



MUSLIM LAW COURSE

COMPLETE MUSLIM LAW NOTES

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1. THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT, 1937

A. HISTORY AND ORIGIN OF THE LAW

➤ History of the Law

- Talking about the history of [Muslim Personal Law](#) it was seen that during the colonial era, the British Courts would consult Hidayah, written by Mirghayani, a Hanafi Scholar, and then have it translated into English by Hamilton.
- This choice of Hanafi Law was rooted in the fact that the ruling class before the British was the Mughals, who were Hanafis.
- In order to make the masses most adaptable to their rule, the British followed the procedure that followed English Law and the substantive part was based on Hidayah, it later came to be known as Anglo-Mohammedan Law, now called as Muslim Personal Law (Shariat law).
- The Shariat law has not remained static over centuries, since the period when the Prophet was alive, the legislation mentioned in the Quran kept developing in response to practical problems faced by the Prophet and his community, so much so that even after his death too, the presence of different schools of Sharia and the way different modern Islamic countries have applied it to their legal domain.
- Modern time Islamic Nation States have responded to the needs of modernity by embracing the Shariat in ways suiting their social and political needs consequently, there are four different schools of Islamic law, each of which interprets the writings in the Quran in different ways and consists of varying rules and regulations for the Islamic community all over the world.
- The four schools of Islamic law are (Hanafiyya, Malikiyya, Shafiyya and Hanabaliyya) which were developed in four different centuries.

➤ Origin of the Law

- Before Islam was introduced as a religion to Arabia, a tribal social structure was prevalent.
- The tribe as a whole duty was to determine what law was and the rules were unwritten. These laws made by the tribe were modified with time, as and when society felt the need for change.

- In the seventh century, the Muslim community was established in Medina and soon started spreading to the surrounding regions. The establishment of Islam, the will of God, as transmitted in the Quran as the revelations of Muhammad, came to supersede every tribal custom which was created prior.
- The writings in the Quran along with unwritten customs, are also known as the Shariat that is what governs the Islamic society. In addition to this, the Shariat is also based on the Hadith (actions and words of the Prophet as recorded by his companions), originally, they were very broad and general solutions to practical problems in society but later on they have become more specific.
- The Act came into force on 7th October, 1937

➤ **Preamble of the Act**

This is an Act to make provision for the application of the Muslim Personal Law (Shariat) to Muslims. It is expedient to make provision for the application of the Muslim Personal Law (Shariat) to Muslims.

❖ Short title and extent as mentioned

- (1) This Act may very well be called The Muslim Personal Law (Shariat) Application Act, 1937.
- (2) It extends to the whole of India.
- All the Muslims living in India are governed by the [Muslim Personal Law \(Shariat\) Application Act, 1937](#).
- The Shariat can be simply explained as being the provisions in the Quran as well as the teachings and practices of Prophet Mohammad.
- Accordingly we can see that Article 14 of the Indian Constitution grants “equal protection of law” to all its citizens, but when it comes to personal issues (marriage, divorce, inheritance, custody of children, etc), Muslims in India are governed by their very own laws, that is, the Muslim Personal Law which came into force in 1937, and that the State shall not interfere.

B. APPLICATION OF THE LAW

“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 (type of divorce) and mubarat, 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).”

These laws mentioned above will not be applicable to Muslims who married under the Special Marriage Act, 1954.

❖ **Explanation on Section 2 of the Act:**

- **Section 2** of the Shariat Act provides that in the case where both the parties are Muslims the ultimate rule for decision *shall* lie under the Muslim Law, if the case of the parties involves any of the following matters:
 - a. Intestate succession (i.e. inheritance),
 - b. Special property of the females,
 - c. Marriage (including all incidents of marriage),
 - d. The Dissolution of Marriage (including all kinds of divorce),
 - e. Maintenance,
 - f. Dower,
 - g. Guardianship,
 - h. Gift: Any type of property can be given as gift,
 - i. Trust and trust properties, and
 - j. Wakf.
- Consequently as seen above, if both the parties to a case are Muslims, the Courts shall apply only the Muslim personal law and nothing else in the case.
- It is to be noted that a custom or usage contrary to Muslim law cannot be applied for such cases thereon. The word *shall* means it is mandatory, meaning thereby that the Courts are not only empowered but also bound to administer only Muslim personal law in the situations mentioned above.
- In the cases handling Adoption, Wills and Legacies, the Courts have consequently no authority to apply Muslim law under **Section 2** of the Act (except in the exception clause mentioned herein under), as these subjects are not included in the said Section.
- Although, we may take note that **Section 3** of the Shariat Act mentions that Courts may apply the rules of Muslim law in cases of Adoption, Will and Legacies provided

that a Muslim *expressly* declares that he wants to be governed by Muslim law also in respect of these matters in addition to the aforesaid (bullets mentioned above) ten matters.

- **Section 5** of the Shariat Act of 1937 concerns Muslim women seeking divorce. **Section 5** was subsequently deleted and replaced by Dissolution of Muslim Marriages Act 1939.

C. POWERS

➤ Power to make a declaration

- 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 (9 of 1872), and
 - (c) that if he is a resident of [the territories to which this Act extends to], he may then by the mode of 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 office as the State Government may, by general or special order, appoint in this behalf, and such officer may, if he is satisfied that the appellant is entitled to make the declaration, order the prescribed authority to accept the same.

