette, may extend the operation of this Chapter to any other class of persons either generally or in any local area.

16. Hindu Adoptions and Maintenance Act, 1956

[Act No. 78 of Year 1956, dated 21st December, 1956]

An Act to amend and codify the law relating to adoptions and maintenance among Hindus.

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:

Chapter I: Preliminary

1. Short title and extent

(1) This Act may be called the Hindu Adoptions and Maintenance Act, 1956.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Application of Act

(1) This Act applies-

(a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of the law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation: The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;

(bb) any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh; and

(c) any person who is convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(2A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to Renoncants of the Union Territory of Pondicherry.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

3. Definitions

In this Act, unless the context otherwise requires,-

(a) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the

force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy:

Provided further that, in the case of a rule applicable only to a family, it has not been discontinued by the family;

(b) "maintenance" includes-

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incidents to her marriage;

(c) "minor" means a person who has not completed his or her age of eighteen years.

4. Overriding effect of Act

Save as otherwise expressly provided in this Act,-

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act.

Chapter II: Adoption

5. Adoptions to be regulated by this Chapter

(1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.

(2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

6. Requisites of a valid adoption

No adoption shall be valid unless-

(i) the person adopting has the capacity, and also the right, to take in adoption;

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption; and

(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

7. Capacity of a male Hindu to take in adoption

Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Explanation: If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.

8. Capacity of a female Hindu to take in adoption

Any female Hindu-

(a) who is of sound mind,

(b) who is not a minor, and

(c) who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind,

has the capacity to take a son or daughter in adoption.

9. Persons capable of giving in adoption

(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (3) and sub-section (4), the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

(3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation: For the purposes of this section-

(i) the expression "father" and "mother" do not include an adoptive father and an adoptive mother;

(ia) "guardian" means a person having the care of the person of a child or of both his person and property and includes-

(a) a guardian appointed by the will of the child's father or mother; and

(b) a guardian appointed or declared by a court; and

(ii) "court" means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

10. Persons who may be adopted

No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely,-

(i) he or she is Hindu;

(ii) he or she has not already been adopted;

(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;

(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

11. Other conditions for a valid adoption

In every adoption, the following conditions must be complied with:

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son

(whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption:

Provided that the performance of datta homam shall not be essential to the validity of adoption.

12. Effects of adoption

An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that-

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

13. Right of adoptive parents to dispose of their properties

Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer inter vivos or by will.

14. Determination of adoptive mother in certain cases

(1) Where a Hindu who has a wife living adopts a child, she shall be deemed to be the adoptive mother.

(2) Where an adoption has been made with the consent of more than one wife, the senior-most in marriage among them shall be deemed to be the adoptive mother and the others to be step-mothers.

(3) Where a widower or a bachelor adopts a child, any wife whom he subsequently marries shall be deemed to be the step-mother of the adopted child.

(4) Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child.

15. Valid adoption not to be cancelled

No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.

16. Presumption as to registered documents relating to adoption

Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

17. Prohibition of certain payments

(1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited by this section.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(3) No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorized by the State Government in this behalf.

Chapter III: Maintenance

18. Maintenance of wife

(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance-

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

19. Maintenance of widowed daughter-in-law

(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law:

Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance-

(a) from the estate of her husband or her father or mother, or

(b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law.

20. Maintenance of children and aged parents

(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends insofar as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Explanation: In this section "parent" includes a childless step-mother.

21. Dependants defined

For the purposes of this Chapter "dependants" means the following relatives of the deceased:

(i) his or her father;

(ii) his or her mother;

(iii) his widow, so long as she does not re-marry;

(iv) his or her son or the son of his predeceased son or the son of predeceased son of his predeceased son, so long as he is a minor:

Provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great grand-son, from the estate of his father or mother or father's father or father's mother;

(v) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried:

Provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father's or mother's estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father's mother;

(vi) his widowed daughter:

Provided and to the extent that she is unable to obtain maintenance-

(a) from the estate of her husband, or

(b) from her son or daughter if any, or his or her estate; or

(c) from her father-in-law or his father or the estate of either of them;

(vii) any widow of his son or of a son of his predeceased son, so long as she does not remarry:

Provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate

(viii) his or her minor illegitimate son, so long as he remains a minor;

(ix) his or her illegitimate daughter, so long as she remains unmarried.

22. Maintenance of dependants

(1) Subject to the provisions of sub-section (2) the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

23. Amount of maintenance

(1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so the court shall have due regard to the considerations set out in sub-section (2), or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to-

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately, whether the claimant is justified in doing so;

(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;

(e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to-

(a) the net value of the estate of the deceased after providing for the payment of his debts;

(b) the provision, if any, made under a will of the deceased in respect of the dependant;

(c) the degree of relationship between the two;

(d) the reasonable wants of the dependant;

(e) the past relations between the dependant and the deceased;

(f) the value of the property of the dependant and any income derived from such property; or from his or her earnings or from any other source;

(g) the number of dependants entitled to maintenance under this Act.

24. Claimant to maintenance should be a Hindu

No person shall be entitled to claim maintenance under this Chapter if he or she has ceased to be a Hindu by conversion to another religion.

25. Amount of maintenance may be altered on change of circumstances

The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.

26. Debts to have priority

Subject to the provisions contained in section 27 debts of every description contracted or payable by the deceased shall have priority over the claims of his dependants for maintenance under this Act.

27. Maintenance when to be a charge

A dependant's claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

28. Effect of transfer of property on right to maintenance

Where a dependant has a right to receive maintenance out of an estate, and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right or if the transfer is gratuitous; but not against the transferee for consideration and without notice of the right.

Chapter IV: Repeal and Saving

29. (Rep. by the Repealing and Amending Act, 1960)

30. Saving

Nothing contained in this Act shall affect any adoption made before the commencement of this Act, and the validity and effect of any such adoption shall be determined as if this Act had not been passed.

17. Hindu Minority and Guardianship Act, 1956

[Act No. 32 of Year 1956, dated 25th August, 1956]

An Act to amend and codify certain parts of the law relating to minority and guardianship among Hindus.

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:

l. Short title and extent

(1) This Act may be called the Hindu Minority and Guardianship Act, 1956.

(2) It extends to the whole of India except the State of Jammu and Kashmir and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

2. Act to be supplemental to Act VIII of 1890

The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardians and Wards Act, 1890.

3. Application of Act

(1) This Act applies,-

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation: The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:-

(i) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(ii) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and

(iii) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

4. Definitions

In this Act-

(a) "minor" means a person who has not completed the age of eighteen years;

(b) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property and includes -

(i) a natural guardian,

(ii) a guardian appointed by the will of the minor’s father or mother,

(iii) a guardian appointed or declared by a court, and

(iv) a person empowered to act as such by or under any enactment relating to any Court of Wards;

(c) "natural guardian" means any of the guardians mentioned in section 6.

5 Overriding effect of Act

Save as otherwise expressly provided in this Act-

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect insofar as it is inconsistent with any of the provisions contained in this Act.

6. Natural guardians of a Hindu minor

The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-

(a) in the case of a boy or an unmarried girl: the father, and after him, the mother, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl: the mother, and after her, the father;

(c) in the case of a married girl: the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation: In this section, the expression "father" and "mother" do not include step-father and a step-mother.

7. Natural guardianship of adopted son

The natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother.

8. Powers of natural guardian

(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court-

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890, shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular-

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section, "court" means the City Civil Court or a District Court or a court empowered under section 4A of the Guardians and Wards Act, 1890, within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

9. Testamentary guardians and their powers

(1) A Hindu father entitled to act as the natural guardian of his minor legitimate children may, by will, appoint a guardian for any of them in respect of the minor’s person or in respect of the minor’s property (other than the undivided interest referred to in section 12) or in respect of both.

(2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian.

(3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children and Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor’s person or in respect of the minor’s property (other than the undivided interest referred to in section 12) or in respect of both.

(4) A Hindu mother entitled to act as the natural guardian of her minor illegitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property or in respect of both.

(5) The guardian so appointed by will has the right to act as minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.

(6)The right of the guardian so appointed by will shall, where the minor is a girl, cease on her marriage.

10. Incapacity of minor to act as guardian of property

A minor shall be incompetent to act as guardian of the property of any minor.

11. De facto guardian not to deal with minor's property

After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor.

12. Guardian not to be appointed for minor's undivided interest in joint family property

Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest:

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

13. Welfare of minor to be paramount consideration

(1) In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

18. The Majority Act, 1875

[Act No. 9 of Year 1875, dated 2nd March, 1875]

An Act to amend the law respecting the age of majority.

Whereas, in the case of persons domiciled in India it is expedient to specify the age of majority;

It is hereby enacted as follows:

1. Short title

This Act may be called the Majority Act, 1875.

It extends to the whole of India except the State of Jammu and Kashmir;

and it shall come into force and have effect only on the expiration of three months from the passing thereof.

2. Saving

Nothing herein contained shall affect-

(a) the capacity of any persons to act in the following matters (namely): marriage, dower, divorce and adoption;

(b) the religion or religious rites and usages of any class of citizens of India; or

(c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

3. Age of majority of persons domiciled in India

(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.

19. Hindu Succession Act, 1956

[Act No. 30 of Year 1956, dated 17th June, 1956]

An Act to amend and codify the law relating to intestate succession among Hindus.

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:

Chapter I: Preliminary

1. Short title and extent

(1) This Act may be called the Hindu Succession Act, 1956.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Application of Act

(1) This Act applies-

(a) to any person, who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;

(b) to any person who is Buddhist, Jaina or Sikh by religion; and

(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation: The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:-

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;

(c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

3. Definitions and interpretations

(1) In this Act, unless the context otherwise requires-

"agnate" – one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through males;

(b) "Aliyasantana law" means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras Aliyasantana Act, 1949, or by the customary Aliyasantana law with respect to the matters for which provision is made in this Act;

(c) "cognate" – one person is said to be a cognate of another if the two are related by blood or adoption but not wholly through males;

(d) the expressions "custom" and "usage" signify any rule which having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy:

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

(e) "full blood", "half blood" and "uterine blood"-

(i) two persons said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives;

(ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation: In this clause "ancestor" includes the father and "ancestress" the mother,

(f) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;

(g) "intestate" – a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect;

(h) "marumakkattayam law" means the system of law applicable to persons-

(a) who, if this Act had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932; the Travancore Nayar Act; the Tra-

vancore Ezhava Act; the Travancore Nanjinad Vellala Act; the Travancore Kshatriya Act; the Travancore Krishnanvaka Marumakkathayyee Act; the Cochin Marumakkathayam Act; or the Cochin Nayar Act with respect to the matters for which provision is made in this Act; or

(b) who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras as it existed immediately before the lst November, 1956, and who, if this Act had not been passed, would have been governed with respect to the matters for which provision is made in this Act by any system of inheritance in which descent is traced through the female line;

but does not include the Aliyasantana law;

(i) "Nambudri law" means the system of law applicable to persons who if this Act had not been passed, would have been governed by the Madras Nambudri Act, 1932; the Cochin Nambudri Act; or the Travancore Malayala Brahmin Act with respect to the matters for which provision is made in this Act;

(j) "related" means related by legitimate kinship:

Provided that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be construed accordingly.

(2) In this Act, unless the context otherwise requires, words imparting the masculine gender shall not be taken to include females.

4. Overriding effect of Act

(1) Save as otherwise expressly provided in this Act,-

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

Chapter II: Intestate Succession

General

5. Act not to apply to certain properties

This Act shall not apply to-

(i) any property succession to which is regulated by the Indian Succession Act, 1925, by reason of the provisions contained in section 21 of the Special Marriage Act, 1954;

(ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;

(iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin.

6. Devolution of interest of coparcenary property

When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation I: For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2: Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.

7. Devolution of interest in the property of a tarwad, tavazhi, kutumba, kavaru or illom

(1) When a Hindu to whom the marumakkattayam or nambudri law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property

of a tarwad, tavazhi or illom, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the marumakkattayam or numbudri law.

Explanation: For the purposes of this sub-section, the interest of a Hindu in the property of a tarwad, tavazhi or illom shall be deemed to be the share in the property of the tarwad, tavazhi or illom, as the case may be, that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of tarwad, tavazhi or illom, as the case may be, then living, whether he or she was entitled to claim such partition or not under the marumakkattayam or nambudri law applicable to him or her, and such share shall be deemed to have been allotted to him or her absolutely.

(2) When a Hindu to whom the aliyasantana law would have applied if this Act had not been passed, dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a kutumba or kavaru, as the case may be his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the aliyasantana law.

Explanation: For the purposes of this sub-section, the interest of a Hindu in the property of kutumba or kavaru shall be deemed to be the share in the property of the kutumba or kavaru as the case may be, that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of the kutumba or kavaru, as the case may be, then living, whether he or she was entitled to claim such partition or not under the aliyasantana law, and such share shall be deemed to have been allotted to him or her absolutely.

(3) Notwithstanding anything contained in sub-section (1), when a sthanamdar dies after the commencement of this Act, sthanam property held by him shall devolve upon the members of the family to which the sthanamdar belonged and the heirs of the sthanamdar as if the sthanam property had been divided per capita immediately before the death of the sthanamdar among himself and all the members of his family then living, and the shares falling to the members of his family and the heirs of the sthanamdar shall be held by them as their separate property.

Explanation: For the purposes of this sub-section, the family of a sthanamdar shall include every branch of that family, whether divided or undivided, the male members of which would have been entitled by any custom or usage to succeed to the position of sthanamdar if this Act had not been passed.

8. General rules of succession in the case of males

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

9. Order of succession among heirs in the Schedule

Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

10. Distribution of property among heirs in class I of the Schedule

The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:

Rule 1-The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2-The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3-The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4-The distribution of the share referred to in Rule 3-

(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his predeceased sons gets the same portion;

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

11. Distribution of property among heirs in class II of the Schedule

The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally.

12. Order of succession among agnates and cognates

The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:

Rule 1: Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2: Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3: Where neither heirs is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously.

13. Computation of degrees

(1) For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.

14. Property of a female Hindu to be her absolute property

(1) Any property possessed by a Female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation: In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

15. General rules of succession in the case of female Hindus

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16:

(a) firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1)-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

16. Order of succession and manner of distribution among heirs of a female Hindu

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place, according to the following rules, namely:-

Rule 1: Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2: If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3: The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

17. Special provisions respecting persons governed by Marumakkattayam and Aliyasantana laws

The provisions of sections 8, 10, 15 and 23 shall have effect in relation to persons who would have been governed by the marumakkattayam law or aliyasantana law if this Act had not been passed as if-

(i) for sub-clauses (c) and (d) of section 8, the following had been substituted, namely:-

(c) thirdly, if there is no heir of any of the two classes, then upon his relatives, whether agnates or cognates;

(ii) for clauses (a) to (e) of sub-section (1) of section 15, the following had been substituted, namely:-

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the mother;

(b) secondly, upon the father and the husband;

(c) thirdly, upon the heirs of the mother;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the husband.";

(iii) clause (a) of sub-section (2) of section 15 had been omitted;

(iv) section 23 had been omitted.

General Provisions Relating to Succession

18. Full blood preferred to half blood

Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

19. Mode of succession of two or more heirs

If two or more heirs succeed together to the property of an intestate, they shall take the property-

(a) save as otherwise expressly provided in this Act, per capita and not per stripes; and

(b) as tenants-in-common and not as joint tenants.

20. Right of child in womb

A child who was in the womb at the time of death of an intestate and who is subsequently born alive has the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

21. Presumption in cases of simultaneous deaths

Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

22. Preferential right to acquire property in certain cases

(1) Where, after the commencement of this Act, interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolve upon to two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation: In this section, "court" means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

23. Special provision respecting dwelling houses

Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein:

Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.

24. Certain widows remarrying may not inherit as widows

Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has re-married.

25. Murderer disqualified

A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any

other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

26. Convert's descendants disqualified

Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

27. Succession when heir disqualified

If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

28. Disease, defect, etc. not to disqualify

No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever.

Escheat

29. Failure of heirs

If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the government; and the government shall take the property subject to all the obligations and liabilities to which an heir would have been subjected.

Chapter III: Testamentary Succession

30. Testamentary succession

Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925, or any other law for the time being in force and applicable to Hindus.

Explanation: The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section.

Chapter IV: Repeal

31. Repeal

Rep. by Repealing and Amending Act, 1960 (58 of 1960).

The Schedule

Heirs in Class I And Class II

Class I

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son.

Class II

I. Father.

II. (1) Son’s daughter’s son, (2) son’s daughter’s daughter, (3) brother, (4) sister.

III. (1) Daughter’s son’s son, (2) daughter’s son’s daughter, (3) daughter’s daughter’s son, (4) daughter’s daughter’s daughter.

IV. (1) Brother’s son, (2) sister’s son, (3) brother’s daughter, (4) sister’s daughter.

V. Father’s father; father’s mother.

VI.. Father’s widow; brother’s widow.

VII. Father’s brother; father’s sister.

VIII. Mother’s father; mother’s mother.

IX. Mother’s brother; mother’s sister.

Explanation: In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

20. The Hindu Inheritance (Removal of Disabilities) Act, 1928

[Act No. 12 of Year 1928, dated 20th September, 1928]

Act Objective: An Act to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts.

Whereas it is expedient to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts;

It is hereby enacted as follows:

1. Short title, extent and application

(1) This Act may be called the Hindu Inheritance (Removal of Disabilities) Act, 1928.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall not apply to any person governed by the Dayabhaga School of Hindu Law.

2. Persons not to be excluded from inheritance or rights in joint family property

Notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by the Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from any right or share in joint family property by reason only of any disease, deformity, or physical or mental defect.

3. Saving and exception

Nothing contained in this Act shall affect any right which has accrued or any liability which has been incurred before the commencement thereof, or shall be deemed to confer upon any person any right in respect of any religious office or service or of the management of any religious or charitable trust which he would not have had if this Act had not been passed.

21. Indian Succession Act, 1925

[Act No. 39 of Year 1925, dated 30th September, 1925]

An Act to consolidate the law applicable to intestate and testamentary succession.

Whereas it is expedient to consolidate the law applicable to intestate and testamentary succession;

It is hereby enacted as follows:

Part I: Preliminary

2. Definitions

In this Act, unless there is anything repugnant in the subject or context,-

(…)

(d) "Indian Christian" means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion;

(…)

3. Power of State Government to exempt any race, sect or tribe in the State from operation of Act

(1) The State Government may, by notification in the Official Gazette, either retrospectively from the sixteenth day of March, 1865, or prospectively, exempt from the operation of any of the following provisions of this Act, namely, sections 5 to 49, 58 to 191, 212, 213 and 215 to 369, the members of any race, sect or tribe in the State, or of any part of such race, sect or tribe to whom the State Government considers it impossible or inexpedient to apply such provisions or any of them mentioned in the order.

(2) The State Government may, by a like notification, revoke any such order, but not so that the revocation shall have retrospective effect.

(3) Persons exempted under this section or exempted from the operation of any of the provisions of the Indian Succession Act, 1865 (10 of 1865), under section 332 of that Act are in this Act referred to as "exempted persons".

Part II: Of Domicile

4. Application of Part

This Part shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jain.

5. Law regulating succession to deceased person's immovable and movable property, respectively

(1) Succession to the immovable property in India, of a person deceased shall be regulated by the law of India, wherever such person may have had his domicile at the time of his death.

(2) Succession to the movable property of a person deceased is regulated by the law of the country in which such person had his domicile at the time of his death.

Part III: Marriage

20. Interests and powers not acquired nor lost by marriage

(1) No person shall, by marriage, acquire any interest in the property of the person whom he or she marries or become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.

(2) This section-

(a) shall not apply to any marriage contracted before the first day of January, 1866;

(b) shall not apply, and shall be deemed never to have applied, to any marriage, one or both of the parties which professed at the time of the marriage the Hindu, Muhammadan, Buddhist, Sikh or Jain religion.

22. Settlement of minor's property in contemplation of marriage

(1) The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the approbation of the minor's father, or, if the father is dead or absent from India with the approbation of the High Court.

(2) Nothing in this section or in section 21 shall apply to any will made or intestacy occurring before the first day of January, 1866, or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jain.

Part IV: Of Consanguinity

23. Application of Part

Nothing in this Part shall apply to any will made or intestacy occurring before the first day of January, 1866, or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh, Jain or Parsi.

Part V: Intestate Succession

Chapter I: Preliminary

29. Application of Part

(1) This Part shall not apply to any intestacy occurring before the first day of January, 1866, or the property of any Hindu, Muhammadan, Buddhist, Sikh or Jain.

(2) Save as provided in sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of India in all cases of intestacy.

30. As to what property deceased considered to have died intestate

A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Chapter II: Rules in Cases of Intestates other than Parsis

31. Chapter not to apply to Parsis

Nothing in this Chapter shall apply to Parsis.

32. Devolution of such property

The property of an intestate devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules hereinafter contained in this Chapter.

Explanation: A widow is not entitled to the provision hereby made for her if, by a valid contract made before her marriage, she has been excluded from her distributive share of her husband's estate.

Chapter III: Special Rules for Parsi Intestates

50. General principles relating to intestate succession

For the purpose of intestate succession among Parsis-

(a) there is no distinction between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive;

(b) a lineal descendant of an intestate who has died in the lifetime of the intestate without leaving a widow or widower of any lineal descendant or a widow or widower of any lineal descendant shall not be taken into account in determining the manner in which the property of which the intestate has died intestate shall be divided; and

(c) where a widow or widower of any relative of an intestate has married again in the lifetime of the intestate such widow or widower shall not be entitled to receive any share of the property of which the intestate has died intestate, and such widow or widower shall be deemed not to be existing at the intestate's death.

Part VI: Testamentary Succession

Chapter I: Introductory

57. Application of certain provisions of Part to a class of wills made by Hindus, etc.

The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply-

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jain on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits so far as relates to immovable property situate within those territories or limits; and

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jain on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):

Provided that marriage shall not revoke any such will or codicil.

58. General application of Part

(1) The provisions of this Part shall not apply to testamentary succession to the property of any Muhammadan nor, save as provided by section 57, to testamentary succession to the property of any Hindu, Buddhist, Sikh or Jain; nor shall they apply to any will made before the first day of January, 1866.

(2) Save as provided in sub-section (1) or by any other law for the time being in force the provisions of this Part shall constitute the law of India applicable to all cases of testamentary succession.

Part VIII: Representative Title to Property of Deceased on Succession

211. Character and property of executor or administrator as such

(1) The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh, Jain or Parsi or an exempted person, nothing herein contained shall vest in an executor or administrator any property of the deceased person which would otherwise have passed by survivorship to some other person.

212. Right to intestate's property

(1) No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

(2) This section shall not apply in the case of intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jain, Indian Christian or Parsi.

213. Right as executor or legatee when established

(1) No right as executor or legatee can be established in any Court of Justice, unless a court of competent jurisdiction in India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans, and shall only apply-

(i) in the case of wills made by any Hindu, Buddhist, Sikh or Jain where such wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such

wills are made within the local limits of the ordinary original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, insofar as they relate to immovable property situated within those limits.

Part IX: Probate, Letters of Administration and Administration of Assets of Deceased

Chapter I: Of Grant of Probate and Letters of Administration

218. To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jain or exempted person

(1) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jain or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

(2) When several such persons apply for such administration, it shall be in the discretion of the court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased.

219. Where deceased is not a Hindu, Muhammadan, Buddhist, Sikh, Jain or exempted person

If the deceased has died intestate and was not a person belonging to any of the classes referred to in section 218, those who are connected with him, either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated, namely:-

(a) If the deceased has left a widow, administration shall be granted to the widow, unless the court sees cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Chapter IV: Of the Practice in Granting and Revoking Probates and Letters of Administration

269. When and how District Judge to interfere for protection of property

(1) Until probate is granted of the will of a deceased person, or an administrator of his estate is constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situate, is authorized and required to interfere for the protection of such property at the instance

of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he thinks fit, to appoint an officer to take and keep possession of the property.

(2) This section shall not apply when the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jain or an exempted person, nor shall it apply to any part of the property of an Indian Christian who has died intestate.

291. Administration bond

(1) Every person to whom any grant of letters of administration, other than a grant under section 241, is committed, shall give a bond to the District Judge with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge may, by general or special order, direct.

(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jain or an exempted person-

(a) the exception made by sub-section (1) in respect of a grant under section 241 shall not operate;

(b) the District Judge may demand a like bond from any person to whom probate is granted.

298. Power to refuse letters of administration

Notwithstanding anything hereinbefore contained, it shall, where the deceased was a Muhammadan, Buddhist or exempted person, or a Hindu, Sikh or Jain to whom section 57 does not apply, be in the discretion of the court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Chapter VI: Of the Powers of an Executor or Administrator

308. General powers of administration

An executor or administrator may, in addition to, and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure-

(a) on such act as may be necessary for the proper care or management of any property belonging to any estate administered by him; and

(b) with the sanction of the High Court, on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

Chapter VII: Of the Duties of an Executor or Administrator

324. Application of movable property to payment of debts where domicile not in India

(1) If the domicile of the deceased was not in India, the application of his movable property to the payment of his debts is to be regulated by the law of India.

(2) No creditor who has received payment of a part of his debt by virtue of sub-section (1) shall be entitled to share in the proceeds of the immovable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

(3) This section shall not apply where the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jain or an exempted person.

Chapter X: Of the Investment of Funds to Provide for Legacies

345. Investment of residue bequeathed for life, without direction to invest in particular securities

(1) Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in securities of the kind mentioned in section 341 shall be converted into money and invested in such securities.

(2) This section shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jain or an exempted person.

Chapter XI: Of the Produce and Interest of Legacies

353. Rate of interest

The rate of interest shall be four per cent per annum in all cases except when the testator was a Hindu, Muhammadan, Buddhist, Sikh or Jain or an exempted person in which case it shall be six per cent per annum.

Part X: Succession Certificates

370. Restriction on grant of certificates under this part

(1) A succession certificate (hereinafter in this Part referred to as certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate:

Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act.

22. The Cutchi Memons Act, 1938

[Act No. 10 of Year 1938, dated 8th April, 1938]

An Act to provide that all Cutchi Memons shall be governed in matters of succession and inheritance by the Muhammadan Law.

Whereas it is expedient that all Cutchi Memons be governed in matters of succession and inheritance by the Muhammadan Law;

It is hereby enacted as follows:

1. Short title and commencement

(1) This Act may be called the Cutchi Memons Act, 1938.

(2) It shall come into force on the 1st day of November, 1938.

2. Cutchi Memons to be governed in certain matters by Muhammadan law

Subject to the provisions of section 3, all Cutchi Memons shall, in matters of succession and inheritance, be governed by the Muhammadan Law.

3. Savings

Nothing in this Act shall affect any right or liability acquired or incurred before its commencement, or any legal proceeding or remedy in respect of any such right or liability; and any such legal proceeding or remedy may be continued or enforced as if this Act had not been passed.

4. Repeal

Repealed by the Repealing and Amending Act, 1942.

F. Strafvollzug

1. The Children Act, 1960

[Act No. 60 of 1960, dated 26th December, 1960]

An Act to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union territories.

Be it enacted by Parliament in the Eleventh Year of the Republic of India as follows:

Chapter IV: Delinquent Children

21. Orders that may be passed regarding delinquent children

(1) Where a children's court is satisfied on inquiry that a child has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the children's court may, if it so thinks fit,-

(a) allow the child to go home after advice or admonition;

(b) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person on such parent, guardian or other fit person executing a bond, with or without surety as that court may require, for the good behaviour and well-being of the child for any period not exceeding three years;

(c) make an order directing the child to be sent to a special school,-

(…)

(4) In determining the special school, or any person to whose custody a child is to be committed or entrusted under this Act, the court shall pay due regard to the religious denomination of the child to ensure that religious instruction contrary to the religious persuasion of the child is not imparted to him.

Chapter V: Procedure of Competent Authorities Generally and Appeals and Revision from Orders of such Courts

33. Circumstances to be taken into consideration in making orders under the Act

In making any order in respect of a child under this Act, a competent authority shall take into consideration the following circumstances, namely:

(…)

(d) the religious persuasion of the child:

Provided that in the case of a delinquent child, the above circumstances shall be taken into consideration after the children's court has recorded a finding against the child that he has committed the offence.

(…)

G. Religiöse Einrichtungen und Stiftungen

1. The Religious Institutions (Prevention of Misuse) Act, 1988

[Act No. 41 of Year 1988, dated 1st September, 1988]

An Act to prevent the misuse of religious institutions for political and other purposes.

Be it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:

1. Short title, extent and commencement

(1) This Act may be called the Religious Institutions (Prevention of Misuse) Act, 1988.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 26th day of May, 1988.

2. Definitions

In this Act, unless the context otherwise requires,-

(a) "ammunition" shall have the same meaning as in clause (b) of sub-section (1) of section 2 of the Arms Act, 1959;

(b) "arms" shall have the same meaning as in clause (c) of sub-section (1) of section 2 of the Arms Act, 1959;

(c) "manager", in relation to a religious institution means every person, including any religious functionary (by whatever name called), who, for the time being, either alone or in association with other persons, administers, manages or otherwise controls the affairs of that institution, its functions or properties;

(d) "political activity" includes any activity promoting or propagating the aims or objects of a political party or any cause, issue or question of a political nature by organising meetings, demonstrations, processions, collection or disbursement of funds, or by the issue of directions or decrees, or by any other means, and includes also such activity by or on behalf of a person seeking election as a candidate for any election to Parliament, any State Legislature or any local authority;

(e) "political party" means an association or body of persons-

(i) which is, or is deemed to be, registered, with the Election Commission of India as a political party under the Election Symbols (Reservation and Allotment) Order, 1968, as in force for the time being; or

(ii) when has set up candidates for election to any legislature, but is not registered, or deemed to be registered, as a political party, under the Election Symbols (Reservation and Allotment) Order, 1968; or

(iii) organised to carry on any political activity or to acquire or exercise political power through election or otherwise;

(f) "religious institution" means an institution for the promotion of any religious or persuasion, and includes any place or premises used as a place of public religious worship, by whatever name or destination known.

3. Prohibition of use of religious institutions for certain purposes

No religious institution or manager thereof shall use or allow the use of any premises belonging to, or under the control of, the institution-

(a) for the promotion or propagation of any political activity; or

(b) for the harbouring of any person accused or convicted of an offence under any law for the time being in force; or

(c) for the storing of any arms or ammunition; or

(d) for keeping any goods or articles in convention of any law for the time being in fore; or

(e) for erecting or putting up of any construction or fortification, including basements, bankers, towers or walls without a valid licence or permission under any law for the time being in force; or

(f) for the carrying on of any unlawful or subversive act prohibited under any law for the time being in force or in contravention of any order made by any court; or

(g) for the doing of any act which promotes or attempts to promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or

(h) for the carrying on of any activity prejudicial to the sovereignty, unity and integrity of India; or

(i) for the doing of any act in contravention of the provisions of the Prevention of Insults to National Honour Act, 1971.

4. Restrictions on carrying arms and ammunition into a religious institution

No religious institution or manager thereof shall allow the entry of any arms or ammunition or of any person carrying any arms or ammunition into the religious institution:

Provided that nothing in this section shall apply to-

(a) the wearing and carrying of a Kirpan by any person professing the Sikh religion; or

(b) any arms which are used, as part of any religious ceremony or ritual of the institution as established by custom or usage.

5. Prohibition of use of funds of religious institutions for certain activities

No religious institution or manager thereof shall use or allow the use of any funds or other properties belonging to, or under the control of, the institution for the benefit of any political party or for the purpose of any political activity or for the commission of any act which is punishable as an offence under any law.

6. Prohibition of religious fora for propagating political ideas

No religious institution or manager thereof shall allow any ceremony, festival, congregation, procession or assembly organised or held under its auspices to be used for any political activity.

7. Penalties

Where any religious institution or manager thereof contravenes the provisions of section 3, section 4, section 5 or section 6, the manager and every person connected with such contravention shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

8. Disqualification of persons convicted or charge-sheeted under this Act

(1) Any manager or other employee of a religious institution shall, upon conviction for an offence under this Act, stand removed from his office or post and shall, notwithstanding anything to the contrary contained in any other law, be disqualified for appointment in any religious institution as manager or in any capacity for a period of six years from the date of his conviction.

(2) Where any manager or other employee of a religious institution is accused of an offence under this Act and a charge-sheet for the prosecution of such person is filed in any court and the court is of the opinion, after considering the charge-sheet and after hearing the prosecution and the accused, that a prima facie case exists, it shall pass an order or direction accused, that a prima facie case exists, it shall pass an order or direction the duties of his office or post pending trial.

(3) Where any manager or other employee has been removed under sub-section (1), or restrained under sub-section (2), the vacancy arising out of such removal or restraint may be filled in the manner provided in the law applicable to the said religious institution.

9. Certain persons bound to give information to police

Every manager or other employee of a religious institution shall be bound to give information to the officer incharge of the police station within whose

local jurisdiction the religious institution is situate of any contravention or any impending contravention of the provisions of this Act and any failure to do so shall be punishable under section 176 of the Indian Penal Code.

10. Repeal and saving

(1) The Religious Institutions (Prevention of Misuse) Ordinance, 1988 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 the corresponding provisions of this Act.

2. The Places of Worship (Special Provisions) Act, 1991

[Act No. 42 of Year 1991, dated 18th September, 1991]

An Act to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August, 1947, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-second Year of the Republic of India as follows:

1. Short title, extent and commencement

(1) This Act may be called the Places of Worship (Special Provisions) Act, 1991.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) The provisions of sections 3, 6 and 8 shall come into force at once and the remaining provisions of this Act shall be deemed to have come into force on the 11th day of July, 1991.

2. Definitions

In this Act, unless the context otherwise requires,-

(a) "commencement of this Act" means the commencement of this Act on the 11th day of July, 1991;

(b) "conversion", with its grammatical variations, includes alteration or change of whatever nature;

(c) "place of worship" means a temple, mosque, gurudwara, church, monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called.

3. Bar of conversion of places of worship

No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof.

4. Declaration as to the religious character of certain places of worship and bar of jurisdiction of courts etc.

(1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as it existed on that day.

(2) If, on the commencement of this Act, any suit, appeal or other proceeding with respect to the conversion of the religious character of any place of worship, existing on the 15th day of August, 1947, is pending before any court, tribunal or other authority, the same shall abate, and no suit, appeal or other proceeding with respect to any such matter shall lie on or after such commencement in any court, tribunal or other authority:

Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in the religious character of any such place after the 15th day of August, 1947, is pending on the commencement of this Act, such suit, appeal or other proceeding shall not so abate and every such suit, appeal or other proceeding shall be disposed of in accordance with the provisions of sub-section (1).

(3) Nothing contained in sub-section (1) and sub-section (2) shall apply to,-

(a) any place of worship referred to in the said sub-sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or any other law for the time being in force;

(b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a court, tribunal or other authority before the commencement of this Act;

(c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;

(d) any conversion of any such place effected before such commencement by acquiescence;

(e) any conversion of any such place effected before such commencement which is not liable to be challenged in any court, tribunal or other authority being barred by limitation under any law for the time being in force.

5. Act not to apply to Ram Janma Bhumi Babri Masjid

Nothing contained in this Act shall apply to the place or place of worship commonly known as Ram Janma Bhumi-Babri Masjid situated in Ayodhya

in the State of Uttar Pradesh and to any suit, appeal or other proceeding relating to the said place or place of worship.

6. Punishment for contravention of section 3

(1) Whoever contravenes the provisions of section 3 shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever attempts to commit any offence punishable under sub-section (1) or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the punishment provided for the offence.

(3) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under sub-section (1) shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code, be punishable with the punishment provided for the offence.

7. Act to override other enactments

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act.

8. Amendment of Act 43 of 1951

In section 8 of the Representation of the People Act, 1951, in sub-section (1),-

(a) in clause (i), the word "or" shall be inserted at the end;

(b) after clause (i), as so amended, the following clause shall be inserted, namely-

"(j) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions Act, 1991".

3. The Religious Endowments Act, 1863

[Act No. 20 of Year 1863, dated 10th March, 1863]

An Act to enable the Government to divest itself of the management of Religious Endowments.

Whereas it is expedient to relieve the Boards of Revenue, and the local Agents, in the Presidency of Fort William in Bengal, and the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX, 1810 (Ben. Reg. 19 of 1810), of the Bengal Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges and other purposes; for the maintenance and repair of Bridges, Sarais, Kattras and other public buildings; and for the custody and disposal of Nazul Property or Escheats), and Regulation VII, 1817 (Mad. Reg. 7 of 1817), of the Madras Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples and Colleges or other public purposes; for the maintenance and repair of Bridges, Choultries, or Chattrams, and other public buildings; and for the custody and disposal of Escheats), so far as those duties embrace the superintendence of lands granted for the support of mosques or Hindu temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connexion with the management of such religious establishments;

It is enacted as follows:

1. Repeal of parts of Bengal Regulation 19 of 1810 and Madras Regulation 7 of 1817

Repealed by the Repealing Act, 1870.

2. Interpretation-clause

In this Act,-

"Civil Court" and "Court". -The words "Civil Court" and "Court" shall save as provided in section 10 mean the principal Court of original civil jurisdiction in the district in which or any other Court empowered in that behalf by the State Government within the local limits of the jurisdiction of which the mosque, temple or religious establishment is situate, relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.

3. Government to make special provision respecting mosques, etc.

In the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in the preamble to this Act are applicable, and nomination of the trustee, manager or superintendent thereof, at the time of the passing of this Act, is vested in, or may be exercised by, the Government or any public officer, or in which the nomination of such trustee, manager or superintendent shall be subject to the confirmation of the Government or any public officer, the State Government shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided.

4. Transfer to trustees, etc., of trust-property in charge of Revenue Board

In the case of every such mosque, temple or other religious establishment which, at the time of the passing of this Act, shall be under the management of any trustee, manager or superintendent whose nomination shall not vest in, nor be exercised by, nor be subject to the confirmation of, the Government, or any public officer, the State Government shall, as soon as possible after the passing of this Act, transfer to such trustee, manager or superintendent, all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue or any local agent, and belonging to such mosque, temple or other religious establishment except such property as is hereinafter provided;

Cessation of Board's powers as to such property – and the powers and responsibilities of the Board of Revenue, and the local agents, in respect to such mosque, temple or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent, previous to such transfer, shall cease and determine.

5. Procedure in case of dispute as to right of succession to vacated trusteeship

Whenever from any cause a vacancy shall occur in the office of any trustee, manager or superintendent, to whom any property shall have been transferred under the last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the mosque, temple or religious establishment to which such property shall belong, or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple or other religious establishment, and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office.

Powers of managers appointed by Court: The manager so appointed by the Civil Court shall have and shall exercise all the powers which, under this or

any other Act, the former trustee, manager or superintendent, in whose place such manager is appointed by the Court, had or could exercise in relation to such mosque, temple or religious establishment, or the property belonging thereto.

6. Rights, etc., of trustees to whom property is transferred under section 4

The rights, powers and responsibilities of every trustee, manager or superintendent, to whom the land and other property of any mosque, temple or other religious establishment is transferred in the manner prescribed in section 4 of this Act, as well as the conditions of their appointment, election and removal, shall be same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue and local agents, given by the Regulations hereby repealed, over such mosque, temple or religious establishment, and over such trustee, manager or superintendent, which authority is hereby determined and repealed.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under the said section 4 of this Act, may, from the date of such transfer, be exercised by any trustee, manager or superintendent to whom such transfer is made.

7. Appointment of committees

In all cases described in section 3 of this Act the State Government shall once for all appoint one or more committees in every division or district to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed.

Constitution and duties of committees: Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act.

8. Qualifications of member of committee

The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple or other religious establishment.

The appointment of the Committee shall be notified in the Official Gazette.

Ascertaining wishes of persons interested: In order to ascertain the general wishes of such persons in respect of such appointment, the State Government may cause an election to be held under such rules, by notification in

the Official Gazette, (not inconsistent with the provision of this Act) as shall be framed by such State Government.

Every rule framed under this section shall be laid, as soon as it is framed, before the State Legislature.

9. Tenure of office

Every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness.

Removal: And no such member shall be removed except by an order of the Civil Court as hereinafter provided.

10. Vacancies to be filled

Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided.

Procedure. -The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided, under rules for elections which shall be framed by the State Government;

and whoever shall be then elected, under the said rules, shall be a member of the committee to fill such vacancy.

When Court may fill vacancy: If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply; and, if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.

Explanation: In this section "Civil Court" means the principal Court of original civil jurisdiction in the district in which the mosques, temples or religious establishments for which the committee has been appointed or any of them are situate.

11. No member of committee to be also trustee, etc., of mosque, etc.

No member of a committee appointed under this Act shall be capable of being, or shall act, also as a trustee, manager or Superintendent of the mosque, temple or other religious establishment for the management of which such committee shall have been appointed.

12. On appointment of committee, Board and local agents to transfer property

Immediately on the appointment of a committee as above provided for the superintendence of any such mosque, temple or religious establishment, and for the management of its affairs, the Board of Revenue, or the local agents acting under the authority of the said Board, shall transfer to such committee all landed or other property which at the time of appointment shall be under the superintendence, or in the possession of the said Board or local agents, and belonging to the said religious establishment, except as is hereinafter provided for,

Termination of powers and responsibilities of Board and agents – and thereupon the powers and responsibilities of the Board and the local agents in respect to such mosque, temple or religious establishment, and to all land and other property so transferred except as above, and except as regards acts done and liabilities incurred by the said Board or agents previous to such transfer, shall cease and determine.

Commencement of powers of committee: All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may from the date of such transfer be exercised by such committee to whom such transfer is made.

13. Duty of trustee, etc., as to accounts

It shall be the duty of every trustee, manager and superintendent of a mosque, temple or religious establishment to which the provisions of this Act shall apply to keep regular accounts of his receipts and disbursements in respect of the endowments and expenses of such mosque, temple or other religious establishment;

and of committee – and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee, manager and superintendent of such mosque, temple or other religious establishment, the production of such regular accounts of such receipts and disbursements at least once in every year; and every such committee of management shall themselves keep such accounts thereof.

14. Persons interested may singly sue in case of breach of trust, etc.

Any person or persons interested in any mosque, temple or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of this trusts vested in, or confided to, them respectively.

Powers of Civil Court and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee.

and may decree damages and costs against such trustee, manager, superintendent or member of a committee,

and may also direct the removal of such trustee, manager, superintendent or member of a committee.

15. Nature of interest entitling person to sue

The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

16. Reference to arbitrators

In any suit or proceeding instituted under this Act it shall be lawful for the Court before which such suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators.

Act 10 of 1940 applied: Whenever any such order shall be made, the provisions of Chapter IV of the Arbitration Act, 1940 shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under section 21 of the said Act.

17. Reference under Act 10 of 1940

Nothing in the last preceding section shall prevent the parties from applying to the Court, or the Court from making the order of reference, under the said section 21 of the Arbitration Act, 1940.

18. Application for leave to institute suits

No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit.

The Court, on the perusal of the application, shall determine whether there are sufficient Prima facie grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution.

Costs: If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.

19. Court may require accounts of trust to be filed

Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may order the trustee, manger or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part thereof as to the Court may seem necessary.

20. Proceedings for criminal breach of trust

No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

21. Cases in which endowments are partly for religious and partly for secular purposes

In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character,

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence of the trustee, manager or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager or superintendent, or of the committee, and made payable to the said Board or to the local agents, for secular uses as aforesaid.

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

22. Government not to hold charge henceforth of property for support of any mosque, temple, etc.

Except as provided in this Act, it shall not be lawful for the Central Government or any State Government, or for any officer of any Government in his official character,

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment, or

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other establishment, or

to nominate or appoint any trustee, manager or superintendent thereof, or to be in any way concerned therewith.

23. Effect of Act in respect of Regulations therein mentioned, and of buildings of antiquity, etc.

Nothing in this Act shall be held to affect the provisions the Regulations mentioned in this Act, except in so far as they relate to mosques, Hindu temples and other religious establishments; or to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said regulations, to prevent injury to and preserve buildings remarkable for their antiquity, or for their historical or architectural value, or required for the convenience of the public.

4. Charitable Endowments Act, 1890

[Act No. 6 of Year 1890]

An act to provide for the vesting and administration of property held in trust for charitable purposes.

Whereas it is expedient to provide for the vesting and held in trust for charitable purposes;

It is hereby enacted as follows:

1. Title, extent and commencement

(1) This Act may be called the Charitable Endowments Act, 1890.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on the first day of October, 1890

2. Definition

In this Act "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

3. Appointment and incorporation of treasurer of Charitable Endowments

(1) The Central Government may appoint an officer of the Government by the name of his office to be treasurer of Charitable Endowments for India, and the Government of any State may appoint an officer of the Government by the name of his office to be treasurer of Charitable Endowments for the State.

(2) Such treasurer shall, for the purposes of taking, holding and transferring movable or immovable property under the authority of this Act, be a corporation sole by the name of the treasurer of Charitable Endowments for India or, as the case may be, the State, and, as such Treasurer, shall have perpetual succession and a corporate seal, and may sue and be sued in his corporate name.

3A. Definition of "appropriate government", etc.

In the subsequent provisions of this Act "the appropriate Government" means, as respects a Charitable Endowment, the objects of which do not extend beyond a single State and are not objects to which the executive authority of the Central Government extends, the Government of the State, and as respects any other Charitable Endowment the Central Government.

4. Order vesting property in treasurer

(1) Where any property is held or is to be applied in trust for charitable purpose, the appropriate Government, if it thinks fit, may, on application made as hereinafter mentioned, and subject to the other provisions of this section, order, by notification in the Official Gazette, that the property be vested in the treasurer of Charitable Endowments on such terms as to the application of the property or the income thereof as may be agreed on between the appropriate Government and the person or persons making the application, and the property shall thereupon so vest accordingly.

(2) When any property has vested under this section in a treasurer of Charitable Endowments, he is entitled to all documents of title relating thereto.

(3) Omitted.

(4) An order under this section vesting property in a treasurer of Charitable Endowments shall not require or be deemed to require him to administer the property, or impose or be deemed to impose upon him the duty of a trustee with respect to the administration thereof.

5. Schemes for administration of property vested in the treasurer

(1) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the appropriate Government, if it thinks fit, may settle a scheme for the administration of any property which has been or is to be vested in the treasurer of Charitable Endowments, and may in such scheme appoint, by name or office, a

person or persons, not being or including such treasurer, to administer the property.

(2) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the appropriate Government may, if it thinks fit, modify any scheme settled under this section or substitute another scheme in its stead.

(3) A scheme settled, modified or substituted under this section shall, subject to the other provisions of this section come into operation on a day to be appointed by the appropriate Government in this behalf, and shall remain in force so long as the property to which it relates continues to be vested in the treasurer of Charitable Endowments or until it has been modified or another such scheme has been substituted in its stead.

(4) Such a scheme, when it comes into operation, shall supersede any decree or direction relating to the subject-matter thereof insofar as such decree or direction is in any way repugnant thereto, and its validity shall not be questioned in any Court, nor shall any Court give, in contravention of the provisions of the scheme or in any way contrary or in addition thereto, a decree or direction regarding the administration of the property to which the scheme relates:

Provided that nothing in this sub-section shall be construed as precluding a Court from inquiring whether the Government by which a scheme was made was the appropriate Government.

(5) In the settlement of such a scheme effect shall be given to the wishes of the author of the trust so far as they can be ascertained and, in the opinion of the appropriate Government, effect can reasonably be given to them.

(6) Where a scheme has been settled under this section for the administration of property not already vested in the treasurer of Charitable Endowments, it shall not come into operation until the property has become so vested.

6. Mode of applying for vesting orders and schemes

(1) The application referred to in the two last foregoing sections must be made,-

(a) if the property is already held in trust for a charitable purpose, then by the person acting in the administration of the trust, or, where there are more persons than one so acting, then by those persons or a majority of them; and

(b) if the property is to be applied in trust for such a purpose, then by the person or persons proposing so to apply it.

(2) For the purposes of this section the executor or administrator of a deceased trustee of property held in trust for a charitable purpose shall be deemed to be a person acting in the administration of the trust.

7. Exercise by Governor General in Council of powers of Local Government

Omitted by the A.O. 1937.

8. Bare trusteeship of treasurer

(1) Subject to the provisions of this Act, a treasurer of Charitable Endowments shall not, as such treasurer, act in the administration of any trust whereof any of the property is for the time being vested in him under this Act.

(2) Such treasurer shall keep a separate account of each property for the time being so vested insofar as the property consists of securities for money, and shall apply the property or the income thereof in accordance with the provision made in the behalf in the vesting order under section 4 or in the scheme, if any, under section 5, or in both those documents.

(3) In the case of any property so vested other than securities for money, such treasurer shall, subject to any special order which he may receive from the authority by whose order the property became vested in him, permit the persons acting in the administration of the trust to have the possession, management and control of the property and the application of the income thereof, as if the property had been vested in them.

9. Annual publication of list of properties vested in treasurer

A treasurer of Charitable Endowments shall cause to be published annually in the Official Gazette, at such time as the appropriate Government may direct, a list of all properties for the time being vested in him under this Act and an abstract of all accounts kept by him under sub-section (2) of the last foregoing section.

10. Limitation of functions and powers of treasurer

(1) A treasurer of Charitable Endowments shall always be a sole trustee, and shall not, as such treasurer, take or hold any property otherwise than under the provisions of this Act, or, subject to those provisions, transfer any property vested in him except in obedience to a decree divesting him of the property, or in compliance with a direction in that behalf issuing from the authority by whose order the property became vested in him.

(2) Such a direction may require the treasurer to sell or otherwise dispose of any property vested in him, and, with the sanction of the authority issuing the direction, to invest the proceeds of the sale or other disposal of the property in any such security for money as is specified in the direction, or in the purchase of immovable property.

(3) When a treasurer of Charitable Endowments is divested, by a direction of the appropriate Government under this section, of any property, it shall vest in the person or persons acting in the administration thereof and be

held by him or them on the same trusts as those on which it was held by such treasurer.

11. Provision for continuance of office of treasurer in certain contingencies

If the office held by an officer of the Government who has been appointed to be treasurer of Charitable Endowments is abolished or its name is changed, the appropriate Government may appoint the same or another officer of the Government by the name of his office to be such treasurer, and thereupon the holder of the latter office shall be deemed for the purposes of this Act to be the successor in office of the holder of the former office.

12. Transfer of property from one treasurer to another

If by reason of any alteration of areas or by reason of the appointment of a treasurer of Charitable Endowments for India or for any State for which such a treasurer has not previously been appointed or for any other reason it appears to the Central Government that any property vested in a treasurer of Charitable Endowments should be vested in another such treasurer, that Government may direct that the property shall be so vested and thereupon it shall vest in that other treasurer and his successors as fully and effectually for the purposes of this Act as if it had been originally vested in him under this Act.

13. Power to frame forms and make rules

(1) The appropriate Government may by notification in the Official Gazette, make rules consistent with this Act for-

(a) prescribing the fees to be paid to the Government in respect of any property vested under this Act in a treasurer of Charitable Endowments;

(b) regulating the cases and the mode in which schemes or any modification thereof are to be published before they are settled or made under section 5,

(c) prescribing the form in which accounts are to be kept by treasurers of Charitable Endowments and the mode in which such accounts are to be audited; and

(d) generally carrying into effect the purposes of this Act.

(2) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both

Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

14. Indemnity to Government and treasurer

No suit shall be instituted against the Government in respect of any thing done or purporting to be done under this Act, or in respect of any alleged neglect or omission to perform any duty devolving on the Government under this Act, or in respect of the exercise of, or the failure to exercise, any power conferred by this Act on the Government, nor shall any suit be instituted against a treasurer of Charitable Endowments except for diverting him of property on the ground of its not being subject to a trust for a charitable purpose, or for making him chargeable with or accountable for the loss or misapplication of any property vested in him, or the income thereof, where the loss or misapplication has been occasioned by or through his wilful neglect on default.

15. Saving with respect to Advocate General and Official Trustee

Nothing in this Act shall be construed to impair the operation of any enactment for the time being in force, respecting the authority of an Advocate General to act with respect to any charity, or of the Official Trustees Act, 1913 respecting the vesting of property in trust for a charitable purpose in an Official Trustee.

16. General controlling authority of Governor General in Council

Repealed by the Devolution Act, 1920 (38 of 1920).

5. Charitable And Religious Trusts Act,1920

[Act No. 14 of Year 1920]

An Act to provide more effectual control over the administration of Charitable and Religious Trusts.

Whereas it is expedient to provide facilities for the obtaining of information regarding trust created for public purposes of a charitable or religious nature, and to enable the trustees of such trusts to obtain the directions of a Court on certain matters, and to make special provision for the payment of the expenditure incurred in certain suits against the trustees of such trusts;

It is hereby enacted as follows:

1. Short title and extent

(1) This Act may be called the Charitable and Religious Trusts Acts, 1920.

(2) It extends to the whole of India except the State of Jammu and Kashmir:

Provided that the Government at any State may, by notification in the Official Gazette, direct that this Act, or any specified part thereof, shall not extend to that State or any specified area therein, or to any specified trust or class of trusts.

2. Interpretation

In this Act, unless there is anything repugnant in the subject or context, "the Court" means the Court of the District Judge or any other Court empowered in that behalf by the State Government and includes the High Court in the exercise of its ordinary original civil jurisdiction.

3. Power to apply to the Court in respect of trusts of a charitable or religious nature

Save as hereinafter provided in this Act, any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the Court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate to obtain an order embodying all or any of the following directions, namely:-

(1) directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust, and of the value condition, management and application of the subject-matter of the trust, and of the income belonging thereto, or as any of these matters, and

(2) directing that the accounts of the trusts shall be examined and audited:

Provided that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition.

4. Contents and verification of petition

(1) The petition shall show in what way the petitioner claims to be interested in the trust, and shall specify, as far as may be, the particulars and the audit which he seeks to obtain.

(2) The petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908), for signing and verifying plaints.

5. Procedure on petition

(1) If the court on receipt of a petition under section 3, after taking such evidence and making such inquiry, if any, as it may consider necessary, is of

opinion that the trust to which the petition relates is a trust to which this Act applies, and that the petitioner has an interest therein, it shall fix a date for the hearing of the petition, and shall cause a copy thereof, together with notice of the date so fixed, to be served on the trustee and upon any other person to whom in its opinion notice of the petition should be given.

(2) On the date fixed for the hearing of the petition, or on any subsequent date to which the hearing may be adjourned, the Court shall proceed to hear the petitioner and the trustee, if he appears, and any other person who has appeared in consequence of the notice, or who it considers ought to be heard, and shall make such further inquiries, if any, as it thinks fit. The trustee may and, if so required by the court, shall at the time of the first hearing or within such time as the Court may permit present a written statement of his case. If he does present a written statement, the statement shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908), for signing and verifying pleadings.

(3) If any person appears at the hearing of the petition and either denies the existence of the trust or denies that it is a trust to which this Act applies, and undertakes to institute within three months a suit for a declaration to that effect and for any other appropriate relief, the court shall order a stay of the proceedings and, if such suit is so instituted, shall continue the stay until the suit is finally decided.

(4) If no such undertaking is given, or if after the expiry of the three months no such suit has been instituted, the Court shall itself decide the question.

(5) On completion of the inquiry provided for in sub-section (2), the Court shall either dismiss the petition or pass thereon such other order as it thinks fit:

Provided that, where a suit has been instituted in accordance with the provisions of sub-section (3), no order shall be passed by the Court which conflicts with the final decision therein.

(6) Save as provided in this section, the Court shall not try or determine any question of title between the petitioner and any person claiming title adversely to the trust.

6. Failure of trustee to comply with order under section 5

If a trustee without reasonable excuse fails to comply with an order made under sub-section (5) of section 5, such trustee shall, without prejudice to any other penalty or liability which he may incur under any law for the time being in force, be deemed to have committed a breach of trust affording ground for a suit under the provisions of section 92 of the Code of Civil Procedure, 1908 (5 of 1908), and any such suit may, so far as it is based on such failure, be instituted without the previous consent of the Advocate General.

7. Powers of trustee to apply for directions

(1) Save as hereinafter provided in this Act, any trustee of an express or constructive trust created or existing for public purpose of a charitable or religious nature may apply by petition to the Court, within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for the opinion, advise or direction of the Court on any question affecting the management or administration of the trust property, and the Court shall give its opinion, advice or direction, as the case may be, thereon:

Provided that the Court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.

(2) The Court on a petition under sub-section (1), may either give its opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the persons interested in the trust, or to be published for information in such manner, as it thinks fit.

(3) On any date fixed under sub-section (2) or any subsequent date to which the hearing may be adjourned, the Court, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition.

(4) A trustee stating in good faith the facts of any matter relating to the trust in a petition under sub-section (1), and acting upon the opinion, advice or direction of the Court given thereon, shall be deemed, as far as his own responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the petition was made.

8. Costs of petition under this Act

The costs, charges and expenses of and incidental to any petition, and all proceedings in connection therewith, under the foregoing provisions of this Act, shall be in the discretion of the Court, which may direct the whole or any part of any such costs, charges and expenses to be met from the property or income of the trust in respect of which the petition is made, or to be borne and paid in such manner and by such persons as it thinks fit:

Provided that no such order shall be made against any person (other than the petitioner) who has not received notification of the petition and had a reasonable opportunity of being heard thereon.

9. Saving

No petition under the foregoing provisions of this Act in relation to any trust shall be entertained in any of the following circumstances, namely:-

(a) if a suit instituted in accordance with the provisions of section 92 of the Code of Civil Procedure, 1908 (5 of 1908), is pending in respect of the trust in question;

(b) if the trust property is vested in the Treasurer of Charitable Endowments, the Administrator-General, the Official Trustee, or any Society registered under the Societies Registration Act, 1860 (21 of 1860); or

(c) if a scheme for the administration of the trust property has been settled or approved by any Court of competent jurisdiction, or by any other authority acting under the provisions of any enactment.

10. Power of Courts as to costs in certain suits against trustees of charitable and religious trusts

(1) In any suit instituted under section l4 of the Religious Endowments Act, 1863, (20 of 1863) or under section 92 of the Code of Civil Procedure, 1908 (5 of 1908), the Court trying such suit may, if, on application of the plaintiff and after hearing the defendant and making such inquiry as it thinks fit, it is satisfied that such an order is necessary in the public interest, direct the defendant either to furnish security for any expenditure incurred or likely to be incurred by the plaintiff in instituting and maintaining such suit, or to deposit from any money in his hands as trustee of the trust to which the suit relates such sum as such Court considers sufficient to meet such expenditure in whole or in part.

(2) When any money has been deposited in accordance with an order made under sub-section (1), the Court may make over to the plaintiff the whole or any part of such sum for the conduct of the suit. Before making over any sum to the plaintiff, the Court shall take security from the plaintiff for the refund of the same in the event of such refund being subsequently ordered by the Court.

11. Provisions of the Code of Civil Procedure

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to-

(a) the proof of facts by affidavit,

(b) the enforcing of the attendance of any person and his examination oath,

(c) the enforcing. of the production of documents, and

(d) the issuing of commissions,

shall apply to all proceedings under this Act, and the provisions relating to the service of summonses shall apply to the service of notice thereunder.

(2) The provisions of the said Code relating to the execution of decrees shall, so far as they are applicable, apply to the execution of orders under this Act.

12. Barring of appeals

No appeal shall lie from any order passed or against any opinion, advice or direction given under this Act.

6. Indian Trusts Act, 1882

[Act No. 2 of Year 1882]

An Act to define and amend the law relating to private trusts and trustees.

Whereas it is expedient to define and amend the law relating to private trusts and trustees;

It is hereby enacted as follows:

Chapter I: Preliminary

1. Short title and commencement

This Act may be called the Indian Trusts Act, 1882; and it shall come into force on the first day of March, 1882.

2. Local extent, Saving

It extends to the whole of India except the State of Jammu and Kashmir and the Andaman and Nicobar Islands; but the Central Government may, from time to time, by notification in the Official Gazette, extend it to the Andaman and Nicobar Islands or to any part thereof. But nothing herein contained affects the rules of Mohamedan law as to waqf, or the mutual relations of the members of an undivided family as determined by any customary, or personal law, or applies to public or private religious or charitable endowments or to trusts to distribute prizes taken in war among the captors; and nothing in the Second Chapter of this Act applies to trusts created before the said day.

3. Interpretation clause – "trust"

A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

(…)

Chapter IV: Of the Rights and Powers of Trustees

41. Power to apply property of minors, etc. for their maintenance, etc.

Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen:

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal civil court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

7. Official Trustees Act, 1913

[Act No. 2 of Year 1913]

An Act to consolidate and amend the law constituting the office of Official Trustee.

It is hereby enacted as follows:

Part III: Rights, Powers, Duties And Liabilities Of Official Trustee

7. General powers and duties of Official Trustee

(1) Subject to, and in accordance with, the provisions of this Act and the rules made thereunder, the Official Trustee may, if he thinks fit,-

(a) act as an ordinary trustee;

(b) be appointed trustee by a Court of competent jurisdiction.

(…)

(5) The Official Trustee shall not, save as provided by any rules made under this Act, accept any trust for a religious purpose or any trust which involves the management or carrying on of any business.

(…)

Part VI: Miscellaneous

28. General powers of administration

The Official Trustee may, in addition to and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure-

(a) on such acts as may be necessary for the proper care and management of any property belonging to any trust administrated by him; and

(b) with the sanction of the High Court on such religious, charitable and other objects and on such improvements as may be reasonable and proper in the case of such property.

30. Rules

(1) The Government shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Official Trustee in the discharge of his duties.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

(…)

(i) the acceptance by the Official Trustee of trusts for religious purposes and trusts which involve the management or carrying on of business; and

(j) any matter in this Act directed to be prescribed.

(3) Rules made under the provisions of this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

(4) Every rule made the Central Government under this section shall be laid as soon as it may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

8. The Wakf Act, 1995

[Act No. 43 of Year 1995, dated 22nd November, 1995]

An Act to provide for the better administration of Wakfs and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:

Chapter I: Preliminary

1. Short titles, extent and commencement

(1) This Act may be called the Wakf Act, 1995.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein, be construed as reference to the commencement of that provision in such State or area.

2. Application of the Act

Save as otherwise expressly provided under this Act, this Act shall apply to all wakfs whether created before or after the commencement of this Act:

Provided that nothing in this area Act shall apply to Durgah Khawaja Saheb, Ajmer to which the Durgah Khawaja Saheb Act, 1955 applies.

3. Definitions

In this Act, unless the context otherwise requires,-

(a) "beneficiary" means a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law;

(b) "benefit" does not include any benefit which a mutawalli is entitled to claim solely by reason of his being mutawalli;

(c) "Board" means a Board of Wakf established under sub-section (1), or as the case may be, under sub-section (2) of section 1; and shall include a common Wakf Board established under section 106;

(d) "Chief Executive Officer" means the chief Executive Officer appointed under sub-section (1) of section 23;

(e) "Council" means the Central Wakf Council established under section 9;

(f) "Executive Officer" means the Executive Officer appointed by the Board under sub-section (1) of section 38;

(g) "list of wakfs" means the list of wakfs published under sub-section (2) of section 5;

(h) "member" means a member of the Board and includes the Chairperson;

(i) "mutawalli" means any person appointed, either verbally or under any deed or instrument by which a wakf has been created, or by a competent authority, to be the mutawalli of a wakf and includes any person who is a mutawalli of a wakf by virtue of any custom or who is a naib-mutawalli, khandim, 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, committee or corporation for the time being managing or administering any wakf or wakf property:

Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office bearer of such committee or corporation;

(j) "net annual income", in relation to a wakf, means net annual income determined in accordance with the provisions of the Explanations to sub-section (1) of section 72;

(k) "person interest in a wakf" means any person who is entitled to receive any pecuniary or other benefits from the wakf and includes-

(i) any person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, khanqah, maqbara, graveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf;

(ii) the wakif and any descendant of the wakif and the mutawalli;

(l) "prescribed", except in Chapter III, means prescribed by rules made by the State Government;

(m) "regulations" means a the regulations made by the Board under this Act;

(n) "Shia wakf" means wakf governed by Shia law;

(o) "Sunni wakf" means a wakf governed by Sunni law;

(p) "Survey Commissioner" means the Survey Commissioner of Wakf appointed under sub-section (1) of section 4 and includes any Additional or Assistance Survey Commissioners of Wakfs under sub-section (2) of section 4;

(q) "Tribunal", in relation to any area, means the Tribunal constituted under sub-section (1) of section 83, having jurisdiction in relation to that area;

(r) "wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes-

(i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) "grants", including mashrut-ul-khidmar for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable,

and "wakif" means any person making such dedication;

(s) "wakf deed" means any deed or instrument by which a wakf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied;

(t) "Wakf Fund" means a wakf fund formed under sub-section (1) of section 77.

4. Preliminary survey of wakfs

(1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Wakfs and as many Additional of Assistant Survey Commissioner of Wakfs as may may be necessary for the purpose of making a survey of wakfs existing in the State at the date of the commencement of this Act.

(2) All Additional and Assistant Survey Commissioner of Wakfs shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of wakfs existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:-

(a) the number of wakfs in the State showing the Shia wakfs and Sunni wakfs separately;

(b) the nature and objects of each wakf;

(c) the gross income of the property comprised in each wakf;

(d) the amount of land revenue, cesses, rates and taxes payable in respect of each wakf;

(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and

(f) such other particulars relating to each wakf as may be prescribed.

(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:-

(a) summoning and examine any witness;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record from any court or office;

(d) issuing commissions for the examination of any witness or accounts;

(e) making any local inspection or local investigation;

(f) such other matters as may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of wakf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3).

5. Publication of list of wakfs

(1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and publish in the Official Gazette a list of Sunni wakfs or Shia wakfs in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

6. Disputes regarding wakfs

(1) If any question arises whether a particular property specified as wakf property in the list of wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

Explanation: For the Purposes of this section and section 7, the expression "any person interested therein", shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been aforesaid to represent his case by notice served on him in that behalf during the course of the relevant inquiry under section 4.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of wakfs shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

7. Power of Tribunal to determine disputes regarding wakfs

(1) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that-

(a) in the case of the list of wakfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs; and

(b) in the case of the list of wakfs relating to any part of the State and published at any time within a period of one year immediately preceding the commencement to this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any wakf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, applicable or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

8. Recovery of costs of survey

(1) The Total cost of making a survey including the cost of publication of the list or lists of wakfs under this Chapter shall be borne by all the mutawalli of the wakfs the net annual income whereof exceeds five hundred rupees, in proportion to the net annual income accruing in the State to such wakfs, such proportion being assessed by the Survey Commissioner.

(2) Notwithstanding anything contained in the deed or instrument by which the wakf was created, any mutawalli may pay from the income of the wakf any sum due from him under sub-section (1).

(3) Any sum due from a mutawalli under sub-section (1) may, on a certificate issued by the State Government, be recovered from the property comprised in the wakf in the same manner as an arrear of land revenue.

Chapter III: Central Wakf Council

9. Establishment and constitution of Central Wakf Council

(1) For the purpose of advising it, on matters concerning the working of Boards and the due administration of wakfs, the Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Wakf Council.

(2) The Council shall consist of-

(a) the Union Minister in charge of wakf-ex officio Chairperson;

(b) the following members to be appointed by the Central Government from amongst Muslims, namely:-

(i) three persons to represent Muslim organisations having all India character and National importance;

(ii) four persons of National eminence of whom two shall be from amongst persons administrative and financial expertise;

(iii) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;

(iv) chairpersons of three Boards by rotation;

(v) two persons who have been Judges of the Supreme Court or a High Court;

(vi) one advocate of national eminence;

(vii) one person to represent the mutawallis of the wakf having a gross annual income of rupees five lakhs and above;

(viii) three persons who are eminent scholars in Muslim law.

(3) the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be prescribed by rules made by the Central Government.

10. Finance of Council

(1) Every Board shall pay from its Wakf Fund annually to the council such contribution as is equivalent to one per cent. of the aggregate of the net annual income of the wakfs in respect of which contribution is payable under sub-section (1) of section 72:

Provided that where the Board, in the case of any particular wakf has remitted under sub-section (2) of section 72 the whole of the contribution payable to it under sub-section (1) of that section, then for calculating the contribution payable to the Council under this section the net annual income of the wakf in respect of which such remission has been granted shall not be taken into account.

(2) All monies received by the Council under sub-section (1) and all other monies received by it as donations, benefactions and grants shall form a fund to be called the Central Wakf Fund.

(3) Subject to any rules that may be made by the Central Government in this behalf, the Central Wakf Fund shall be under the Control of the Council and may be applied for such purposes as the Council may deem fit.

11. Accounts and audit

(1) The Council shall cause to be maintained such books of account and court other books in relation to its accounts in such form and in such manner as may be prescribed by rules made by the Central Government.

(2) The accounts of the Council shall be audited and examined annually by such auditor as may be appointed by the Central Government.

(3) The costs of the audit shall be paid from the Central Wakf Fund.

12. Power of Central Government to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, the members of the Council;

(b) control over and application of the Central Wakf Fund;

(c) the form and manner in which accounts of the Council may be maintained.

(3) Every rule made by the Central Government under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following, the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

13. Incorporation

(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of Wakfs under such name as may be specified in the notification.

(2) Notwithstanding anything contained in sub-section (1), if the Shia wakfs in any State constitute in number more than fifteen per cent. of all the wakfs in the State or if the income of the properties of the Shia wakfs in the State constitute more than fifteen per cent. of the total income of properties of all the wakfs in the State, the State Government may, by notification in the Of-

ficial Gazette, establish a Board of Wakfs each for Sunni wakfs and for Shia wakfs under such names as may be specified in the notification.

(3) The 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.

14. Composition of Board

(1) The Board for a State and the Union territory of Delhi shall consist of-

(a) a Chairperson;

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

(i) Muslim Members of Parliament from the State or, as the case may be, the Union territory of Delhi,

(ii) Muslim Members of the State Legislature,

(iii) Muslim Members of the Bar Council of the State, and

(iv) mutawallis of the wakfs having an annual income of rupees one lakh and above;

(c) one and not more than two members to be nominated by the State Government representing eminent Muslim organisations;

(d) one and not more than two members to be nominated by the State Government, each from recognised scholars in Islamic Theology;

(e) an officer of the State Government not below the rank of Deputy Secretary.

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

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

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

(3) Notwithstanding anything contained in this section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1),

the State Government may nominate such persons as the members of the Board as it deems fit.

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

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

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

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

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

(8) Whenever the Board is constituted or re-constituted the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the chairperson of the Board.

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

15. Term of office

The members of the Board shall hold office for a term of five years.

16. Disqualification for being appointed, or for continuing as, a member of the Board

A person shall be disqualified for being appointed, or for continuing as, a member of the Board if-

(a) he is not a Muslim and is less than twenty-one years of age;

(b) he is found to be person of unsound mind;

(c) he is an undischarged insolvent;

(d) he has been convicted of an offence involving moral turpitude and such conviction has not been reserved or he has not been granted full pardon in respect of each offence;

(e) he has been on a previous occasion-

(i) removed from his office as a member or as a mutawalli, or

(ii) removed by an order of a competent court or tribunal from any position of trust either for mismanagement or for corruption.

17. Meetings of the Board

(1) The Board shall meet for the transaction of business at such time and places as may be provided by regulations.

(2) The Chairperson, or in his absence, any member chosen by the members from amongst themselves shall preside at a meeting of the Board.

(3) Subject to the provisions of this Act, all questions which come before any meeting of the Board shall be decided by a majority of votes of the members present, and in the case of equality of votes, the Chairperson or, in his absence, any other person presiding shall have a second or casting vote.

18. Committees of the Board

(1) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of wakfs.

(2) The constitution, functions and duties and the term of office of such committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such committees to be members of the Board.

19. Resignation of Chairperson and members

The Chairperson or any other member may resign his office by writing under his hand addressed to the State Government:

Provided that the Chairperson or the member shall continue in office until the appointment of his successor is notified in the Official Gazette.

20. Removal of Chairperson and member

(1) The State Government may, by notification in the Official Gazette, removes the Chairperson of the Board or any member thereof if he-

(a) is or becomes subject to any disqualifications specified in section 16; or

(b) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the wakfs; or

(c) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.

(2) Where the Chairperson of the Board is removed under sub-section (1), he shall also cease to be a member of the Board.

21. Filling of a vacancy

When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be appointed in his place and such member hold office so long as the member whose place he fills would have been entitled to hold office, if such vacancy had not occurred.

22. Vacancies, etc., not to invalidate proceedings of the Board

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

23. Appointment of Chief Executive Officer and his term of office and other conditions of service

(1) There shall be a Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State government, in consultation with the Board, by notification in the Official Gazette.

(2) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.

(3) The Chief Executive Officer shall be ex officio Secretary of the Board and shall be under the administrative control of the Board

24. Officers and other employees of the Board

(1) The Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under this Act, details thereof shall be determined by his Board in consultation with the State Government.

(2) The appointment of officers and other employees, their terms of office and conditions of service shall be such as may be provided by regulations.

25. Duties and powers of Chief Executive Officer.

(1) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include-

(a) investigating the nature and extent of wakfs and Wakf properties and calling whenever necessary, an inventory of Wakf properties and calling, from time to time, for accounts, returns and information from mutawallis;

(b) inspecting or causing inspection of Wakf properties and account, records, deeds or documents relating thereto;

(c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of wakfs.

(2) In exercising the powers of giving directions under sub-section (1) in respect of any Wakf, the Board shall act, in conformity with the directions by the Wakf in the deed of the Wakf, the purpose of Wakf and such usage and customs of the Wakf as are sanctioned by the school of Muslim law to which the Wakf belongs.

(3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act.

26. Powers of Chief Executive Officer in respect of orders of resolutions of Board

Where the Chief Executive Officer considers that an order or resolution passed by the Board-

(a) has not been passed in accordance with the law; or

(b) is in excess of or is an abuse of the powers conferred on the Board by or under this Act or by any other law; or

(c) if implemented, is likely to-

(i) cause financial loss to the Board or to the concerned Wakf or to the wakfs generally; or

(ii) lead to a riot or reach of peace; or

(iii) cause danger to human life, health or safety; or

(d) is not beneficial to the Board or to any Wakf or to wakfs generally,

he may, before implementation such order or resolution place the matter before the Board for its reconsideration and, if such order or resolution is not confirmed by a majority of vote of the members present and voting after such reconsideration, refer the matter to the State Government along with his objections to the order or resolution, and the decision of the State Government thereon shall be final.

27. Delegation of powers by the Board

The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the secretary or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary.

28. Chief Executive Officer to exercise powers through Collectors, etc.

(1) Subject to the provisions of this act and of the rules made thereunder, the Chief Executive Officer may exercise all or any of the powers conferred on him by or under this Act with the previous approval of the Board through the Commissioner of the division or the Collector of the district in which the

concerned Wakf property is situated or through any other Gazetted Officer whom he may appoint for such purpose and may, from time to time, delegate any of his powers to any such Commissioner of the division or Collector any other Gazetted Officer and may, at any time revoke the delegations so made by him.

(2) Where any delegation of powers is made by the Chief Executive Officer under sub-section (1), the person to whom such delegation is made may exercise those powers in the same manner and to the same extent as if they have been conferred on him directly by this Act and not by way of delegation.

29. Powers of Chief Executive Officer to inspect records, registers etc.

The Chief Executive Officer or any officer of the Board duly authorized by him in this behalf shall, subject to such conditions and restrictions as may be prescribed and subject to the payment of such fees as may be leviable under any law for the time being in force, be entitled at all reasonable time to inspect, in any public office, any records, registers or other documents relating to a Wakf or movable or immovable properties which are Wakf properties or are claimed to be Wakf properties.

30. Inspection of records

(1) The Board may allow inspection of its proceedings or other records in its custody and issue copies of the same on payment of such fees and subject to such conditions as may be prescribed.

(2) All copies issued under this section shall be certified by the Chief Executive Officer of the Board in the manner provided in section 76 of the India Evidence Act, 1872.

(3) The powers conferred on the Chief Executive Officer by sub-section (2) may be exercised by such other officer or officers of the Board as may either generally or specially be authorized in this behalf by the Board.

31. Prevention of disqualification for membership of Parliament

It is hereby declared that the offices of the Chairperson or members of a Board shall not be disqualified and shall be deemed never to have been disqualified for being chosen as, or for being, a Member of Parliament.

32. Powers and function of the Board

(1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:

Provided that in exercising its powers under this Act in respect of any Wakf, the Board shall act in conformity with the directions of the wakif, the purposes of the Wakf and any usage or custom of the Wakf sanctioned by the school of Muslim law to which the Wakf belongs.

Explanation: For the removal of doubts, it is hereby declared that in this sub-section, "Wakf" includes a Wakf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be-

(a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every Wakf;

(b) to ensure that the income and other property of wakfs are applied to the objects and for the purposes for which such wakfs were intended or created;

(c) to give directions for the administration of wakfs;

(d) to settle schemes of management for a Wakf:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) to direct-

(i) the utilisation of the surplus income of a Wakf consistent with the objects of a Wakf;

(ii) in what manner the income of a Wakf, the objects of which are not evident from any written instrument, shall be utilized;

(iii) in any case where any object of Wakf has ceased to exist or has become incapable of achievement, that so much of the income of the Wakf as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.

Explanation: For the purposes of this clause, the powers of the Board shall be exercised-

(i) in the case of a Sunni Wakf, by the Sunni members of the Board only; and

(ii) in the case of a Shia Wakf, by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board

that the powers should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;

(f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of account of wakfs;

(g) to appoint and remove mutawallis in accordance with the provisions of this Act;

(h) to take measures for the recovery of lost properties of any Wakf;

(i) to institute and defend suits and proceedings relating to wakfs;

(j) to sanction any transfer of immovable property of a Wakf by way of sale, gift, mortgage, exchange or lease, in accordance with the provisions of this Act:

Provided that no such sanction shall be given unless at least two-thirds of the members of the Board vote in favour of such transaction;

(k) to administer the Wakf Fund;

(l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the Wakf property as the Board may, from time to time, require;

(m) to inspect, or cause inspection of, Wakf properties, accounts, records or deeds and documents relating thereto;

(n) to investigate and determine the nature and extent of Wakf and property, and to cause, whenever necessary, a survey of such Wakf property;

(o) generally do all such acts as may be necessary for the control, maintenance and administration of wakfs.

(3) Where the Board has settled any scheme of management under clause (d) or given any direction under clause (e) of sub-section (2), any person interested in the Wakf or affected by such settlement or direction may institute a suit in a Tribunal for setting aside such settlement or directions and the decisions of the Tribunal thereon shall be final.

(4) Where the Board is satisfied that any Wakf land, which is a Wakf property, offers a feasible potential for development as a shopping centre, market, housing flats and the like, it may serve the mutawalli of the concerned wakf a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.

(5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may, with the prior approval of the Government, take over the

property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from Wakf funds or from the finances which may be raised on the security of the properties of the Wakf concerned, and control and manage the properties till such time as all expenses incurred by the Board under this section, together with interest therein, the expenditure on maintenance of such works and other legitimate charges incurred on the property are recovered from the income derived from the property:

Provided that the Board shall compensate annually the mutawalli of the concerned wakf to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.

(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned wakf.

33. Powers of inspection by Chief Executive Officer or persons authorized by him

(1) With a view to examining whether, by reason of any failure or negligence on the part of a mutawalli in the performance of his executive or administrative duties, any loss or damage has been caused to any wakf or wakf property, the Chief Executive Officer with the prior approval of the Board, either himself or any other person authorized by him in writing in this behalf, may inspect all movable and immovable properties, which are wakf properties, and all records, correspondences, plans, accounts and other documents relating thereto.

(2) Whenever any such inspection as referred to in sub-section (1) is made, the concerned mutawalli and all officers and other employees working under him and every person connected with the administration of the wakf, shall extend to the person making such inspection, all such assistance and facilities as may be necessary and reasonably required by him to carry out such inspection, and shall also produce for inspection any movable property or documents relating to the wakf as may be called for by the person making the inspection and furnish to him such information relating to the wakf as may be required by him.

(3) Where, after any such inspection, it appears that the concerned mutawalli or any officer or other employee who is or was working under him had mis-appropriated, misapplied or fraudulently retained, any money or other wakf property, or had incurred irregular, unauthorized or improper expenditure from the funds of the wakf, the Chief Executive Officer may, after giving the mutawalli or the person concerned a reasonable opportunity of showing cause why an order for the recovery of the amount or property should not be passed against him and after considering such explanation, if any, as such person may furnish, determine the amount or the property,

which has been mis-appropriated, misapplied or fraudulently retained, or the amount of the irregular, unauthorized or improper expenditure incurred by such person, and make an order directing such person to make payment of the amount so determined and to restore the said property to the wakf, within such time as may be specified in the order.

(4) A mutawalli or other person aggrieved by such order may, within thirty days of the receipt by him of the order, appeal to the Tribunal:

Provided that no such appeal shall be entertained by the Tribunal unless the appellant first deposits with the Chief Executive Officer the amount which has been determined under sub-section (3) as being payable by the appellant and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3).

(5) The Tribunal may, after taking such evidence as it may think fit, confirm, reverse or modify the order made by the Chief Executive Officer under sub-section (3) or may remit, either in whole or in part, the amount specified in such order and may make such orders as to costs as it may think appropriate in the circumstances of the case.

(6) The order made by the Tribunal under sub-section (5) shall be final.

34. Recovery of the amount determined under section 33

Where any mutawalli or other person who has been ordered, whether under sub-section (3) or sub-section (5) of section 33, to make any payment or to restore the possession of any property, omits or fails to make such payment or restoration within the time specified in such order, the Chief Executive Officer, with the prior approval of the Board shall, take such steps as he may think fit for the recovery of possession of the property aforesaid and shall also send a certificate to the Collector of the district in which the property of such mutawalli or other person is situate, stating therein the amount that has been determined by him or by the Tribunal, as the case may be, under section 33, as being payable by such mutawalli or other person, and, thereupon, the Collector shall recover the amount specified in such certificate as if it were an arrear of land revenue and on the recovery of such amount, pay the same to the Chief Executive Officer, who shall, on receipt thereof, credit the amount to the funds of the concerned wakf.

35. Conditional attachment by Tribunal

(1) Where the Chief Executive Officer is satisfied that the mutawalli or any other person who has been ordered under sub-section (3) or sub-section (5) of section 33 to make any payment, with intent to defeat or delay the execution of the said order-

(a) is about to dispose of the whole or any part of his property; or

(b) is about to remove the whole or any part of his property from the jurisdiction of the Chief Executive Officer.

he may, with the prior approval of the Board, apply to the Tribunal for the conditional attachment of the said property or such part thereof, as he may think necessary.

(2) The Chief Executive Officer shall, unless the Tribunal otherwise directs, specify in the application the property required to be attached and the estimated value thereof.

(3) The Tribunal may direct the mutawalli or the person concerned, as the case may be, within a time to be fixed by it, either to furnish security, in such case sum as may be specified in the order, to produce and place at the disposal of the Tribunal when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the amount specified in the certificate referred to in section 34, or to appear and show cause why he should not furnish such security.

(4) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(5) Every attachment made under this section shall be made in accordance with the provisions of the Code of Civil Procedure, 1908, as if it were an order for attachment made under the provision of the said Code.

Chapter V: Registration of Wakfs

36. Registration

(1) Every wakf, whether created before or after the commencement of this Act, shall be registered at the office of the Board.

(2) Application for registration shall be made by the mutawalli:

Provided that such application may be made by the wakf or his descendants or a beneficiary or the wakf of any Muslim belonging to the sect to which the wakf belongs.

(3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain following particulars:-

(a) a description of the wakf properties sufficient for the identification thereof;

(b) the gross annual income from such properties;

(c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the wakf properties;

(d) an estimate of the expenses annually incurred in the realisation of the income of the wakf properties;

(e) the amount set apart under the wakf for-

(i) the salary of the mutawalli and allowances to the individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars provided by the Board by regulations.

(4) Every such application shall be accompanied by a copy of the wakf deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant of the origin, nature and objects of the wakf.

(5) Every application made under sub-section (2) shall be signed and verified by the application in the manner provided in the Code of Civil Procedure, 1908 for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(7) On receipt of an application for registration, the Board may, before the registration of the wakf make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the wakf property, the Board shall, before registering the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.

(8) In the case of wakfs created before the commencements of this Act, every application for registration shall be made, within three months from such commencement and in the case of wakfs created after such commencement, within three months from the date of the creation of the wakf:

Provided that where there is no Board at the time of creation of a wakf, such application will be made within three months from the date of establishment of the Board.

37. Register of wakfs

The Board shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds, when available and the following particulars, namely:-

(a) the class of the wakf;

(b) the name of the mutawalli;

(c) the rule of succession to the office of mutawalli under the wakf deed or by custom or by usage;

(d) particulars of all wakf properties and all titles deeds and documents relating thereto;

(e) particulars of the scheme of administration and the scheme of expenditure at the time of registration;

(f) such other particulars as may be provided by regulations.

38. Powers of Board to appoint Executive Officer

(1) Notwithstanding anything contained in this Act, the Board may, if it is of the opinion that it is necessary so to do in the interests of the wakf, appoint on whole-time or part-time basis or in an honorary capacity, subject to such conditions as may be provided by regulations, an Executive Officer with such supporting staff as it considers necessary for wakf having a gross annual income of not less than five lakh rupees:

Provided that the person chosen for appointment should be a person Professing Islam.

(2) Every Executive Officer appointed under sub-section (1) shall exercise such power and discharge such duties as pertain only to the administration of the property of the wakf for which he has been appointed and shall exercise those powers and discharge those duties under the direction, control and supervision of the Board:

Provided that the Executive Officer who is appointed for a wakf having a gross annual income of not less than five lakh rupees shall ensure that the budget of the wakf is submitted, the accounts of the wakf are regularly maintained, and the yearly statement of accounts are submitted within such time as the Board may specify.

(3) While exercising his powers and discharging his functions under sub-section (2), the Executive Officer shall not interfere with any religious duties or any usage or custom of the wakf sanctioned by the Muslim law.

(4) The salaries and allowances of the Executive Officer and his staff shall be fixed by the Board and in fixing the quantum of such salary the Board shall have due regard to the income of the wakf, the extent and nature of the duties of the Executive Officer and shall also ensure that the amounts of such salaries and allowances are not disproportionate to the income of the wakf and do not operate as an unnecessary financial burden on it.

(5) The salaries and allowances of the Executive Officer and his staff shall be paid by the Board from the Wakf Fund and, if the wakf generates any additional income as a result of appointment of the Executive Officer, the Board may claim reimbursement of amounts spent on the salaries and allowances from the fund of the wakf concerned.

(6) The Board may, for sufficient reasons, and after giving to the Executive Officer or a member of his staff, a reasonable opportunity of being heard, suspend, remove or dismiss the Executive Officer or a member of his staff from his post.

(7) Any Executive Officer or a member of his staff who is aggrieved by any order of removal or dismissal made under sub-section (6) may, within thirty days from the date of communication of the order, prefer an appeal against the order to the Tribunal and the Tribunal may, after considering such representation as the Board may make in the matter, and after giving a reasonable opportunity to the Executive Officer or a member of his staff of being heard, confirm, modify or reverse the order.

39. Powers of Board in relation to wakfs which have ceased to exist

(1) The Board shall, if it is satisfied that the objects or any part thereof, of a wakf have ceased to exist, whether such cesser took place before or after the commencement of this Act, cause an inquiry to be held by the Chief Executive Officer, in the prescribed manner, to ascertain the properties and funds pertaining to such wakf.

(2) On the receipts of the report of inquiry of the Chief Executive Officer, the Board shall pass an order-

(a) specifying the property and funds of such wakf;

(b) directing that any property or funds pertaining to such wakf which have been recovered shall be applied or utilised for the renovation of any wakf property and where there is no need for making any such renovation or where utilisation of the funds for such renovation is not possible, be appropriated, to any of this purposes specific in sub-clause (iii) of clause (e) of sub-section (2) of section 32.

(3) The Board may, if it has reason to believe that any building or other place which was being used for religious purpose or instruction or for charity has, whether before or after the commencement of this Act, ceased to be used for that purposes, make an application to the Tribunal for an order directing the recovery of possession of such building or other place.

(4) The Tribunal may, if it is satisfied, after making such inquiry as it may think fit, that such building or other place-

(a) is wakf property;

(b) has not been acquired under any law for the time being in force relating to acquisition of land or is not under any process of acquisition under any such law, or has not vested in the State Government under any law for the time being in force relating to land reforms; and

(c) is not in the occupation of any person who has been authorized by or under any law for the time being in force to occupy such building or other place, make an order-

(i) directing the recovery of such building or place from any person who may be in unauthorized possession thereof, and

(ii) directing that such property, building or place be used for religious purpose or instruction as before, or if such use is not possible, be utilised for any purpose specified in sub-clause (iii) of clause (e) of sub-section (2) of section 32.

40. Decision if a property is wakf property

(1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf it may, after making such inquiry as it may deem fit, decide the question.

(2) The decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final.

(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 or under the Societies Registration act, 1860 or under any other Act, is wakf property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is wakf property, call upon the trust or society, as the case may be, either to register such property under this Act as wakf property or show cause why such property should not be so registered:

Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.

(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.

41. Power to cause registration of wakf and to amend register

The Board may direct a mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may itself cause the wakf to be registered or may at any time amend the register of wakfs.

42. Change in the management of wakfs to be notified

(1) In the case of any change in the management of a registered wakf due to the death or retirement or removal of the mutawalli, the incoming mutawalli shall forthwith, and any other person may notify the change to the Board.

(2) In the case of any other changes in any of the particulars mentioned in section 36, the mutawalli shall, within three months from the occurrence of the change, notify such change to the Board.

43. Wakfs registered before the commencement of this Act deemed to be registered

Notwithstanding anything contained in this Chapter, where any wakf has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the wakf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act.

Chapter VI: Maintenance of Accounts of Wakfs

44. Budget

(1) Every mutawalli of a wakf shall, in every year prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure during that financial year.

(2) Every such budget shall be submitted by the mutawalli at least ninety days before the beginning of the financial year to the Board and shall make adequate provision for the following:-

(i) for carrying out the objects of the wakf;

(ii) for the maintenance and preservation of the wakf property;

(iii) for the discharge of all liabilities and subsisting commitments funding on the wakf under this Act or any other law for the time being in force.

(3) The Board may give such directions for making alterations, omissions or additions in the budget as it may deem fit, consistent with the objects of the wakf and the provisions of this Act.

(4) If in the course of the financial year the mutawalli finds it necessary to modify the provisions made in the budget in regard to the receipt or to the distribution of the amounts to be expended under the different heads, he may submit to the Board a supplementary or a revised budget and the provisions of sub-section (3) shall, as far as may be, apply to such supplementary or revised budget.

45. Preparation of budget of wakfs under direct management of the Board

(1) The Chief Executive Officer shall prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure for each of the wakfs under

the direct management of the Board, showing therein the estimated receipts and expenditure and submit it to the Board for its approval.

(2) While submitting the budget under sub-section (1), the Chief Executive officer shall also prepare statement giving details of the increase, if any, in the income of each wakf under the direct management of the Board and the steps which have been taken for its better management and the results accruing therefrom during the year.

(3) The Chief Executive Officer shall keep regular accounts and be responsible for the proper management of every wakf under the direct management of the Board.

(4) Every budget submitted by the Chief Executive Officer under sub-section (1) shall comply with the requirement of section 46 and, for this purpose, references therein to the mutawalli of the wakf shall be construed as references to the Chief Executive Officer.

(5) The audit of accounts of every wakf under the direct management of the Board shall be undertaken by the State Examiner of Local Funds or any other officer appointed by the State Government for this purpose, irrespective of the income of the wakf.

(6) The provisions of sub-sections (2) and (3) of section 47 and the provisions of sections 48 and 49 shall, in so far as they are not inconsistent with the provisions of this section, apply to the audit of accounts referred to in this section.

(7) Where any wakf is under the direct management of the Board, such administrative charges as may be specified by the Chief Executive Officer shall be payable by the wakf to the Board:

Provided that the Chief Executive Officer shall not collect more than ten per cent. of the gross annual income of the wakf under the direct management of the Board as administrative charges.

46. Submission of accounts of wakfs

(1) Every mutawalli shall regular accounts.

(2) Before the 1st day of May next, following the date on which the application referred to in section 36 has been made and thereafter before the 1st day of May in every year, every mutawalli of a wakf shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be provided by regulations by the Board, of all moneys received or expended by the mutawalli on behalf of the wakf during the period of twelve months ending on the 31st day of March, or, as the case may be, during that portion of the said period during which the provisions of this Act, have been applicable to the wakf:

Provided that the date on which the annual accounts are to be closed may be varied at the discretion of the Board.

47. Audit of accounts of wakfs

(1) The accounts of wakfs submitted to the Board under section 46 shall be audited and examined in the following manner, namely:-

(a) in the case of a wakf having no income or a net annual income not exceeding ten thousand rupees, the submission of a statement of accounts shall be a sufficient compliance with the provisions of section 46 and the accounts of two per cent. of such wakfs shall be audited annually by an auditor appointed by the Board;

(b) the accounts of the wakf having net annual income exceeding ten thousand rupees shall be audited annually, or at such other intervals as may be prescribed, by an auditor appointed by the Board from out of the panel of auditors prepared by the State Government and while drawing up such panel of auditors, the State Government shall specify the scale of remuneration of auditors;

(c) the State Government may, at any time cause the account of any wakf audited by the State Examiner of Local Funds or by any other officer designated for that purpose by that State Government;

(2) The auditor shall submit his report to the Board and the report of the auditor shall among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(3) The cost of the audit of the accounts of a wakf shall be met from the funds of that wakf:

Provided that the remuneration of the auditors appointed from out of the panel drawn by the State Government in relation to wakfs having a net annual income of more than ten thousand rupees but less than fifteen thousand rupees shall be paid in accordance with the scale of remuneration specified by the State Government under clause (c) of sub-section (1):

Provided further that where the audit of the accounts of any wakf is made by the State Examiner of Local Funds or any other officer designated by the State Government in this behalf, the cost of such audit shall not exceed one and a half per cent. of the net annual income of such wakf and such costs shall be met from the funds of the wakfs concerned.

48. Board to pass orders on auditor's report

(1) The Board shall examine the auditor's report, and may call for the explanation of any person in regard to any matter mentioned therein, and

shall pass such orders as it thinks fit including orders for the recovery of the amount certified by the auditor under sub-section (2) of section 47.

(2) The mutawalli or any other person aggrieved by any order made by the Board may, within thirty days of the receipt by him of the order, apply to the Tribunal to modify or set aside the order and the Tribunal may, after taking such evidence as it may think necessary, confirm or modify the order or remit the amount so certified, either in whole or in part, and may also make such order as to costs as it may think appropriate in the circumstances of the case.

(3) No application made under sub-section (2) shall be entertained by the Tribunal unless the amount certified by the auditor under sub-section (2) of section 47 has first been deposited in the Tribunal and the Tribunal shall not have any power to stay the operation of the order made by the Board under sub-section (1).

(4) The order made by the Tribunal under sub-section (2) shall be final.

(5) Every amount for the recovery of which any order has been made under sub-section (1) or sub-section (2) shall, where such amount remains unpaid, be recoverable in the manner specified in section 34 or section 35 as if the said order were an order for the recovery of any amount determined under sub-section (3) of section 35.

49. Sums certified to be due recoverable as arrears of land revenue

(1) Every sum certified to be due from any person by an auditor in his report under section 47 unless such certificate is modified or cancelled by an order of the Board of the Tribunal made under section 48, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board giving after the person concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

50. Duties of mutawalli

It shall be the duty of every mutawalli-

(a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(b) to furnish such returns and supply such information or particular as may from time to time be required by the Board in accordance with the provisions of this Act or any rule or order made thereunder;

(c) to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto;

(d) to discharge all public dues; and

(e) to do any other act which he is lawfully required to do by or under this Act.

51. Alienation of wakf property without sanction of Board to be void

(1) Notwithstanding anything contained in the wakf deed, any gift, sale, exchange or mortgage of any immovable property which is wakf property, shall be void unless such gift, sale, exchange or mortgage is effected with the prior sanction of the Board:

Provided that no mosque, dargah or khangah shall be gifted, sold, exchanged or mortgaged except in accordance with any law for the time being in force.

(2) The Board may, after publishing in the Official Gazette, the particulars relating to the transaction referred to in sub-section (1) and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any, that may be received by it from the concerned mutawalli or any other person interested in the wakf, accord sanction to such transaction if it is of opinion that such transaction is-

(i) necessary or beneficial to the wakf;

(ii) consistent with the objects of the wakf;

(iii) the consideration thereto of reasonable and adequate:

Provided that the sale of any property sanctioned by the Board shall be effected by public auction and shall be subject to confirmation by the Board within such time as may be prescribed:

Provided further that the Tribunal may, on the application of the aggrieved mutawalli or other person, for reasons to be recorded by it in writing, permit such sale to be made otherwise than by public auction, if it is of opinion that it is necessary so to do in the interest of the wakf.

(3) The utilisation or investment of the amount realised by the sale or exchange mortgage of any property shall be made by the mutawalli subject to the approval of the Board, and where any amount has been raised by mortgage of any such property, the mutawalli or other person shall make repayment of the mortgage-debt and obtain a discharge of the mortgage-debt from the mortgage within such reasonable time as the Board may specify.

(4) Every approval given by the Board under sub-section (3) shall be communicated to the mutawalli and shall also be published in the manner prescribed.

(5) The mutawalli or any other person having an interest in the wakf who is aggrieved by the decision given under sub-section (3), may, within ninety days from the date of communication to him of such decision or the publication of the decision, as the case may be, prefer an appeal to the Tribunal against such decision, and, thereupon, the Tribunal may, after giving the

appellant and the Board, a reasonable opportunity of being heard, confirm, modify or set aside such decision.

52. Recovery of wakf property transferred in contravention of section 51

(1) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a wakf entered as such in the register of wakf maintained under section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of section 51, it may send a requisition to the Collector within whose jurisdiction is situate to obtain and deliver possession of the property to it.

(2) On receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.

(3) Every order passed under sub-section (2) shall be served-

(a) by giving or tendering the order, or by sending it by post to the person for whom is intended; or

(b) if such person cannot be found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some audit male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:

Provided that where the person on whom the order is to be served is a minor, service upon guardian or upon any adult male member or servant of his family shall be deemed to be the service upon the minor.

(4) Any person aggrieved by the order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the Tribunal within whose jurisdiction the property is situate and the decision of the Tribunal on such appeal shall be final.

(5) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.

(6) In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations.

53. Restriction on purchase of property on behalf of wakf

Notwithstanding anything contained in a wakf deed, no immovable property shall be purchased for or on behalf of any wakf from the funds of any wakf except with the prior sanction of the Board, and the Board shall not accord

such sanction unless it considers that the acquisition of such property is necessary or beneficial to the wakf and that the price proposed to be paid therefore is adequate and reasonable:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in the Official Gazette inviting objections and suggestions with respect thereto and, the Board shall, after considering the objections and suggestions that may be received by it from mutawallis or other persons interested in the wakf, make such orders as it may think fit.

54. Removal of encroachment from wakf property

(1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under his Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property:

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgage by the mutawalli of the wakf or by any other person authorized by him in this behalf.

55. Enforcement of orders made under section 54

Where the person, ordered under sub-section (3) of section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time

aforesaid, the Chief Executive Officer may apply to the Sub-divisional Magistrate within the local limits of whose jurisdiction the land, building, space or other property, is situate for evicting the encroacher, and, thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property and to deliver possession thereof to the concerned mutawalli and in default of compliance with the order, remove the encroachment, or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.

56. Restriction on power to grant lease of wakf property

(1) A lease or sub-lease for any period exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect.

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease or sub-lease or renewal thereof under this section review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.

57. Mutawalli entitled to pay certain costs from income of wakf property

Notwithstanding anything contained in the wakf deed, every mutawalli may pay from the income of the wakf 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 or for the purpose of enabling him to carry out the directions of the Board.

58. Power of Board to pay dues in case of default by mutawalli

(1) Where a mutawalli refuses to pay or fails to pay any revenue cess, rates or taxes due to the Government or any local authority, the Board may discharge dues from the Wakf Fund and may recover the amount so paid from the wakf property and may also recover damages not exceeding twelve and a half per cent. of the amount so paid.

(2) Any sum of money due under sub-section (1) may, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of

being heard, be recovered in the same manner as an arrear of land revenue.

59. Creation of reserve fund

For the purpose of making provisions for the payment of rent and of revenue, cess, rates and taxes due to the Government or any local authority, for the discharge of the expenses of the repair of the wakf property and for the preservation of the wakf property, the Board may direct the creation and maintenance, in such manner as it may think fit, of a reserve fund from the income of a wakf.

60. Extension of time

The Board may, if it is satisfied that it is necessary so to do, extend the time within which any act is required to be done by the mutawalli under this Act.

61. Penalties

(1) If a mutawalli fails to-

(a) apply for the registration of a wakfs;

(b) furnish statements of particulars or accounts or returns as required under this Act;

(c) supply information particulars as required by the Board;

(d) allow inspection of wakf properties, accounts, records or deeds and documents relating thereto;

(e) deliver possession of any wakf property, if ordered by the Board or Tribunal;

(f) carry out the directions of the Board;

(g) discharge any public dues; or

(h) do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the court or the Tribunal that there was reasonable cause for his failure, be punishable with fine which may extend to eight thousand rupees.

(2) Notwithstanding anything contained in sub-section (1), if-

(a) a mutawalli omits or fails, with a view to concealing the existence of a wakf, to apply for its registration under this Act,-

(i) in the case of a wakf created before the commencement of this Act, within the period specified therefore in sub-section (8) of section 36;

(ii) in the case of any wakf created after such commencement, within three months from the date of the creation of the wakf; or

(b) a mutawalli furnishes any statement, return or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular,

he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees.

(3) No court shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer duly authorized by the Board in this behalf.

(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the fine imposed under sub-section (1), when realised, shall be credited to the Wakf Fund.

(6) In every case where offender is convicted after the commencement of this Act, of an offence punishable under sub-section (1) and sentenced to a fine, the court shall also impose such term of imprisonment in default of payment of fine as is authorized by law for such default.

62. Mutawalli not to spend money belonging to wakf for self defense

No mutawalli shall spend any money out of the funds of the wakf, of which he is the mutawalli, for meeting any costs, charges, or expenses which are or may be, incurred by him, in relation to any suit, appeal or any other proceeding for, or incidental to, his removal from office or for taking any disciplinary action against himself.

63. Power to appoint mutawalli in certain cases

When there is a vacancy in the office of the mutawalli of a wakf and there is no one to be appointed under the terms of the deed of the wakf, or where the right of any person to act as mutawalli is disputed, the Board may appoint any person to act as mutawalli for such period and on such condition as it may think fit.

64. Removal of mutawalli

(1) Notwithstanding anything contained in any other law or the deed of wakf, 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 and he has not been granted full pardon with respect to such offence; or

(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; or

(e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or

(f) is employed as a paid legal practitioner on behalf of, or against, the wakf; or

(g) has failed, without reasonable excuse, to maintain regular account for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or

(h) is interested, directly or indirectly, in a subsisting lease in respect of any wakf property, or in any contract made with, or any work being done for, the wakf or is in arrears in respect of any sum due by him to such wakf; or

(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the wakf or in respect of any money or other wakf property; or

(j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;

(k) misappropriates or fraudulently deals with the property of the wakf.

(2) The removal of a person from the office of the mutawalli shall not effect his personal rights, if any, in respect of the wakf property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority or not less than two-thirds of the members of the Board.

(4) A mutawalli who shall is aggrieved by an order passed under any of the clauses (c) or (i) of sub-section (1), 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.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the wakf, by an order suspend such mutawalli until the conclusion of the inquiry:

Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

(6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the wakf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, appoint a suitable person as receiver to manage the wakf and direct the receiver so appointed to ensure that the customary of religious rights of the mutawalli and of the wakf are safeguarded.

(7) When a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct, the mutawalli to deliver possession of the wakf 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 wakf property.

(8) A mutawalli of a wakf removed from his office under this section shall not be eligible for re-appointment as a mutawalli of that wakf for a period of five years from the date of such removal.

65. Assumption of direct management of certain wakf-by the Board

(1) Where no suitable person is available for appointment as a mutawalli of a wakf, or where the Board is satisfied, for reasons to be recorded by it in writing, that the filling up of the vacancy in the office of a mutawalli is prejudicial to the interests of the wakf, the Board may, by notification in the Official Gazette, assume direct management of the wakf for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification.

(2) The State Government may, on its own motion or on the application of any person interested in the wakf, call for the records of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the notification issued by the Board under sub-section (1) and pass such orders as it may think fit and the orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (1).

(3) As soon as possible after the close of every financial year, the Board shall send to the State Government a detailed report in regard to every wakf under its direct management, giving therein-

(a) the details of the income of the wakf for the year immediately preceding the year under report;

(b) the steps taken to improve the management and income of the wakf;

(c) the period during which the wakf has been under the direct management of the Board and explaining the reasons as to why it has not been possible to entrust the management of the wakf to the mutawalli or any committee of management during the year; and

(d) such other matters as may be prescribed.

(4) The State Government shall examine the report submitted to it under sub-section (3), and after such examination issue such directions or instructions to the Board as it may think fit and the Board shall comply with such directions or instructions on receipt thereof.

66. Powers of appointment and removal of mutawalli when to be excised by the State Government

Whenever a deed of wakf or any decree or order of a court of any scheme of management of any wakf provided that a court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise exercise superintendence over the wakf, then, notwithstanding anything contained in such deed of wakf, decree, order or scheme, such powers aforesaid shall be exercisable by the State Government:

Provided that where a Board has been established, the State Government shall consult the Board before exercising such powers.

67. Supervision and supersession of committee of management

(1) Whenever the supervision or management of a wakf is vested in any committee appointed by the wakf, then, notwithstanding anything contained in this Act, such committee shall continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the wakf, whichever is earlier:

Provided that such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time:

Provided further that if the Board is satisfied that any scheme for the management of a wakf by a committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions of the wakf, it may, at any time, modify the scheme in such manner as may be necessary to bring it in conformity with the directions of the wakf or of the provisions of this Act and the rules made thereunder.

(2) Notwithstanding anything contained in this Act and in the deed of the wakf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the wakf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the wakf, in so far as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the Committee to show cause within such time, not

being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the wakf.

(4) Any order made by the Board under sub-section (2) shall be final:

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal

(5) The Board shall, whenever it supersedes any committee under sub-section (2), constitute a new committee of management simultaneously with the order made by the Board under sub-section (2).

(6) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the wakf, and every such order for the removal of any member shall be served upon him by registered post:

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the committee may, within a period of thirty days from the date of service of the order on him, prefer an appeal against such order to the Tribunal and the Tribunal may, after giving a reasonable opportunity to the appellant the Board of being heard, confirm, modify or reverse the order made by the Board and the order made by the Tribunal in such appeal shall be final.

68. Duty of mutawalli or committee to deliver possession of records, etc.

(1) Where any mutawalli or committee of management has been removed by the Board in accordance with the provisions of this Act, or of any scheme made by the Board, the mutawalli or the committee so removed from the office (hereinafter in this section referred to as the removed mutawalli or committee) shall hand over charge and deliver possession of the records, accounts and all properties of the wakf (including cash) to the successor mutawalli or the successor committee, within the month from the date specified in the order.

(2) Where any removed mutawalli or committee fails to deliver charge or deliver possession of the records, accounts and properties (including cash) to the successor mutawalli or committee within the time specified in sub-

section (1) or prevents or obstructs such mutawalli or committee, from obtaining possession thereof after the expiry of the period aforesaid, the successor mutawalli or any member of the successor committee may make an application, accompanied by a certified copy of the order appointing such successor mutawalli or committee, to any Magistrate of the first class within the local limits of whose jurisdiction any part of the wakf property is situated and, thereupon, such Magistrate may, after giving notice to the removed mutawalli or members of the removed committee, make an order directing the delivery of charge and possession of such records, accounts and properties (including cash) of the wakf to the successor mutawalli or the committee, as the case may be, within such time as may be specified in the order.

(3) Where the removed mutawalli or any member of the removed committee, omits or fails to deliver charge and possession of the records, accounts and properties (including cash) within the time specified by the Magistrate under sub-section (2), the removed mutawalli or every member of the removed committee, as the case may be, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

(4) Whenever any removed mutawalli or any member of the removed committee omits or fails to comply with the orders made by the Magistrate under sub-section (2), the Magistrate may authorise the successor mutawalli or committee to take charge and possession of such records, accounts, properties (including cash) and may authorise such person to take such police assistance as may be necessary for the purpose.

(5) No order of appointment of the successor mutawalli or committee, shall be called in question in the proceedings before the Magistrate under this section.

(6) Nothing contained in this section shall bar the institution of any suit in a competent civil court by any person aggrieved by any order made under this section, to establish that he has right, title and interest in the properties specified in the order made by the Magistrate under sub-section (2).

69. Power of Board frame scheme for administration of wakf

(1) Whenever the Board is satisfied, whether on its own motion or on the application of not less than five persons interested in any wakf, that it is necessary or desirable to frame a scheme for the proper administration of the wakf, it may by an order frame such scheme for the administration of the wakf, after consultation with the mutawalli or the applicant in the prescribed manner.

(2) A scheme framed under sub-section (1) may provide for the removal of the mutawalli of the wakf holding office as such immediately before the date on which the scheme comes into force:

Provided that where any such scheme provided for the removal of any hereditary mutawalli, the scheme shall also provide for the appointment of the person next in hereditary succession to the mutawalli so removed, as one of the members of the committee appointed for the proper administration of the wakf.

(3) Every order made under sub-section (2) shall be published in the prescribed manner, and, on such publication shall be final and binding on the mutawalli and all persons interested in the wakf:

Provided that any person aggrieved by an order made under this section may, within sixty days from the date of the order, prefer an appeal to the Tribunal and after hearing such appeal, the Tribunal may confirm, reverse or modify the order:

Provided further that the Tribunal shall have no power to stay the operation of the order made under this section.

(4) The Board may, at any time by an order, whether made before or after the scheme has come into force, cancel or modify the scheme.

(5) Pending the framing of the scheme for the proper administration of the wakf, the Board may appoint a suitable person to perform all or any of the functions of the mutawalli thereof and to exercise the powers, and perform the duties, of such mutawalli.

70. Inquiry relating to administration of wakf

Any person interested in a wakf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, it shall take such action thereon as it thinks fit.

71. Manner of holding inquiry

(1) The Board may, either on an application received under section 73 or on its own motion,-

(a) hold an inquiry in such manner as may be prescribed; or

(b) authorise any person in this behalf to hold an inquiry into any matter relating to a wakf and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the Board or any person authorized by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 for enforcing the attendance of witness and production of documents.

Chapter VII: Finance of The Board

72. Annual contribution payable to Board

(1) The mutawalli of every wakf, the net annual income of which is not less than five thousand rupees, shall pay annually, out of the net annual income derived by the wakf, such contributions, not exceeding seven per cent. of such annual income, as may be prescribed, to the Board for the services rendered by such Board to the wakf.

Explanation I: For the purposes of this Act, "net annual income" shall mean the gross income of the wakf from all sources, including nazars and offerings which do not amount to contributions to the corpus of the wakfs, in a year after deducting therefrom the following, namely:-

(i) the land revenue paid by it to the Government;

(ii) the rates, cessers, taxes and licence fees, paid by it to the Government or any local authority;

(iii) expenditure incurred for all or any of the following purposes, namely:-

(a) maintenance of, or repairs to, irrigation works, which shall not include the capital cost of irrigation;

(b) seeds or seedlings;

(c) manure;

(d) purchase and maintenance of agriculture implements;

(e) purchase and maintenance of cattle for cultivation;

(f) wages for ploughing, watering, sowing, transplanting, harvesting, threshing and other agricultural operations:

Provided that the total deduction in respect of an expenditure incurred under this clause shall not exceed ten per cent. of the income derived from lands belonging to the wakf;

(iv) expenditure on sundry repairs to rented buildings, not exceeding five per cent. of the annual rent derived therefrom, or the actual expenditure, whichever is less;

(v) sale proceeds of immovable properties or rights relating to, or arising out of immovable properties, if such proceeds are reinvested to earn income for the wakf:

Provided that the following items of receipts shall not be deemed to be income for the purposes of this section, namely:-

(a) advances and deposits recovered and loans taken or recovered;

(b) deposits made as security by employees, lessees or contractors and other deposits, if any;

(c) withdrawals from banks or investments;

(d) amounts recovered towards costs awarded by courts;

(e) sale proceeds of religious books and publications where such sales are undertaken as an un-remunerative enterprise with a view to propagating religion;

(f) donations in cash or kind or offerings made by the donors as contribution to the corpus of the wakf:

Provided that the interest on income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income;

(g) voluntary contributions received in cash or kind for a specific service to be performed by the wakf and expended on such service;

(h) audit recoveries;

Explanation II: In determining, the net annual income for the purposes of this section, only the net profit derived by any wakf from its remunerative undertakings, if any, shall be taken as income, and in respect of its non-remunerative undertakings, such as, schools, colleges, hospitals, poor homes, orphanages or any other similar institutions, the grants given by the Government or any local authority or donations received from the public or fees collected from the pupils of educational institutions shall be taken as income.

(2) The Board may in the case of any mosque or orphanage or any particular wakf reduce or remit such contribution for such time as it thinks fit.

(3) The mutawalli of a wakf may realise the contributions payable by him under sub-section (1) from the various persons entitled to receive any pecuniary or other material benefit from the wakf, but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion, as the value of the benefits receivable by such person bears to the entire net annual income of the wakf:

Provided that if there is any income of the wakf available in excess of the amount payable as dues under this Act, other than as the contribution under sub-section (1), and in excess of the amount payable under the wakf deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub-section (1) in respect of a wakf shall subject to the prior payment of any dues to the Government or any local authority of any other statutory first charge on the wakf property or the income thereof, be a first charge on the income of the wakf and shall be recoverable, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, as an arrear of land revenue.

(5) If a mutawalli realises the income of the wakf and refuses to pay or does not pay such contribution, he shall also be personally liable for such contribution which may be realised from his person or property in the manner aforesaid.

(6) Where, after the commencement of this Act, the mutawalli of a wakf fails to submit a return of the net annual income of the wakf within the time specified therefore or submits a return which, in the opinion of the Chief Executive Officer is incorrect or false in any material particular, on which does not comply with the provisions of this Act or any rule or order made thereunder, the Chief Executive Officer may assess the net annual income of the wakf to the best of his judgment or revise the net annual income as shown in the return submitted by the mutawalli and the net annual income as so assessed or revised shall be deemed to be the net annual income of the wakf for the purpose of this section:

Provided that no assessment of net annual income or revision of return submitted by mutawalli shall be made except after giving a notice to the mutawalli calling upon him to show cause, within the time specified in the notice, as to why such assessment or revision of the return shall not made and every such assessment or revision shall be made after considering the reply if any, given by the mutawalli.

(7) Any mutawalli who is aggrieved by the assessment or revision made by the Chief Executive Officer, under sub-section (6), may prefer an appeal to the Board within thirty days from the date of the receipt of the assessment or revision of return and the Board may, after giving the appellant a reasonable opportunity of being heard, confirm, reverse or modify the assessment or revision or the return and the decision of the Board thereon shall be final.

(8) If, for any reason, the contribution or any portion thereof leviable under this section has escaped assessment in any year, whether before or after the commencement of this Act, the Chief Executive Officer may, within five years from the last date of the year to which such escaped assessment relates serve upon the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment, and demanding payment thereof within thirty days from the date of service of such notice, and the provisions of this Act and the rules made thereunder, shall as far as may be, apply as if the assessments were made under this Act, in the first instance.

73. Power of Chief Executive Officer to direct bank or other person to make payments

(1) Notwithstanding anything contained in any other law for the time being in force, the Chief Executive Officer, if he is satisfied that it is necessary and expedient so to do, make an order directing any bank in which, or any person with whom any money belonging to a wakf is deposited, to pay the contribution, leviable under section 72, out of such money, as may be

standing to the credit of the wakf in such bank or may be deposited with such person, or out of the moneys which may, from time to time, be received by bank or other person for or on behalf of the wakf by way of deposit, and on receipt of such orders, the bank or the other person, as the case may be, shall, when no appeal has been preferred under sub-section (3), comply with such orders, or where an appeal has been preferred under sub-section (3), shall comply with the orders made by the Tribunal on such appeal.

(2) Every payment made by a bank or other person in pursuance of any order made under sub-section (1), shall operate as a full discharge of the liability of such bank or other person in relation to the sum so paid.

(3) Any bank or other person who is ordered under sub-section (1) to make any payment may, within thirty days from the date of the order, prefer an appeal against such order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(4) Every officer of the bank or other person who fails, without any reasonable excuse, to comply with the order made under sub-section (1) or, as the case may be, under sub-section (3), shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

74. Deduction of contribution from perpetual annuity payable to the wakf

(1) Every authority empowered to disburse any perpetual annuity payable to a wakf under any law relating to the abolition of zamindaries or jagirs, or laying down land ceiling, shall, or receipt of a certificate from the Chief Executive Officer, specifying the amount of contribution payable by the wakf under section 72 which remains unpaid, deduct before making payment of the perpetual annuity to the wakf, the amount specified in such certificate and remit the amount so deducted to the Chief Executive Officer.

(2) Every amount remitted under sub-section (1) to the Chief Executive Officer shall deemed to be a payment made by the wakf and shall, to the extent of the amount so remitted, operate as a full discharge of the liability of such authority with regard to the payment of the perpetual annuity.

75. Power of Board to borrow

(1) For the purpose of giving effect to the provisions of this Act, the Board may, with the previous sanction of the State Government, borrow such sum of money and on such terms and conditions as the State Government may determine.

(2) The Board shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.

76. Mutawalli not to lend or borrow moneys without sanction

(1) No mutawalli, Executive Officer or other person in charge of the administration of a wakf shall lend any money belonging to the wakf or any wakf property or borrow any money for the purposes of the wakf except with the previous sanction of the Board:

Provided that no such sanction is necessary if there is an express provision in the deed of wakf for such borrowing or lending, as the case may be.

(2) The Board may, while according sanction, specify any terms and conditions subjects to which the person referred to in sub-section (1) is authorized by him to lend or borrow any money or lend any other wakf property.

(3) Where any money is lent or borrowed, or other wakf property is lent in contravention of the provisions of this section, it shall be lawful for the Chief Executive Officer,-

(a) to recover an amount equal to the amount which has been so lent or borrowed, together with interest due thereon, from the personal funds of the person by whom such amount was lent or borrowed;

(b) to recover the possession of the wakf property lent in contravention of the provisions of this Act, from the person to whom it was lent, or from persons who claim title to such property through the person to whom such property was lent.

77. Wakf fund

(1) All moneys received or realised 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 Wakf Fund.

(2) All moneys received by the Board, as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head.

(3) Subject to any rules that may be made by the State Government in this behalf, the Wakf Fund shall be under the control of the Board, so, however, that the Wakf Fund under the control of common Wakf Board shall be subject to rules, if any, made in this behalf by the Central Government.

(4) The Wakf Fund shall be applied to-

(a) repayment of any loan incurred under section 75 and payment of interest thereon;

(b) payment of the cost of audit of the Wakf Fund and the accounts of wakfs;

(c) payment of the salary and allowances to the officers and staff of the Board;

(d) payment of travelling allowances to the Chairperson, members of the Board;

(e) 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;

(f) payment of all expenses incurred by the Board for the discharge of any obligation imposed on it by or under any law for the time being in force.

(5) If any balance remains after meeting the expenditure referred to in sub-section (4), the Board may use any portion of such balance for the preservation and protection of wakf properties or for such other, purposes as it may deem fit.

78. Budget of Board

(1) The Board shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and forward a copy of the same to the State Government.

(2) On receipt of the budget forwarded to it under sub-section (1), the State Government shall examine the same and suggest such alterations, corrections, or modifications to be made therein as it may think fit and forward such suggestions to the Board for its consideration.

(3) On receipt of the suggestions from the State Government the Board may make written representations to that Government with regard to the alterations, corrections or modifications suggested by that Government and the State Government shall, after considering such representations, communicate, within a period of three weeks from the date of receipts thereof, to the Board its final decision in relation to the matter and the decision of the State Government shall be final.

(4) On receipt of the decision of the State Government under sub-section (3), the Board shall incorporate in its budget all the alterations, corrections, modifications finally suggested by the State Government and the budget as so altered, corrected or modified, shall be the budget which shall be passed by the Board.

79. Accounts of Board

The Board shall cause to be maintained such books of accounts and other books in relation to its accounts in such form and in such manner as may be provided by regulations.

80. Audit of accounts of Board

(1) The accounts of the Board shall be audited and examined annually by such auditor as may be appointed by the State Government.

(2) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify whether the accounts of every wakf under the direct management of the Board have been kept

separately and whether such accounts have been audited annually by the State Examiner or Local Funds and shall also specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(3) The cost of the audit shall be paid from the Wakf Fund.

81. State Government to pass orders on auditor's report

The State Government shall examine the auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit.

82. Dues of Board to be recovered as arrears of land-revenue

(1) Every sum certified to be due from any person by an auditor in his report under section 80, be paid by such person within sixty days after the service of a demand notice by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board, after giving the person concerned an opportunity of being heard, be recovered as an arrear of land revenue.

Chapter VIII: Judicial Proceedings

83. Constitution of Tribunals, etc.

(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

(2) Any mutawalli or person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.

(3) Where any application made under sub-section (1) relates to any wakf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis

of the wakf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, it is of opinion that it is expedient in the interest of the wakf or any other person interested in the wakf or the wakf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such wakf or wakf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Codes of Civil Procedure, 1908, while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The executing of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908.

(9) No appeal shall lie against any decision or other whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision

Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a wakf or wakf property it shall hold its proceedings as expeditiously as possible and shall soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute.

85. Bar of jurisdiction of civil courts

No suit other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

86. Appointment of receiver in certain cases

Notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time being in force, where any suit or other legal proceeding is instituted or commenced-

(a) by or on behalf of a Board-

(i) to set aside the sale of any immovable property, which is wakf property, in execution of a decree or order of a civil court;

(ii) to set aside the transfer of any immovable property, which is wakf property, made by the mutawalli, whether for valuable consideration or not, without or otherwise than in accordance with, the sanction of the Board;

(iii) to recover possession of the property referred to in clause (a) or clause (b) or to restore possession of such property to the mutawalli of the concerned wakf; or

(b) by a mutawalli to recover possession of immovable property, which is wakf property, which has been transferred by a previous mutawalli, whether for valuable consideration or not, without otherwise than in accordance with the sanction of the Board, and which is in the possession of the defendant,

the court may, on the application of the plaintiff, appoint a receiver of such property and direct such receiver to pay from time to time to the plaintiff, out of the income of the property, such amount as the court may consider to be necessary for further prosecution of the suit.

87. Bar to the enforcement of right on behalf of unregistered wakfs

(1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or

heard, tried or decided by any court after the commencement of this Act, or where any such suit, appeal or other legal proceeding, had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commencement unless such wakf has been registered, in accordance with the provisions of this Act.

(2) The provisions of sub-section (1) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act.

88. Bar to challenge the validity of any notification, etc.

Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any civil court.

89. Notice of suits by parties against Board

No suit shall be instituted against the Board in respect of any act purporting to be done by it pursuance of this Act or of any rules made thereunder, 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 place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

90. Notice of suits, etc., by courts

(1) In every suit or proceeding relating to a title or possession of a wakf property or the right of a mutawalli or beneficiary, the court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any wakf property is notified for sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates of taxes due to the Government or any local authority, notice shall be given to the Board by the court, Collector or other person under whose order the sale is notified.

(3) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board, within one month of its coming to know of such suit or proceeding, applies to the court in this behalf.

(4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the court or other authority under whose order the sale was held.

91. Proceedings under Act 1 of 1894

(1) If, in the course of proceedings under the Land Acquisition Act, 1894 or under any law for the time being in force relating to the acquisition of land or other property, it appears to the Collector before an award is made that any property under acquisition is wakf property, a notice of such acquisition shall be served by Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.

Explanation: The reference to the Collector in the foregoing provisions of this sub-section shall, in relation to any other law referred to therein, be construed, if the Collector is not the competent authority under such other law to make an award of the compensation or other amount payable for acquisition of land or other property thereunder, as a reference to the authority under such other law competent to make such award.

(2) Where the Board has reason to believe that any property under acquisition is wakf property, it may at any time before the award is made appear and plead as a party to the proceeding.

(3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2), no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard.

(4) Any order passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard, shall be declared void if the Board, within one month of its coming to know of the order, applies in this behalf to the authority which made the order.

92. Board to be party to suit or proceedings

In any suit or proceeding in respect of a wakf or any wakf property the Board may appear and plead as a party to the suit or proceeding.

93. Bar to compromise of suits by or against mutawallis

No suit or proceeding in any court by or against the mutawalli of a wakf relating to title to wakf property or the rights of the mutawalli shall be compromised without the sanction of the Board.

94. Power to make application to the Tribunal in case of failure of mutawalli to discharge his duties

(1) Where a mutawalli is under an obligation to perform any act which is recognised by Muslim law as pious, religious or charitable and the mutawalli fails to perform such act, the Board may apply to the Tribunal for

an order directing the mutawalli to pay to the Board or to any person authorized by the Board in this behalf the amount necessary for the performance of such act.

(2) Where a mutawalli is under an obligation to discharge any other duties imposed on him under the wakf and the mutawalli wilfully fails to discharge such duties, the Board or any person interested in the wakf may make an application to the Tribunal and the Tribunal may pass such order thereon as it thinks fit.

95. Power of appellate authority to entertain appeal after expiry of specified period

Where, under this Act any period has been specified for the filling of any appeal, the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period so specified, entertain the appeal after the expiry of the said period.

Chapter IX: Miscellaneous

96. Power of Central Government to regulate secular activities of wakfs

(1) For the purpose of regulating the secular activities of wakfs, the Central Government shall have the following powers and functions, namely:-

(a) to lay down general principles and policies of wakf administration in so far as they relate the secular activities of the wakf;

(b) to co-ordinate the functions of the Central Wakf Council and the Board, in so far as they relate to their secular functions;

(c) to review administration of secular activities of wakfs generally and to suggest improvements, if any.

(2) In exercising its powers and functions under sub-section (1), the Central Government may call for any periodic or other reports from any Board and may issue to the Board such directions as it may think fit and the Board shall comply with such directions.

Explanation: For the purposes of this section "secular activities" shall include social, economic, educational and other welfare activities.

97. Directions by State Government

Subject to any directions issued by the Central Government under section 96, the State Government may, from time to time give to the Board such general or special directions as the State Government thinks fit and in the performance of its functions, the Board shall comply with such directions.

98. Annual report by State Government

As soon as may be after the close of a financial year, the State Government shall cause a general annual report on the working and administration of the State Wakf Board and the Administration of wakf in the State during that year to be prepared and laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House, and every such report shall be in such form and shall contain such matters as may be provided by regulations.

99. Power to supersede Board

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

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

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

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

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct; and

(c) all properties vested in the Board shall, during the period of supersession vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government, may-

(a) extend the period of supersession for such further period as it may consider necessary; or

(b) reconstitute the Board in the manner provided in section 14.

100. Protection of action taken in good faith

No suit or other legal proceeding shall lie against the Board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

101. Survey Commissioner, members and officers of the Board deemed to be public servants

(1) The Survey Commissioner, members of the Board, every officers, every auditor of the Board and every person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

(2) Every mutawalli of a wakf, every member of managing committee, whether constituted by the Board or under any deed of wakf, every Executive Officer and every person holding any office in a wakf shall also be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

102. Special provision for reorganisation of certain Boards

(1) Where on account of the reorganisation of States under any law providing reorganisation of States, the whole or any part of a State in respect of which a Board was, immediately before the day of such reorganisation, functioning has been transferred on that day to another State and by reason of such transfer, it appears to the Government of a State in any part of which the Board is functioning that the Board should be dissolved or that it should be reconstituted as an Intra-State Board for the whole or any part of that State, the State Government may frame a scheme or such dissolution or such reconstitution, including proposals regarding the transfer of the assets, rights and liabilities of the Board to any other Board or State Government and the transfer or re-employment of employees of the Board and forward the scheme to the Central Government.

(2) On receipt of a scheme forwarded to it under sub-section (1), the Central Government may, after consulting the State Governments concerned, approve the scheme with or without modifications and give effect to the scheme so approved by making such order as it thinks fit.

(3) An order under sub-section (2) may provide for all or any of the following matters, namely:-

(a) the dissolution of the Board;

(b) the reconstitution in any manner whatsoever of the Board including the establishment, where necessary, of a new Board.

(c) the area in respect of which the reconstituted Board or new Board shall function and operate;

(d) the transfer, in whole or in part, of the assets, rights and liabilities of the Board (including the rights and liabilities under any contract made by it) to any other Board or State Government and the terms and conditions of such transfer;

(e) the substitution of any such transferee for the Board, or the addition of any such transferee, as a party to any legal proceeding to which the Board is a party; and the transfer of any proceeding pending before the Board to any such transferee;

(f) the transfer or re-employment of any employee of the Board to or by, any such transferee and subject to the provisions of law providing for the reorganisation of the concerned State, the terms and conditions of service applicable to such employees after such transfer or re-employment; and

(g) such incidental, consequential and supplement matters as may be necessary to give effect to the approved scheme.

(4) Where an order is made under this section transferring the assets, rights and liabilities of any Board, then, by virtue of that order, such assets, rights and liabilities of the Board shall vest in, and be the assets, rights and liabilities of, the transferee.

(5) Every order made under this section shall be published in the Official Gazette.

(6) Every order made under this section shall be laid before each House of Parliament, as soon as may be, after it is made.

103. Special provision for establishment of Board for part of a State

(1) Where on account of the territorial changes brought about by any law providing for the reorganisation of any State, this Act is as from the date on which that law comes into force applicable only to any part or parts of a State but has not been brought into force in the remaining part thereof, then notwithstanding anything contained in this Act, it shall be lawful for the Government of the State to establish one or more Boards for such part or parts in which this Act is in force and in such a case any reference in this Act to the word "State" in relation of a Board shall be construed as a reference to that part of the State for which the Board is established.

(2) Where any such Board has been established and it appears to the Government of the State that a Board should be established for the whole of the State, the State Government may, by order notified in the Official Gazette dissolve the Board established for the part of the State or reconstitute and reorganise. such Board or establish a new Board for the whole of the State and thereupon, the assets, rights and liabilities of the Board for the part of

the State shall vest in and be the assets, rights and liabilities of the reconstituted Board or the new Board, as the case may be.

104. Application of Act to properties given or donated by persons not professing Islam for support of certain wakf

Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam of the support of a wakf being-

(a) a mosque, idgah, imambara, dargah, khanqah or a maqbara;

(b) a Muslim graveyard;

(c) a choultry or a musafarkhana,

then such property shall be deemed to be comprised in that wakf and be dealt in the same manner as the wakf in which it is so comprised.

105. Power of Board and Chief Executive Officer to require copies of documents, etc., to be furnished

Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Board or the Chief Executive Officer to require any person having the custody of any record, register, report or other document relating to a wakf or any immovable property, which is wakf property, to furnish subject to the payment of necessary costs, copies of, or extracts from, any such record, register, report or documents and every person to whom such a requisition is made, shall furnish, as soon as may be practicable, to the Board or Chief Executive Officer copies or extracts from the required record, register, report or other document.

106. Powers of Central Government to constitute common Boards

(1) Where the Central Government is satisfied that by reasons of-

(i) the smallness of the Muslim population in two or more States,

(ii) the slender resources of the wakfs in such States, and

(iii) the disproportion between the number and income of the wakfs and the Muslim population in such States,

it is expedient in the interests of the wakfs in the States and the Muslim population of such States, to have, instead of separate Boards for each of such States, a common Board, it may, after consultation with the Government of each of the concerned States, establish, by notification in the Official Gazette, a common Board for such States as it may deem fit, and may, by the same or any subsequent notification specify the place at which the principal office of such common Board shall be located.

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

(3) Whenever any common Board is established under sub-section (1),-

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

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

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

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

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

107. Act 36 of 1963 not to apply for recovery of wakf properties

Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any wakf or for possession of any interest in such property.

108 Special provision as to evacuee wakf properties

The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of section 2 of the Administration of Evacuee Property Act, 1950 which immediately before it became such evacuee property within the said meaning was property comprised in any wakf and, in particular any entrustment (whether by transfer of any documents or in any other manner and whether generally or for specified purpose) of any such property to a Board made before the commencement of this Act in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment had operated to-

(a) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (1) of section 11 of the Administration of Evacuee Property Act, 1950 with effect from the date of such entrustment, and

(b) authorise such Board to assume direct management of the wakf concerned for so long as it might deem necessary.

109. Power to make rules

(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act, other than those of Chapter III.

(2) In particulars, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(i) other particulars which the report of the Survey Commissioner may contain, upon clause (f) of sub-section (3) of section 4;

(ii) any other matter under clause (f) of sub-section (4) of section 4;

(iii) the particulars which a list of Wakfs published under sub-section (2) of section 5, may contain;

(iv) the manner of election of members of the Board by means of a single transferable vote, under sub-section (2) of section 14;

(v) the terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 23;

(vi) the conditions and restrictions subject to which the Chief Executive Officer or any other officer may inspect any public office, records or registers under section 29;

(vii) the conditions subject to which an Executive Officer and supporting staff may be appointed under sub-section (1) of section 38;

(viii) the manner in which an inquiry may be held by the Chief Executive Officer under sub-section (1) of section 39;

(ix) the form in which, and the time within which, a separate budget for Wakfs under the direct management of the Board shall be prepared under sub-section (1) of section 45;

(x) the interval at which accounts of Wakfs may be audited in pursuance of the provisions of sub-section (1) of section 47;

(xi) the time within which, the sale of any property is to be informed under the first proviso to sub-section (2) of section 51 and the manner in which the approval given under sub-section (3) of that section shall be published;

(xii) the guidance subject to which the Collector shall recover the property transferred in contravention of the provisions of this Act, under section 52;

(xiii) the manner of service of notice issued under sub-section (1) of section 54 and the manner in which any inquiry is to be made under sub-section (3) of that section;

(xiv) the manner in which any inquiry may be held under section 64 or section 71;

(xv) the other matters which may be specified in the report submitted under sub-section (3) of section 65;

(xvi) the manner of publication of order made under sub-section (2) of section 67;

(xvii) the manner in which consultation may be made with mutawalli under sub-section (1) of section 69;

(xviii) the manner of publication of order made under sub-section (3) of section 69;

(xix) the rate at which contribution is to be made by a mutawalli under section 72;

(xx) the payment of moneys into the Wakf Fund, the investment, the custody and disbursement of such moneys under section 77;

(xxi) the form in which, and the time within which, the budget of the Board may be prepared and submitted under section 78;

(xxii) the time within which application is to be made to the Tribunal under sub-section (2) of section 83;

(xxiii) the procedure which the tribunal shall follow under sub-section (6) of section section 83;

(xxiv) the form in which the annual report is to be submitted and the matters which such report shall contain under section 98; and

(xxv) any other matter which is required to be, or may be, prescribed.

110. Powers to make regulations by the Board

(1) The Board may, with the previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made thereunder, for carrying out its functions under this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:-

(a) the time and places of the meetings of the Board under sub-section (1) of section 17;

(b) the procedure and conduct of business at the meetings of the Board;

(c) the constitution and functions of the committees and the Board and the procedure for transaction of business at the meetings of such committees;

(d) the allowances or fees to be paid to the Chairperson or members of the Board or members of committees;

(e) the terms and conditions of service of the officers and other employees of the Board under sub-section (3) of section 24;

(f) the forms of application for registration of Wakfs further particulars to be contained therein and the manner and place of registration of Wakfs under sub-section (2) of section 36;

(g) further particulars to be contained in the register of Wakfs under section 37;

(h) the form in which, and the time within which, the budgets of Wakfs may be prepared and submitted by the Mutawalli and approved by the Board under sub-section (1) of section 44;

(i) the books of accounts and other books to be maintained by the Board under section 79;

(j) fees payable for inspection of proceedings and records of the Board or for issue of copies of the same;

(k) persons by whom any order or decision of the Board may be authenticated; and

(l) any other matter which has to be, or may be, provided by regulations.

(3) All regulations made under this section shall be published in the Official Gazette and shall have effect from the date of such publication.

111. Laying of rules and regulations before State Legislature

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

112. Repeal and savings

(1) The Wakf Act, 1954 and the Wakf (Amendment) Act, 1984 are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

(3) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers

conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken.

113. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

(2) However, order made under the section shall be laid as soon as may be after it is made, before each House of Parliament.

9. The Requisitioning And Acquisition of Immovable Property Act, 1952

[Act No. 30 of Year 1952, dated 14th March, 1952]

An Act to provide for the requisitioning and acquisition of immovable property for the purposes of the Union.

3. Power to requisition Immovable Property

(1) (…)

(2) If, after considering the cause, if any, shown by any person interested in the property or in possession thereof, the competent authority is satisfied that it is necessary or expedient so to do, it may, by order in writing, requisition the property and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning:

Provided that no property or part thereof-

(…)

(b) which is exclusively used either for religious worship by the public or as a school, hospital, public library or an orphanage or for the purpose of accommodation of persons connected with the management of such place of worship or such school, hospital, library or orphanage,

shall be requisitioned:

Provided further that where the requisitioned property consists of premises which are being used as a residence by a tenant for not less than two months immediately preceding the date of the service of notice under subsection (1), the competent authority shall provide such tenant with alternative accommodation which, in its opinion, is suitable.

10. Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976

[Act No. 13 of Year 1976]

An Act to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto.

Whereas for the effective prevention of smuggling activities and foreign exchange manipulations which are having a deleterious effect on the national economy it is necessary to deprive persons engaged in such activities and manipulations of their ill-gotten gains;

And whereas such persons have been augmenting such gains by violations of wealth-tax, income-tax or other laws or by other means and have thereby been increasing their resources for operating in a clandestine manner;

And whereas such persons have in many cases been holding the properties acquired by them through such gains in the names of their relatives, associates and confidants;

Be it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:

4. Prohibition of holding illegally acquired property

(1) As from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf.

(2) Where any person holds any illegally acquired property in contravention of the provision of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Act.

25. Provisions of the Act not to apply to certain properties held in trust

Nothing contained in this Act shall apply in relation to any property held by a trust or an institution created or established wholly for public religious or charitable purposes if-

(i) such property has been so held by such trust or institution from a date prior to the commencement of this Act, or

(ii) such property is wholly traceable to any property held by such trust or institution prior to the commencement of this Act.

11. The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Acts 1987

[A.P. Act No. 30 of Year 1987, dated 12th April, 1987]

Reserved by the Governor on the 21st April, 1987 for the consideration and assent of the President, received the assent of the President on the 15th May, 1987 and published on 23rd May, 1987, in the Andhra Pradesh Gazette Part-IV B (Ext.).

An Act to consolidate and amend the law relating to the administration and governance of Charitable and Hindu Religious Institutions and Endowments in the State of Andhra Pradesh.

Be it enacted by the Legislative Assembly of the State of Andhra Pradesh in the thirty-eighth Year of the Republic of India as follows:

Chapter I: Preliminary

1. Short title, extent, application and Commencement

(1) This Act may be called the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987.

(2) It extends to the whole of the State of Andhra Pradesh.

(3) It applies to-

(a) all public charitable institutions and endowments, whether registered or not, in accordance with the provisions of this Act, other than Wakfs governed by the provisions of the Wakfs Act, 1954.

Explanation: In this clause, the expression "public charitable institutions and Endowments" shall include every charitable institution or endowment the administration of which is for the time being vested in any department of Government, or Civil Court, Zilla Praja Parishad, Municipality or local authority, or any company, society, organisation institution or other person;

(b) all Hindu public religious institutions and endowments whether registered or not in accordance with the provisions of this Act.

(4) It shall come into force on such date as the State Government may, by notification in the Andhra Pradesh Gazette, appoint.

2. Definitions

In this Act, unless the context otherwise requires-

(1) *"archaka"* includes a Pujari, Panda, an Archakatvam Mirasidar or other person, who personally performs or conducts any archana, puja or other ritual;

(2) *"Assistant Commissioner"* means the Assistant Commissioner appointed under sub-section (1) of Section 3 and includes every officer who for the time being exercises the powers and performs the functions of an Assistant Commissioner under this Act or the rules made thereunder in respect of any charitable or religious institutions or endowments, as specified in sub-section (5) of Sec. 3;

(2-a) *"Board"* means the Tirumala Tirupathi Devasthanams Board constituted by the Government under Section 96;

(2-b) *"Chairman"* means the Chairman of the Board or the Committee of Management of Tirumala Tirupathi Devastanams appointed under Section 96;

(3) *"charitable endowments"* means all property given or endowed for any charitable purpose;

Explanation I: Any property which belonged to or was given or endowed for the support or maintenance of a charitable institution or which was given, endowed or used as of a right for any charitable purpose shall be deemed to be a charitable endowment within the meaning of this definition, notwithstanding that before or after the commencement of this Act, the charitable institution has ceased to exist or ceased to be used for any charitable purpose or the charity has ceased to be performed.

Explanation II: Any Inam granted to a service holder or to an employee of a Charitable Institution for the performance of any charity or service in connection with a charitable institution shall not be deemed to be a personal gift to the service holder or to the employees notwithstanding the grant of ryotwari patta to such service holder or employee under the Andhra Pradesh (Andhra Areas) Inams (Abolition and Conversion into Ryotwari) Act, 1956, but shall be deemed to be a charitable endowment;

(4) *"charitable institution"* means any establishment, undertaking, organisation or association formed for a charitable purpose and includes a specific endowment and dharmadayam;

(5) "charitable purpose" includes-

(a) relief of poverty or distress;

(b) education;

(c) medical relief;

(d) advancement of any other object of utility or welfare to the general public or a section thereof not being an object of an exclusively religious nature.

(6) *"Commissioner"* means the Commissioner and the Additional Commissioner appointed under sub-section (1) of Section 3 and includes every officer who for the time being exercises the powers and performs the functions of a Commissioner under this Act or the rules made thereunder in respect

of any charitable or religious institution or endowment as specified in sub-section (5) of Section 3;

(7) *"Common Good Fund"* means the Andhra Pradesh Hindu Charitable and Religious Institution and Endowments Common Good Fund, or the Andhra Pradesh Charitable Institutions and Endowments Common Good Fund as the case may be, under sub-section (1) of Sec. 70.

(7-a) *"Committee"* means the Tirumala Tirupathi Devasthanams Management Committee appointed by the Government under Section 97-A for the administration of the Tirumala Tirupathi Devasthanams;

(8) *"Court"* means-

(i) in relation to a charitable or religious institution or endowment situated within the limits of the Municipal Corporation of Hyderabad, the City Civil Court, Hyderabad;

(ii) in relation to a charitable or religious institution or endowment situated elsewhere in the State, the Subordinate Judge's Court having Jurisdiction over the area in which the said institution or endowment is situate or, if there is no such court, the District Court having jurisdiction over such area;

in relation to a specific endowment attached to a charitable or religious institution, the Court which would have jurisdiction as aforesaid in relation to such charitable or religious institution;

in relation to a specific endowment attached to two or more such institutions, any Court which would have jurisdiction as aforesaid in relation to either or any of such institutions;

(9) *"Deputy Commissioner"* means the Deputy Commissioner appointed under sub-section (1) of Section 3 and includes every officer who for the time being exercises the powers and performs the functions of a Deputy Commissioner under this Act or the rules made thereunder in respect of any charitable or religious institution or endowment as specified in sub-section (5) of Section 3;

(10) *"Dharmadayam"* means any amount charged or collected under whatever name, according to custom or usage of any business or trade or the agreement between the parties relating to any transaction or otherwise from any party to the said transactions, as being intended to be used for a charitable or a religious purpose;

(11) *"dittam"* means the schedule of articles and other requirements of worship or offering in connection with the daily dhupa, naivedyam, pachikam, paricharikarn and other general, special or periodical services, ceremonies or observances in the institution, endowment, math or specific endowment, as the case may be;

(12) *"Endowment Administration Fund"* means the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Administration Fund established under Sub-section (1) of Section 69;

(13) "*Executive Officer"* means an Officer appointed as such under any of the provisions of this Act;

(14) *"Government"* means the State Government;

(15) "*hereditary Office-holder"* means any office holder including Pedda Jeeyangar, China Jeeyangar, a Mirasidar and an Archaka of a charitable or religious institution or endowment the succession to whose office devolves according to the rule of succession laid down by the founder or according to the usage or custom applicable to the institution or endowment or according to the law of succession for the time being in force, as the case may be;

(16) "*hereditary trustee"* means the trustee of a charitable or religious institution or endowment the succession to whose office devolves according to the rule of succession laid down by the founder or according to usage or custom applicable to the institution or endowment or according to the law of succession for the time being in force, as the case may be;

(17) "*math"* means a Hindu Religious institution presided over by a person, whose principal duty is to engage himself in the teaching and propagation of Hindu religion and philosophy or the teachings and philosophy of the denomination, sect or sampradaya to which the math belongs and in imparting religious instruction and training and rendering spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples; and includes any place or places of religious worship, instruction or training which are appurtenant to the institution;

(17-a) *"member"* means the member of the Board or Committee.

(18) *"person having interest"* includes-

(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;

(b) in the case of a charitable institution or endowment or a religious institution other than a math or a religious endowment a person who is entitled to attend at or is in the habit of attending the performance of service, charity or worship connected with the institution or endowment or who is entitled to partake or is in the habit of partaking in the benefit of any charity or the distribution of gifts thereat;

(c) in the case of a specific endowment a person who is entitled to attend at or is in the habit of attending the performance of the service or charity or who is entitled to partake or is in the habit of partaking in the benefit of the charity;

(19) "*prescribed"* means the prescribed by rules made by the Government under this Act;

(20) "*Regional Joint Commissioner"* means the Regional Joint Commissioner appointed under sub-section 3 and includes every officer who for the time being exercises the powers and performs the functions of a Regional Joint Commissioner under this Act or the rule made thereunder in respect of any charitable or religious institution or endowment as specified in sub-section (5) of Section 3;

(21) "*religious charity"* means a public charity associated with a Hindu festival or observance of a religious character, whether connected with a religious institution or not;

(22) "*religious endowments"* means property (including movable property), and religious offerings whether in cash or kind, given or endowed for the support of a religious institution or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof.

Explanation I: All property which belonged to or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a religious endowment within the meaning of this definition, notwithstanding that, whether before or after the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed.

Explanation II: Any Inam granted to an archaka, service-holder or other employee of a religious Institution or the performance of any service or charity in connection with a religious institution shall not be deemed to be a personal gift to the archaka, service-holder or employee, notwithstanding the grant or ryotwari patta to an archaka, service holder or employee under the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 but shall be deemed to be a religious endowment;

(23) "*religious institution"* means a math, temple or specific endowment and includes a Brindavan, samadhi or any other institution established or maintained for a religious purpose;

(24) "*Revenue Divisional Officer"* means any officer in charge of a revenue division and includes a Deputy Collector, a Sub-Collector and an Assistant Collector;

(25) "*Specific Endowment"* means any property or money endowed for the performance of any specific service or charity in a charitable or religious institution or for the performance of any other charity, religious or otherwise;

Explanation I: Two or more endowments of the nature specified in this clause the administration of which is vested in a common trustee or which are managed under a common scheme settled shall be construed as a single specific endowment for the purpose of this Act;

Explanation II: Where a specific endowment attached to charitable or religious institution is situated partly within the State and partly outside the State, control shall be exercised in accordance with the provisions of this Act over the whole of the specific endowment provided the charitable or religious institution is situated within the State;

(26) "*State"* means the State of Andhra Pradesh;

(27) "*Temple"* means a place whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of, or used as a right by the Hindu community or any section thereof, as a place of public religious worship and includes sub-shrines, utsava mandapas, tanks and other necessary appurtenant structures and land;

Explanation I: A place of worship where the public or a section thereto have unrestricted access or declared as a private place of worship by court or other authority but notwithstanding any such declaration, public or a section thereof has unrestricted access to such place and includes a temple which is maintained within the residential premises, if offerings or gifts are received by the person managing the temple from the public or a section thereof at the time of worship or other religious function shall be deemed to be a temple.

(28) "*Tirumala Tirupathi Devasthanams"* means the temples specified in the First Schedule and the endowments and properties thereof and shall include the educational institutions and the other institutions specified in the Second Schedule and the endowments and properties thereof and Tirumala Tirupati Devasthanams shall be deemed to be constituted into a single religious institution for the proposes of this Act;

(29) *"trustee"* means any person whether known as mathadhipathi, mahant, dharmakarta, mutawally, muntazim or by any other name, in whom either alone or in association with any other person, the administration and management of a charitable or religious institution or endowment are vested; and includes a Board of Trustees;

(30) any reference to ´*Hindu'* shall be construed as including a reference to a person professing Buddhist, Jain or Sikh religion and the reference to Hindu religious institution shall be construed accordingly;

words and expressions used in this Act, but not defined herein, shall have the meaning assigned to them in the relevant Acts.

Chapter II: Commissioner, Additional Commissioner, Regional Joint etc., and their powers and functions

3. Appointments etc., of Commissioner, Additional Commissioner, Regional Joint Commissioner, Deputy Commissioner and Assistant Commissioner

(1) Subject to the provisions of Section 4, the Government shall appoint a Commissioner, Additional Commissioner and such number of Regional Joint Commissioners, Deputy Commissioners and Assistant Commissioners as they think fit for the purpose of exercising the powers and performing the functions conferred on or entrusted to them by or under this Act.

(2) The Commissioner, the Additional Commissioner and every Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner appointed under sub-section (1) exercising the powers and performing the functions as aforesaid in respect of religious institutions or endowments, shall be a person professing Hindu religion and shall cease to exercise those powers and perform those functions when he ceases to profess that religion.

(3) The conditions of service of the officers appointed under sub-section (1), shall be such as may be determined by the Government.

(4) The Officers appointed under sub-section (1) shall be the employees of the Government and their salaries, allowances, pensions and other remuneration shall be paid in the first instance out of the Consolidated Fund of the State and subsequently reimbursed from the Endowments Administration Fund.

(5) The Government may direct the Commissioner, Additional Commissioner and every Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner appointed under sub-section (1) to exercise the powers and perform the functions conferred on or entrusted to the Commissioner, Additional Commissioner or Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, by or under this Act in respect of charitable or religious institutions or endowments.

4. Qualifications for appointment of Commissioner etc.

(1) A person to be appointed as the Commissioner, shall be one-

(a) who is holding or has held a post of the District Collector or a post not lower in rank than that of a District Collector in any other service in the State; or

(b) who is holding or has held a post in the Andhra Pradesh State Higher Judicial Service; or

(c) who has at least ten years practice as an Advocate of the High Court of Andhra Pradesh or of the Supreme Court; or

(d) who has been holding the post of Additional Commissioner:

Provided that no person shall be eligible for appointment as Commissioner unless he has completed the age of forty-five years.

(2) The qualifications for appointment to the office of Additional Commissioner, Regional Joint Commissioner and Assistant Commissioner shall be such as may be prescribed.

(3) [- - - - - - - -].

(4) [- - - - - - - -].

(5) A person to be appointed as an Assistant Commissioner shall be one-

(a) who has been for not less than three years as an Advocate of the High Court of Andhra Pradesh, by direct recruitment; or

(b) who has been holding for not less than three years the post of Superintendent in the Endowments Department or the post of an Executive Officer of the prescribed grade, by promotion;

(c) who has been holding an equivalent post of Assistant Commissioner in any of the charitable or religious institutions or endowments published under clause (a) of Section 6 including a person in the service of the Tirumala Tirupathi Devasthanams, by transfer:

Provided that in the case of Deputy Commissioners and Assistant Commissioners the number of posts to be filled by direct recruitment shall not exceed one-fifth of the cadre strength of each category.

5. State to be divided into regions, divisions and sub-divisions for purposes of this Act

For the purposes of this Act, the Commissioner shall with the previous approval of the Government divide the State into such number of regions and, each such region into such number of divisions and each such division into such number of sub-divisions as he may deem fit. Each region shall be in the charge of Regional Joint Commissioner, each division shall be in the charge of a Deputy Commissioner and each subdivision shall be in the charge of an Assistant Commissioner:

Provided that it shall be lawful for the Government to appoint a Regional Joint Commissioner for more regions than one or a Deputy Commissioner for more divisions than one or an Assistant Commissioner for more subdivisions than one.

6. Preparation and publication of list of charitable and religious institutions and endowments on the basis of income

The Commissioner shall prepare separately and publish in the prescribed manner, a list of-

(a) (i) the charitable institutions and endowments; or

(ii) the religious institutions and endowments other than maths: whose annual income as calculated for the purpose of levy of contribution under Section 65 exceeds rupees five lakhs,

(b) (i) the charitable institutions and endowments;

(ii) the religious institutions and endowments, other than maths: whose annual income calculated as aforesaid exceeds rupees fifty thousand but does not exceed rupees five lakhs;

(c) (i) the charitable institutions and endowments; or

(ii) the religious institutions and endowments other than maths, not falling under clause (a) or clause (b);

(d) the maths irrespective of the income;

(e) the Dharmadayam irrespective of the income:

Provided that the Commissioner may alter the classification assigned to an institution or endowment in the list and enter the same in the appropriate list in case the annual income of such institution or endowment calculated as aforesaid exceeds or falls below the limits specified in clause (a) or clause (b) or clause (c) for three consecutive years.

7. Commissioner to be corporate sole

The Commissioner shall be a corporate sole and shall have perpetual succession and common seal and may sue or be sued in his corporate name.

8. Powers and functions of Commissioner and Additional Commissioner

(1) Subject to the other provisions of this Act, the administration of all charitable and Hindu religious institutions and endowments shall be under the general superintendence and control of the Commissioner and such superintendence and control shall include the power to pass any order which may be deemed necessary to ensure that such institutions and endowments are properly administered and their income is duly appropriated for the purposes for which they were found or exist.

(2) Without prejudice to the generality of the foregoing provisions the Commissioner shall exercise the powers conferred on him and perform the functions entrusted to him by or under this Act in respect of such institutions or endowments in the State as are included in the lists published under clause (a), clause (d) and clause (e) of Section 6.

(3) The powers and functions of the Additional Commissioner shall be such as may be determined by the Government from time to time.

(4) The Commissioner may delegate to a Deputy Commissioner any of the powers conferred on or functions entrusted to the Commissioner by or under this Act including the powers and functions of an Assistant Commissioner which may be exercised or performed by the Commissioner under

sub-section (5) but not including the power and functions of the Commissioner under sub-section (1), Sections 6, 15, 49, 51, 66, 90, 92 and 132 in respect of any institutions or endowments or any class or group of institutions or endowments in the State subject to such restrictions and control as the Government may by general or special order lay down and subject also to such limitations and conditions, if any, as may be specified in the order of delegation.

(5) The Commissioner may delegate to an Assistant Commissioner any of the powers conferred on or functions entrusted to the Commissioner by or under this Act except the powers and functions of the Commissioner under sub-section (1), Sections 6, 15, 49, 51, 66, 90, 92 and 132 in respect of any institution or endowment in the sub-division in charge of the Assistant Commissioner subject to such restrictions and control as the Government may, by general or special order, lay down and subject also to such limitations and conditions if any, as may be specified in the order of delegation.

(6) Notwithstanding anything in Sections 10 and 11, the Commissioner may, by order in writing, declare that the exercise and performance of all or any of the powers or functions by the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall be subject to such exceptions, limitations and conditions as may be specified in the order and he may himself exercise any power or perform the functions so excepted.

9. Powers and functions of Regional Joint Commissioner

Subject to the administrative control of the Commissioner a Regional Joint Commissioner shall exercise such powers and perform such functions of the Commissioner as may, from time to time, be determined by the Government in respect of institutions and endowments in the region and any order passed or proceeding taken by a Regional Joint Commissioner in the exercise of such powers and the performance of such functions shall be deemed to be an order of the Commissioner for the purpose of this Act.

10. Powers and functions of Deputy Commissioner

Every Deputy Commissioner shall, within the division in his charge exercise the powers conferred on and perform the functions entrusted to a Deputy Commissioner as such by or under this Act, in respect of such institutions or endowments as are included in the list published under clause (b) of Sec. 6:

Provided that where a specific endowment is situated in two or more divisions, the Commissioner shall decide as to which of the Deputy Commissioners shall have the jurisdiction to exercise the powers, or perform the functions in respect of such endowment.

11. Powers and functions of Assistant Commissioner

Every Assistant Commissioner shall, within the sub-division in his charge, exercise the powers conferred on, and perform the functions entrusted to, an Assistant Commissioner as such by or under this Act in respect of all institutions and endowments included in the list published under clause (c) of Section 6:

Provided that where a specific endowment is situated in two or more sub-divisions, the Commissioner shall decide as to which of the Assistant Commissioner shall have jurisdiction to exercise the powers, or perform the functions in respect of such endowment.

12. Powers of Commissioner etc., to enter and inspect institutions and endowments

(1) The Commissioner, the Additional Commissioner, a Regional Joint Commissioner, a Deputy Commissioner or an Assistant Commissioner having jurisdiction or any other person authorized by the Commissioner in this behalf, may with due regard to the religious practices and usages of the institutions, inspect any charitable or religious institution or endowment all movable and immovable property belonging to and all records, correspondence, plans, accounts and other documents relating to such institution or endowment for the purpose of satisfying himself that the provisions of this Act and the rules made thereunder are duly carried out:

Provided that in the case of a religious institution or endowment or place of worship, the person so inspecting or authorized to inspect shall be a Hindu.

(2) Every person exercising the power of inspection under sub-section (1) or for the purpose of exercising any other power conferred or performing any function entrusted, by or under this Act shall have the right to enter the premises of any charitable or religious institution or endowment or any place of worship:

Provided that before making such entry for any purpose as aforesaid, the person exercising such power shall give reasonable notice to the trustee or head of the institution or endowment or archaka on duty and shall while making the entry, have due regard to the practices and usages of the institutions or endowments:

Provided further that in the case of a religious institution or endowment or place of worship where the custom or usage does not permit the entry of any person other than the archaka, or a person authorized by such custom or usage, into the sanctum sanctorum or garbhalaya or any other place held specially sacred within the premises of such institution or endowment or place of worship, the person exercising the powers under this section shall not make the entry himself, unless he is a person authorized by such custom or usage in that behalf but may authorise any archaka or other per-

son authorized by such custom or usage to make the entry for the purpose of this section.

13. Commissioner etc., to observe appropriate form, usages and practices

(1) The Commissioner, the Additional Commissioner, a Regional Joint Commissioner, a Deputy Commissioner, an Assistant Commissioner and every other person, exercising powers or performing the functions under this Act, shall not interfere with and shall observe the forms, usages, ceremonies and practices obtaining in and appropriate to the religious institution or endowment in respect of which such powers are exercised or functions are performed and in the case of a math, act in conformity with the rules, practices, usages or customs of the math in his dealings with the head of the math.

(2) The Commissioner shall subject to such directions as the Government may give from time to time, prepare a code of conduct for the trustees, archakas and other office holders, servants and employees and for the persons visiting, worshipping at or resorting to a religious institution or endowment and different codes may be prepared in relation to different classes of institutions or endowments.

Any person violating the code of conduct so prepared shall be liable to be evicted from the premises of the institution or endowment.

Chapter III: Administration and Management of Charitable and Hindu Religious Institutions and Endowments

14. Vesting of all properties in the institution or endowment

All properties belonging to, or given or endowed to a charitable or religious institution or endowments shall vest in the charitable or religious institution or endowment, as the case may be.