❖ Explanation of Section 3

- (1) Any person who satisfies the prescribed authority (as stated above) may by only a 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.
- It should be made absolutely clear that since adoption, wills and legacies are not mentioned under Section 2, therefore the Courts will not apply Muslim law to all the

Muslims in these three matters unless they desire to be governed by Muslim law also in these matters. This desire must only be expressed through a declaration to that effect.

- It is to be noted that the effect of such a declaration is that not only the declarant but also his children and all the descendants shall be governed by Muslim law in these three additional subjects.
- Consequently it must be noted that if there is no such declaration by a Muslim, the Courts are not bound to apply Muslim personal law on these matters and they may freely apply customs and usages or the local enactments, if any.

➤ **Rule-making power**

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

(2) Especially 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 the duty of prescribing the authority before whom and also for the form in which declaration under this Act shall be made;

(b) For the duty of prescribing the fees to be paid for the filing of declarations and also 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 held in this section shall be published, in the Official Gazette and shall thereupon have effect as if enacted in this Act.

(4) Every rule henceforth made by the State Government under this Act shall be laid, as soon as it is made, before the State Legislature.

D. INCORPORATION IN STATES

- This law extends to the whole of India , all the Muslims living in India are governed by the Muslim Personal Law (Shariat) Application Act, 1937
- It can be seen in Muslim-majority countries have incorporated shariat law at some level in their legal framework and so on.
- Although these Muslim personal laws are not applicable in the State of Goa, where the Goa Civil Code is applicable for all persons irrespective of religion.

- These laws are also not applicable to Muslims who married under the Special Marriage Act, 1954.
- Section 6 of the Shariat Act repeals certain provisions of those earlier enactments which gave authority to the Courts to apply Muslim law before the commencement of the Shariat Act. Take for instance, Section 26 of Bombay Regulation Act, 1827, Section 16 of the Madras Civil Courts Act, 1873, Section 3 of Oudh Law Act, 1876, Section 5 of Punjab Laws Act, 1872 and the Central Provinces Laws Act, 1875, have been actually repealed and are now not in force any more.

E. CASE REFERENCES

- **Abdur Rahim Undre (Dr.) vs Padma Abdur Rahim Undre (Smt.) on 9 July, 1981-** The Shariat Act, makes personal law applicable uniformly to all Muslims notwithstanding any custom or usage to the contrary, it does not contain any rules or law governing Muslims and less so provides for grant of any relief in respect of a marriage.
- **A.S.Parveen Akthar vs The Union Of India on 27 December, 2002-** Muslim Personal Law (Shariat) Act, 1937 provides for the application of Muslim Personal Law to all questions regarding, inter alia, “marriage, dissolution of marriage, including talaq, ıla, zihar, lian, Khula and mubaraat.”
- **Shayara Bano vs Union of India and Ors. Ministry Of on 22 August, 2017-** It was held by the Court that the questions and subjects (including ‘talaq-e-biddat’), would have to be in conformity (-and not in conflict), with the provisions of Part III – Fundamental Rights, of the Constitution.
- **Khuran Sunnath Society & Others vs Union Of India And Another-** here the petitioners prayer is to direct the respondents not to enact Shariat Act in respect of those adversely affecting the dignity and rights of Muslim women and against their protection, based on this prayer, the Court dismissed the writ petition as it cannot legislate in such matters.

2. THE MUSLIM DISSOLUTION OF MARRIAGE ACT, 1939

A. GROUNDS FOR DISSOLUTION OF MARRIAGE

- Under **Muslim Law**, Marriage is a **contractual relationship** between two parties.
- All the essentials that are needed for a contract are available under [Muslim Marriage](#).
- The purpose of such a form of marriage is to legalise sexual intercourse and the Procreation of children.
- A Muslim marriage may be dissolved by the Courts of India under **Section 2 of the Dissolution of Muslim Marriage Act, 1939** under certain circumstances which are as follows: -
 - Long absence of Husband: Whereabouts of the husband has not been known for a period of four years.
 - Failure to maintain wife: If a husband fails to provide [maintenance](#) to his wife for a period of two years then there is no protection available to the husband on the ground of poverty, failing health or unemployment.
 - Imprisonment of Husband: If the husband is detained for seven years or more.
 - Failure to perform marital obligation: If, with no sensible reason, the spouse can't play out his marital obligations for three years.
 - Impotence of Husband: Husband was impotent at the time of marriage and keeps on being so.
 - Insanity, Leprosy or Venereal disease: If the spouse is crazy or experiencing sickness, or any venereal sickness for a time period of two years, legal separation by wife can be guaranteed on similar ground.
 - Option of Puberty: If a girl is married before the age of 15 years by her father or guardian, then she has been provided with a right to repudiate such marriage after attaining the age of majority that is 18 years of her age provided that marriage is not consummated. She is qualified for legal separation for the equivalent.
 - Cruelty: Remorselessness by spouse assuming the husband treats his better half with mercilessness, she can move towards the Court and case for an announcement of legal separation on similar ground.
 - Other grounds of dissolution in Muslim law: The wife is also entitled to obtain a [divorce](#) on the ground recognised valid under the law.