15. Appointment of Board of Trustees

(1) In respect of a charitable or religious institution or endowment included in the list published under clause (a) of Section 6-

(a) whose annual income exceeds rupees ten lakhs, the Government shall constitute a Board of Trustees consisting of nine persons appointed by him;

(b) whose annual income does not exceed rupees ten lakhs, the Commissioner shall constitute a Board of Trustees consisting of five persons appointed by him.

(2) In respect of a charitable or religious institution or endowment included in the list published under clause (b) of Section 6, the Deputy of Commissioner having jurisdiction shall constitute a Board of Trustees consisting of five persons appointed by him.

(3) In the case of any charitable or religious institution or endowment included in the list published under clause (c) of Section 6, the Assistant Commissioner having jurisdiction shall constitute a Board of Trustees consisting of three persons appointed by him:

Provided that the Assistant Commissioner may either in the interest of the institution or endowment or any other sufficient cause or for reasons to be recorded in writing appoint a single trustee instead of a Board of Trustees.

16. Abolition of hereditary trustees

Notwithstanding any compromise or agreement entered into or scheme framed, or judgment, decree, or order passed by any court, tribunal or other authority or in a deed or other document prior to the commencement of this Act and in force on such commencement, the rights of a person for the office of the hereditary trustee or mutawalli or dharmakarta or muntazim or by whatever name it is called shall stand abolished on such commencement.

17. Procedure for making appointments of trustees and their term

(1) In making the appointment of trustees under Section 15 the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, shall have due, regard to the religious denomination or any such section thereof to which the institution belongs or the endowment is made and the wishes of the founder:

Provided that one of the trustees shall be from the family of the founder, if qualified.

(2) Every trustee appointed under Section 15 shall hold office for a term of one year from the date of taking oath of office and secrecy:

Provided that every trustee who completed a term of office of one year at the commencement of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Amendment) Ordinance, 1995, shall cease to hold office forthwith and every Trustee who completes a term of office of one year after such commencement shall cease to hold office in such completion.

Explanation: Where the oath of office and secrecy are administered on different dates, the period of three years shall be reckoned from the earlier of those dates for the purpose of this sub-section.

(3) The procedure for calling for application for appointment of trustees, verification of antecedents and other matters shall be such as may be prescribed.

(4) No person shall be a trustee in more than one Board of Trustees.

(5) In every Board of Trustees, there shall be at least one woman member and one member belonging to the Scheduled Castes or the Scheduled

Tribes whose population is larger in the concerned village and one member belonging to Backward Classes:

Provided that it shall not be necessary to appoint-

(a) a woman member where any person appointed to represent the Scheduled Castes, or the Scheduled Tribes or the Backward Classes is a woman;

(b) a member of the Scheduled Castes or the Schedule Tribes where any woman member appointed belongs to the Scheduled Castes or the Scheduled Tribes;

(c) a member of the Backward Classes where any woman member appointed belongs to the Backward Classes.

(6) All properties belonging to a charitable or religious institution or endowment, which on the date of commencement of this Act, are in the possession or under the superintendence of the Government, Zilla Praja Parishad, Municipality or other local authority or any company, society, organisation institution or other person or any committee, superintendent or manager appointed by the Government, shall, on the date on which a Board of Trustees is or is deemed to have been constituted or trustee is or is deemed to have been appointed under this section, stand transferred to such Board of Trustees or trustee thereof, as the case may be and all assets vesting in the Government, local authority or person aforesaid and all liabilities subsisting against such Government, local authority or person on the said date shall devolve on the institution or endowment, as the case may be.

18. Qualifications of Trusteeship

A person shall be qualified for being appointed as or for being a trustee or charitable or religious institution or endowment,

(a) if he has faith in God;

(b) if he possesses good conduct and reputation and commands in the locality in which the institution is situated:

(c) if he has contributed for construction, renovation or development of any institution or performance of any Utsavam or Ubhay am or any charitable cause;

(d) if he has sufficient time and interest to attend to the affairs of the institution; and

(e) if he possesses any other merit.

19. Disqualifications for Trusteeship

(1) A person shall be disqualified for being appointed as, or for being, trustee of any charitable or religious institution or endowment

(a) if he is an undischarged insolvent;

(b) if he is of unsound mind and stands so declared by a competent court or if he is a deaf-mute or is suffering from leprosy or any virulent contagious disease;

(c) if he is interested either directly or indirectly in a subsisting lease of any property or of contract made, with, or any work being done for, the institution or endowment or is in arrears of any kind due by him to such institution or endowment;

(d) if he is appearing as a legal practitioner on behalf of or against the institution or endowment;

(e) if he has been sentenced by a criminal Court for an offend involving moral turpitude, such sentence not having been reversed;

(f) if he has acted adverse to the interest of the institution or endowment;

(g) if he is an office holder or servant attached to, or a person in receipt of any emoluments perquisite from such institution or endowment;

(h) if he is addicted to intoxicating liquors or drugs;

(i) if he has not completed eighteen years of age:

Provided that nothing in the clause shall apply to the trustee holding office immediately before the commencement of this Act:

(j) if he does not profess Hindu Religion in the case of religious institution or endowment; or

(k) if he has held such office for two consecutive terms;

Explanation: The expression "term" includes a part of the term.

(2) Before a trustee enters upon his office the Commissioner, Deputy Commissioner or Assistant Commissioner or any other person authorized by him in this behalf shall administer to him the oath of office and secrecy as may be prescribed.

(3) Any such trustee who fails to take, within thirty days from the date on which he was appointed, the oath of office and secrecy laid down in sub-section (2) shall cease to hold office.

20. Chairman of the Board of Trustees

(1) In the case of charitable and religious institution or endowment and for which a Board of Trustees is constituted under Section 15, the members of the Board of Trustees shall, within such period not exceeding sixty days and in such manner as may be prescribed, elect from among themselves, the Chairman; and if no chairman is elected within the prescribed period, the Government in the case of a Board of Trustees constituted under clause (a) of sub-section (15) and the Commissioner in the case of any other Board of Trustees shall nominate one of the members as Chairman.

(2) A Chairman elected or nominated under sub-section (1) shall hold office so long as he continues to be a member of the Board of Trustees.

21. Cessation of trusteeship on absence from the meeting of the Board of Trustees

(1) A trustee of a charitable or religious institution or endowment for which a Board of Trustees is constituted, shall cease to hold office as such-

(a) where more than three ordinary meetings of the Board of Trustees have been held within a period of three consecutive months reckoned from the date of commencement of the term of office of the trustee or of the date of his restoration to the office as member under sub-section (2), as the case my be if he absents himself from all such meetings; or

(b) where less than three ordinary meetings have been held within the said period of three months, if he absents himself from three consecutive ordinary meetings held during and after the said period:

Provided that no meeting from which a member absented himself shall be counted against him under this sub-section if-

(i) due notice of that meeting was not given to him in the prescribed manner; or

(ii) the meeting was held on a requisition of members;

Provided further that nothing in this sub-section shall apply to a member who attends any meeting other than ordinary meeting held-

(i) in respect of clause (a), within the said period of three months:

(ii) in respect of clause (b), before the third ordinary meeting;

Explanation: For the purpose of this sub-section

(i) "ordinary meeting" shall mean a meeting held after giving a notice of at least three days before the day of the meeting:

(ii) where a meeting other than an ordinary meeting intervenes between one ordinary meeting and another ordinary meeting, those two ordinary meetings shall be regarded as being consecutive to each other;

(iii) a meeting adjourned for want of quorum shall be deemed to be a meeting.

(2) Where a person ceases to be a member under sub-section (1), the person authorized in this behalf by the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall forthwith intimate the fact by registered post to the member concerned report the fact to the Board of Trustees at its next meeting. If such member applied for restoration of his membership to the Board of Trustees within thirty days of the receipt by him of such intimation, he shall be deemed to have been re-

stored to his membership and the person aforesaid shall report the fact of such restoration to the Board of Trustees at its next meeting:

Provided that where a member who is so restored to his membership again incurs the disqualification under sub-section (1), the Board of Trustees may on his application for restoration filed within a period of thirty days of the receipt by him of the intimation from the person aforesaid regarding the disqualification, restore him to his membership.

22. Vacancy in the office of trustee and filling of such vacancy

(1) Where a trustee of any charitable or religious institution or endowment-

(a) becomes subject to any disqualification specified in sub-sections (1) and (3) Section 19 and is removed under Section 28; or

(b) tenders resignation of his office and the same is accepted by the Government, the Commissioner, the Deputy Commissioner, or the Assistant Commissioner, as the case may be his office shall there upon become vacant.

(2) Where a vacancy in the office shall there upon become vacant. Section (1), or by efflux of time or otherwise the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall appoint a new trustee in his place and such trustee shall hold office for the residue of the term of office of his predecessor except where the vacancy has arisen by efflux of time.

23. Powers of trustee

(1) The trustee of every charitable of religious institution or endowment shall administer its affairs, manage its properties and apply its funds in accordance with the terms of the trust, the usage of the institution or endowment and all lawful directions which a competent authority may issue in respect thereof and as carefully as a man of ordinary prudence would deal with such affairs, fund and properties if they were of his own.

(2) A trustee shall, subject to the provisions of this act, be entitled to exercise all powers incidental to the prudent and beneficial administration of the charitable or religious institution or endowment and to the performance of the functions entrusted to him.

(3) A trustee shall not spend the funds of the charitable or religious institution or endowment for meeting any costs, charges or expenses incurred by him in any suit, appeal or application or other proceedings for or incidental to the establishment of his appointment to or removal from office or any disciplinary action taken against him:

Provided that the trustee may reimburse himself in respect of such costs, charges or expenses if he is specifically permitted to do so by an order passed under Section 136.

(4) (a) It shall be lawful for a trustee of a religious institution by an order, to prohibit within the premises of the religious institutions or within such area belonging to that institution as may be specified in the order-

(i) sale, possession, use or consumption of any intoxicating liquor or drug, or cigarettes including beedies and chuttas;

(ii) gaming with cards, dice, counters, money or other instrument of gaming;

(iii) sale, possession, preparation or consumption of meat or other food stuffs containing meat;

(iv) slaughter, killing or maiming of any animal or bird for any purpose.

(b) Any person contravening an order made by the trustee under clause (a) shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees or with both;

(c) Every offence punishable under this sub-section shall be cognizable offence within the meaning of the Code of Criminal Procedure 1973:

Provided that no police officer shall arrest any person for such offence except on a written complaint made by the trustee or Executive Officer of a religious institution or endowment;

(d) Every person contravening an order made by the trustee under clause (a) shall be deemed to be an 'encroacher' within the meaning of Section 83.

(5) (a) Notwithstanding anything in any other law for the time being in force, whoever in the local area

(i) imports, exports, transports, or possesses liquor or any intoxicating drug or cigarettes including beedies and chuttas;

(ii) manufactures liquor or any intoxicating drug;

(iii) cultivates the hemp plant or collects any portion of such plant from which an intoxicating drug can be manufactured;

(iv) sells liquor or any intoxicating drug;

(v) consumes or buys liquor or any intoxicating drug;

(vi) allows any of the acts aforesaid upon the premises in his immediate possession; or

(vii) sells or possesses, prepares or consumes meat or the food stuffs containing meat shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.

(b) Every offence punishable under this sub-section shall be cognizable offence within the meaning of the Code of Criminal Procedure, 1973.

Explanation: In this section "local area" means such area in the vicinity of any religious institution as the Government may, by notification, specify in this behalf.

(6) (a) The trustee of a religious institution or endowment shall have power subject to such conditions as the Commissioner may by general or Special order impose to fix fees for the performance of archana or any service or ritual or ceremony connected with such institution or endowment;

(b) The trustee shall have power to determine and fix place for breaking the coconut within the premises of the temple for the convenience of devotees and to maintain cleanliness in the temple.

(7) It shall be lawful for the trustee of an institution or endowment to convene a meeting of devotees, persons having interest and beneficiaries in the manner prescribed for obtaining suggestions for the betterment of such institution or endowment.

24. Duties of the Trustee

(1) The Commissioner, the Deputy Commissioner, or the Assistant Commissioner, as the case may be, having jurisdiction over any charitable or religious institution or endowment,

(a) may require the trustee or any person, in possession of, or responsible for the custody of any books, accounts, returns reports or other information relating to the administration of the institution or endowment, its funds, income, monies or other properties connected therewith or the appropriation thereof, to furnish or produce or cause to be furnished or produced for any inspection which may be made under the provisions of this Act, all or any of them at such place and time and in such manner as may direct;

(b) shall, at all reasonable times, have free access to such books, accounts, documents, funds, income, monies or other properties.

(2) It shall be the duty of the trustee, all servants and employees working under him any agent of the trustee, or any other person having concern in the administration of such institution or endowment, to afford such assistance and facility as may be necessary or required in connection with any inspection.

(3) The trustee of every charitable or religious institution or endowment shall obey all lawful orders issued under the provisions of this Act, by the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be.

25. Fixation of Dittam

(1) The trustee of a religious institution or endowment, other than a math or specific endowment attached thereto, shall within a period of ninety days from the date of commencement of this Act or the date of founding of the

religious institution or endowment, other than a math or specific endowment attached thereto, and after consultation with the Sthanacharya or where there is no such Sthanacharya, the archaka or archakas concerned, submit proposals, for fixing the dittam in the institution or endowment and the amounts to be spent therefore to the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, having jurisdiction over such institution or endowment:

Provided that the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, may extend the time for the submission of such proposals:

Provided further that this sub-section shall not apply to any institution or endowment in respect of which proposals were submitted to the Commissioner under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 before the commencement of this Act.

(2) The trustee shall, while submitting his proposals under sub-section (1), have due regard to the established usage, in any, the performance of the ceremonies and services and the observance of festivals, worships and the like, appropriate to the religious denomination to which the religious institution or endowment belongs and to the financial position thereof.

(3) The trustee shall, at the time of submission of proposals under sub-section (1) publish the proposals at the premises of the institution or endowment in such manner as may be prescribed, together with a notice stating that within a period of thirty days from the date of such publication any person having interest may submit his objections or suggestions to the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be.

(4) After expiry of the period specified in sub-section (3), the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be shall after considering any objections and suggestions received, pass such order as he may think fit on such proposals having regard to the matters specified in sub-section (2). A copy of the order shall be communicated to the trustee and shall be published in the prescribed manner.

(5) The trustee shall scrutinise the particulars of dittam every three years and submit to the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, having jurisdiction proposals for altering the dittam together with the reasons therefore.

(6) Save as aforesaid, the dittam for the time being in force in an institution or endowment shall not be altered by the trustee.

(7) The procedure for alteration of the dittam shall be the same as laid down in sub-sections (2), (3) and (4).

26. Power of trustee of charitable or religious institution over trustee of specific Endowment

The trustee of a specific endowment made for the performance of any service or charity connected with a charitable or religious institution shall perform such service of charity subject to the general superintendence of the trustee of the institution and shall comply with all lawful orders issued by him.

27. Acts of trustees or Board of Trustees not to be invalidated by informality, vacancy etc.

No act or proceedings of the trustee or trustees appointed or deemed to be appointed or Board of Trustees constituted or deemed to be constituted under Section 15 shall be deemed to be invalid by reason only of a defect in the appointment of such trustee or trustees or constitution of such Board of Trustees or on the ground that the trustee, the Chairman or any member of the Board, as the case may be was not entitled to hold or continue in such office by reason of any disqualification or by reason of any irregularity or illegality in his appointment or by reason of such act or proceeding having been done or conducted during the period of any vacancy in the office of the trustee, Chairman or member of the Board.

28. Suspension, removal or dismissal of trustee

(1) The authority competent to appoint a trustee may suspend, remove or dismiss a trustee if he-

(a) fails to discharge the duties and perform the functions of a trustee in accordance with the provisions of this Act or the rules made thereunder:

(b) disobeys any lawful order issued under the provisions of this Act or the rules made thereunder, by the Government or the Commissioner or the Deputy Commissioner or the Assistant Commissioner;

(c) refuses, fails or delays to handover the property and records in his possession relating to the institution or endowment to his successor or any other person authorized in this behalf;

(d) commits any malfeasance or misfeasance or is guilty of breach of trust or misappropriation in respect of the properties of the institution or endowment;

(e) becomes subject to any of the disqualifications specified in Section 19; or

(f) in the case of a religious institution or endowment, ceases to profess Hindu religion.

(2) Where it is proposed to take action under sub-section (1), the authority competent to appoint the trustee shall frame a charge against the trustee concerned and give him an opportunity of meeting such charge, of testing

the evidence adduced against him and of adducing evidence in his favour and the order of suspension, removal or dismissal shall state every charge framed against trustee, his explanation and the finding on such charge, together with the reasons therefore.

(3) Pending disposal of any charge framed against a trustee, the authority competent to appoint the trustee may suspend the trustee and appoint a fit person to discharge the duties and perform the functions of the trustee.

29. Appointment and duties of Executive Officer

(1) The Government may constitute not more than three charitable or religious institutions or endowments each of whose annual income is rupees fifty thousand but does not exceed rupees one lakh into such groups as may be prescribed.

(2) For each such group of charitable or religious institutions or endowments there shall be appointed an Executive Officer for exercising the powers and discharging the duties conferred on him by or under this Act.

(3) The Government may for purpose of this Act, constitute such grade of Executive Officers, prescribing their appointing authorities and authorise them to exercise such powers and discharge such duties as may be prescribed:

Provided that twenty per centum of vacancies in each grade of Executive Officers shall be filled by the employees belonging to the institutions or Endowments of prescribed grade.

Provided further that, it shall be competent for the Government to appoint a Regional Joint Commissioner, a Deputy Commissioner or an Assistant Commissioner as an Executive Officer.

(4) The Executive Officer appointed and exercising the powers and discharging the duties shall be a person professing Hindu religion and shall cease to exercise those powers and discharge those duties when he ceased to profess that religion.

(5) (a) The Executive Officer appointed under this section shall be under the administrative control of the trustee of the institution or endowment and shall be responsible for carrying out all lawful directions issued by such trustee, from time to time;

(b) The Executive Officer shall, subject to such restrictions as may imposed by the Government

(i) be responsible for the proper maintenance and custody of all the records, accounts and other documents and of all the jewels, valuables, moneys, funds and other properties of the institution or endowment;

(ii) arrange for the proper collection of income and for incurring of expenditure;

(iii) sue or be sued by the name of the institution or endowment in all legal proceedings:

Provided that any legal proceeding pending immediately before the commencement of this Act, by or against an institution or endowment in which any person other than an Executive Officer is suing or being sued shall not be affected;

(iv) deposit all moneys received by the institution or endowment in such bank or treasury as may be prescribed and be entitled to sign all orders cheques against such moneys:

Provided that such deposit may be made in the treasury if the rate of interest offered by it is higher than that of any bank;

(v) have power in cases of emergency, to direct the execution of any work or the doing of any act which is provided for in the budget for the year or the immediate execution or the doing of which is in his opinion, necessary for the preservation of properties of the institution or endowment or for the service or safety of the pilgrims resorting thereto and to direct that the expenses of executing such work or the doing of such act shall be paid from the funds of the institution or endowment:

Provided that the Exceptive Officer shall report forthwith to the trustee any action taken by him under this sub-clause and the reasons therefore.

(c) The Executive Officer shall, with the prior approval of the trustee, institute any legal proceedings in the name of the institution or endowment, or defend any such legal proceedings;

(d) Where there is no Executive Officer in respect of any charitable or religious institution or endowment, the trustee or the chairman of the Board of Trustees, as the case may be, of the institution or endowment shall exercise the powers, perform the functions and discharge the duties of an Executive Officer.

(6) The Executive Officer appointed under this section shall be the employee of the Government and the conditions of his service shall be such as may be determined by the Government. The salary, allowances, pension and other remuneration of the Executive Officer shall be paid in the first instance out of the Consolidated Fund of the State and later recovered from the Endowments Administration Fund established under Section 69 of this Act.

30. Appointment of engineering staff

(1) The Government may appoint the engineering staff of such grades and designations as they may deem necessary, in the Endowments Department to evaluate and control the quality in the supply of material and execution of work. The salaries, allowances, pension and other remuneration of such

engineering staff shall be paid in the first instance out of the Consolidated Fund of the State.

(2) The Government may, for the services rendered by the engineering staff appointed under sub-section (7) recover the whole or any portion of the amounts or charges from such institution or endowments as may be prescribed.

(3) The procedure laid down in this Act, for the recovery of contribution from the institution or endowment shall, as far as may be, apply to the recovery of amounts or charges under sub-section (2).

31. Appointment of Engineers, Architects and Silpis for subdivision

The Commissioner may draw a panel of Engineers, Architects and Silpis from time to time for appointment on such terms and conditions as may be prescribed for each sub-division for preparation of plans and estimates for supervision of the execution of the works, and for recording measurements and check measurements and the like.

32. Appointment of Subordinate Officers

The Government or such other authority as may be authorized by them in the behalf, shall appoint such other subordinate officers with such designations and assign to them such powers and such functions as the Government may deem necessary for the purposes of this Act.

33. Constitution of Endowment services for different officers or classes of officers

(1) The Government may, by notification, constitute any officers or class of officers appointed under Section 29, Section 30 or Section 32 into an Endowment Service for the State.

(2) Upon the issue of a notification under sub-section (1), the Government shall have power, subject to the provisions of Section 153 to make rules, to regulate the classification, methods of recruitment qualifications, conditions of service, pay and allowances and discipline and conduct of every Endowment Service thereby constituted and such rule shall invest jurisdiction in relation to such service in the Govt. and in such other authority as may be prescribed therein.

34. Abolition of hereditary rights in Mirasidars, Archakas, and other office holders and servants

(1) (a) Notwithstanding anything in any compromise or agreement entered into or scheme framed or sanad or grant made or judgment, decree or order passed by any Court, Tribunal or other authorities prior to the commencement of this Act and in force on such Commencement, all rights, whether hereditary, contractual or otherwise of a person holding any office of the Peddajeeyanagar, Chinna Jeeyangar, a Mirasidar or an Archaka or

Pujari or any other office or service or post by whatever name it is called in any religious institution or endowment shall on the commencement of this Act stand abolished.

(b) Any usage or practice relating to the succession to any office or service or post mentioned in clause (a) shall be void;

(c) All rights and emoluments of any nature in cash or kind or both accrued to and appertaining to any office or service or post mentioned in clause (a) and subsisting on the date of commencement of this Act shall on such commencement stand extinguished.

(2) Every office holder and servant mentioned in Cl. (1) of sub-section (i) holding office as such on the date of commencement of this Act shall notwithstanding the abolition of the hereditary rights, continue to hold such office or post on payment of only such emoluments and subject to such conditions of service referred to in sub-sections (3) and (4) of Section 35.

35. Appointment of office holders and servants, etc.

(1) Every vacancy, whether permanent or temporary, amongst the office-holders or servants of a charitable or religious institution or endowment shall be filled by the Trustee:

Provided that in the case of a charitable or religious institution or endowment whose annual income exceeds rupees ten lakhs the Executive Officer, shall appoint the office holders and servants thereof.

(2) No person shall be considered for appointment to any vacancy under sub-section (1) on the ground merely, that he is entitled for such appointment according to-

(i) any scheme framed, agreement entered or judgment, decree or order passed by any court, tribunal or other authority prior to the commencement of this Act;

(ii) any custom or usage; or

(iii) the principle that he is next in the line of succession to the last holder of office.

(3) Every office holder or servant including Pedda Jeeyanagar, Chinna Jeeyanagar and Mirasidar, Archaka and Pujari whether hereditary or not holding office as such on the date of commencement of this Act, shall continue as such office holder or servant and notwithstanding any scheme, judgment, decree or order of a Court, Tribunal or other authority or any agreement or custom or usage relating to the payment of any perquisites, emoluments or remuneration, either in cash or kind or both, before the commencement of this Act, be paid only such emoluments as may be prescribed:

Provided that it shall be lawful for the Government to direct such office holders and servants as they may consider necessary to acquire such qualifications and to undergo training in such manner, for such period and no such terms as may be prescribed.

(4) The qualifications, method of recruitment and temporary appointments, pay and allowances, discipline and conduct and other conditions of service of the office holders and servants of a charitable or religious institution or endowment, shall be such as may be prescribed.

36. Qualifications for Archaka

A person shall be qualified for being appointed as or for being an Archaka of a religious institution or endowment-

(a) if he has passed the Archaka Examination recognised by the Commissioner,

(b) if he is not disabled or suffering from any virulent and contagious disease,

(c) if he is able to recite vedic mantras and sloka relating to rituals with clarity and without any fault,

(d) if he possesses good conduct and character,

(e) if he is free from Sapthavyasanams:

Provided that preference shall be given to a person who is a Brahmacharin.

Explanation: For purposes of this section, the expression "Sapthavyasanams" means gambling, addiction to intoxicating liquors and drug, womanizing, hunting, stealing, abusing others and jealousy.

37. Punishment of office-holders and servants

(1) All office-holders and servants attached to a charitable or religious institution or endowment, shall be under the control of the trustee; and the trustee may, after following the prescribed procedure and for reason to be recorded in writing, impose fine, or order suspension, removal, dismissal or any other prescribed penalty, or any of them for breach of trust, misappropriation, incapacity, disobedience of orders, misconduct, violation of the code of conduct laid down or neglect of duty assigned by or under this Act or other sufficient cause.

(2) Notwithstanding anything in sub-section (1), in the case of an office-holder or servant of an institution or endowment whose annual income exceeds rupees ten lakhs, the power to impose any penalty specified in that subsection shall, subject to such restrictions and conditions as may be laid down by the Government, be exercised by the executive officer after following such procedure as may be prescribed.

(3) (a) Any office-holder or servant aggrieved by an order passed under sub-section (1) by the trustee may, within sixty days from the date of receipt of the orders by him, prefer an appeal to the Commissioner, the Deputy Commissioner, or the Assistant Commissioner as the case may be having jurisdiction, from the order of the trustee;

(b) Any office-holder or servant aggrieved by an order passed under sub-section (2) by the Executive Officer, may within sixty days from the date of receipt of the order by him prefer an appeal to the trustee.

(4) (a) Any office-holder or servant may, within sixty days from the date of receipt by him of the order passed in an appeal filed under clause (a) of sub-section (3), prefer a second appeal if such order is made by

(i) the Commissioner, to the Government;

(ii) the Deputy Commissioner or the Assistant Commissioner, to the Commissioner;

Any office-holder or servant aggrieved by an order of the trustee under clause (b) of sub-section (3) may, within sixty days from the date of receipt by him of such order, prefer a second appeal to the Commissioner.

(5) (a) Where it is noticed by the trustee that any office-holder or servant attached to an institution or endowment has not been dealt with suitably by the Executive Officer under sub-section (2), for any of the lapses specified in sub-section (1), the trustee may direct the Executive Officer to take action under sub-section (2), failing which the trustee may, after following the prescribed procedure, impose, by an order in writing any of the penalties specified in sub-section (1);

(b) Any office-holder or servant aggrieved by an order, passed by the trustee or by the Executive Officer, in pursuance of the direction given under clause (a) may, within sixty days from the date of receipt of the order by him, prefer an appeal to the Commissioner.

38. Power of Commissioner, Deputy Commissioner or Assistant Commissioner to punish office-holders etc., in certain cases

(1) Where it is noticed by the Commissioner, the Deputy Commissioner or the Assistant Commissioner having jurisdiction that any office holder or servant attached to an institution or endowment has not been dealt with suitably by the trustee or the Executive Officer as the case may be under Section 37 for any of the lapses specified in sub-section (1) thereof, the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, may direct the trustee or the Executive Officer to take action under Section 37, failing which the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, may after following the prescribed procedure, impose by an order in writing any of the penalties specified in sub-section (1) of that section on such office-holder or servant.

(2) Any office holder or servant aggrieved by an order passed under subsection (1) may within sixty days from the date of receipt of the order by him, prefer an appeal if such order is passed by-

(a) the Commissioner, to the Government;

(b) the Deputy Commissioner, to the Commissioner: and

(c) the Assistant Commissioner to the Deputy Commissioner; and any order passed in such appeal shall be final.

39. Transfer of office holders and servants

(1) The Commissioner shall have power to transfer any office holder or servant attached to a charitable or religious institution or endowment from that institution or endowment to any other institution or endowment in accordance with such rules as may be made by the Government in this behalf.

(2) The Deputy Commissioner or the Assistant Commissioner as the case may be having jurisdiction over the area shall have power to transfer any office holder or servant attached to a charitable or religious institution or endowment from that institution or endowment to any other institution or endowment in accordance with such rules as may be made by the Government in this behalf.

40. Office holders and servants not to be in possession of jewels etc., except under conditions

No office-holder or servant of a charitable or religious institution or endowment shall have the right to be in possession of the jewels or other valuables belonging to the institution or endowment except under such conditions and safeguards as may be prescribed.

41. Power of Executive Officer not to implement resolution of the trustee or the Board of Trustees in certain cases

(1) Where an Executive Officer considers that an order or resolution passed by a trustee or the Board of Trustees-

(a) has not been passed in accordance with law;

(b) is in excess or abuse of the powers conferred on the trustee or the Board of Trustees by or under the Act or by any other law;

(c) if implemented, is likely to cause financial loss to the institution or endowment, danger to human life, health or safety, or is likely to lead to a riot or breach of peace; or

(d) is not beneficial to the institution or endowment;

the Executive Officer may, without implementing such order or resolution, place the matter before the trustee or Board of Trustees along with a note

pointing out the objections to the order or resolution and request the trustee or the Board of Trustees to reconsider the order or resolution.

(2) The Executive Officer shall forthwith submit a report of the action taken by him under sub-section (1) to the Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be.

(3) (a) Where the order or resolution is placed for reconsideration under sub-section (1), the trustee or the Board of Trustees shall reconsider the order or resolution having due regard to the objections contained in the note and pass such further order or resolution as he or it may deem fit. A copy of every such further order or resolution shall be sent forthwith to the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, who may pass such order as he deems fit;

(b) where after the expiry of sixty days from the date on which the order or resolution was placed for reconsideration under sub-section (1) the trustee or Board of Trustees fails to pass further order or resolution as required under cl. (a), the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, may pass such order as he deems fit;

(c) every order passed by the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be under clause (a) or clause (b) shall be final and binding on the trustee or Board of Trustees and the Executive Officer.

42. Over-riding effect of the provisions of this chapter over the existing corresponding provisions

(1) Notwithstanding any scheme, judgment, decree or order of a court, tribunal or other authority or any custom or usage, governing any charitable or religious institution or endowment the provisions of this chapter shall, with effect on and from the date of the commencement of this Act, prevail in so far as they relate to the matters governed by the corresponding provisions in any such scheme, judgment, decree or order or any custom or usage and such corresponding provisions, shall thereafter have no effect.

(2) (a) Any scheme in force at the commencement of this Act, in so far as it relates to matters not governed by the provisions of this chapter, may at any time, by order, be modified or cancelled

(i) where such schemes was settled or modified by the Commissioner or the Deputy Commissioner, by such Commissioner or the Deputy Commissioner, as the case may be;

(ii) where such scheme was settled or modified by the Court, by such Court on an application made to it by the Commissioner, the trustee or any person having interest:

Provided that before passing an order under this clause an opportunity shall be given to the trustee or other person likely to be affected by such order;

(b) any person aggrieved by an order under clause (a) may, within thirty days from the date of receipt of the order, appeal

(i) where it is passed by the Commissioner or the Deputy Commissioner, to the Court;

(ii) where it is passed by the Court, to the High Court.

Chapter IV: Registration of Charitable and Religious Institutions and Endowments

43. Registration of Charitable and Religious Institutions and Endowments

(1) The trustee or other person in charge of the management of every charitable or religious institution or endowment shall in the case of an institution or endowment in existence at the commencement of this Act, within ninety days from such commencement and in the case of an institution or endowment found after such commencement, within ninety days of such founding make an application for its registration to the Assistant Commissioner within whose sub-division such institutions or endowment is situated:

Provided that the Assistant Commissioner may, for sufficient cause, extend the time for making the application.

(2) (a) When any endowment is situated in the sub-divisions of two or more Assistant Commissioners, the trustee or other persons in charge of the management of the endowment shall apply for registration to any one of such Assistant Commissioners;

(b) On receipt of such application, the Assistant Commissioner concerned shall refer the matter to the Commissioner who will decide as to which of the Assistant Commissioners shall register the endowment and thereupon the application shall be entertained by such Assistant Commissioner.

(3) Notwithstanding anything in sub-section (1), no application for registration shall be necessary in the case of any institution or endowment which was duly registered and entered in the book of endowments before the commencement of this Act, under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966.

(4) Every application made under sub-section (1) shall contain the following particulars, namely:-

(a) in the case of a religious institution or endowment, its origin, nature and denomination in the case of a charitable institution or endowment, its date of commencement objects, nature and particulars regarding beneficiaries, if any;

(b) name of the founder, if any, and the names of the past and present trustees;

(c) particulars of the institution or endowment and of the grant, the scheme of administration, muntakab, decree or any other record of rights pertaining to the founding of the institution or endowment;

(d) names of all offices to which any salary is attached and the nature, time and conditions of service in each case and the names of the present holders thereof;

(e) names of Sthanacharyas, archakas, adhyapakas, Vedaparayanikas and such other persons, responsible for performing worship and other religious service in the institution and the particulars regarding their salaries;

(f) particulars of the immovable and movable properties including jewels, gold, silver, precious stones, vessels and utensils belonging to the institution or endowment with their estimated value and the moneys and securities and of the annual income therefrom;

(g) particulars of all title-deeds and other documents relating to the properties belonging to the institution or endowment;

(h) in the case of religious institution, particulars of the idols and other images in the institution or connected therewith, whether intended for worship or for being carried in processions;

(i) particulars regarding rights of a special nature, if any, the names of the holders thereof and the customs, usages and practices in force in connection therewith;

(j) charges, liabilities and other actionable claims, outstanding against the institution or endowment on the date of registration, whether under decree of a court or order of the Government or other competent authority or otherwise;

(k) a brief account of the history, legend, sthalapuranam, and the artistic, architectural or archaeological significance of the institution or endowment and other particulars of a like nature;

(1) details of the fairs, festivals, daily and periodical worship, service and other religious ceremonies connected with the institution or endowment and the particulars of dittam fixed therefore; and

(m) such other particulars as may be prescribed:

(5) On receipt of the application, the Assistant Commissioner shall, after making such enquiry as he thinks fit and hearing any person having interest in the institution or endowment, pass an order directing its registration and grant to the trustee or other person a certificate of registration containing the particulars furnished in the application with the alterations, if any, made by him as a result of his enquiry.

(6) The particulars relating to every institution or endowment contained in the certificate of registration granted under sub-section (5) shall be entered in "the register of institution and endowments" (hereinafter in this chapter

referred to as the "Register") which shall be maintained by the Assistant Commissioner in respect of all institutions and endowments situate within his sub-division and one copy of the entries made in such register relating to every institution or endowment shall be furnished to the Deputy Commissioner having jurisdiction and another copy to the Commissioner.

(7) The register shall be divided into two parts, one for charitable institutions and endowments and the other for religious institutions and endowments.

(8) The Assistant Commissioner shall also enter in the register maintained by him under sub-section (6), all the particulars contained in the Book of Endowments or, as the case may be in the register relating to every institution or endowment which was registered before the commencement of this Act under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966:

Provided that if the book of Endowments or the aforesaid register does not contain all or any of the particulars required to be furnished in the application for registration under sub-section (4), the Assistant Commissioner shall call for such information relating to such particulars from the trustee or other person in charge of the management of such institution or Endowment and after making such enquiry as he deems fit shall make necessary entries in the register maintained by him under sub-section (6).

(9) In the case of every institution or endowment in respect of which no application for registration is required under sub-section (3), the Assistant Commissioner shall grant a certificate of registration to the trustee or other person in charge of the management of such institution or endowment containing all the particulars pertaining to it as entered by him under subsection (8) in the register maintained by him under sub-section (6).

(10) The trustee or other person in charge of the management of an institution or endowment or his authorized agent shall report to omissions or additions in the particulars, relating to the institution or endowment and shall also send to him once in three years the certificate of registration granted to him under sub-section (5) or sub-section (9) together with a statement of such alterations, omissions or additions as may be necessary to the said certificate and the Assistant Commissioner shall thereupon make such enquiry as he deems fit and amend the certificate wherever necessary and return it to such trustee or other person and shall also take necessary amendments in this regard in the register maintained by him under subsection (6). A copy of such amendments shall be furnished to the Deputy Commissioner having jurisdiction and another copy to the Commissioner.

(11) Where any trustee or other person aforesaid-

(a) fails to apply for registration of an institution of endowment within the time specified in sub-section (1);

(b) fails to report the alteration, omissions or additions or to send the certificates of registration as required in sub-section (10), or

(c) furnishes or causes to be furnished to the Assistant Commissioner, any particulars which are false and which he either knows or believes to be false or does not believe to be true;

he shall be punishable with fine which may extend to one thousand rupees.

44. Power of Commissioner to have the institution or endowment registered

Where any trustee or other person in charge of the management of a charitable or religious institution or endowment fails to apply for the registration of the institution or endowment, the Commissioner, shall give notice to the trustee or the other person aforesaid to make an application in that regard within a specified period and if he fails to make such application within the period specified, the Commissioner may have the institution or endowment registered after following the prescribed procedure and recover the cost incurred for such registration from the funds of such institution or endowment.

45. Application in regard to entry or omission to make an entry in register

(1) Any person aggrieved by an entry or omission to make an entry in the register maintained under Section 43 may apply to the Deputy Commissioner for modification or annulment of such entry, or for directing the making of such entry, as the case may be.

(2) On receipt of the application the Deputy Commissioner may, after making such enquiry as may be necessary, pass such order as he may deem fit. The order so passed shall, subject to the provisions of sub-section (3), be final; and the Assistant Commissioner shall amend the entry in the register maintained under Section 43 in accordance therewith.

(3) Where any such application relates to the right claimed by the applicant in respect of such entry or omission, the Deputy Commissioner shall enquiry into and decide the question as if it were a dispute within the meaning of Section 87 and the provisions of Chapter XII shall apply.

46. Extract from the register maintained under Section 43 to be furnished

(1) The Assistant Commissioner may on an application made to him in this behalf, furnish to the applicant copies of any extracts from the register maintained under Section 43 on payment of such fee as may be prescribed.

(2) Such copies may be certified in the manner provided in Section 76 of the Indian Evidence Act, 1872.

It shall, until the contrary is established, be presumed that all particulars entered in the register maintained under Section 43 are genuine, a certified copy of an entry in the register maintained under Section 43 shall be admissible in evidence in any court and have the same effect to all intents as the original entry in the register of which it is a copy.

Chapter V: Maths and specific endowments attached thereto

47. Definitions

In this chapter, unless the context otherwise requires, "Mathadhipathi" means any person whether known as Mahant or by any other name, in whom the administration and management of a math or specific endowment attached to a math are vested.

48. Certain sections of Chapter III not to apply to maths or specific endowments attached thereto

The provisions of Sections 18, 19, 20, 21, 22, 25 and 28 shall not apply to math or specific endowment attached thereto.

49. Fixation of dittam

(1) The mathadhipathi of every math or specific endowment attached thereto shall submit to the Commissioner within a period of ninety days from the date of commencement of this Act, or the date of founding of such math or specific endowment, proposals for fixing the dittam in the math or specific endowment and the amount to be spent therefore:

Provided that the Commissioner may extend the time for the submission of such proposals:

Provided further that this sub-section shall not apply to any math or specific endowment in respect of which proposals were submitted to the Commissioner under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966, before the commencement of this Act.

(2) The mathadhipathi shall, while submitting his proposals under sub-section (1) have due regard to the established usage, if any of the math or specific endowment, the performance of the ceremonies and services, the observance of festivals, ownerships and the like, appropriate to the religious denomination to which the math or specific endowment belongs and to the financial position thereof.

(3) The mathadhipathi shall at the time of submission of proposals under sub-section (1) publish such proposals on the premises of the math or specific endowment and in such other manner as the Commissioner may direct together with a notice stating that within thirty days from the date of such publication any person having interest may submit this objections or suggestions, to the Commissioner.

(4) After expiry of the period specified in sub-section (1) the Commissioner shall scrutinize such proposals and the suggestions made by persons having interest and if on such scrutiny he thinks that the dittam as proposed by the mathadhipathi should be modified having regard to the matters specified in sub-section (2), the Commissioner may call for the remarks of the

mathadhipathi who shall send his remarks within such time as may be specified by the Commissioner.

(5) If after considering the remarks of the mathadhipathi received under sub-section (4), the Commissioner is of the opinion that any modification is required in the dittam he shall refer the matter to the court for its decision and the decision of the Court shall subject to Section 91, be final.

(6) The dittam for the time being in force in a math or specific endowment shall not be altered by the mathadhipathi:

Provided that the Commissioner may at any time for reasons to be recorded in writing suggest to the mathadhipathi to alter the dittam and the procedure for such alteration shall be the same as laid down in sub-sections (2), (3), and (5):

Provided further that where the mathadhipathi does not comply with any suggestion aforesaid, the Commissioner shall refer the matter to the Court for its decision and the decision of the court shall subject to Sec. 91 be final.

50. Padakanukas and other gifts

(1) The Mathadipathi shall maintain regular accounts of receipts of padakanukas or other personal gifts of property made to him as the head of the Math and he shall be entitled to spend at his discretion for any purpose which is connected with the objects of the math and propagation of Hindu Dharma.

(2) Any padakanuka or other personal gift which remains undisposed of during the life time of the mathadhipathi shall devolve on the math as its assets.

(3) In the case of gifts of property or money made to the mathadhipathi not as personal gifts but as gifts intended for the benefit of the math, the Mathadhipathi, shall keep accounts of all receipts and disbursements of such gifts and shall cause such accounts to be produced before the Commissioner or any person authorized by him in this behalf whenever so required.

Explanation: Any gift of property or money made to the Mathadhipathi shall, unless it is specified by the donor as padakanuka or personal gift, be presumed to be gift intended for the benefit of the math.

51. Removal of Mathadhipathi

(1) The Commissioner may suo motu or on an application of two or more persons having interest initiate proceedings for removing a mathadhipathi or a trustee of a specific endowment attached to a math, if he-

(a) is of unsound mind; is suffering from any physical or mental defect or infirmity which renders him unfit to be a mathadhipathi or such trustee;

(c) has ceased to profess the Hindu religion or the tenets of the math;

(d) has been sentenced for any offence involving moral turpitude, such sentence not having been reversed;

(e) is guilty of breach of trust, or misappropriation in respect of any of the properties of the math;

(f) commits persistent and wilful default in the exercise of his powers or performance of his functions under this Act;

(g) violate any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math, in relation to his personal conduct, such as celibacy, renunciation and the like;

(h) leads an immoral life; or

(i) fails or ignores to implement the principles set out in clause (17) of Section 2.

(2) The Commissioner shall frame a charge on any of the grounds specified in sub-section (1) against the mathadhipathi or trustee concerned and give him an opportunity of meeting such charge, of testing the evidence adduced and of adducing evidence in his favour. After considering the evidence adduced and other material before him, the Commissioner may, by order exonerate the mathadhipathi or trustee, or remove him. Every such order shall state the charge framed against the mathadhipathi or the trustee, his explanation and the finding on such charge together with the reasons therefore:

Provided that in the case of a math or specific endowment attached thereto whose annual income exceeds rupees one lakh, the order of removal passed by the Commissioner against the mathadhipathi or trustee shall not take effect unless it is confirmed by the Government.

(3) Pending the passing of an order under sub-section (2), the Commissioner may suspend the mathadhipathi or the trustee.

(4) (a) Any mathadhipathi or trustee aggrieved by an order passed by the Commissioner under sub-section (2), may within ninety days from the date of receipt of such order, institute a suit in the court against such order;

(b) An appeal shall lie to the High Court within ninety days from the date of a decree or order of the Court in such suit.

52. Filling of temporary vacancies in the office of the mathadhipathi

(1) Where a temporary vacancy occurs in the office of the mathadhipathi and there is a dispute in regard to the right of succession to such Office, or where the mathadhipathi is a minor and has no guardian fit and willing to act as guardian, or where the mathadhipathi is under suspension under sub-section (3) of Section 51 the Commissioner shall, if he is satisfied after making an inquiry in this behalf that an arrangement for the administration

of the math and its endowment or of the specific endowment, as the case may be, is necessary, make such arrangement as he thinks fit until the disability of the office, as the case may be.

(2) In making any such arrangement, the Commissioner shall have due regard to the claims, if any, of the disciples of the math.

(3) Nothing in this section shall be deemed to affect anything in the Andhra Pradesh (Andhra Area) Court of Wards Act, 1902 and the Andhra Pradesh (Telangana Area) Court of Wards Act, 1350-F.

53. Filling of permanent vacancies in the office of mathadhipathi

(1) Where a permanent vacancy occurs in the office of the Mathadhipathi, by reason of death or resignation or on account of his removal under Section 51 or otherwise the person next entitled to succeed, according to the rule of succession laid down by the founder, or where no such rule is laid down, according to the usage or custom of the math, or where no such usage or custom exists according to the law of succession for the time being in force, shall with the permission of the Commissioner succeed to the office of the Mathadhipathi.

(2) A person for succession to the office of the mathadhipathi under subsection (1) shall possess the following qualifications, namely:-

(a) basic knowledge of the Hindu Religion and philosophy;

(b) knowledge of the relevant scriptures and sampradaya to which the math belongs;

(c) capacity to impart the knowledge and preach the tenets of the math to the disciples;

(d) religious temperament with implicit faith in discipline and practice; and

(c) unquestionable moral character.

54. Nomination of Mathadhipathi

(1) Subject to the provisions of Section 53, a mathadhipathi may nominate his successor. The fact of such nomination shall be intimated to the Commissioner, within ninety days of such nomination and the Commissioner may recognise such nomination. A nomination shall not be complete unless it is recognised by the Commissioner. The conditions for recognition shall be such as may be prescribed.

(2) Where a Mathadhipathi fails to nominate his successor under subsection (1) or where there is no mathadhipathi, the Commissioner or any officer authorized by him shall after due publication convene a meeting with the mathadhipathis of other maths of the same sampradayam and the disciples of the math and recognise the person nominated in such meetings as a mathadhipathi subject to the provisions of this Act. The procedure for

convening the meeting and method of publication shall be such as may be prescribed.

55. Power of Commissioner to frame schemes

(1) Where the Commissioner either suo motu or upon a report submitted by the Deputy Commissioner or the Assistant Commissioner having jurisdiction, has reason to believe that the affairs of the math and its properties are being mismanaged, funds are being misappropriated, or that there is gross neglect of duty on the part of the mathadhipathi, he may after making such enquiry as may be prescribed order to frame a scheme of administration, of a math and the specific endowment.

(2) A scheme of administration framed under sub-section (1) may contain provision for-

(a) appointing or directing the appointment of an Executive Officer;

(b) constituting a committee consisting of not more than five persons for the purpose of assisting in the whole or any part of the administration of all the endowments of such math or of specific endowment:

Provided that the members of such Committee shall be chosen from among such persons having interest in such math or endowment;

(c) determining the powers and duties of such committee; and

(d) any other relevant matter incidental to the framing of such scheme.

(3) Until a scheme is framed under sub-section (1) the Commissioner may appoint a fit person to manage the properties of math and its endowment.

(4) The Commissioner, after consulting the mathadhipathi and other persons having interest, and after making such enquiry as may be prescribed may by order modify or cancel the scheme settled under sub-section (1).

(5) Every order passed by the Commissioner under sub-section (1) and sub-section (4) shall be published in the manner prescribed.

Any person aggrieved by the order of the Commissioner passed either under sub-section (1) or under sub-section (4), may, within sixty days from the date of publication of the order, prefer an appeal to the Court.

Chapter VI: Dharmadayam

56. Dharmadayam

(1) All sums of dharmadayam shall vest in the person charging or collecting the same as a trustee.

(2) Such trustee shall before the 15th May of every year furnish in respect of every financial year the particulars of the amounts charged or collected, to the Commissioner.

(3) The Commissioner shall have power to make such enquiry as he thinks fit to verify the correctness of the accounts submitted and to take such steps as may be necessary for the utilisation of the amount for charitable or religious purposes:

Provided that no amount charged or collected for a specific charitable religious purpose shall be utilised for any purpose other than one for which it was charged or collected.

(4) The provisions of Chapter III other than Sections 23, 24, 28 and 29 and Chapter IV shall not apply to Dharmadayam.

Where any person charging or collecting such sums fails to submit accounts under sub-section (2), the Commissioner shall require the person to furnish to him the accounts on such requisition within the period specified, he shall be punishable with fine which may extend to one thousand rupees.

Chapter VII: Budget, Accounts and Audit

57. Budget of charitable or religious institution or endowment

(1) The trustee of every charitable or religious institution or endowment shall, ninety days before the close of every financial year, submit in such form as may be specified by the Commissioner, a budget showing the probable receipts and disbursements of the institution or endowment during the following year-

(i) to the Commissioner, if it is included in the list published under clause (d) of Section 6;

(ii) to the Deputy Commissioner, if it is included in the list published under clause (a) or (b) of Section 6;

(iii) to the Assistant Commissioner, if it is included in the list published under clause (c) of Section 6.

(2) (a) Every budget shall make an adequate provision for-

(i) the due maintenance of the object of the institution or endowment and the proper performance of and the remuneration for, the services therein, including the dittam for the time being in force:

Provided that the salaries of the religious and secular establishment shall not exceed thirty per cent of its annual income calculated under Section 65;

(ii) the due discharge of all liabilities and subsisting commitments binding on the institution or endowment;

(iii) the maintenance of the working balance;

(iv) the arrangement to be made for securing the health, safety or convenience of the disciples, pilgrims, worshippers or other persons resorting to the institution or endowment:

Provided that in the case of an institution or endowment whose annual income exceeds twenty thousand rupees, the provisions made under this item shall not be less than forty per centum of the balance of the income for the financial year remaining after making provision for items (i), (ii) and (iii) above;

(v) the contribution to the reserve fund of the institution or endowment at ten per centum of the balance referred to in the proviso to item (iv) above;

(vi) the construction, repair, renovation and improvement of the institution or endowment and the buildings connected therewith:

Provided that in the case of an institution or endowment whose annual income is not less than rupees one lakh, the provision made under this item shall not be less than thirty per centum of the balance of the income for the financial year remaining after making provision for items (i), (ii), (iii) and (iv) above.

(b) Where the budget relates to an institution or endowment whose annual income exceeds fifty thousand rupees, the budget shall also make provision for the payment at five per centum of the balance referred to in the proviso to item (iv) of clause (a), to the Common Good Fund.

(3) The Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, may after giving notice to the trustee in the prescribed manner and after considering his representation, if any, pass an order making such alterations, omissions or additions in the budget as he may deem fit.

(4) If, in the course of a financial year, the trustee finds it necessary to modify the provisions made in the budget in regard to the receipt or to the distribution of the amount to be expended under the different heads, he may submit to the Commissioner, the Deputy Commissioner, or the Assistant Commissioner, as the case may be, his supplemental or revised budget. The Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, may make such alterations, omissions or additions therein as provided in sub-section (3) but so as not to affect the amount allotted in the budget under the items (ii) and (iii) of clause (a) of sub-section (2).

(5) The trustee shall report forthwith every expenditure incurred in excess of the provisions made in the budget together with the reasons therefore to the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, who may ratify such excess expenditure.

58. Accounts and Audit

(1) The Executive Officer shall keep regular accounts of all receipts and disbursements, for each financial year separately in such form and containing such particulars as may be specified by the Commissioner.

(2) (a) The accounts of every charitable or religious institution or endowment, the annual income of which as calculated for the purpose of Section 65 for the financial year immediately preceding exceeds rupees one lakh, shall be subject to concurrent audit, that is to say, the audit shall take place as and when expenditure is incurred.

(b) The accounts of every other institution or endowments the annual income of which calculated as aforesaid for the financial year immediately preceding is not less than five thousand rupees, shall be audited annually, or if the Commissioner so directs in any case, as shorter intervals.

(c) The accounts of any charitable or religious institution or endowment, the annual income of which calculated as aforesaid for the financial year immediately preceding is less than five thousand rupees, shall be audited annually by an officer subordinate to the Assistant Commissioner and deputed by him for the purpose.

(3) The audit referred to in clauses (a) and (b) of sub-section (2) shall be made by the agency referred to in Section 63.

59. Authority to whom audit report is to be submitted

After completing the audit for any financial year or shorter period, or for any transaction or, series of transactions, as the case may be, the auditor shall send a report-

(i) to the Commissioner in respect of the institutions included in the lists published under clause (a), clause (d) and clause (e) of Section 6.

(ii) to the Deputy Commissioner in respect of institutions included in the list published under clause (b) of Section 6.

(iii) to the Assistant Commissioner in respect of institutions included in the list published under clause (c) of Section 6.

60. Contents of audit report

(1) The auditor shall specify in his report all cases of irregular, illegal or improper expenditure or of failure to report moneys or other property due to the charitable or religious institution or endowment or of loss or waste of money or other property thereof, caused by neglect or misconduct or misapplication or collusion or fraud or breach of trust or misappropriation on the part of the trustee or of any other person.

(2) The auditor shall also report on such other matters relating to the accounts as may be prescribed or on which the Commissioner, Deputy Com-

missioner or Assistant Commissioner, as the case may be, may require him to report.

61. Rectification of defects in audit, etc.

(1) The Commissioner, as the case may be, shall send a copy of every audit report relating to the accounts of a charitable or religious institution or endowment to the Executive Officer and it shall be the duty of such Executive Officer to remedy within the time specified in this behalf the defects or irregularities pointed out by the auditor and report the same to the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be.

(2) Where on a consideration of the audit report received by him under clause (i) of Section 59 and the report of the Executive Officer thereon received by him under sub-section (1) of this section and after such enquiry as may be necessary, the Commissioner thinks that the trustee or any other person was guilty of illegal expenditure or of loss or waste or money or other property thereof caused by misconduct, misapplication, collusion, fraud, breach of trust, misappropriation or negligence, he may, after giving notice to the trustee or such person to show cause why an order of surcharge should not be passed against him and after considering his explanation, if any, by order, certify that amount so spent or the amount or value of the property so lost or wasted and direct the trustee or such person to pay within a specified time such amount or value personally and not from the funds of the institution or endowment.

(3) Where on a consideration of the audit report received by him under Section 59 and the report of the Executive Officer thereon received by him under sub-section (1) of this section and after such enquiry as may be necessary, the Deputy Commissioner or the Assistant Commissioner, as the case may be, thinks that the trustee or any other person was guilty of illegal expenditure, or of loss or waste of money or other property thereof, caused by misconduct, misapplication, collusion, fraud, breach of trust, misappropriation or negligence he shall report to the Commissioner, and the Commissioner may, after giving notice to the trustee or such person to show why an order of surcharge should not be passed against him and after considering his explanation if any by order, certify the amount so spent or the amount or value of the property so lost or wasted, and direct the trustee or such person to pay within a specified time such amount or value personally and not from the funds of the institution or endowment.

(4) The Commissioner shall send a copy of the order under sub-section (2) or sub-section (3) with the reasons for the same by registered post to the trustee or the person concerned.

(5) An order of surcharge under sub-section (2) of sub-section (3) against a trustee or other person shall not bar a suit for accounts against him except in respect of the matter finally dealt with by such order.

(6) Where the Commissioner is satisfied that the trustee or other person with intent to defeat or delay the execution of any order that may be made under sub-section (2) of sub-section (3)-

(a) is about to dispose of the whole or any part of his property; or

(b) is about to remove the whole or any part of his property from the jurisdiction of the Commissioner, the Commissioner may by an order direct the trustee or other person within a time to be fixed by him either to furnish security in such sum as may be specified in the order or to produce and place at his disposal when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the order or to appear and show cause as to why he should not be asked to furnish security. The Commissioner may also in the order direct conditional attachment of the whole or any portion of such property in the manner prescribed.

62. Rectification of defects detected by Commissioner

Without prejudice to the provisions of Section 61, where the Commissioner either suo mote or on a report made by the Deputy Commissioner, the Assistant Commissioner or any other officer has reason to believe that the trustee or any other person was guilty of illegal expenditure or of causing loss or waste of money or other property, by misconduct, misapplication, collusion, fraud, breach of trust, misappropriation, or negligence, the Commissioner, may after such enquiry as may be necessary and after giving an opportunity to the trustee or other person concerned to make his representation-

(i) pass an order directing conditional attachment of the whole or any portion of the property of the trustee or other person;

(ii) institute such criminal proceedings as may be necessary; or

(iii) pass an order of surcharge after obtaining an audit report in this behalf.

63. Agency to audit accounts

The Government shall specify the agency for the purposes of carrying out the Audit referred to in clauses (a) and (b) of sub-section (2) of Section 5.

64. Duty of trustee to give all assistance and facilities to auditors

It shall be the duty of the trustee of the charitable or religious working under him, his agent and any person having concern in the administration of the institution or endowment, to produce or cause to be produced before the auditors, all accounts, records, correspondence, plan, other documents and property including monies relating to the institution or endowment to furnish them with such information as may be required, and to afford them all such assistance and facilities as may be necessary for the audit of the account of the institution or endowment.

Chapter VII: Finance

65. Liability of institution or endowment or Dharmadayam to pay annual contribution and audit fees

(1) In respect of the services rendered by the Government and their employees, every charitable or religious institution or endowment or dharmadayam other than Tirumala Tirupathi Devasthanams whose annual income is not less than rupees five thousands, shall be liable to pay to the Government annually from the income derived by it, such contribution of the actual expenditure incurred towards such services subject to a maximum of fifteen percentum of the annual income as may be prescribed.

(2) In respect of the services rendered by the Government and their employees, the Tirumala Tirupathi Devasthanams, shall be liable to pay to the Government annually from the income derived by it, a contribution of seven per centum of such annual income or rupees fifty lakhs in lump sum, whichever is higher.

(3) The contribution which an institution or endowment or Tirumala Tirupathi Devasthanams is liable to pay under sub-sections (1) and (2) shall be paid annually to the Endowments Administration Fund.

(4) Every institution or endowment referred to in sub-section (1) shall pay to the Government annually for meeting the cost of auditing its accounts, such further sum of one and half per centum of its annual income.

(5) For purposes of this section, annual income shall mean-

(a) in relation to Dharmadayam, the total of the amount charged or collected as Dharmadayam during the year of account;

(b) in relation to any other income, the proceeds in each year after deducting the amounts specified below:-

(i) the revenue paid to Government including cesses paid to local authorities;

(ii) the taxes and licence fees paid to local authorities;

(iii) expenditure incurred for the following purposes connected with the direct cultivation of lands held by charitable or religious institution or endowment, namely:-

(A) maintenance of or repairs to irrigation works which shall not include the capital cost or irrigation works:

(B) seeds or seedling;

(C) manure;

(D) purchase and maintenance of cattle for cultivation;

(E) purchase and maintenance of agricultural implements, and

(F) wages for ploughing, watering, sowing, transplantation, thrashing and other agricultural operations:

Provided that the total deduction in respect of expenditure under this item shall not exceed ten per centum of the income from such lands:

(iv) expenditure on sundry repairs to rented buildings, not exceeding ten per centum of the annual rent derived there from or actual expenditure whichever is less;

(v) the actual cost of collection of rents not exceeding ten per centum of the amount collected in cases where special staff is employed solely to attend to the work relating to collection of rents due to charitable or religious institution or endowment; and

(vi) sale proceeds of immovable properties, and rights relating to or arising out of immovable properties, if such proceeds are reinvested to earn income for the charitable or religious institution or endowment.

Explanation (1): The following items of receipts shall not be deemed to be income for purposes of this section namely:-

(a) advances and deposits recovered and loans taken or recovered;

(b) deposits made as security by employees, lessees, or contractors and other deposits, if any;

(c) withdrawals from the banks or of investments;

(d) amount recovered towards costs awarded by courts;

(e) sale proceeds of religious books and publications where such sales are undertaken as an unremunerative enterprise with a view to propagate religion; sale proceeds of jewels, vahanams, provisions or other articles or livestock purchased by the charitable or religious institution or endowment;

(g) donations in cash or kind by the donors as contributions to capital;

(h) abhayams or voluntary contributions received in cash or kind for a specified service in the charitable or religious institution or endowment and expended on such service;

(i) actual driage of the agricultural produce or the articles from immovable properties or one per centum of the value of such receipts during the financial year, whichever is less; and

(j) audit recoveries.

Explanation (2): In respect of any remunerative undertaking of a charitable or religious institution or endowment only the net profit shall be taken as income. In respect of non-remunerative undertaking of a charitable or religious institution or endowment such as a school, college, hospital, poorhome, orphanage or any other similar institution, the grants given by Government or a local authority or donations received from public or fees collected from pupils of educational institutions shall not be taken as income.

Explanation (3): Receipts in kind other than, those referred to in item (g) and (h) of Explanation (1) shall be deemed to accrue as income on the date of the sale thereof and shall be valued at the amount realised by such sale.

Explanation (4): Receipts in kind from immovable properties shall be valued, in cases of produce consumed or utilised by the charitable or religious institution or endowment, at their market value on the dates of their receipt.

66. Assessment of contribution on the trustee

(1) The contribution payable under Section 65 shall be assessed by the Commissioner, on and notified to, the trustee of the charitable or religious institution or endowment or Dharmadayam in the prescribed manner and the order of assessment passed under this sub-section shall, subject to the provisions of Sections 90 and 91, be binding on the trustee:

Provided that if, for any reason the contribution or any portion thereof has escaped assessment in any year, the Commissioner may, within three years from the end of the year to which such escaped assessment relates, serve on the trustee a notice assessing him to the contribution or portion thereof due and demanding payment thereof within fifteen days from the date of such service and the provisions of this Act and the rules made thereunder shall, so far as may be, apply as the assessment was made in the first instance.

(2) It shall not be competent for the Commissioner to levy any contribution for more than three years immediately preceding the year in which a notice of assessment is issued under sub-section (1).

67. Liability of institution or endowment to pay costs etc.

(1) Notwithstanding anything in sub-section (1) of Section 136, all costs, charges and expenses incurred by the Government, the Commissioner, Deputy Commissioner or Assistant Commissioner under any of the provisions of this Act as a party to or in connection with any legal proceedings in respect of any charitable or religious institution or endowment shall, subject to the limits prescribed, be payable out of the funds of such institution or endowment.

(2) The costs, charges and expenses payable under sub-section (1) shall be assessed on, and notified to, the trustee of the charitable or religious institution or endowment in the prescribed manner:

Provided that if for any reason any costs, charges and expenses or any portion thereof has not been notified in any year, the Commissioner may, within three years from the end of the year, in which it was omitted to be notified, serve on the trustee a notice notifying the costs, charges and expenses or portion thereof due and demanding payment thereof within fifteen days from the date of such service, and the provisions of this Act and

the rules made thereunder shall, as far as may be, apply as if the amount was notified in the first instance.

68. Payment of contribution costs, charges and expenses

(1) The trustee of a charitable or religious institution or endowment or Dharmadayam may, within fifteen days from the date of receipt of a notice issued under sub-section (1) of Section 66, or under sub-section (2) of Section 67, or within such further time as may be granted by the Commissioner, prefer his objection, if any, to the Commissioner, in writing. Such objection may relate either to the liability to pay or the quantum of the amount specified in the notice. The Commissioner shall consider such objection and pass an order confirming, withdrawing or modifying his original notice and communicate the same to the trustee.

(2) Within thirty days from the date of receipt of the notice under Section 66 or Section 67 or when objection has been preferred, within thirty days from the date of receipt by the trustee of the order of the Commissioner under sub-section (1) of this section, or within such further time as may be granted by him, such trustee shall pay the amount as ordered.

69. Establishment of Endowments Administration Fund

(1) There shall be established a fund to be called the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Administration Fund. The Endowments Administration Fund shall vest in the Commissioner.

(2) (a) The following amounts shall be credited to the Endowments Administration Fund, namely-

(i) the balance in the fund constituted under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966;

(ii) the sums due to the Government under Section 64 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966;

(iii) the contributions and audit fee payable under sub-section (1) of Section 65 when realised;

(iv) the amounts recovered under Section 30.

(b) It shall be lawful for the Commissioner to accept to the credit of the said fund, grants or loans from the Government or any grant by any institution or person.

(3) The Commissioner shall out of the said fund repay the Government-

(i) the sums paid out to the Consolidated Fund of the State in the first instance towards the salaries, allowances, pension and other remuneration of persons appointed by the Government for rendering services under any of the provisions of this Act;

(ii) any other expenditure incurred by the Government in the course of rendering services to and in connection with administration of the charitable or religious institution or endowment under the provisions of this Act;

(iii) the loans received from the Government;

(iv) the cost of publication of journals, manuals, descriptive accounts and other literature relating to Hindu Religion or charitable or religious institutions or endowments;

(v) the expenses of committees or sub-committees thereof constituted for any purpose of this Act by the Government or by any officer or authority subordinate to the Government and specifically authorized by them in this behalf.

70. Common Good Fund

(1) (a) The Commissioner shall create out of the payments made by the charitable and religious institutions and endowments and by any institution or person

(i) in respect of Hindu Charitable Institution and Religious Institutions and Endowments, a fund to be called the Andhra Pradesh Hindu Charitable and Religious Institutions and Endowments Common Good Fund; and

(ii) in respect of other charitable institutions and endowments, a fund to be called the Andhra Pradesh Charitable Institutions and Endowments Common Good Fund.

(b) The Common Good Fund created under item (i) of Clause (a) shall be utilised for the following purposes namely;

(i) renovation, preservation and maintenance including payment of salaries to Archakas of Hindu Charitable and Hindu Religious Institutions or Endowments which are in needy circumstances and promotion and propagation of purpose and objects connected therewith:

Provided that the amount to be utilised for the purpose of payment of salaries to Archakas in any year shall not be less than ten per centum of the receipts, to the said fund during the preceding year;

(ii) establishment and maintenance of vedapathasalas and schools for the training in archakathawam, adhyapakathwam, Vedaparayanikatwam, silpam, vaidyam or like services;

(iii) construction of new temples and Kalayana mandapams:

Provided that the amount to be utilised for the purpose mentioned in item (ii) in any year shall not be less than twenty per centum of the receipts to the said fund during the preceding year.

(c) The Common Good Fund created under item (ii) of Clause (a) shall be utilised for the renovation, preservation and maintenance of other charitable

institutions or endowments and for the promotion and propagation of purposes and objects connected therewith.

(2) The Commissioner, may on direction from the Government, transfer to the Common Good Fund, any surplus or such portion thereof, as may be specified in the direction, remaining in the Endowments Administration Fund after repayment of the amounts specified in sub-section (3) of Section 69.

(3) The Commissioner shall issue a notice demanding the payment of contribution payable towards Common Good Fund basing on the provisions made in the Budget estimate of each institution or endowment in the manner prescribed.

71. Vesting of Common Good Fund

The Common Good Fund shall vest in a Committee constituted by the Government and shall be administered in such manner as may be prescribed.

Chapter IX: Surplus Funds and Utilisation thereof

72. Utilisation of Surplus Funds

(1) Where there is a surplus in the funds of an institution or endowment including a specific endowment attached thereto after providing for all the objects, needs, requirements or improvements of the institution or endowment and after making adequate provision for purposes referred to in subsection (2) of Section 57, the trustee may make an application in the manner prescribed for permission to utilise such surplus fund for all or any of the following purposes:

(i) propagation of the religious tenets of the institution or endowment;

(ii) establishment and maintenance of schools for the training of archakas, adhyapakas, and Vedaparayanikas and for the study of Divya Prabhandhams and the like for furthering education in Sanskrit;

(iii) establishment and maintenance of any institution in which special provision is made for the study of Hindu Religion, Philosophy or Sastras or for imparting instruction in Hindu Temple Architecture, and for setting up libraries in connection with such study;

(iv) grant of aid to any other Hindu religious institution or endowment which is in poor or needy circumstances or which require renovation;

(v) establishment and maintenance of hospitals and dispensaries for the relief of the pilgrims and worshippers visiting the religious institutions;

(vi) construction and maintenance of choultries and rest houses for the use and accommodation of pilgrims;

(vii) provision of water supply and sanitary arrangement to the pilgrims and worshippers;

(viii) acquisition of any land or other immovable property for the purpose of the religious institution,

(ix) construction and maintenance of roads and communications and the lighting thereof for the convenience of the pilgrims and worshippers;

(x) establishment and maintenance of orphanages for children belonging to Hindu Religion;

(xi) establishment and maintenance of the Homes for the poor destitute and helpless, physically disabled persons belonging to Hindu Religion;

(xii) establishment and maintenance of leprosy asylum for those belonging to Hindu Religion;

(xiii) payment to the Common Good Fund.

(2) Nothing in sub-section (1) shall prevent the trustee of a math or a specific endowment attached thereto from utilising such surplus for any other purpose consistent with the tenets of the math.

(3) Subject to such restrictions and conditions as may be prescribed, the trustee of a charitable or religious institution or endowment may appropriate any portion of such surplus for the performance of any Hindu Marriage among the needy persons belonging to Hindu Religion.

73. Determination and application of properties and funds of defunct institution or endowment

(1) The Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, having jurisdiction shall on being satisfied that a charitable or religious institution or endowment has, whether before or after the commencement of this Act, ceased to exist, hold an enquiry in the prescribed manner to ascertain its properties and funds and after doing so, shall pass an order

(a) specifying the properties and funds of the institution or endowment;

(b) appointing a trustee therefore;

(c) directing the recovery of any such properties or funds from any persons who may be in possession thereof; and

(d) laying down that the properties, and funds so specified shall be applied or utilised for the renovation of the institution or endowment and if such renovation is not possible, be appropriated to any one or more of the purposes specified in sub-section (2) of Section 74.

(2) The Commissioner, the Deputy Commissioner of the Assistant Commissioner, as the case may be, having jurisdiction, may, on being satisfied after holding an enquiry in the prescribed manner, that any building or other

place which was being used for religious worship or instruction or for charity has, whether or before or after the commencement of this Act, ceased to be used for that purpose, pass an order-

(a) directing the recovery of such building or place from any person who may be in possession, and

(b) laying down that it shall be used for religious worship or instruction or for charity as before, or if such use is not possible, be utilised for any one or more of the purposes specified in sub-section (2) of Section 74.

(3) Every order made under sub-section (1) or sub-section (2) shall be published in the prescribed manner and shall subject to the provisions of Sections 90 and 91 be binding on the parties concerned.

74. Appropriation of endowments

(1) Where the Commissioner is satisfied after making such enquiry as may be prescribed, that-

(a) the original object for which a charitable or religious institution or endowment was founded has, from the beginning, been or has subsequently become, impossible of realisation;

(b) the income or any surplus balance of such institution or endowment has not been utilised or is not likely to be utilised;

(c) in any of the cases mentioned in Section 158 or in regard to the appropriation of the Dharmadayam sums held in trust under Section 56, the directions of the Commissioner are necessary.

The Commissioner shall make an order giving directions as to how the property or money, belonging to the institution, endowment or Dharmadayam concerned shall be appropriated. In giving the directions, the Commissioner shall, so far as may be practicable, desirable, necessary or proper in public interest, give effect to the original intention of the founder of institution or endowment or the object for which the institution or endowment was founded.

(2) Where the Commissioner is of opinion that the carrying out of such intention or object is not wholly or partially expedient, practicable, desirable, necessary or proper in public interest, the Commissioner may direct the property or money belonging to the institution or endowment or dharmadayam or any portion thereof to be applied-

(a) if such institution or endowment is a charitable institution or endowment, to any other charitable purpose; and

(b) if such institution or endowment is a religious institution or endowment, to all or any of the purposes specified in items (i) to (iv) of sub-section (1) of Section 72:

Provided that-

(i) in the case of a charitable institution or endowment which is founded and maintained for the benefit of a section of the public, the endowment shall as far as possible be appropriated for the benefit of that section or for any other charitable purpose of like nature;

(ii) in the case of religious institution or endowment which is founded and maintained for the benefit of religious denomination or any section thereof, the endowment shall as far as possible be appropriated for the benefit of the denomination or section concerned for all or any of the purposes mentioned in clause (b).

(3) In giving directions as to the appropriation of property or money belonging to the institution or endowment to any other charitable or religious purposes under sub-section (1) of sub-section (2) the Commissioner may, by order, after any scheme already settled or vary the terms of any order or' conditions contained in the deed of trust relating to the institution or endowment:

Provided that in the case of a scheme settled by a court or a decree or order passed by the Court, the Commissioner shall move such court to alter the scheme or vary the terms of the decree or order, as the case may be.

From any order passed by the Commissioner under sub-section (1), an appeal shall lie to the Court within ninety days from the date of receipt of the order.

Chapter X: Alienation of any Immovable Property and Resumption of Inam Lands

75. Lease, sale of inams to be void in certain cases

(1) Any lease for a term exceeding six years and any gift, sale exchange or mortgage of an inam land granted for the support or maintenance of charitable or religious institution or endowment or for the performance of a religious or public charity or service, shall be null and void unless any such transaction not being a gift, is effected with the prior sanction of the Government.

(2) Such prior sanction may be accorded by the Government where they consider that the transaction is-

(i) necessary or beneficial to the institution or endowment;

(ii) in regard to the land which is an uneconomical holding for the institution or endowment to own and maintain; and

(iii) the consideration thereof is adequate and proper.

(3) The provisions in clause (c) of sub-section (1) of Section 80 shall apply for the sale of any inam land.

76. Prohibition of transfer of lands granted for rendering service to a religious or charitable institution or endowment

(1) Where, before or after the commencement of this Act, any person has been granted a ryotwari patta in respect of any inam land given to a service holder or other employee of a charitable or religious institution or endowment for the purpose of rendering service to the institution or endowment then, notwithstanding to the contrary in any other law for the time being in force or in the deed of grant or of transfer of other document relating to such land, it shall be and shall be deemed never to have granted and the lands covered by such ryotwar patta shall not be transferred and shall be deemed never to have been transferred and accordingly no right or title in such land shall vest in any person acquiring the land by such transfer and a ryotwari patta in respect of such land shall be deemed to have been granted in favour of the institution or endowment concerned and thereafter the person in possession of such land shall be deemed as an encroacher and the provisions in Sections 84 and 85 shall apply.

(2) No ryotwari patta holder in respect of the aforesaid land shall transfer any such land and no person shall acquire any such land either by purchase, gift, lease, mortgage, exchange or otherwise.

(3) Any transfer or acquisition made in contravention of the provisions in sub-section (1) or sub-section (2) shall be deemed to be null and void.

(4) The provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil court or any order of any other authority.

77. Resumption of Inam Lands

(1) The Revenue Divisional Officer may, either suo motu or on the application of the trustee of a charitable or religious institution or endowment or of the Commissioner or of any person having interest in the institution or endowment authorized by the Commissioner, by order, resume the whole or any portion of any such inam land referred to in Section 75 on all or any of the following grounds namely:-

(i) that the holder of the inam has effected a transaction which is null and void under Section 75;

(ii) that the charitable or religious institution endowment has ceased to exist or the charity or service has become impossible of performance;

(iii) that the holder of such inam land has failed to perform or make the necessary arrangements for performing, in accordance with the custom or usage of the institution or endowment, the charity or service for the performance of which the roam land was granted.

(2) (a) Before passing an order under sub-section (1), the Revenue Divisional Officer shall give notice to the trustee, to the Commissioner, to the

holder of the inam land, to the person in possession of the inam land where he is not the holder thereof and to the alienee, if any, of the inam land and also publish a copy of the notice in such manner as may be prescribed, which publication shall be deemed to be sufficient notice to every other person likely to be affected by such order; and consider the objections if any holding such inquiry as may be prescribed;

(b) Where only a portion of the inam land is affected, notice shall be given under clause (a) to the holder of such portion as well as to the holder or holders of the other portion or portions to the persons in possession of every such portion, where he is not the holder thereof, and to the alienee, if any, of every such portion and the objections of all such persons shall be considered by the Revenue Divisional Officer.

(3) A copy of every order passed under sub-section (1), shall be communicated to each of the persons mentioned in sub-section (2) and shall also be published in the manner prescribed.

(4) (a) Where any inam land or portion thereof is resumed under this section, the Revenue Divisional Officer shall, by order, grant a ryotwari patta in respect of the inam land or portion thereof to the charitable or religious institution concerned; and where the resumption is made on the ground specified in item (ii) of sub-section (1) to any such charitable or religious institution as the Commissioner may recommend.

(b) The order, granting the ryotwari patta under clause (a) shall, on application made to the Revenue Divisional Officer within the time prescribed be executed by him in accordance with such rules as may be made in this behalf.

(5) Pending the resumption of an inam land or portion thereof under this section on the ground specified in item (iii) of sub-section (1), the Revenue Divisional Officer may direct the person in possession of inam land or portion thereof, to pay to the trustee, the expenses incurred to/likely to be incurred for the performance of the charity or service to the institution or endowment. In default of such payment, the Revenue Divisional Officer may pass an order or make such arrangement as he considers necessary for the performance of the charity or service; and the expenses incurred therefore shall be recovered from the person in possession of the inam land or portion thereof, as if they were arrears of land revenue.

78. Appeal

(1) Any person aggrieved by an order of the Revenue Divisional Officer under sub-section (1) of Section 77 may appeal to the Dist. Collector within such time as may be prescribed, and on such appeal, the District Collector may, after giving notice to the Commissioner and each of the persons mentioned in sub-section (2) of that section and after holding such inquiry as may be prescribed, pass an order, confirming, modifying or cancelling the order of the Revenue Divisional Officer.

(2) The order of the District Collector on such appeal or the order of the Revenue Divisional Officer under sub-section (1) of Section 77 where no appeal is preferred, shall be final, and shall not be liable to be questioned in any Court of law.

79. Prohibition of purchase of immovable property in certain cases

No immovable property shall be purchased for or on behalf of any charitable or religious institution or endowment except with the prior sanction of the Commissioner and the Commissioner shall not accord such sanction unless he considers that such property is necessary or beneficial to the institution or endowment and that the price proposed to be paid therefore is not excessive:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in the Andhra Pradesh Gazette inviting objections and suggestions with trustee or other person having interest shall be duly considered by the Commissioner.

80. Alienation of immovable property

(1) (a) Any gift, sale, exchange or mortgage of any immovable property belonging to or given or endowed for the purpose of any charitable or religious institution or endowment shall be null and void unless any such transaction, not being a gift, is affected with the prior sanction of the Commissioner.

(b) The Commissioner, may, after publishing in the Andhra Pradesh Gazette the particulars relating to the proposed transaction and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any received from the trustee or other person having interest, accord such sanction where he considers that the transaction is-

(i) prudent and necessary or beneficial to the institution or endowment;

(ii) in respect of immovable property which is uneconomical for the institution or endowment to own and maintain; and

(iii) the consideration therefore is adequate and proper.

(c) Every sale of any such immovable property sanctioned by the Commissioner under clause (b) shall be effected by tender-cum-public auction in the prescribed manner subject to the confirmation by the Commissioner within a period prescribed:

Provided that the Government may, in the interest of the institution or endowment and for reasons to be recorded therefore in writing, permit the sale of such immovable property, otherwise than by public auction;

Provided further that the Government may purchase the lands situated in scheduled Areas belonging to institutions or endowments, wherever neces-

sary, otherwise than by public auction and assign such lands to the members of the Scheduled Tribes.

Explanation: In this section, the expression "Scheduled Tribe" shall have the meaning assigned to it in Clause 25 of Article 366 of the Constitution and the expression "Scheduled Area" shall have the meaning assigned to it in sub-paragraph (1) of paragraph 6 of the Fifth Schedule to the Constitution of India.

(2) (a) no lessee, mortgagee with possession or licensee of any land or building belonging to the institution or endowment and which is appurtenant to or which adjoins the institution or endowment or any tank, well, spring or water course appurtenant to the institution or endowment whether situated within or outside the prakarams, mandapams, court-yards or corridors of the institution or endowment, shall make use of the land, building or space so as to mar the artistic appearance or view or the religious atmosphere of the institution or endowment. The Commissioner, shall, by order and for reasons to be recorded therein, terminate or cancel the lease, mortgage, or licence, as the case may be, of any person who contravenes the aforesaid provision, after giving the person an opportunity of making his representation against the proposed termination or cancellation and require such person to deliver possession of the land, building or space, as the case may be, to the trustee before the date specified in the order.

(b) Where such person fails to deliver possession as aforesaid, before the date specified, the Commissioner may direct the Deputy Commissioner concerned to take action under the provisions of Chapter-XI.

(c) Nothing in this sub-section shall be construed as disentitling the person who is dispossessed of any property under this sub-section from recovering an amount which is lawfully due to him from the institution or endowment under the lease, licence or mortgage, as the case may be.

(3) The utilisation or investment of the amount realised by any transaction under sub-section (1) and in the case of a mortgage the discharge of the mortgage within a reasonable period shall be made by the trustee, subject to the approval of the Commissioner.

(4) A copy of the order made by the Commissioner under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(5) The trustee may, within ninety days from the date of the communication of the order under sub-section (4), and any person having interest may, within ninety days from the date of publication of such order, prefer an appeal to the Government to modify the order or set it aside.

(6) Notwithstanding anything contained in the first proviso to clause (c) of sub-section (1), the Government may call for and examine the record of the Commissioner in respect of the order passed by him under this section to satisfy themselves as to the legality or correctness of such order or regular-

ity or property thereof and if, in any case it appears to the Government that such order should be modified, annulled, reversed or remitted for reconsideration, they may pass order accordingly:

Provided that the Government shall not pass any order prejudicial to any party unless he has had an opportunity of making his representation.

(7) The Government may stay the execution of any such order pending the exercise of their powers under sub-section (6) in respect thereof.

(8) Nothing in this section shall apply to the leasing or licensing of any land or building or space mentioned sub-section (2) for the purpose of providing amenities to pilgrims or of vending flowers of other articles, used for worship of holding for specified periods, fairs or exhibitions during festival connected with the institution or endowment.

81. Invalidation of unauthorized sale

Where before the commencement of this Act, any sale, exchange, or mortgage of any immovable property belonging to any charitable or religious institution or endowment is effected, without the prior sanction of the Commissioner or Government such transaction shall be null and void and shall be deemed never to have been effected and accordingly no right or title in such property shall vest in any person acquiring the property by such transaction and any such property shall be deemed to be the property of the institution or endowment concerned and any person in possession of such property shall be deemed to be an encroacher and thereafter the provisions of Section 84 and 85 shall apply.

82. Lease of Agricultural Lands

(1) Any lease of agricultural land belonging to or given or endowed for the purpose of any institution or endowment subsisting on the date of commencement of this Act shall, notwithstanding anything in any other law for the time being in force, held by a person who is not a landless poor person stands cancelled.

(2) In respect of leases of agricultural lands held by landless poor person for not less than six years continuously, such person shall have the right to purchase such lands for a consideration of seventy-five per-centum of the prevailing market value of similarly situated lands at the time of purchase and such consideration shall be paid in four equal instalments in the manner prescribed. Such sale may be effected otherwise than by tender-cum-public auction:

Provided that if such person fails to purchase the land in accordance with this sub-section or is unwilling to purchase the land, the lease shall be deemed to have been terminated.

Explanation: For the purpose of this sub-section "landless poor person" means a person whose total extent or as both does not exceed 1.011715

hectares (two and half acres) of wet land or 2.023430 hectares (five acres) of dry land and whose monthly income other than from such lands does not exceed two hundred and fifty rupees per mensum or three thousand rupees per annum. For the purpose of computing the extent of land 0.404686 hectares (one acre) of wet land shall be equal to 0.809372 hectares (two acres) of dry land.

(3) The authority to sanction the lease or licence in respect of any property or any right or interest thereon belonging to or given or endowed for the purpose of any charitable or religious institution or endowment, the manner in which and the period for which such lease or licence shall be such as may be prescribed.

Every lease or licence of any immovable property, other than the Agricultural land belonging to, or given or endowed for the purpose of any charitable or religious institution or endowment subsisting on the date of the commencement of this Act, shall continue to be in force subject to the rules as may be prescribed under sub-section (3).

Chapter XI: Encroachment

83. Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers

(1) Where the Assistant Commissioner having jurisdiction, either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this Chapter referred to as ´encroacher`) any land, building, tank, well, spring or watercourse or any space belonging to the institution or endowment, wherever situated or deemed as an encroacher under any of the provisions of this Act the Assistant Commissioner shall report the fact together with relevant particulars to the Deputy Commissioner having jurisdiction over the division in which the institution or endowment is situated.

Explanation: For the purpose of this Chapter the expression 'encroacher' shall mean any person who unauthorizedly occupy any land or building or space and deemed to include any person who is in occupation of the land or building or space without the approval of the competent authority sanctioning lease or mortgage, or licence and also a person who continues to remain in the land or building or space after the expiry of termination or cancellation of the lease, mortgage or licence in respect thereof granted to him or it.

(2) Where, on a perusal of the report received by him under sub-section (1), the Deputy Commissioner finds that there is a prima facie case of encroachment, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the en-

croachment before the date specified in the notice should not be made. A copy of the notice shall also be sent to the trustee of the institution or endowment concerned.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Where after considering the objects, if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such enquiry as may be prescribed, the Deputy Commissioner is satisfied that there has been an encroachment, he may, by order, require the encroacher to remove the encroachment and deliver possession of the land or building or space encroached upon to the trustee before the date specified in such order.

(5) The order of the Deputy Commissioner under sub-section (4) shall be in writing and shall contain the grounds on which he has passed the order.

(6) During the pendency of the proceedings, the Deputy Commissioner shall order the encroacher to deposit such amount as may be specified by him in consideration of the use and occupation of the properties in question in the manner prescribed.

84. Mode of eviction on failure of removal of the encroachments as directed by the Deputy Commissioner

(1) Where within the period specified in the order under sub-section (4) of Section 83, the encroacher has not removed the encroachment and has not vacated the land, building or space, the Assistant Commissioner having jurisdiction over the sub-division may remove the encroachment and obtain possession of the land, building or space, encroached upon, taking such police assistance as may be necessary. Any Police Officer whose help is required for this purpose shall be required to render the necessary help to the Assistant Commissioner.

(2) Nothing in sub-section (1) shall prevent any person aggrieved by the order of the Deputy Commissioner under sub-section (4) of Section 83 from instituting a suit in a Court to establish that the charitable or religious institution or endowment has no title to the land, building or space:

Provided that no Civil Court shall take cognizance of any suit instituted after six months from the date of receipt of the order under sub-section (4) of Section 83:

Provided further that no such suit shall be instituted by a person who is let into the possession of the land, building or space, or who is a lessee, licensee or mortgagee, of the institution or endowment.

(3) No injunction shall be granted by any court in respect of any proceedings taken or about to be taken by the Deputy Commissioner under Section 83.

85. Encroachment by group of persons on land belonging to charitable and religious institutions and their eviction

(1) Where the Deputy Commissioner knows or has reason to believe that a group or groups of persons, without any entitlement and with the common object of occupying any land, which is the property belonging to a charitable or religious institution or endowment, are occupying or have occupied any such land and if such group or groups of persons have not vacated the land on demand by the Deputy Commissioner or any officer authorized by him in this behalf, the Deputy Commissioner shall, notwithstanding anything contained in this Act, order without any notice, the immediate eviction of the encroachers from the land and the taking of possession of the land and thereupon, it shall be lawful for any office authorized by the Deputy Commissioner in this behalf to evict the encroachers from the land by force, taking such police assistance as may be necessary and take possession of the land. Any police officer whose help is required for this purpose shall be bound to render the necessary help to the Deputy Commissioner or to such officer authorized by him.

(2) Where, in any proceedings taken under this section, or in consequence of anything done under this Section a question arises as whether any land is the property of the charitable or religious institution or endowment, such land shall be presumed to be the property of the charitable or religious institution or endowment until the contrary is proved.

(3) Notwithstanding anything in this Act, but subject to the provisions of Sections 92 and 93 any order of eviction passed by the Deputy Commissioner under sub-section shall be final and shall not be questioned in any court.

86. Penalty for offences in connection with encroachment

(1) Any person who, on or after the commencement of this Act continues to be in occupation, otherwise than by a lawful possession of a land belonging to a charitable or religious institution or endowment shall be guilty of an offence under this Act.

(2) Whoever contravenes the provisions of sub-section (1), shall on conviction be punished with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine which may extend to five thousand rupees.

(3) No Court shall take cognizance of an offence punishable under sub-section (2) except on the complaint in writing of the Commissioner.

No offence punishable under sub-section (2) shall be inquired into or tried by any court inferior to that of a Magistrate of the First Class.

Chapter XII: Enquiries

87. Power of Deputy Commissioner to decide certain disputes and matters

(1) The Deputy Commissioner having jurisdiction shall have the power, after giving notice in the prescribed manner to the person concerned, to enquire into and decide any dispute as to the question-

(a) whether an institution or endowment is a charitable institution or endowment;

(b) whether an institution or endowment is a religious institution or endowment;

(c) whether any property is an endowment, if so whether it is a charitable endowment or a religious endowment;

(d) whether any property is a specific endowment;

(e) whether any person is entitled by custom or otherwise to any honour, emoluments or perquisites in any charitable or religious institution or endowment and what the established usage of such institution or endowment is in regard to another matter;

(f) whether any institution or endowment is wholly or partly of a secular or religious character and whether any property is given wholly or partly for secular or religious uses; or

(g) where any property or money has been given for the support of an institution or endowment which is partly of a secular character and partly of religious character or the performance of any service or charity connected with such institution or endowment or the performance of a charity which is partly of a secular character and partly of a religious character or where any property or money given is appropriated partly to secular uses and partly to religious uses, as to what portion of such property or money shall be allocated to secular or religious uses.

(2) The Commissioner may pending his decision under sub-section (1), pass such order as he deems fit for the administration of the property or custody of the money belonging to the institution or endowment.

(3) Every decision or order of the Deputy Commissioner on confirmation by the Commissioner under this section shall be published in the prescribed manner.

(4) The Deputy Commissioner may while recording his decision under sub-section (1) and pending implementation of such decision, pass such interim order as he may deem fit for safeguarding the interests of the institution or endowment and for preventing damage to or loss of or misappropriation or criminal breach of trust in respect of the properties or moneys belonging to or in the possession of the institution or endowment.

(5) Any decision or order of the Deputy Commissioner deciding whether an institution or endowment is not a public institution or endowment shall not take effect unless such decision or order is confirmed by an order of the Commissioner.

(6) The presumption in respect of matters covered by clauses (a), (b), (c), (d) and (e) in sub-section (1) is that the institution or the endowment is public one and that the burden of proof in all such cases shall lie on the person claiming the institution or the endowment to be private or the property or money to be other than that of a religious endowment or specific endowment as the case may be.

88. Right of appeal against the decision of the Deputy Commissioner under Section 87 and Commissioner under Section 119

Any person aggrieved by the decision of the Deputy Commissioner or the order of the Commissioner under Section 87 and the decision of the Commissioner under Section 119 may, within ninety days from the date of receipt of the decision prefer an appeal to the District Judge and within the limits of Municipal Corporation of Hyderabad to the Chief Judge, City Civil Court.

89. Compromise how to be made

(1) No suit, application or appeal pending before a Court which relates to charitable religious institution or endowment, shall be withdrawn or compromised by the trustee or other person in charge of the management of such institution or endowment except with the previous sanction of the Commissioner.

Where the Commissioner considers that any claim, demand, or cause of action for suing in respect of the affairs, funds, or properties of the charitable or a religious institution or endowment shall in the interest of the institution or endowment be compromised without instituting or without continuing any suit or other legal proceeding and if the other party to such suit or other legal proceedings is willing to enter into a compromise under the terms and conditions which the Commissioner considers acceptable in the interest of the institution or endowment, the Commissioner may, for reasons to be recorded in writing pass an order directing the trustee or other person referred to in sub-section (1) to enter into such compromise.

Chapter XII: Appeals, Revision, Review, etc.

90. Appeal in certain cases

(1) Any person aggrieved may, within ninety days from the date of receipt by him of an order, appeal against such order where it is passed by-

(i) the Commissioner under sub-section (4) of Section 25, sub-section (1) of Section 28, sub-section (2) or sub-section (3) of Section 61, sub-section (1) of Section 66 and sub-sections (1) and (2) of Section 73, to the Government;

(ii) the Deputy Commissioner or the Assistant Commissioner, as the case may be, under sub-section (4) of Section 25, sub-section (1) of Section 28, sub-sections (1) and (2) of Section 73, to the Commissioner.

91. Revision

The High Court may call for the record of any case-

(i) which has been decided by a court and in which no appeal lies thereto;

(ii) which has been decided by the District Court in an appeal under Section 88;

(iii) which has been decided by the Government in an appeal under Section 90; or

(iv) which has been decided by the Government under sub-section (1) of Section 28.

If such court or the Government appears

(a) to have exercised a jurisdiction not vested in it or them by law;

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its or their jurisdiction illegally or with material irregularity. The High Court may make such order in the case as it thinks fit.

92. Power of the Commissioner to call for records and pass orders

(1) The Commissioner may either suo motu or on application, call for and examine the record of any Deputy Commissioner or Assistant Commissioner, or of any other Officer subordinate to him or of any Executive Officer or any trustee of a charitable or religious institution or endowment, other than a math or a specific endowment attached to a math in respect of any administrative or quasi-judicial decision taken or order passed under this Act, but not being a proceeding in respect of which a suit or an appeal or application or reference to a Court is provided by this Act to satisfy himself as to the Correctness, legality or propriety of such decision or order taken or passed, and if in any case appears to the Commissioner that such decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly.

(2) The Commissioner shall not pass any order prejudicial to any party under sub-section (1), without giving him an opportunity for making representation.

(3) The Commissioner may stay the execution of any decision or order of the nature referred to in sub-section (1) pending the exercise of his powers under the said sub-section in respect thereof.

(4) Every application to the Commissioner for the exercise of his powers under this section shall be preferred within ninety days from the date on which the order or proceeding to which the application relates was received by the applicant.

93. Power of Government to call for records and pass orders

(1) The Government may either suo motu or on an application call for and examine the record of the Commissioner or any Deputy Commissioner or any Assistant Commissioner or any other Officer subordinate to them, or of any Executive Officer or any trustee of a charitable or religious institution or endowment, other than a math or specific endowment attached to a math in respect of any administrative or quasi-judicial decision taken or order passed under this Act, but not being a proceeding in respect of which a suit or an appeal or application, or a reference to court is provided by this Act, to satisfy themselves as the correctness, legality or propriety of such decision or order taken or passed, and if in any case, it appears to the Government that such decision or order should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly:

Provided that the Government shall not pass any order prejudicial to any party unless he has had an opportunity of making his representation.

(2) The Government may stay the execution of any such decision or order pending the exercise of their powers under sub-section (1) in respect thereof.

(3) No application to the Government for the exercise of their power under this section shall be made in respect of any matters unless an application had already been made in respect of the same matter to the Commissioner under Section 92 and had been disposed of by him.

(4) Every application to the Government for the exercise of their powers under this section shall be made within ninety days from the date on which the decision or order to which the application relates was received by the applicant.

94. Review

The Government may either suo motu, or on an application from any person interested made within ninety days of the passing of an order under Section 93, review any such order if it was passed by them under any mistake, whether of fact or of law, or in ignorance of any material fact. The provisions in the proviso to sub-section (1) and sub-section (2) of Section 93, shall also apply to any proceeding under this section.

Chapter XIV: Tirumala Tirupathi Devasthanams

95. Application of the Act to Tirumala Tirupathi Devasthanams

(1) The provisions of this Chapter shall apply only to the Tirumala Tirupathi Devasthanams.

(2) The other provisions of this Act shall, subject to the provision of this Chapter, apply-

(i) to the Tirumala Tirupathi Devasthanams which shall be constituted into a single religious institution for the purpose of inclusion in the list published under clause (a) of Sec. 6;

(ii) to every specific endowment attached either to the said Devasthanams as a whole or to any temple or institution thereof;

as if all powers and functions assigned therein to a Deputy commissioner or an Assistant commissioner had been assigned to the Commissioner instead.

96. Constitution of Board

(1) There shall be a Board constituted by the Government for the Tirumala Tirupathi Devasthanams consisting of not more than thirteen members, including the Chairman, to be appointed by the Government of whom-

(i) the commissioner shall be a member ex-officio;

(ii) the Executive Officer, shall be the Member-Secretary, ex-officio;

(iii) three shall be members of the State Legislature;

(iv) one shall be a person belonging to the Schedule Castes;

(v) one shall be a woman:

Provided that it shall not be obligatory to appoint,

(a) a person to represent category (iv), where any of the person appointed under category (iii) or category (v) belongs to the Scheduled Castes;

(b) a person to represent category (v) where any one of the persons appointed under category (iii) or category (iv) is a woman;

Provided further that a member representing category (iii) shall cease to hold office as soon as he ceases to be a member of the State Legislature.

(2) The persons appointed as members under sub-section (1) shall be persons professing Hindu Religion.

Explanation: In this section the expression "Scheduled Castes" shall have the meaning assigned to it in clause (24) of Article 366 of the Constitution of India.

97. Powers and functions of the Board

The Board shall in addition to the powers conferred and functions entrusted to it by this Act, exercise such other powers and perform such other functions as may be prescribed in regard to matters of policy and general superintendence and review in relation to the Administration of Tirumala Tirupathi Devasthanams having due regard to public interest and the services and amenities to be provided to and welfare safety measures to be undertaken for, the pilgrims, devotees and worshippers resorting to Tirumala Tirupathi Devasthanams.

97-A. Constitution of Committee

(1) There shall be a Committee constituted by the Government for Tirumala Tirupathi Devasthanams called the Tirumala Tirupathi Devasthanams Management Committee which shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property and shall sue and be sued by the said corporate name.

(2) The Committee shall consist of the following members namely:-

(i) the Chairman of the Board, who shall be ex-officio Chairman of the Committee;

(ii) the Commissioner, who shall be a member ex-officio;

(iii) the Executive Officer, who shall be the ex-officio Member-Secretary of the Committee;

(iv) five other members of the Board to be nominated by the Government one of whom shall be member of the State Legislature:

Provided that five of the ten non-official members of the Board shall be nominated under this item for the first year and the other five members shall be nominated for the second year.

97-B. Powers and functions of Committee

Subject to the provisions of this Act and the rules made thereunder:

(i) the administration of the Tirumala Tirupathi Devasthanams shall vest in the Committee and the Committee shall, for this purpose, in addition to the powers conferred and functions entrusted to it by this Act exercise such powers and perform such functions as may be prescribed;

(ii) the Committee shall manage the properties and affairs of the Tirumala Tirupathi Devasthanams and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its custom and usage;

(iii) the Committee shall have power to fix fees for the performance of archana, or any service or ritual or Utsavam or ceremony connected with the Tirumala Tirupathi Devasthanams;

(iv) the Committee shall have power to call for such information and accounts as may in its opinion be necessary for reasonably satisfy itself, that the Tirumala Tirupathi Devasthanams are properly maintained, the endowments thereof are properly administered, and their funds are duly appropriated to the purposes for which they were founded or exist; and the Executive officer or other officers in possession of such information or accounts shall on such requisition furnish such information and accounts to the Committee;

(v) The Committee shall exercise the general superintendence and control over the administration of the Tirumala Tirupathi Devasthanams in conformity with the policy laid down by the Board;

(vi) The Committee shall fix the dittam in the temples specified in the first Schedule and the endowments attached thereto and the amounts to be spent therefore in such manner and after following such procedure as may be prescribed;

(vii) The Committee may, subject to such conditions and restrictions as it may lay down delegate to the Executive Officer such of the powers conferred on it by or under this Act, as it may consider necessary.

98. Qualifications and disqualifications for Chairman and Members of Board or Committee

The provisions of Sections 18 and 19 shall as far as may be apply in relation to the office of the Chairman and members of the Board or Committee.

99. Term of Office of Chairman and members of the Board or Committee

The Chairman and any other member of the Board or Committee other than an ex-officio members shall hold office for a period of two years from the date of appointment by the Government.

100. Chairman and Members not to receive or be paid salary or other remuneration

The Chairman or member shall not receive or be paid any salary or other remuneration from the funds of the Tirumala Tirupathi Devasthanams, except such honorarium or compensatory allowance or travelling, daily and conveyance allowances as may be prescribed.

101. Resignation

Chairman or any member, other than an ex-officio member may resign his office as the Chairman or member by giving notice in writing to the Executive Officer and his office shall become vacant from the date of acceptance of the same by the government.

102. Cessation of office of members

(1) A member shall cease to hold office as such member if he has absented himself from three consecutive meetings of Board or Committee, without obtaining the prior permission of the Chairman therefore.

(2) Where a person is the Chairman or a Member of the Board or the Committee such person shall cease to be such Chairman or Member if he ceases to be the Chairman or the Member of the Board or Committee as the case may be.

103. Suspension or removal of Chairman or Member

(1) The Government may, for good and sufficient reason, suspend or remove the Chairman or a member other than an ex-officio member, after giving him an opportunity of showing cause against such suspension or removal and after considering explanation offered therefore.

(2) Pending the passing of an order under sub-section (1), the Government may suspend the Chairman or the member.

104. Casual vacancy in the office of the Chairman or Member

(1) Where the Chairman or a member becomes subject to any disqualification specified in Section 19 or tenders resignation of his office and the same is accepted by the Government under Section 101 or ceases to be such member under Section 102 or is removed under Section 103, his office shall become vacant.

(2) Where a casual vacancy occurs as specified in sub-section (1) or otherwise, the Government may fill the vacancy by appointing another person as Chairman or member in his place in accordance with the provisions of this Chapter and such Chairman or member shall hold office only for the residue of the term of office of his predecessor.

105. Dissolution and reconstitution of Board or Committee

(1) Where at any time it appears to the Government that the Board or Committee has failed to perform its functions or has exceeded or abused any of the powers conferred upon it by or under this chapter, the Government may, on the recommendation of the Commissioner, by notification published in the Andhra Pradesh Gazette, dissolve the Board or Committee from such date as may be specified therein and constitute another Board or Committee afresh in accordance with the provisions of this Chapter.

(2) Before issuing a notification under sub-section (1), the Government shall communicate to the Executive Officer who is the ex-officio member Secretary of the Board or Committee the grounds on which they propose to do so, fix a reasonable time to enable the Board or Committee to show cause against the proposal and consider its explanation on objection, if any.

(3) On receipt of such communication under sub-section (2), the Executive Officer shall place the matter before an extraordinary meeting of the Board or Committee specially convened for the purpose and communicate the explanation or objection of the Board or Committee within the time fixed by the Government in this behalf.

(4) The Government may on consideration of the explanation or objection of the Board or Committee dissolve the Board or Committee and cause all or any of powers and functions of the Board or Committee to be exercised or performed by the Commissioner and Executive Officer, until the Board or Committee is reconstituted in accordance with the provisions of this Chapter.

(5) With effect from the date specified for the dissolution of the Board or Committee all its members including the Chairman shall forthwith be deemed to have vacated their officer as such.

106. Appointment of Executive Officer, Joint Executive Officer, Special Grade Deputy Executive Officer and Financial Advisor and Chief Accounts Officer etc.

(1) Subject to the provisions of Section 107, the Government shall appoint an Executive Officer, a Joint Executive Officer, a Special Grade Deputy Executive Officer, a Financial Advisor, a Chief Accounts Officer, a Chief Engineer, a Chief Security Officer and any other officer.

(2) Every officer, appointed under sub-section (1) shall be a person professing Hindu religion.

(3) The conditions of service of the officers appointed under sub-section (1), shall be such as may be determined by the Government.

(4) Every officer appointed under sub-section (1), shall be a whole time Officer of the Tirumala Tirupathi Devasthanams and shall not undertake any work unconnected with his office without the permission of the Committee.

(5) Any officer appointed under sub-section (1) shall be paid out of the funds of the Tirumala Tirupathi Devasthanams such salary as may, from time to time, be fixed by the Government, having regard to the pay to which he is eligible in the service of which he was a member before his appointment as such.

107. Qualifications for appointment of Executive Officer, Joint Executive Officer, Special Grade Executive Officer, Financial Advisor and Chief Accounts Officer etc.

(1) A person to be appointed as Executive Officer shall be one who is holding or has held a post of the District Collector or a post not lower in rank than that of a District Collector in any other service in the State.

(2) A person to be appointed as Joint Executive Officer shall be one who is holding or has held a post of a Joint District Collector or a post not lower in rank than that of a Joint District Collector in any other service in the State.

(3) A person to be appointed as a Special Grade Deputy Executive Officer shall be one who has been holding or has held a post of a Deputy Executive Officer in the service of the Tirumala Tirupathi Devasthanams for a period of not less than five years.

(4) A person to be appointed as a Financial Advisor, and Chief Accounts Officer, a Chief Engineer, a chief Security Office and any other officer shall be one possessing such qualifications as may be prescribed.

108. Term of appointment of Executive Officer and Joint Executive Officer

The Executive Officer or Joint Executive Officer appointed under sub-section (1) of Section 106 shall hold office for a term of three years and he shall also be eligible for reappointment for another term.

109. Powers and functions of Officers appointed under Section 106

(1) (a) The Executive Officer shall be the Chief Administrative Officer of Tirumala Tirupathi Devasthanams and shall, subject to the guidance and control of the Committee have general power to carry out the other provisions of this Chapter.

(b) He shall be responsible for the proper maintenance and custody of the records and properties of the Tirumala Tirupathi Devasthanams and shall arrange for the proper collection of the offerings made in the temples specified in the First Schedule.

(c) Save as otherwise provided in this Chapter he shall exercise such other powers and perform such other functions as may be prescribed.

(2) The Executive Officer may delegate any of the powers conferred on or functions entrusted to or duties imposed on him by or under this Chapter to the Joint Executive Officer or Special Grade Deputy Executive Officer appointed under sub-section (1) of Section 106 or to such other officer of the Tirumala Tirupathi Devasthanams as the Executive Officer may deem fit subject to such restrictions and control as the Government may, by special or general order, lay down and also subject to such limitations and conditions, if any, as may be specified in the order of delegations.

(3) Every Officer appointed under sub-section (1) of Section 106 shall exercise the powers conferred on and perform the functions entrusted to him by or under this Chapter.

110. Extraordinary powers of the Executive Officer

The Executive Officer may, in case of emergency direct execution of any work or the doing of any act, which is not provided for in the budget for the year and the immediate execution or the doing of which is in his opinion,

necessary for the preservation of the properties of the Tirumala Tirupathi Devasthanams or for the service of safety of the pilgrims resorting to the Tirumala Tirupathi Devasthanams and may also direct that the expenses of executing such work or doing the act shall be paid, from the fund of the Tirumala Tirupathi Devasthanams, the Executive Officer shall forthwith report to the Board of Committee the action taken under this section and the reasons therefore.

111. Funds of the Tirumala Tirupathi Devasthanams

(1) The Tirumala Tirupathi Devasthanams shall have its own funds, the corpus of which shall include all the amounts received by it by way of donations, gifts, anukas including offerings deposited in Hindis and any income from any other source and all payments by Tirumala Tirupathi Devasthanams shall be made from the said funds.

(2) The said funds shall be operated by an officer or officers authorized by the Committee in such manner and subject to such conditions as may be prescribed.

(3) All monies belonging to the funds of the Tirumala Tirupathi Devasthanams shall be deposited in such Bank or Treasury or be invested in such securities in accordance with such guidelines as may be issued by the Government in this behalf.

(4) The funds of Tirumala Tirupathi Devasthanams may be utilised for all or any of the following purposes and also for any other purpose permitted by any other provisions of this Act:-

(i) the maintenance, management and administration of the temples specified in the First Schedule and the endowments and the properties thereof including the conduct or performance of religious rituals, functions and festivals connected therewith;

(ii) the maintenance, management and administration of the educational or other institutions specified in the Second Schedule and the endowments and the properties thereof:

Provided that the Government may, by notifications published in the Andhra Pradesh Gazette alter, add to, or omit any of the items in the said Schedule;

(iii) propagation of Hindu religion by way of printing and publication of literature on religion and sale thereof at concessional price;

(iv) propagation, promotion and popularization of study of Vedas, Hindu religion, philosophy or sastras, Indian Languages, including Sanskrit, Sculpture, Hindu temple architecture and epigraphy;

(v) training of archakas to perform religious worship and ceremonies and the training of Adhyapakas and Vedaparayanikas;

(vi) construction and maintenance of choultries and rest houses for the use and accommodation of the pilgrims;

(vii) provision of water supply and other sanitary arrangements to the pilgrims and worshippers;

(viii) establishment and maintenance of hospitals and dispensaries for the relief of the pilgrims and worshippers visiting the temples;

(ix) construction and maintenance of roads and communications and the lighting thereof for the convenience of the pilgrims and worshippers;

(x) acquisition of any land or other immovable property for the purpose of the Tirumala Tirupathi Devasthanams, if such acquisition is authorized by the Government;

(xi) establishment and maintenance of dairy farm and a veterinary hospital for the animals of the Tirumala Tirupathi Devasthanams;

(xii) any work or undertaking for purposes of the Tirumala Tirupathi Devasthanams, authorized by the Govt.; and

(xiii) any other religious or charitable purposes connected with or incidental to the Tirumala Tirupathi Devasthanams as may be prescribed.

(5) The Tirumala Tirupathi Devasthanams shall every year, out of its funds set apart a sum of not less than rupees seven lakhs towards the maintenance of Sri Venkateswara University and Sri Padmavathi Aarnia Viswa Vidhyalayam.

(6) The Committee may, with the prior approval of the Government, utilise its surplus funds after providing for all the objects, namely, requirements or improvements of the Tirumala Tirupathi Devasthanams and after making adequate provision for all the purposes for which such funds shall be lawfully spent, for such charitable or religious purposes as may be prescribed.

112. Establishment of Dharma Prachara Parishad

(1) It shall be lawful for the Committee to establish an institution called "the Dharma Prachara Parishad" and to set apart every year out of its funds a sum not less than rupees one lakh for the maintenance of the said Parishad.

(2) Upon such establishment of the said Parishad, the Hindu Dharma Rakshara Samstha established under sub-section (1) of Section 24 of the Tirumala Tirupathi Devasthanams Act, 1979 shall stand abolished and the funds standing to its credit and other assets of the said Samstha shall thereupon vest with the Dharma Prachara Parishad established under sub-section (1).

(3) The objects of the said Dharma Prachara Parishad shall include-

(i) promotion and propagation of the Hindu Dharma;

(ii) the establishment and maintenance of institutions for imparting instructions in the Hindu Dharma;

(iii) preparation, publication and dissemination of literature relating to the Hindu Dharma;

(iv) training of dharmacharayas, dharmapracharakas and such other personnel as may be required for propagation of the Hindu Dharma;

(v) establishment and maintenance of institutions for imparting training in Vedas, Agamas and Powrohityam and for conducting examinations for awarding certificates in Veda, Agama and Powrohityam;

(vi) any other purpose connected with or incidental to the aforesaid objects.

(4) Subject to such rules as may be made by the Government in this behalf, the Committee may make regulations for the purpose of carrying out the purposes aforesaid.

113. Establishment of Sri Venkateswara Sishtacharya Vidya Samstha

(1) It shall be lawful for the Committee to establish an institution to be called "Sri Venkateswara Sishtacharya Vidya Samstha" and to make a foundation grant of such sum as it may think fit for the said purpose in the name of the said Samstha, the interest accrued from the proceeds of which may be utilised for the purposes of the Samstha.

(2) The objects of the said Samstha shall include-

(i) the running of Gurukulas for imparting Vedic knowledge in the traditional manner;

(ii) the implementation of Niyamadhyayana and Kumaradhyayana schemes of imparting Vedic knowledge;

(iii) the running of an upto date high level institute of Vedic learning and research;

(iv) the giving of financial aid to indigent Vedic Schools and indigent Veda Scholars or Veda Pandits;

(v) the selection and training of Veda Pandits for the various Vedaparayana schemes of Tirumala Tirupathi Devasthanams;

(vi) generally to attend to all matters pertaining to rite preservation and propagation of Vedic studies by the Tirumala Tirupathi Devasthanams; and

(vii) any other matter incidental and relevant to Vedic studies or Vedic knowledge.

114. Civic Administration of Tirumala Hills area

(1) The Government may, from time to time, notify in the Andhra Pradesh Gazette the limits of the Tirumala Hills area for the purposes of civic administration.

(2) (a) The Government may by notification in the Andhra Pradesh Gazette declare that any of the provisions of the Andhra Pradesh Gram Panchayats Act, 1964 or of the Andhra Pradesh (Andhra Area) Public Health Act, 1939 and the rules made thereunder shall be extended to, and be in force in the Tirumala Hills area as notified under sub-section (1) with such modifications not affecting the substance as may be necessary or proper for the purpose of adopting them to the Tirumala Hills area; and any such notification may likewise be cancelled or modified by a subsequent notification.

(b) Without prejudice to the generality of the foregoing provisions,-

(i) the Tirumala Hills area as notified under sub-section (1) shall be deemed to be a village for the purposes of the Andhra Pradesh Gram Panchayats Act, 1964 and a local area for the purposes of the Andhra Pradesh (Andhra Area) Public Health Act, 1939;

(ii) all reference to a Gram Panchayat, the Sarpanch, Executive Officer or Executive authority thereof in the Andhra Pradesh Gar". Panchayas Act, 1964; and all references to a local authority, executive authority or Executive Officer in the Andhra Pradesh (Andhra Area) Public Health Act, 1939, shall subject, to the provisions of sub-clause (iii) and (iv) be construed as references to the Executive Officer in the said Tirumala Hills area;

(iii) any appeal provided for by or under the Andhra Pradesh Gram Panchayats Act, 1974, from an order or decision of the Sarpanch, executive authority or Executive Officer of a Gram Panchayat to the Gram Panchayat, shall lie instead to the Commissioner of Panchayati Raj;

(iv) any appeal provided for by or under the Andhra Pradesh (Andhra Area) Public Health Act, 1939 from an order or decision of the executive authority or Executive Officer of a local authority to the local authority, shall lie instead to the Director of Medical and Health Services.

(3) (a) Subject to such rules as may be prescribed, it shall be lawful for the Executive Officer by order to prohibit within the Tirumala Hills area notified under sub-section (1) or within the premises of the Tirumala Tirupathi Devasthanams, specified in the First Schedule as the case may be,-

(i) begging by any person;

(ii) straying of any cattle, pigs or dogs;

(iii) possession, use or consumption of any intoxicating liquor or drug or cigarettes including beedies and chuttas;

(iv) possession, preparation or consumption of meat or other foodstuffs containing meat;

(v) slaughter, killing or maiming any animal or bird for any reason;

(vi) gaming with cards, dice, counters, money or other instruments of gaming;

(vii) tonsuring or hair-cutting or opening and running of a hairdressing saloon by any person other than a person authorized or employed by the Executive Officer.

(b) Any person contravening an order made by the Executive Officer under clause (a) shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.

(c) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under clause (b) shall be tried in a summary way by a Magistrate of the First Class specially empowered in this behalf by the Government.

(d) The Executive Officer may accept from any person who has committed or is reasonably suspected of having committed an offence under clause (b) a sum not exceeding five hundred rupees by way of compounding the offence which may have been committed.

(e) On receipt of the sum of money referred to in clause (d) by the Executive Officer

(i) the accused person, if in custody, shall be discharged;

(ii) no further proceedings shall be taken against such person.

(4) (a) The Government may, by notification published in the Andhra Pradesh Gazette, authorise the Executive Officer to levy tolls in the prescribed manner in respect of any road (including the ghat road leading to Tirumala from Tirupathi) which has been or shall hereafter, be constructed wholly or partly from the funds of the Tirumala Tirupathi Devasthanams and situated within the Tirumala Hills area as notified under sub-section (1), at such rates and for such period as may be specified in the notification.

(b) The Executive Officer may-

(i) place the collection of such tolls under the management of such persons as may appear to him proper; or

(ii) farm out such collections on such terms and conditions as he may thinks fit.

(c) The provisions of Sections 3, 4, 5, 6 and 7 of the Indian Tolls Act, 1851 in force for the time being in the State shall apply to the collection of such tolls and the persons under whose management the collection of such tolls may be placed, as well as the persons to whom such collections may be framed out and their agents and servants shall be deemed to be persons appointed to collect tolls within the meaning of that Act.

115. Powers of Government to take over or transfer, control and management of educational institutions belonging to Tirumala Tirupathi Devasthanams to the Government or any authority

(1) Where the Subcommittees by a resolution passed in that behalf requests the Government to take over or arrange for the transfer to any other authority of the control and management of any educational or other institutions specified in the Second Schedule, the Government may, by notification published in the Andhra Pradesh Gazette, take over itself or transfer to any local or other authority the control and management of any or all of the educational or other institutions specified in the said notification; and from the date so notified it shall be open to the Government or the local or other authority, as the case may be, to control and manage the said educational or other institutions and all the properties and assets of the Tirumala Tirupathi Devasthanams pertaining to or intended to be used for, every such educational or other institution shall stand transferred to, and vest in the Government or the local or other authority, as the case may be, free from all encumbrances.

(2) Notwithstanding any contract or arrangement or any law for the time being in force, every teacher or other person employed in any of the said educational or other institutions immediately before the date on which the control and management thereof is taken over by the Government or the local or other authority shall as from the said date be deemed to be an employee of the Government or such local or other authority and shall hold office on the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held under the Tirumala Tirupathi Devasthanams until his remuneration, terms and conditions of service are duly altered by the Government:

Provided that every such appeal shall, within a period of three months or such other period beyond three months as may be specified by the Government by a notification published in the Andhra Pradesh Gazette, from the date of taking over of the control and management of the educational or other institutions exercise his option either to be retrenched from the service on receipt of such retrenchment benefit as may be prescribed or be absorbed in the service of the Government or local or other authority, as the case may be, with effect from the said date and shall be governed by the terms and conditions governing the said service which shall not be less favourable than those applicable to such employee prior to the said date.

116. Budget

(1) The Executive Officer shall, in each Financial year (hereinafter referred to as the said year) not later than the 15th January of the said year frame and place before the Committee, the Budget showing the probable receipts and expenditure during the following financial year, and the Committee shall, within fifteen days of the date on which the budget is placed before it,

place it before the Board at a special meeting convened for the purpose for its approval, and the Board shall approve the same, with or without modifications, at such meeting and forward sufficient number of copies of such budget to the Government before the end of the said year.

(2) The Government may sanction the budget with such modifications, if any, as they deem fit.

(3) If, for any reason, the budget is not sanctioned by the Government before the end of March of the said year, the Committee shall be competent to incur for each of the months April and May of the following financial year an expenditure equivalent to one-twelfth of the expenditure provided under each head, for the said year.

(4) The Committee shall be competent to reappropriate such amount; as may be necessary, from one head of account to another head of account, subject to the condition that the amount so reappropriated under each head of account shall not exceed the amount originally sanctioned in the budget for the said year by more than fifteen per centum under that head of account without prior approval of the Government:

Provided that a report regarding the reappropriation of any amount as aforesaid shall be forwarded to the Government for their ratification before the prescribed date.

(5) The Committee may forward a supplementary budget for as may be prescribed and the provisions of sub-sections (2) and (4) shall apply to such supplementary budget.

(6) (a) Every budget shall make an adequate provision for-

(i) the due performance of the objects of the Tirumala Tirupathi Devasthanams and the proper performance of and the remuneration for the services therein including the dittam for the time being in force:

(ii) the due discharge of all liabilities and subsisting commitments binding on the Tirumala Tirupathi Devasthanams,

(in) the maintenance of the working balance;

(iv) the arrangement to be made for securing the health, safety or convenience of the pilgrims, worshippers or other persons resorting to the Tirumala Tirupathi Devasthanams:

Provided that the provision made under this item shall not be less than forty per centum of the balance of the income for the financial year maintained after making provision for items (i), (ii) and (iii) above;

(v) the contribution to the reserve fund of the Tirumala Tirupathi Devasthanams ten per centum of balance referred to in the proviso to item (iv) above;

(vi) the construction, repair, renovation and improvement of the Tirumala Tirupathi Devasthanams and the buildings connected therewith:

Provided that the provision made under this item shall not be less than thirty per centum of the balance of income for the financial year maintained after making provision for items (i), (ii), (iii) and (iv) above.

(b) The budget shall also make provision for the payment of an amount of five per centum of the balance referred to in the proviso to item (iv) of clause (a) or rupees one crore twenty-five lakhs whichever is higher to the Common Good Fund created under Section 70.

117. Accounts and Audit

(1) The Financial Adviser and Chief Accounts Officer shall keep regular accounts of all receipts and disbursements for each financial year separately in such form and containing such particulars as may be prescribed.

(2) (a) The accounts of the Tirumala Tirupathi Devasthanams shall be audited annually or if the Government so directs in any case at short intervals.

(b) The audit referred to in clause (a) shall be made by auditor appointed by the Government for the purpose and the auditor shall send a report to the Government containing such particulars as may be prescribed.

(3) It shall be the duty of the Financial Adviser and Chief Accounts Officer and all officers and servants working under him to afford the auditor all such assistance and facilities as may be necessary for the audit of the accounts of the Tirumala Tirupathi Devasthanams.

(4) The remuneration payable to such auditor and the cost of audit shall be in the first instance out of the Consolidated Fund of the State and subsequently reimbursed from the funds of the Tirumala Tirupathi Devasthanams.

118. Encroachments

The provisions in Sections 83, 84, 85 and 86 shall apply to Tirumala Tirupathi Devasthanams, subject to the Condition that the powers of Deputy Commissioner therein shall be exercised by the Commissioner.

119. Enquiries

The provisions in Section 87 shall apply to Tirumala Tirupathi Devasthanams subject to the condition that the powers of the Deputy Commissioner therein shall be exercised by the Commissioner.

120. Appeals

Any person aggrieved may, within ninety days from the date of receipt by him of an order, appeal against such order, where it is passed by-

(i) the Joint Executive Officer or Executive Officer under any provision of this chapter or any rules made thereunder, to the Committee.

(ii) the Committee under any provision of this chapter or any rules made thereunder, to the Government:

Provided that where an appeal against an order of the Executive Officer is being heard by the Commissioner, the Executive Officer shall not participate in the deliberations of the Committee in relation to the said appeal.

121. Revision

(1) The Government, either suo motu or on an application call for and examine the records from the Board or Committee or the Commissioner in respect of any administrative or quasi-judicial decision taken or order passed under this chapter to satisfy themselves as to the correctness, legality or propriety of such decision or order taken or passed and if in any case it appears to the Government that such decision or order should be modified, annulled reversed or remitted for consideration they may pass orders accordingly:

Provided that every application to the Government for the exercise of the powers under this section shall be preferred within ninety days from the date on which the decision or order to which an application relates was communicated to the applicant:

Provided further that the Government shall not pass any order adversely affecting any person unless such person has been given an opportunity of making his representation.

(2) The Government may stay the execution of any such decision or order pending the exercise of their powers under sub-section (1) in respect thereof.

122. Review

(1) The Government may either suo motu or on an application from any person interested made within ninety days of the passing of the order under Section 120 or Section 121, review any such order if it was passed by them under any mistake, whether of fact or law or in ignorance of any material fact:

Provided that the Government shall not pass any order adversely affecting any person unless such person has been given an opportunity of making his representation.

(2) The Government may stay the execution of any such decision or order, pending the exercise of their power under sub-section (1) in respect thereof.

123. Right of pre-emption

(1) Any person intending to sell his land situated in Tirumala Hills area shall first give notice to the Executive Officer of his intention to sell such land, requiring him to exercise his option to purchase the land. The particulars to

be specified in the notice and the time within which the option shall be exercised by the Executive Officer shall be such as may be prescribed.

(2) If the Executive Officer exercises his option to purchase the land and there is an agreement between the person and the Executive Officer in regard to the price payable, the person shall sell the land to the Tirumala Tirupathi Devasthanams in accordance with such agreement.

(3) Where the Executive Officer exercises his option to purchase the land but there is no agreement in regard to the price payable, the Executive Office may apply to the Revenue Divisional Officer for the determination of reasonable price of such land: and the Revenue Divisional Officer shall, after giving notice to the person and after making such inquiry as he thinks fit, determine the reasonable price:

Provided that where the land is not sold to any other person within a period of two years from the date of notice given under sub-section (1) the person shall not sell the land thereafter without giving a fresh option under this section to the Executive Officer to purchase the land.

(4) Any sale of the land by the person in contravention of this section shall be voidable at the option of the Executive Officer.

124. Oath of Office

Before the Chairman or a member of the Board or Committee enters upon his office, the Executive Officer or any other officer authorized by him in this behalf shall administer to the Chairman or member the oath of office and secrecy as may be prescribed.

125. Administration report

Within three months after the close of each financial year, the Committee shall submit to the Board a report on the administration of the affairs of the Tirumala Tirupathi Devasthanams during that year in such form as the Government may determine. The Board shall review the report and submit a copy of the same to the Government with its remarks thereon.

126. Meeting of the Board or Committee

(1) Every meeting of the Board or Committee shall be presided over by the Chairman and in his absence by the Commissioner.

(2) The quorum for a meeting-

(a) of the Board shall be five of which one shall be the Chairman or the Commissioner.

(b) of the Committee shall be two of which one shall be the Chairman or Commissioner.

(3) All decisions at the meeting of the Board or Committee shall be by a majority vote:

Provided that in the event of tie, the Chairman or the Commissioner who presides over the meetings shall have casting vote.

(4) The Board or Committee shall meet once in every three months.

127. Acts of the Board or Committee not to be invalidated by informality, vacancy etc.

No act or proceeding of the Board or Committee shall be deemed to be invalid by reason only of a defect in its constitution or on the grounds that the Board or Committee or any member thereof, as the case may be, was not entitled to hold or continue in such office by reason of any disqualification or by reason of any irregularity or illegality in his appointment or by reason of such act or proceeding having been done or conducted during the period of any vacancy in the office of the Chairman or member.

128. Committee to be in possession of institutions and properties

(1) The Committee shall be entitled to take and be in possession of all the institutions, properties, jewels, records and documents of the Tirumala Tirupathi Devasthanams.

(2) If in obtaining such possession, the Committee is resisted or obstructed by any person, it may make an application to the Court of competent jurisdiction complaining of such resistance or obstruction, and the court shall unless it is satisfied that the resistance or obstruction was occasion by any person claiming in good faith to be in possession on is own account or by virtue of some right independent of that of the Tirumala Tirupathi Devasthanams make an order that the Committee be put into possession. Such order shall subject to the result of any suit which may be filed to establish the right to the possession of the property, be final.

129. Suits and other legal proceedings by or against Tirumala Tirupathi Devasthanams

In all suits and other legal proceedings by or against Tirumala Tirupathi Devasthanams the pleadings shall be signed and verified by the Executive Officer and all processes in such suits and proceedings shall be issued to or served on the Executive Officer.

130. Cost of Proceedings etc.

The costs, charges and expenses of, and incidental to, any suit, appeal or application to a court under this chapter shall be in the discretion of the court which may direct the whole or any part of such costs, charges and expenses to be met from the funds of the Tirumala Tirupathi Devasthanams or to be borne and paid in such manner and by such persons as it thinks fit:

Provided that all costs, charges and expenses incurred by the Government or the Committee in connection with any legal proceedings required in the

interests of the Tirumala Tirupathi Devasthanams shall be payable out of the funds of the Tirumala Tirupathi Devasthanams.

131. Annual Inspection

(1) Notwithstanding any of the provisions of this chapter, the Executive Officer shall furnish the copies of all the statutory returns, approved Budget, Audit Report and of all other correspondence made to Government for information of the Commissioner.

The Government shall cause an annual inspection of the Tirumala Tirupathi Devasthanams by such officer above the rank of the Executive Officer as they may nominate.

Chapter XV: Miscellaneous

132. Power of Commissioner to transfer proceedings etc.

(1) The Commissioner shall have power at any stage to transfer any proceeding pending before a Regional Joint Commissioner, Deputy Commissioner or an Assistant Commissioner either to his own file, or to another Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be for disposal.

(2) Any person aggrieved by an order passed by the Commissioner may pass such orders thereon as they may deem fit.

133. Duty of trustees, etc., to handover charge to successor and procedure for recovery of possession of institution etc., in case of default

(1) Where a person, who-

(a) is or has been a trustee on the ground of succession of an institution or endowment; or

(b) is appointed as trustee, Execution Officer, Office holder or servant of such institution or endowment; or

(c) is appointed to discharge the functions of a trustee of such institution or endowment in accordance with the provisions of this Act, in any scheme in force at the time of commencement, Executive Officer, Office-holder or servant or ceases to discharge the functions of the trustee (hereinafter referred to as the "ex-office holder”), on account of the expiry of his term of office or by reason of his suspension, removal or dismissal from office, it shall be the duty of such ex-office holder, to hand over charge of his office and deliver possession of the records, accounts, properties of the institution or endowment including cash to the person who succeeds him or is appointed in his place (hereinafter called the "successor”) or to the Executive Officer within seven days from the date of service in the prescribed manner of the order directing him to hand over charge of the office to his successor or to the

Executive Officer, and if he fails to do so without sufficient cause, he shall be punishable with fine which may extend to one thousand rupees.

(2) (a) Where the successor or the Executive Officer is resisted in or prevented from obtaining the possession of the records, accounts or properties of the institution or endowment by such ex-officeholder or by any person claiming or deriving title from him or by any person who is otherwise not entitled to be in such possession, any Magistrate of the first Class having jurisdiction shall, on an application made by the successor or the Executive Officer, by an order after notice to the ex-office holder direct delivery of the possession of such records, accounts and properties of the institution or endowment, to the successor to the Executive Officer within the time specified in such order.

(b) Every application made under clause (a) shall be accompanied by a certified copy of the order of appointment of the successor along with a certificate issued by the Commissioner in such form and after following such procedure as may be prescribed stating that the records accounts and properties specified therein belong to the institution or endowment.

(3) Where the ex-office holder fails to deliver possession of the records, accounts and properties within the time specified in the order of the Magistrate under sub-section (2), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both; and the Magistrate shall cause the possession of the records, accounts or properties to be delivered to the successor, taking such police assistance as may be necessary.

(4) The order of appointment of the successor and the certificate referred to in clause (b) of sub-section (2) shall not be called in question in the proceedings before the Magistrate under this section.

(5) Nothing in this section shall bar the institution of a suit in a competent court by any person aggrieved by an order under this section for establishing his title to the properties specified in the certificate referred to in sub-section (2).

134. Trustee not to lend or borrow money without sanction

A trustee or an Executive Officer or other person who is in charge of the administration of a charitable or religious institution or endowment, shall not lend or borrow money on behalf of the charitable or religious institution or endowment, except with the sanction of such authority, and subject to such condition, as may be prescribed.

135. Dissolution of the Board of Trustee

Where at any time it appears to the Government that any Board of Trustees has failed to perform its functions or has exceeded or abused any of the powers conferred upon it by or under this Act resulting in material loss or

loss of prestige to the institution or endowment, the Government may communicate the particulars thereof to the Board of Trustees and if the Board of Trustees fails to remedy such defect, excess, or abuse or to give a satisfactory explanation therefore within such time as the Government may fix in this behalf, the Government may dissolve the Board of Trustees.

136. Cost of proceedings etc.

(1) The costs, charges and expenses of and incidental to any suit, appeal or application to a Court under this Act shall be in the discretion of the court which may, subject to the provisions of Section 67, direct the whole or any part of such costs, charges and expenses to be met from the property or income of the charitable or religious institution or endowment concerned or to be borne and paid in such manner and by such person as it thinks fit.

(2) The costs, charges and expenses of and incidental to any appeal, application or other proceedings before the Government Commissioner, Additional Commissioner or Joint Commissioner or Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, shall be in their discretion, and they shall have power to determine by whom or out of what funds and to which extent such costs, charges and expenses are to be paid; and the order passed in this regard may be transferred to the Revenue Divisional Officer for recovery of such amounts as arrears of land revenue.

137. Appointment of specified authority by Government in certain cases

Where the Board of Trustees have ceased to function after the expiration of its term or where the Board of Trustees has been dissolved under section 135, the Government may for reasons to be recorded appoint a specified authority and cause any or all of the powers and functions of the Board of Trustees to be exercised and performed by such specified authority for such period not exceeding one year as they may think fit.

138. Public officer to furnish copies or extracts from certain documents

Notwithstanding anything in law, the Commissioner, Additional Commissioner, Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner, shall have power to require any person having custody of any record, register, report or other document relating to a charitable or religious institution or endowment or any movable or immovable property of such institution or endowment, to furnish copies of, or extracts from any such document and every such person shall on such requisition furnish them.

139. Power to enter and inspect

The Commissioner, Additional Commissioner, Regional Joint Commissioner, Deputy Commissioner or an Assistant Commissioner shall, subject

to such condition and restrictions as may be prescribed, be entitled to enter at any time between 9-00 A.M. and 6-00 P.M. any premises of institution or endowment and to inspect in any public office any record, register or other document or any movable or immovable property relating to a charitable or religious institution or endowment.

140. Request under will for benefit of charitable or religious institution or endowment

(1) Notwithstanding anything in any other law for the time being in force where under any will, a request has been made in favour of a charitable or religious institution or endowment or such institution or endowment is created, it shall be the duty of the executor under the will and also the registration authority to forward a copy thereof to the Assistant Commissioner within whose jurisdiction such will was or is required to be registered, and in the case of Tirumala Tirupathi Devasthanams to the Executive Officer.

(2) No probate of any such will or letter of administration with such will annexed shall be granted by any court unless it is satisfied that a copy of such will has been forwarded to the authority as provided by sub-section (1).

141. Court fee to be paid as specified in the Third Schedule/Act VII of 1956

Without prejudice to the provisions of the Andhra Pradesh Court Fees and Suit Valuation Act, 1956, the proper fee chargeable in respect of the documents described in column (2) of the Third Schedule shall be the fees indicated in column (3) thereof.

142. Savings

Notwithstanding in this Act shall-

(a) affect any honour to which any person is entitled by custom, the performance of or interference with the religious worship, ceremonies and poojas in religious institutions according to the sampradayams and Agams followed in such institutions; or

(b) authorise any interference with the religious or spiritual functions of the head of a math including those relating to the imparting of religious instructions or rendering of spiritual service.

143. Property of charitable or religious institution or endowment not to vest under the law of limitation after commencement of this Act

Nothing in any lack of limitation for the time being in force shall be deemed to vest in any person the property or funds of any charitable or religious institution or endowment which have not vested in such person or his predecessor in title before the 30th September, 1951 in the Andhra Area of the State and the 26th January 1967 in the remaining area of the State.

144. Abolition of shares in Hundi and other rusums

Notwithstanding any judgment, decree or order of any Court, Tribunal or other authority or in any scheme custom, usage or agreement, or in any manual prepared by any institution or in any Framana or Sanad or any deed or order of the Government to the contrary governing any charitable or religious institution or endowment, all shares which are payable or being paid or given or allowed at the commencement of this Act to any Trustee, Dharmakartha, Mutawalli, any office holder or servant including an Archaka or Mirasidar and share or shares, in the kanukas offered either in kind or in cash or both by the devotees either in Hundi, Plate or otherwise, or any rusums in the Archana or Seva tickets and tickets for Tonsuring or any rusums collected from the person for the performance of marriage or Upanayanam and the like, all offerings made in the premises of the Temple or at such places as may be specified by the Trustee, all Prasadams and Panyarams offered either by the Temple or devotee, and such other kinds of offerings, all shares in the lands of the institution or endowment allotted or allowed to be in possession and enjoyment of any archaka, office holder or servant towards remuneration or otherwise for rendering service and for defraying the "Paditharam" and other expenses connected with the service or management of the temple, shall stand abolished with effect on and from the commencement of this Act.

Explanation: For the purposes of this sub-section, the cooked rice or such other things, offered to the deity towards "Nitya Nyvedam" alone as per the dittam, permitted by the Executive Officer of trustee to be appropriated by the archaka or other servants of the temple shall not be considered as offerings.

145. Adoption or amalgamation of institution and endowments

(1) Where the Commissioner has reason to believe that any religious institution is not capable of maintaining out of its funds, he may, in the interest of proper management of administration, subject to such restrictions and conditions as he may deem fit, direct the amalgation or as the case may be, the adoption of such religious institution by any other religious institution having similar objects and capable of managing such institution and there upon the trustee of the institution to which it is amalgamated or by which it is adopted shall maintain and administer such institution.

(2) On such amalgamation or adoption the institutions shall be deemed to comprise a single institution and administered as if they were a single institution published under Section 6.

(3) Where the institution so amalgated or as the case may be adopted under sub-section (1), subsequently found to be capable of being managed by itself, the Commissioner may in the interest of proper management of administration revoke the orders issued under sub-section (1), and thereupon the institution shall manage its affairs independently out of its funds.

(4) An appeal shall lie to the Government against the orders passed by the Commissioner under sub-section (1) or sub-section (3).

146. Constitution of Renovation Committee and its liability

(1) The Government may constitute a renovation committee to any religious or charitable institution consisting of persons with qualifications prescribed in Section 18 and subject to qualifications specified in Section 19.

(2) The composition of the Committee, the term of the Office of the members of the Committee and other matters relating to the functions of the committee shall be such as may be prescribed.

(3) The provisions in Chapter VII except Section 57 shall apply to the Renovation Committee.

147. Imposing of fines and execution

(1) If any trustee including the Executive Officer or other persons in whom the administration of an institution or endowment is vested or any agent of, or person working under the trustee-

(a) refuses, neglects or fails to comply with the provisions of Sections 43, 56 or 133;

(b) refuses, neglects or fails to furnish such accounts, returns, reports or other information relating to the administration of the institution or endowment or its funds, property or income or the application thereof, at such time and in such manner as the Commissioner, the Additional Commissioner, the Regional Joint Commissioner, the Deputy Commissioner or the Assistant Commissioner may require; or

(c) refuses to permit, or causes obstruction to, or inspection by the Commissioner, Additional Commissioner, Joint Commissioner, Regional Joint Commissioner, Deputy Commissioner, or an Assistant Commissioner, of any movable or immovable property belonging to or of any records correspondence, plans, accounts and other documents relating to the institution or endowment, neglects or fails to produce them for inspection; the trustee or where there is more than one trustee, each of the trustees shall be punishable with fine which may extend to two hundred rupees, and in case the act or default complained of continues for more than one month with a further fine which may extend to one hundred rupees for every week or part thereof during which the act or default so continues.

(2) No Court shall take cognizance of an offence punishable under sub-section (1), except on the complaint in writing of the Commissioner.

(3) No offence punishable under sub-section (1) shall be enquired into or tried by any Court inferior to that of a Magistrate of the First Class.

(4) The Commissioner may accept from any trustee who has committed or is reasonably suspected of having committed any of the offences referred

to in sub-section (1), by way of composition of such offence, a sum of money not exceeding one thousand rupees.

(5) Any fine imposed under sub-section (1) or any money payable by way of composition under sub-section (4) shall be paid by the trustee from his own funds and not from the funds of the institution concerned.

148. Recovery of contributions etc., as arrears of land revenue

(1) The Revenue Divisional Officer or the Deputy Commissioner within whose jurisdiction any property of the trustee or other person from whom an amount is recovery by way of surcharge under the provisions of this Act is situate shall, on a requisition made by the Commissioner, recover such amount as if it were an arrear of land revenue and pay the same to the charitable or religious institution or endowment concerned.

(2) Where trustee fails to pay the contribution and other costs due to the Government within the time allowed, the Revenue Divisional Officer or the Deputy Commissioner within whose jurisdiction any property of the institution or endowment is situate, shall on requisition made to him in the prescribed manner by the Commissioner and subject to the provisions of this section recover such amount as if it were an arrear of land revenue.

(3) (a) On receipt of a requisition under sub-sections (1) and (2) the Revenue Divisional Officer or the Deputy Commissioner shall issue a notice to the trustee or other person concerned-

(i) requiring him to pay within fifteen days from the date of service thereof, the amount mentioned in the requisitions and specified in the notice; and

(ii) stating that on default, such amount will be recovered as if it were an arrear of land revenue.

(b) if, within the period of fifteen days aforesaid the amount demanded is not paid, the Revenue Divisional Officer or Deputy Commissioner shall proceed to recover the amount specified in the notice together with the charges of collection, as if it were an arrear of land revenue.

(4) The Revenue Divisional Officer or the Deputy Commissioner shall on receipt of a requisition under sub-section (2) withhold the amount mentioned therein out of the tasdik or any other allowance or amount payable by the Government to the institution or endowment concerned and where the tasdik or other allowance or amount is insufficient for the purpose, the Revenue Divisional Officer or the Deputy Commissioner shall withhold the amount of allowance available and recover the balance as if it were an arrear of land revenue.

(5) Places of worship including temples, tanks and places where Utsavas are performed, Idols, Vahanams, Jewels and such vessels, and other articles of the institution or endowment as may be necessary in accordance with the usage of the institution or endowment for the purposes of worship

or processions shall not be liable to be proceeded against in pursuance of sub-sections (2), (3) and (4).

(6) Instead of selling the property under the provisions of the Andhra Pradesh Revenue Recovery Act, 1964, it shall be open to the Revenue Divisional Officer or the Deputy Commissioner at the instance of the Commissioner to appoint a receiver to take possession of the property or such portion thereof as may be necessary and collect the income thereof until the amount to be recovered is realised. The remuneration, if any, paid to the Receiver and the other expenses incurred by him shall be paid out of the institution or endowment concerned after providing fur the purposes specified in item (i) of clause (o) of sub-section (2) of Section 57.

(7) No suit, prosecution or other legal proceedings shall be entertained in any court of law against the Government or any officer or other employer of the Government for anything done or intended to be done in good faith in pursuance of this section.

(8) The powers exercisable by the Revenue Divisional Officer or the Deputy Commissioner under this section, except the power to appoint a Receiver under sub-section (6) shall also be exercisable by any other officer not below the rank of a Mandal Revenue Officer or an Assistant Commissioner authorized by the Revenue Divisional Officer or by the Deputy Commissioner as the case may be in this behalf.

149. Procedure and powers at enquiries under this Act

(1) Where a Commissioner, a Deputy Commissioner or Assistant Commissioner makes an enquiry or hears an appeal under this Act, the enquiry shall be made and the appeal shall be heard as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits or the hearing of appeals, as the case may be.

(2) The provisions of the Indian Evidence Act, 1872 and the Indian Oaths Act, 1969 shall, so far as may be, apply to such inquiries and appeals.

(3) The Commissioner, Additional Commissioner or Joint Commissioner Regional Joint Commissioner, Deputy Commissioner, or Assistant Commissioner holding such an inquiry or hearing such an appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officer's Protection Act, 1850.

150. Notification, orders etc., under the Act not to be questioned in Courts of law

Save as otherwise expressly provided in this Act, no notification or certificate issued, order passed, decision made, proceedings or action taken or other things done under the provisions of this Act, by the Government, the Commissioner, the Additional Commissioner or the Regional Joint Com-

missioner the Deputy Commissioner or the Assistant Commissioner shall be liable to be questioned in any court of law.

151. Bar of Jurisdiction

No suit or other legal proceeding in respect of the administration or management of an institution or endowment or any other matters of dispute for determining or deciding for which provision is made in this Act shall be instituted in any court of Law except under and in conformity with the provisions of this Act.

152. Constitution of an Advisory Council for the State

(1) The Government may by notification in the Andhra Pradesh Gazette, constitute an Advisory Council for the State consisting of the following members, namely:-

(i) the Minister for Endowments who shall be the Chairman;

(ii) the Commissioner, Endowments who shall be the Member-Convener, Ex-Officio;

(iii) one Agama Expert or Philanthropist;

(iv) one legal expert; and

(v) one Chartered Accountant.

(2) The Council may for purposes of consultation invite any person having experience and specialised knowledge in any subject under its consideration to attend its meetings and every such person shall be entitled to such allowances as may be prescribed.

(3) The term of office of the non-official members of the Council, and the procedure for conducting its meetings shall be such as may be prescribed.

(4) The Council shall advise the Government the developmental activities that may be undertaken by the charitable or the religious institutions and the endowments and also advise on such other matters as the Government may, by order entrust to it, from time to time.

153. Power to make rules

(l) The Government may, after previous publication and by notification in the Andhra Pradesh Gazette, make rules for carrying out all or any of the purposes of this Act.

(2) Every rule made under this Act shall immediately after it is made, be laid before the Legislative Assembly of the State if it is in session, and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiration of the session in which it is so laid or the session immediately following the Legislative Assembly agrees in making any

modification in the rule or in the annulment of the rule, the rule shall from the date on which the modification or annulment is notified have effect only in such modified form or shall stand annulled, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

154. Exemptions

The Government may by notification, exempt from the operation of any of the provisions of this Act or any of the rules made thereunder-

(a) any charitable institution or endowment the administration of which was or is for the time being vested-

(i) in the Government either directly or through a Committee or Treasurer of Endowments, appointed for the purpose;

(ii) in the official Trustee or in the Administrator General;

(b) any charitable institution or endowment founded for educational purpose or for providing medical relief; or

(c) any institution or endowment which is being well managed by the founder; or

(d) any institution or endowment:

and make likewise vary or cancel such exemption.

155. Repeals and Savings

(1) The Andhra Pradesh Charitable Hindu Religious Institutions and Endowments Act, 1966 and the Tirumala Tirupathi Devasthanams Act, 1979 are hereby repealed.

(2) Notwithstanding such repeal,-

(a) all rules made, notifications or certificates issued, orders passed, decisions made, proceedings taken and other things done by any authority or officer under the repealed Acts shall in so far as they are not inconsistent with this Act be deemed to have been made, issued, passed, taken or done by the appropriate authority or officer under the corresponding provisions of this Act and shall have effect accordingly until they are modified, cancelled or superseded under the provisions of this Act;

(b) all powers conferred and all duties imposed by any scheme in force before the commencement of this Act on any court or judge or any other person or body of persons not being a trustee, an honorary officer or servant of the charitable or religious institution or endowment shall be exercised and discharged by the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may he, in accordance with the provisions of this Act;

(c) all proceedings pending before the Government, any officer, or authority or a trustee under the provisions of the repealed Acts at the commencement of this Act may, in so far as they are not inconsistent with the provisions of this Act, be continued by the appropriate authority under this Act;

(d) any remedy by way of right of application, suit or appeal which is provided by this Act, shall be available in respect of proceedings under the repealed Acts pending at the commencement of this Act, as if the proceedings in respect of which the remedy is sought had been instituted under this Act;

(e) every member of the Board of Trustees other than a hereditary trustee, Chairman and members of the Tirumala Tirupathi Devasthanams Board lawfully holding office on the date of commencement of this Act shall be deemed to have been duly appointed or as the case may be duly nominated under this Act and shall continue to act as such for the residue of the term of his office and every Board of Trustees or the Board lawfully constituted on the date of commencement of this Act, shall be deemed to have been duly constituted as a Board of Trustees under this Act, and thereupon exercise all the powers and discharge all the duties entrusted to them under this Act;

(f) every trustee whose term of office had expired prior to the date of commencement of this Act, but who continues in office beyond such date with the concurrence of the competent authority, shall continue as such until a new trustee is appointed under this Act unless in the meanwhile he is removed, dismissed or has resigned or otherwise ceases to be a trustee.

(3) The mention of particular matters in this section shall not be held to prejudice or affect the general application of Section 8 and 18 of the Andhra Pradesh General Clauses Act 1891 with regard to the effect of repeals.

156. Certain enactments cease to apply to charitable and religious institutions

The enactments mentioned below shall cease to apply to Charitable and the Hindu Religious institutions and endowments thereof to which this Act applies; and Section 8 of the Andhra Pradesh General Clauses Act, 1891, shall apply upon such cessor as if these enactments had been repealed by an Andhra Pradesh Act;

(a) the Andhra Pradesh (Andhra Area) Endowments and Escheats Regulation, 1817;

(b) the Religious Endowments Act, 1863;

(c) the Charitable Endowments Act, 1890;

(d) the Charitable and Religious Trusts Act, 1920; and

(e) Sections 92 and 93 of the Code of Civil Procedure, 1908.

157. Trustees etc., to be public servants

The trustee or any member of the Board of Trustees or Chairman, the Executive Officer or any office holder or servant of a Charitable or religious institution or endowment, shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

158. Validation

(1) Notwithstanding any law, custom or usage, a charitable or religious endowment including an endowment created for such objects as dharma, dharmadaya, punyakarya, or punyadana shall not be deemed to be void, only on the ground that the objects for which it is created, or the persons or objects for the benefit of whom or which it is created are unascertained or unascertainable.

(2) A charitable or religious endowment created for purposes, some of which are charitable or religious and some are not, shall not be deemed to be void in regard to the charitable or religious purpose, only on the ground that it is void in respect of the purposes which are not charitable or religious.

(3) Any disposition of property for charitable or religious purpose shall not be deemed to be void as a charitable or religious endowment, only on the ground that no obligation is annexed to such disposition requiring the person in whose favour it is made to hold for the benefit of charitable or religious objects.

159. Power to remove difficulties

If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order in the Andhra Pradesh Gazette, make such provisions, not inconsistent with the purposes or provisions of this Act, as appear to them to be necessary or expedient for removing the difficulty.

160. Overriding effect of the Act

(1) Notwithstanding any compromise, agreement, scheme, judgment, decree or order of a Court, Tribunal or other authority or any custom or usage governing any charitable or religious institution or endowment of Tirumala Tirupathi Devasthanams, the provisions of this Act shall with effect on and from, the date of the commencement of this Act, prevail in so far as they relate to the matters governed by the corresponding provisions in any such compromise, agreement, scheme, judgment, decree or order or any custom or usage and such corresponding provisions shall thereafter have no effect.

Notwithstanding anything in the agreements entered into by the Tirumala Tirupathi Devasthanams represented by the Executive Officer and Archakam Mirasidars of Tirumala Tirupathi Devsthanams on the 30th May, 1979 or any other agreements of the like nature, the provisions of this Act

shall with effect on and from the date of commencement of this Act, prevail in so far as they relate to the matters governed by the corresponding provisions in any such agreements and such corresponding provisions in such agreements shall thereafter have no effect.

First Schedule
[See Section 2 (28)]

(…)

Second Schedule
[See Section 2 (28)]

(…)

Third Schedule
(See Section 141)

(…)

12. The Bihar Hindu Religious Trusts Act, 1950

[Bihar Act I of Year 1951]

An Act to provide for the better administration of Hindu Religious Trusts and for the protection and preservation of properties appertaining to such trusts.

Whereas it is expedient to provide for the better administration of Hindu religious trusts in the State of Bihar and for the protection and preservation of properties appertaining to such trusts;

It is hereby enacted as follows:

Chapter I: Preliminary

1. Short title, extent and commencement

(1) This Act may be called the Bihar Hindu Religious Trusts Act, 1950.

(2) It extends to the whole of the State of Bihar.

(3) It shall come into force on such date, not being later than six months from the date on which it is first published in the Official Gazette, as the

State Government may, by notification, appoint (The Act came into force on the 15th August, 1951).

2. Definitions

In this Act, unless there is anything repugnant in the subject or context,-

(a) "Board" means, in the case of religious trusts other than Jain religious trusts, the Bihar State Board of Religious Trusts, in the case of Swetambar Jain Religious Trusts, the Bihar State Board of Swetambar Jain Religious Trusts and, in the case of Digambar Jain religious trusts, the Bihar State Board of Digambar Jain Religious Trusts established under Section 5;

(b) "Committee" means a committee appointed by the Board under Section 22;

(c) "District Judge" includes a Subordinate Judge especially empowered by the State Government to discharge the functions of a District Judge under this Act;

(d) “founder" means a person who creates a religious trust;

(e) "Hindu" means a person professing any religion of Hindu origin and includes a Jain and a Buddhist, but does not include a Sikh;

(f) "member" means a member of the Board;

(g) "person interested in a religious trust" means any person who is entitled to receive any pecuniary or other benefit from a religious trust and includes

(i) any person who has a right to worship or to perform any rite, or to attend at the performance of any worship or rite, in any religious institution connected with such trust or to participate in any religious or charitable administration under such trust;

(ii) the founder and any descendant of the founder; and

(iii) the trustee;

(h) "prescribed" means prescribed by rules made by the State Government under this Act;

(i) "President" means the person appointed to be the President of the Board under Section 7 or Section 8;

(j) "qualified accountant" means any person or class of persons declared by the State Government by notification to be qualified accountant for the purposes of this Act;

(k) "Regional Trust Committee" means a Regional Trust Committee established by the Board under Section 40;

(l) "religious trust" means any express or constructive trust created or existing for any purpose recognised by Hindu Law to be religious, pious or charitable, but shall not include a trust created according to the Sikh religion or

purely for the benefit of the Sikh community and a private endowment created for the worship of a family idol in which the public are not interested;

(m) "Superintendent" means the person appointed to be the Superintendent of Religious Trusts under Section 23;

(n) "trustee" means any person, by whatever designations known, appointed to administer a religious trust either verbally or by or under any deed or instrument or in accordance with the usage of such trust or by the District Judge or any other competent authority, and includes any person appointed by a trustee to perform the duties of a trustee and any member of a Committee or any other person for the time being managing or administering any trust property as such;

(o) “Trust Fund" means the Bihar State Board of Religious Trust Fund, the Bihar State Board of Swetambar Jain Religious Trust Fund or the Bihar State Board of Digambar Jain Religious Trust Fund as the case may be, formed under Section 69;

(p) "trust property" means the property appertaining to a religious trust.

3. Application

This Act shall apply to all religious trusts, whether created before or after the commencement of this Act, any part of the property of which is situated in the State of Bihar.

4. Amendments and repeals

(1) In Section 17 of the Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810 (Ben. Reg. XIX of 1810), as amended in its application to the State of Bihar for words and figures “in respect of any wakf property in the State" of Bihar by the Majlis established under the Bihar Wakfs Act, 1947, the following words and figures shall be substituted namely:-

"in respect of any wakf property within the meaning of the Bihar Wakfs Act, 1947 (Bihar Act VIII of 1948) and in respect of any trust property within the meaning of the Bihar Hindu Religious Trusts Act 1950 (Bihar Act I of 1951), by the Majlis and the Board, respectively, established under the said Acts."

(2) In the proviso to Section 5, of the Bengal Land Revenue Sales Act 1859 (XI of 1859), after the words "wakf property", the words and figures "within the meaning of the Bihar Wakfs Act, 1947 (Bihar Act VIII of 1948) or a trust property within the meaning of the Bihar Hindu Religious Trusts Act, 1950 (Bihar Act I of 1951)", shall be inserted and after the words and figures "the Bihar Wakfs Act, 1947," the words and figures "or, as the case may be on the President of the Board established under Section 5 of the Bihar Hindu Religious Trusts Act, 1950 (Bihar Act I of 1951)," shall be added.

(3) In the proviso to Section 5 of the Charitable Endowments Act, 1890 (VI of 1890) as amended in its application to the State of Bihar, for words and figures "any property shall, in respect of any wakf property in the State of Bihar, be exercised, subject to the approval of the State Government, by the Majlis established under the Bihar Wakfs Act, 1947," the words and figures "any property shall, in respect of any wakf property within the meaning of the Bihar Wakfs Act, 1947 (Bihar Act VIII of 1948) or trust property within the meaning of the Bihar Hindu Religious Trusts Act, 1950 (Bihar Act I of 1951), be exercised, subject to the approval of the State Government, by the Majlis established under the first mentioned Act or, as the case may be, by the Board established under the last mentioned Act," shall be substituted.

(4) In Section 13 of the Charitable and Religious Trusts Act, 1920 (XIV of 1920), as amended in its application to the State of Bihar, for the words "apply to any wakfs in the State of Bihar", the words and figures "or the Bihar Religious Trusts Act, 1950 (Bihar Act I of 1951), apply to any wakfs or, as the case may be, religious trust in the State of Bihar" shall be substituted.

(5) The Religious Endowments Act, 1863 (XX of 1863) and Section 92 of the Code of Civil Procedure, 1908 (V of 1908), shall not apply to any religious trust in this State as defined in this Act.

Chapter II: Constitution of the Board

5. Constitution and incorporation of the Board

(1) As soon as possible after this Act comes into force, there shall be established by the State Government for the State of Bihar a Board to be called the Bihar State Board of Religious Trusts to discharge in regard to religious trusts other than Jain Religious Trusts the functions assigned to the Board by this Act.

(2) There shall be established by the State Government a Board to be called the Bihar State Board of Swetambar Jain Religious Trusts and a Board to be called the Bihar State Board Digambar Jain Religious Trusts to discharge respectively in regard to Swetambar Jain Religious Trusts and Digambar Jain Religious Trusts the functions assigned to the Board by this Act.

(3) The Board shall be a body corporate by the name of the Bihar State Board of Religious Trusts or the Bihar State Board of Swetambar Jain Religious Trusts or the Bihar State Board of Digambar Jain Religious Trusts, as the case may be, and shall have perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to transfer any such property subject to the prescribed conditions and restrictions and shall by the name sue and be sued.

6. Strength of the Board

The Bihar State Board of Religious Trusts shall consist of seventeen members and the Bihar State Board of Swetambar Jain Religious Trusts and the Bihar State Board of Digambar Jain Religious Trusts shall each consist of eleven members.

7. President and members of the first Board and their term of office

(1) All the members of the first Board shall be appointed by the State Government.

(2) The State Government shall appoint one from amongst the members to be the President of the first Board.

(3) The term of office of the members of the first Board shall, save as otherwise provided in this Act, be five years from the date of the publication of their names in the Official Gazette under Section 12 and shall include any further period which may elapse between the expiration of the said five years and the date of the first meeting of the second Board at which a quorum is present.

8. President and members of the second and every subsequent Board and their term of office

(1) Of the members of the second and every subsequent Bihar State Board of Religious Trusts-

(a) seven shall be persons appointed by the State Government:

Provided that, of the persons so appointed,-

(i) one shall be a person who is, or has been, a member of the Bihar Civil Service (Executive or Judicial Branch) or a member of the Bihar Superior Judicial Service or the Indian Administrative Service or a lawyer, of at least ten years standing, if no such person has been elected under clause (c); and

(ii) two shall be Shadhus; and

(b) two shall be persons elected in the prescribed manner by the trustees of religious trust other than Jain Religious Trusts registered under this Act; and

(c) eight shall be persons elected in the prescribed manner by the Hindu members of the State Legislature and the Hindu members of the Parliament from the State of Bihar:

Provided that of the persons to be so elected, one shall be a Buddhist, unless there is no Buddhist candidate for such election.

(2) Of the members of the second and every subsequent Bihar State Board of Swetambar Jain Religious Trusts-

(a) two shall be persons appointed by the State Government;

(b) four shall be persons elected in the prescribed manner by the trustees of the Swetambar Jain Religious Trusts registered under this Act; and

(c) five shall be persons elected in the prescribed manner by the members of Swetambar Jain community residing in the State of Bihar who are enrolled as electorate in the electoral roll of any constituency of the Legislature Assembly of the State of Bihar for the time being in force.

(3) Of the members of the second and every subsequent Bihar State Board of Digambar Jain Religious Trusts-

(a) two shall be persons appointed by the State Government;

(b) four shall be persons elected in the prescribed manner by the trustees of the Digambar Jain Religious Trusts registered under this Act; and

(c) five shall be persons elected in the prescribed manner by the members of Digambar Jain community residing in the State of Bihar, who are enrolled as electorate in the electoral roll of any constituency of the Legislative Assembly of the State of Bihar for the time being in force.

(4) The State Government shall appoint one from amongst the members appointed under clause (a) of sub-section (1), (2) or (3), as the case may be, to be the President of the second and every subsequent Board.

(5) The term of office of members of the second and every subsequent Board shall, save as otherwise provided in this Act, be five years from the date of the publication of their names in the Official Gazette under Section 12 and shall include any further period which may elapse between the expiration of the said five years and the date of the first meeting of the next succeeding Board at which a quorum is present.