➤ **Case References**

- In the case of [Gul Mohd. Khan v. Hasina](#); the wife documented a suit for the disintegration of marriage on the ground of impotency. The husband made an application under the steady gaze of the court looking for a request for demonstrating his strength. The court permitted him to demonstrate his potency.
- In the case of [Itwari v. Asghari](#); the Allahabad High Court saw that Indian Law doesn't perceive different kinds of cruelty, for example, 'Muslim cruelty', 'Hindu cruelty, etc, and that the trial of cruelty depends on universal and humanitarian guidelines; in other words, lead of the husband which would cause such bodily or mental agony as to imperil the wife's security or wellbeing.
- In the case of [Aboobacker v. Mamu koya](#); the husband used to urge his wife to put on a sari and see pictures in the film. The spouse would not do so in light of the fact that as per her convictions this was against the Islamic lifestyle. She looked for separate on the ground of mental remorselessness. The Kerala High Court held that the lead of the spouse can't be viewed as brutality since simple take-off from the guidelines of choking out universality doesn't establish un-Islamic conduct.

B. FAITH CONVERSION

➤ **Section 4 of the Muslim Dissolution of Marriage Act**

Under [Section 4](#) of this act, if both husband and wife renounce Islam, their marriage is not dissolved but remains intact.

- In the case of a Muslim Husband

If a Muslim husband renounces Islam, his marriage with his Muslim wife stands dissolved ipso facto.

- In the case of a Muslim Woman

If a married Muslim woman renounces Islam, her conversion to another faith shall not by itself operate to dissolve her marriage.

- Provided that after her conversion to another religion the woman shall be entitled to get a divorce on the grounds mentioned under [section 2](#) of this act.

- Provided that this section will not apply to such a woman who converted to Islam from some other religion but re-embraces her former faith.

➤ **Effects of Apostasy/ Faith Conversion**

- If a Muslim woman who converts to another faith remarries without dissolution of marriage she can be prosecuted for bigamy.
- It is to be noted that a husband's [conversion](#) to another religion is not a ground for a Muslim woman to seek divorce.
- Before the enactment of this act, conversion by any of the one spouse resulted in the automatic dissolution of marriage.
- Conversion by Muslims is forbidden as per many Sharia law interpretations and such converts are called [apostates](#).
- In some nations, conversion to another faith is considered a sin and can be punishable with death. For example, countries like Iran & Saudi Arabia.

➤ **CASE REFERENCE**

- **MUNNAVAR-UL-ISLAM v. Rishu Arora:** In this case, the wife at the time of marriage converted to Islam but re-embraced her original faith I.e. Hinduism. Hence, her marriage stood dissolved. Hence her case attracted the provisions of section 4 of this act.
- **Abdul Ghanni v. Azizul Haq:** In this case, both the husband and wife were Muslims but the husband converted to Christianity. However, he again re-embraced Islam but the wife before the expiry of Iddat remarried another man. The husband filed a case against his ex-wife, her father & her new husband for [bigamy](#) u/s. 494. It was held that no offence has been committed.

3. THE WAQF ACT, 1955

A. Auqaf

- The donees of an ordinary gift are mortals or people. Waqf is the permanent dedication of property to God with the goal of using the property's usufruct for religious, pious, or charitable purposes.
- The corpus is owned by God and therefore cannot be consumed; only the profits produced by the property can be used for the purposes desired. While the primary motivation is religious, the entire property, including the corpus and any revenue, can be used for the desired purpose in the case of Sadaqah, while property settled by Waqf is in the nature of permanent commitment and thus is irrevocable.
- Auqaf (also written awkaf, singular waqf/wakf) is an Arabic term that refers to properties that are donated, bequeathed, or bought for the purpose of being kept in perpetual trust for socially beneficial charitable causes.
- The idea of waqf is close to the Western concept of endowment in several respects. The strong focus on the perpetuity of Auqaf has resulted in a significant accumulation of societal resources over time, to the point where Auqaf has become an important economic field dedicated to improving the socio-economic welfare of Muslim communities/populations in many countries.
- Anyone who wishes to establish a Waqf must meet only two requirements. They must be of sound mind and have a clear ownership claim to the asset or property. Interestingly, the person who establishes a Waqf or a 'Waqif' does not have to be a Muslim as long as he or she professes belief in Islamic values.

➤ Board of Auqaf

- Chapter IV of the Waqf Act, 1955 talks about the establishment of Boards and their functions.
- Section 13 of the act talks about the incorporation of the board. A Board of Auqaf under such name as may be stated in the notification shall be constituted with effect from such date as the State Government may appoint in this regard by notification in the Official Gazette.

- If a Board of Waqf has not been appointed as necessary under this sub-section, a Board of Waqf shall be established within six months from the date of commencement of the Wakf (Amendment) Act, 2013, without prejudice to the provisions of this Act or any other law currently in force.
- Members of the Board of Waqf constituted under sub-section (2) of Section 13 must be Shia Muslims in the case of Shia waqf and Sunni Muslims in the case of Sunni waqf.
- The Board shall be a corporate body with perpetual succession and a common seal, with powers to purchase, retain, and sell property subject to such conditions and restrictions as may be specified, and shall sue and be sued under the said name.
- Waqf Boards ensure that Waqfs are properly managed and that any revenue received is used in accordance with Islamic values and law.
- A Waqf board is a legal entity that ensures that Waqf is properly administered. This entails ensuring that every Waqf is properly maintained and controlled, with any rent or revenue produced by the asset or property being used in accordance with Mohammedan law, depending on whether a Waqf board is Sunni or Shia, these laws can differ.
- Every Waqf board must appoint custodians, whose duty it is to make sure that the waqf, as well as any revenue it produces, is utilized or used for its intended purpose.
- The most well-known Waqf board is India's Central Waqf Council (CWC), which was established in 1964 which advises and supervises state-level Waqf boards across the country. Mukhtar Abbas Naqvi, the Minister of Minority Affairs in Prime Minister Narendra Modi's Cabinet, is the new Chairperson of the CWC.

➤ **Registration process**

- Chapter V of the Act deals with the registration of the Auqafs. Section 36 talks about the registration of Waqfs and Section 37 talks about the registration of Auqaf. Any two Waqfs, whether formed before or after the effective date of this Act, must be registered with the Board.

- The Mutawalli shall make the application for registration: Provided, however, that such applications may be made by the Waqf or his descendants, a beneficiary of the Waqf, or any Muslim belonging to the sect to which the Waqf belongs.
- An application for registration must be submitted in the form, manner, and location specified by the Board by regulation, and must include the following information: (a) a description of the two Waqf properties sufficient for identification; (b) the gross annual income from such properties; and (c) the amount of land revenue, cesses, rates, and taxes payable annually in respect of such properties.
- Any such application must be followed by a copy of the 2 Waqf deed or, if no such deed has been executed or a copy thereof cannot be obtained, full particulars of the 2 Waqf's sources, existence, and objects, to the extent that they are known to the applicant.
- The applicant must sign and verify each submission made under subsection (2) in the manner prescribed in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings. The Board may require the applicant to include any additional details or information it deems relevant.
- When the Board receives an application for registration, it may make such inquiries as it deems necessary before registering the Waqf, including inquiries into the genuineness and validity of the application and the accuracy of any particulars therein, and when the application is made by anyone other than the person in charge of the Waqf property, the Board shall give notice before registering the Waqf.
- Any application for registration of Awqaf created before the commencement of this Act must be made within three months of that commencement, and any application for registration of Awqaf created after that commencement must be made within three months of the date of the creation of the Waqf. Where there is no Board at the time of the formation of the Waqf, the application must be made within three months of the Board's establishment.
- The Board shall keep an Awqaf register, which shall include, for each Waqf, copies of the Waqf deeds, when available, and the following information: (a) the Waqf class, (b) the name of the Mutawallis; (c) the rule of succession to the office of Mutawalli under

the Waqf deed or by custom or by usage; (d) details of all Waqf properties and all title deeds and documents

- The Board shall notify the concerned land record office having jurisdiction over the Waqf property of the descriptions of the properties entered in the Awqaf registry.
- Upon receipt of the information described in subsection (2), the land record office must either make appropriate entries in the land record or communicate its objections to the Board within six months of the date of registration of Waqf property under Section 36, according to the existing procedure.

➤ **Maintenance of accounts**

- Chapter VI talks about the maintenance of the account of the Waqfs. Section 44 says about the budget and section 46 talks about the submission of the accounts of Waqfs.
- Every Mutawalli of a Waqf shall prepare a budget for the financial year next ensuing in such form and at such time as may be specified, showing the expected receipts and expenditure during that financial year.
- The Mutawalli must submit such a budget to the Board at least [thirty days] before the start of the financial year, and it must include adequate provisions for the following: I carrying out the Waqf's objects, (ii) maintaining and preserving the Waqf's property, and (iii) discharging all liabilities and existing commitments binding on the Waqf under the Act.
- If the Board determines that any item in the budget is incompatible with the Waqf's objectives and the provisions of this Act, it may guide the addition or deletion of that item.
- If the Mutawalli determines during the financial year that the provisions made in the budget in regard to the receipt or allocation of the sums to be spent under the various heads need to be changed, he will send a supplementary or revised budget to the Board, and the provisions of sub-section (3) will apply to such supplementary or revised budget to the extent possible.
- The Chief Executive Officer shall prepare a budget for the financial year next ensuing, in such form and at such time as may be prescribed, showing the projected receipts

and expenditure for each of the Awqaf under the direct control of the Board, and send it to the Board for approval.

- In submitting the budget under sub-section (1), the Chief Executive Officer must also prepare a statement detailing the rise, if any, in the income of each Waqf under the Board's direct control, as well as the measures taken to improve its management and the results obtained during the year.
- Every Mutawalli is required to keep accurate records. Every Mutawalli of a Waqf shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as the Board can provide by regulations, of all money received or expended before the [1st day of July] next following the date on which the application referred to in section 36 has been made, and thereafter before the [1st day of July] in every year.

➤ **Formation and Working of the Waqf Council**

- Chapter III of the act talks about the waqf council. Section 9 of the act gives the provision of the establishment of a waqf council.
- The CWC is an apex council that deals with waqf and related issues. It is necessary to give priority to this topic because it is relevant and pertains to the welfare of the Muslim community. Initially, the CWC was formed to provide advice on waqf and related matters to the Ministry of Minority Affairs, the Government of India, state governments, and state waqf boards.
- Any dispute arising from a directive issued by the council under section 9 (4) must be referred to a Board of Adjudication, which must be formed by the central government and presided over by a retired Supreme Court judge or Chief Justice of the High Court.
- The Central Waqf Council is formed and constituted. (1) The Central Government may, by notification in the Official Gazette, create a Council to be known as the Central Waqf Council for the purpose of advising the Central Government, State Governments, and Boards on matters relating to the functioning of Boards and the proper administration of awqaf. The Council referred to in subsection (1) shall issue instructions to the Boards on the issues and in the manner set forth in subsections (4) and (5).