9. Disqualifications of members

A person shall not be eligible for appointment or election as member, if such person-

(a) is not a Hindu;

(b) is less than twenty-five years of age;

(c) is of unsound mind and stands so declared by a competent court;

(d) has applied for being adjudged an insolvent or is an undischarged insolvent:

(e) has been convicted of any offence under this Act;

(f) has been convicted of any such offence or is subjected by a Criminal Court to any such order as implies moral turpitude which, in the opinion of the State Government, unfits him to hold office;

(g) has, on any previous occasion, been removed from office under Section 14 or by order of a competent Court from any position of trust or mismanagement or corruption; or

(h) except in the case of a person to be elected by the trustees of religious trust registered under this Act is a trustee of, or holds any office of profit under, religious trust:

Provided that this clause shall not apply to a person appointed as member of the first Board under sub-section (1) of section 7.

10. Filing of casual vacancies

If any member is unable by reason of his death, resignation, removal or otherwise to complete his full term of office, the vacancy so caused shall be filled' by the appointment or election, as the case may be, of another person and the person so appointed or elected shall fill such vacancy for the unexpired portion of the term for which the member in whose place such person is appointed or elected would otherwise have continued in office.

11. Procedure on failure of electorate to elect members

If any of the electorates referred to in clauses (b) and (c) of sub-section (1), (2) or (3), as the case may be, of Sec. 8 fails, within such time as the State Government considers reasonable, to elect a member or members referred to in those clauses, or on the occurrence of any casual vacancy, to fill that vacancy, as provided in Section 10, the State Government may appoint a person or persons possessing the requisite qualification, to fill such a vacancy or vacancies.

12. Publication of names of president and members

The name of the president and of every member appointed or elected under Section 7, 8, 10 or 11 shall be published by the State Government in the Official Gazette.

13. Salary and allowances of president and members

(1) The president may be either a paid or an honorary officer of the Board according as the State Government may, from time to time, determine in consultation with the Board.

(2) When the president is a paid officer of the Board, his salary, allowances and other conditions of service shall be such as may, from time to time, be faced by the State Government in consultation with the Board.

(3) Members may be paid travelling and other allowances for attending meetings of the Board of any Committee and, subject to the prescribed conditions and restrictions, for undertaking any journey in connection with any of the affairs of the Board, at such rates as may be fixed by the State Government.

14. Removal of president and members

The State Government may remove from office-

(i) the president or any member, if the President or such member-

(a) is or becomes subject to any of the disqualifications specified in Section 9; or

(b) refuses to act or becomes incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interest of religious trusts;

(ii) the president, if he fails, without an excuse which is in the opinion of the State Government sufficient, to attend two consecutive meetings of the Board; and

(iii) any member, if he fails, without any excuse which is in the opinion of the State Government sufficient, to attend three consecutive meetings of the Board.

Chapter III: Meetings of the Board and Procedure at Meetings

15. Ordinary meetings of the Board

(1) The Board shall have an office at Patna or at such other place as the State Government may, in consultation with the Board, by notification, determine, and shall meet for the transaction of business at least once in every three months and as often as it is necessary to meet for the transaction of business.

(2) Every meeting of the Board shall be convened by the President or by the superintendent under the direction of the President, and at least ten days' notice of the meeting shall be given to the members.

(3) If there is no official business to be transacted at any quarterly meeting and if no notice of any business to be transacted at such meetings is received by the President from any member at least twenty days before the end of the quarter, the President shall, instead of calling the meeting, notify the fact to each member at least one week before the end of the quarter.

16. Special meetings

A special meeting of the Board shall be called by the President on the receipt of a requisition signed by not less than five members and specifying the business to be transacted at such meeting. If the President fails to call such meeting within three weeks after the receipt of any such requisition, the meeting may be called by the members who signed the requisition.

17. Quorum at meeting

(1) Six members shall form the quorum for a meeting of the Bihar State Board of Religious Trusts and four members shall form the quorum for a meeting of each of the Bihar State Board of Swetambar Jain Religious Trusts and the Bihar State Board of Digambar Jain Religious Trusts.

(2) If, at the time appointed for a meeting or within half an hour thereafter, a quorum is not present, the meeting shall stand adjourned. The President shall fix a date for the adjourned meeting and one week's notice of such date shall be given to each member.

18. President to preside at meetings

The President shall preside at every meeting of the Board and in his absence the members present shall elect one of their numbers to preside at the meeting.

19. Decision to be by majority of votes

(1) Save, as otherwise provided by this Act, every matter coming before the Board shall be decided by a majority of votes of the members present and voting in the meeting.

(2) In the case of an equality of votes, the President shall have a second or casting vote.

20. Minutes of the proceedings

Minutes of the proceedings of all meetings of the Board shall be entered in a book to be kept for the purpose and shall be signed by the President.

21. Copy of minutes to be forwarded to State Government

A copy of the minutes of the proceedings of every meeting shall be forthwith forwarded by the President to the State Government or to such authority as the State Government may direct.

22. Appointment of Committees and functions of such Committees

(1) The Board may appoint Committees to assist it in the exercise of the powers or the performance of the duties conferred or imposed upon it by or under this Act, and may determine the functions and procedure of such Committees.

(2) Any person who is not a member of the Board may be appointed to be a member of any such Committee:

Provided that the number of such persons on any such Committee shall not exceed one-third of the total number of members of the Committee.

Chapter IV: Superintendent of Religious Trusts and Officers and Servants of the Board

23. Appointment of Superintendent

The Board may, subject to the approval of the State Government, appoint a person to be the superintendent of the Religious Trusts:

Provided that the first Superintendent who shall hold office for four years only but will be eligible for re-appointment shall be appointed by the State Government.

24. Qualifications, salary and allowances of superintendent

(1) No person shall be eligible for appointment as superintendent unless he is a Hindu.

(2) The salary, allowances and other conditions of service of the Superintendent shall be such as may be fixed by the Board subject to the approval of the State Government:

Provided that the salary, allowances and other conditions of service of the first Superintendent shall be such as may be fixed by the State Government.

25. Powers and duties of Superintendent and other officers and servants

(1) The Superintendent and other officers and servants of the Board shall exercise such powers and perform such duties as may, from time to time, be conferred or imposed on them by the Board.

(2) The Superintendent may take part in the discussions before the Board but shall not be entitled to vote.

26. Appointment of officers and servants

(1) The Board may, from time to time, determine the number, designations, grades and scales, of salary and other conditions of service of its officers and servants.

(2) The power of appointing, promoting and granting leave to such officers and servants and of reducing them in rank or suspending or dismissing them and of dispensing with their services shall vest in the President:

Provided that-

(i) a person shall not be appointed to an office the salary of which is one hundred rupees or more per mensem without the sanction of the Board; and

(ii) an officer or servant whose salary is more than sixty rupees per mensem shall not be dismissed without such sanction.

(3) Any officer or servant considering himself aggrieved by any order of dismissal passed by the President under sub-section (2), not being an order passed with the sanction of the Board, may appeal to the Board and the Board may confirm, modify or set aside such order or pass such other order as its thinks fit.

27. Gratuities and provident fund

(1) The Board, at a meeting specially convened for the purpose, or by a resolution in favour of which not less than two-third of the members present at such meeting shall have voted may, subject to the approval of the State Government, make bye-laws for-

(a) the granting of gratuities out of the Trust Fund; or

(b) the creation and management of a provident fund, for compelling contribution thereto on the part of its officers and servants and for supplementing such contribution out of the Trust Fund.

(2) The Board may, from time to time, in accordance with such bye-laws, grant gratuities out of the Trust Fund, and allowances out of such provident fund, to any of its officers or servants, as it think fit.

Explanation: In this section, the expression "officers and servants" includes the Superintendent, but does not include the President.

Chapter V: Powers and Duties of the Board

28. General powers and duties of the Board

(1) The general superintendence of all religious trusts in the State shall be vested in the Board. The Board shall do all things reasonable and necessary to ensure that such trusts are properly supervised and administered and that the income thereof is duly appropriated and applied to the objects of such trust and in accordance with the purposes for which such trusts were founded or for which they exist, so far as the objects and purposes can be ascertained.

(2) Without prejudice to the generality of the provisions of sub-section (1), and subject to the other provisions of this Act, the powers and duties of the Board shall be-

(a) to prepare and maintain in the prescribed manner a complete record containing full information relating to the origin, nature, extent, income (if any), objects and beneficiaries of the different classes of religious trusts in the State of Bihar;

(b) to prepare and maintain a register containing true copies of all documents creating any religious trust;

(c) to prepare and settle its budget and to furnish a copy thereof to the State Government or to such authority as the State Government may direct;

(d) to take measures for the recovery of lost property of any religious trust;

(e) to cause inspection to be made of the property and the office of any religious trust including accounts and to authorise the superintendent or any of its members officers or servants for that purpose;

(f) from time to time, to call for information, reports, returns and other documents from trustees;

(g) to give directions for the proper administration of a religious trust in accordance with the law governing such trust and the wishes of the founder in so far as such wishes can be ascertained and are not repugnant to such law;

(h) to remove a trustee from his office if such trustee-

(i) is convicted of any such offence or is subjected by a Criminal Court to any such order as implies moral turpitude which, in the opinion of the Board, unfits him to hold office;

(ii) is convicted more than once of the same or different offences under this Act;

(iii) refuses to act, or wilfully disobeys the directions and order of the Board under this Act; or

(iv) applies for being adjudged or is adjudged an insolvent;

(i) to direct the deposit of the endowment money of a religious trust in the hands of a trustee in any bank approved by the State Government;

(j) to sanction on the application of a trustee or any other person interested in a religious trust, the conversion of any property of such trust into another property, if the Board is satisfied that such conversion is beneficial for the said trust:

Provided that no such conversion shall be sanctioned unless the Board so resolves by a majority which includes at least three-fourths of its members and the resolution of the Board is approved by the District Judge;

(k) to control and administer the Trust Fund subject to the general supervision of the State Government;

(1) to keep true and regular accounts of its own receipts and disbursements and submit the same for adult;

(m) to furnish to the State Government or to such officer as the State Government may appoint in this behalf any statement, report, return or other document and any information which the State Government or, as the case may be, such officer may require to be furnished and also to furnish to the State Government an annual report giving a detailed account of the activities of the Board;

(n) to institute, whenever it thinks fit, an inquiry relating to the administration of a religious trust;

(o) to direct the trustee of a religious trust to institute in a court of law, within such time as may be fixed by the Board, any suit or proceeding which he is entitled to institute in accordance with the law for the time being in force in respect of the trust or any matter connected therewith and, on failure of the trustee to do so, to institute such suit or proceeding itself;

(p) to defend either on behalf of or in addition to the trustee any suit or proceeding instituted with respect to religious trust or any matter connected therewith, or in cases where there is no trustee or the succession to the office of the trustee is disputed, to defend any such suit or proceeding itself;

(q) to direct the trustee of a religious trust to apply to the appropriate officer or authority to enter in a record of rights or municipal records, if any, the right, title or interest of such trust in any immovable property and, on failure of the trustee to do so within a reasonable time, to make such application itself;

(r) to realise, in the prescribed manner and subject to the prescribed conditions, out of the income of any religious trust the costs incurred by the Board in any suit or proceeding instituted by it under clause (o), in defending any suit or proceeding under clause (p) or in making and prosecuting any application under clause (q) in respect of such trust;

(s) to permit a trustee to retire from his office and in case the trustee has power to appoint his successor, to permit him to make the application in his lifetime; and

(t) to extend, for sufficient reason, the time within which any act or thing is required or ordered to be done before the Board under any of the provisions of this Act.

(3) An order passed by the Board under clause (h) of sub-section (2) shall be communicated to the trustee concerned and such trustee may, within ninety days of the communication of such order, apply to the District Judge for varying, modifying or setting aside the order.

29. Committee or association vested with the supervision of a religious trust to function under the Board

(1) Where the supervision of a religious trust is vested in any committee or association by the founder or by a competent Court or authority, such committee or association shall continue to function under the general superintendence and control of the Board, unless superseded by the Board under sub-section (2).

(2) The Board may supersede any committee or association referred to in sub-section (1) which, to the opinion of the Board, is not discharging its functions satisfactorily and, if the Board does so, any decree or order of a

Court or authority by which such committee or association was constituted shall be deemed to have been modified accordingly:

Provided that before making any order under this sub-section the Board shall communicate to the committee or association concerned the grounds on which they propose to supersede it, fix a reasonable period for the committee or association to show cause against the proposal and consider its explanations and objections, if any.

(3) Such committee or association or any other person interested in the religious trust may, within thirty days of any order of the Board under sub-section (2) make an application to the District Judge for varying, modifying or setting aside such order, but subject to the decision of the District Judge on any such application, the order of the Board shall be final and binding upon the applicant and every person interested in such trust.

(4) Where such committee or association has been superseded under sub-section (2), the Board may make such arrangements as may be necessary for the administration of the religious trust concerned.

30. Power to determine the object to which funds, property and income of a religious trust shall be applied where object ceases to exist or becomes impossible of achievement

(1) When any object of a religious trust has ceased to exist or has, in the opinion of the Board, become impossible of achievement, the Board may, of its own motion or on the application of any Hindu, after issuing notice in the prescribed manner, to the trustee of such trust and to such other person as may appear to the Board to be interested therein and after making such inquiry as it thinks fit, determine the object (which shall be similar or as nearly similar as practicable to the object which has ceased to exist or become impossible of achievement) to which the funds, property or income of the trust or so much of such fund, property or income as was previously expended on or applied to the object which has ceased to exist or become impossible of achievement shall be applied.

(2) The applicant or the trustee of, or any other person interested in, the religious trust may, within ninety days of any order passed under sub-section (1), make an application to the District Judge for varying, modifying or setting aside such order; but subject to the decision of the District Judge on any such application, the order of the Board shall be final and binding upon the applicant and every person interested in such trust.

31. Power to contract and mode of execution of contracts

(1) Subject to provisions of this Act, the Board may enter no such contracts as it may consider necessary or expedient for carrying out any of the purposes of this Act.

(2) Every contract made on behalf of the Board, the value or amount of which exceeds one hundred rupees, shall be in writing, shall be signed by the Superintendent, and countersigned by the President and sealed with the common seal of the Board. Contracts, the value or amount of which is one hundred rupees or less shall be in writing and shall be signed by the Superintendent.

(3) If any contract is executed on behalf of the Board otherwise than in conformity with the provisions of sub-section (2), it shall be voidable at the instance of the Board.

32. Power of Board to settle schemes for proper administration of religious trusts

(1) The Board may, of its own motion or on application made to it in this behalf by two or more persons interested in any trust,-

(a) settle a scheme for such religious trust after making such inquiry as it thinks fit and giving notice to the trustee of such trust and to such other person as may appear to the Board to be interested therein;

(b) in like manner and subject to the like conditions, modify any scheme settled under this section or under any other law or substitute another scheme in its stead:

Provided that any scheme so settled, modified or substituted shall be in accordance with the law governing the trust and shall not be contrary to the wishes of the founder so far as such wishes can be ascertained.

(2) A scheme settled, modified or substituted instead of another scheme under this section shall, unless otherwise ordered by the District Judge on an application, if any, made under sub-section (3) come into force on a day to be appointed by the Board in this behalf and shall be published in the Official Gazette.

(3) The trustee of, or any other person interested in, such trust, may within three months from the date of the publication in the Official Gazette of the scheme so settled, modified or substituted instead of another scheme, as the case may be, make an application to the District Judge for varying, modifying or setting aside the scheme; but, subject to the result of such application, the order of the Board under sub-sections (1) and (2) shall be final and binding upon the trustee of the religious trust and upon every other person interested in such religious trust.

(4) An order passed by the District Judge on any application made under sub-section (3) shall be final.

33. Power to appoint temporary trustee

(1) Where there is a vacancy in the office of trustee of a religious trust and there is no one competent to be appointed as trustee under the terms of the

deed of such trust or where there is a bona fide dispute as to the right of any person to act as trustee and in the opinion of the Board there is likelihood of a breach of the peace or serious interference with the management of the property of such trust, or where there is a vacancy caused by the order of the Board passed under clause (h) of sub-section (2) of Section 28 of this Act the Board may, subject to any order of a competent Court, appoint any person to act as trustee of the said trust for such period and upon such conditions as it thinks fit.

(2) In appointing a person as a trustee under sub-section (1), the Board shall, if possible, select a person of the section to which the last trustee belonged.

34. Power to keep certain registers

(1) The Board shall prepare and maintain in such form as it thinks fit a register of all religious trusts in the State.

(2) Entries in the register may be made by the Board of its own motion or on application made by any Hindu after such inquiry as the Board thinks fit.

(3) Any Hindu may, on payment of such fee as may be fixed by the Board, inspect the register.

35. Power to grant copies and certify such copies

(1) The Board may grant copies of its proceedings and records and any other document in its possession on payment of such fees and subject to such conditions as may, from time to time, be determined by the Board.

(2) Such copies may be certified in the manner provided in Section 76 of the Indian Evidence Act, 1872.

36. Power of Board to make certain payments on behalf of religious trusts

(1) Where a trustee refuses to pay or fails to pay any land revenue, cess, rent, rates or taxes due to the Government or to a local authority from a religious trust, the Board may itself defray the charges from the Trust Fund and may recover the amount so paid from the property of the trust concerned and, if the refusal or failure of the trustee was in the opinion of the Board wilful, the Board may also recover from the personal property of the trustee responsible for such refusal or failure damages at the rate of twelve and a half per centum of the amount so paid:

Provided that a trustee aggrieved by a decision of the Board to recover damages under this sub-section may apply to the District Judge to have the order set aside or modified, and the order of the District Judge on such application shall be final.

(2) The procedure provided in sub-section (4) of Section 70 shall apply to the recovery by the Board of any sum which the Board is empowered by sub-section (1) to recover from a religious trust or a trustee.

37. Power of Board to borrow money

The Board may, with the previous sanction of the State Government, borrow, for the purpose of giving effect to the provisions of this Act, such sum of money and on such terms as the State Government may determine.

38. Exercise by President of powers of Board

If any necessity arises for immediate action by the Board and a meeting of the Board cannot be arranged in time to take such action, the President may exercise any power that could be exercised under this Act by the Board, but shall at the next meeting of the Board make a report in writing of the action taken by him under this section, and the reasons for taking such action, for confirmation of the action taken.

39. Delegation of powers of Board

The Board may delegate any of its powers and duties under this Act to the President, to be exercised and performed in such special circumstances as the Board may specify, and may likewise withdraw any such delegation.

Chapter VI: Regional Trust Committees

40. Regional Trust Committee

(1) The Board may establish a Regional Trust Committee for each such area as it considers necessary.

(2) Every such committee shall consist of such number of members appointed by the Board as the Board may, from time to time, determine:

Provided that in the case of a committee established by the Bihar State Board of Religious Trusts at least one-fourth of the members so appointed shall be those elected in the prescribed manner by the Hindu members of the State Legislature and Parliament representing the area in which the committee is established.

(3) All the members of every such committee shall be Hindu and shall ordinarily be residents of the area for which such committee is established:

Provided that no person shall be eligible for appointment as a member of such committee if he is subject to any of the disqualification referred to in Section 9.

(4) The members of such committee shall elect one of their number as President. The quorum of the meeting to elect the President shall be at least one-half of the total number of members of such committee.

(5) The Board shall appoint one of the members of each such committee to be the Secretary thereof.

(6) The members of such committee shall hold office for three years from the date of their appointment.

(7) Casual vacancies arising in such committee may be filled by the Board, if it thinks fit, and for such period as the vacancy lasts.

41. Board to determine the manner of conduct of business, staff, etc., of Regional Trust Committee

The manner in which the business of a Regional Trust Committee shall be conducted, the staff required for such committee, the conditions of service of such staff, the travelling and other allowances to be paid to the members of such committee for attending meetings and undertaking journeys in connection with the affiars of the said committee shall, subject to the approval of the State Government, be determined by the Board.

42. Powers and duties of Regional Trust Committee

Every Regional Trust Committee shall, subject to the control and direction of the Board, have the following powers and duties, namely:-

(a) to inquire into and report to the Board as to the manner in which any religious trust in the area for which such committee has been established is being administered;

(b) to submit to the Board information relating to religious trusts in such area on such matters as the Board may require; and

(c) generally to perform such other duties, not inconsistent with the provisions of this Act, as may be entrusted to it by the Board in furtherance of the objects of this Act.

Chapter VII: Declaring Immovable Property of Religious Trusts as Trust Property

43. Decision of disputes as to whether any immovable property is a trust property

(l) All disputes as to whether any immovable property is or is not a trust property shall be inquired into, either on its own motion or on application, by the authority appointed in this behalf by the State Government, by notification, in the Official Gazettes:

Provided that such authority shall be a person who is, or has been, a member of the Bihar Civil Service (Executive or Judicial Branch) or a member of the Bihar Superior Judicial Service or the Indian Administrative Service.

(2) Such authority shall cause-

(a) a general notice to be published in the prescribed manner calling upon all persons having any claim to such property to file their claims within sixty days from the publication of the general notice; and

(b) notices to be served on the Board and on the persons stated in the application or known to such authority to be in possession of the property.

(3) Such authority shall, after taking into consideration the claims, if any, filed under sub-section (2) and after hearing the parties and taking such evidence as may be adduced before him, declare whether the property is a trust property and, if it is so, the trust to which it belongs and shall make an order accordingly.

(4) Where such authority makes an order declaring a property to be trust property, it shall direct that the trustee of the trust to which it belongs, or, if there be no such trustee, a person appointed by the Board to be a trustee for the purpose, be put into possession of the property, and determine the cost of management referred to in sub-section (7).

(5) The Board or any other person, aggrieved by the order of such authority, may, within ninety days of such order, institute a suit in a Court of competent jurisdiction to have the order set aside or modified.

(6) Subject to the final result of any suit instituted under sub-section (5), the order of such authority shall be final and conclusive; and the Court trying the suit shall have no power to stay the enforcement of the order pending the disposal of the suit.

(7) The income from a property declared to be a trust property under sub-section (3) shall, after meeting the cost of management, be kept in deposit under the directions of the Board for ninety days after the delivery of possession under sub-section (4) or where a suit is instituted under sub-section (5), till the final disposal of the suit.

Explanation:-In this sub-section, `cost of management' shall include, in the case of a property dedicated to an idol, the expenses incurred in the worship and rag bhog (performance of religious ceremonies) of the idol.

(8) In any proceeding under this section, such authority shall have the powers of the Court under the Code of Civil Procedure, 1908 (V of 1908), in respect of the following matters; namely:-

(a) proof of facts by affidavits;

(b) summoning and enforcing the attendance of any person and examining him on oath;

(c) compelling the production of documents; and

(d) issuing of commissions.

(9) Every order of such authority under sub-section (3) shall be enforcement by any Civil Court having local jurisdiction in the same manner as a decree of such Court.

(10) Notwithstanding anything to the contrary contained in the Court-fees Act, 1870 (VII of 1870), in its application to the State of Bihar the fee payable by the Board on the plaint or memorandum of appeal in respect of suit instituted under sub-section (5) shall be fifteen rupees.

Chapter VIII: Transfer of Immovable Property and Borrowing of Money by Trustee

44. Power to transfer immovable property of a religious trust

(1) No transfer made by a trustee of any immovable property of a religious trust by way of sale, mortgage, gift or exchange, or by way of lease for a term exceeding three years shall, after the Board has been established under this Act, be valid unless made with the previous sanction of the Board.

(2) Subject to the provisions regarding conversion of trust property in clause (j) of sub-section (2) of Section 38, no transfer of any immovable properly of a religious trust by way of sale, mortgage, gift or exchange or by way of lease, shall be sanctioned by the Board against the terms of the deed or instrument creating the trust, or in case where no deed or instrument creating the trust is available, against the wishes of the founder so far as the can be ascertained.

45. No trustee to borrow money without the previous sanction of the Board

No trustee shall, after the date on which this Act is first published in the Official Gazette, borrow any money for any of the purposes of the religious trust of which he is trustee without the previous sanction of the Board.

Chapter IX: Judicial Proceedings

46. Power of Board to make application to the District Judge in case of failure of performance of any religious, pious or charitable act the performance of which is charged on any property

Where a charge exists on any property for the performance of any religious, pious or charitable act recognised as such by Hindu Law and there is failure to perform such act, the Board may apply to the District Judge for an order directing the person in possession of the property to pay the Board the amount necessary for the performance by the Board, or any person appointed by the Board in this behalf, of the act for the performance of which the charge was created.

47. Application to compel the trustee to discharge obligations for appointment of receiver

Where the trustee of a religious trust wilfully fails to discharge any of the duties imposed upon him under such religious trust, the Board or any person interested in such religious trust may make an application to the District Judge for an order-

(a) directing the trustee to discharge such duty within a time to be specified in the order; or

(b) appointing a receiver of the funds and property of the religious trust if the trustee fails to carry out such direction within the time so specified.

48. Power of District Judge to remove trustee or appoint trustee

The Board, or with the previous sanction of the Board, any person interested in a religious trust may make an application to the District Judge for an order-

(a) removing the trustee of such religious trust, if such trustee-

(i) acts in a manner prejudicial to the interest of the said trust; or

(ii) defaults on three or more occasions in the payment of any amount payable under any law for the time being in force in respect of the property or income of the said trust or any other statutory charge on such property or income; or

(iii) defaults on three or more occasions in the payment of any sum payable to any beneficiary under the said trust, or in discharging any other duty imposed upon him under it; or

(iv) is guilty of a breach of trust;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(d) directing accounts and inquiries; or

(e) granting such further or other relief as the nature of the case may require.

(2) The order of the District Judge under sub-section (1) shall be final.

49. Application of property, etc., where object is vague or uncertain

(1) Where on the application of the Board, or, with the previous sanction of the Board, of any person interested in a religious trust, the District Judge is satisfied that any object of the trust to which the application relates is vague or uncertain, he may direct that the funds, property or income of the trust or so much of such funds, property or income as relates to such object shall be utilised for the purpose of imparting education to poor Hindus.

(2) The funds, property or income to be utilised for the purpose of imparting education to poor Hindus under the provision of sub-section (1) shall be applied to the object by the trustee concerned subject to the directions of the Board.

50. Notice of certain suits to be given to Board and addition of Board as party thereto

(1) In every suit or proceeding (except in suits instituted by a trustee for the recovery of arrears of rent and proceedings in execution of decrees passed in such suits) in respect of any religious trust or property belonging to such trust, whether instituted by a trustee or by any other person, the Court shall issue a notice of the institution thereof to the Board.

(2) The Board may apply to the Court in which the suit or proceeding referred to in sub-section (1) is pending to be added, and shall thereupon be added as a party thereto, and shall be entitled to conduct such suit or proceeding, if instituted by the trustee, or to defend such suit or proceeding, if instituted by any other person against the trustee.

(3) If the notice required by sub-section (1) to be issued to the Board in respect of any suit or proceeding is not issued, the decree or order passed in such suit or proceeding shall be voidable at the instance of the Board.

51. Approval of Board required to compromise, etc.

No agreement, compromise or adjustment in any suit or proceeding (except in suits instituted by a trustee for the recovery of arrears of rent and proceedings in execution of decrees passed in such suits) in respect of any religious trust or property belonging to such trust shall be recorded under the provisions of Rule 8 of Order XXIII of the Code of Civil Procedure, 1908, without the consent in writing of the Board.

52. Notice to Board of proceedings under the Land Acquisition Act, 1894, in respect of property belonging to a religious trust

(1) In the course of a proceeding under the Land Acquisition Act, the Collector shall before making an award in respect of a property belonging to a religious trust issue a notice to the Board and shall stay further proceedings to enable it to plead as a party to the proceeding at any time within three months from the date of the receipt of the notice.

(2) Where the Board has reason to believe that any property under acquisition is a property belonging to a religious trust, it may at any time before the award is made appear and plead as party to the proceeding.

(3) When the Board has appeared under the provisions of sub-section (2), no order shall be passed under Section 31 or Section 32 of the Land Acquisition Act, 1894, without giving opportunity to the Board to be heard.

(4) Any order passed under Section 31 or Section 32 of the Land Acquisition Act, 1894, without giving opportunity to the Board to be heard, shall be voidable at the instance of the Board.

53. Notice of sales to be given to Board

(1) Whenever any property belonging to a religious trust is notified for sale in execution of a decree of a Civil Court or under the order of a Certificate Officer in execution of a certificate filed under Section 4 or Section 6 of the Bihar and Orissa Public Demands Recovery Act, 1914, or in pursuance of a decree or order of a Collector or other revenue officer, such Court, Certificate Officer, Collector or other officer shall give a notice thereof to the Board also.

(2) If the notice required by sub-section (1) to be given to the Board in respect of any sale is not given, the sale shall be voidable at the instance of the Board.

54. Application to be made to the District Judge of the district in which subject-matter of trust is situated

(1) When any application or reference is required or authorized by or under any of the provisions of this Act to be made to the District Judge, such application or reference shall be made to the District Judge of the district in which the whole or any part of the subject-matter of the religious trust concerned is situated.

(2) When any such application or reference is pending before the District Judge of one district, no such application or reference in respect of the whole or part of the subject-matter of such trust shall lie before the District Judge of any other district.

55. Orders of District Judge to be appealable to the High Court

(1) Unless otherwise provided in this Act, an appeal shall lie to the High Court against every order passed by the District Judge under this Act.

(2) No appeal shall lie from any order passed in appeal under this section.

56. Power to summon and enforce attendance of witnesses and production of documents

For the purposes of inquiries under this Act, the Board and, if specially authorized by the Board in this behalf, the President, the Superintendent, a Committee and a Regional Trust Committee shall have the same power to summon and enforce the attendance of witnesses and parties and to compel production of documents as a Civil Court under the Code of Civil Procedure, 1908.

57. Order of Board passed under clause (2)(h) of Section 28 or Section 33 to be enforceable as a decree of Civil Court

Every order of the Board passed under clause (h) of sub-section (2) of Section 28, sub-section (4) of section 29 or sub-section (1) of Section 33 shall be enforceable by any Civil Court having local jurisdiction in the same manner as a decree of such court.

Chapter X: Trustees and their Duties

58. Trustees to carry out orders of Board. Trustees to furnish particulars of religious trusts

Every trustee shall carry out all directions which may from time to time be issued to him by the board under any of the provisions of this Act.

59.

(1) (a) Within six months from the date of the publication in the Official Gazette of the names of the President and members of the first Board, the trustee of every religious trust existing on the said date shall furnish to the Board a statement in the prescribed form containing the prescribed particulars in respect of the trust of which he is the trustee.

(b) In the case of a religious trust created after the date of the said publication, such statement shall be furnished to the Board by the trustee of such trust within six months from the date on which the trust is created:

Provided that the State Government may, from time to time, extend by notification, the period mentioned in clauses (a) and (b).

(2) Every such statement shall be verified by the trustee in the manner laid down in the Code of Civil Procedure, 1908. for the verification of pleadings, and shall be accompanied by a true copy of the deed or instrument creating the trust, or where there is no such deed or instruments, by a statement in the prescribed form setting forth the objects of the trust and verified in like manner.

60. Budget of religious trusts and submission of such budgets to Board

(1) The trustee of every religious trust shall, before the fifteenth day of January in each year, prepare a budget of the estimated income and expenditure of such trust for the next succeeding financial year and shall forthwith send a copy thereof to the Board:

Provided that the Board may, subject to such conditions as it may deem fit to impose from time to time, exempt the trustee of a religious trust having an income of less than five hundred rupees from the obligation of sending a copy of the budget of such trust to the Board and may at any time withdraw such exemption:

Provided further that such exemption shall not prevent the Board from calling for a copy of the budget of such trust for any financial year during which the exemption is in force.

(2) The Board may, within six weeks from the date on which it receives such copy, alter or modify the budget in such manner and to such extent as it thinks fit.

(3) If the Board alters or modifies any budget under sub-section (2), it shall forthwith send a copy of the budget as so altered or modified to the trustee of the trust concerned, and the budget as so altered or modified shall be deemed to be the budget of the said religious trust.

(4) If within the period mentioned in sub-section (2) and for two weeks thereafter the Board does not send to the trustee of the trust concerned a copy of the budget altered or modified as aforesaid, the Board shall be deemed to have approved the budget without any alteration or modification.

(5) If the trustee fails to prepare and send a copy of the budget as required by sub-section (1), the Board shall prepare a budget for the trust concerned and send a copy thereof to the trustee before the first day of March each year and such budget shall be deemed to be the budget of that trust for the year in question.

(6) Nothing contained in this section shall be deemed to authorise the Board to alter or modify any budget in a manner or to an extent inconsistent with the wishes of the founder, so far as such wishes can be ascertained, or with the provisions of this Act.

61. Copies of budgets to be furnished to the Regional Trust Committees

In areas for which Regional Trust Committees have been established under the provisions of this Act, a copy of each of the statements referred to in Section 59 and of the budget referred to in Section 60 shall be furnished by the trustee to the Regional Trust Committee of the area in which the head office of the trust concerned is situated.

62. Duties of trustees to give assistance in inquiries, etc.

The trustee of every religious trust shall offer every reasonable facility for the inspection of the documents and the property of such trust and shall render every assistance in inquiries, when called upon to do so by the Board, to any Committee, the President, the Superintendent or any other person or officer appointed by the Board to make such inquiries.

Chapter XI: Audit of Accounts and Recovery of Irregular Expenses

63. Audit of accounts of religious trusts

(1) The accounts of every religious trust, other than a religious trust the trustee of which has been exempted from sending a copy of budget under the first proviso to sub-section (1) of section 60, shall be audited and examined annually by a qualified accountant appointed as auditor by the Board.

(2) The auditor may, by written notice, require the production before him of any document or the attendance before him of any person responsible for the preparation of the accounts to enable the auditor to obtain such information as he may consider necessary for the proper conduct of the audit.

(3) Within a month of the completion of the audit, the auditor shall prepare a report on the accounts audited and examined and shall submit a report to the Board and deliver a copy thereof to the trustee concerned:

Provided that the auditor may submit an interim report at any time he thinks fit.

(4) The report of the auditor shall include a statement of-

(a) any payment which appears to him to be contrary to law or to the provisions of the budget;

(b) the amount of any deficiency or loss which appears to have been incurred by the negligence or misconduct of the trustee; and

(c) the amount of any sum which ought to have been, but is not, brought into account by the trustee.

(5) After considering such report, the Board may-

(a) order that any payment referred to in clause (a) of sub-section (4) shall be allowed or that no further action shall be taken as regards any amount referred to in clause (b) of clause (c) of the said sub-section; or

(b) serve a notice on the trustee concerned requiring him to show cause within one month from the date of the service of such notice why such payment should not be surcharged or such amount should not be charged against him.

(6) After considering such cause as may be shown by the trustee and affording him a reasonable opportunity of being heard, the Board may surcharge such payment or charge the amount of any loss or deficiency against him and shall in every such case certify the amount due from him.

(7) A copy of the statement, if any, referred in sub-section (4), included in the report of the auditor shall be forwarded by the Board to the State Government for such orders as the State Government may think fit.

(8) Where there is a conflict between the orders of the Board under sub-sections (5) and (6) and the orders of the State Government under sub-section (7), the latter shall prevail.

(9) The cost of the audit of the accounts of a religious trust shall be paid from the Trust Fund.

64. Certified amount recoverable as a public demand

(1) Every amount certified under sub-sec. (b) of Sec. 63 as due from any trustee shall, if not paid within ninety days next after the date of the certification thereof, be recoverable from him in the manner provided in sub-section (4) of Section 70.

(2) The Board shall pay all certify amounts received or recovered by it to the trustee of the religious trust concerned for being credited to the amounts of such trust.

65. Appeal against order of surcharge or charge

(1) A trustee aggrieved by any order of surcharge or charge made against him under sub-section (6) of Section 63 may, within thirty days of such order, appeal to the prescribed authority which may, after making such inquiry as it considers proper, pass such order as it thinks fit.

(2) Notwithstanding anything to the contrary contained in sub-section (1) of section 64, pending the disposal of such appeal, all proceedings on the certificate shall be stayed.

66. Audit of accounts of the Board

The accounts of the Board shall be subject to audit under the Bihar and Orissa Local Fund Audit Act, 1925, and, for the purposes of the said Act, the Board shall be deemed to be a local authority whose accounts have been declared by the State Government to be subject to audit under Section 3 of the said Act and the Trust Fund shall be deemed to be a local fund.

Chapter XII: Offences and Penalties

67. Offences under the Act and penalties for such offences

(1) If a trustee fails without reasonable cause, the burden of proving which shall be upon him, to comply with any order or direction made or issued under clause (i), (o) or (q) of sub-section (2) of Section 28 or under Section 58 to comply with the provisions of sub-section (1) of Section 59, sub-section (1) of Section 60, and Section 61 or Section 62, or to furnish any statement, annual account, estimate, explanation or other document or information relating to the religious trust of which he is the trustee, which he

is required or called upon to furnish under any of the provisions of this Act, he shall be punishable with fine which may extend, in the case of the first offence to two hundred rupees and, in the case of the second or any subsequent offence, to five hundred rupees and, in default of payment of the fine, with simple imprisonment for a term which may extend to six months or one year, as the case may be.

(2) The fines realised under sub-section (1) shall be credited to the Trust Fund.

68. Offences to be bailable, compoundable and non-cognizable

(1) No prosecution for any offence under this Chapter shall be commenced except upon a complaint made by the President or any person authorized in writing in this behalf by the President.

(2) No Court other than that of a Magistrate of the first class shall try any such offence.

(3) Every such offence shall be bailable and shall, notwithstanding, anything to the contrary contained in the Code of Criminal Procedure, 1898, be compoundable by the President or by the person on whose complaint the prosecution was commenced.

Chapter XIII: The Trust Fund

69. Creation of Trust Funds

(1) There shall be formed a separate Trust for each of the Bihar State Board of Religious Trusts, the Bihar State Board of Swetambar Jain Religious Trusts and the Bihar State Board of Digambar Jain Religious Trusts to be respectively known as the Bihar State Board of Religious Trust Fund, the Bihar State Board of Swetambar Jain Religious Trust Fund and the Bihar State Board of Digambar Jain Religious Trust Fund, and there shall be placed to Credit of-

(i) the Bihar State Board of Religious Trust Fund-

(a) all sums received by the Bihar State Board of Religious Trusts as donations and grants;

(b) all sums received by the Bihar State Board of Religious Trusts as fines under Section 67;

(c) all sums received by the Bihar State Board of Religious Trusts as fees under Section 70;

(d) all receipts by the Bihar State Board of Religious Trusts in respect of fees for inspection and supplying copies of any document;

(e) all sums received or recovered by the Bihar State Board of Religious Trusts as costs awarded to it in any suit or proceeding; and

(f) all sums received or recovered by the Bihar State Board of Religious Trusts on any other account except certified sums received or recovered by it under Section 64;

(ii) the Bihar State Board of Swetambar Jain Religious Trust Fund-

(a) all sums received by the Bihar State Board of Swetambar Jain Religious Trusts as donations and grants;

(b) all sums received from trustee of Swetambar Jain Religious Trusts as fines under Section 67;

(c) all sums received from trustees of Swetambar Jain Religious Trusts as fees under Section 70;

(d) all receipts by the Bihar State Board of Swetambar Jain Religious Trusts in respect of fees for inspection and supplying copies of any documents;

(e) all sums received or recovered by the Bihar State Board of Swetambar Jain Religious Trusts as costs awarded to it in any suit or proceeding; and

(f) all sums received or recovered by the Bihar State Board of Swetambar Jain Religious Trusts on any other account except certified sums received or recovered by it under section 64; and

(iii) the Bihar State Board of Digambar Jain Religious Trust Fund-

(a) all sums received by the Bihar State Board of Digambar Jain Religious Trust as donations and grants;

(b) all sums received from trustees of Digambar Jain Religious Trusts as fines under Section 67;

(c) all sums received from trustees of Digambar Jain Religious Trusts as fees under Section 70;

(d) all receipts by the Bihar State Board of Digambar Jain Religious Trusts in respect of fees for inspection and supplying copies of any documents;

(e) all sums received or recovered by the Bihar State Board of Digambar Jain Religious Trusts as costs awarded to it in any suit or proceeding; and

(f) all sums received or recovered by the Bihar State Board of Digambar Jain Religious Trusts on any other account except certified sums received or recovered by it under Sec. 64.

(2) The Trust Fund for each Board shall be vested in the Board concerned and the balance standing to the Credit of the Fund shall be kept in such custody as the State Government may, from time to time direct.

70. Fee payable by religious trusts to Board

(1) For the purpose of defraying the expenses incurred or to be incurred in the administration of this Act, the trustee of every religious trust shall, in each financial year. pay to the Board such fee, not exceeding five per centum of its net income in the last preceeding financial year, as the Board may, from time to time, with the previous sanction of the State Government, determine.

Explanation: In this sub-section, the expression “net income" means the total income realised by the trustee from all sources after deducting any amount payable as revenue, rent, taxes, local or other cesses and cost of management at twelve and a half per centum.

(2) (a) The fee referred to in sub-section (1) shall be assessed by the prescribed authority in the prescribed manner.

(b) A trustee, aggrieved by an order of assessment made by the prescribed authority under clause (a), may, within one month of the date of receipt of the said order, appeal to such authority as may be prescribed, and such authority may by order set aside or vary such assessment and such order shall be final.

(3) Such fee shall be payable in the prescribed manner in four equal instalments on such dates as may, from time to time be fixed by the Board.

(4) If any instalment of such fee is not paid on or before the date fixed by the Board under sub-section (3) for the payment of such instalment, it shall be recoverable from the person responsible for paying the same as a public demand payable to the Board.

(5) The Board may reduce any portion of the fee payable by the trustee of any religious trust.

(6) The trustee of religious trust may realise the fee payable by him under sub-section (1) from the beneficiaries of such trust but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion as the value of benefits receivable by such persons bears to the entire net available income of such trust:

Provided that, if there is any income of such trust in excess of the amount payable as dues under this Act, other than as the fee payable under sub-section (1) and in excess of the amount payable under the deed of trust, the fee shall be paid in the first instance out of such income

71. Objects to which Trust Fund may be applied

The Trust Fund shall be applicable to the following objects and in the following order:-

(a) to the repayment of debts incurred by the Board for the purposes of this Act;

(b) to the payment of the salaries and allowances of the President, the Superintendent and of the establishments employed by the Board for the purposes of this Act and to the payment of any gratuities and provident fund contribution to the Superintendent and to the members of such establishment;

(c) to the payment of the travelling and other allowances of the members;

(d) to the payment of the travelling and other allowances of the members of the Committees and of the members of the Regional Trust Committees;

(e) to the expenses incurred in the assessment and recovery of the fee mentioned in Section 70;

(f) to the payment of the cost of audit of the Trust Fund and of the cost of audit of the accounts of any religious trust made under Chapter XI;

(g) to the expenses of any suit or proceeding to which the Board is a party;

(h) to the payment of land revenue, cess, rent, rates or taxes due to the Government or to a local authority from a religious trust under sub-section (1) of Section 36;

(i) to any object which may be decided by the Board at a meeting specially convened for the purpose, by a resolution in favour of which not less than two-thirds of the members present at such meeting shall have voted to be an object to which the Trust Fund may be applicable in consonance with the Hindu Law; and

(j) to the payment of any other expense incurred by the Board in carrying out the provisions of this Act.

Chapter XIV: Special Provisions for Certain Suits

72. Special provisions for suits for recovery of immovable property of religious trusts in certain cases

(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, where a suit is instituted on behalf of the Board,-

(a) to set aside a sale of immovable property comprised in a religious trust in execution of a decree of a Civil Court;

(b) to set aside a sale of immovable property comprised in a religious trust in execution of a certificate filed under the provisions of the Bihar and Orissa Public Demands Recovers Act, 1914, or under the Public Demands Recovery Act, 1880 or under the Public Demands Recovery Act, 1895, for the realisation of any amount due to the Collector under Section 98 of the Cess Act, 1880;

(c) to set aside a transfer of immovable property comprised in a religious trust made by a trustee thereof for a valuable consideration otherwise than with the sanction of the District Judge;

(d) to recover possession of the property referred to in clauses (a), (b) and (c) as trustee of the religious trust to which the property appertains or to restore such property to the possession of the trustee of such trust; or (e) by a trustee to recover possession of immovable property comprised in a religious trust which has been transferred by a previous trustee for a valuable consideration otherwise than with the sanction of the District Judge,

and the property which is the subject-matter of such suit is in the possession of the defendant, the Court shall, on the application of the plaintiff, appoint a receiver of such property and direct such receiver to pay to the plaintiff, from time to time, such amount of the income of the property as the Court considers necessary for the prosecution of the suit.

(2) Notwithstanding anything contained in the Court-fees Act, 1870, in its application to the State of Bihar, the fee payable on plaint or memorandum of appeal in respect of a suit of the nature referred to in clause (a), (b), (c), (d) or (e) of sub-section (1) shall be fifteen rupees.

Chapter XV: Miscellaneous

73. Fee inspection by Board of the document, register or record relating to property belonging to a religious trust

Notwithstanding anything contained in any law or rule having the force of law, no fee shall be chargeable from the Board for inspection of any document, register or record relating to the property of a religious trust which may be in the custody of any Court, office or department of the State Government or any local authority:

Provided that such inspection shall be allowed only to the duly authorized agents and servants of the Board and of only such document, register or record which can ordinarily be inspected by a private party.

74. Trustee may apply to Board for directions

The trustee of a religious trust may apply by petition to the Board for the opinion, advice or direction of the Board on any question affecting the management or administration of the property of such trust and the Board shall give its opinion, advice or direction, as the case may be, thereon.

75. President, etc., to be public servants

The President, the Superintendent, every auditor appointed under Section 63 and every member, officer and servant of the Board authorized by the Board or by the President to do any act under this Act shall be deemed to

be a public servant within the meaning of Section 21 of the Indian Penal Code.

76. Presumption and savings

(1) No act of the Board or of a Committee shall be deemed to be invalid by reason of the existence of a vacancy in the Board or such Committee.

(2) Accidental omission to serve notice of a meeting of the Board or of a Committee or any member of the Board or such Committee, as the case may be, shall not affect the validity of any such meeting and any decision taken at any such meeting by the Board or the Committee, as the case may be, shall not be deemed to be invalid by reason only of any such irregularity, unless it can be shown that the said irregularity has affected the merits of the case.

(3) No act, order or direction of the Board shall be deemed to be invalid by reason of any irregularity in the constitution of the Board and no order or decision or direction of the Board or of the President shall be reversed or substantially varied, nor shall any proceeding heard by the Board or by the President be remanded, by the District Judge before whom, or any Court in which, an application is made; a suit instituted or an appeal preferred to reverse or vary such order, or direction, on account of any misjoinder or non-joinder of parties or causes of action, or any error, defect or irregularity in the proceedings before the Board or the President not affecting the merits of the case or the jurisdiction of the Board or the President.

77. Bar of Suits

Save as otherwise provided in this Act, no suit shall be brought in any Civil Court to set aside or modify any order made, under this Act, and no suit shall lie against the Board, the President or any other member or the Superintendent for anything in good faith done or purporting to be done under this Act.

78. No suit to be brought against the Board or the President, etc., until after notice of cause of action

No suit shall be brought against the Board or the President or any other member or the Superintendent or any other officers or servants of the Board for anything done or purporting to be done under this Act, until the expiration of two months next after notice in writing has been delivered or left at the office of the Board and also (if the suit is intended to be brought against the President or any other member or the Superintendent or any of the officers or servants of the Board), at the place of abode of the person against whom such suit is intended to be brought, stating the cause of action and the name and place of abode of the person who intends to bring the suit.

79. Provisions to have effect notwithstanding any other law

The provisions of this Act shall have effect notwithstanding anything contained in any other law or anything having the force of law and anything in any such law or anything having the force of law which is inconsistent with any of the provisions of the Act, shall, to the extent of such inconsistency, be deemed to have been repealed.

Chapter XVI: Dissolution or Supersession of the Board

80. Power of the State Government to dissolve or supersede the Board

(1) If in the opinion of the State Government, the Board persistently makes default in the performance of the duties imposed on it by or under this Act or exceeds or abuses its powers, the State Government may, by notification, specifying the reason for so doing, declare the Board to be in default or to have exceeded or abused its powers, as the case may be; and-

(a) that on date to be specified in the order the office of the members of the Board shall be deemed to be vacated and require a fresh election to be held on or before the said date; or

(b) direct that the Board shall be superseded for such period, as may be specified in the notification.

(2) The members of the Board who vacate office by reason of declaration made under sub-section (1) shall not, unless the State Government otherwise direct, be deemed disqualified for re-election or re-appointment.

81. Consequences of supersession

Where an order of supersession has been passed under clause (b) of subsection (1) of Section 80 the following consequences shall ensue, namely:

(a) all the members of the Board shall from a date to be specified in the order, vacate their offices as such members;

(b) all the powers and duties which under the provisions of this Act are to be exercised and performed by the Board or the President shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct;

(c) all property vested in the Board shall, during the period of supersession, vest in the State Government; and

(d) before the expiration of the period of supersession, election shall be held and appointment made for the purpose of reconstituting the Board. -

81-A. Power of the State Government where injunction issued or constitution of the Board declared illegal by Court

Where an injunction has been issued by a competent Court restraining the Board from discharging its functions or where the constitution of the Board has been declared illegal by such Court, the State Government may direct that-

(a) all the powers and duties which under the provisions of this Act are to be exercised and performed by the Board or the President shall, during the continuance of such injunction, or as the case may be, till the first meeting of a validly reconstituted Board, be exercised and performed by such person or persons as the State Government may appoint in this behalf:

Provided that when the State Government have already appointed a person or persons to exercise the powers and perform the duties of the Board or the President during the continuance of an injunction, such person or persons shall continue to do so till the first meeting of a validly reconstituted Board;

(b) all property vested in the Board shall, during the continuance of the injunction or, as the case may be, till the meeting of a validly reconstituted Board, vest in the State Government; and

(c) where the constitution of the Board has been declared illegal election shall be held and appointments made for the purpose of reconstituting the Board within a period of 48 months from the date of orders of the Court.

Chapter XVI: Rules And Bey-Laws

82. Power of the State Government to make rules

(1) The State Government may, after previous publication, make rules, not inconsistent with this Act, for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make rules with respect to all or any of the following matters:-

(a) the conditions and restrictions, subject to which the Board may transfer any property under sub-section (3) of Section 5;

(b) the manner in which members shall be elected under clauses (b) and (c) of sub-section (1) and cls. (b) and (c) of sub-sec. (2) clauses (b) and (c) of sub-sec. (3) of sub-sec. 8 and Sec. 10;

(c) the condition and restrictions subject to which members of the Board and of a Committee may undertake journeys in connection with any of the affairs of the Board and the travelling and other allowances to be paid for such journeys;

(d) the manner in which the record referred to in clause (a) of sub-section (2) of section 28 shall be prepared and maintained;

(e) the manner in which and the conditions subject to which the Board may realise the costs referred to in clause (r) of sub-section (2) of section 28;

(f) the manner in which notices under sub-section (1) of section 30 shall be issued;

(g) the manner in which the members shall be elected under the proviso to sub-section (2) of Section 40;

(h) the manner in which the names of the persons appointed or elected as members of Regional Trust Committees under sub-section (2) of Section 40 shall be published;

(i) the manner in which applications to the District Judge under sub-section (1) of Section 43 shall be made;

(j) the manner in which general notices under sub-section (2) of Section 43 shall be published;

(k) the forms of statements referred to in sub-sections (1) and (2) of Section 59, and the particulars to be contained in the statement referred to in the said sub-section (1);

(1) the authority to whom a trustee may appeal under sub-section (1) of Section 65;

(m) the manner in which fees under Sec. 70 shall be assessed, the authority by whom such assessment shall be made, the authority to whom appeal from orders of assessment shall lie and the manner in which the assessed fees shall be payable; and

(n) other matters expressly required or allowed by this Act to be prescribed.

83. Power of Board to make bye-laws

(1) The Board may make bye-laws not inconsistent with this Act and the rules made thereunder for any matter necessary for carrying into effect the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Board may make bye-laws with respect to-

(a) the preservation of order and the conduct of proceedings of the Board;

(b) the functions and procedure of Committees;

(c) the fee to be levied on applications under this Act before it or any of its Committees or before the President or the Superintendent or any of the officers or servants of the Board and on applications for copies of proceedings or other records of the Board, the form and manner of making such applications and the conditions subject to which copies of such proceedings and records may be granted;

(d) the fee to be paid for inspecting the register of religious trusts;

(e) the form of the register of religious trust to be prepared and maintained by the Board;

(f) the books and accounts to be kept in the office of religious trusts;

(g) the accounts, reports and returns to be submitted by trustees;

(h) the manner in which the accounts of religious trusts shall be audited and published, the time and place of such audit, the forms and contents of the auditor's reports and the scale of remuneration to be paid to auditors;

(i) the custody and investment of the funds of any trust, the conditions subject to which a trustee shall deposit trust money in his hands under clause (i) of sub-section (2), of Section 28 and the conditions subject to which a trustee can withdraw such money;

(j) the number, designation, grades, salaries, allowances and other conditions of service including the powers and duties of the officers and servants of the Board;

(k) the allocation of duties to the President and members;

(I) the security, if any, to be furnished by officers and servants of the Board;

(m) the persons by whom receipts may be granted for money received;

(n) the custody of the common seal;

(o) the manner in which the decision of the Board may be ascertained otherwise than at meetings;

(p) the form of, and particulars to be contained in, the budget referred to in Section 60;

(q) the number of members of which a Regional Trust Committee shall consist, the manner in which the business of a Regional Trust Committee shall be conducted, the staff required for such Committee, the conditions of service of such staff and the travelling and other allowances to be paid to members of such Committees for attending meetings and undertaking journeys in connection with the affairs of such Committee; and

(r) the publication of the notices, decisions and orders of the Board.

(3) Such bye-laws shall be made after previous publication and shall not take effect until they are approved and confirmed by the State Government:

Provided that if the State Government do not approve and confirm such bye-laws within four months from the date of receipt thereof by the State Government, the said bye-laws shall be deemed to have been approved and confirmed on the expiry of the said four months.

13. The Bombay Public Trusts

[Bom. Act No. XXIX of Year 1950]

An Act to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Bombay.

Whereas it is expedient to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Bombay;

It is hereby enacted as follows:

Chapter I: Preliminary for Maharashtra

1. Short title, extent, operation and application

(1) This Act may be called the Bombay Public Trusts Act, 1950.

(2) It shall extend to the whole of the State of Maharashtra.

(3) This Act shall come into force at once; but the provisions thereof shall apply to a public trust or any class of public trusts on the date specified in the notification under sub-section (4).

(4) The State Government may, by notification in the Official Gazette, specify the date on which the provisions of this Act shall apply to any public trust or any class of public trusts; and different dates may be specified for such trusts in different areas:

Provided that the State Government may also by a like notification direct that from the date specified therein any public trust or class of public trusts shall be exempted from all or any of the provisions of this Act, subject to such conditions as may be specified in the notification:

Provided further that before a notification of such application of exemption is published a draft thereof shall be published, in the Official Gazette and in such other manner as may be prescribed for the information of persons likely to be affected thereby together with a notice specifying the date on or before which any objections or suggestions shall be received and the date on or after which the draft shall be taken into consideration.

2. Definitions

In this Act, unless there is anything repugnant in the subject or context,

(1) xxxxxx.

(2) "Assistant Charity Commissioner" means an Assistant Charity Commissioner appointed under Section 5;

(3) "Charity Commissioner" means the Charity Commissioner appointed under Section 3;

(4) "Court" means in Greater Bombay, the City Civil Court and elsewhere, the District Court;

(5) "Deputy Charity Commissioner" means Deputy Charity Commissioner appointed under Section 5;

(5A) "Director of Accounts" and "Assistant Director of Accounts" means respectively the Director of Accounts and Assistant Director of Accounts appointed under section 6 of this Act;

(6) “Hindu” includes Jain, Buddhist and Sikh;

(7) “Inspector” means an Inspector appointed under section 6;

(7A) “Instrument of trust” means the instrument by which the trust is created by the author of the trust and includes any scheme framed by a competent authority or any Memorandum of Association and rules and regulations of a society registered under the Societies Registration Act, 1860, in its application to the State of Maharashtra;

(7 B) "Joint Charity Commissioner" means a Joint Charity Commissioner appointed under section 3A;

(8) "Manager” means any person (other than a trustee) who for the time being either alone or in association with some other person or persons administers the trust property of any public trust and includes-

(a) in the case of a math, the head of such math,

(b) in the case of a wakf, a mutawalli of such wakf,

(c) in the case of the society registered under the Societies Registration Act, 1860, its governing body, whether or not the property of the society is vested in a trustee;

(9) "Math" means an institution for the promotion of the Hindu religion presided over by a person whose duty it is to engage himself in imparting religious instructions or rendering spiritual service to a body of disciples or who exercises or claims to exercise headship over such a body and includes places of religious worship or instruction which are appurtenant to the institution;

(10) “Person having interest" includes-

(a) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the distribution of gifts thereof,

(b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs,

(c) in the case of wakf, a person who is entitled to receive any pecuniary or other benefit from the wakf and includes a person who has right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf,

(d) in the case of a society registered under the Societies Registration Act, 1860, any member of such society, and

(e) in the case of any other public trust, any trustee or beneficiary,

(11) “prescribed” means prescribed by rules;

(12) “Public securities” means-

(a) securities of the Central Government or any State Government;

(b) stocks, debentures or shares in Railway or other companies, the interest or dividend on which has been guaranteed by the Central or any State Government;

(c) debentures or other securities for money issued by or on behalf of any local authority in exercise of the powers conferred by an Act of the Central or State Legislature;

(d) a security expressly authorized by an order which the State Government makes in this behalf.

(13) “Public Trust” means an express or constructive trust for either a public, religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860.

(14) “Region” or “sub-region” means the areas designated as such and for which a Public Trusts Registration Office has been established under this Act;

(15) “Rules” means rules made under this Act;

(16) x x x x x.

(17) “Temple” means a place by whatever designation known and used as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu Community or any section thereof as a place of public religious worship;

(18) “trustee” means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager;

(19) “Wakf” means a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable and includes a wakf by user and grants (including mashrut-ul-khidmat) for any purpose recognised by

the Muslim Law as pious, religious or charitable and a wakf-allal-aulad to the extent to which the property is dedicated for any purpose so recognised; but does not include a wakf such as is described in Section 3 of the Mussalman Wakf Validating Act, 1913, under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any member of his family or descendants;

(20) Words and expressions used but not defined in this Act and defined in the Indian Trusts Act, 1882, shall have the meanings assigned to them in that Act.

Chapter II: Establishment

3. Charity Commissioner

The State Government may, by notification in the Official Gazette, appoint an Officer to be called the Charity Commissioner who shall exercise such powers and shall perform such duties and functions as are conferred by or under the provisions of this Act and shall, subject to such general or special orders as the State Government may pass, superintend the administration and carry out the provisions of this Act throughout the State:

3A. Joint Charity Commissioner

(1) The State Government may, by notification in the Official Gazette, appoint one or more Officers to be called Joint Charity Commissioners who shall, subject to the control of the Charity Commissioner and to such general or special orders, as the State Government may pass, exercise all or any of the powers and perform all or any of the duties and functions, of the Charity Commissioner.

(2) The State Government may, by general or special order, declare a Joint Charity Commissioner to be the regional head to superintend, subject to the control of the Charity Commissioner, the administration in one or more regions or sub-regions, as may be specified in such order.

4. Qualifications for appointment of Charity Commissioner and Joint Charity Commissioner

A person to be appointed as the Charity Commissioner or a Joint Charity Commissioner shall be one-

(a) who is holding or has held a Judicial Office not lower in rank than that of a District Judge of the Bombay City Civil Court or the Chief Judge of the Presidency Small Causes Court:

Provided that a person to be appointed as a Joint Charity Commissioner may be one who is holding or has held a Judicial Office not lower in rank than that of an Assistant Judge or an Additional Chief Judge of the Court of

Small Causes, Bombay or who has held the office of the Deputy Charity Commissioner for not less than five years, or

(b) who has been for not less than ten years:

(i) an advocate enrolled under the Indian Bar Councils Act, 1926 (38 of 1926) or the Advocates Act, 1961 (25 of 1961);

(ii) an attorney of a High Court; or

(iii) a pleader enrolled under the Bombay Pleaders Act, 1920 (Bom. 17 of 1920).

5. Deputy and Assistant Charity Commissioners

(l) The State Government may also appoint such number of Deputy and Assistant Charity Commissioners in the office of the Charity Commissioner or for such regions or sub-regions or for such public trusts or such class of public trusts as may be deemed necessary.

(2) A person to be appointed as a Deputy Charity Commissioner shall be one-

(a) who is holding or has held a judicial office not lower in rank than that of a Civil Judge (Senior Division) or a Judge of the Court of Small Causes of Bombay or any office which in the opinion of the State Government is an equivalent office, or

(b) who has been for not less than eight years,

(i) an advocate enrolled under the Indian Bar Council Act, 1926 or the Advocates Act, 1961

(ii) an attorney of a High Court or

(iii) a pleader enrolled under the Bombay Pleaders Act, 1920;

or

(c) who has held the office of an Assistant Charity Commissioner for not less than five years;

(2A) A person to be appointed as an Assistant Charity Commissioner shall be a person-

a) who is holding or has held a judicial office not lower in rank than that of a Civil Judge (Junior Division), for not less than one year,

(b) who has been for not less than four years,

(i) an advocate enrolled under the Indian Bar Councils Act, 1926, (38 of 1926) or the Advocates Act, 1961, (25 of 1961),

(ii) an attorney of a High Court, or

(iii) a pleader enrolled under the Bombay Pleaders Act, 1920, (Bom.17 of 1920), or

(c) who holds a degree in Law of any University in India established by law or any other University recognised by the State Government in this behalf and has worked in the Charity Organisation after obtaining such degree for not less than five years in an office no lower in rank of Superintendent or Legal Assistant.

(3) The Deputy and Assistant Charity Commissioners shall exercise such powers and perform such duties and functions as may be provided by or under the provisions of this Act.

6. Subordinate Officers

For the purpose of carrying out the provisions of this Act, the State Government may appoint the Director of Accounts and Assistant Directors of Accounts possessing the prescribed qualifications, Inspectors and other subordinate officers and assign to them such powers, duties and functions under this Act, as may be deemed necessary:

Provided that, the State Government may, by general or special order and subject to such conditions as it deems fit to impose, delegate to the Charity Commissioner, the Joint Charity Commissioner and the Deputy and Assistant Charity Commissioners, powers to appoint subordinate officers and servants as may be specified in the order.

6A. Charity Commissioner and other officers to be servants of State Government

The Charity Commissioner, the Joint Charity Commissioner, the Deputy and Assistant Charity Commissioners, the Director of Accounts, the Assistant Directors of Accounts, the Inspectors, and other subordinate officers and servants appointed under this Act shall be the servants of the State Government and they shall draw their pay and allowances from the Consolidated Fund of State. The conditions of service of such officers shall be such as may be determined by the State Government.

6-B. Cost of pay, pension, etc., of Charity Commissioner etc., to be paid to Government out of the Public Trusts Administration Fund

There shall be paid every year out of the Public Trusts Administration Fund to the State Government such cost as the State Government may determine on account of the pay, pension, leave and other allowances of the Charity Commissioner, the Joint Charity Commissioner, the Deputy and Assistant Charity Commissioners, the Director of Accounts, the Assistant Directors of Accounts, the Inspectors and other subordinate officers and servants appointed under this Act.

8. Delegations

(1) The State Government may delegate any of its own powers or functions under this Act to the Charity Commissioner or any other office subject to such conditions as it thinks fit.

(2) The State Government may also direct that any powers exercisable and duties or functions to be performed by any particular officer appointed under this Act may be performed by any other officer subject to such conditions as it thinks fit.

Chapter III: Charitable Purposes and Validity of Certain Public Trusts

9. Charitable purposes

(1) For the purposes of this Act, a charitable purpose includes

(1) relief of poverty or distress,

(2) education,

(3) medical relief,

(3A) provision for facilities for recreation or other leisure time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit, and

(4) the advancement of any other object of general public utility, but does not include a purpose which relates-

(a) xxxxx;

(b) exclusively to religious teaching or worship.

(2) The requirement of this section that the facilities are provided in the interest of social welfare shall not be treated as satisfied, unless

(a) the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended and,

(b) either

(i) those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances, or

(ii) the facilities are to be available to the members of the public at large.

(3) Subject to the said requirement, sub-section (1) of this section applies in particular to the provision of facilities at village halls, community centres and women institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation and leisure time occupation, and extends to the provision of facilities for those purposes by the organizing of any such activity.

10. Public trust not to be void on ground of uncertainty

Notwithstanding any law, custom or usage, a public trust shall not be void only on the ground that the persons or objects for the benefit of whom or which it is created are unascertained or unascertainable:

Explanation: A public trust created for such objects as dharma, dharmada or punyakarya, punyadan shall not be deemed to be void, only on the ground that the objects for which it is created are unascertained or unascertainable.

11. Public trust not void on ground that it is void for non-charitable or non-religious purpose

A public trust created for purposes some of which are charitable or religious and some are not shall not be deemed to be void in respect to the charitable or religious purpose, only on the ground that it is void with respect to the non-charitable or non-religious purpose.

12. Public trust not void on ground of absence of obligations

Any disposition of property for a religious or charitable purpose shall not be deemed to be void as a public trust, only on the ground that no obligation is annexed with such disposition requiring the person in whose favour it is made to hold it for the benefit of a religious or charitable object.

13. Public trust not void on failure of specific object or society, etc. ceasing to exist

If any public trust is created for a specific object of a charitable or religious nature or for the benefit of a society or institution constituted for a charitable or religious purpose, such trust shall not be deemed to be void only on the ground

(a) that the performance of the specific object for which the trust was created has become impossible or impracticable, or

(b) that the society or institution does not exist or has ceased to exist, notwithstanding the fact that there was no intent for the appropriation of the trust property for a general charitable or religious purpose.

Chapter IV: Registration of Public Trusts

14. Regions and sub-regions

(1) For the purposes of this Act, the State Government may form regions and sub-regions and may prescribe and alter limits of such regions or sub-regions.

(2) The regions and sub-regions formed under this section together with the limits thereof and every alteration of such limits shall be notified in the Official Gazette.

15. Public Trusts Registration Offices

In every region or sub-region there shall be a Public Trusts Registration Office:

Provided that, for two or more regions or sub-regions, there may be one Public Trusts Registration Office:

Provided further that, for one region or sub-region there may be one or more Joint Public Trusts Registration Offices.

15A. Power to set up offices in districts

To facilitate the administrative work of the regions and sub-regions, the State Government may set up offices in all the districts under any region or sub-region.

16. Deputy or Assistant Charity Commissioner to be in charge of Public Trusts Registration Office

The State Government may appoint a Deputy Charity Commissioner or Assistant Charity Commissioner to be in charge of one or more Public Trusts Registration Offices or Joint Public Trusts Registration Offices.

17. Books, indices and registers

In every Public Trusts Registration Office or Joint Public Trusts Registration Office, it shall be the duty of the Deputy or Assistant Charity Commissioner in charge to keep and maintain such books, indices and other registers as may be prescribed. Such books, indices and registers shall contain such particulars as may also be prescribed.

18. Registration of public trusts

(1) It shall be the duty of the trustee of a public trust to which this Act has been applied to make an application for the registration of the public trust.

(2) Such application shall be made to the Deputy or Assistant Charity Commissioner of the region or sub-region within the limits of which the trustee has an office for the administration of the trust or the trust property or substantial portion of the trust property is situated, as the case may be.

(3) Such application shall be in writing, shall be in such form and accompanied by such fee as may be prescribed.

(4) Such application shall-

(a) in the case of a public trust created before this Act was applied to it, be made within three months from the date of the application of this Act, and

(b) in the case of a public trust created after this Act comes into force, within three months of its creation.

(5) Such application shall inter alia contain the following particulars:

(a) The designation by which the public trust is or shall be known (herein after referred to as the name of the public trust)

(i) the names and addresses of the trustees and the manager,

(ii) the mode of succession to the office of the trustee,

(iii) the list of the movable and immovable trust property and such descriptions and particulars as may be sufficient for the identification thereof,

(iv) the approximate value of the movable and immovable property,

(v) the gross average annual income of the trust property estimated on the income of three years immediately preceeding the date on which the application is made or of the period which has elapsed since the creation of the trust, whichever period is shorter,

(vi) the amount of the average annual expenditure in connection with such public trust estimated on the expenditure incurred within the period to which the particulars under clause (v) relate,

(vii) the address to which any communication to the trustee or manager in connection with the public trust may be sent,

(viii) such other particulars which may be prescribed:

Provided that, the rules may provide that in the case of any or all public trusts it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified therein.

(6) Every application made under sub-section (1) shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf. It shall be accompanied by a copy of an instrument of trust, if such instrument had been executed and is in existence.

(6-A) Where on receipt of such application, it is noticed that the application is incomplete in any particulars, or does not disclose full particulars of the public trust, the Deputy or Assistant Charity Commissioner may return the application to the trustee, and direct the trustee to complete the application in all particulars or disclose therein the full particulars of the trust, and resubmit it within the period specified in such direction; and it shall be the duty of the trustee to comply with the direction.

(7) It shall also be the duty of the trustee of the public trust to send a memorandum in the prescribed form containing the particulars, including the name and description of the public trust, relating to the immovable property of such public trust, to the Sub-Registrar of the sub-district appointed under the Indian Registration Act, 1908, in which such immovable property is situated for the purpose of filing in Bank No. 1 under section 89 of that Act.

Such memorandum shall be sent within three months from the date of creation of the public trust and shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf.

19. Inquiry for registration

On the receipt of an application under section 18, or, upon an application made by any person having interest in a public trust or on his own motion, the Deputy or Assistant Charity Commissioner shall make an inquiry in the prescribed manner for the purpose of ascertaining:

(i) whether a trust exists and whether such trust is a public trust,

(ii) whether any property is the property of such trust,

(iii) whether the whole or any substantial portion of the subject-matter of the trust is situate within jurisdiction,

(iv) the names and address of the trustees and manager of such trust,

(v) the mode of succession to the office of the trustees of such trust,

(vi) the origin, nature and object of such trust,

(vii) the amount of gross average annual income and expenditure of such trust, and

(viii) any other particulars as may be prescribed under sub-section 5 of section 18.

20. Findings of Deputy or Assistant Charity Commissioners

On completion of the inquiry provided for under Section 19, the Deputy or Assistant Charity Commissioner shall record his findings with the reasons therefore as to the matters mentioned in the said section, and may make an order for the payment of the registration fee.

21. Entries in register

(1) The Deputy or Assistant Charity Commissioner shall make entries in register kept under Section 17 in accordance with the findings recorded by him under Section 20 or if appeals or applications are made as provided by this Act, in accordance with the final decision of the competent authority provided by this Act.

(2) The entries so made shall, subject to the provisions of this Act and subject to any change recorded under the following provisions, be final and conclusive.

22. Change

(1) Where any change occurs in any of the entries recorded, in the register kept under section 17, the trustee shall, within 90 days from the date of the

occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust report such change or proposed change to the Deputy or Assistant Charity Commission in charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form.

(1A) Where the change to be reported under sub-section (1) relates to any immovable property, the trustee shall, along with the report, furnish a memorandum in the prescribed form containing the particulars (including the name and description of the public trust) relating to any change in the immovable property of such public trust, forwarding it to the Sub-Registrar referred to in sub-section (7) of section 18.

Such memorandum shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf.

(2) For the purpose of verifying the correctness of the entries in the register kept under section 17 or ascertaining whether any change has occurred in any of the particulars recorded in the register, the Deputy or Assistant Charity Commissioner may hold an inquiry in the prescribed manner.

(3) If the Deputy or Assistant Charity Commissioner, as the case may be, after receiving a report under sub-section (1) and holding an inquiry, if necessary, under sub-section (2), or merely after holding an inquiry under the said sub-section (2), is satisfied that a change has occurred in any of the entries recorded in the register kept under section 17 in regard to a particular public trust, or that the trust should be removed from the register by reason of the change resulting in both the office of the administration of the trust and the whole of the trust property ceasing to be situated in the State, he shall record a finding with the reasons therefore to that effect; and if he is not so satisfied he shall record a finding with reasons therefore accordingly. Any such finding shall be appealable to the Charity Commissioner. The Deputy or Assistant Charity Commissioner shall amend or delete the entries in the said register in accordance with the finding which requires an amendment or deletion of entries and if appeals or applications are made against such finding, in accordance with the final decision of the competent authority provided by this Act. The amendments in the entries so made subject to any further amendment on occurrence of a change or any cancellation of entries, shall be final and conclusive.

(4) Whenever an entry is amended or the trust is removed from the register under sub-section (3), the Deputy or Assistant Charity Commissioner, as the case may be, shall forward the memorandum furnished to him under sub-section (lA), after certifying the amended entry, or the removal of the trust from the register to the Sub-Registrar referred to in sub-section (7) of Section 18, for the purpose of filing in Book No. 1 under Section 89 of the Indian Registration Act, 1908 in its application to the State of Maharashtra.

22-A. Further inquiry by Deputy or Assistant Charity Commissioner

If at any time after the entries are made in the register under sec. 21, 22 or 28 it appears to the Deputy or Assistant Charity Commissioner that any particular relation to any public trust which was not the subject-matter of the inquiry under section 19, or sub-section (3) of section 22 or section 28, as the case may be, has remained to be inquired into, the Deputy or Assistant Charity Commissioner, as the case may be, may make further inquiry in the prescribed manner, record his findings and make entries in the register in accordance with the decision arrived at or if appeals or applications are made as provided by this Act, in accordance with the decision of the competent authority provided by this Act. The provisions of sections 19, 20, 21 and 22 shall, so far as may be, apply to the inquiry, the recording of findings and the making of entries in the register under this section.

22-B Registration of trust property in the name of public trust which has already been registered, etc.

(1) In the case of a public trust,-

(a) which is deemed to have been registered under this Act under section 28, or

(b) which has been registered under this Act before the date of the coming into force of the Bombay Public Trusts (Amendment) Act, 1955 (hereinafter referred to as the said date), on an application made under Section 18, or

(c) in respect of which an application for registration has been made under Section 18, and such application was pending on the said date,

the trustee of such public trust shall within three months from the said date make an application in writing for registration of the property of the public trust in the name of such trust and shall state in the application the name of the public trust,

(2) Such application shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf and made to the Deputy or Assistant Charity Commissioner who made entries in respect of such public trust in the register kept under section 17 or with whom the application for registration of the public trust was pending as the case may be.

(3) On receipt of such application, the Deputy or Assistant Charity Commissioner shall

(a) in the case of a public trust which is deemed to have been registered under section 28 or which has been registered under this Act before the said date specify the name of the public trust against the entries made in respect of such trust in the register kept under Section 17, and

(b) in the case of a public trust the application for the registration of which was pending on the said date specify the name of the public trust at the

time of making entries under section 21 in respect of such public trust in the register kept under sec. 17.

22-C. Registration of particulars of immovable property of trusts already registered with certain officers and authorities

(1) In the case of a public trust,-

(a) which is deemed to have been registered under this Act under section 28, read with Schedule A, or

(b) which has been registered under this Act before the coming into force of Bombay Public Trusts (Amendment) Act, 1955 (hereinafter referred to as the said date), on an application made under Section 18, or

c) in respect of which an application has been made under section 18, and such application was pending on the said date, the trustee of such public trust shall within three months from the said date send a memorandum in the prescribed form containing the particulars including the name and description of the public trust, relation to the immovable property of such public trust, to the officers specified in sub-section (7) of section 18 for the purposes of filing in Book No. 1 under section 89 of the Indian Registration Act, 1908, in its application to the State of Maharashtra.

Such memorandum shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf.

(2) In the case of a public trust deemed to have been registered under section 28 read with Schedule AA, the provisions of sub-section (1) shall apply with the modification that the said date shall refer to the date of the coming into force of the Bombay Public Trusts (Unification and Amendment) Act, 1959.

23. Procedure where trust property is situate in several regions or sub-regions

If any part of the property of any public trust is situate within the limits of more than one region or sub-region, the Deputy or Assistant Charity Commissioner of the region or sub-region within the limits of which the public trust is registered, shall forward a copy of the entries to the Deputy or Assistant Charity Commissioner in charge of the region or sub-region within the limits of which such part of the trust property is situate. The Deputy or Assistant Charity Commissioner in charge of such region or sub-region shall make an entry in such book as may be prescribed for the purpose. A copy of such entry shall also be sent by the Deputy or the Assistant Charity Commissioner, as the case may be, to the Sub-Registrar appointed under the Indian Registration Act, 1908, of the sub-district within the limits of which such property or part thereof is situate.

24. Stay of inquiry

No Deputy or Assistant Charity Commissioner shall proceed with an inquiry under Section 19 or 22 in regard to any public trust which has been already registered in any other region or sub-region.

25. Inquiry regarding public trust not to be held by more than one Deputy or Assistant Charity Commissioner

(1) If an inquiry under section 19 or 22 in regard to any public trust is pending before more than one Charity Commissioner, whether Deputy or Assistant, the Charity Commissioner shall, on the application of any of the persons having interest in such public trust or of any Deputy or Assistant Charity Commissioner before whom such inquiry is pending or on his own motion, determine which of such Deputy or Assistant Charity Commissioner shall proceed with the inquiry in regard to such trust.

(2) The determination of the Charity Commissioner under sub-section (1) shall be final and conclusive; and upon such determination, no Deputy or Assistant Charity Commissioner other than the Deputy or Assistant Charity Commissioner specified by the Charity Commissioner shall proceed with the inquiry in regard to the public trust under sec. 19 or 22, as the case may be.

26. Entries in register to be made or amended in certain cases

(1) Any Court of competent jurisdiction deciding any question relating to any public trust which by or under the provisions of this Act is not expressly or impliedly barred from deciding shall cause copy of such decision to be sent to the Charity Commissioner and the Charity Commissioner shall cause the entries in the register kept under sec. 17 to be made or amended in regard to such public trust in accordance with such decision. The entries so made or amended shall not be altered except in cases where such decision has been varied in appeal or revision by a Court of competent jurisdiction. Subject to such alterations, the entries made or amended shall be final and conclusive.

(2) Where the Charity Commissioner decides any question in relation to any public trust or passes any order in relation thereto, he shall also cause the entries in such register to be made or amended in regard to such public trust in accordance with the decision so given or order passed by him; and thereupon, the provisions of sub-section (1) shall apply in relation to entries so made or amended as they apply in relation to entries made or amended according to the decision or order of a Court.

27. x x x x x

28. Public trusts previously registered under enactments specified in Schedule

(1) All public trusts registered under the provisions of any of the enactments specified in Schedule A and Schedule AA shall be deemed to have been registered under this Act from the date on which this Act may be applied to them. The Deputy or Assistant Charity Commissioner of the region or sub-region within the limits of which a public trust had been registered under any of the said enactments shall issue notice to the trustee of such trust for the purpose of recording entries relating to such trust in the register kept under section 17 and shall after hearing the trustee and making such inquiry as may be prescribed record findings with the reasons therefore. Such findings shall be in accordance with the entries in the registers already made under the said enactment subject to such changes as may be necessary or expedient.

(2) Any person aggrieved by any of the findings recorded under sub-section (1) may appeal to the Charity Commissioner.

(3) The provisions of this Chapter shall, so far as may be, apply to the making of entries in the register kept under section 17 and the entries so made shall be final and conclusive.

28-A. Copy of entries relating to immovable property to be sent to Sub-Registrar, revenue and local authorities

The Deputy or Assistant Charity Commissioner shall send a memorandum in the prescribed form containing entries including the entry of the name and description of the public trust relating to immovable property of such public trust made by him in the register kept under section 17-

(i) to the Sub-Registrar of the sub-district appointed under the Indian Registration Act, 1908, in which such immovable property is situate.

(ii) xxxxx,

(iii) xxxxx.

29. Public trust created by Will

In the case of the public trust which is created by a Will, the executor of such Will shall within one month from the date on which the probate of the Will is granted or within six months from the date of the testator's death whichever is earlier make an application for the registration in the manner provided in section 18 and the provisions of this Chapter shall mutates mutandis apply to the registration of such trust:

Provided that the period prescribed herein for making an application for registration may for sufficient cause, be extended by the Deputy or Assistant Charity Commissioner concerned.