- The Council shall be composed of the following members: (a) the Union Minister-in-charge of Waqf—ex officio Chairperson; (b) the following members to be appointed by the Central Government from among Muslims, namely:
 1. three persons to represent Muslim organizations of all-India character and national importance;
 2. four persons of national eminence, one each from the fields of administration or management, finance, and law;
 3. three Members of Parliament, two from the House of People and one from the Council of States;
 4. rotating Chairpersons of three Boards;
 5. two Supreme Court or High Court Judges;
 6. one national eminent Advocate;
 7. one person to represent the mutawallis of the waqf with a gross annual income of rupees five lakhs and above;
 8. Three eminent scholars in Muslim Law
- The term of office of members of the Council, the procedure to be followed in carrying out their duties, and the manner of filling casual vacancies among them shall be as specified by rules made by the Central Government.
- The State Government or, as the case may be, the Board shall provide information to the Council on the performance of Waqf Boards in the State, especially on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports, and audit reports, in the manner and time as the Council may specify, and the Council may suo motu call for information.
- Any dispute arising from a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Supreme Court Judge or a retired Chief Justice of a High

Court, and the fees, travelling, and other allowances payable to the Presiding Officer shall be as specified by that Board.

- The Waqf Act of 1995 specifies the financial arrangements for the Central Waqf Council. According to Section 10 of the act, each state waqf board must pay the council 1% of the waqf's net annual profits.
- The Central Waqf Fund will receive all funds raised by the council from the state waqf boards, as well as all gifts, benefactions, and grants. The Central Waqf Council will have full control over the Central Waqf Fund and will be able to make guidelines for the Central Waqf Fund.
- The Central Waqf Council is required by Section 11 of the Waqf Act of 1995 to keep certain books of account in the form and manner prescribed by the Central Government. The central government's auditor is responsible for auditing and inspecting these books on an annual basis. The audit's costs will be covered by the Central Waqf Fund.

B. Concept of Mutawalli

- According to Muslim law, once a wakf is formed, all property rights pass from the wakif to God. However, someone who can look after and maintain the property is needed. The person who supervises or takes over the management of a wakf is known as a Mutawalli in Muslim law. A basic understanding of wakf is needed before proceeding.
 - Mutawalli is the person in charge of wakf's management. In Shia Law, the appointment of a Mutawalli is required. Sunni Law, on the other hand, does not impose any obligations. Under Islamic law, a Mutawalli has no claim to the wakf's lands. He does not own the land. Under Muslim law, the status of Mutawalli is distinct from that of a trustee. He is merely a boss or manager.
- **Who can be a Mutawalli?**
- A Mutawalli can be someone of sound mind and majority age who is capable of performing the functions that must be performed under a specific wakf. A minor, on

the other hand, maybe a Mutawalli if the office is hereditary or if the line of succession is established in the wakf-name and the office is held by a minor.

- A woman may be appointed as a Mutawalli in most cases, but where the Mutawalli is also expected to perform religious duties, a female, as well as a non-muslim, cannot be appointed.

➤ **Who can appoint a Mutawalli?**

- Founder: The founder of a wakf has complete appointment control. In addition, he has the power to nominate himself as the first mutawalli. He may also develop guidelines for the appointment of mutawallis in the future. He may also appoint a stranger as mutawalli on his deathbed.
- Mutawalli: If the founder and wakif are both deceased and there is no written succession plan in place, the current mutawalli will nominate his successor on his deathbed. In terms of fitness, however, he lacks certain authority. Whether one of the joint Mutawallis dies and the wakf remains silent on what to do if one of them dies, the office would be passed down by survivorship.
- The court will appoint a Mutawalli in cases where the creator has not appointed a Mutawalli or cannot be appointed as mutawalli. The District Court has the authority to designate. The court follows a few laws, including the following:- The court disregards the settler's course. A settler member should be preferred over a stranger.
- Where a wakf is strictly local, such as a graveyard or a mosque, the Mutawalli may be appointed by a locality's collective decision.

➤ **Duties of mutawalli**

A Mutawalli is in charge of wakf property management and administration. He has complete control over the use of wakf property for the reason for which it was developed. He may only alienate property with the court's permission. It is merely voidable even without prior court approval. Mutawalli could file a suit relating to a wakf before Wakf Act, 1954 came into effect. However, Wakf Board now wields this force.

- As the wakf's manager, he is responsible for the property's usufruct. He is granted the following privileges:

- He has the power to use the usufructs in the wakf's best interests. He is authorized to take all necessary steps in good faith to ensure that the wakf's end beneficiaries receive all of the wakf's benefits. He is unable to sell the property because he is not the owner of the property. The wakif, on the other hand, could bestow certain rights on him by explicitly mentioning them in the waqf name.
- By demonstrating the presence of sufficient grounds or urgency, he may obtain court permission to sell or borrow money.
- He will file a lawsuit to defend the wakf's interests.
- He also has the authority to lease the land for less than three years for agricultural purposes and for less than one year for non-agricultural purposes. With the proper approval from the judge, he may have the term extended.
- He is entitled to remuneration in accordance with the wakif's provisions. If the remuneration is insufficient, he will petition the court to have it increased.

➤ **Removal of Mutawalli**

The creator cannot remove Mutawalli after he has been named unless such power has been granted under wakf-name. A Mutawalli may be removed by the court. A court can remove Mutawalli for any legitimate cause, including misfeasance, breach of confidence, or unfitness.

- By the Court – Once a mutawalli has been named, the waqif cannot dismiss him. The Mutawalli, on the other hand, can only be excluded by the Court on the following grounds.
- He disputes the property's waqf status and establishes an adverse title to it in his own name.
- He neglects to repair the waqf premises, despite having sufficient funds, and allows them to fall into disarray; he knowingly and deliberately causes harm or loss to the waqf land or commits a breach of trust.
- The Mutawalli is declared bankrupt.

- According to Section 64 of the Wakf Act, 1995, the Wakf Board has the power to dismiss the Mutawalli from his role if no requirements are met.
- According to the Wakif – This definition is seen from a variety of perspectives. Even if the wakif has not claimed the right to delete the mutawalli in the wakf deed, the mutawalli may be removed, according to Abu Yusuf.
- Imam Mohammed, on the other hand, argues that the wakif cannot do so unless there is a reservation.
- Waqf Property Management - De Facto Mutawalli- If a person who has not been authorized to act as a mutawalli by the waqif or the Court assumes the status to manage the property, he becomes a "trustee de son tort" and is liable for the property.
- If there is a provision in the waqf deed exempting the mutawalli from liability, it must be followed. At any point, a beneficiary has the right to demand an account from a Mutawalli. A beneficiary of such rights has the right to assert his share of income and may sue for it.

➤ **Financial Records (Waqf Council and Board)**

- The mutawalli of any wakf with a net annual income of not less than five thousand rupees shall pay to the Board, out of the wakf's net annual income, such contributions, not exceeding seven per cent of such annual income, as may be prescribed, for the Board's services to the wakf. I. Explanation.— For the purposes of this Act, "net annual income" refers to the wakf's gross income from all sources, including Mazars and offers that do not contribute to the wakf's corpus, in a given year after deducting the following:
 1. the land revenue paid to the Government;
 2. the rates, cesses, taxes and licence fees, paid by it to the Government or any local authority;
 3. expenditure incurred for all or any of the following purposes,
 - expenditure on various repairs to leased houses, not to exceed 5% of the annual rent arising from them, or actual expenditure, whichever is less;

- If the proceeds from the sale of immovable assets or rights relating to or resulting from immovable properties are re-invested to generate income for the wakf: The following receipts, however, will not be considered profits for the purposes of this section.
- The wakf's mutawalli may collect the contributions due him under subsection (1) from the various persons entitled to any pecuniary or other material benefits from the wakf, but the amount collected from any one of them shall not exceed the amount that bears the same proportion to the total contribution due as the value of the benefits due to such person.
- The contribution shall be paid out of any wakf income available in excess of the sum payable as dues under this Act, other than the contribution under sub-section (1), and in excess of the amount payable under the wakf deed.
- The contribution payable under sub-section (1) in respect of a wakf shall be a first charge on the wakf's income and shall be recoverable, subject to the payment of any dues to the Government or any local authority or of any other statutory first charge on the wakf property or income thereof, on a certificate issued by the Board after giving the mutawalli concerned an opportunity to object.
- If a mutawalli realizes the wakf's income and declines or fails to pay the wakf's contribution, he is personally liable for the contribution that may be realized from his person or property in the manner aforesaid.
- After the commencement of this Act, if the mutawalli of a wakf fails to submit a return of the wakf's net annual income within the time specified, or submits a return that, in the opinion of the Chief Executive Officer, is incorrect or false in any material particular, or does not comply with the provisions of this Act or any rule or order made thereunder, the Chief Executive Officer may impose penalties.
- Provided, however, that no assessment of net annual income or revision of a mutawalli's return shall be made unless the mutawalli has been given the notice to show cause, within the time specified in the notice, why such assessment or revision of the return should not be made, and that any such assessment or revision shall be made after considering the mutawalli's reply if any.

- Any mutawalli who is aggrieved by the Chief Executive Officer's assessment or revision made under sub-section (6) can file an appeal with the Board within thirty days of receiving the assessment or revision of return, and the Board can confirm, reverse, or modify the assessment or revision of the return after giving the appellant a fair opportunity to be heard.
- If the contribution or any portion thereof leviable under this section escaped assessment for any reason in any year, whether before or after the commencement of this Act, the Chief Executive Officer may, within five years of the last date of the year to which such escaped assessment relates, serve on the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment.
- Regardless of any other law in force at the time, the Chief Executive Officer may, if he believes it is necessary and expedient, issue an order directing any bank in which, or any individual with whom, any money belonging to a waqf is deposited, to pay the contribution, leviable under section 72, out of any money standing to the credit of the waqf.
- Any payment made by a bank or other individual in accordance with an order issued under subsection (1) discharges the bank or other person's liability in relation to the amount so charged fully.
- Any bank or other individual who is ordered to make a payment under subsection (1) may appeal the order to the Tribunal within thirty days of the date of the order, and the Tribunal's decision on the appeal is final.
- Any bank officer or other individual who fails, without fair excuse, to comply with the order made under sub-section (1) or, as the case may be, under sub-section (3) is punishable by imprisonment for a period not exceeding six months or a fine not exceeding eight thousand rupees, or both.

Powers

- The general supervision of all [Waqfs](#) in a State shall be vested in the Board established by the State, and it shall be the duty of the Board to exercise its powers under this Act in such a way that the Waqfs under its supervision are properly maintained, regulated, and administered, and their income is properly applied to the objects and purposes for which such Waqfs were created or established.