30. Notice of particulars of immovable property entered in register

Any person acquiring any immovable property belonging to a public trust which has been registered under this Chapter or any part of or any share or interest in such property of such trust shall be deemed to have notice of the relevant particulars relating to such trust entered in the register or in the registers maintained under Section 281 B.

Explanation: For the purposes of this section, a person shall be deemed to have notice of any particulars in the registers.

(1) when he actually knows the said particulars or when, but for wilful abstention from any inquiry or search which he ought to have made, or gross negligence, he would have known them;

(2) if his agent acquires notice thereof whilst acting on his behalf in the course of business to which the fact of such particulars is material.

31. Bar to hear or decide suits

(1) No suit to enforce a right on behalf of a public trust which has not been registered under this Act shall be heard or decided in any Court.

(2) The provisions of sub-section (1) shall apply to a claim of set-off or other proceedings to enforce a right on behalf of such public trust.

31-A. Trustees of certain trusts to submit budget to Charity Commissioner

(1) A trustee of a public trust which has an annual income exceeding the prescribed amount shall, at least one month before the commencement of each accounting year, prepare and submit in such form or forms as may be prescribed, a budget showing the probable receipts and disbursements of the trust during the following year to the Charity Commissioner.

(2) Every such budget shall make adequate provision for carrying out the objects of the trust, and for the maintenance and preservation of the trust property.

32. Maintenance of accounts

(1) Every trustee of a public trust shall keep regular accounts.

(2) Such accounts shall be kept in such forms as may be approved by the Charity Commissioner and shall contain such particulars as may be prescribed.

33. Balancing and auditing of accounts

(1) The accounts kept under section 32 shall be balanced each year on the thirty-first day of March or such other day as may be fixed by the Charity Commissioner.

(2) The accounts shall be audited annually by a person who is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, or by such persons as the State Government may, subject to any conditions, authorise in this behalf:

Provided that, no such person is in any way interested in, or connected with the public trust.

(3) Every auditor acting under sub-section (2) shall have access to the accounts and to all books, vouchers, other documents and records in the possession of or under the control of the trustee; and it shall be the duty of the trustee to make them available for the use of the auditor.

(4) Notwithstanding anything contained in the proceeding sub-sections-

(a) the Charity Commissioner may direct a special audit of the accounts of any public trust whenever in his opinion such special audit is necessary. The provisions of sub-sections (2) and (3) shall, so far as may be applicable, apply to such special audit. The Charity Commissioner may direct the payment of such fee as may be prescribed for such special audit; and

(b) State Government may, by general or special order, exempt any public trust or class of trusts from the provisions of sub-section (2), subject to such conditions as may be specified in the order.

34. Auditor's duty to prepare balance sheet and to report irregularities, etc.

(1) It shall be the duty of every auditor auditing the accounts of a public trust under section 33 to prepare a balance sheet and income and expenditure account and to forward a copy of the same along with a copy of his report to the trustee and to the Deputy or Assistant Charity Commissioner of the region or sub-region or to the Charity Commissioner, if the Charity Commissioner requires him to do so.

(1-A) It shall be the duty of the trustee of a public trust to file a copy of the balance sheet and income and expenditure account forward by the auditor before the Deputy or Assistant Charity Commissioner of the region or sub-region or to the Charity Commissioner, if the Charity Commissioner requires him to do so.

(2) The auditor shall in his report specify all cases of irregular, illegal or improper expenditure, or failure or omission to recover moneys or other property belonging to the public trust or of loss or waste of money or other property thereof and state whether such expenditure, failure, omission, loss or waste was caused in consequence of a breach of trust, or misapplication or any other misconduct on the part of the trustees, or any other person.

Chapter V-A: Powers and Duties of and Restriction on Trustees

35. Investment of public trust money

(1) Where the trust property consists of money and cannot be applied immediately or at any early date to the purposes of the public trust the trustee shall be bound (notwithstanding any direction contained in the instrument of the trust) to deposit the money in any Scheduled Bank as defined in the Reserve Bank of India Act, 1934, in the Postal Savings Bank or in a Co-operative Bank approved by the State Government for the purpose or to invest it in public securities:

Provided that such money may be invested in the first mortgage of immovable property situate in any part of India if the property is not leasehold for a term of years and the value of the property exceeds by one-half the mortgage money:

Provided further that the Charity Commissioner may by general or special order permit the trustee of any public trust or classes of such trusts to invest the money in any other manner.

(2) Nothing in sub-section (1) shall affect any investment or deposit already made before the coming into force of the Bombay Public Trusts (Amendment) Act, 1954, in accordance with a direction contained in the instrument of the trust:

Provided that, any interest or dividend received or accruing from such investment or deposit on or after the coming into force of the said Act or any sum so invested or deposited on the maturity of the said investment or deposit shall be applied or invested in the manner prescribed in sub-sec. (1).

36. Alienation of immovable property of public trust

(1) Notwithstanding anything contained in the instrument of trust-

(a) no sale, exchange or gift of any immovable property; and

(b) no lease for a period exceeding ten years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or building belonging to a public trust shall be valid without the previous sanction of the Charity Commissioner. Sanction may be accorded subject to such conditions as the Charity Commissioner may think fit to impose, regard being had to the interest, benefit or protection of the trust;

(c) if the Charity Commissioner is satisfied that in the interest of any public trust any immovable property thereof should be disposed of, he may, on application, authorise any trustee to dispose of such property subject to such conditions as he may think fit to impose, regard being had to the interest or benefit or protection of the trust.

(2) The Charity Commissioner may revoke the sanction given under clause (a) or clause (b) of sub-section (1) on the ground that such sanction was

obtained by fraud or misrepresentation made to him or by concealing from the Charity Commissioner, facts material for the purpose of giving sanction; and direct the trustee to take such steps within a period of one hundred and eighty days from the date of revocation (or such further period not exceeding in the aggregate one year as the Charity Commissioner may from time to time determine) as may be specified in the direction for the recovery of the property.

(3) No sanction shall be revoked under this section unless the person in whose favour such sanction has been made has been given a reasonable opportunity to show cause why the sanction should not be revoked.

(4) If in the opinion of the Charity Commissioner, the trustee has failed to take effective steps within the period specified in sub-section (2), or it is not possible to recover the property with reasonable effort or expense, the Charity Commissioner may assess any advantage received by the trustee and direct him to pay compensation to the trust equivalent to the advantage so assessed.

36-A. Powers and duties of, and restrictions on trustees

(1) A trustee of every public trust shall administer the affairs of the trust and apply the funds and properties thereof for the purpose and objects of the trust in accordance with the terms of the trust, usage of the institution and lawful directions which the Charity Commissioner or Court may issue in respect thereof, and exercise the same care as a man of ordinary prudence does when dealing with such affairs, funds or property, if they were his own.

(2) The trustee shall, subject to the provisions of this Act and the instrument of trust, be entitled to exercise all the powers incidental to the prudent and beneficial management of the trust, and to do all things necessary for the due performance of the duties imposed on him.

(3) No trustee shall borrow moneys (whether by way of mortgage or otherwise) for the purpose of or on behalf of the trust of which he is a trustee, except with the previous sanction of the Charity Commissioner and subject to such conditions and limitations as may be imposed by him in the interest or protection of the trust.

(4) No trustee shall borrow money for his own use from any property of the public trust of which he is a trustee:

Provided that, in the case of a trustee who makes a gift of debentures or any deposit in his business or industry the trustee shall not be deemed to have borrowed from the trust for his own use.

36-B. Register of movable and immovable properties

(1) A public trust shall prepare and maintain a register of all movable and immovable properties (not being property of trifling value) of such trust in

such form or forms giving all such information, as may be prescribed by the Charity Commissioner.

(2) Such register shall show the jewels, gold, silver, precious stones, vessels and utensils and all other movable property belonging to the trust with their description, weight and estimated value.

(3) Such register shall be prepared within three months from the expiry of the accounting year after the commencement of the Bombay Public Trusts (Amendment) Act, 1970.

(4) Such register shall be signed by all the trustees or by any person duly authorized by trustees in this behalf after verifying its correctness, and shall be made, available to the auditor for the purpose of auditing if the accounts are required to be audited under the provisions of this Act. Where the accounts are not required to be audited, the trustees shall file a copy of such register duly signed and verified, with the Deputy or Assistant Charity Commissioner of the region.

(5) The auditor shall mention in the audit report whether such register is properly maintained or not, and the defects or inaccuracies, if any, in the said register and the trustees shall comply with the suggestions made by the auditor and rectify the defects or inaccuracies mentioned in the audit report within a period of three months from the date on which the report is sent to the trustees.

(6) Every year within three months from the date of balancing the accounts, the trustee or any person authorized by him shall scrutinize such register, and shall bring it up-to-date by showing alterations, omissions or additions to the same, and such changes shall be reported to the Deputy or Assistant Charity Commissioner in the manner provided in Section 22.

Chapter VI: Control

37. Power of inspection and supervision

(1) The Charity Commissioner, the Deputy or Assistant Charity Commissioner or any officer authorized by the State Government by a general or special order shall have power-

(a) to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust;

(b) to call for and inspect any proceedings of the trustees of any public trust, and any books of account or document in the possession or under the control of the trustees or any person connected with the trust;

(c) to call for any return, statement, account or report which he may think fit from the trustee or any person connected with a public trust;

(d) to get the explanation of the trustee or any person connected with the public trust and reduce or cause to be reduced to writing any statement made by him:

Provided that, in entering upon any property belonging to the public trust the officers making the entry shall give reasonable notice to the trustees and shall have due regard to the religious practices or usages of the trust.

(2) It shall be the duty of every trustee to afford all reasonable facilities to any officer exercising any of the powers under sub-section (1) and the trustees or any person connected with the public trust shall comply with any order made or direction issued by such officer in exercise of the power conferred upon him by or under sub-section (1).

(3) If on inspection of the affairs of a public trust under this section, it is noticed by the Deputy or Assistant Charity Commissioner or the officer authorized under sub-section (1) that there is a loss caused to the public trust on account of gross negligence, breach of trust, misapplication or misconduct on the part of a trustee or any person connected with the trust, the Deputy or Assistant Charity Commissioner may submit report thereof to the Charity Commissioner; and the officer so authorized to the Deputy or Assistant Charity-Commissioner.

38. Explanation on report of auditor or on complaint

On receipt of a report of the auditor under Section 34 or of a report, if any, made by an officer authorized under Section 37 or on receipt of a complaint in respect of any trust the Deputy or Assistant Charity Commissioner, to whom the report is submitted or complaint is made shall require the trustee or any other person concerned to submit an explanation thereon within such period as he thinks fit.

39. Report to Charity Commissioner

On considering the report referred to in section 38, the accounts and explanation, if any, furnished by the trustees or any other person, connected with the public trust and after holding an inquiry in the prescribed manner, the Deputy or Assistant Charity Commissioner shall record his findings on the question whether or not a trustee or the person connected with the trust has been guilty of gross negligence, breach of trust, misappropriation or misconduct which resulted, in loss to the trust, and make a report thereof to the Charity Commissioner.

40. Power of Charity Commissioner to issue orders on report received under section 39 or to remand matter, etc.

The Charity Commissioner may after considering the report of the Deputy or Assistant Charity Commissioner, giving an opportunity to the person concerned and holding such inquiry as he thinks fit,

(1) determine-

(a) the amount of loss caused to public trust;

(b) whether such loss was due to any gross negligence, breach of trust, misapplication or misconduct on the part of any person;

(c) whether any of the trustees, or any person connected with the public trust was responsible for such loss;

(d) the amount which any of the trustees or any person connected with the public trust is liable to pay to the public trust for such loss, or

(2) remand the matter for further inquiry to the officer who made the report or to any other officer as he thinks fit or for reasons to be recorded in writing, compromise the matter or may drop the matter if a suit is instituted for obtaining a decree for a direction for taking accounts under section 50.

41. Order of surcharge

(1) If the Charity Commissioner decides that any person connected with the trust is liable to pay to the public trust any amount for the loss caused to the trust, the Charity Commissioner may direct that amount shall be surcharged on the person,

(2) Subject to the provisions of Section 72, the order of the Charity Commissioner under sub-section (1) shall be final and conclusive

41-A. Power of Commissioner to issue directions for proper administration of the trust

(1) Subject to the provisions of this Act, the Charity Commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith to ensure that the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust; and the Charity Commissioner may also give directions to the trustees or such person if he finds that any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of.

(2) It shall be the duty of every trustee or of such person to comply with the directions issued under sub-section (1).

41-AA. Power of Charity Commissioner and State Government to issue directions in respect of hospitals, etc., to earmark certain beds etc., for poorer patients to be treated free of charge or at concessional rates

Notwithstanding anything contained in any law for the time being in force or in any instrument or in any contract or in any judgment, decree or order of any Court, Tribunal, Charity Commissioner or other competent authority, in the case of any State-aided public trust, whose annual expenditure exceeds five lakhs of rupees, or such other limit as the State Government may from

time to time by notification in the Official Gazette specify, with the view to making essential medical facilities available to the poorer classes of the people, either force of charge or at concessional rates, it shall be lawful for the Charity Commissioner, subject to such general or special orders as the State Government may, from time to time, issue in this behalf, to issue all or any of the following directions to the trustees of, or persons connected with, any such trust, which maintains a hospital (including any nursing home or maternity home), dispensary or any other centre for medical relief (hereinafter in this section referred to as “the medical centre”) namely-

(a) having regard to the accommodation and facilities available to keep admission to the medical centre open to any person without any discrimination on the ground of religion, race, caste, sex, place of birth, language or any of them:

Provided that, where a medical centre is exclusively for females, treatment for any males at such centre shall not be insisted upon;

(b) to reserve and earmark ten per cent of the total number of operational beds and ten per cent of the total capacity of patients treated at such medical centre, for medical examination and treatment in each department of the medical centre, in such manner as may be specified in the directions, of the indigent patients seeking admission or treatment, who shall be medically examined and treated and admitted, as the case may be, free of charge;

(c) to reserve and earmark ten per cent of the total number of operational beds and ten per cent of the total capacity of patients treated at such medical centre, for medical examination and treatment in each department of the medical centre, in such manner as may be specified in the directions, for the weaker sections of the people seeking admission for medical examination and treatment, who shall be charged according to such rates as the State Government may, by general or special order, determine from time to time, having regard to the rates charged by the State Government in the corresponding medical centres maintained by it;

(d) to comply with such other incidental or supplemental requirements as may be specified in the directions or in any general or special orders issued thereunder:

Provided that, while issuing any directions as aforesaid the Charity Commissioner shall take into consideration such facilities as are already made available by any such medical centre and having regard to the availability of such facilities may give appropriate directions if any, consistent with and subject to the percentage specified to clauses (b) and (c).

(2) (a) It shall be lawful for the officer duly authorized by the State Government in this behalf, or for the Charity Commissioner by himself or through his representative duly authorized by him in this behalf, to verify the implementation of the directions given under sub-section (1) to any medical cen-

tre, and, for that purpose, visit, inspect and call for information and returns periodically or otherwise.

(b) It shall be the duty of every trustee of, or person connected with, such medical centre to comply with the directions issued under sub-section (1) and to afford all reasonable facilities and assistance required by the said officer or the Charity Commissioner or his representative for verification of the implementation of such directions under clause (a) and to comply with the requirements thereunder.

(c) In case there arises any dispute relating to the interpretation, implementation or any matter whatsoever in respect of any direction issued under sub-section (1), it shall be referred to the State Government, through the Charity Commissioner, for appropriate directions.

(3) Nothing in sub-sections (1) and (2) shall prejudicially affect any medical facilities of whatever nature which any such State-aided public trust has provided by virtue of any condition subject to which any grant, exemption, concession, etc. referred to in clause (a) of sub-section (4) has been granted or received by it or otherwise and such medical facilities which are in operation on the date of commencement of the Bombay Public Trusts (Amendment) Act, 1984, (Mah. VIII of 1985), shall continue as before if they exceed the percentage of reserved and earmarked category.

(4) For the purposes of this section,-

(a) “State-aided public trust” means a public trust exclusively for medical relief or for medical relief and other charitable purposes, which maintains a hospital (including any nursing home or maternity home), dispensary or any other centre for medical relief, and which-

(i) has received any grant of land or building, either on ownership basis or on lease or leave and licence, at a nominal or concessional rate from the State Government or the Central Government or any local authority; or

(ii) has been given by the State Government any exemption or permission to continue to hold any vacant land under section 20 or 21 of the Urban Land (Ceiling and Regulation) Act, 1976 (XXXIII of 1976); or

(iii) has been given any concession or exemption or relaxation of a substantial nature from the Development Control Rules by any competent authority for the purposes of the trust; or

(iv) has received any loan or guarantee or any non-recurring grant-in-aid or other financial assistance or is receiving any recurring grant-in-aid or other financial assistance from the State Government, the Central Government or any local authority,

(b) “indigent person” means a person whose total annual income does not exceed three thousand and six hundred rupees or such other limit as the State Government may, from time to time, by notification in the Official Gazette, specify;

(c) “person belonging to the weaker sections of the people” means a person who is not an indigent person, but whose income does not exceed fifteen thousand rupees per annum or such other limit as the State Government may, from time to time, by notification in the Official Gazette, specify;

(d) it shall be the duty of the governing body (by whatsoever name called) of every medical centre to get the category of a patient duly verified and recorded in a register kept for the purpose in the prescribed form before he is admitted or treated as a patient within the reserved and earmarked percentage under sub-section (1). If there is any dispute as to the category of a patient, it shall be referred to the State Government, through the Charity Commissioner, for appropriate direction.

(5) Notwithstanding anything contained in the foregoing provisions of this section, any person, who desires to undergo an operation for sterilization or an intraocular operation or who desires to undergo any operation or medical treatment specified by the State Government in this behalf shall not be entitled and shall not be allowed to seek admission in any hospital or other medical centre in the reserved or earmarked quota provided under this section.

41-B. Power to institute inquiries

(1) On receipt of a complaint in writing from any person having interest in respect of any public trust or suo motu the Charity Commissioner or Deputy or Assistant Charity Commissioner may institute an inquiry with regard to charities, or a particular charity or class of charities either generally, or for particular purposes.

(2) The officers aforesaid may either hold the inquiry themselves, or entrust such inquiry to the officer authorized under sub-section (1) of Sec. 37.

(3) For the purpose of any such inquiry, the officer holding the inquiry may by notice, require any person to attend at a specified time and place and give evidence or produce documents in his custody or control which relate to any matter in question at the inquiry.

(4) For the purpose of any such inquiry evidence may be taken on oath and the person holding the inquiry may for that purpose administer an oath under the Indian Oaths Act, 1873, or may instead of administering an oath on solemn affirmation require the person to make and subscribe a declaration of the truth of the matters about which he is examined.

(5) The necessary expenses of any person of his attendance to give evidence or produce documents for the purpose of the inquiry shall be paid in the manner prescribed.

(6) After the completion of the inquiry, the person holding the inquiry (not being the Charity Commissioner) shall submit his report to the officer who entrusted such inquiry to him.

(7) The Deputy or Assistant Charity Commissioner of the region concerned shall submit his own report or report received by him under this section to the Charity Commissioner or he may proceed under Section 38, if necessary, or send a copy of the report to the Charity Commissioner with his remarks thereon. The Charity Commissioner may, if he is satisfied that there is a prima facie case against the trustees, take such steps as are necessary under the provisions of this Act.

(8) The Charity Commissioner may himself also call for the proceedings of any inquiry made under this section for such action as he may think fit.

41-C. Persons (other than public trusts) collecting moneys, etc., for religious or charitable purpose to inform Charity Commissioner of such collections forthwith, etc.

(1) Any person (not being a public trust registered under this Act) collecting any money, subscription, donation or other property for religious or charitable purpose shall forthwith inform the Charity Commissioner in writing of such collection and the purpose for which such collection is made.

(2) On receipt of such information, the Charity Commissioner may, on making such inquiry as he deems fit, permit such collection to be continued subject to such conditions as he deems fit, or may, after recording his reasons in writing in that behalf, direct such person to stop making such collection forthwith, and require such person to render an account of the collections made by him.

(3) It shall be the duty of every such person to comply with the directions or any order made by the Charity Commissioner under sub-section (2).

41-D. Suspension, removal and dismissal of trustee

(1) The Charity Commissioner may either on application of a trustee or any person interested in the trust or on receipt of a report under Section 41-B or suo motu suspend, remove or dismiss any trustee of a public trust, if he-

(a) makes persistent default in the submission of accounts, report or return;

(b) wilfully disobeys any lawful orders issued by the Charity Commissioner under the provisions of this Act or rules made thereunder by the State Government;

(c) continuously neglects his duty or commits any malfeasance or misfeasance, or breach of trust in respect of the trust;

(d) misappropriates or deals improperly with the properties of the trust of which he is a trustee;

(e) accepts any position in relation to the trust which is inconsistent with his position as a trustee; or

(f) is convicted of an offence involving moral turpitude.

(2) When the Charity Commissioner proposes to take action under sub-section (1), he shall frame charges against the trustee or the person against whom action is proposed to be taken and give him an opportunity of meeting such charges of testing the evidence adduced against him, and of adducing evidence in his favour. The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge, with the reasons therefore.

(3) Pending disposal of the charges framed against a trustee, the Charity Commissioner may place the trustee under suspension.

(4) Where the Charity Commissioner has made an order suspending, removing or dismissing any trustee and such trustee is the sole trustee, or where there are more than one trustee and the remaining trustees, according to the instrument of trust, cannot function or administer the trust without the vacancy being filled, then in that case the Charity Commissioner shall appoint a fit person to discharge the duties and perform the functions of the trust, and such person shall hold the office only until a trustee is duly appointed according to the provisions of the instrument of trust.

(5) A trustee, aggrieved by an order made under sub-section (1), may, within ninety days from the date of communication of the order of suspension, removal or dismissal, apply to the Court against such order.

(6) An appeal shall lie to the High Court against the decision of the Court under sub-section (5) as if such decision was a decree from which an appeal ordinarily lies.

(7) The order of the Charity Commissioner shall, subject to any order of the Court or in appeal, be final.

41-E. Power to Act for Protection of Charities

(1) Where it is brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by at least two persons having interest supported by affidavit,-

(a) that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person, or

(b) that the trustee or such person threatens, or intends to remove or dispose of that property,

the Charity Commissioner may by order grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property, on such terms as to the duration of injunction, keeping an account, giving security, production of the property, or otherwise as he thinks fit.

(2) The Charity Commissioner shall in all such cases, except where it appears that the object of granting injunction would be defeated by delay, be-

fore granting an injunction, give notice of the facts brought to his notice to the person concerned.

(3) After hearing the trustee or person concerned and holding such inquiry as he thinks fit, the Charity Commissioner may confirm, discharge or vary or set aside the order of injunction or pass any other appropriate order.

(4) In case of disobedience or breach of any injunction, any of its terms or any order passed under this section, the Charity Commissioner may apply to the Court, which may, after hearing the Charity Commissioner and the party affected, order the property of such person, guilty of such disobedience or breach, to be attached, and may also order such person to be detained a jail for a term not exceeding six months. No attachment under this sub-section shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds, the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the person entitled thereto, and thereupon, the temporary injunction granted, or any order passed, by the Charity Commissioner, under this section, if in force shall stand vacated, or as the case may be, cancelled.

(5) A trustee or a person against whom the order of injunction or any other order under this section is passed may, within ninety days of the date of communication of such order, appeal to the Court against such order.

(6) The order of the Court attaching the property of such person or detaining such person in civil prison shall be a decree appealable to the High Court.

(7) The order of the Charity Commissioner shall, subject to any order of the Court or in appeal, be final.

Chapter VII: Other Functions and Powers of Charity Commissioner

42. Charity Commissioner to be a corporation sole

Each Charity Commissioner shall be a corporation sole and shall have perpetual succession and a common seal and may sue and be sued in his corporate name.

43. Charity Commissioner to cease to be Treasurer of Charitable Endowments under Act VI of 1890

(1) On the commencement of the Bombay Public Trusts (Amendment) Act, 1975, the Charity Commissioner, Maharashtra, shall cease to be the Treasurer of Charitable Endowments for that part of the State of Maharashtra to which the principal Act extends and the property vesting in the Charity Commissioner as the Treasurer of Charitable Endowments by or under any law for the time being in force shall cease to vest in the Charity Commis-

sioner and shall vest in the Treasurer of Charitable Endowments appointed under the Charitable Endowments Act, 1890.

(2) Notwithstanding anything contained in the Charitable Endowments Act, 1890, the Charity Commissioner shall have the following powers-

(a) power to modify or substitute the scheme for the administration of any charitable endowment framed under the Charitable Endowments Act, 1890, after hearing the State Government and the administrator under Section 50A;

(b) power to exercise powers under Section 37; and

(c) power to change the administrator after hearing and in consultation with the State Government if the endowment is not being properly administered.

44 to 46. x x x x x

47. Power of Charity Commissioner to appoint, suspend, remove or discharge trustees and to vest property in new trustees

(1) Any person interested in a public trust may apply, to the Charity Commissioner for the appointment of a new trustee, where there is no trustee for such trust or the trust cannot be administered until the vacancy is filled, or for the suspension, removal or discharge of a trustee, when a trustee of such trust,-

(a) disclaims or dies;

(b) is for a continuous period of six months absent from India without the leave of the Charity Commissioner or the Deputy or Assistant Charity Commissioner or the Officer authorized by the State Government in this behalf;

(c) leaves India for the purpose of residing abroad;

(d) is declared an insolvent;

(e) desires to be discharged from the trust;

(f) refuses to act as a trustee;

(g) becomes in the opinion of the Charity Commissioner unfit or physically incapable to act in the trust or accepts a position which is inconsistent with his position as trustee;

(h) in any of the cases mentioned in Chapter III, is not available to administer the trust;

(i) is convicted of an offence punishable under this Act or an offence involving moral turpitude

(2) The Charity Commissioner may, after hearing the parties and making such enquiry as he may deem fit, by order appoint any person as a trustee

or may also remove or discharge any trustee for any of the reasons specified in sub-section (1).

(3) In appointing a trustee under sub-section (2), the Charity Commissioner shall have regard-

(a) to the wishes of the author of that trust;

(b) to the wishes of the person, if any, empowered to appoint a new trustee;

(c) to the question whether appointment will promote or impede the execution of the trust;

(d) to the interest of the public or the section of the public who have interest in the trust; and

(e) to the custom and usage of the trust.

(4) It shall be lawful for the Charity Commissioner upon making any order appointing a new trustee under sub-section (2) either by the same or by any subsequent order to direct that any property subject to the trust shall vest in the person so appointed and thereupon it shall so vest.

(5) The order of the Charity Commissioner under sub-section (2) shall be deemed to be the decree of the Court and an appeal shall lie therefrom to the High Court.

47-A, 47-AA, 47-B, 48-49. x x x x x

50. Suit by or against or relating to public trusts or trustees or others

In any case,

(i) where it is alleged that there is a breach of a public trust, negligence, misapplication or misconduct on the part of a trustee or trustees;

(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property or proceeds from a trustee, extrustee, alienee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee;

(iii) where the direction of the court is deemed necessary for the administration of any public treat; or

(iv) for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof,

the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under sub-clauses (i) to (iii), or one or more such persons in case the suit is under sub-clause (iv) having obtained the consent in writing of the Charity Commissioner as provided in Section 51 may institute a suit whether contentious or not in the Court within the local limits of whose jurisdiction the

whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs:

(a) an order for the recovery of the possession of such property or proceeds thereof;

(b) the removal of any trustee or manager;

(c) the appointment of a new trustee or manager;

(d) vesting any property in a trustee;

(e) a direction for taking accounts and making certain enquiries;

(f) an order directing the trustees or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or wilful default;

(g) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(h) a direction to apply the trust property or its income cypres on the line of Section 56 if this relief is claimed along with any other relief mentioned in this section;

(i) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged or in any manner alienated on such terms and conditions as the court may deem necessary,

(j) the settlement of a scheme, or variations or alterations in a scheme already settled;

(k) an order for amalgamation of two or more trusts by framing a common scheme for the same;

(1) an order for winding-up of any trust and applying the funds for other charitable purposes;

(m) an order for handing over of one trust to the trustees of some other trust and deregistering such trust;

(n) an order exonerating the trustees from technical breaches, etc.;

(o) an order varying, altering, amending or superseding any instrument of trust;

(p) declaring or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases; or

(q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid reliefs or is necessary in the interest of the trust:

Provided that, no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust, except in conformity with the provisions thereof:

Provided further that, the Charity Commissioner may instead of instituting a suit make an application to the Court for a variation or alteration in a scheme already settled:

Provided also that, the provisions of this section and other consequential provisions shall apply to all public trusts, whether registered or not or exempted from the provisions of this Act under sub-section (4) of section 1.

50-A. Power of Charity Commissioner to frame, amalgamate or modify schemes

(1) Notwithstanding anything contained in Section 50, where the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, to the interest of the proper management or administration of a public trust, a scheme should be settled for it, the Charity Commissioner may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such trust.

(2) Where the Charity Commissioner is of opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may, after-

(a) publishing a notice in the Official Gazette and also if necessary in any newspaper which in the opinion of the Charity Commission is best calculated to bring to the notice of persons likely to be interested in the trust with a wide circulation in the region in which the trust is registered, and

(b) giving the trustees of such trusts and all other interested persons due opportunity to be heard frame a common scheme for the same.

(3) The Charity Commissioner may at any time, after hearing the trustees, modify the scheme framed by him under sub-section (1) or sub-section (2).

(4) The scheme framed under sub-section (1) or sub-section (2) or modified under sub-section (3) shall, subject to the decision of the competent Court under Section 72, have effect as a scheme settled or altered, as the case may be, under a decree of a Court under Section 50.

51. Consent of Charity Commissioner for institution of suit

(1) If the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. If the Charity Commissioner after hearing

the parties and making such enquiries (if any) as he thinks fit is satisfied that there is a prima facie, he may, within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reason for the refusal.

(2) If the Charity Commissioner refuses his consent to the institution of the suit under sub-section (1) the persons applying for such consent may file an appeal to the Maharashtra Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1957, in the manner provided by this Act.

(3) In every suit filed by persons having interest in any trust under section 50, the Charity Commissioner shall be a necessary party.

(4) Subject to the decision of the Maharashtra Revenue Tribunal in appeal under section 71, the decision of the Charity Commissioner under sub-section (1) shall be final and conclusive.

52. Non-application of Sections 92 and 93 of the Civil Procedure Code to public trusts

(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the provisions of Sections 92 and 93 of the said Code shall not apply to the public trusts.

(2) If on the date of the application of the Act to any public trust any legal proceedings in respect of such trust are pending before any Civil Court of competent jurisdiction to which the Advocate-General or the Collector exercising the powers of the Advocate-General is a party, the Charity Commissioner shall be deemed to be substituted in those proceedings for the Advocate-General or the Collector, as the case may be, and such proceedings shall be disposed of by such Court.

(3) Any reference to the Advocate-General made in any instrument scheme, order of decree of any Civil Court of competent jurisdiction made or passed, whether before or after the said date, shall be construed as a reference to the Charity Commissioner.

52-A. Suit against assignee for valuable consideration not barred by time

Notwithstanding anything contained in the Indian Limitation Act, 1908, no suit against an assignee for valuable consideration of any immovable property of the public trust which has been registered or is deemed to have been registered under this Act for the purpose of following in his hands, such property or the proceeds thereof, or for an account of such property or proceeds shall be barred by any length of time.

53. Bequest under Will for benefit of Public Trust

(1) Where under any Will a bequest has been made in favour of a public trust or where such bequest itself creates a public trust, it shall be the duty

of executor under the Will to forward a copy thereof to the Deputy or Assistant Charity Commissioner for the region or sub-region where such trust may have been, or is required to be registered.

(2) No probate of any such Will or letters of administration with such Will annexed shall be granted by any Court whatsoever unless it is satisfied that a copy of such Will has been forwarded to the Deputy or Assistant Charity Commissioner as provided by sub-section (1).

54. Dharmada

(1) Where according to the custom or usage of any business or trade or, the agreement between the parties relating to any transaction any amount is charged to any party to the said transaction or collected under whatever name, as being intended to be used for a charitable or religious purpose the amount so charged or collected (in this Act called 'dharmada') shall vest in the person charging or collecting the same as a trustee.

(2) Any person charging or collecting sums shall within three months from the expiration of the year for which his accounts are ordinarily kept submit an account in such form as may be prescribed to the Deputy of Assistant Charity Commissioner.

(3) The Deputy or Assistant Charity Commissioner shall have power to make such inquiry as he thinks fit to verify the correctness of the account submitted and may pass order for the disposal of the amount in the manner prescribed.

(4) The provisions of Chapter IV shall not apply to Dharmada.

55. Cypres

(1) If upon an application made to him or otherwise the Charity Commissioner is of opinion that-

(a) the original object for which the public trust was created has failed;

(b) the income or any surplus balance of any public trust has not been utilized or is not likely to be utilized;

(c) in the case of a public trust other than a trust for a religious purpose, it is not in public interest expedient, practicable, desirable, necessary or proper to carry out wholly or partially the original intention of the author of the public trust or the object for which the income of the public trust or any portion thereof should be applied to any other charitable or religious object, or

(d) in any of the cases mentioned in Sections 10 to 13 or in regard to the appropriation of the Dharmada sums held in trust under Section 54 the directions of the Court are necessary.

The Charity Commissioner shall require the trustees to apply within the prescribed time for directions to the Court within the local limits of whose

jurisdiction the whole or part of the subject matter of the trust is situate, and the trustees shall comply with such requisition.

(2) If the trustees fail to make the application as required under sub-section (1) or if the Charity Commissioner himself is a trustee or if there is no trustee of the public trust, the Charity Commissioner shall make an application to the Court.

56. Court's power to hear application

(1) On such application being made, the Court after hearing the parties and the Charity Commissioner and making an inquiry shall decide the matter and shall give directions. In giving the directions, the Court shall, so far as may be expedient, practicable, desirable necessary or proper in public interest give effect to the original intention of the author of the public trust or the object for which the public trust was created. If the Court is of opinion that the carrying out of such intention or object is not wholly or partially expedient, practicable, desirable, necessary or proper in public interest, the Court may direct the property or income of the public trust or any portion to be applied Cypres to any other charitable or religious object. In doing so, it shall be lawful for the Court to alter any scheme already settled or to vary the terms of any decree or order already passed in respect of the public trust or the conditions contained in the instrument of the public trust.

(2) Any decision or order passed by court under sub-section (1) shall be deemed to be a decree of such Court and an appeal shall lie therefrom to the High Court.

56-A. Powers of trustee to apply for directions

(1) Save as hereinbefore provided in this Act, any trustee of a public trust may apply to the Court, within the local limits of whose jurisdiction the whole or part of the subject-matter of trust is situate, for the opinion, advice or direction of the Court on any question, affecting the management or administration of the trust property or income thereof, and the Court shall give its opinion, advice or direction, as the case may be, thereon:

Provided that the Court shall not be bound to give such opinion, advice or, direction on any question which it considers to be a question, not proper for summary disposal.

(2) The Court, on an application under sub-section (1), may give its opinion, advice or direction thereon after giving notice to the Charity Commissioner. The Court before giving any opinion, advice or direction shall afford a reasonable opportunity of being heard to all persons appearing in connection with the application.

(3) A trustee stating in good faith the facts of any matter relating to the trust in an application under sub-section (1), and acting upon the opinion, advice or direction of the Court given thereon, shall be deemed, as far as his own

responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the application was made.

(4) No appeal shall lie against any opinion, advice or direction given under this section.

56-B. Proceedings involving question, affecting public charitable or religious purpose

(1) In any suit or legal proceedings in which any question affecting a public religious or charitable purpose is involved, the Court shall not proceed to determine such question until after notice has been given to the Charity Commissioner.

(2) If upon the receipt of such notice or otherwise the Charity Commissioner makes any application in that behalf he shall be added as a party at any stage of such suit or proceedings.

(3) In this section "Court" shall mean any Civil Court of competent jurisdiction in the State of Maharashtra.

Chapter VII-A: Special Provision as Respects Religious and Charitable Institutions and Endowments Which Vests in or the Management of Which Vests in the State Government

56-C. Provisions of Chapter VII-A to apply to certain endowments

(1) The provisions of this Chapter shall apply to every temple, mosque or endowment created for a public religious or charitable purpose (hereinafter in this Chapter referred to as "the endowment"), which vests in, or the Management of which vests in the State Government and which-

(a) has been registered under the provisions of this Act as, or

(b) is declared by the State Government by notification in the Official Gazette, after such inquiry as it thinks fit, and after previous publication, to be a public trust.

On such declaration such endowment shall be deemed to be a registered public trust for the purposes of this Act and the provisions of Chapter IV relating to the registration of public trusts, shall as far as may be, apply to the making of entries in the register kept under Section 17, provided that such entries shall also conform to the provisions of this Chapter. The entries so made shall be final and conclusive.

(2) The State Government shall, as soon as may be after the commencement of this Chapter, publish in the Official Gazette a list of such endowments as are registered as, or declared to be, public trusts; and the State Government may, by like notification and in like manner add to or delete from such list any endowment entered therein.

56-D. Vesting, or transfer of management of certain endowments

The State Government shall, from such date as it determines, and in the manner hereinafter provided, transfer the endowment, or the management thereof to a committee (hereinafter referred to as "committee") and thereupon such endowment together with all the immovable or movable property appertaining thereto, or as the case may be, management thereof, shall vest in the members of such committee, and the members of the committee shall be the trustees of such endowment within the meaning and for the purposes of this Act.

56-E. Committees of management

(1) Notwithstanding anything contained in Sections 47 and 50 for the purpose of vesting or transferring the management of the endowment under the provisions of this Chapter, to a committee, the State Government shall, by notification in the Official Gazette, appoint (under such name as may be specified in the notification) one or more committees for one or more districts as the State Government may think fit.

(2) The committee shall have power to acquire, hold and dispose of property, subject to such conditions and restrictions as may be prescribed, and may sue and be sued in the names of all the members of the committee.

(3) A committee shall consist of not less than five and not more than seven members and the members in the case of a religious endowment shall, and in any other case may, be appointed from amongst persons professing the religion or belonging to the religious denomination (or any section thereof), for the purposes of which or for the benefit of whom the endowment was found, or is being administered. The members shall be appointed, as far as possible, and in accordance so far as can be ascertained with the general wishes of those who are interested in the administration, of such endowment.

56-F. Term of office of members of committee

(1) A member shall be appointed to a committee for a period of five years, but shall be eligible for re-appointment.

(2) A member may, by writing under his hand addressed to the State Government, resign his membership of a committee:

Provided that, such resignation shall not take effect until the resignation has been accepted by the State Government.

56-G. Disqualification of membership

(1) A person shall be disqualified for appointment as, or for being, a member of a committee if he-

(a) is a minor;

(b) has been convicted by a Criminal Court of any offence involving moral turpitude;

(c) is of unsound mind and is so declared by a Competent Court;

(d) is an undischarged insolvent;

(e) has already or indirectly interest in a lease or any other transaction relating to the property vesting in the committee;

(f) is a paid servant of the committee or has any share of interest in a contract for the supply of goods to, or for the execution of any works, or the performance of any service, undertaken by the committee in respect of the endowment;

(g) is found to be guilty of misconduct by the State Government;

(h) in the case of a religious endowment ceases to profess the religion or to belong to the religious denomination for which the committee is appointed; or

(i) is otherwise unfit.

(2) If it appears to the State Government that a member has incurred any of the disqualifications aforesaid, the State Government may, after giving such member an opportunity of showing cause, and after considering any such cause shown, remove such person from membership, and the decision of the State Government shall be final.

(3) Notwithstanding anything contained in any other law for the time being in force, a member of the Committee shall not be disqualified from being chosen as, and for being a, member of, the Maharashtra Legislative Assembly or the Maharashtra Legislative Council or any local authority by reason only of the fact that he is a member of such committee.

56-H. Power of Government to Appoint New Member

The State Government may appoint a new member when a member of a committee (a) resigns or dies; (b) is for a continuous period of six months absent from India without leave of the Charity Commissioner; (c) leaves India for the purpose of residing abroad; (d) desires to be discharged; (e) refuses to act; or (f) is removed by the State Government.

56-I. Chairman and treasurer of committee

(1) The State Government shall from amongst the members of a committee appoint a chairman and shall also appoint a treasurer.

(2) The State Government may direct that the chairman, treasurer and other members of the committee may be paid such honorarium or fees and allowances from the Management Fund constituted under Section 56-QQ and in such manner as may be prescribed.

56-J. Meeting of and procedures for committee

The committee shall meet at such intervals and follow such procedure in exercising its powers and discharging its duties and functions as may be prescribed; but the day-to-day proceedings and routine business shall be despatched in accordance with regulations made by it, and approved by the State Government.

56-K. Power of committee to appoint sub-committees

A committee may by resolution appoint such sub-committees as it may think fit, and may delegate to them such powers and duties as it specifies in the resolution; and a committee or sub-committee may associate with itself, generally or for any particular purpose, in such manner as may be determined by regulations, any person who is not a member, but whose assistance or advice it may desire; and the person associated as aforesaid shall have the right to take part in the discussions of the committee or sub-committee, relevant to that purpose, but shall not have the right to vote at any meeting thereof.

56-L. Secretary and other officers of committee

(1) The State Government may appoint a Secretary to the committee.

(2) The committee may appoint such officers (other than the Secretary) and servants as it thinks necessary for the efficient performance of the duties and functions of the committee under this Act:

Provided that, no officer or servant who is paid or is to be paid a salary of over one hundred rupees per mensum shall be appointed by a committee without the previous approval of the State Government.

56-M. Terms and conditions of service of Secretary and other servants

(1) The Secretary, officers and servants shall be appointed on such terms and conditions as to service as may be prescribed by rules, or as the case may be, by regulations made by the Committee.

(2) The salary and allowance of the Secretary, officers and servants of a committee shall be paid out of the Management Fund.

56-N. General duties of committee

(1) Subject to the general and special orders of the State Government, it shall be the general duty of a committee to manage and administer the affairs of the endowment which vests in, or the management of which vests in it. It shall be the duty of a committee to so exercise the powers conferred and discharge the duties and functions imposed upon it, by or under the Act or under any instrument of trust, or a scheme, for the time being in force relating to such endowment as to ensure that such endowment is properly maintained, controlled and administered and the income or thereof is duly

applied to the object and purposes for which it was created, intended or to be administered.

(2) In particular, but without prejudice to the generality of the foregoing provision, a committee shall-

(a) maintain a record containing information, relating to the origin, income, object and the beneficiaries, of every such endowment;

(b) prepare a budget estimating its income and expenditure;

(c) make regular payment of salaries and allowances and other sums payable to the Secretary, officers and servants of a committee (in Gujarat read) from such fund as may be prescribed. (In Maharashtra read) from the Management fund.

(d) keep separate accounts for each such endowment;

(e) ensure that the income and property of the endowment are applied to the objects and for the purposes for which such endowment was created, intended or is to be administered;

(f) take measures for the recovery of lost properties of any such endowment;

(g) institute and defend any suits and proceedings in Court of Law relating to such endowment;

(h) supply such returns, statistics, accounts and other information with respects of such endowment as the State Government may from time to time require;

(i) inspect, or cause the inspection of the properties of such endowments; and

(j) generally do all such acts as may be necessary for the proper control, maintenance and administration of such endowment.

56-0. Act of committee not invalid by reason of vacancy or defect

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

56-P. Power of State Government to issue directions

The State Government may, from time to time, for the better management or administration of any endowment, issue directions to a committee.

56-Q. Power of Charity Commissioner to require duties of committee to be performed and to direct expenses in respect thereof to be paid from fund of committee etc.

The Charity Commissioner may, with the previous sanction of the State Government, provide for the performance of any duty which a committee is bound to perform under the provisions of this Act or the rules or directions made or given thereunder, and may direct that the expenses of the performance of such duty be paid by any person who may have from time to time the custody of any fund belonging to the committee. If such duty is in connection with any endowment, the payment shall be made out of the funds belonging to the said endowment.

56-QQ. Management Fund

(1) For each committee there shall be constituted a fund to be called the "Management Fund" which shall vest in and be under the control of the committee.

(2) There shall be placed to the credit of every Management Fund-

(a) save as otherwise provided in sub-section (3) in respect of Kolhapur, the total balances (whether in cash, securities or in any other form) standing to the credit of any endowment held by the State Government, immediately before such endowment or the management thereof is transferred to and vested in the members of the committee under Section 56 D;

(b) a sum not exceeding ten per cent of the gross annual income of each endowment transferred to, or under the management of, the members of the committee as the committee may, with the approval of the State Government, fix in this behalf. In fixing such sum regard shall be had to the gross annual income of the endowment, the annual expenditure incurred to give effect to the objects and purposes for which or for the benefit of whom the endowment is founded, created, intended, or is being administered, the liability, if any, to which the endowment is subject, and any other factors which the State Government may either generally or specially specify in the case of any endowment or class of endowments.

(c) the fees charged for inspection of proceedings of the committee, and for copies of records maintained by the committee;

(d) any other sum which the State Government may by order specify in this behalf.

(3) The contributions levied known us "Devasthan cess" or by whatever name called on Devasthan inam lands in the former State of Kolhapur and dated 29th September, 1917 and continued to be levied and collected in that Fund as aforesaid under the provisions of Sar Subha Jahirnama No. 36, dated the 5th November, 1932 shall, on the commencement of the Bombay Public Trusts (Amendment) Act, 1963, cease to be levied and collected on the Devasthan inam lands aforesaid; and the total balance

(whether in cash, securities or in any other form) to the credit of the said Devasthan Fund at such commencement including the sum accumulated out of the endowments in the former State of Kolhapur (such accumulated sum being commonly known as the Amanat Fund) shall be placed to the credit of the Management Fund of such committee or committees in the district of Kolhapur as may be specified by the State Government in this behalf.

(4) The Management Fund shall, subject to the provisions of this Act and, subject to any general or special order of the State Government, be applied to-

(i) the payment of honorarium, fees and allowance of the Chairman, Treasurer and other members of the Committee;

(ii) the payment of salaries, allowances, and other sums payable to the Secretary, officers and servants of the Committee;

(iii) the payment of any expenses lawfully incurred by the Committee in the exercise of its powers and in the performance of its duties and functions as provided by Section 56N.

(5) The custody and investment of the moneys credited to the Management Fund and the disbursement and payment therefrom and the audit of accounts of the Fund shall be regulated in the prescribed manner.

56-R. Power to supersede a committee

(1) If the State Government is of opinion that a committee is unable to perform or has persistently made default in the performance of the duties imposed upon 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 committee 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 opportunity to the committee to show cause why it should not be superseded and consider the explanations and objections, if any, of the committee.

(2) Upon the publication of a notification under sub-section (1) superseding a committee-

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

(b) all the powers, duties and functions which may by or under the provisions of this Act, be exercised or performed by or on behalf of the committee, shall during the period of supersession, be exercised and performed by such person or persons as the State Government having regard to the provisions of sub-section (1) of Section 56G may direct; and

(c) all property vested in, or the management of which is vested in the committee shall during the period of supersession vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-sec. (1), the State Government may (a) extend the period of supersession for such further period as it may consider necessary, or (b) reconstitute the committee in the manner provided in Sec. 56-E.

56-RR. Power of removal of members of committee and appointment of Administrator temporarily

(1) Notwithstanding anything contained in this Chapter or any other provisions of this Act or in any judgment, decree, order of scheme of any Court, Charity Commissioner or any other authority, where a committee of management has been appointed by the State government under Section 56 E in respect of any endowment or endowments, and the State Government is of opinion that for better management and administration of the endowments, the management of the said endowments should be taken over temporarily by the State Government and then should be governed by a scheme or schemes framed by the Charity Commissioner or should be handed over again to the committee as reconstituted, the State Government may, by notification in the Official Gazette-

(a) terminate the appointment of all the existing members of the committee (including the Chairman and Treasurer), even before the expiry of their term of office of five years, on and from such date as may be specified in the notification, whereupon they shall be deemed to have vacated their office on that date;

(b) appoint a Government officer, from time to time, as the Administrator of the committee, for such period not exceeding three years as may be specified in the notification, which may be extended by like notification, from time to time, so however, that the total period shall not exceed five years:

Provided that, if during the said period, the committee is reconstituted, the Administrator shall cease to hold his office from the day the committee is reconstituted or as and when any scheme is framed by the Charity Commissioner in respect of any endowment, the Administrator shall cease to function in respect of that endowment from the day the scheme comes into operation.

(2) During the period the Administrator is holding his office, all the powers, duties and functions of the committee and its members and subcommittees (if any), under this Act or any other law for the time being in force, shall be exercised, performed and discharged by the Administrator and he shall be deemed to be the sole trustee in respect of the endowments under his management under Section 56D.

(3) The Administrator may delegate any of his powers, duties and functions to any office or servant of the committee or, with the previous approval of the State Government, to any other Government officer.

(4) The Administrator and any other Government officer to whom he may have delegated any of his powers, duties and functions, shall receive such salary and allowances from the Management Fund and be subject to such other conditions of service as the State Government may, by general or special order, determine.

56-S. Power to make regulations

(1) The committee may, with the approval of the State Government, make regulations not inconsistent with this Act or the Rules made thereunder for carrying out its functions under this Act.

(2) In particular, but without prejudice to the generality of the foregoing provisions, such regulations may provide for all or any of the following matters, namely-

(i) despatch of day-to-day proceedings and routine business of the committee under Section 56J;

(ii) the manner in which any person who is not a member of a committee or sub-committee may be associated with such committee or sub-committee, as the case may be under Section 56K; and

(iii) terms and conditions of service of the servants of a committee under Section 56M.

56-T. Non-application of certain provisions of this Act to endowments

Except so far as is expressly provided in the provisions of this Chapter, nothing in Sections 18, 19, 20, 21, 47, 50, 59, 66 and 67 shall apply to the endowment to which this Chapter applies:

Provided that, the provisions of this Chapter shall cease to apply to any such endowment in respect of which a scheme has been framed under Section 50A, and upon framing such scheme the other provisions of this Act except Sections 18, 19, 20, 21 shall apply to such endowment.

Chapter VIII: Public Trusts Administration Fund

57. Public Trusts Administration Fund

(1) There shall be established a fund to be called the Public Trusts Administration Fund. The Fund shall vest in the Charity Commissioner.

(2) The following sums shall be credited to the said Fund, namely:

(a) fees leviable under Section 18;

(b) contributions made under Section 58;

(c) the amount from the funds or the portion thereof credited under Section 61;

(d) any sum received from a private person;

(e) any sum allotted by the State Government or any local authority; and

(f) any other sum which may be directed to be credited by or under the provisions of this Act or the Inter-State Corporations Act, 1957, or the Bombay Statutory Corporations (Regional Reorganisation) Act, 1960.

58. Contribution by public trusts to Public Trusts Administration Fund

(1) Subject to the provisions of this section, every public trust shall pay to the Public Trusts Administration Fund annually such contribution at a rate or rates not exceeding five per cent of the gross annual income or of the gross annual collection or receipt, as the case may be, as may be notified from time to time by the State Government, by order published in the Official Gazette.

The contribution shall be paid on such date and in such manner as may be prescribed.

The contribution payable under this section shall-

(i) in the case of a dharmada, be fixed at a rate or rates on the gross annual collection, or receipts of the dharmada;

(ii) in the case of other public trusts, be fixed at a rate or rates on the gross annual income of such public trust.

Explanation 1: For the purposes of this sub-section 'gross annual collection or receipt' or 'gross annual income' does not include any donations received by any dharmada or public trust from another dharmada or public trust registered under this Act.

Explanation 2: (a) For the purpose of this sub-section 'gross annual income' means gross income from all sources in a year (including all donations and offerings), but does not include any payment made or anything given with a specific direction that it shall form part of the corpus of the public trust, or include any deductions which the State Government may allow by rules:

Provided that, the interest or income accruing from such payment made or thing given in the years, following that in which they were given or made, shall be taken into account in calculating the gross annual income:

(b) where a public trust conducts a business or trade as one of its activities, for the purpose of assessing the contribution as respects that activity, the net annual profits of such business or trade shall be treated as the gross annual income of the business or trade.

(2) The State Governments may exempt from payment of contribution public trusts which are exclusively for the purpose of the advancement and (propagation of education or exclusively for the purpose of water conservation or exclusively for the purpose of development of forests horticulture or agriculture or exclusively for the purpose of welfare of the Schedule Castes, Tribes, Denotified Tribes, Nomadic Tribes or women) or exclusively for the purpose of medical relief or veterinary treatment of animals, or exclusively for the purpose of relief of distress caused by scarcity, drought, flood, fire or other natural calamity; and may also exempt from the payment of contribution any donations forming part of the gross annual income and which are actually spent on the relief of distress caused by scarcity, drought, flood, fire or other natural calamity. If any question is raised whether a trust falls in any exempted class of trusts or whether any donations are donations which qualify for exemption from contribution under this sub-section, the decision of the State Government on the question, obtained in the manner prescribed, shall be final.

(3) The State Government may, by order published in the Official Gazette, reduce, whether prospectively or retrospectively, the rate or rates which the contribution fixed under sub-section (1) is payable by any class of public trusts and may in like manner remit the whole of such contribution or any part thereof, regard being had to the nature of the objects of the class of public trusts or the smallness of the income thereof.

(4) In determining the rate or rates of contribution to be notified under sub-section (1), the State Government shall take into consideration the balance available in the Public Trusts Administration Fund and the estimated income and expenditure (including capital expenditure) of the Charity Organisation and ensure that the levy has reasonable correlation with the services rendered or to be rendered or any expenditure incurred or to be incurred for carrying out the purposes of this Act. For this purpose, the rates of contribution may be increased or decreased or reductions or remissions may be granted, from time to time, prospectively or retrospectively, by the State Government, by any order or orders made provided in this section and published in the Official Gazette.

(5) Notwithstanding anything contained in the foregoing provisions in this section, on and after the commencement of the Bombay Public Trusts (Amendment) Act, 1983 (Mah. Ord. X of 1983) every trustee of a public trust liable to pay contribution, shall, while filing a copy of the Balance Sheet and Income and Expenditure Account under sub-section (1A) of section 34, pay in advance the whole amount of the annual contribution of the public trust computed at the rate fixed under sub-section (1) of this section according to specified percentage of the gross annual income or of the gross annual collection or receipt, as the case may be, as shown in the Balance Sheet and Income and Expenditure Account, in such manner, and subject to such adjustments to be made after the contribution payable is assessed, as may be prescribed.

59. Penalties as recovery of contribution

(1) If the trustee of public trust (other than the Charity Commissioner) or the person charging or collecting dharmada fails to pay the contribution under Section 58, he shall be liable to penalties provided in Section 66.

(2) The Charity Commissioner may also make an order directing the bank in which or any person with whom any moneys belonging to the public trust are deposited to pay the contribution from such moneys as may be standing to the credit of the public trust or may be in the hands of such person or may from time to time be recovered from or on behalf of the public trust by way of deposit by such bank or person and such bank or person shall be bound to obey such order. Every payment made pursuant to such order shall be a sufficient discharge to such bank or person from all liability to the public trust in respect of any sum or sums so paid by it or him of the moneys belonging to the public trust so deposited with the bank or persons.

(3) Any bank or person who has been ordered under sub-section (2) to make the payment may appeal to the State Government and the State Government may, after making such inquiry as it thinks fit, confirm, modify or cancel such order.

60. Application of Public Trusts Administration Fund

(1) The Public Trusts Administration Fund shall subject to the provisions of the Act and subject to the general or special order of the State Government, be applicable to the payment of charges for expenses incidental to the regulation of public trusts and generally for carrying into effect the provisions of this Act.

(2) The custody and investment of the moneys to be credited to the Public Trusts Administration Fund and the disbursement and payment therefrom shall be regulated and made in the prescribed manner.

61. State Government to direct crediting of funds constituted under any Act in Schedule to Public Trusts Administration Fund constituted under this Chapter

On the application of this Act to any public trust or class of public trusts which may have been registered under any of the Acts specified in the Schedule A or Schedule AA the State Government may direct that the Charity Commissioner shall recover any arrears due under any such Act and that the amount of any fund or for the administration of public trusts constituted under the said Act for the region or sub-region in which such public trust or class of public trusts was registered or any portion thereof including the arrears recovered by the Charity Commissioner shall be credited to the Public Trusts Administration Fund constituted under this Chapter.

Chapter IX: 62 to 65 x x x x x

Chapter X: Offences and Penalties

66. Penalty

Whoever contravenes any provision of any of the section mentioned in the first column of the following table shall, on conviction, for each such offence, be punished with fine which may extend to the amount mentioned in that behalf in the third column of the said table:

Explanation: The entries in the second column of the said table headed "Subject" are not intended as the definitions of offences described in the Sections mentioned in the first column or even as abstracts of those Sections, but are inserted merely as references to the subject of the Sections, the numbers of which are given in the first column:

Table
(…)

67. Other Offences

Whoever contravenes any of the provisions of this Act or the rules for which no specific penalty has been provided by this Act, or fails without reasonable cause to comply with any order passed or direction issued under any of the provisions of this Act by the Charity Commissioner, Joint Charity Commissioner or by Deputy or Assistant Charity Commissioner shall, on conviction, be punished with fine which may extend to Rs.1000.

Chapter XI: Functions of Charity Commissioner Procedure Jurisdiction and Appeals

68. Duties, functions and powers of Deputy or Assistant Charity Commissioner

For the purposes of this Act, the following shall be the duties and functions to be performed and powers to be exercise by the Deputy or Assistant Charity Commissioner for the region or sub-region for which he is appointed namely-

(a) to keep and maintain such books, entries and other documents as may be prescribed under Section 17;

(b) to hold an inquiry under Sections 19 or 22 for any of the purposes mentioned in the said section;

(c) to record entries in the register kept under Section 17 and to make amendments in the said entries or the cancellation of the entries or the cancellation of the entries under Sec. 22;

(cc) to send a memorandum under Section 28A;

(d) to enter on and inspect any trust property, to call for and inspect any proceedings of a trustee and to call for any return, statement, account or report from trustees or any person connected with a public trust under Section 37;

(e) to permit inspection of any statement, notice, intimation, account audit note or any other document;

(f) x x x x x;

(g) to exercise such other powers and to perform such other duties and functions as may be prescribed.

69. Duties, functions and powers of Charity Commissioner

For purposes of this Act, the following shall be the duties to be performed and powers to be exercises by the Charity Commissioner namely-

(a) the general superintendence of the administration and carrying out the purposes of this Act under Section 3;

(b) power to entertain and dispose of appeals from the findings of a Deputy Assistant Charity Commissioner under sections 20, 22 or 28;

(c) power to determine which of the Deputy or Assistant Charity Commissioner shall proceed with an inquiry relating to the registration of any public trust under Section 25;

(d) power to direct a special audit of the accounts of a public trust under Section 33;

(e) power to require an auditor to forward to him a copy of a Balance Sheet and Income and Expenditure Account under Section 34;

(f) power to permit a trustee to invest money of a public trust in any manner other than in public securities under Section 35;

(g) power to sanction a sale, mortgage, exchange, gift or lease of immovable property belonging to a public trust under Sec. 36;

(h) power to enter on and inspect any trust property, to call for and inspect any proceedings of a trustee, and to call for any return, statement, account or report from trustees or any person connected with a public trust under Section 37;

(i) power to hold an inquiry in regard to any loss caused to a public trust under Section 40, and to order a surcharge under Section 41;

(j) power to the Charity Commissioner, to act as the Treasurer of Charitable Endowments under the Charitable Endowments Act, 1890, under Section 43;

(k) power to act as trustee of a public trust;

(l) power to file suit under Section 50;

(ll) power to frame, or modify scheme under Section 50 A;

(m) power to give or refuse consent to the institution of a suit under Section 51;

(n) power to give notice to trustee for the Cypres application of the trust money and to make an application to the Court under Section 55;

(o) x x x x x;

(p) to exercise such other powers and perform such other duties and functions as may be prescribed.

70. Appeals from findings of Deputy or Assistant Charity Commissioner

(1) An appeal against the finding or order of the Deputy or Assistant Charity Commissioner may be filed to the Charity Commissioner in the following cases:

(a) the finding and order, if any, under Section 20;

(b) the finding under Section 22;

(b1) the finding under Section 22A;

(c) the finding under Section 28;

(d) the order under sub-section (3) of Section 54.

(2) No appeal shall be maintainable after the expiration of sixty days from the recording of the finding or the passing of the order, as the case may be.

(3) The Charity Commissioner may, after hearing the appellant or any person appearing on his behalf or reasons to be recorded in writing either annual, reverse, modify or confirm the finding or the order appealed against or he may direct the Deputy or Assistant Charity Commissioner to make further inquiry or to take such additional evidence as he may think necessary or he may himself take such additional evidence.

70-A. Charity Commissioner to call for and examine records and proceedings before Deputy or Assistant Charity Commissioner

(1) The Charity Commissioner may, in any of the cases mentioned in section 70, either suo motu or on application call for and examine the records and proceedings of such case before any Deputy or Assistant Charity Commissioner for the purpose of satisfying himself as to the correctness of any finding or order recorded or passed by the Deputy or Assistant Charity

Commissioner and may either annual, reverse, modify or confirm the said finding or order or may direct the Deputy or Assistant Charity Commissioner to make further inquiry or take such additional evidence as he may think necessary or he may himself take such additional evidence:

Provided that, the Charity Commissioner shall not record or pass any orders without giving the party affected thereby an opportunity of being heard.

(2) Nothing in sub-section (1) shall entitle the Charity Commissioner to call for and examine the record of any case-

(a) during the period in which an appeal under Section 70 can lie against any finding recorded by the Assistant or Deputy Charity Commissioner in such case, or

(b) in which an order has been passed either in an appeal made under section 70 or 71 or on an application under section 72.

71. Appeal to Maharashtra Revenue Tribunal

(1) The appeal to the Maharashtra Revenue Tribunal under sub-section (2) of Section 51 against the decision of the Charity Commissioner refusing consent of the institution of the suit shall be filed within sixty days from the date of such decision in such form and shall be accompanied by such fee as may be prescribed.

(2) The Maharashtra Revenue Tribunal after making such inquiry as it thinks fit may confirm, revoke or modify the decision of the Charity Commissioner.

(3) The decision of the Maharashtra Revenue Tribunal shall be final and conclusive.

72. Application for Charity Commissioner's decision under section 40, 41, 41C and 43(2)(a) and (c), 50-A, 70 or 70-A etc.

(1) Any person aggrieved by the decision of the Charity Commissioner under section 40, 41, 41 C and 43 (2) (a) and (c), 50-A, 70 or 70-A etc.:

(1) Any person aggrieved by the decision of the Charity Commissioner under Section 40,41,41 C and 43 (2)(a) and (c), 50-A, 70 or 70-A or on the questions whether a trust exists and whether such trust is a public trust or whether any property is the property of such trust may, within sixty days from the date of the decision, apply to the Court to set aside the said decision.

(1A) No party to such application shall be entitled to produce additional evidence, whether oral or documentary, before the Court unless the Deputy or Assistant Charity Commissioner or the Charity Commissioner has refused to admit evidence which ought to have been admitted or the Court requires any document to be produced or any witness to be examined to enable it to

pronounce judgment or for any other substantial cause the Court thinks it necessary to allow such additional evidence:

Provided that, whenever additional evidence is allowed to be produced by the Court, the Court shall record the reason for its admission.

(2) The Court after taking evidence if any, may confirm, revoke or modify the decision or remit the amount of the surcharge and make such orders as to costs as it thinks proper in the circumstances.

(3) Pending the disposal of an application under sub-section (2) all proceedings for surcharge shall be stayed if the person aggrieved makes out a prima facie case for a stay order.

(4) An appeal shall lie to the High Court against the decision of the Court under sub-section (2) as if such decision was a decree from which an appeal ordinarily lies.

Explanation: In this section, the expression, “decision” shall include a scheme framed or modified under section 50-A.

73. Officers holding inquiries to have powers of civil Court

In holding inquiries under this Act, the officer holding the same shall have the same powers as are vested in courts in respect of the following matters under the Code of Civil Procedure, 1908, in trying a suit:

(a) proof of facts of affidavits,

(b) summoning and enforcing the attendance of any person and examining him on oath,

(c) ordering, discovery and inspection, and compelling the production of documents,

(d) issuing of commissions.

73-A. Power of inquiry officer to join persons as party to proceedings

In any proceedings under this Act, any person having interest in the public trust may be joined as a party to such proceedings on an application made by such person on such terms and conditions as the officer holding the inquiry may order.

74. Inquiries to be judicial inquiries

All inquiries and appeals under this Act shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code.

74-A. Charity Commissioner, Joint Charity Commissioner, Deputy Charity Commissioner etc., to be deemed Civil Court within sections 480 and 482 of Criminal Procedure Code

When the State Government so directs, the Charity Commissioner, Joint Charity Commissioner or Director of Accounts or any Deputy or Assistant Charity Commissioner shall be deemed to be a Civil Court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898.

75. Limitation

In computing the period of appeal under this Chapter, the provisions of Sections 4, 5, 12 and 14 of Indian Limitation Act, 1908, shall apply to the filing of such appeals.

76. Civil Procedure Code to apply to proceedings before Court under this Act

Save insofar as they may be inconsistent with anything contained in this Act the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings, before the Court under this Act.

77. Recovery of sums due under Sections 18, 20, 41, 79-A, 79-C or 79-CC or rules

All sums payable under sections 18, 20, 41, 79-A, 79-C or 79-CC or under any rule if not paid shall notwithstanding anything contained in any law, recoverable as arrear of land revenue.

Chapter XII: Miscellaneous

78. Charity Commissioner and other officers to be public servants

The Charity Commissioner, Deputy and Assistant Charity Commissioners, the Director and Assistant Director of Accounts, Inspectors and other subordinate officers appointed under this Act shall be deemed to be public servants within the meaning of Sec. 21 of the Indian Penal Code.

79. Decision of property as public trust property

(1) Any question, whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal as provided by this Act.

(2) The decision of the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal, as the case may be, shall, unless set aside by the decision of the court on application or of the High Court in appeal, be final and conclusive.

79-AA. Power to finalise reconstructed record

(1) When ever any record kept in any Public Trust Registration Office is damaged or destroyed due to any cause whatsoever and is reconstructed, the Assistant Charity Commissioner may, by notice in the prescribed form published in Official Gazette, and also in the newspapers with wide circulation in the region concerned, announce the fact of the reconstruction of the record, and call upon all persons having interest in the public trust which are entered in such reconstructed record to show cause in writing within a period of thirty days from publication of the notice in the Official Gazette, why such record should not be treated as final and conclusive. A copy of such notice may be sent also to the trustees of such public trusts.

(2) On the expiry of the period of thirty days aforesaid, the Assistant or Deputy Charity Commissioner shall, after hearing the trustees and persons having interest, if any, after duly considering the objections and documents produced, if any, and if necessary after making inquiry record his findings with the reasons therefore, and either confirm or amend the record including any entries therein accordingly. The record so confirmed or amended shall, subject to the provisions of this Act, be final and conclusive, as if such record was made or maintained under this Act.

79-A. Recovery of costs and expenses incurred on legal proceedings by Charity Commissioner, etc.

All costs, charges and expenses incurred by the Charity Commissioner, or the Deputy or Assistant Charity Commissioner as a party to or in connection with, any legal proceeding in respect of any public trusts shall, notwithstanding anything contained in Section 79-B, be payable out of the property or lands of the public trust, except in cases where the liability to pay the same has been laid on any party or other person personally and the right to reimbursement under this section has been negatived in express terms.

79-B. Costs of proceedings before Courts including High Court

The costs, charges and expenses of and incidental to any suit, appeal or application to any Court including the High Court under this Act shall be in the discretion of the Court, which may, subject to the provisions of Section 79-A, direct the whole or any part of such costs, charges and expenses to be met from the property or funds of the public trust concerned or to be borne and paid in such manner and by such person as it thinks fit.

79-C. Costs of proceedings before Charity Commissioner, etc.

The costs, charges and expenses of and incidental to any appeal, application or other proceeding before the Charity Commissioner or the Deputy or Assistant Charity Commissioner shall be in his discretion and he shall have full power to determine by whom or out of what property or funds and to what extent such costs, charges and expenses are to be paid.

79-CC. Compensatory costs for frivolous or vexatious proceedings before Charity Commissioner, etc.

(1) If in any inquiry under the provision of this Act, the Charity Commissioner or the Deputy or Assistant Charity Commissioner is of opinion that the application on which such inquiry was commenced was either frivolous or vexatious, the Charity Commissioner, the Deputy or as the case may be, Assistant Charity Commissioner, may at the request of person against whom such application was made (hereinafter referred to as 'the opponent') call upon the person making the application (hereinafter referred to as `applicant') to show cause why the applicant should not pay compensation to the opponent and if the applicant is not present, direct the issue of summons to him to appear and show cause as aforesaid.

(2) If the Deputy or Assistant Charity Commissioner or Charity Commissioner, as the case may be, is satisfied that the application was either frivolous or vexatious he may, after recording reasons, order that compensation to such amount not exceeding five hundred rupees as he may determine be paid by the applicant to the opponent.

(3) An appeal shall lie against an order awarding compensation under subsection (2) if made by the Deputy or Assistant Charity Commissioner to the Charity Commissioner and if made by the Charity Commissioner to the Maharashtra Revenue Tribunal and the provisions of Sections 60 and 71 shall mutatis mutandis apply to such appeal.

79-D. Court-fee to be paid as prescribed by Schedule B

Notwithstanding anything contained in the Court Fees Act, 1870, the documents described in columns l and 2 of Schedule B hereto shall bear a court-fee-stamp of the value specified in column 3 thereof.

80. Bar of Jurisdiction

Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, and in respect of which the decision or order of such officer or authority has been made final and conclusive.

81. Indemnity from suits and proceedings

No suit, prosecution or other proceedings shall be instituted against the State Government or any officer or authority in respect of anything in good faith done or purporting to be done under this Act.

82. Trial of offences under this Act

No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try an offence punishable under this Act.

83. Previous sanction of Charity Commissioner necessary for prosecution

No prosecution for an offence punishable under this Act, shall be instituted without the previous sanction of the Charity Commissioner.

84. Rules

(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions such rules may be made for all or any of the following matters, namely:

(a) the manner of publishing the notification under sub-section (4) of section 1;

(aa) the qualifications of the Director, and Assistant Directors of Accounts appointed under section 6;

(b) the powers, duties and functions of the officers other than the Charity Commissioner, Deputy and Assistant Charity Commissioner appointed under this Act in addition to those provided for in this Act;

(c) the powers, duties and functions of assessors in addition to those provided for in this Act;

(d) the limits of regions and sub-regions to be prescribed under sub-section (1) of section 14;

(e) the books, indices and registers to be kept and maintained in a Public Trust Registration Office, and the particulars to be entered in such books, indices and registers under section 17;

(f) the form in which an application for the registration of a public trust is to be made and the fee to be paid for the same, the other particulars to be entered therein and the manner in which an application for such registration to be signed and verified, and the value and kind of trust property in respect of which it shall not be necessary to give particulars under section 18;

(g) the manner in which an inquiry has to be made by the Deputy or Assistant Charity Commissioner under sections 19 and 39;

(h) the form in which the trustee has to make a report regarding the change under sub-section (1), and the manner of holding an inquiry under sub-section (2) of section 22;

(i) the book in which the Deputy or Assistant Charity Commissioner shall make an entry under section 23;

(j) the form of memorandum to be sent by trustees and Deputy and Assistant Charity Commissioner for registration and the manner in which the memorandum shall be signed and verified;

(j-1) the inquiry to be made under sub-section (1) of section 38;

(j-2) the amount of annual income of a public trust exceeding which it is liable to prepare and submit budget; and the forms of such budget, under sub-section (1) section 31A;

(k) the particulars to be entered in the accounts under sub-section (2) of section 32 and the fee to be paid for special audit under section 33;

(k-1) the manner of payment of expenses under sub-section (5) of section 41-B;

(l) and (m) were deleted by Mah. Act XX of 1971.

(m-1) the manner of making an application under sub-section (1) of section 50A;

(n) the form of account to be submitted under sub-section (2), and the manner of passing order under sub-section (3) of section 54;

(o) the time within which trustees may apply to the court for directions under sub-section (1) of section 55;

(o-1) the conditions and restrictions subject to which the committee shall deal with property under sub-section (2) of section 66-E;

(o-2) the honorarium or fees and allowances to be paid to chairman, treasurer and members of a committee under sub-section (2) of section 56-I and the manner in which such honorarium or fees and allowances shall be paid;

(o-3) the interval at which a committee shall meet and the procedure it shall follow under section 56-J;

(o-4) the terms and conditions as to service or which secretaries and officers of a committee are appointed under section 56-M;

(o-5) the manner in which the custody and investment of, and the disbursement and payment from the Management Fund and the audit of accounts of the Fund shall be regulated under section 56-QQ.

(p) the date on which and the manner in which every public trust shall pay the annual contribution under section 58 and the deductions to be allowed under the explanation to sub-section (1), and the manner of obtaining the decision of State Government on whether or not, a trust falls in any of the exempted class of public trusts under sub-section (2) of that section and the manner in which the custody and investment of and disbursement and payment from such und shall be made under section 60;

(q) and (r) - Deleted by Mah. Act 22 of 1967.

(s) the other powers, duties and functions to be exercised and performed by a Deputy or Assistant Charity Commissioner under Section 68;

(t) the other powers, duties and functions to be exercised and performed by the Charity Commissioner under Section 69;

(u) the form of appeal and the fees to be paid for filing such appeal under section 71;

(v) the custody and investment of the money to be credited to the Public Trusts Administration Fund and the disbursement and payment therefrom;

(v-1) the form of notice in respect of reconstructed record under sub-section (1) of section 79-AA;

(w) any other matter which is to be or may be prescribed under this Act.

(3) All rules made under this section shall be subject to the condition of previous publication.

(4) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session, for a total period of thirty days which shall be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made and notify such decision in the Official Gazette, the rule shall, from the date of such notification, have effect only in such modified form or be of no effect, as the case may be however, that any such modification or amendment shall be without prejudice to the validity or anything previously done or omitted to be done under that rule.

85. Repeal

(1) The Religious Endowment Act, 1862, is hereby repealed.

(2) On the date of the application of the provisions of this Act to any public trust or class of public trusts under sub-section (4) of section 1 (hereinafter in this section referred to the said date) the provisions of the Act specified in Schedule A which apply to such trust or class of trusts shall cease to apply to such trust or class of trusts.

(3) Save as otherwise provided in this section such repeal or cessation shall not in any way affect

(a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the said date,

(b) any legal proceedings or remedy in respect of such right, title, interest, obligation or liability, or

(c) anything duly done or suffered before the said date.

(4) Notwithstanding anything contained in sub-section (3), all proceedings pending before any authority under the Mussalman Wakf Act, 1923 (as amended by the Bombay Public Trusts Registration Act, 1935, or the Parsi Public Trusts Registration Act, 1936, immediately before the said date shall be transferred to the Charity Commissioner and any such proceedings shall be continued and disposed of by the Charity Commissioner or the Deputy

or Assistant Charity Commissioner as the Charity Commissioner, may direct. In disposing of such proceedings the Charity Commissioner, the Deputy Charity Commissioner or the Assistant Charity Commissioner, as the case may be, shall have and exercise the same powers which were vested in and exercised by the Court and under the Mussalman Wakf Act, 1923, as amended by the Mussalman Wakf (Bombay Amendment) Act, 1935), and by the Registrar under the Bombay Public Trusts Registrations Act, 1936, and the Parsi Public Trusts Registration Act, 1936, and shall pass such order as may be just or proper.

(5) All records maintained by the authority or Court under any of the Acts referred to in sub-section (4) shall be transferred to the Charity Commissioner or to the Deputy or Assistant Charity Commissioner as the Charity Commissioner may direct.

86. Further repeals and savings consequent on commencement of Bom. XXIX of 1950, in other areas of the State

(1) On the commencement of this Act in that area of the State to which it is extended by the Bombay Public Trusts (Unification and Amendment) Act, 1959-

(i) the Religious Endowments Act, 1863, as in force in the Saurashtra and Kutch areas of the State,

(ii) the Madhya Pradesh Dharmadaya Funds Act, 1951 as in force in the Vidarbha Region of the State, and

(iii) any law relating to public trusts to which Chapter VII-A applies, to the extent to which it corresponds to the provisions of this Act, shall stand repealed.

(2) On the date of application of the provisions of this Act to any public trust or class of public trusts under sub-sec. (4) of Sec. 1 (hereinafter in this section referred to as the said date), the provisions of the Acts specified in Schedule AA which apply to such trust or class of trusts shall cease to apply thereto.

(3) Save as otherwise provided in this section, such repeal or cessation, shall not in any way affect-

(a) anything duly done or suffered under the laws hereby repealed or ceasing to apply before the said date;

(b) any right, title, interest, obligation or liability already acquired, accrued or incurred before the said date under the laws hereby repealed or ceasing to apply;

(c) any legal proceeding or remedy in respect of such right, title, interest, obligation or liability:

Provided that if on the said date, any legal proceeding in respect of any public trust is pending before any court under any enactment specified in Schedule AA to which the State Government, Commissioner, Registrar or any officer of the State Government is a party, the Charity Commissioner, shall be deemed to be substituted in those proceedings for the State Government, Commissioner, Registrar or as the case may be, the officer, and such proceedings shall be disposed of by such Court:

Provided further that every proceeding pending before any criminal court under the Madhya Pradesh Dharmadaya Funds Act, 1951, shall abate on the repeal of that Act, under sub-section (1).

Notwithstanding anything contained in sub-section (3) all proceedings pending immediately before the said date before any authority (other than a Court) under any enactment specified in Schedule AA shall be continued and disposed of by such authority under that enactment, as if the Bombay Public Trusts (Unification and Amendment) Act, 1959, had not been passed.

(5) Notwithstanding the cessation of any enactment specified in Schedule AA, all arrears of contributions and other sums payable under any such enactment shall be recoverable under the provisions of this Act, as if they had been recoverable under the provisions of this Act.

(6) All records maintained by Registrar under the Madhya Pradesh Public Trust Act, 1951, shall be transferred to the Charity Commissioner or to the Deputy or Assistant Charity Commissioner as the Charity Commissioner may direct.

87. Act not to apply to certain wakfs to which Act XXIX of 1954 applies for to Gurudwaras governed by Hyderabad Act, XXXVII of 1956

Nothing contained in this Act shall apply to-

(a) those Wakfs in certain areas of the State to which the provision of the Wakf Act, 1954, have continued to apply, or

(b) the Nanded Gurudwara, the administration of which is governed by the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar Sahib Act, 1956.

88. Provision for removal of difficulties

If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by an order published in the Official Gazette, do anything not inconsistent with the provisions of this Act which appears to it to be necessary, or expedient for the purpose of removing the difficulty.

Schedule A
(See Sections 28, 61 and 85)

1. The Charitable and Religious Trusts Act, 1920 (XIV of 1920).

2. The Mussalman Wakf Act, 1923 (XLII of 1923) as amended by Bombay Act, XVIII of 1935.

3. The Bombay Public Trusts Registration Act, 1935 (Bom. XXV of 1935).

4. The Parsi Public Trusts Registration Act, 1936 (Bom. XXIII of 1936).

5. The Baroda Public Institutions Act (Baroda Act No. VI of Samvat 1961).

6. The Religious Endowments Act, 1863 (XX of 1863); as applied to the Jamkhandi State in 1890.

7. The Deosthan Rules, 1912, of the Jamkhandi State as amended by Jamkhandi Act; No. 1 of 1948.

Schedule AA

1. The Charitable and Religious Trusts Act, 1920 (XIV of 1920) in its application to the areas of the State other than the area comprised in the pre-Reorganisation State of Bombay.

2. The Savantwadi Devasthan Act, 1932.

3. The (Hyderabad) Endowment Regulation, 1349 Fasli.

4. The Madhya Pradesh Public Trusts Act, 1951 (M.P.Act XXX of 1951).

Schedule B
(...)

14. The Delhi Sikh Gurdwaras Act, 1971

[Act No. 82 of Year 1971, dated 30th December, 1971]

An Act to provide for the proper management of the Sikh Gurdwaras and Gurdwara property in Delhi and for matters connected therewith.

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:

Part I: Preliminary

1. Short title, extent and commencement

(1) This Act may be called the Delhi Sikh Gurdwaras Act, 1971.

(2) It extends to the whole of the Union territory of Delhi.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definition

In this Act, unless the context otherwise requires,-

(a) "appointed day" means the date on which this Act shall come into force;

(b) "Board" means the Delhi Sikh Gurdwara Board constituted under section 3 of the Delhi Sikh Gurdwaras (Management) Act, 1971;

(c) "Committee" means the Delhi Sikh Gurdwara Management Committee established under section 3;

(d) "Delhi" means the Union territory of Delhi;

(e) "Director Gurdwara Elections" means the Director Gurdwara Elections appointed by the Central Government under section 13;

(f) "Gurdwaras" means the Sikh Gurdwaras situated in Delhi as were, immediately before the appointed day, being managed by or affiliated to the Board and includes such other local Gurdwaras as may, after the appointed day, be affiliated to or managed by the Committee;

(g) "Gurdwara property" means,-

(i) all movable and immovable property which, immediately before the appointed day, vested or was kept in deposit in the name of the Board;

(ii) all property which stands in the name of the Gurdwaras or in the name of the Board or the present or old managers of the historic Gurdwaras;

(iii) all offerings in cash or kind made in various Gurdwaras or institution, managed or controlled by the Committee;

(iv) all property in cash or kind, movable as well as immovable that may be acquired by purchase, exchange or otherwise by the Gurdwaras, or the Committee, from time to time;

(v) all grants, donations or contributions made, from time to time, by any person or authority to the Gurdwaras or the Committee, and includes any actionable claim with respect to such Gurdwara property;

(h) "local Gurdwara" means a Gurdwara in Delhi, other than a Gurdwara under the control or management of the Board immediately before the appointed day;

(i) a person shall not be deemed to be "ordinarily resident" in a ward on the ground only that he owns or is in possession of a dwelling-house therein and a person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein;

(j) "patit" means a Sikh who trims or shaves his beard or hair (keshas) or who after taking Amrit commits any one or more of the four Kurahitis;

(k) "registered Singh Sabha" means a Singh Sabha registered as a society under the Societies Registration Act, 1860, (21 of 1860) which is managing or controlling a local Gurdwara in Delhi;

(l) "regulation" means a regulation made under this Act by the Committee;

(m) "rule" means a rule made under this Act by the Central Government;

(n) "Sikh" means a person who professes the Sikh religion, believes and follows the teachings of Sri Guru Granth Sahib and the ten Gurus only and keeps unshorn hair (Keshas). For the purposes of if any question arises as to whether any living person is or is not a Sikh, he shall be deemed respectively to be or not to be a Sikh according as he makes or refuses to make in the manner prescribed by rules the following declaration:-

"I solemnly affirm that I am a Keshadhari Sikh, that I believe in and follow the teachings of Sri Guru Granth Sahib and the ten Gurus only, and that I have no other religion.";

(o) "Amritdhari Sikh" means and includes every Sikh who has taken Khande ka Amrit or Khanda Pahul, prepared and administered according to the tenets of Sikh religion and rites at the hands of five Pyaras or "beloved ones".

Part II: The Committee

3. Incorporation of the Committee

(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established a Committee

to be called the Delhi Sikh Gurdwara Management Committee for the proper management and control of the Gurdwaras and Gurdwara property.

(2) The Committee shall be a body corporate with the name aforesaid having perpetual succession and a common seal and shall by such name sue and be sued.

(3) The Committee shall have its head office in Delhi.

4. Composition of the Committee

The Committee shall consist of-

(a) forty-six members to be elected from various wards into which Delhi shall be divided in accordance with the provisions of this Act;

(b) nine members to be co-opted by the elected members of the Committee referred to in clause (a) in the manner hereinafter appearing,-

(i) two members to represent the registered Singh Sabhas of Delhi who shall be chosen by drawing of lots out of the Presidents of those registered Singh Sabhas;

(ii) four members, each being the head priest of the (1) Sri Akal Takhat Sahib, Amritsar, (2) Sri Takhat Kesgarh Sahib, Anandpur, (3) Sri Takhat Patna Sahib, Patna, and (4) Sri Takhat Hazur Sahib, Nanded:

Provided that the head priest shall have no right to vote for the purpose of election of office-bearers and other members of the Executive Board under sub-section (1) and sub-section (2) of section 16;

(iii) one member, being the nominee of the Shromani Gurdwara Parbandhak Committee, Amritsar;

(iv) two members to represent the Sikh community of Delhi, other than those referred to in sub-clause (i), sub-clause (ii) and sub-clause (iii), to be chosen in accordance with the system of proportional representation by means, of a single transferable vote.

5. Term of office

(1) Save as otherwise provided in this section, the term of office of a member of the Committee shall be four years and shall commence from the date on which the first meeting of the Committee is held under section 15, and no longer.

(2) When a vacancy occurs in the Committee owing to death, resignation, removal or otherwise of a member, a new member shall be elected or co-opted, as the case may be, in the manner in which the member whose seat is to be filled was elected or co-opted and every such member shall continue to hold office so long only as the member in whose place he is elected or co-opted would have been entitled to hold office, if the vacancy had not occurred.

(3) An outgoing member shall continue in office until the notification of election or co-option of his successor is published under section 12.

6. Delimitation of wards

(1) For the purpose of election of members of the Committee, Delhi shall be divided into single member wards.

(2) The Director Gurdwara Elections shall by order determine-

(a) the number of wards; and

(b) the extent of each ward.

(3) The Director Gurdwara Elections may, from time to time, in consultation with the Committee, alter or amend any order made under subsection (2).

7. Electoral roll

(1) An electoral roll shall be prepared in such manner as may be prescribed by rules for every ward notified under section 6 on which shall be entered the names of all persons entitled to be registered as voters in that ward.

(2) No person shall be entitled to be registered in the electoral roll for any ward more than once.

(3) No person shall be entitled to be registered in the electoral roll for more than one ward.

8. Qualifications of elector

Every person who-

(a) has been ordinarily resident in a ward for not less than one hundred and eighty days during the qualifying period,

(b) is a Sikh of not less than twenty-one years of age on qualifying date, shall, be entitled to be registered in the electoral roll for that ward:

Provided that no person shall be registered as an elector who-

(a) trims or shaves his beard or keshas;

(b) smokes;

(c) takes alcoholic drinks.

Explanation: For the purpose of this section, the "qualifying date" and the "qualifying period"-

(i) in the case of electoral rolls first prepared under this Act, shall be the 1st day of January, 1972, and the period beginning on the 1st day of January, 1971 and ending on the 31st day of December, 1971, respectively; and

(ii) in the case of every electoral roll subsequently prepared under this Act, shall be the 1st day of January of the year in which it is prepared and the year immediately preceding that year respectively.

9. Right to vote

Every person registered on the electoral roll for the time being in force for any ward for the election of a member of the Committee, shall be entitled while so registered to vote at an election of a member for that ward, provided that no person shall be entitled to vote at an election in more than one ward.

10. Qualifications of member

(1) A person shall not be qualified to be chosen or co-opted as a member of the Committee if such person-

(a) has not attained the age of twenty-five years;

(b) is not a citizen of India;

(c) in the case of an elected member, if he is not registered as an elector in the electoral roll for any ward;

(d) is not an Amritdhari Sikh;

(e) being an Amritdhari Sikh, trims or shaves his beard or keshas;

(f) takes alcoholic drinks;

(g) smokes;

(h) is a patit;

(i) is of unsound mind and stands so declared by a competent court;

(j) is an undischarged insolvent;

(k) has been convicted of an offence involving moral turpitude or has been dismissed from service by Government, Board, Committee or any local authority, on account of moral turpitude;

(l) is a paid servant of any Gurdwara or a local Gurdwara;

(m) not being a blind person cannot read and write Gurmukhi.

Explanation: A person shall be deemed to-

(i) be able to read Gurmukhi if he is able to recite Sri Guru Granth Sahib, in Gurmukhi, and

(ii) write Gurmukhi if he fills his nomination paper for election to the Committee in Gurmukhi in his own handwriting.

If any question arises whether a candidate is or is not able to read an write Gurmukhi, the question shall be decided in such manner as may be prescribed by rules.

(2) If a person sits or votes as a member of the Committee when he knows that he is not qualified for such membership, he shall be liable in respect of each day on which he so sits or votes to a penalty of three hundred rupees which shall be recoverable as an arrear of land revenue.

11. Elections

Election of members under clause (a) of section 4 whether for the purpose of initial constitution of the Committee under section 3, or for filling vacancies arising by efflux of time or a casual vacancy shall be conducted by the Director Gurdwara Elections in accordance with the rules made in this behalf:

Provided that no election shall be held to fill a casual vacancy occurring within four months prior to the holding of a general election under this section.

12. Omitted

13. Director Gurdwara Elections.

(1) The Central Government may, by notification in the Official Gazette, appoint a suitable person to be the Director Gurdwara. Election in whom shall vest the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, elections of members of the Committee.

(2) A person shall not be qualified for appointment as Director Gurdwara Elections unless he is a citizen of India and possesses judicial or administrative experience for a period of not less than ten years.

(3) Subject to the provisions of section 37, the term of office, and the terms and conditions of service of the Director Gurdwara Elections shall be such as may be prescribed by rules.

14. First meeting of the elected members

(1) The persons to be co-opted as members of the Committee under clause (b) of section 4 shall be chosen at the first meeting of the elected members which shall be convened by the Director Gurdwara Elections as early as possible and not later than fifteen days after publication of the results of the election under sub-section (1) of section 12.

(2) The Director Gurdwara Elections may adjourn the first meeting of the elected members to any other date or dates, being not later than fifteen days from the date of the first meeting aforesaid, if the elected members are unable to choose all persons to be co-opted at that first meeting.

15. First meeting of the Committee

(1) The Director Gurdwara Elections shall summon the first meeting of the Committee to meet on such date, not being later than fifteen days after the publication of the names of the members co-opted under sub-section (2) of section 12, as he thinks fit.

(2) The first meeting shall be held at such time and place as the Director Gurdwara Elections may appoint and shall be presided by him:

Provided that while so presiding at the meeting of the Committee, the Director Gurdwara Elections shall have no right to vote.

(3) Every member of the Committee shall, before taking his seat make and subscribe before the Director Gurdwara Elections an oath according to the form set out for the purpose in the Schedule.

(4) The members of the Committee shall proceed thereafter to elect from amongst themselves a pro tempore Chairman in such manner as may be prescribed by rules, who shall preside at the meeting until the Committee elects the President.

16. Election of office-bearers

(1) The Committee shall, at its first meeting after the election of the pro tempore Chairman under sub-section (4) of section 15, elect from amongst its members a President, who shall conduct the election if other office-bearers and members of the Executive Board under this section.

(2) The Committee shall also at its first meeting elect from amongst its members a Senior Vice-President, Junior Vice-President, General Secretary and a Joint Secretary (hereinafter referred to as office-bearers of the Committee), and shall also at the same meeting in like manner elect ten of its members to be members of the Executive Board of the Committee, and the office-bearers and members so elected shall be the Executive Board of the Committee.

(3) No person shall be eligible for election as the President or other office-bearer unless he is at least a matriculate or has passed Higher Secondary Examination of any recognised University or Board or is a Giani or possesses any other equivalent educational qualification.

(4) No member of the Committee shall, at the same time, hold any of the offices referred to in sub-section (1) or sub-section (2) in more than one capacity.

(5) The President and other members of the Executive Board elected under sub-section (1) or sub-section (2) shall hold office for a term of one year but shall be eligible for re-election for one more term only:

Provided that an outgoing office-bearer or member shall continue it office until election of his successor is held.

(6) The election of the President and other office-bearers and members of the Executive Board under sub-section (1) or sub-section (2) or any subsequent annual election to any of those offices shall be held in such manner as may be prescribed by rules.

(7) The provisions of sub-section (2) of section 5 shall apply so far as may be to the filling of a casual vacancy in the office of the President, any other office-bearer or member of the Executive Board as they apply in relation to casual vacancies in the membership of the Committee.

16A. Power to convene another meeting for election of office-bearers

(1) If the Committee at its first meeting is unable to elect a pro tempore Chairman or a President or any other office-bearer or member of the Executive Board under sub-section (4) of section 15 or sub-section (1) or sub-section (2) of section 16, the Director Gurdwara Elections shall summon another meeting of the Committee, being not later than fifteen days from the date of the first meeting, for the election of the pro tempore Chairman, the President or the remaining office-bearers or members of the Executive Board, as the case may be.

(2) The provisions of sections 15 and 16 shall, so far as may be, apply to the conduct of election under sub-section (1).

17. Vacation, resignation and removal of members and office-bearers

(1) A member of the Committee may resign his office by writing under his hand addressed to the President.

(2) An office-bearer or any other member of the Executive Board shall vacate his office if he ceases to be a member of the Committee;-

(b) may at any time by writing under his hand addressed to the Committee resign his office; and

(c) may be removed from his office by a resolution of the Committee passed by a three-fourth majority of the total members thereof:

Provided that no resolution for the purpose of clause (c) shall be moved unless it is supported by not less than seventeen members of the Committee and fourteen days' notice has been given of their intention to move the resolution.

(3) The resignation of office under sub-section (1) or clause (b) of sub-section (2) shall be effective from the date from which it is accepted by the Executive Board or the Committee, as the case may be.

18. Fees and allowances of members

Any office-bearer or other member of the Executive Board or any other member of the Committee may, if he so desires, draw such fees and allowances for attending the meetings of the Executive Board or the Committee and for attending to any other work of the Executive Board or the Committee, as the case may be, as may be prescribed by regulations.

19. Meetings of the Committee and the Executive Board

(1) The annual general meeting of the Committee shall be held in every year.

(2) The Executive Board shall meet at least once in every fortnight or at such intervals as may be prescribed by regulations.

(3) The President, or in his absence the Senior Vice-President and in the absence of both, the Junior Vice-President, and in the absence of all the three, any other member elected from amongst themselves shall preside at any meeting of the Committee or of the Executive Board.

(4) The Committee or the Executive Board shall observe such rules of procedure in regard to transaction of the business at its meetings as may be prescribed by regulations.

(5) Save as otherwise provided, all questions which come up before any meeting of the Committee or the Executive Board shall be decide by a majority of votes of the members present and voting and in the event of equality of votes, the person presiding shall have a second or casting vote.

(6) All proceedings of the meetings of the Committee or the Executive Board shall be recorded in Punjabi in Gurmukhi script.

20. Sub-committees

(1) The Executive Board may constitute such number of subcommittees from amongst the members of the Committee as it thinks fit and for such purpose as it may decide.

(2) A sub-committee constituted under sub-section (1) shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by regulations.

(3) A member of a sub-committee may, if he so desires, draw such fees and allowances for attending its meetings and for attending to any other work of the sub-committee, as may be prescribed by regulations.

21. Omitted

22. Validity of acts of Committee, Executive Board or sub-committees not to be questioned by reason of vacancy, etc.

No act or proceeding of the Committee or the Executive Board or any sub-committee shall be invalidated by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

23. Officers and other employees of the Committee

(1) The Committee may appoint such number of officers and other employees as it considers necessary for the efficient performance of its functions, and may, from time to time, determine the number, designations, grades and scales of pay or other remuneration of the officers and other employees, and may at any time reduce, suspend, remove or dismiss or impose any other penalty on any officer or other employee for carelessness, unfitness, neglect of duty or other misconduct.

(2) The officers and other employees appointed under sub-section (1) shall exercise such powers and perform such duties as may be prescribed by regulations or as may, from time to time, be delegated by the Committee.

(3) The terms and conditions of service of the officers and other employees shall be such as may be prescribed by regulations.

Part III: Powers and Functions of the Committee

24. Powers and functions of the Committee

Subject to the provisions of this Act and the rules made thereunder, the control, direction and general superintendence over all the Gurdwaras and Gurdwara property in Delhi shall vest in the Committee, and it shall be the duty of the Committee-

(i) to arrange for the proper performance of the religious rites and ceremonies in the Gurdwaras,

(ii) to provide facilities for worship by the devotees at the Gurdwaras,

(iii) to ensure safe custody of its funds, movable and immovable properties, deposits, offerings in cash or kind,

(iv) to do all such things as may be incidental and conducive to the efficient management of the affairs of Gurdwaras, educational and other institutions under the Committee and their properties or to the convenience of devotees,

(v) to provide suitable accommodation and facilities for pilgrims,

(vi) to maintain free langars,

(vii) to manage the historic and other Gurdwaras, educational and other institutions and their properties in such a way as to make them inspiring centres of the Sikh tradition, culture and religion,

(viii) to ensure maintenance of order, discipline and proper hygienic conditions in Gurdwaras, educational and other institutions under its management,

(ix) to open free dispensaries,

(x) to spread education, especially the knowledge of Punjabi, in Gurmukhi script,

(xi) to establish educational institutions, research centres and libraries,

(xii) to render financial assistance to religious and educational institutions, societies and needy persons,

(xiii) to give stipends to needy and deserving students,

(xiv) to render help in the case of the uplift of the Sikh community and propagation of Sikh religion,

(xv) to perform such other functions and to do such religious or charitable acts, as may be prescribed by regulations for carrying out the purposes of this Act.

Part IV: Gurdwara Fund, Accounts and Audit

26. Prohibition regarding making of contributions for political purposes

Nothing contained in this Act shall, or shall be deemed to, authorise the Committee to contribute any amount or amounts-

(a) to any political party, or

(b) for the benefit of any political party, or

(c) for any political purpose to any individual or body.

27. Budget

(1) In respect of every financial year, budget (annual financial statement) of the estimated receipts and expenditure of the Committee for the year shall be placed before the Committee and duly passed.

(2) No moneys out of the Gurdwara Fund shall be appropriated except as passed and approved by the Committee.

28. Maintenance of accounts

(1) The Committee shall maintain proper accounts showing receipts on account of and expenditure out of Gurdwara Fund.

(2) At the end of each calendar month, a statement of income and expenditure relating to that month shall be prepared and placed before the Committee and it shall be pasted at prominent places outside all Gurdwaras; and a consolidated annual statement, showing income and expenditure relating to a financial year shall likewise be prepared and placed before the Committee and outside the Gurdwaras at the end of each financial year.

29. Audit of Accounts

(1) The accounts of the Committee including those of the Gurdwaras, and Gurdwara property including educational and other charitable institutions administered by the Committee, shall be audited by one or more auditors duly qualified to act as auditor under subsection (1) of section 226 of the Companies Act, 1956 (hereinafter referred to as the auditor) who shall be appointed by the Committee within sixty days of the close of every financial year and shall receive such remuneration as the Committee may fix:

Provided that the first appointment of auditors shall be made by the Committee within sixty days from the date of its first meeting held under section 15.

(2) For the purpose of any such audit and examination of accounts the auditors may, by a demand in writing, require from the Committee or any office-bearer or member or employee of the Committee or any Gurdwara, educational or other institution of the Committee, the production before him of all books, deeds, vouchers and all other documents and papers which he deems necessary, and may require any person holding or accountable for any such books, deeds, vouchers, documents and papers to appear before him at any audit and examination, to answer all questions which may be put to him with respect to the same or to prepare and submit any further statement which such auditor may consider necessary.

(3) Within thirty days after the audit and examination have been completed, the auditor shall submit a report to the Committee upon each account audited and examined.

(4) The audit report shall be published in, at least two daily papers of Delhi (one in English and one in Punjabi) as well as in Gurdwara Journal, if any, within thirty days of its receipt.

(5) The report of the auditor shall, among other matters, specify all items of expenditure which in his opinion are illegal, irregular or improper, all cases of failure of recoveries of money or property due to the Committee, all instances of loss or wasteful expenditure of money or property due to negligence or misconduct and all instances in which any money or property has been devoted to any purpose not authorized by this Act.

30. Consideration of the auditor's report by the Committee

The Committee, in meeting next following the date of receipt of the auditor's report, shall consider such report and satisfy itself that no expenditure shown therein has been incurred otherwise than in accordance with the provisions of this Act and shall pass such orders as are, in its opinion, necessary and proper to rectify the illegal, unauthorized or improper expenditure and may also pass such further orders upon the report, as it may deem proper:

Provided that if the next meeting falls on a day earlier than two months after the receipt of the report it may be considered in the meeting next following which shall be convened before the expiry of a period of three months from the date of receipt of the said report.

Part V: Settlement of Elections and other Disputes

31. Election disputes, electoral offences, etc.

The provisions of sections 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 29 and 30 of the Delhi Municipal Corporation Act, 1957 (66 of 1957), shall mutatis mutandis apply, subject to such modifications as the Central Government may by order direct, in relation to settlement of disputes regarding elections, corrupt practices and electoral offences in respect of election or co-option of members of the Committee.

32. Jurisdiction of District Court in other matters

The Court of the District Judge in Delhi shall also have jurisdiction in respect of the following matters, namely:-

(a) Petitions regarding complaints, irregularities, breach of trust, mismanagement in any Gurdwara, educational or other institutions against any member, office-bearer or officer or other employee of the Committee.

(b) Petitions arising out of any type of disputes between the Committee and its employees including past employees.

(c) Applications regarding failure of publication of, or non-implementation or non-clearance of the objections raised in, any annual report of the auditors of the Committee.

33. Appeals

(1) Any person aggrieved by an order passed by the District Judge may, within sixty days of the order, prefer an appeal to the High Court at Delhi and the orders of the High Court on such appeal shall be final and conclusive.

(2) The provisions of sections 5 and 12 of the Limitation Act, 1963, shall, so far as may be, apply to appeals under this section.

Part VI: Miscellaneous

34. Procedure for affiliation of local Gurdwaras

(1) A registered Singh Sabha may, in relation to any local Gurdwara under its control, decide by a resolution adopted by three-fourth majority of its total membership for affiliating that local Gurdwara to the Committee and if the Committee consents thereto, the said local Gurdwara shall be deemed to be affiliated to the Committee.

(2) All assets and liabilities of the local Gurdwara so affiliated and of the registered Singh Sabha shall thereafter vest in the Committee.

35. Act not to affect rites and practices of Sikh religion.

Nothing contained in this Act or any other law for the time being in force shall-

(a) save as otherwise expressly provided in this Act or the rules or regulations made thereunder, affect any honour, emolument or perquisite to which any person is entitled by custom or otherwise in any Gurdwara;

(b) authorise any interference with the religious or spiritual functions performed in any Gurdwara.

37. Salary, etc., of the Director Gurdwara Elections to be defrayed out of the Consolidated Fund of India in the first instance.

(1). The salaries and allowances payable to the Director Gurdwara Elections or to the officers and other employees engaged for the conduct of elections to the Committee, shall be defrayed out of the Consolidated Fund of India in the first instance, but shall be recoverable from the Committee by debit to the Gurdwara Fund after the close of each financial year.

(2) Any sum due to the Central Government under sub-section (1) shall, if not paid within three months after the demand has been made, be recoverable as arrears of land revenue.

38. Protection of action taken

No suit, prosecution or other legal proceedings shall lie against any member of the Committee, the Executive Board or any sub-committee, the Director Gurdwara Elections or any other officer or employee of the Committee for anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder.

39. Power to make rules

(1). The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for or regulate all or any of the following matters, namely:-

(a) the manner in which a declaration for the purpose of clause (n) of section 2 shall be made;

(aa) the manner and the criterion for deciding whether a candidate for election as a member of the Committee is able to read and write Gurmukhi;

(b) the particulars to be entered in the electoral rolls;

(c) the preliminary publication of electoral rolls;

(d) the manner in which and the time within which claims and objections as to entries in electoral rolls may be preferred;

(e) the manner in which notices of claims or objections shall be published;

(f) the place, date and time at which claims or objections shall be heard and the manner in which claims or objections shall be heard and disposed of;

(g) the final publication of electoral rolls;

(h) the revision and correction of electoral rolls and inclusion of names therein;

(i) the appointment of returning officers, assistant returning Officers, Presiding officers and polling officers for the conduct of elections;

(j) the nomination of candidates, form of nomination papers, objections to nominations and scrutiny of nominations;

(k) the deposits to be made by candidates, time and manner of making such deposits and the circumstances under which such deposits may be refunded to candidates or forfeited to the Committee;

(l) the withdrawal of candidatures;

(m) the appointment of agents of candidates;

(n) the procedure in contested and uncontested elections;

(o) the date, time and place for poll and other matters relating to the conduct of elections including-

(i) the appointment of polling stations for each ward;

(ii) the hours during which the polling station shall be kept open for the casting of votes;

(iii) the printing and issue of ballot papers;

(iv) the checking of voters by reference to the electoral roll;

(v) the marking with indelible ink of the left forefinger or any other finger or limb of the voter and prohibition of the delivery of any ballot paper to any person if at the time such person applies for such paper he has already such mark so as to prevent personation of voters;

(vi) the manner in which votes are to be given and in particular in the case of illiterate voters or of voters under physical or other disability;

(vii) the procedure to be followed in respect of challenging votes and tendered votes;

(viii) the scrutiny of votes, counting of votes, the declaration of the results and the procedure in case of equality of votes or in the event of a member being elected to represent more than one ward;

(ix) the custody and disposal of papers relating to elections;

(x) the suspension of polls in case of any interruption by riot, violence or any other sufficient cause and the holding of a fresh poll;

(xi) the holding of a fresh poll in the case of destruction of, or tampering with, ballot boxes before the count;

(xii) the countermanding of the poll in the case of the death of a candidate before the poll;

(p) the fee to be paid on an election petition;

(q) the terms and conditions of service of the Director Gurdwara Elections;

(r) the procedure for the election of pro tempore Chairman under sub-section (4) of section 15, and of the President and other office-bearers and members of the Executive Board under section 16;

(s) any other matter in respect of which the Central Government deems it necessary to make rules under this section or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary;

(t) the manner in which results of election or co-option of members of the Committee shall be published, or the orders made under the rules shall be widely made known by affixing copies thereof in conspicuous public places, by publishing the same by beat of drum or by advertisement in local newspapers.

(3) In making any rule under this section the Central Government may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(4) All rules made under this section shall be laid, as soon as may be, after they are made, before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rules or both Houses agree that the rules should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under those rules.

40. Power of Committee to make regulations

(1) The Committee may make regulations not inconsistent with the provisions of this Act or the rules made thereunder for carrying out its functions under this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely-

(a) date for election

(b) fees and allowances to which office-bearers and other members of the Executive Board or other members of the Committee or of a sub-committee shall be entitled for attending meetings or any other work of the Executive Board, Committee or sub-committee respectively;

(c) the periods of interval at which meetings of the Executive Board shall be hold, the manner in which meetings of the Committee or the Executive Board or any sub-committee shall be convened, the quorum for the transaction of business thereat and the rules of procedure to be followed for transaction of business at meetings of the Committee, the Executive Board or any sub-committee;

(d) the manner in which a majority decision of the Executive Board shall be obtained by circulation to its office-bearers and members of any matter requiring decision;

(e) the matters in respect of which powers may be exercised or duties performed by the President or other office-bearers of the Executive Board or by any officer or other employee of the Committee;

(f) the terms and conditions of service of officers and other employees of the Committee including recruitment, transfer, fixation of seniority, promotion of, and disciplinary action or punishment against, such officers and other employees;

(g) any other functions or religious or charitable acts which, in addition to those specified in section 24, may be performed or done by the Committee, and the conditions and restrictions subject to which those functions or acts shall be performed or done;

(h) the manner in which cash or other moneys of the Gurdwara Fund shall be deposited or invested;

(i) the form in which the budget of the Committee shall be presented;

(j) the form in which the accounts of the Committee shall be maintained and the publication of such accounts;

(k) the manner in which any regulations or orders made thereunder shall be published or widely made known by affixing copies thereof in conspicuous public places, by publishing the same by beat of drum or by advertisement in local newspapers;

(l) any other matter which has to be, or may be, prescribed.

41. Repeal and Saving

(1) As from the date of the establishment of the Committee, the Delhi Sikh Gurdwaras (Management) Act, 1971 (24 of 1971) shall stand repealed.

(2) Notwithstanding such repeal,-

(a) any appointment, notification, order or rule made or issued under the said Act shall, in so far as it is not inconsistent with the provisions of this

Act, continue in force and be deemed to have been made or issued under the provisions of this Act unless and until it is superseded by any appointment, notification, order or rule made or issued under the said provisions;

(b) all budget estimates made, all obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Delhi Sikh Gurdwara Board shall be deemed to have been made, incurred, entered into or engaged to be done by, with or for the Committee under the provisions of this Act;

(c) all Gurdwara property, movable and immovable and all interests of whatsoever nature and kind therein vested in, belonging or due to, the Delhi Sikh Gurdwara Board, immediately before such establishment, shall, with all rights, powers and privileges of whatsoever description, used, enjoyed or possessed by the Board vest in the Committee;

(d) all sums of money including rents due to the Board immediately before such establishment shall be deemed to be due to the Committee;

(e) all suits and other legal proceedings instituted or which might have been instituted by or against the Delhi Sikh Gurdwara Board may be continued or instituted by or against the Committee;

(f) any will deed or other instrument which contains any bequest, gifts or trusts in favour of the Board shall as from such establishment, be construed as if the Committee were therein named instead of the said Board.

15. The Punjab Religious Premises and Land (Eviction and Rent Recovery) Act, 1997

[Punjab Act No. 4 of Year 1998]

Received the assent of the Governor of Punjab on the 25th January, 1908 and was published in the Punjab Gazette, (Extra.), Legislative Supplement, Part I, dated January 29, 1998/Magha 9, 1919.

An Act to provide for the eviction of unauthorized occupants from religious premises and for certain incidental matters.

Be it enacted by the Legislature of the State of Punjab in the Forty-eighth Year of the Republic of India as follows:

1. Short title and commencement

(1) This Act may be called the Punjab Religious Premises and Land (Eviction and Rent Recovery) Act 1997.

(2) It shall come into force at once.

2. Definitions

In this Act unless the context otherwise requires,-

(a) "Collector" means the Collector of the District and includes any other officer appointed by the State Government for performing the functions of the Collector under this Act;

(b) "Commissioner" means the Commissioner of a Division;

(c) "estate" means any area-

(i) for which a separate record-of-rights has been made; or

(ii) which has been separately assessed to land revenue, or would have been so assessed if the land revenue had not been released, compounded for or redeemed; or

(iii) which the State Government may, by general rule or special order, declare to be an estate;

(d) "Religious Institution" means any gurdwara, temple, church, mosque, temple of Jains or Budhas – which is registered under the provisions of the Societies Registration Act, 1860 (Central Act No. XXI of 1860) or is established under any statute and includes any other place of worship by whatever name it may be called, which is registered as aforesaid or is established under any statute;

(e) "religious premises" means any land whether used for agricultural or non-agricultural purposes, or any building or part of a building belonging to a Religious Institution and includes, -

(i) the garden, grounds and out-houses, if any, appertaining to such building or part of a building; and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;

(f) "rent" in relation to any religious premises, means the consideration, payable periodically for the authorized occupation of the religious premises and includes-

(i) any charge for electricity, water or any other services in connection with the occupation of the premises;

(ii) any tax (by whatever name called) payable in respect of the religious premises; where such charge or tax is payable by the Religious Institution.

3. Unauthorized occupation of religious premises

For the purposes of this Act, a person shall be deemed to be in unauthorized occupation of any religious premises-

(a) where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under an in pursuance of any allotment, lease or grant; or

(b) where he, being an allottee, lessee or grantee has, by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such religious premises; or

(c) where any person authorized to occupy any religious premises has, whether before or after the commencement of this Act,-

(i) sub-let, in contravention of the terms of allotment, lease or grant, without the permission of the Religious Institution, the whole or any part of such religious premises; or

(ii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorized, to occupy such religious premises.

Explanation: For the purpose of clause (a), a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee.

4. Issue of notice to show cause against order of eviction

(1) On an application made by a Religious Institution, if the Collector is of opinion that any persons are in unauthorized occupation of any religious premises situate within his jurisdiction and that they should be evicted, the Collector shall issue in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall -

(a) specify the grounds on which the order of eviction is proposed to be made;

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the religious premises to show cause, if any, against the proposed order on or before such date as is specified in the notice being a date not earlier than ten days from the date of issue thereof.

(3) The Collector shall cause the notice to be sent through a registered post and also affixed on the outerdoor or some other conspicuous part of the religious premises, or of the estate in which the religious premises are situated whereupon the notice shall be deemed to have been duly given to all persons concerned.

5. Eviction of unauthorized persons

(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the religious premises are in unauthorized occupation the Collector may make an order of eviction, for reasons to be recorded therein, directing that religious premises shall be vacated, on such date not being the date beyond the period of forty-five days from the date of receipt of application by him under section 4 and as may be specified in the order by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outerdoor or some other conspicuous part of the religious premises or of the estate in which the religious premises are situated.

(2) If any person refuses or fails to comply with the order of eviction within thirty days of the date of order made under sub-section (1), the Collector or any other officer duly authorized by him in this behalf may evict that person from, and deliver the possession of the religious premises to the concerned Religious Institution and, may for that purpose, use such force as may be necessary.

6. Power to recover damages in respect of religious premises as arrears of land revenue

(1) Where any person is in arrears of rent payable in respect of any religious premises the Collector may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been in unauthorized occupation of any religious premises the Collector may, having regard to reasonable principles of assessment of damages, assess the damages on account of the use and occupation of such premises and may by order, require that person to pay the damages within such time and in instalments as may be specified in the order.

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice, in writing, to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same have been considered by the Collector.

7. Power of Collector

The Collector shall for the purpose of holding any inquiry under this Act, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matter namely-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) any other matter which he may consider necessary.

8. Appeals

(1) An appeal shall lie from every order of the Collector made in respect of any religious premises under section 5 or section 6 to the Commissioner.

(2) An appeal under sub-section (1) shall be preferred-

(a) in the case of an appeal from an order under section 5, within thirty days from the date of the order; and

(b) in the case of an appeal from an order under section 6 within thirty days from the date on which the order is communicated to the appellant:

Provided that the Commissioner may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the Collector, the Commissioner may stay the enforcement of that order for such period and on such conditions as he deems fit.

(4) Every appeal under this section shall be disposed of by the Commissioner as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the Commissioner.

9. Finality of orders

Every order made by the Commissioner and subject to the orders of the Commissioner the order made by the Collector under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

10. Liability of heirs and legal representatives

(1) Where any person against whom any proceeding for the determination of arrears of rent or for the assessment of damages is to be or has been taken under section 6 dies before the proceeding is taken or during the pendency thereof, legal proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person.

(2) Any amount due to the Religious Institution from any person whether by way of arrears of rent or damages or costs shall after the death of the per-

son, be payable by his heirs or legal representatives, but their liability shall be limited to the extent of the assets of the deceased in their hands.

11. Recovery of rent as arrears of land revenue

If any person refuses or fails to pay the arrears of rent payable under sub-section (1) of section 6 of the damages payable under sub-section (2) of that section or the costs awarded to the Religious Institution under sub-section (5) of section 8 or any portion of such rent, damages or costs, within the time, if any, specified thereof in the order relating thereto, the Collector shall proceed to recover the amount due as arrears of land revenue.

12. Bar of jurisdiction

No Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorized occupation of any religious premises or the recovery of the arrears of rent payable under sub-section (1) of section 6 or the damages payable under sub-section (2) of that section or the costs awarded to the Religious Institution under sub-section (5) of section 8 or any portion of such rent, damages or costs.

13. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Commissioner, the Collector or any other person authorized by him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or orders made thereunder.

16. The Rajasthan Religious Buildings and Places Act, 1954

[Act No. XVIII of Year 1954]

(Received the assent of the President on the 15th day of August, 1954)

An Act to regulate the construction of public religious buildings and to restrict the use of public places for religious purposes.

Whereas with a view to avoiding a breach of the public peace and tranquillity likely to arise from disputes between different sections of the people of the State of Rajasthan, it is expedient to regulate the construction of public religious buildings and restrict the use of public places for religious purposes;

It is hereby enacted as follows:

1. Short title, extent and commencement

(1) This Act may be called the Rajasthan Religious Buildings and Places Act, 1954.

(2) It extends to the whole of the State of Rajasthan.

(3) It shall come into force on the date of its first publication in the official Gazette.

2./3. Omitted

4. Definitions

In this Act, unless the context otherwise requires,-

(i) (repealed);

(ii) "building" means a house, shop, hut, shed or other structure or enclosure, whether roofed or not, of whatsoever material constructed and includes every part thereof, all walls, verandahs, platforms, plinths, door steps and the like and a tent or other portable and merely temporary shelter;

(iii) “Commissioner” means the Divisional Commissioner appointed under section 17 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956);

(iv) "place" means any open space which is not a building;

(v) "public" used with reference to a building or place, signifies that such building or place, whether or not acquired, constructed and maintained by or at the expense of some specified person or body of persons is not the private and personal property of such person or body and is open to the use and enjoyment of the public in general or of a particular class or section thereof for the purpose, if any, for which it may have been set apart;

(vi) "religious" when used with reference to a building or place, signifies-

(a) that such building is used or intended to be used for the purpose of religious worship or instructions, or offering prayers (which include Bhajan, Kirtan, Stuti or Namaz) or performance of any religious rites by persons of or belonging to any religion, creed, sect of any or class, such as a temple, mosque, church, chhatri, dargah, khanqah, mutt, takiya or the like, or

(b) that such place is likewise used or intended to be used.

5. Restrictions on use of public places fur religious purposes

No person shall use any public place-

(a) as a permanent religious place, or

(b) save with the previous written permission of the Collector obtained in the prescribed manner, as a temporary religious place.

(2) Nothing in this section shall apply to cremation grounds and burial places or to the holding of functions or the taking out of processions, in connection with deaths or marriages or to other purely social and secular functions or to religious processions.

6. Constructions, etc. of public religious buildings

(1) No person shall, without first obtaining the written permission of the Collector,-

(a) construct any public religious building,

(b) convert any private or public building or place into a public religious building; or

(c) destroy, damage or transfer any public religious building or place.

Explanation: The temporary use of a building or place for religious purposes on occasions such as Holi, Moharram and the like shall not be deemed to be the conversion thereof into a public religious building.

(2) A person desirous of obtaining of the purposes mentioned in subsection (1) shall first obtain permission from any local authority or officer having jurisdiction over the area where the building or place in question lies and thereafter such person shall apply to the Collector for the requisite permission in the prescribed manner.

7. Procedure of Collector

(1) When an application under Sec. 5 or Sec. 6 is presented to the Collector in the prescribed manner, he may, after making such inquiry as he may think necessary, either disallow the application or grant the requisite permission unconditionally or with such conditions as to security or otherwise as he may consider reasonable in the circumstances of each case.

(2) The order of the Collector passed under sub-section (l) shall be communicated in writing to the applicant and if the latter does not receive such communication within four weeks in the case of an application under Sec. 5 or within three months in case of an application under Sec. 6, calculated from the date on which such application was received in the office of the Collector, the applicant shall be deemed to have obtained the permission required by Sec. 5 or Sec. 6, as the case may be.

8. Appeals

(1) An appeal shall lie, and may be brought in the prescribed mode to the revenue appellate authority from an order of the Collector made under Sec. 7 within thirty days from the date on which it was communicated to the applicant.

(2) Any person aggrieved by any decision of the revenue appellate authority under sub-section (1) may within 90 days from the date of such decision,

appeal to the Commissioner of the area from where the matter has arisen and the decision of the Commissioner shall be final.

9. Jurisdiction of courts barred

An order made under this Act by a Collector or on appeal by a revenue appellate authority or a Commissioner shall be final and shall not be liable to be called in question in any civil court.

10. Duration of permission

(1) A permission obtained under Sec. 5 shall expire three months after the date of the order granting the same or the day next after the date on which the act thereby permitted was to be performed, whichever may be earlier.

(2) A permission obtained under Sec. 6 shall endure for a period of one year within which the act permitted to be done should be commenced.

11. Offences and punishments

Whoever contravenes, or attempts to contravene, or abets the contravention of, any of the provisions of this Act or the rules made thereunder or any condition subject to which a permission thereunder may have been granted shall on conviction be punishable with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

11A. Power of Collector to direct removal of unauthorized work

(1) Notwithstanding anything contained in but without prejudice to the provisions of section 12, the Sub-Divisional Officer, on his own motion or on a complaint or otherwise on receiving information that any work has been constructed in contravention of the provisions of this Act or of any permission granted thereunder within his jurisdiction, shall proceed to enquire into the truth of the matter and if after enquiry comes to the conclusion that the work has been so constructed, he shall make a report to the effect to the Collector.

(2) Where the Collector on the receipt of the report under sub-section (1) or suo motu has reasons to believe that a work has been constructed in contravention of this Act or of any permission granted thereunder, he shall cause to be notified in the locality by beat of drum and by affixing a show cause notice on the conspicuous part of the work so constructed and on the notice board of his office and also cause a notice to be served on the person or persons (if ascertainable) responsible for the construction of the work calling for objections, if any, within a period of fifteen days as to why such work should not be removed and may, if necessary, stay further construction till he gives his findings on the matter.

(3) The Collector shall then hear and decide the objections, if any, and record the finding on the matter.

(4) If the Collector arrives at the finding that the work was constructed in contravention of the provisions of this Act or of any permission granted thereunder, he shall direct the removal of the work so as to restore the building or place in question, as nearly as may be, to its original condition.

(5) Subject to the result of any appeal that may be filed, where any work is not removed in compliance with the direction within a period of one month from the date of such direction of the Collector, or of the decision of appeal, if any, the Collector shall cause such compliance to be made through a police officer not below the rank of Sub-Inspector the cost of the defaulter in the prescribed manner.

(6) The provisions of section 8 shall mutatis mutandis apply to an order made by the Collector under sub-section (4) in the same manner as they apply to an order made under section 7.

12. Removal of unauthorized work

(1) The Court making an order of conviction for any offence under Sec. 11 shall direct that any work which shall have been constructed in contravention of the provisions of this Act or of any permission granted thereunder, but has not been already removed under the provisions of section 11 A, shall be removed so as to restore the building or place in question as nearly as may be to its original condition.

(2) In case of non-compliance with a direction made under sub-section (1) the Court shall cause such compliance to be made through a police officer not below the rank of Sub-Inspector at the cost of the defaulter in the prescribed manner.

13. Cognizance of offences

An offence under this Act shall be triable by a Sub-Divisional Magistrate or a Magistrate of First Class on the complaint of a police officer not below the rank of a Sub-Inspector made under the orders of a Collector.

14. Power to make rules

The State Government may, by notification in the official Gazette, make such rules, consistent with this Act, as may appear to it reasonable regulating all matters that are required by this Act to be prescribed and generally for the purpose of carrying into effect the provisions of this Act.

17. The Acquisition of Certain Area at Ayodhya Act, 1993

[Act No. 33 of Year 1993, dated 3rd April, 1993]

An Act to provide for the acquisition of certain area at Ayodhya and for matters connected therewith or incidental thereto.

Whereas there has been a long-standing dispute relating to the structure (including the premises of the inner and outer courtyards of such structure), commonly know as the Ram Janma Bhumi-Babri Masjid, situated in village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh;

And whereas the said dispute has affected the maintenance of public order and harmony between different communities in the country;

And whereas it is necessary to maintain public order and to promote communal harmony and the spirit of common brotherhood amongst the people of India;

And whereas with a view to achieving the aforesaid objectives, it is necessary to acquire certain areas in Ayodhya;

Be it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:

Chapter I: Preliminary

1. Short title and commencement

(1) This Act may be called the Acquisition of Certain Area at Ayodhya Act, 1993.

(2) It shall be deemed to have come into force on the 7th day of January, 1993.

2. Definitions

In this Act, unless the context otherwise requires,-

(a) "area" means the area (including all the buildings, structures or other properties comprised therein) specified in the Schedule;

(b) "authorized person" means a person or body of persons or trustees of any trust authorized by the Central Government under section 7;

(c) "Claims Commissioner" means the Claims Commissioner appointed under sub-section (2) of section 8;

(d) "prescribed" means prescribed by rules made under this Act.

Chapter II: Acquisition of the Area in Ayodhya

3. Acquisition of rights in respect of certain area

On and from the commencement of this Act, the right, title and interest in relation to the area shall, by virtue of this Act, stand transferred to, and vest in, the Central Government.

4. General effect of vesting

(1) The area shall be deemed to include all assets, rights, leaseholds, powers, authority and privileges and all property, movable and immovable, including lands, buildings, structures, shops of whatever nature or other properties and all other rights and interests in, or arising out of, such properties as were immediately before the commencement of this Act in the ownership, possession, power or control of any person or the State Government of Uttar Pradesh, as the case may be, and all registers, maps, plans, drawings and other documents of whatever nature relating thereto.

(2) All properties aforesaid which have vested in the Central Government under section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them and any attachment, injunction, decree or order of any court or tribunal or other authority restricting the use of such properties in any manner or appointing any receiver in respect of the whole or any part of such properties shall cease to have any effect.

(3) If, on the commencement of this Act, any suit, appeal or other proceeding in respect of the right, title and interest relating to any property which has vested in the Central Government under section 3, is pending before any court, tribunal or other authority, the same shall abate.

5. Duty of person or State Government in charge of the management of the area to deliver all assets etc.

(1) The Central Government may take all necessary steps to secure possession of the area which is vested in that Government under section 3.

(2) On the vesting of the area in the Central Government under section 3, the person or State Government of Uttar Pradesh, as the case may be, in charge of the management of the area immediately before such vesting shall be bound to deliver to the Central Government or the authorized person, all assets, registers and other documents in their custody relating to such vesting or where it is not practicable to deliver such registers or documents, the copies of such registers or documents authenticated in the prescribed manner.

6. Power of Central Government to direct vesting of the area in another authority or body or trust

(1) Notwithstanding anything contained in sections 3, 4, 5 and 7, the Central Government may, if it is satisfied that any authority or other body, or trustees of any trust, set up on or after the commencement of this Act is or are willing to comply with such terms and conditions as that Government may think fit to impose, direct by notification in the Official Gazette, that the right, title and interest or any of them in reason to the area or any part thereof, instead of continuing to vest in the Central Government, vest in that authority or body or trustees of that trust either on the date of the notification or on such later date as may be specified in the notification.

(2) When any right, title and interest in relation to the area or part thereof vest in the authority or body or trustees referred to in sub-section (1), such rights of the Central Government in relation to such area or part thereof, shall, on and from the date of such vesting, be deemed to have become the rights of that authority or body or trustees of that trust.

(3) The provisions of sections 4, 5, 7 and 11 shall, so far as may be, apply in relation to such authority or body or trustees as they apply in relation to the Central Government and for this purpose references therein to the Central Government and for this purpose references therein to the Central Government shall be construed as references to such authority or body or trustees.

Chapter III: Management and Administration of Property

7. Management of property by Government

(1) Notwithstanding anything contained in any contract or instrument or order of any court, tribunal or other authority to the contrary, on and from the commencement of this Act, the property vested in the Central Government under section 3 shall be managed by the Central Government or by a person or body of persons or trustees of any trust authorized by that Government in this behalf.

(2) In managing the property vested in the Central Government under section 3, the Central Government or the authorized person shall ensure that the position existing before the commencement of this Act in the area on which the structure (including the premises of the inner and outer courtyards of such structure), commonly known as the Ram Janma Bhumi-Babri Masjid, stood in village Kot Ramchandra in Ayodhya, in Pargana Haveli Avadh, in tehsil Faizabad Sadar, in the district of Faizabad of the State of Uttar Pradesh is maintained.

8. Payment of amount

(1) The owner of any land, building, structure or other property comprised in the area shall be given by the Central Government, for the transfer to and vesting in that Government under section 3 of that land, building, structure or other property, in cash an amount equivalent to the market value of the land, building, structure or other property.

(2) The Central Government shall, for the purpose of deciding the claim of the owner or any person having a claim against the owner under sub-section (1), by notification in the official Gazette, appoint a Claims Commissioner.

(3) The Claims Commissioner shall regulate his own procedure for receiving and deciding the claims.

(4) The owner or any person having a claim against the owner may make a claim to the Claims Commissioner within a period of ninety days from the date of commencement of this Act:

Provided that if the Claims Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of ninety days, the Claims Commissioner may entertain the claim within a further period of ninety days and not thereafter.

9. Act to override all other enactments

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act or any decree or order of any court, tribunal or other authority.

10. Penalties

Any person who is in charge of the management of the area and fails to deliver to the Central Government or the authorized person any asset, register or other document in his custody relating to such area or, as the case may be, authenticated copies of such register or document, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees or with both.

11. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Central Government or the authorized person or any of the officers or other employees of that Government or the authorized person for anything which is in good faith done or intended to be done under this Act.

12. Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

13. Repeal and saving

(1) Subject to the provisions of sub-section (2), the Acquisition of Certain Area at Ayodhya Ordinance, 1993, is hereby repealed.

(2) Notwithstanding anything contained in the said Ordinance,-

(a) the right, title and interest in relation to plot No.242 situated in village Kot Ramchandra specified against Sl. No. 1 of the Schedule to the said Ordinance shall be deemed never to have been transferred to, and vested in, the Central Government;

(b) any suit, appeal or other proceeding in respect of the right, title and interest relating to the said plot No. 242, pending before any court, tribunal or other authority, shall be deemed never to have abated and such suit, appeal or other proceeding (including the orders or interim orders of any court thereon) shall be deemed to have been restored to the position existing immediately before the commencement of the said Ordinance;

(c) any other action taken or thing done under that Ordinance in relation to the said plot No. 242 shall be deemed never to have been taken or done.

(3) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

The Schedule: Description of the Area
(…)

H. Bürgerliches Recht und Wirtschaftsrecht

1. Transfer of Property Act,1882

[Act No. 4 of Year 1882]

An Act to amend the law relating to the transfer of property by act of parties.

Whereas it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties;

It is hereby enacted as follows:

Chapter I: Preliminary

2. Repeal of Acts-Saving of certain enactments, incidents, rights, liabilities, etc.

In the territories to which this Act extends for the time being the enactments specified in the Schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect-

(…)

(d) (…), and nothing in the second Chapter of this Act shall be deemed to affect any rule of Mohammedan law.

Chapter II: Of Transfers of Property by Act of Parties

5. Transfer of property defined

In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

In this section "living person includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

10. Condition restraining alienation

Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is

void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:

Provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

14. Rule against perpetuity

No transfer of property can operate to create an interest which is to take effect after the life time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

16. Transfer to take effect on failure of prior interest

Where, by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

17. Direction for accumulation

(1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than-

(a) the life of the transferor, or

(b) a period of eighteen years from the date of transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of-

(i) the payment of the debts of the transferor or any other person taking any interest under the transferor; or

(ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer; or

(iii) the preservation or maintenance of the property transferred,

and such direction may be made accordingly.

18. Transfer in perpetuity for benefit of public

The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

Chapter IV: Of Mortgages of Immovable Property and Charges

69. Power of sale when valid

(1) A mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section have power to sell or concur in selling the mortgaged property or any part thereof, in default of payment of the mortgage-money, without the intervention of the court, in the following cases and in no others, namely,-

(a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Mohammedan or Buddhist or a member of any other race, sect, tribe or class from time to time specified in this behalf by the State Government, in the Official Gazette;

(…)

2. Monopolies and Restrictive Trade Practices Act, 1969

[Act No. 54 of Year 1969]

An Act to provide that operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twentieth Year of the Republic of India as follows:

Chapter I: Preliminary

2. Definitions

In this Act, unless the context otherwise requires-

(…)

(ja) "owner", in relation to an undertaking, means an individual, Hindu undivided family, body corporate or other association of individuals, whether incorporated or not, or trust (whether public or private or whether religious

or charitable) who or which owns or controls, the whole or substantially the whole of such undertaking, and includes any associated person who is a constituent of a group and who has the ultimate control over the affairs of such undertaking;

(…)

Chapter III: Concentration of Economic Power

27. Division of undertakings

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, the Commission may-

(i) upon receiving a complaint of facts from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not; or

(ii) upon a reference made to it by the Central Government or a State Government; or

(iii) upon its own knowledge or information,

if it is of opinion that the working of an undertaking is prejudicial to the public interest, or has led, or is leading, or is likely to lead, to the adoption of any monopolistic or restrictive trade practices, inquire, as to whether it is expedient in the public interest to make an order,-

(a) for the division of any trade of the undertaking by the sale of any part of the undertaking or assets thereof, or

(b) for the division of any undertaking or inter-connected undertakings into such number of undertakings as the circumstances of the case may justify,

and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon and shall, where it is of opinion that a division ought to be made, specify the manner of the division and compensation, if any, payable for such division.

(…)

3. Copyright Act, 1957

[Act No. 14 of Year 1957, dated 4th June, 1957]

An Act to amend and consolidate the law relating to copyright.

Be it enacted by Parliament in the Eighth Year of the Republic of India as follows:

Chapter XI: Infringement of Copyright

52. Certain acts not to be infringement of copyright

(1) The following acts shall not constitute an infringement of copyright, namely,-

(…)

(l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;

(m) the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction;

(…)

4. Trade Marks Act, 1999

[Act No. 47 of Year 1999, dated 30th December, 1999]

An Act to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks.

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:

Chapter II: The Register and Conditions for Registration

9. Absolute grounds for refusal of registration

(…)

(2) A mark shall not be registered as a trade mark if–

(…)

(b) it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;

(…)

5. The Geographical Indications of Goods (Registration and Protection) Act, 1999

[Act No. 48 of Year 1999, dated 30th December, 1999]

An Act to provide for the registration and better protection of geographical indications relating to goods.

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:

Chapter II: The Register and Conditions for Registration

9. Prohibition of registration of certain geographical indications

A geographical indication-

(…)

(d) which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;

(…)

shall not be registered as a geographical indication.

(…)

I. Gesellschafts- und Aktienrecht

1. Companies Act, 1956

[Act No.1 of Year 1956, dated 18th January, 1956]

An Act to consolidate and amend the law relating to companies and certain other associations.

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:

Part II: Incorporation of Company and Matters Incidental thereto

25. Power to dispense with "Limited" in name of charitable or other company

(1) Where it is proved to the satisfaction of the Central Government that an association:-

(a) is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and

(b) intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members,

the Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the words "Private Limited".

(2) The association may thereupon be registered accordingly; and on registration shall enjoy all the privileges, and (subject to the provisions of this section) be subject to all the obligations, of limited companies.

(3) Where it is proved to the satisfaction of the Central Government-

(a) that the objects of a company registered under this Act as a limited company are restricted to those specified in clause (a) of sub-section (1), and

(b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members, the Central Government may, by licence, authorise the company by a special resolution to change its name, including or consisting of the omission of the word "Limited" or the words "Private Limited"; and section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21.

(4) A firm may be a member of any association or company licensed under this section, but on the dissolution of the firm, its membership of the association or company shall cease.

(5) A licence may be granted by the Central Government under this section on such conditions and subject to such regulations as it thinks fit, and those conditions and regulations, shall be binding on the body to which the licence is granted, and where the grant is under sub-section (1), shall, if the Central Government so directs, be inserted in the memorandum, or in the articles, or partly in the one and partly in the other.

(6) It shall not be necessary for a body to which a licence is so granted to use the word "Limited" or the words "Private Limited" as any part of its name and, unless its articles otherwise provide, such body shall, if the Central Government by general or special order so directs and to the extent specified in the directions, be exempt from such of the provisions of this Act as may be specified therein.

(7) The licence may at any time be revoked by the Central Government, and upon revocation, the Registrar shall enter the word "Limited" or the words "Private Limited" at the end of the name upon the register of the body to which it was granted; and the body shall cease to enjoy the exemption granted by this section:

Provided that, before a licence is so revoked, the Central Government shall give notice in writing of its intention to the body, and shall afford it an opportunity of being heard in opposition to the revocation.

(8)(a) A body in respect of which a licence under this section is in force shall not alter the provisions of its memorandum with respect to its objects except with the previous approval of the Central Government signified in writing.

(b) The Central Government may revoke the licence of such a body if it contravenes the provisions of clause (a).

(c) In according the approval referred to in clause (a), the Central Government may vary the licence by making it subject to such conditions and regulations as that Government thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence was formerly subject.

(d) Where the alteration proposed in the provisions of the memorandum of a body under this sub-section is with respect to the objects of the body so far as may be required to enable it to do any of the things specified in clauses (a) to (g) of sub-section (1) of section 17, the provisions of this sub-section shall be in addition to, and not in derogation of, the provisions of that section.

(9) Upon the revocation of a licence granted under this section to a body the name of which contains the words "Chamber of Commerce", that body shall, within a period of three months from the date of revocation or such

longer period as the Central Government may think fit to allow, change its name to a name which does not contain those words; and-

(a) the notice to be given under the proviso to sub-section (7) to that body shall include a statement of the effect of the foregoing provisions of this sub-section; and

(b) section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21.

(10) If the body makes default in complying with the requirements of sub-section (9), it shall be punishable with fine which may extend to five thousands rupees for every day during which the default continues.

2. The State Bank of India (Subsidiary Banks) Act, 1959

[Act No. 38 of Year 1959, dated 10th September, 1959]

An Act to provide for the formation of certain Government or Government-associate banks as subsidiaries of the State Bank of India and for the constitution, management and control of the subsidiary banks so formed, and for matters connected there with, or incidental thereto.

Be it enacted by Parliament in the Tenth Year of the Republic of India as follows:

Chapter IV: Shares of the Subsidiary Banks

19. Restriction on individual holdings

(1) No person shall be registered as a shareholder in respect of any shares in a subsidiary bank held by him, whether in his own name or jointly with any other person, in excess of two hundred shares, or be entitled to payment of any dividend on the excess shares held by him, or to exercise any of the rights of a shareholder in respect of such excess shares otherwise than for the purpose of selling them:

Provided that nothing contained in this sub-section shall apply to-

(…)

(g) a trustee of a public for private religious or charitable trust;

(…)

(2) Notwithstanding anything contained in sub-section (1), no person referred to in the proviso to that sub-section, other than the State Bank, shall be entitled to exercise voting rights in respect of any shares held by such

person in excess of one per cent of the issued capital of the subsidiary bank concerned.

J. Finanzen und Steuern

1. Foreign Contribution (Regulation) Act, 1976

[Act No. 49 of Year 1976]

An Act to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:

Chapter I: Preliminary

2. Definitions

(1) In this Act, unless the context otherwise requires,-

(a) "association" means an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860 (21 of 1860), or not, and any other organisation, by whatever name called;

(…)

(c) "foreign contribution" means the donation, delivery or transfer made by any foreign source-

(i) of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, does not exceed one thousand rupees;

(ii) of any currency, whether Indian or foreign;

(iii) of any foreign security as defined in clause (i) of section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973).

Explanation: A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause;

(…)

Chapter II: Regulation of Foreign Contribution and Foreign Hospitality

5. Organisation of a political nature not to accept foreign contribution except with the prior permission of the Central Government

(1) No organisation of a political nature, not being a political party, shall, accept any foreign contribution except with the prior permission of the Central Government.

Explanation: For the purposes of this section, "organisation of a political nature, not being a political party" means such organisation as the Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisation with the activities of any political party, by an order published in the Official Gazette, specify in this behalf.

(…)

6. Certain associations and persons receiving foreign contribution to give intimation to the Central Government

(1) No association other than an organisation referred to in sub-section (1) of section 5 having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such association,-

(a) registers itself with the Central Government in accordance with the rules made under this Act; and

(b) agrees to receive such foreign contributions only through such one of the branches of a bank as it may specify in its application for such registration,

and every association so registered shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of each foreign contribution received by it, the source from which and the manner in which such foreign contribution was received and the purposes for which, and the manner in which, such foreign contribution was utilised by it:

Provided that where such association obtains any foreign contribution through any branch other than the branch of the bank through which it has agreed to receive foreign contribution or fails to give such intimation within the prescribed time or in the prescribed manner, or gives any intimation which is false, the Central Government may, by notification in the Official Gazette, direct that such association shall not, after the date of issue of such notification, accept any foreign contribution without the prior permission of the Central Government.

(1A) Every association referred to in sub-section (1) may, if it is not registered with the Central Government under that sub-section, accept any for-

eign contribution only after obtaining the prior permission of the Central Government and shall also give, within such time and in such manner as may be prescribed an intimation to the Central Government as to the amount of foreign contribution received by it, the source from which and the manner in which such foreign contribution was received and the purpose for which and the manner in which such foreign contribution was utilised by it.

(…)

10. Power of Central Government to prohibit receipt of foreign contribution, etc., in certain cases

The Central Government may-

(a) prohibit any association, not specified in section 4, or any person, from accepting any foreign contribution;

(b) without prejudice to the provisions of sub-section (1) of section 6, require any association specified in that sub-section, to obtain prior permission of the Central Government before accepting any foreign contribution;

(c) require any person or class of persons or any association not being an association specified in section 6, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons or association, as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;

(d) require any person or class of persons, not specified in section 9, to obtain prior permission of the Central Government before accepting any foreign hospitality;

(e) require any person or class of persons, not specified in section 9, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received:

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such association or person or class of persons, as the case may be, the acceptance of foreign hospitality by such person, is likely to affect prejudicially-

(…)

(v) harmony between religious, racial, linguistic or regional groups, castes or communities.

2. Income-Tax Act, 1961

[Act No. 43 of Year 1961]

An Act to consolidate and amend the law relating to income-tax and super-tax.

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows:

Chapter I: Preliminary

2. Definitions

In this Act, unless the context otherwise requires,-

(…)

(24) "income" includes-

(…)

(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) of clause (23C), of section 10.

Explanation: For the purposes of this sub-clause, "trust" includes any other legal obligation;

(…)

Chapter II: Basis of Charge

10. Incomes not included in total income

In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

(…)

(23BBA) any income of any body or authority (whether or not a body corporate or corporation sole) established, constituted or appointed by or under any Central, State or Provincial Act which provides for the administration of any one or more of the following, that is to say, public religious or charitable trusts or endowments (including maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship) or societies for religious or charitable purposes registered as such under

the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force:

Provided that nothing in this clause shall be construed to exempt from tax the income of any trust, endowment or society referred to therein;

(…)

(23C) any income received by any person on behalf of-

(…)

(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

(iiiac) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed; or

(iiiae) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed; or

(iv) any other fund or institution established for charitable purposes which may be notified by the Central Government in the Official Gazette, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; or

(v) any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, which may be notified by the Central Government in the Official Gazette, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof;

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority; or

(via) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiac) or sub-clause (iiiae) and which may be approved by the prescribed authority:

Provided that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via):

Provided further that the Central Government, before notifying the fund or trust or institution, or the prescribed authority, before approving any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the Central Government or the prescribed authority, as the case may be, may also make such inquiries as it deems necessary in this behalf:

Provided also that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via)-

(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than twenty-five per cent of its income is accumulated on or after the 1st day of April, 2001, the period of the accumulation of the amount exceeding twenty-five per cent of its income shall in no case exceed five years; and

(b) does not invest or deposit its funds, other than-

(i) any assets held by the fund, trust or institution or any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of the fund, trust or institution or any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1973.

(ia) any asset, being equity shares of a public company, held by any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of any university or other

educational institution or any hospital or other medical institution as on the 1st day of June, 1998;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the fund, trust or institution or any university or other educational institution or any hospital or other medical institution before the 1st day of March, 1983;

(iii) any accretion to the shares, forming part of the corpus mentioned in sub-clause (i) and sub-clause (ia), by way of bonus shares allotted to the fund, trust or institution or any university or other educational institution or any hospital or other medical institution;

(iv) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify,

for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11:

Provided also that the exemption under sub-clause (iv) or sub-clause (v) shall not be denied in relation to any funds invested or deposited before the 1st day of April, 1989, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 1993:

(…)

Provided also that the exemption under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (b) of the third proviso to this sub-clause, subject to the condition that such voluntary contribution is not held by the trust or institution or any university or other educational institution or any hospital or other medical institution, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1992, whichever is later:

Provided also that nothing contained in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall apply in relation to any income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:

Provided also that any notification issued by the Central Government under, sub-clause (iv) or sub-clause (v) shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (includ-

ing an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification;

(…)

11. Income from property held for charitable or religious purposes

(1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of twenty-five per cent of the income from such property;

(c) income derived from property held under trust-

(...)

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

(…)

Explanation: For the purposes of clauses (a) and (b),-

(1) in computing the twenty-five per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income;

(2) if, in the previous year, the income applied to charitable or religious purposes in India falls short of seventy-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount-

(i) for the reason that the whole or any part of the income has not been received during that year, or

(ii) for any other reason,

then-

(a) in the case referred to in sub-clause (i), so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount, and

(b) in the case referred to in sub-clause (ii), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount,

may, at the option of the person in receipt of the income (such option to be exercised in writing before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income) be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (i), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (ii), during the previous year immediately following the previous year in which the income was derived.

(1A) For the purposes of sub-section (1),-

(a) where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:-

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain;

(ii) where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

(b) where a capital asset, being property held under trust in part only for such purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the appropriate fraction of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:-

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of the appropriate fraction of such capital gain;

(ii) in any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of the transferred asset.

Explanation: In this sub-section,-

(i) "appropriate fraction" means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes;

(ii) "cost of the transferred asset" means the aggregate of the cost of acquisition (as ascertained for the purposes of sections 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in sub-clause (b) of clause (1) of section 55;

(iii) "net consideration" means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(1B) Where any income in respect of which an option is exercised under clause (2) of the Explanation to sub-section (1) is not applied to charitable or religious purposes in India during the period referred to in sub-clause (a) or, as the case may be, sub-clause (b), of the said clause, then, such income shall be deemed to be the income of the person in receipt thereof-

(a) in the case referred to in sub-clause (i) of the said clause, of the previous year immediately following the previous year in which the income was received; or

(b) in the case referred to in sub-clause (ii) of the said clause, of the previous year immediately following the previous year in which the income was derived.

(2) Where seventy-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:-

(a) such person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5):

Provided that in computing the period of ten years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

(3) Any income referred to in sub-section (2) which-

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

(…)

(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof,

shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or, as the case may be, of the previous year immediately following the expiry of the period aforesaid.

(3A) Notwithstanding anything contained in sub-section (3), where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of clause (b) of sub-section (2) cannot be applied for the purpose for which it was accumulated or set apart, the Assessing Officer may, on an application made to him in this behalf, allow such person to apply such income for such other charitable or religious purpose in India as is specified in the application by such person and as is in conformity with the objects of the trust; and thereupon the provisions of sub-section (3) shall apply as if the purpose specified by such person in the application under this sub-section were a purpose specified in the notice given to the Assessing Officer under clause (a) of sub-section (2).

(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.

(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

(…)

12. Income of trusts or institutions from contributions

(1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.

(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income tax notwithstanding the provisions of sub-section (1) of section 11.

Explanation: For the purposes of this sub-section, the expression "value" shall be the value of any benefit or facility granted or provided free of cost or at concessional rate to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13.

12A. Conditions as to registration of trusts, etc.

The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:-

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution,

whichever is later and such trust or institution is registered under section 12AA:

Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,-

(i) from the date of the creation of the trust or the establishment of the institution if the Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;

(ii) from the 1st day of the financial year in which the application is made, if the Commissioner is not so satisfied;

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds fifty thousand rupees in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed from duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(…)

13. Section 11 not to apply in certain cases

(1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof-

(a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;

(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof-

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-section (3):

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution:

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) in so far as such use or application relates to any period before the 1st day of June,1970;

(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year-

(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; or

(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983; or

(iii) any shares in a company not being a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act are held by the trust or institution after the 30th day of November, 1983:

Provided that nothing in this clause shall apply in relation to-

(i) any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973;

(ia) any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before the 1st day of March, 1983;

(iia) Any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1993, whichever is later;

(iii) any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April, 1984 or any subsequent assessment year.

Explanation: Where the trust or institution has any other income in addition to profits and gains of business, the provisions of clause (iii) of this proviso

shall not apply unless the trust or institution maintains separate books of account in respect of such business.

Explanation: For the purposes of sub-clause (ii) of clause (c), in determining whether any part of the income or any property of any trust or institution is during the previous year used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of July, 1972, no regard shall be had to the amendments made to this section by section 7 other than sub-clause (ii) of clause (a) thereof of the Finance Act, 1972.

(2) Without prejudice to the generality of the provisions of clause (c) and clause (d) of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),-

(a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest or both;

(b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;

(c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;

(d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;

(e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;

(f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;

(g) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3):

Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;

(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern in which any person referred to in sub-section (3) has a substantial interest.

(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely:-

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;

(c) where such author, founder or person is a Hindu undivided family, a member of the family;

(cc) any trustee of the trust or manager (by whatever name called) of the institution;

(d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

(e) any concern in which any of the persons referred to in clauses (a), (b), (c),(cc) and (a) has a substantial interest.

(4) Notwithstanding anything contained in clause (c) of sub-section (1) but without prejudice to the provisions contained in clause (a) of that sub-section, in a case where the aggregate of the funds of the trust or institution invested in a concern in which any person referred to in sub-section (3) has a substantial interest, does not exceed five per cent of the capital of that concern, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such investment, by reason only that the funds of the trust or the institution have been invested in a concern in which such person has a substantial interest.

(5) Notwithstanding anything contained in clause (a) of sub-section (1), where any assets (being debentures issued by, or on behalf of, any company or corporation) are acquired by the trust or institution after the 28th day of February, 1983 but before the 25th day of July, 1991, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such assets, by reason only that the funds of the trust or the institution have been invested in such assets if such funds do not continue to remain so invested in such assets after the 31st day of March, 1992.

(6) Notwithstanding anything contained in sub-section (1) or sub-section (2), but without prejudice to the provisions contained in sub-section (2) of section 12, in the case of a charitable or religious trust running an educational institution or a medical institution or a hospital, the exemption under section 11 or section 12 shall not be denied in relation to any income, other

than the income referred to in sub-section (2) of section 12, by reason only that such trust has provided educational or medical facilities to persons referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3).

Explanation 1: For the purposes of sections 11, 12, 12A and this section, "trust" includes any other legal obligation and for the purposes of this section "relative", in relation to an individual, means-

(i) spouse of the individual;

(ii) brother or sister of the individual;

(iii) brother or sister of the spouse of the individual;

(iv) any lineal ascendant or descendant of the individual;

(v) any lineal ascendant or descendant of the spouse of the individual;

(vi) spouse of a person referred to in sub-clause (ii), sub-clause (iii), sub-clause (iv) or sub-clause (v);

(vii) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

Explanation 2: A trust or institution created or established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of clause (b) of sub-section (1).

Explanation 3: For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,-

(i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3);

(ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern.

Chapter VIa: Deductions to be made in Computing Total Income

80G. Deduction in respect of donations to certain funds, charitable institutions, etc.

(1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section,-

(…)

(ii) in any other case, an amount equal to fifty per cent of the aggregate of the sums specified in sub-section (2).

(2) The sums referred to in sub-section (1) shall be the following, namely:-

(a) any sums paid by the assessee in the previous year as donations to-

(…)

(iv) any other fund or any institution to which this section applies; or

(…)

(b) any sums paid by the assessee in the previous year as donations for the renovation or repair of any such temple, mosque, gurdwara, church or other place as is notified by the Central Government in the Official Gazette to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any State or States.

(5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely:-

(…)

(ii) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;

(iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;

(…)

(5B) Notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five per cent of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply.

Explanation 1: An institution or fund established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or of women and chil-

dren shall not be deemed to be an institution or fund expressed to be for the benefit of a religious community or caste within the meaning of clause (iii) of sub-section (5).

Explanation 3: In this section, "charitable purpose" does not include any purpose the whole or substantially the whole of which is of a religious nature.

Chapter XIV: Procedure for Assessment

139. Return of Income

(1) Every person,-

(…)

shall furnish a return, of his income during the previous year, on or before the due date in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed

(…)

(4A) Every person in receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes, or of income being voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2, shall, if the total income in respect of which he is assessable as a representative assessee (the total income for this purpose being computed under this Act without giving effect to the provisions of sections 11 and 12) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

Chapter XV: Liability in Special Cases

164. Charge of tax where share of beneficiaries unknown

(…)

(2) In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, or which is of the nature referred to in sub-clause (iia) of clause (24) of section 2, or which is of the nature referred to in sub-section (4A) of section 11, tax shall be charged on so much of the relevant income as is not exempt under section 11 or section 12, as if the relevant income not so exempt were the income of an association of persons:

Provided that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

(3) In a case where the relevant income is derived from property held under trust in part only for charitable or religious purposes or is of the nature referred to in sub-clause (iia) of clause (24) of section 2 or is of the nature referred to in sub-section (4A) of section 11, and either the relevant income applicable to purposes other than charitable or religious purposes (or any part thereof) is not specifically receivable on behalf or for the benefit of any one person or the individual shares of the beneficiaries in the income so applicable are indeterminate or unknown, the tax chargeable on the relevant income shall be the aggregate of-

(a) the tax which would be chargeable on that part of the relevant income which is applicable to charitable or religious purposes (as reduced by the income, if any, which is exempt under section 11) as if such part (or such part as so reduced) were the total income of an association of persons; and

(b) the tax on that part of the relevant income which is applicable to purposes other than charitable or religious purposes, and which is either not specifically receivable on behalf or for the benefit of any one person or in respect of which the shares of the beneficiaries are indeterminate or unknown, at the maximum marginal rate:

Provided that in a case where-

(i) none of the beneficiaries in respect of the part of the relevant income which is not applicable to charitable or religious purposes has any other income chargeable under this Act exceeding the maximum amount not chargeable to tax in the case of an association of persons or is a beneficiary under any other trust; or

(ii) the relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him; or

tax shall be charged on the relevant income as if the relevant income (as reduced by the income, if any, which is exempt under section 11) were the total income of an association of persons:

Provided also that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (a) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

3. The Gift-Tax Act, 1958

[Act No. 18 of Year 1958, dated 15th May, 1958]

An Act to provide for the levy of gift-tax.

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:

Chapter II: Charge of Gift-Tax and Gifts Subject to Such Charge

5. Exemption in respect of certain gifts

(1) Gift-tax shall not be charged under this Act in respect of gifts made by any person-

(…)

(v) to any institution or fund established or deemed to be established for a charitable purpose to which the provisions of section 80G of the Income-tax Act apply;

(va) (i) to such temple, mosque, gurdwara, church or other place as has been notified by the Central Government for the purposes of clause (b) of sub-section (2) of section 80G of the Income-tax Act; or

(ii) by way of settlement on trust, of property the income from which, according to the deed of settlement, is to be used exclusively in connection with the temple, mosque, gurdwara, church or other place specified therein and notified as aforesaid;

(vi) for any charitable purpose not falling within clause (v)-

(a) made at any time before the 1st day of April, 1958; or

(b) made at any time after that date subject, in respect of each, such gift, to a maximum of rupees one hundred in value and, in respect of such gifts in any one previous year to the same donee, to a maximum of rupees five hundred in value in the aggregate;

(…)

(1a) Any reference in clause (v) or clause (vi) of sub-section (1) to charitable purpose in relation to a gift made on or after the 1st day of April, 1964 shall be construed as not including a purpose, the whole or substantially the whole of which is of a religious nature.

(…)

4. Payment of Bonus Act, 1965

[Act No. 21 of Year 1965, dated 25th September, 1965]

An Act to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.

Be it enacted by Parliament in the Sixteenth Year of the Republic of India as follows:

7. Calculation of direct tax payable by the employer

Any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely,-

(…)

(b) Where the employer is a religious or a charitable institution to which the provisions of section 32 do not apply and the whole or any part of its income is exempt from tax under the Income Tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;

(…)

32. Act not to apply to certain classes of employees

Nothing in this Act shall apply to,-

(…)

(v) employees employed by,-

(b) universities and other educational institutions;

(c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;

(…)

5. The Estate Duty Act, 1953

[Act No. 34 of Year 1953, dated 6th October, 1953]

An Act to provide for the levy and collection of an estate duty.

Be it enacted by Parliament as follows:

Part I: Preliminary

3. Interpretation

(…)

(4) Any reference in sections 9, 11 and 33 to public charitable purpose or purposes in relation to a gift made or disposition or determination of an interest effected or suffered on or after the 1st day of April, 1964 shall be construed as not including a purpose the whole or substantially the whole of which is of a religious nature.

Part II: Imposition of Estate Duty

9. Gifts within a certain period before death

(1) Property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been bona fide made two years or more before the death of the deceased shall be deemed to pass on the death:

Provided that in the case of gifts made for public charitable purposes the period shall be six months.

(…)

11. Limited interests disposed of within a certain period before death

(…)

(2) Where a disposition or determination of an interest limited to cease on the death was bona fide effected or suffered not less than two years before the death (or, if it was effected or suffered for public charitable purposes, not less than six months before the death,) the disposition or determination shall be excepted by this sub-section-

(a) if bona fide possession and enjoyment of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thenceforward retained to the entire exclusion of the person who immediately be-

fore the disposition or determination had the interest and of any benefit to him by contract or otherwise; or

(b) in the case of a partial determination, if the conditions specified in the preceding paragraph were not satisfied by reason only of the retention or enjoyment by the deceased of possession of some part of the property, or of some benefit, by virtue of the provisions of the instrument under which he had the interest:

(…)

Part III: Exceptions from the Charge of Duty

33. Exemptions

(1) To the extent specified against each of the clauses in this sub-section, no estate duty shall be payable in respect of property of any of the following kinds belonging to the deceased which passes on his death-

(a) property taken under one or more gifts made by the deceased for a public charitable purpose within a period of six months before his death, to the extent of rupees two thousand and five hundred in value;

(…)

6. The Wealth-Tax Act, 1957

[Act No. 27 of Year 1957, dated 12th September, 1957]

An Act to provide for the levy of wealth-tax.

Be it enacted by Parliament in the Eighth Year of the Republic of India as follows:

Chapter II: Charge of Wealth-Tax and Assets Subject to Such Charge

5. Exemptions in respect of certain assets

Wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee-

(i) any property held by him under trust or other legal obligation for any public purpose of a charitable or religious nature in India:

Provided that nothing contained in this clause shall apply to any property forming part of any business, not being a business referred to in clause (a) or clause (b) of sub-section (4A) of section 11 of the Income-tax Act in re-

spect of which separate books of account are maintained or a business carried on by an institution, fund or trust referred to in clause (23B) or clause (23C) of section 10 of that Act;

(…)

Chapter V: Liability to Assessment in Special Cases

21A. Assessment in cases of diversion of property, or of income from property, held under trust for public charitable or religious purposes

Notwithstanding anything contained in clause (i) of section 5, where any property is held under trust for any public purpose of a charitable or religious nature in India and-

(i) any part of such property or any income of such trust whether derived from such property or from voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2 of the Income-tax Act is used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3) of section 13 of the Income-tax Act, or

(ii) any part of the income of the trust whether derived from such property or from voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2 of the Income-tax Act, being a trust created on or after the 1st day of April, 1962, endures, directly or indirectly, for the benefit of any person referred to in sub-section (3) of section 13 of the said Act, or

(iii) any funds of the trust are invested or deposited, or any shares in a company are held by the trust, in contravention of the provisions of clause (d) of sub-section (1) of section 13 of the Income-tax Act,

wealth-tax shall be leviable upon, and recoverable from, the trustee or manager (by whatever name called) in the like manner and to the same extent as if the property were held by an individual who is a citizen of India and resident in India for the purposes of this Act:

Provided that in the case of a trust created before the 1st day of April, 1962, the provisions of clause (i) shall not apply to any use or application, whether directly or indirectly, of any part of such property or any income of such trust for the benefit of any person referred to in sub-section (3) of section 13 of the Income-tax Act, if such use or application is by way of compliance with a mandatory term of the trust:

Provided further that,-

(a) in the case of any association referred to in clause (21) of section 10 of the Income-tax Act,-

(i) the provisions of clause (i) and clause (ii) shall not apply; and

(ii) the other provisions of this section shall apply with the modifications that,-

(1) for the words, brackets, letter and figures "in contravention of the provisions of clause (d) of sub-section (1) of section 13 of the Income-tax Act", the words, brackets and figures "in contravention of the provisions contained in the proviso to clause (21) of section 10 of the Income-tax Act" had been substituted; and

(2) for the words "at the maximum marginal rate", the words and figures "at the rates specified in sub-section (2) of section 3" had been substituted;

(b) in the case of any institution, fund or trust referred to in clause (22) or clause (22A) or clause (23B) or clause (23C) of section 10 of the Income-tax Act, the provisions of clauses (i) to (iii) shall not apply.