- The Board shall act in accordance with the directives of the Waqf, the Waqf's purposes, and any Waqf use or tradition sanctioned by the school of Muslim law to which the Waqf belongs when exercising its powers under this Act in respect of any Waqf.
- The board's power and duties are governed by Section 32 of the Act. The Board appointed by the concerned State has general supervision over all waqf in the state, and it is the board's responsibility to:
 - To ensure that the waqf is properly administered, maintained, and regulated.
 - The waqf was established to ensure that the profits and other assets of the waqf are applied to the items for the primary purpose.
 - To provide guidance in the administration of the waqf and to develop management schemes for the waqf.
 - To nominate and dismiss mutawallis, as well as to scrutinize and approve mutawallis' budget submissions.
 - To take the requisite steps to reclaim the waqf land.
 - Authorized to file and fight lawsuits involving waqf assets.
 - To take care of the waqf fund.
 - Waqf assets, accounts, records, and documents may be inspected and investigated.
 - In addition, all activities related to the preservation, management, and control of waqf assets must be completed.
 - Inspectors and superintendents of wakfs should conduct frequent and surprise audits of the wakfs' accounts, and they must be kept accountable for any errors. The board is given the authority to draft schemes for the management of wakfs, and this authority must be exercised with due notice to the Mutawalli and all parties affected, as well as enough opportunity to be heard.
 - If the Board determines that the framing of a scheme for the administration of a wakf is required, it can do so on its own initiative or in response to a request from not less than 5

persons involved in that wakf. This is done in consultation with the mutawalli and the applicants.

Judicial Proceedings

- The Waqf Act of 1995, Section 83, allows the State Government to create as many tribunals as they see fit for the administration of waqf and [waqf property](#) by notifying the Official Gazette.
- Under the Code of Civil Procedure, 1908, the Tribunals are considered to be civil courts and must exercise all of the powers and duties that a civil court does. The Tribunal's decision is definitive and binding on the parties. No civil court shall have jurisdiction over any suit or legal action that this act needs to be decided by a Tribunal.
- Members of the Tribunals: The Tribunals will be made up of the following individuals: One member of the State Judicial Service who is not below the rank of District, session, or Civil judge, one member of the State Civil Services who is equal to the rank of District Magistrate, and one person with knowledge of Muslim Law and Jurisprudence.
- When a mutawalli fails to perform his duties as prescribed by Muslim Law or is unable to discharge the duties to which he is obligated, the board must file a complaint with the Tribunal, and the Tribunal can take appropriate action.
- If the waqf land is subject to the jurisdiction of two or more tribunals, the claim must be made to the tribunal in whose local jurisdiction the mutawalli resides.
- Where an application made under subsection (1) relates to waqf property that falls within the territorial limits of the jurisdiction of two or more Tribunals, the application may be made to the Tribunal within whose local limits the mutawalli or any one of the mutawallis of the waqf actually and voluntarily resides, carries on business, or personally works for gain.
- Provided, however, that the State Government may, if it believes it is in the best interests of the waqf or any other person interested in the waqf or waqf property, transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question, or other matter relating to such waqf or waqf property, transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question, or other matter relating to such waqf of waqf property.

- The Tribunal would be treated as a trial court and will have the same powers that a federal court will have while trying a case or enforcing a decision or order under the Code of Civil Procedure, 1908.
- The Tribunal shall observe such procedure as may be prescribed, notwithstanding anything in the Code of Civil Procedure, 1908.
- The Tribunal's decision is definitive and binding on the parties to the application, and it has the legal force of a civil court order.
- The civil court to which the Tribunal's decision is submitted for execution shall carry out the decision in accordance with the rules of the Code of Civil Procedure, 1908.
- No appeal shall be allowed against any decision or order issued by the Tribunal, whether interim or final:
- A High Court may, on its own motion or on the application of the Board or any person aggrieved, order and examine the records relating to any dispute, issue, or other matter decided by the Tribunal for the purpose of ascertaining the correctness, legality, or propriety of such determination, and may confirm, reverse, or modify such determination or pave the way for further proceedings.
- Whenever an application is made to a Tribunal for the resolution of any conflict, issue, or other matter relating to a waqf or waqf land, the Tribunal shall conduct its proceedings as quickly as possible and shall, as soon as practicable, give its decision in writing and provide a copy of such decision to each of the parties to the dispute.
- No suit may be brought against the Board for any act purporting to be done by it in pursuance of this Act or any rules made thereunder until two months have passed after notice in writing has been sent to, or left at, the Board's office, stating the cause of action, the plaintiff's name, description, and place of residence, and the relief sought.

C. CASE REFERENCES

➤ Definition of Waqf

- In the case of **M Kazim v. A Asghar Ali**, it means the dedication of a particular property for a religious reason or the secession of religious purposes. Wakf, according to Muslim jurists

such as Abu Hanifa, is the detention of a particular item in the waqif's or appropriator's possession, and the dedication of its revenues or usufructs to charity, the needy, or other good things, in order to accommodate a loan. Waqf literally translates to "detention" or "tying up," implying that the owner of the dedicated property is taken away from the individual who makes waqf and transferred to God. Details about the prophet's wakf can be found in old documents.

- **Abdul Hannan v. Fateh Mohammad**, 1958, waqf means tying up the corpus and devotion and the usufruct to some pious object and the waqf property is not to be sold or made the subject of the gift and inheritance.