Explanation: For the purposes of this section,-

(a) any part of the property or income of a trust shall be deemed to have been used or applied for the benefit of any person referred to in sub-section (3) of section 13 of the Income-tax Act in every case in which it can be so deemed to have been used or applied within the meaning of clause (c) of sub-section (1) of that section at any time during the period of twelve months ending with the relevant valuation date;

(b) "trust" includes any other legal obligation.

7. The New Delhi Municipal Council Act, 1994 (As Passed By The Houses of Parliament)

[Act No.44 of Year 1994, dated 14th July, 1994]

An Act to provide for the establishment of the New Delhi Municipal Council and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:

Chapter VIII: Taxation

62. Premises in respect of which property tax is to be levied

(1) Save as otherwise provided in this Act, the property tax shall be levied in respect of all lands and buildings in New Delhi except-

(a) lands and buildings or portions of lands and buildings exclusively occupied and used for public worship or by a society or body for a charitable purpose:

Provided that such society or body is supported wholly or in part by voluntary contributions, applies its profits, if any, or other income in promoting its objects and does not pay any dividend or bonus to its members.

Explanation: "Charitable purpose" includes relief of the poor, education and medical relief but does not include a purpose which relates exclusively to religious teaching;

(…)

(2) Lands and buildings or portions thereof shall not be deemed to be exclusively occupied and used for public worship or for a charitable purpose within the meaning of clause (a) of sub-section (1) if any trade or business is carried on in such lands and buildings or portions thereof or if in respect of such lands and buildings or portions thereof, any rent is derived.

(3) Where any portion of any land or building is exempt from the property tax by reason of its being exclusively occupied and used for public worship or for a charitable purpose such portion shall be deemed to be a separate property for the purpose of municipal taxation.

86. Theatre-tax

Save as otherwise provided in this Act, there shall be levied a tax (referred to in this Act as theatre-tax) in respect of every cinema, theatre, circus, carnival and other place of entertainment to which persons are ordinarily admitted on payment for performances or shows held or conducted thereat, at such rates not exceeding those specified in the Third Schedule as the Council may determine:

Provided that the theatre-tax shall not be levied in respect of any performance or show if the Chairperson is satisfied-

(a) that the entire receipts from such performance or show will be devoted to philanthropic, religious or charitable purposes; or

(b) that the performance or show is of a wholly educational character; or

(c) that the performance or show is provided for partly educational or partly scientific purposes by a society not conducted or established for profit.

K. Arbeitsrecht

1. Trade Unions Act, 1926

[Act No. 16 of Year 1926]

An Act to provide for the registration of trade unions and in certain respects to define the law relating to registered trade unions.

Whereas it is expedient to provide for the registration of trade unions and in certain respects to define the law relating to registered trade unions.

It is hereby enacted as follows:

Chapter III: Rights and Liabilities of Registered Trade Unions

15. Objects on which general funds may be spent

The general funds of a registered trade union shall not be spent on any other objects than the following namely-

(…)

(h) the provision of education, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;

(…)

2. Industrial Disputes Act, 1947

[Act No. 14 of 1947, dated 11th March, 1947]

An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.

Whereas it is expedient to make provision for the investigation and settlement of industrial disputes, and for certain other purposes hereinafter appearing;

It is hereby enacted as follows:

Chapter I: Preliminary

2. Definitions

In this Act, unless there is anything repugnant in the subject or context,-

(…)

(j) "industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature),

(…)

but does not include-

(…)

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(…)

3. The Additional Emoluments (Compulsory Deposit) Act, 1974

*[*Act No. *37 of 1974, dated 1st September, 1974]*

An Act to provide, in the interests of national economic development, for the compulsory deposit of additional emoluments and for the framing of a scheme in relation thereto, and for matters connected there with or incidental thereto.

Be it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:

Chapter I: Preliminary

2. Definitions

In this Act, unless the context otherwise requires,-

(…)

(d) "bank deposit rate" means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those

maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949).

(…)

3. Persons to whom this Act applies

This Act shall apply to an employee of-

(…)

(f) any establishment owned or maintained in India by a trust, fund or institution established for a charitable or religious purpose, and required by the Income-tax Act, 1961, (43 of 1961) to deduct income-tax at source from the emoluments paid to their employees;

(…)

L. Verfahrensrecht

1. Code of Civil Procedure, 1908

[Act No. 5 of Year 1908, dated 21st March, 1908]

An Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature.

Whereas it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature;

It is hereby enacted as follows:

Part I: Suits in General

9. Courts to try all civil suits unless barred

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I: A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II: For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

Part II: Execution

60. Property liable to attachment and sale in execution of decree

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(…)

Part V: Special Proceedings

92. Public charities

(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court may institute a suit, whether contentious or not, in the principal Civil Court of the original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree-

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(cc) 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 inquiries;

(e) declaring what proportion of the trust property or of 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 let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more of the following circumstances, namely:

(a) where the original purposes of the trust, in whole or in part,

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.

2. The Code of Criminal Procedure, 1973

[Act No. 2 of Year 1974, dated 25th January, 1974]

An Act to consolidate and amend the law relating to Criminal Procedure.

Be it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows:

Chapter XXIV: General Provisions as to Inquiries And Trials

320. Compounding of offences

(1) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:

Table

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Uttering words, etc., with deliberate intent to wound the religious feelings of any person	298	The person whose religious feelings are intended to be wounded

(…)

Chapter XXXII: Execution, Suspension, Remission and Commutation of Sentences

D – General Provisions Regarding Execution

427. Sentence on offender already sentenced for another offence

(1) When a person already undergoing a sentence on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

State Amendment

Tamilnadu: Insert the following sub-section after sub-section (I):

"(IA) Notwithstanding anything contained in sub-section (1), when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment under sub-section (2) of Section 380 of the Indian Penal Code (Central Act XLV of 1860), for an offence of theft of any idol or icon in any building used as a place of worship, such imprisonment shall commence at the expiration of the imprisonment to which he has been previously sentenced" – T.N. Act 28 of 1993.

3. Indian Evidence Act, 1872

[Act No. 1 of Year 1872]

Whereas it is expedient to consolidate, define and amend the law of Evidence;

It is hereby enacted as follows:

Chapter II: Of the Relevancy of Facts

49. Opinion as to usage, tenets, etc., when relevant

When the Court has to form an opinion as to-

(…)

the constitution and government of any religious or charitable foundation, or

(…)

the opinions of persons having special means of knowledge thereon, are relevant facts.

4. Limitation Act, 1963

[Act No. 36 of Year 1963, dated 5th October, 1963]

An Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith.

Be it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:

Part I: Preliminary

2. Definitions

In this Act, unless the context otherwise requires,

(…)

(j) "period of limitation" means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act;

(…)

10. Suits against trustees and their representatives

Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

Explanation: For the purposes of this section any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of the property shall be deemed to be the trustee thereof.

The Schedule: Periods of Limitation

[Sections 2 (j) and 3]

First Division-Suits

Description of suits	Period of limitation	Time from which period begins to run
Part VIII: Suits relating to trusts and trust property		
94. To set aside a transfer of immovable property comprised in Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Twelve years	When the transfer becomes known to the plaintiff.
95. To set aside a transfer of movable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Three years	When the transfer becomes known to the plaintiff.
96. By the manager of a Hindu, Muslim or Buddhist religious or charitable endowment to recover possession of movable or immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	Twelve years	The date of death, resignation or removal of the transferor or the date of appointment of the plaintiff as manager of the endowment, whichever is later.

5. The Disturbed Areas (Special Courts) Act, 1976

[Act No. 77 of Year 1976, dated 11th June, 1976]

An Act to provide for the speedy trial of certain offences in certain area.

Be it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:

3. Declaration of an area as disturbed area

(1) Where a State Government is satisfied that-

(i) there was, or

(ii) there is,

in any area within a State extensive disturbance of the public peace and tranquillity, by reason of differences or disputes between members of different religious, racial, language or regional groups or castes or communities, it may, by notification in the Official Gazette, declare such area to be a disturbed area.

(…)

4. Constitution of Special Courts

(1) The State Government may, for the purpose of providing speedy trial of scheduled offences committed in disturbed areas, by notification in the Official Gazette, constitute as many Special Courts as may be necessary in or in relation to such disturbed area or areas as may be specified in the notification.

(…)

6. The Terrorist Affected Areas (Special Courts) Act, 1984

[Act No. 61 of Year 1984, dated 31st. August, 1984]

An Act to provide for the speedy trial of certain offences in terrorist affected areas and for matters connected therewith.

Be it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:

2. Definitions

(1) In this Act, unless the context otherwise requires,-

(h) "terrorist" means a person who indulges in want on killing of persons or in violence or in the disruption of services or means of communications essential to the community or in damaging property with a view to-

(…)

(ii) affecting adversely the harmony between different religious, racial, language or regional groups or castes or communities; or

(…)

3. Declaration of terrorist affected area

(1) If the Central Government is of the opinion that offences of the nature specified in the Schedule are being committed in any area by terrorists on such a scale and in such a manner that it is expedient for the purpose of coping with the activities of such terrorists to have recourse to the provisions of this Act, it may, by notification,-

(a) declare such area to be a terrorist affected area; and

(b) constitute such area into a single judicial zone or into as many judicial zones as it may deem fit.

(…)

M. Bau- und Grundstücksrecht

1. The Urban Land (Ceiling and Regulation) Act, 1976

[Act No. *33 of Year 1976, dated 17th February, 1976]*

An Act to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good.

Whereas it is expedient to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good;

and whereas Parliament has no power to make laws for the States with respect to the matters aforesaid except as provided in articles 249 and 250 of the Constitution;

and whereas in pursuance of clause (1) of article 252 of the Constitution resolutions have been passed by all the Houses of the Legislatures of the States of Andhra Pradesh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Orissa, Punjab, Tripura, Uttar Pradesh and West Bengal that the matters aforesaid should be regulated in those States by Parliament by law;

Be it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:

Chapter III: Ceiling On Vacant Land

3. Persons not entitled to hold vacant land in excess of the ceiling limit

Except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which this Act applies under sub-section (2) of section 1.

19. Chapter not to apply to certain vacant lands

(1) Subject to the provisions of sub-section (2), nothing in this Chapter shall apply to any vacant land held by-

(…)

(iv) any public charitable or religious trust (including wakf) and required and used for any public charitable or religious purposes:

Provided that the exemption under this clause shall apply only so long as such land continues to be required and used for such purposes by such trust;

(…)

(vii) any society registered under the Societies Registration Act, 1860, (21 of 1860) or under any other corresponding law for the time being in force and used for any non-profit and non-commercial purpose;

(…)

(2) The provisions of sub-section (1) shall not be construed as granting any exemption in favour of any person, other than an authority, institution or Organisation specified in sub-section (1), who possesses any vacant land which is owned by such authority, institution or Organisation or who owns any vacant land which is in the possession of such authority, institution or Organisation:

Provided that where any vacant land which is in the possession of such authority, institution or Organisation, but owned by any other person is declared as excess vacant land under this Chapter such authority, institution or Organisation shall, notwithstanding anything contained in any of the foregoing provisions of this Chapter, continue to possess such land under the State Government on the same terms and conditions subject to which it possessed such land immediately before such declaration.

Explanation: For the purposes of this sub-section, the expression "to possess vacant land" means to possess such land either as tenant or as mortgagee or under a hire-purchase agreement or under an irrevocable power of attorney or partly in one of the said capacities and partly in any other of the said capacity or capacities.

2. The Metro Railways (Construction of Works) Act, 1978

[Act No. *33 of Year 1978, dated 21st August, 1978]*

An Act to provide for the construction of works relating to metro railways in the metropolitan cities and for matters connected therewith.

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:

15 A. Power to inspect property under acquisition

The competent authority may, with or without assistants or workmen, enter into or upon any land, building, street, road or passage, for the purpose of performing his functions under this act and make such enquiry, inspection, measurement and take such photographs and prepare such memorandum thereof as he may consider necessary:

Provided that-

(i) no such entry shall be made except between the hours of sunrise and sunset and without giving reasonable notice

(…)

(iii) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made to the social and religious usage of the person to whom notice as aforesaid is given;

(…)

3. The New Delhi Municipal Council Act 1994 (As Passed By The Houses of Parliament)

[Act No. *44 of Year 1994, dated 14th July, 1994]*

An Act to provide for the establishment of the New Delhi Municipal Council and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:

Chapter XIV: Building Regulations

236. Definition

In this Chapter, unless the context otherwise requires, the expression "to erect a building" means:

(…)

(e) to convert into a place of religious worship or into a sacred building any place or building not originally constructed for such purpose;

(…)

237. Prohibition of building without sanction

(1) No person shall erect or commence to erect any building or execute any of the works specified in section 239 except with the previous sanction of the Chairperson not otherwise than in accordance with the provisions of this Chapter and of the bye-laws made under this Act in relation to the erection of buildings or execution of works.

(…)

Chapter XVIII: Markets, Trades And Occupations

318. Private markets

(…)

(2) No place other than a municipal slaughter house shall be used as a slaughter house:

Provided that nothing in this sub-section shall be deemed-

(i) to restrict the slaughter of any animal in any place on the occasion of any religious festival or ceremony, subject to such conditions (non-compliance with which shall be punishable under this Act) as the Chairperson may, by public or special notice, impose in this behalf, or

(ii) to prevent the Chairperson, with the sanction of the Council, from setting apart place for the slaughter of animal in accordance with religious custom.

Chapter XX: Powers, Procedure, Offences And Penalties

340. Powers of entry and inspection

The Chairperson or any officer or other employee authorized in this behalf by him or empowered in this behalf by or under any provision of this Act, rules, regulations or bye-laws made thereunder, may enter into or upon any land or building with or without assistants and workmen-

(a) for the purpose of ascertaining whether there is or has been on or in connection with the land or building any contravention of the provisions of this Act, rules, regulations or any bye-law made there-under;

(…)

345. Regard to be had to social or religious usages

When any place used as a human dwelling is entered under this Act, due regard shall be paid to the social and religious customs and usages of the occupants of the place entered, and no apartment in the actual occupancy of a female shall be entered or broken open until she has been informed that she is at liberty to withdraw and every reasonable facility has been afforded to her withdrawing.

N. Dienstrecht

1. The Police-Forces (Restriction of Rights) Act, 1966

[Act No. 33 of Year 1966, dated 2nd December, 1966]

An Act to provide for the restriction of certain rights conferred by Part III of the Constitution in their application to the members of the Forces charged with the maintenance of public order so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Be it enacted by Parliament in the Seventeenth Year of the Republic of India as follows:

3. Restrictions respecting right to form association, freedom of speech etc.

(1) No member of a police-force shall, without the express sanction of the Central Government or of the prescribed authority,-

(…)

(b) be a member of, or be associated in any way with, any other society, institution, association or organisation that is not recognised as part of the force of which he is a member or is not of a purely social, recreational or religious nature; or

(…)

Explanation: If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature under clause (b) of this sub-section, the decision of the Central Government thereon shall be final.

(…)

2. The Air Force Act, 1950

[Act No. 45 of Year 1950, dated 18th May, 1950]

An Act to consolidate and amend the law relating to the government of the Air Force.

Be it enacted by Parliament as follows:

Chapter IV: Conditions of Service

21. Power to modify certain fundamental rights in their application to persons subject to this Act

Subject to the provisions of any law for the time being in force relating to the Air Force or to any branch thereof, the Central Government may, by notification, make rules restricting in such manner and to such extent as may be specified the right of any person subject to this Act-

(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class or trade or labour unions or any society, institution or association, or any class of societies, institutions or associations;

(b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes;

(…)

Chapter VI: Offences

66. Miscellaneous offences

Any person subject to this Act who commits any of the following offences, that is to say,-

(…)

(b) be defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or

(…)

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

3. The Army Act, 1950

[Act No. 46 of Year 1950, dated 20th May, 1950]

An Act to consolidate and amend the law relating to the government of the regular Army.

Be it enacted by Parliament as follows:

Chapter IV: Conditions of Service

21. Power to modify certain fundamental rights in their application to persons subject of this Act

Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act-

(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions, or any society, institution or association or any class of institution or associations;

(b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes;

(…)

Chapter IV: Conditions of Service

64. Miscellaneous offences

Any person subject to this Act who commits any of the following offences, that is to say,-

(…)

(b) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or

(…)

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

4. The Navy Act, 1957

[Act No. 62 of Year 1957, dated 27th December, 1957]

An Act to consolidate and amend the law relating to the government of the Indian Navy

Be it enacted by Parliament in the Eighth Year of the Republic of India as follows:

Chapter V: Conditions of Service

19. Restrictions respecting right to form associations, freedom of speech, etc.

(1) No person subject to naval law shall, without the express sanction of the Central Government,-

(…)

(b) be a member of, or be associated in any way with, any other society, institution, association or organisation that is not recognised as part of the Armed forces of the Union or is not of a purely social, recreational or religious nature.

Explanation: If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature, the decision of the Central Government thereon shall be final.

(…)

5. The Border Security Force Act, 1968

[Act No. 47 of 1968, dated 2nd September, 1968]

An Act to provide for the constitution and regulation of an Armed Force of the Union for ensuring the security of the borders of India and for matters connected therewith.

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:

Chapter II: Constitution of the Force and Conditions of Service of the Members of the Force

13. Restrictions respecting right to form association, freedom of speech, etc.

(1) No person subject to this Act shall, without the previous sanction in writing of the Central Government or of the prescribed authority,-

(…)

(b) be a member of, or be associated in any way with, any society, institution, association or organisation that is not recognised as part of the Force or is not of a purely social, recreational or religious nature; or

(…)

Explanation: If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature under clause (b) of this sub-section, the decision or the Central Government thereon shall be final.

(…)

Chapter III: Offences

41. Miscellaneous offences

Any person subject to this Act who commits any of the following offences, that is to say,-

(…)

(b) by defiling any place of worship, or otherwise, intentionally insults the religion, or wounds the religious feelings of, any person; or

(…)

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

6. The Central Industrial Security Force Act, 1968

[Act No. 50 of Year 1968, dated 2nd December, 1968]

An Act to provide for the constitution and regulation of an armed force of the Union for the better protection and security of industrial undertakings owned by the Central Government, certain other industrial undertakings, employees of all such undertakings and to provide technical consultancy services to industrial establishments in the private sector and for matters connected therewith.

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:

15A. Restrictions respecting right to form association, etc.

(1) No member of the Force shall, without the previous sanction in writing of the Central Government or of the prescribed authority,-

(…)

(b) be a member of, or be associated in any way with, any other society, institution, association or organisation that is not recognised as part of the Force or is not of a purely social, recreational or religious nature; or

(…)

Explanation: If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature under clause (b) of this sub-section, the decision of the Central Government thereon shall be final.

(…)

7. The Coast Guard Act, 1978

[Act No. 30 of Year 1978, dated 18th August, 1978]

An Act to provide for the constitution and regulation of an Armed Force of the Union for ensuring the security of the maritime zones of India with a view to the protection of maritime and other national interests in such zones and for matters connected therewith.

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:

Chapter II: Constitution of the Coast Guard and Conditions of Service of the Members of the Coast Guard

13. Restrictions respecting right to form association, freedom of speech, etc.

(1) No member of the Coast Guard shall, without the previous sanction in writing of the Central Government or of the prescribed authority,-

(…)

(b) be a member of, or be associated in any way with, any society, institution, association or Organisation that is not recognised as part of the Coast Guard or is not of a purely social, recreational or religious nature; or

(…)

Explanation: If any question arises whether any society, institution, association or Organisation is of a purely social, recreational or religious nature under clause (b) of this sub-section, the decision of the Central Government thereon shall be final.

(…)

8. The Indo-Tibetan Border Police Force Act, 1992

[Act No. 35 of Year 1992, dated 1st September, 1992]

An Act to provide for the constitution and regulation of an armed force of the Union for ensuring the security of the borders of India and for matters connected therewith.

Be it enacted by Parliament in the Forty-third Year of the Republic of India as follows:

Chapter II: Constitution of the Force and Conditions of Service of the Members of the Force

13. Restrictions respecting right to form association, freedom of speech, etc.

(1) No person subject to this Act shall, without the previous sanction in writing of the Central Government or of the prescribed authority,-

(…)

(b) be a member of, or be associated in any way with, any society, institution, association or organisation that is not recognised as part of the Force or is not of a purely social, recreational or religious nature; or

(…)

Explanation: If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature under clause (b) of this sub-section, the decision of the Central Government thereon shall be final.

(…)

44. Miscellaneous offences

Any person subject to this Act who commits any of the following offences, that is to say,-

(…)

(b) by defiling any place of worship, or otherwise, intentionally insults the religion, or wounds the religious feelings of any person; or

(…)

shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

9. The Railway Protection Force Act, 1957

[Act No. 23 of Year 1957, dated 29th August, 1957]

An Act to provide for the constitution and regulation of an armed force of the Union for the better protection and security of railway property and for matters connected therewith.

Be it enacted by Parliament in the Eighth Year of the Republic of India as follows:

15A. Restrictions respecting right to form association, etc.

(1) No member of the Force shall, without the previous sanction in writing of the Central Government or of the prescribed authority,-

(…)

(b) be a member of, or be associated in any way with, any other society, institution, association or organisation that is not recognised as part of the Force or is not of a purely social, recreational or religious nature; or

(…)

Explanation: If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature under clause (b) of this sub-section, the decision of the Central Government thereon shall be final.

(…)

O. Verkehrsrecht

1. The Motor Vehicles Act, 1988

[Act No. 59 of Year 1988, dated 14th October, 1988]

An Act to consolidate and amend the law relating to motor vehicles.

Be it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:

Chapter V: Control of Transport Vehicles

87. Temporary permits

(1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in sector 80, grant permits, to be effective for a limited period which shall not in any case exceed four months, to authorise the use of a transport vehicle temporarily-

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(…)

Chapter VI: Special Provisions Relating to State Transport Undertakings

101. Operation of additional services by a State transport undertaking in certain circumstances.

Notwithstanding anything contained in section 87, a State transport undertaking may, in the public interest operate additional services for the conveyance of the passengers on special occasions such as to and from fairs and religious gatherings:

Provided that the State transport undertaking shall inform about the operation of such additional services to the concerned Transport Authority without delay.

P. Wahlrecht

1. The Representation of the People Act, 1951

[Act No. 43 of Year 1951, dated 17th July, 1951]

An Act to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

Be it enacted by Parliament as follows:

Part II: Qualification and Disqualifications

Chapter III: Disqualifications for Membership of Parliament and State Legislatures

8. Disqualification on conviction for certain offences

(1) A person convicted of an offence punishable under-

(a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or (…) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code; or

(b) the Protection of Civil Rights Act, 1955 which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(…)

(d) sections 10 to (…) [offence of being a member of an association declared unlawful (…)] of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(…)

(h) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connection with the election) or (…) of this Act; or

(j) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991, or

(…)

shall be disqualified for a period of six years from the date of such conviction.

(2) A person convicted for the contravention of

(…)

(c) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961); or

(d) any provisions of the Commission of Sati (Prevention) Act, 1987 (3 of 1988),

and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(4) Notwithstanding anything in sub-section (1), sub-section(2), or sub-section (3) a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

(…)

Part IV A: Registration of Political Parties

29 A. Registration with the Commission of associations and bodies as political parties

(1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(…)

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India.

(…)

Part VII: Corrupt Practices and Electoral Offences

Chapter I: Corrupt Practices

123. Corrupt practices

The following shall be deemed to be corrupt practices for the purposes of this Act:

(…)

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation: For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987.

(…)

Chapter III: Electoral Offences

125. Promoting enmity between classes in connection with election

Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable, with imprisonment for a term which may extend to three years, or with fine, or with both.

Q. Umwelt- und Tierschutz

1. The Prevention of Cruelty to Animals Act, 1960

[Act No. 59 of Year 1960, dated 26th December, 1960]

An Act to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to the prevention of cruelty to animals.

Be it enacted by Parliament in the Eleventh Year of the Republic of India as follows:

Chapter III: Cruelty to Animals Generally

11. Treating animals cruelly

(1) If any person-

(…)

(l) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in the heart or any other unnecessarily cruel manner; or

(…)

he shall be punishable, in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees, and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both.

(…)

Chapter VI: Miscellaneous

28. Saving as respects manner of killing prescribed by religion

Nothing contained in this Act shall render it an offence to kill any animal in a manner required by the religion of any community.

2. The Protection of Plant Varieties and Farmers' Rights Act, 2001

[Act No. 53 of Year 2001, dated 30th October, 2001]

An Act to provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

Whereas it is considered necessary to recognise and protect the rights of the farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties;

and whereas for accelerated agricultural development in the country, it is necessary to protect plant breeders' rights to stimulate investment for research and development, both in the public and private sector, for the development of new plant varieties;

and whereas such protection will facilitate the growth of the seed industry in the country which will ensure the availability of high quality seeds and planting material to the farmers;

and whereas, to give effect to the aforesaid objectives, it is necessary to undertake measures for the protection of the rights of farmers and plant breeders;

and whereas India, having ratified the Agreement on Trade Related Aspects of Intellectual Property Rights should, inter alia, make provision for giving effect to sub-paragraph (b) of paragraph 3 of article 27 in Part II of the said Agreement relating to protection of plant varieties;

Be it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:

Chapter III: Registration of Plant Varieties and Essentially Derived Variety

15. Registrable varieties

(1) A new variety shall be registered under this Act if it conforms to the criteria of novelty, distinctiveness, uniformity and stability.

(…)

(4) A new variety shall not be registered under this Act if the denomination given to such variety-

(…)

(vi) is likely to hurt the religious sentiments respectively of any class or section of the citizens of India; or

(…)

3. The Madhya Pradesh Agricultural Cattle Preservation Act, 1959

[Act No. 18 of Year 1959, received the assent of the President on the 24th July, 1959; assent first published in the "Madhya Pradesh Gazette" on the 7th August 1959]

An Act to provide for the preservation of animals suitable for milch, draught, breeding or agricultural purposes.

Be it enacted by the Madhya Pradesh Legislature in the Tenth Year of the Republic of India as follows:

4. Prohibition of slaughter of agricultural cattle

(1) Notwithstanding anything contained in any other law for the time being in force or in any usage or custom to the contrary, no person shall slaughter or cause to be slaughtered or offer or cause to be offered, for slaughter,-

(a) cows, calves of cows, or calves of she-buffaloes, or

(b) any other agricultural cattle unless he has obtained in respect of such cattle a certificate in writing issued by the Competent Authority for the area in which the cattle is to be slaughtered that the cattle is fit for slaughter.

(…)

17. Power to grant exemption

The State Government may, by general or special order and subject to such conditions as it may think fit to impose exempt from the operation of this Act the slaughter of any male or female buffaloe or the possession of flesh thereof for any religious, medical or research purposes.

4. The Rajasthan Animals and Birds Sacrifice (Prohibition) Act, 1975

[Act No. 21 of Year 1975, received the assent of the President on the 24th April, 1975]

An Act to prohibit sacrifice of Animals and birds in, or within the premises, the temples or places of public religious worship in the State of Rajasthan.

Be it enacted by the Rajasthan State Legislature in the Twenty-sixth Year of the Republic of India as follows:

1. Short title, extent and commencement

(1) This Act shall call the Rajasthan Animals and Birds Sacrifice (Prohibition) Act, 1975.

(2) It shall extend to whole of the State of Rajasthan.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions

In this Act, unless the context otherwise requires,-

(a) "Temple Premises" means a mandap, building attached, to the temple, and a land attached to the temple, which is generally used for the purpose of worship, in the temple, whether such land is a property of the temple or not, and includes whole of the area attached to the temple, where a fair is organised or a Yatra is performed;

(b) "Sacrifice" means killing or mutilating an animal or a bird with the intention or for the purpose, of pleasing a deity or a god;

(c) "Temple" means a place, known by whatever name; which is being used as a public place of religious worship and dedicated as a public place of religious worship, and

(d) "Place of public religious worship" means any place intended for use by, or accessible to, the public or a section thereof; for the purposes of religious worship or adoration.

3. Sacrifice of animals or birds in, or within the premises of temple; or many place of public religious worship prohibited

No person shall sacrifice an animal or a bird, or assist in sacrificing it in a temple or within the premises thereof, or in any other place of public religious worship.

4. Performing of a sacrifice etc. prohibited

No person shall,-

(a) officiate or offer to officiate at, or

(b) perform or offer to perform, or

(e) serve, assist, or participate, or offer to serve, assist or participate in,

any sacrifice in a temple or its premises or in any other place of public religious worship.

5. Prohibition of use of a temple or temple premises or any other place of public religious worship for a sacrifice

No person shall, knowingly allow the performance of sacrifice at a place, which is-

(a) situated in a temple or, its premissor in any other place of public religious worship; and

(b) in his possession or under his control.

6. Punishment

(l) Whoever shall contravene or assist or abet in contravention of the provisions of section 3 of this Act, may on conviction be punishable with imprisonment which may extend up to 6 months or with fine up to Rs. 500/- or with both simultaneously.

(2) Whoever shall contravene or assist or abet in contravention of the provisions of section 4 or section 3 of this Act, may be punishable with imprisonment which may extend up to 3 months or with fine up to Rs. 300/- or with both simultaneously.

7. Hearing of offences

The offence falling under this Act shall be heard by a Judicial Magistrate of the First Class.

8. Issue of prohibitory Order

(1) If, on receipt of a complaint or any information, the Executive Magistrate is satisfied that a sacrifice is going to be performed in contravention of the provisions of this Act, he may issue an order prohibiting the persons arranging or performing such sacrifice or those connected therewith.

(2) Whoever, having known that a prohibitory order has been issued against him under sub-section (1) contravenes it, may on conviction, be punishable either with imprisonment which may extend up to l year or with fine up to Rs. 1,000/- or with both.

9. Duties of an Incharge of a police Station for making an application or a prohibitory order or for filing a complaint

(1) On receiving the information that a sacrifice has been arranged or has to be performed, the Officer in charge of a Police Station shall, unless there are reasonable grounds which shall be recorded in writing for not believing the said information, make an application to the Executive Magistrate where the sacrifice is going to be performed in contravention of the provisions of this Act for obtaining a prohibitory order under section S. 8.

(2) On receiving the information that an offence under this Act has been committed, the Officer in charge of a Police Station shall, unless there are

reasonable grounds which shall be recorded in writing for not believing the said information, file a complaint as early as possible before the Judicial Magistrate having jurisdiction to try such offences.

R. Denkmal- und Kulturgüterschutz

1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958

[Act No. 24 of Year 1958, dated 28th August, 1958]

An Act to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects.

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:

Preliminary

2. Definitions

In this Act, unless the context otherwise requires,-

(…)

(b) "antiquity" includes-

(…)

(iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals, or politics in bygone ages,

(…)

which has been in existence for not less than one hundred years;

(…)

Protected Monuments

5. Acquisition of rights in a protected monument

(1) The Director-General may, with the sanction of the Central Government, purchase, or take a lease of, or accept a gift or bequest of, any protected monument.

(…)

(6) Nothing in this section shall affect the use of any protected monument for customary religious observances.

6. Preservation of protected monument by agreement

(1) The Collector, when so directed by the Central Government, shall propose to the owner of a protected monument to enter into an agreement with the Central Government within specified period for the maintenance of the monument.

(…)

7. Owners under disability or not in possession

(…)

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the person on whose behalf he is acting to make or execute an agreement relating to a protected monument which or any part of which is periodically used for the religious worship or observances of that religion.

16. Protection of place of worship from misuse, pollution or desecration

(1) A protected monument maintained by the Central Government under this Act which is a place of worship or shrine shall not be used for any purpose inconsistent with its character.

(2) Where the Central Government has acquired a protected monument under section 13, or where the Director-General has purchased, or taken a lease or accepted a gift or bequest or assumed guardianship of a protected monument under section 5 and such monument or any part thereof is used for religious worship or observances by any community, the Collector shall make due provision for the protection of such monument or part thereof, from pollution or desecration-

(a) by prohibiting the entry therein, except in accordance with the conditions prescribed with the concurrence of the persons, if any, in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used, or

(b) by taking such other action as he may think necessary in this behalf.

Protection of Antiquities

26. Purchase of antiquities by Central Government

(1) If the Central Government apprehends that any antiquity mentioned in a notification issued under sub-section (1) of section 25 is in danger of being destroyed, remove, injured, misused or allowed to fall into decay or is of opinion that, by reason of its historical or archaeological importance, it is desirable to preserve such antiquity in a public place, the Central Govern-

ment may make an order for the [compulsory acquisition of such antiquity] and the Collector shall thereupon give notice to the owner of the, antiquity to be purchased.

(…)

(3) The power of compulsory acquisition given by this section shall not extend to any image or symbol actually used for bona fide religious observances.

2. The Ancient Monuments Preservation Act, 1904

[Act No. 7 of Year 1904, dated 18th March, 1904]

An Act to provide for the preservation of Ancient Monuments and of objects of archaeological, historical, or artistic interest.

Whereas it is expedient to provide for the preservation of ancient monuments, for the exercise of control over traffic in antiquities and over excavation in certain places, and for the protection and acquisition in certain cases of ancient monuments and of objects of archaeological, historical, or artistic interest;

It is hereby enacted as follows:

Ancient Monuments

5. Preservation of ancient monument by agreement

(1) The Collector may, with the previous sanction of the Central Government, propose to the owner to enter into an agreement with the Central Government for the preservation of any protected monument in his district.

(…)

6. Owners under disability or not in possession

(…)

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the persons on whose behalf he is acting to make or execute an agreement relating to a protected monument which or any part of which is periodically used for the religious worship or observances of that religion.

10. Compulsory purchase of ancient monument

(1) If the Central Government apprehends that a protected monument is in danger of being destroyed, injured or allowed to fall into decay, the Central

Government may direct the State Government to acquire it under the provisions of the Land Acquisition Act, 1894, as if the preservation of a protected monument were a "public purpose" within the meaning of that Act.

(2) The powers of compulsory purchase conferred by sub-section (1) shall not be exercised in the case of-

(a) any monument which or any part of which is periodically used for religious observances;

(…)

13. Protection of place of worship from misuse, pollution or desecration

(1) A place of worship or shrine maintained by the Government under this Act shall not be used for any purpose inconsistent with its character.

(2) Where the Collector has, under section 4, purchased or taken a lease of any protected monument, or has accepted a gift or bequest, or the Commissioner has, under the same section, accepted the guardianship thereof, and such monument, or any part thereof, is periodically used for religious worship or observances by any community, the Collector shall make due provision for the protection of such monument, or such part thereof, from pollution or desecration-

(a) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used, or

(b) by taking such other action as he may think necessary in this behalf.

Protection of Sculptures, Carvings, Images, Bas-reliefs, Inscriptions or like objects

19. Purchase of sculptures, carvings or like objects by the Government

(1) If the Central Government apprehends that any object mentioned in a notification issued under section 18, sub-section (1), is in danger of being destroyed, removed, injured or allowed to fall into decay, the Central Government, may pass orders for the compulsory purchase of such object at its market-value, and the Collector shall thereupon give notice to the owner of the object to be purchased.

(2) The power of compulsory purchase given by this section shall not extend to-

(a) any image or symbol actually used for the purpose of any religious observance; or

(…)

3. The Antiquities and Art Treasures Act, 1972

[Act No. 52 of Year 1972, dated 9th September, 1972]

An Act to regulate the export trade in antiquities and art treasures to provide for the prevention of smuggling of, and fraudulent dealings in antiquities, to provide for the compulsory acquisition of antiquities and art treasures for preservation in public places and to provide for certain other matters connected therewith or incidental or ancillary thereto.

Be it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:

2. Definitions

(1) In this Act, unless the context otherwise requires,-

(a) "antiquity" includes

(…)

(iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages;

(…)

19. Power of Central Government to compulsorily acquire antiquities and art treasures

(1) If the Central Government is of the opinion that it is desirable to preserve any antiquity or art treasure in a public place, that Government may make an order for the compulsory acquisition of such antiquity or art treasure.

(…)

(7) The power of compulsory acquisition conferred by this section shall not extend to any object, being an antiquity or art treasure, used for bona fide religious observances.

(…)

S. Medien und Kultur

1. Cable Television Networks (Regulation) Act, 1995

[Act No. 7 of Year 1995, dated 25th March, 1995]

Promulgated by the President in the Forty-fifth Year of the Republic of India.

An Act to regulate the operation of cable television networks in the country and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-sixth year of the Republic of India as follows:

Chapter V: Miscellaneous

19. Power to prohibit transmission of certain programmes in public interest

Where any authorized officer thinks it necessary or expedient so to do in the public interest, he may, by order, prohibit any cable operator from transmitting or re-transmitting any programme or channel if (…) it is likely to promote, on grounds of religion, race, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb the public tranquillity.

2. The Dramatic Performances Act, 1876

[Act No. 19 of Year 1876, dated 16th December, 1876]

An Act for the better control of public dramatic performances.

Whereas it is expedient to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene;

It is hereby enacted as follows:

12. Exclusion of performances at religious festivals

Nothing in this Act applies to any jatras or performances of a like kind at religious festivals.

T. Pilgerwesen

1. The Haj Committee Act, 2002

[Act No. 35 of Year 2002, dated 11th June, 2002]

An Act to establish a Haj Committee of India and State Haj Committees for making arrangements for the pilgrimage of Muslims for Haj, and for matters connected therewith.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:

Chapter I: Preliminary

1. Short title and commencement

(1) This Act may be called the Haj Committee Act, 2002.

(2) It shall come into force on such date or dates as the Central Government may, by notification, appoint, and different dates may be appointed for different provisions of this Act and for different States.

2. Definitions

In this Act, unless the context otherwise requires,-

(a) ‘‘bye-laws’’ means bye-laws made under section 45;

(b) ‘‘Chief Executive Officer or the Executive Officer’’ means the Chief Executive Officer of the Committee or the Executive Officer of the State Committee appointed under sub-section (1) of section 16 or sub-section (1) of section 29, as the case may be;

(c) ‘‘Committee’’ means the Haj Committee of India constituted under section 3;

(d) ‘‘member’’ means a member of the Haj Committee of India nominated under section 4 or of a State Haj Committee nominated under section 18, as the case may be, and includes the Chairperson and a Vice-Chairperson;

(e) ‘‘notification’’ means a notification published in the Gazette of India or the Official Gazette of a State, as the case may be;

(f) ‘‘pilgrim’’ means a Muslim proceeding to, or returning from, Haj;

(g) ‘‘prescribed’’ means prescribed by rules made under section 44 by the Central Government or, as the case may be, under section 47 by the State Government;

(h) ‘‘State Committee’’ means a State Haj Committee constituted under section 18 and includes a Joint State Committee;

(i) ‘‘State Government’’, in relation to a Union territory, means the Administrator of that Union territory appointed by the President under article 239 of the Constitution.

Chapter II: Haj Committee Of India

3. Constitution and incorporation of Haj Committee of India

(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be constituted a Committee by the name of the Haj Committee of India.

(2) The Committee shall be a body corporate, by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, to create a charitable trust or endowment, and to contract and shall by the said name sue and be sued.

(3) The Committee shall have its headquarters at Mumbai and as and when the Committee considers it functionally necessary, additional regional offices may be opened in consultation with the Central Government.

4. Composition of Committee

The Committee shall consist of the following members, namely:

(i) three members of Parliament of whom two are to be nominated by the Speaker of the House of the People from among its Muslim members, and one by the Chairman of the Council of States from among its Muslim members:

Provided that a member of Parliament shall, upon ceasing to be a member, cease to be a member of the Committee and the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, shall make a fresh nomination upon request by the Central Government;

(ii) nine Muslim members of the Committee shall be elected, three from those States sending largest number of pilgrims during last three years and one each from the zones as specified in the Schedule, in such manner as may be prescribed:

Provided that not more than one member shall be elected from a State falling in the zone as specified in the Schedule;

(iii) four persons not below the rank of Joint Secretary to the Government of India nominated by that Government to represent the Ministries of External Affairs, Home, Finance and Civil Aviation, as ex officio members;

(iv) seven Muslim members shall be nominated by the Central Government from among the following categories of persons, namely:

(a) two members who have special knowledge of public administration, finance, education, culture or social work and out of whom one shall be a Shia Muslim;

(b) two women members, out of them one shall be Shia Muslim;

(c) three members who have special knowledge of Muslim theology and law, out of them one shall be a Shia Muslim.

5. Notification of members

As soon as may be after the nomination of the members of the Committee under section 4, the Central Government shall publish in the Official Gazette the names of all such members.

6. Term of office

(1) The term of office of the members of the Committee (other than the ex officio members and members filling casual vacancies) shall be three years, commencing on the day following the publication of the list of members under section:

Provided that the term of the members of the Committee may be extended by the Central Government by a notification in the Official Gazette for a period not exceeding six months at a time but, in any case, not exceeding beyond a total period of one year.

(2) The allowances payable to, and the other terms and conditions of, the Chairperson, Vice-Chairpersons and members shall be such as may be prescribed.

7. Chairperson and Vice-Chairperson

(1) After the publication of the names of members of the Committee under section 5, the Central Government shall convene within forty-five days of such publication the first meeting of the Committee at which the Committee shall elect a Chairperson and two Vice-Chairpersons from amongst its members:

Provided that a Minister shall not be the Chairperson of the Committee and ex officio members shall not take part in the election of the Chairperson or of the Vice-Chairpersons.

(2) If the Committee fails to elect the Chairperson or the Vice-Chairpersons the Central Government may appoint a member of the Committee to be the Chairperson thereof or Vice-Chairpersons, as the case may be.

(3) The Chairperson shall exercise such powers and discharge such duties as may be prescribed.

(4) The Vice-Chairpersons shall exercise such powers and discharge such duties as may be determined by bye-laws made in this behalf by the Committee:

Provided that till such bye-laws are made, the Vice-Chairpersons shall exercise such powers and discharge such duties as may be determined by an order made by the Chairperson in this regard.

(5) The election of the Chairperson and the Vice-Chairpersons shall be notified by the Central Government in the Official Gazette.

(6) The term of office of the Chairperson and the Vice-Chairpersons, as the case may be, shall be co-terminus with the term of the Committee and no person shall hold office of the Chairperson or the Vice-Chairpersons, as the case may be, for more than two consecutive terms.

(7) Any casual vacancy in the office of the Chairperson or a Vice-Chairperson shall be filled for the remainder of the term in accordance with sub-section (1) or sub-section (2), as the case may be.

8. Reconstitution of Committee

(1) The Central Government shall take or cause to be taken all necessary steps for the reconstitution of a new Committee at least four months before the expiry of the term, or the extended term, as the case may be, of the Committee.

(2) An outgoing member shall be eligible for renomination on the Committee for not more than two terms:

Provided that not more than fifty per cent. of the members may be renominated for a second term in such manner as may be prescribed.

9. Duties of Committee

(1) The duties of the Committee shall be

(i) to collect and disseminate information useful to pilgrims, and to arrange orientation and training programmes for pilgrims;

(ii) to advise and assist pilgrims during their stay at the embarkation points in India, while proceeding to or returning from pilgrimage, in all matters including vaccination, inoculation, medical inspection, issue of pilgrim passes and foreign exchange and to liaise with the local authorities concerned in such matters;

(iii) to give relief to pilgrims in distress;

(iv) to finalise the annual Haj plan with the approval of the Central Government, and execute the plan, including the arrangements for travel by air or any other means, and to advise in matters relating to accommodations;

(v) to approve the budget estimates of the Committee and submit it to the Central Government at least three months before the beginning of the financial year for its concurrence;

(vi) to co-ordinate with the Central Government, railways, airways and travel agencies for the purpose of securing travelling facilities for pilgrims;

(vii) to generally look after the welfare of the pilgrims;

(viii) to publish such proceedings of the Committee and such matters of interest to pilgrims as may be determined by bye-laws made in this behalf by the Committee;

(ix) to discharge such other duties in connection with Haj as may be prescribed by the Central Government.

(2) The Central Government shall afford all reasonable assistance to the Committee in the discharge of the duties specified in sub-section (1).

10. Meetings of Committee

(1) The Committee shall meet at least three times in a year before the commencement of the Haj season to plan and make arrangements for Haj and once after that to review all arrangements made by the Committee.

(2) In addition to the meetings specified in sub-section (1), the Committee may hold meetings as and when requisitioned by at least one-third of its members or when considered necessary by the Chairperson.

(3) The number of members required to make a quorum at any meeting of the Committee shall be one-third of its members.

(4) All matters shall be decided by a majority of votes of the members present and, in the event of an equality of votes, the Chairperson or other person presiding shall have a casting vote.

(5) The Committee shall observe such rules of procedure in regard to the transaction of business at its meetings as may be determined by bye-laws.

11. Appointment of Standing Committees and sub-committees

(1) The Committee shall appoint two Standing Committees, each headed by a Vice-Chairperson of the Committee, to deal with matters relating to finance and Haj arrangements, from amongst its member consisting of such number of members and with such powers and functions as may be determined by bye-laws made in this behalf by the Committee:

Provided that the Chairperson shall preside over the meeting of the Standing Committee in case he attends the meeting.

(2) The Committee may also appoint other sub-committees for such purposes as it may think fit and any such sub-committee shall consist of such number of members and other persons as may be determined by bye-laws made in this behalf by the Committee.

12. Disqualification for being nominated, or for continuing, as a member of Committee

A person shall be disqualified for being nominated, or for continuing as a member of the Committee, if he-

(i) is not a citizen of India;

(ii) is not a Muslim, except for ex officio members as provided in clause (iii) of section 4;

(iii) is less than twenty-five years of age;

(iv) is of unsound mind and stands so declared by a competent court;

(v) is an undischarged insolvent;

(vi) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;

(vii) has been on a previous occasion-

(a) removed from his office as a member; or

(b) removed by an order of a competent authority either for not acting

in the interest of the pilgrims or for corruption.

13. Resignation of Chairperson, Vice-Chairperson and members

The Chairperson, the Vice-Chairperson or any other member may resign his office by writing under his hand addressed to the Central Government and it shall be effective from the date of such resignation.

14. Removal of Chairperson, Vice-Chairperson and members

(1) The Central Government may, by notification in the Official Gazette, remove the Chairperson, a Vice-Chairperson of the Committee or any member thereof, if he

(i) is or becomes subject to any of the disqualifications specified in section 12; or

(ii) refuses to act or is incapable of acting or acts in a manner which the Central Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the Committee or the interests of the pilgrims; or

(iii) fails, in the opinion of the Committee, to attend three consecutive meetings of the Committee, without sufficient excuse.

(2) Where the Chairperson or a Vice-Chairperson of the Committee is removed under sub-section (1), he shall also cease to be a member of the Committee.

15. Filling of a casual vacancy

(1) When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be nominated or elected, as the case may be, in his place and such member shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred.

(2) Any casual vacancy under sub-section (1) shall be filled up by the same category to which the former member belonged.

16. Chief Executive Officer and other employees

(1) The Central Government shall appoint a person, from a panel of Muslim officers of the Central Government and of the State Governments not below the rank of Deputy Secretary to the Government of India, to be the Chief Executive Officer of the Committee on such terms and conditions as may be prescribed.

(2) The Chief Executive Officer shall be the ex officio Secretary of the Committee.

(3) The Chief Executive Officer shall be appointed for a period of three years, which may be extended by a maximum period of one year by the Central Government.

(4) The Chief Executive Officer shall execute the decisions of the Committee and perform such other functions as may be prescribed:

Provided that in case of any difference of opinion between the Chief Executive Officer and the Committee, he shall bring the matter to the notice of the Central Government, whose decision thereon shall be final.

(5) The Committee may, with the previous sanction of the Central Government, employ such other officers and employees as it deems necessary to carry out the purposes of this Act, on such terms and conditions as may be prescribed.

Chapter III: State Haj Committees

17. Establishment and incorporation of State Haj Committee

(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, the Government of a State shall constitute a Committee by the name of the name of the State Haj Committee:

Provided that in case it appears to the Central Government for any reasons that it is not necessary for a State or Union territory to establish a Haj Committee, it may authorise the State Haj Committee of a contiguous State

to deal with those pilgrims an suggest suitable representation of those States and Union territories.

(2) The State Committee shall be a body corporate, by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, to create a charitable trust or endowment, and to contract and shall by the said name sue and be sued.

(3) Notwithstanding anything contained in this Act, an agreement may be entered into-

(a) by two or more Governments of contiguous States, or

(b) by the Central Government (in respect of one or more Union territories) and one or more Governments of States contiguous to such Union territory or Union territories,

to be in force for such period and to be subject to renewal for such further period, if any, as may be specified in the agreement to provide for the constitution of a Joint State Committee,-

(i) in a case referred to in clause (a), for all the participating States, and

(ii) in a case referred to in clause (b), for the participating Union territory or Union territories and the State or States.

(4) An agreement under this section shall be published, in a case referred to in clause (a) of sub-section (2), in the Official Gazette of the participating States and in a case referred to in clause (b) of that sub-section, in the Official Gazette of the participating Union territory or Union territories and participating State or States.

(5) Any reference in this Act to the State Committee shall, unless the context otherwise requires, be construed as including a Joint State Committee.

18. Composition of State Committee

(1) A State Committee shall consist of sixteen members, to be nominated by the State Government, namely:-

(i) three members from the Muslim members of-

(a) Parliament representing the State;

(b) State Legislative Assembly; and

(c) Legislative Council, where it exists;

(ii) three members from Muslim members representing local bodies in the State;

(iii) three members having expertise in Muslim theology and law including one who shall be a Shia Muslim;

(iv) five members representing Muslim voluntary organisations working in the fields of public administration, finance, education, culture or social work;

(v) the Chairperson of the State Wakf Board; and

(vi) Executive Officer of the State Committee, who shall be the ex officio member of the State Committee:

Provided that a Committee for any Union territory or a Joint State Committee shall consist of such number of members as may be prescribed.

(2) In case where there is no Muslim member in any of the categories mentioned in clauses (i) and (ii) of sub-section (1), or where there is no Legislative Council in a State, nomination may be made in such manner as may be prescribed.

19. Notification of members

As soon as may be after the nomination of the members of a State Committee under sub-section (1) of section 18, the State Government shall publish, in the Official Gazette of that State, the names of all such members.

20. Term of office

(1) The term of office of the members of the State Committee (other than the ex officio members and members filling casual vacancies) shall be three years, commencing on the day following the publication of the list of members under section 19.

(2) The allowances payable to, and the other terms and conditions of the Chairperson and members shall be such as may be prescribed.

21. Chairperson

(1) After the publication of the names of members of the State Committee under section 19, the State Government shall convene within forty-five days the first meeting of the State Committee at which the State Committee shall elect a Chairperson from amongst its members:

Provided that an ex officio member shall not take part in the election of the Chairperson.

(2) If the State Committee fails to elect a Chairperson, the State Government may appoint a member of the State Committee to be the Chairperson thereof.

(3) The election of the Chairperson shall be notified by the State Government in the Official Gazette of the State.

(4) The term of office of the Chairperson shall be three years and no person shall hold the office of the Chairperson for more than two consecutive terms.

(5) Any casual vacancy in the office of the Chairperson shall be filled in accordance with sub-section (1) or sub-section (2), as the case may be.

22. Reconstitution of a State Committee

(1) The State Government shall take or cause to be taken all necessary steps for the reconstitution of a new State Committee at least four months before the expiry of the term of the State Committee.

(2) An outgoing member shall be eligible for re-nomination of the State Committee for not more than two terms: Provided that fifty per cent of the nominees may be re-nominated for a second term in such manner as may be prescribed.

23. Disqualification for being nominated, or for continuing, as a member of the Committee

A person shall be disqualified for being nominated, or for continuing, as a member of the State Committee, if he-

(i) is not a citizen of India;

(ii) is not a resident of that State;

(iii) is not a Muslim, except for an Executive Officer as provided in clause (vi) of sub-section (1) of section 18;

(iv) is less than twenty-five years of age;

(v) is of unsound mind and stands so declared by a competent court;

(vi) is an undischarged insolvent;

(vii) has been convicted of an offence which, in the opinion of the State Government, involves a moral turpitude;

(viii) has been on a previous occasion-

(a) removed from his office as a member; or

(b) removed by an order of a competent authority either for not acting in the interest of the pilgrims or for corruption.

24. Resignation of Chairperson and members

The Chairperson or any other member may resign his office by writing under his hand addressed to the State Government and it shall be effective from the date of such resignation.

25. Removal of Chairperson and members

(1) The State Government may, by notification in the Official Gazette, remove the Chairperson of the State Committee or any member thereof, if he-

(i) is or becomes subject to any of the disqualifications specified in section 23; or

(ii) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the State Committee or the interests of the pilgrims; or

(iii) fails, in the opinion of the State Committee, to attend three consecutive meetings of the State Committee, without sufficient excuse.

(2) Where the Chairperson of the State Committee is removed under sub-section (1), he shall also cease to be a member of the State Committee.

26. Filling of casual vacancy

(1) When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be nominated in his place and such member shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred.

(2) Any casual vacancy under sub-section (1) shall be filled up by the same category to which the former member belonged.

27. Duties of State Committee

(1) It shall be the duty of a State Committee to implement the policy and directions of the Committee in the interests of Haj pilgrims.

(2) The State Committee shall provide assistance to the Haj pilgrims including in the matter of their transport between their home States and the point of exit from India and their transit accommodation at points of exit.

(3) The State Committee shall discharge such other duties in connection with Haj as may be prescribed by the State Government concerned, in consultation with the Central Government.

28. Meetings of State Committee

(1) A State Committee shall meet at least twice in a year before the Haj day and once after the Haj is over.

(2) The number of members required to make a quorum at any meeting of the State Committee shall be one-third of its members.

(3) In addition to the number of meetings specified in sub-section (1), the State Committee may hold meetings as and when requisitioned by at least one-third of its members or when considered necessary by the Chairperson.

(4) All matters shall be decided by a majority of votes of the members present and, in the event of an equality of votes, the Chairperson or other person presiding shall have a casting vote.

29. Executive Officer and other employees of State Committee

(1) The State Government shall appoint a person, from amongst its officers not below the rank of Deputy Secretary, to be the Executive Officer of the State Committee:

Provided that the person so appointed shall preferably be a Muslim.

(2) The Executive Officer of the State Committee shall act as its Secretary.

(3) The Executive Officer shall execute the decisions of the State Committee and perform such other functions as may be prescribed:

Provided that in case of any difference of opinion between the Executive Officer and the State Committee, he shall bring the matter to the notice of the State Government whose decision thereon shall be final.

(4) The State Committee shall, with the previous sanction of the State Government, employ such officers and other employees as it deems necessary to carry out the purposes of this Act.

(5) The term of office and conditions of service of officers and other employees shall be such as may be prescribed.

Chapter IV: Finance, Accounts And Audit

30. Central Haj Fund

The Committee shall have its own Fund to be called the Central Haj Fund, and there shall be placed to the credit thereof the following sums, namely:

(a) sums realised from any fees and service charges which may be levied by the Committee:

(i) for registration of applications for Haj; and

(ii) for issue of Haj pilgrim travel passes;

(b) money collected from pilgrims for performance of Haj;

(c) the income from all deposits and investment of the Committee's funds;

(d) the sums realised from the sale of the effects of deceased pilgrims and sums of money left by them, which are unclaimed and have lapsed to the Central Government;

(e) any sums loaned by the Central or a State Government, or any other source approved by the Government;

(f) any amount that may be legally due to the Committee from any source; and

(g) the amount standing at the commencement of this Act to the credit of the Haj Fund or the Indigent Pilgrims Fund established under the Haj Committee Act, 1959 (51 of 1959).

31. Application of Central Haj Fund

The Central Haj Fund shall, subject to the provisions of this Act and the rules made thereunder, be under the control and management of the Committee, and shall be applied to the following purposes, namely:-

(a) pay and allowances of the Chief Executive Officer and other employees of the Committee;

(b) payment of charges and expenses incidental to the objects specified in section 9; and

(c) any other expenses which are required to be met by the Committee or a State Committee, as approved by the Central Government.

32. State Haj Fund

The State Committee shall have its own fund to be called the State Haj Fund and the following sums shall be placed to the credit thereof, namely:-

(i) all sums of money paid to it or any grant made by the Committee for the purposes of this Act;

(ii) any grant or loan that may be made to the State Committee by the State Government, or any other source for the purposes of this Act, as approved by the State Government;

(iii) any amount that may be legally due to the State Committee from any source; and

(iv) the moneys, if any, standing to the credit of a State Haj Committee, at the commencement of this Act.

33. Application of State Haj Fund

The State Haj Fund shall, subject to any rules that may be made under this Act, be under the control and management of the State Committee and shall be applied to the following purposes, namely:-

(i) pay and allowances of the employees of the State Committee other than its Executive Officer whose pay and allowances shall be borne by the State Government;

(ii) payment of charges and expenses incidental to the due performance of its duties by the State Committee for the objects specified in section 27; and

(iii) any other expenses, as approved by the State Government which are required to be met by the State Committee.

34. Accounts and audit

(1) The Committee and every State Committee shall maintain proper accounts and other relevant records and prepare an annual statement of ac-

counts, in such form as may be prescribed by the Central Government, or as the case may be, the State Government.

(2) The accounts shall be examined and audited annually by such auditors as the Central Government or, as the case may be, the State Government may approve.

(3) The accounts of the Committee or the State Committee as certified by the auditor together with the audit report thereon shall be forwarded annually by the said Committee to the Central Government, or as the case may be, the State Government.

(4) The Central Government shall, as soon as may be after the receipt of the audit report under sub-section (3), cause the same to be laid before each House of Parliament.

(5) The State Government shall, as soon as may be, after the receipt of the audit report under sub-section (3), cause the same to be laid before the State Legislature.

Chapter V: Miscellaneous

35. Powers of Committee to issue Pilgrim Passes and levy fees

(1) The Committee shall have the power to issue a travel document called "Pilgrim Pass" to a Haj pilgrim for his departure from India as a bona fide pilgrim to Saudi Arabia and the said Pilgrim shall be deemed to be exempted from the provisions of section 3 of the Passports Act, 1967 (15 of 1967).

(2) Notwithstanding anything contained in the Passports Act, 1967 (15 of 1967), the Central Government may, in consultation with the Committee, levy such fees for registration of Haj pilgrims, issuance of Pilgrim Pass by the Committee and other related matters, as may be prescribed in connection with rendering of such services.

36. Supersession of Committee

(1) If, in the opinion of the Central Government, the Committee is unable to perform, or persistently makes default in the performance of the duties imposed on it by or under this Act or exceeds or abuses its powers, the Central Government may, by an order published, together with a statement of the reasons therefore, in the Official Gazette, supersede it for such period as may be specified in the order:

Provided that before making an order of supersession as aforesaid, the Central Government shall give a reasonable opportunity to the Committee to show cause why it should not be superseded.

(2) When the Committee is superseded by an order under sub-section (1),-

(a) all members shall, on such date as may be specified in the order, vacate their offices as such members without prejudice to their eligibility for nomination under clause (d);

(b) during the period of supersession of the Committee, all powers and duties conferred and imposed upon the Committee by or under this Act shall be exercised and performed by such officer or authority as the Central Government may appoint in that behalf;

(c) all property vested in the Committee shall, until it is reconstituted, vest in the Central Government;

(d) before the expiry of the period of supersession, nominations shall be made by the Central Government for the purpose of reconstituting the Committee.

(3) An order of supersession made under this section together with a statement of the reasons therefore shall be laid before each House of Parliament as soon as may be after it has been made.

(4) A State Government may exercise the same powers and duties in respect of a State Committee as mentioned in sub-sections (1), (2) and (3) of this section subject to the conditions mentioned therein and any directions issued by the Central Government in this regard.

37. Membership of Committee or State Committee not to constitute office of profit

Notwithstanding anything contained in any other law for the time being in force, the office of a member of the Committee or State Committee shall not be deemed to be an office of profit.

38. Vacancies, etc., not to invalidate proceedings of Committee

No act or proceeding of the Committee or of a State Committee or of a Joint State Committee, as the case may be, shall be invalid by reason only of the existence of any vacancy amongst its members, or any defect in the constitution thereof.

39. Officers and employees of Committee to be public servants

The officers and employees of the Committees and other persons duly appointed to discharge any duty under this Act or rules or bye-laws made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

40. Indemnity

No suit, prosecution or other legal proceeding shall lie against the Chairperson, Vice-Chairpersons or any member of the Committee or a State Committee in respect of anything in good faith done or purporting to have

been done under this Act, except with the prior permission of the Central or State Government, as the case may be.

41. Power to amend Schedule

(1) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification published in the Official Gazette, amend the Schedule and thereupon the Schedule shall be deemed to have been amended accordingly.

(2) A copy of every notification made under sub-section (1) shall be laid before each House of Parliament as soon as may be after it is made.

42. Redressal of grievances

Any Haj pilgrim, who is aggrieved by the discharge of any of the duties performed by the Haj Committee or the State Haj Committee, shall make a representation for the redressal of his grievance to the Haj Committee or the State Haj Committee, as the case may be, and the same shall be disposed of by the said Committee, if necessary, after hearing the aggrieved person.

43. Vesting of properties and other rights, etc., in Committees

(1) On and from the commencement of this Act, all assets, rights, leaseholds, powers, authorities and privileges and all properties, movable and immovable, including lands, buildings, stores, cash balances, cash on hand, reserve funds, investments and all other rights and interests in or arising out of such properties as were immediately before such commencement in the ownership, power or control of Haj Committee, Mumbai, constituted under the Haj Committee Act, 1959 (51 of 1959) and all books of account, registers and all other documents of whatever nature relating thereto shall vest absolutely in and belong to the Committee.

(2) On and from the commencement of this Act, all assets, rights, leaseholds, powers, authorities and privileges and all properties, movable and immovable, including lands, buildings, stores, cash balances, cash on hand, reserve funds, investments and all other rights and interests in or arising out of such properties as were immediately before such commencement in the ownership, power or control of Haj Committee of a State and, all books of account, registers and all other documents of whatever nature relating thereto shall vest absolutely in and belong to the Haj Committee of a State.

(3) All debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Committee or a State Committee immediately before such commencement for or in connection with the purposes of the Committee or a State Committee shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Committee or a State Committee, as the case may be.

(4) All sums of money due to the Committee or a State Committee immediately before such commencement shall be deemed to be due to the Committee or a State Committee, as the case may be.

(5) All contracts made with and all instruments executed on behalf of the Haj Committee, Mumbai or the Haj Committee of a State shall be deemed to have been made or executed on behalf of the Committee, or as the case may be, the State Committee and shall be performed accordingly.

(6) In all suits and legal proceedings pending on the commencement of this Act in or to which the Haj Committee, Mumbai or the Haj Committee of a State was a party, the Committee, or as the case may be, the State Committee shall be deemed to have been substituted therefore.

44. Power to make rules

(1) The Central Government may, by notification, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(i) the manner of election of members of the Committee under clause (ii) of section 4;

(ii) the terms and conditions of the Chairperson and members under sub-section (2) of section 6;

(iii) the powers and duties of the Chairperson under sub-section (3) of section 7;

(iv) the manner in which the members may be re-nominated under the proviso to sub-section (2) of section 8;

(v) duties in connection with Haj under clause (ix) of sub-section (1) of section 9;

(vi) the functions of the Chief Executive Officer and the terms and conditions of service of the Chief Executive Officer and other employees of the Committee under section 16;

(vii) the number of members of a Joint State Committee or of a Committee for Union territory under the proviso to clause (vi) of sub-section (1) of section 18;

(viii) the manner in which the accounts shall be maintained by the Committee and the State Committees and the audit of such accounts under section 34;

(ix) issue of Haj Pilgrim Pass under sub-section (1) of section 35;

(x) amendment of the Schedule relating to the zones comprising contiguous States or Union territories under section 41;

(xi) any other matter which may be prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive session, and if, before the expiry of the session in which it is so laid, or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

45. Power to make bye-laws

(1) The Committee may, by notification, make bye-laws consistent with the provisions of the Act and the rules made thereunder in respect of the following matters, namely:

(i) powers and duties of the Vice-Chairpersons under sub-section (4) of section 7;

(ii) providing for the publication of the proceedings of the Committee and any matter of interests to pilgrims under clause (viii) of sub-section (1) of section 9;

(iii) laying down the rules of procedure for transaction of business at meeting of the Committee under sub-section (5) of section 10;

(iv) powers and functions of the Standing Committee and determination of number of members and other persons in sub-committees under section 11.

(v) providing for any other matter which the Committee deems necessary for giving effect to the provisions of this Act.

(2) Bye-laws made by the Committee under this section shall be submitted to the Central Government and shall not take effect until they have been confirmed by the Central Government.

(3) Bye-laws which have been confirmed by the Central Government shall be published in the Official Gazette.

46. Power to delegate

Subject to the provisions of this Act and the rules made thereunder, the Committee may, by general or special order in writing, with the prior approval of the Central Government, delegate to any member or Chief Executive Officer o the Committee, and subject to such conditions and limitations, as may be specified in the order, such of its powers under this Act (except the powers to make bye-laws under section 45) as it may deem necessary.

47. Power to make rules by State Governments

(1) The State Governments may, in consultation with the Central Government, by notification make rules to carry out the purposes of this Act in respect of the State Committees.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(i) terms and conditions of the Chairperson and members of the State Committee under sub-section (2) of section 20;

(ii) the manner in which the members may be re-nominated under the proviso to sub-section (2) of section 22;

(iii) duties of the State Committee under sub-section (3) of section 27;

(iv) the functions of the Executive Officer and the terms and conditions of service of officers and other employees under section 29;

(v) any other matter which is required to be or may be prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.

48. Provisions as to employees of the existing Committee before the commencement of this Act

Every officer and other employee of any of the existing Committee and the State Committee, as the case may be, shall, on and from the commencement of this Act, stand transferred to or become an officer or other employee of the Committee or the State Committee, as the case may be, with such designation as such Committee may determine and shall hold office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions of service as he would have held under the Haj Committee constituted under the Haj Committee Act, 1959 (51 of 1959) and shall continue to do so as an officer or other employee of the Committee till such time the terms and conditions are duly altered by such Committee:

Provided that the tenure, remuneration and terms and conditions of service of any such officer or other employee of the Committee or of a State Committee, as the case may be, shall not be altered to his disadvantage without the previous sanction of the Central Government or State Government, as the case may be:

Provided further that any service rendered by any such officer or other employee before the commencement of this Act shall be deemed to be the service rendered under the Committee or, as the case may be, the State Committee.

49. Protection of action taken in good faith

No suit, prosecution or other legal proceedings shall lie against the Government or any officer or other employee of the Government or the Committee constituted under this Act in respect of anything which is in good faith done or intended to be done under this Act.

50. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Any order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

51. Powers to give directions

The Central Government may, in exercise of its powers and performance of its functions under this Act, issue directions in writing to the Committee or the State Government or the State Committee and such Committee, State Government or State Committee, as the case may be, shall be bound to comply with such directions.

52. Repeal

(1) The Haj Committee Act, 1959 (51 of 1959) is hereby repealed.

(2) Notwithstanding such repeal, the Haj Committee constituted under the said Act shall, until the establishment of the Committee under this Act, continue to function as if this Act had not been passed and on such notification under section 5 on the establishment of the Committee, the former Committee shall stand dissolved.

(3) Notwithstanding such repeal, anything done or any action taken under the Haj Committee Act, 1959 (51 of 1959) shall be deemed to have been done or taken under the corresponding provisions of this Act.

2. The Bihar and Orissa Places of Pilgrimage Act, 1920

[Bihar and Orissa Act II of Year 1920]

An Act to make better provision for the control and sanitation of places of pilgrimage and for the regulation of houses therein in which pilgrims are accommodated.

Whereas it is expedient to make better provision for the control and sanitation of places of pilgrimage, and for the regulation of houses therein in which pilgrims are accommodated;

And whereas the previous sanction of the Governor-General has been obtained under S. 79 (2) of the Government of India Act, 1915, to the passing of this Act;

It is hereby enacted as follows:

Preliminary

1. Short title and extent

(1) This Act may be called the Bihar and Orissa Places of Pilgrimage Act, 1920.

(2) This section extends to the whole of the State of Bihar and Orissa, including the Santal Parganas.

(3) The Provincial Government may by notification extend all or any of the other provisions of this Act to any local area to or through which people go on pilgrimage.

2. Definitions

In this Act, unless there is something repugnant in the subject or context,-

(1) "licensed house" means a house in respect of which a licence for the accommodation of pilgrims has been granted under this Act and is in force;

(2) "Magistrate" means an Executive Magistrate empowered by the State Government in that behalf to perform the functions of a Magistrate under this Act;

(3) "owner" means the person entitled to the immediate possession of any houses and includes the person who has obtained a licence in respect of any house;

(4) "pilgrim" includes a person who visits a place of pilgrimage with the object, among others, of performing such rites as are usually performed by pilgrims;

(5) "prescribed" means prescribed by rules made by the Provincial Government under this Act.

Licensed Houses

3. Prohibition of accommodation of pilgrims for gain in unlicensed houses

No person shall accommodate pilgrims for gain in any house not licensed.

4. Application for licence

(1) The owner of any house may apply to the Magistrate to licence such house for the accommodation of pilgrims.

(2) Every such application shall be in writing in the prescribed form, and shall be accompanied by the prescribed fee for inspection of the house by the Medical Officer of Health.

5. Reference to Medical Officer of Health

The Magistrate shall forward the application to the Medical Officer of Health, who shall inspect the house and return the application to the Magistrate with a certificate in the prescribed form of the result of his inspection.

6. Grant of licence

(1) If it appears to the Magistrate after considering the certificate of the Medical Officer of Health that the house satisfies the prescribed requirements, he may, on payment of the prescribed licence-fee, license the house for the accommodation of such number of pilgrims, if any, as in his opinion the house is fit to accommodate, having regard to the number of persons stated in the application to be resident in the house as members of the family and servants of the owner, or if the Magistrate considers that the number of persons so stated has been overstated or understated, to the number of persons likely in his opinion to be so resident at the time when the largest number of pilgrims is accommodated in the house.

(2) Every such licence shall be in the prescribed form and subject to the prescribed conditions, and shall specify the date, not exceeding one year from the date of issue, up to which it is to remain in force.

7. Discretion to grant temporary or provisional licence

The Magistrate may license any house for a period not exceeding one month at a reduced fee, and may also, in case of urgency, if satisfied that sufficient accommodation cannot otherwise be provided for all the pilgrims visiting the town or place, provisionally license any house pending the result of the inspection of the Medical Officer of Health.

8. Revocation or suspension of licence

If the Magistrate is satisfied that any licensed house is unfit for the accommodation of pilgrims, or if the owner of any licensed house is convicted of any offence punishable under this Act, the Magistrate may revoke or suspend the licence granted in respect of such house.

9. Modification of licence

Whenever the Magistrate is satisfied that any licensed house is fit for the accommodation of a less number only of Pilgrims than the number entered in the licence, the Magistrate may modify such licence by entering therein such less number:

Provided that if the change is not due to the fault of the licensee, the Magistrate shall refund to him such portion of the licence-fee already paid as he deems just and reasonable in the circumstances of the case.

10. Powers of entry and inspection

(1) The Magistrate or the Medical Officer of Health may at any time-

(a) enter and inspect any licensed house or any part thereof other than a zanana room;

(b) after giving the prescribed notice of his intention to do so, enter and inspect any zanana room in a licensed house.

Explanation: The expression “zanana room” means any part of a house in the exclusive use and occupation of women who according to the custom and manners of the country ought not to be compelled to appear in public.

(2) The Magistrate may by order in writing-

(a) authorise any officer not below the rank of a Sub-Deputy Magistrate or Sub-Deputy Collector to exercise the above powers;

(b) authorise any other person to exercise the above powers between the hours of 6 a. m. and 9 p. m.

(3) Every person so authorized shall be deemed to be a public servant within the meaning of the Indian Penal Code (Act XLV of 1860).

11. Power to exempt licensed house from inspection

The Magistrate may by order, exempt any licensed house or any part thereof from inspection for a period specified in the order, and may cancel or renew any such order.

Medical Officers of Health

12. Power to appoint Medical Officers of Health and sanction establishment

The Commissioner may-

(a) appoint Medical Officers of Health to carry out the purposes of this Act;

(b) sanction the entertainment of such establishment as he may deem necessary for the purposes of this Act.

Terminal tax on passengers

13. Power to impose terminal tax

The Provincial Government may impose a terminal tax on passengers of one or more of the following classes, namely:

(a) passengers brought by railway to any railway station;

(b) passengers taken by railway from any railway station;

(c) passengers brought by steam vessel to any landing place;

(d) passengers taken by steam vessel from any landing place-in or near a place of pilgrimage;

(e) passengers carried by road by a public service vehicle as defined in the Motor Vehicles Act, 1939 (IV of 1939) and brought to or taken from any place:

Provided that no terminal tax shall be imposed on passengers of class (a) or class (b) after the commencement of the Constitution, which was not lawfully being imposed immediately before such commencement and any tax so imposed on passengers of those classes shall only be leviable until provision to the contrary is made by Parliament.

Penalties

14. Penalty for accommodating pilgrims in house not licensed

If any pilgrim is accommodated for gain in a house other than a licensed house, the owner of the house shall be liable for every pilgrim so accommodated to a fine not exceeding rupees fifty for every day or night during any part of which such pilgrim was accommodated in the house.

15. Penalty for accommodating persons in house after revocation or suspension of licence

When a licence in respect of any house has been revoked or suspended, if there is resident in such house any person other than a member of the fam-

ily or a servant in the actual employ of the owner, the owner shall be liable to a fine not exceeding Rs. 50 for each person so found.

16. Penalty for accommodating excess number

If there is at any time resident in a licensed house a number of persons in excess of the authorized number, the owner of the house shall be liable to a fine not exceeding fifty rupees for each person so found in excess.

Explanation: In this section the expression "authorized number" means the total arrived at by adding the number of pilgrims entered in the licence, to the number of residents to which regard was had under the provisions of sub-S. (1) of S. 6.

17. Penalty for contravention of conditions of licence

If the conditions entered on a licence granted in respect of a licensed house are contravened in any manner for which no penalty is provided by this Act and the rules made thereunder, the owner of the house shall be liable to a fine not exceeding Rs. 200.

17A. Trial of offences

(1) The State Government may confer on an Executive Magistrate not being one empowered under clause (2) of Section 2, the powers of a Judicial Magistrate of the first class or of the second class for the trial of the offences under this Act, and on such conferment of powers, the Executive Magistrate, on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973 (2 of 1974) to be a judicial Magistrate of the first class or of the second class, as the case may be.

(2) An offence under this Act may be tried summarily.

17 B. Compounding of offences

Any offence punishable under this Act may, either before or after the institution of the prosecution, be compounded by the Magistrate on payment of such sum not being less than fifty percentum of the maximum fine provided for such offence and more than such maximum fine as the Magistrate may determine, and on payment thereof,

(a) no further proceedings shall be commenced against the person accused in respect of such offence;

(b) if any proceedings have already been commenced against such person, such proceedings shall not be further proceeded with; and

(c) such person, if in custody, shall be discharged.

18. Liability of persons in charge of licensed house in absence of owner

If the owner of a licensed house is absent therefrom, leaving it in charge of any other person, then such other person as well as the owner shall be liable to any penalty which may under this Act be imposed for any offence in respect of such house.

19. Power to perform work of which notice is given

Where any person is required to perform any work of or connected with conservancy or sanitation, and such person fails to perform such work within eight days after being served with a notice in that behalf, the Magistrate may cause such work to be performed and may recover the cost from such person as if it were a fine:

Provided that in case of urgency where immediate remedy is in the opinion of the Magistrate essentially necessary, he may cause such work to be performed at any time after the issue of the notice, and may recover the cost as aforesaid:

Provided that this section shall not apply to an area which is a municipality within the meaning of the Bengal Municipal Act, 1884 (Bengal Act III of 1884).

The Lodging-house Fund

20. The Lodging-house Fund

(1) In every area to which this Act applies, there shall be constituted a fund, to be called the "Lodging-house Fund", and there shall be placed to the credit thereof in the District Treasury or in a Sub-Treasury, or in any bank or branch bank used as a Government treasury in or near the area-

(a) all sums levied and recovered within such area as fees, or otherwise under this Act, not being fines or penalties;

(b) all sums which may be allotted to the fund from provincial revenues by the Provincial Government, or directed by the Provincial Government to be credited to the fund; and

(c) the net proceeds of the terminal tax, if any, imposed under S. 13:

Provided that a committee appointed under sub-S. (2) may, with the previous sanction of the provincial Government, invest any moneys not required for immediate use either in Government securities or in any other form of security of which the Provincial Government may approve.

(2) The Provincial Government may appoint any person or a committee to administer, in accordance with the provisions of this Act, the Lodging-house Fund constituted for any area:

Provided that in any area where the Bengal Municipal Act, 1884 (Bengal Act III of 1884) is in force, the fund shall be administered by a committee, at least one-third of whose number shall be elected by the commissioners of the municipality for that area and the remainder shall be elected or nominated in such manner as the Provincial Government may prescribe.

21. Application of Fund

The Lodging-house Fund shall be applied as the Commissioner may direct

(a) to the payment of the salaries of Medical Officers of Health appointed and of establishment entertained in accordance with the provisions of S. 12, and of pensions and gratuities, and of contributions to the provident or annuity fund;

(b) to the provision of medical relief in the area for which the fund is constituted, and to the sanitary improvement and conservancy of the said area and of any place, building or road which is or may be regulated by rules made under this Act.

Miscellaneous

22. Suits against officers

(1) For the purposes of S. 80 of the Code of Civil Procedure, 1908 (V of 1908), the Magistrate, the Medical Officer of Health and every person acting under his or their direction shall be deemed to be a public officer.

(2) A suit or proceeding against any such person for anything done or professing or purporting to be done under this Act shall not be instituted after three months form the date of accrual of the cause of action.

23. Power to make rules

(1) The Provincial Government may, after previous publication, make rules for carrying out the purposes of this Act:

Provided that without the previous sanction of the Central Government no railway company or administration operating a railway within the meaning of Cl. (20) of Art. 366 of the Constitution shall by such rules be called upon to collect a terminal tax.

(2) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may by such rules-

(a) provide for every matter by this Act directed or expressly or impliedly authorized to be prescribed;

(b) prescribe the authority which may require a person to perform a work of or connected with conservancy or sanitation, or to perform such a work of any specified class;

(c) prescribe the manner of service of any notice or other under this Act or any rule made thereunder.

(d) subject to the proviso to sub-S. (1), prescribe the manner in which the terminal tax shall be collected;

(e) prescribe registers, forms and returns;

(f) provide for the grant of pensions and gratuities to the Medical Officer of Health and to the members of the establishment entertained under S. 12;

(g) provide for the creation and management of a provident fund or annuity fund, for compelling contributions thereto on the part of members of the said establishment and for supplementing such contributions out of the Lodging-house Fund;.

(h) regulate the encampments, lodging and halting places, sarais and dharmsalas used by pilgrims in any place of pilgrimage, or on their journey thereto or therefrom;

(i) prescribe measures to be taken for preventing the outbreak or spread of any epidemic disease;

(j) in any area not being a municipality or part of a municipality provide for all or any matters of or connected with conservancy, sanitation and medical relief.

(3) The Provincial Government may in making any rule under this section direct that the breach thereof shall be punishable with fine not exceeding fifty rupees, and in case of a continuing offence, a further fine not exceeding twenty rupees for each day after written notice of the offence from the Magistrate.

Repeals

24. Repeals

The enactments specified in the Schedule, so far as they force in Bihar and Orissa, are hereby repealed

The Schedule

(…)

Impressum

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