➤ **Condition for a valid waqf**

- If a condition is imposed in the waqf deed, that the wakif reserves to himself the power of revoking a waqf, the waqf is void ab-initio. In **Abdul Satar v. Advocate General of Bombay**, two settlors proposed to create a Waqf by a deed which contained a clause enabling one of them by deed, enabling the alter of trust wholly, declared by the deed and by the same deed to declare new trust. It was held by the Court that the power of revocation reserved in the favour of settlors rendered the whole deed void. It is impossible to contemplate whole property transferable to the Almighty God subject to a condition enforceable by anyone in a Court for recovering that property for the benefit of the settler.

➤ **Who can be a Muttawali**

- The Privy Council held in **Shahar Bano v. Aga Mohammad** that there is no legal bar to a woman being a mutawalli if the wakf's duties do not include religious activities. A mutawalli may be named if he or she is a major, of sound mind, and capable of performing the wakf's functions as the wakif desires. A male or female of either faith may be chosen for the role. If the wakf includes religious responsibilities, a female or non-muslim cannot be named.

➤ **Office of Muttawali**

- In **Ahmad Arif v. Wealth Tax Commissioner**, the Supreme Court held that a mutawalli does not have the authority to sell, mortgage, or lease wakf property unless the Court has given him that authority or unless the mutawalli has been given that authority expressly in the wakfnama. Mutawalli is the owner and operator of a wakf. He is not the property's owner or even a trustee. He is merely a supervisor whose duty it is to ensure that the property's usufructs are being used for the purposes intended by the wakif. He must ensure that the benefits are being received by the intended recipients. As a result, he just has a small amount of power over the usufructs.

4. THE HAJ COMMITTEE ACT, 2002

A. CENTRAL HAJ COMMITTEE

➤ Constitution of the Haj Committee

- The constitution is incorporated under Section 3 of the [Act](#).
- Committee is a corporate body having the power acquire, hold and dispose any movable or immovable property or creating a charitable trust and to sue and be sued.
- The headquarters are situated in Mumbai.

➤ Composition of the Committee

- The required composition of the Committee is laid down under Section 4 of the Act.
- Three members are to be nominated from the Muslim members of the Parliament and Council of States.
- The two members from the Parliament are to be nominated by the Speaker of the House of People and the one member from Council of States by the Chairman.
- The member will cease to be a member once he retires from the Parliament or the Council of States.
- 3 out of the 9 members are to be elected from the States sending largest pilgrims during previous three years and one each from zones specified in the Schedule as prescribed.
- 4 members nominated above the rank of Joint Secretary to represent Ministries of External Affairs, Home, Finance and Civil Aviation as *ex-officio* members.
- 7 members nominated by Central Government; 2 women; 2 people who have special knowledge of public administration, finance, education, culture or social work; 3 members who have special knowledge of Muslim theology and law and one member should be Shia Muslim in each category.
- Under Section 5 names of the members should be published in Official Gazette as soon as nominations are done.

➤ Chairperson and Vice-Chairperson

- The appointment of Chairperson and Vice-Chairperson is prescribed in Section 7 of the Act.
- The first meeting of the committee, which must be held within 45 days of the notification, is when the Chairperson and the Vice-chairperson are elected.

- The Ministers or the *ex-officio* members are not to be elected for the positions.
- If the Committee fails to elect, the Central Government appoints a member as the Chairperson or Vice-Chairperson.
- The Chairperson exercise powers and duties as prescribed whereas the Vice-Chairperson exercises the powers and duties as prescribed by the bye-laws made by the Committee and prior to making such bye-laws, as prescribed by the Chairperson.
- The election is to be notified in the Official Gazette and any vacancy is to be filled as prescribed in the sub-sections.

➤ **Term of the Office**

- Section 6 of the Act lays down that a member of the Committee, other than *ex-officio* members and members filling vacancy, will hold the office for 3 years from the day of notification.
- The term can be extended to a maximum of 1 year (6months at once) by an Official Gazette.
- The term for the Chairperson and the Vice-Chairperson is co-terminus with the Committee and a person cannot hold office for more than 2 terms.

➤ **Reconstitution of the Committee**

- The steps for reconstitution of the Committee should be initiated at least 4 months before expiry of the term as specified under Section 8.
- Renomination of a member can be done for not more than 2 years but only 50 percent of the members can be renominated for a second term.

➤ **Duties of the Committee**

- The duties of the Committee have been iterated in Section 9 of the Act.
 - Collecting and providing information to the pilgrims and training them.
 - Advising and assisting the pilgrim in all matters as well as liaising with the local authorities concerned.
 - Giving relief to pilgrims.
 - Approving the budget estimates and submission to the government before 3 months of starting of financial year.
 - Finalising the plan for approval of arrangements including accommodation facilities and travelling arrangements.

- Looking after the welfare of the pilgrims.
- Publishing the proceedings of the Committee as prescribed by the bye-laws.
- Discharging duties as prescribed by the Central government.
- The Central government is to provide all assistance required in fulfilling the duties of the Committee.

➤ **Meetings of the Committee**

- Section 10 of the Act prescribes the details regarding meetings of the Committee.
- The Committee meets 3 times a year to finalize the plan and once for review.
- The meetings can be held when one-third of the members deem necessary or when the Chairperson deems fit.
- One-third is the quorum of the meeting and matters are to be decided by majority vote and by the vote of the Chairperson in case of equal votes.
- The procedures as prescribed by the bye-laws are to be followed.

➤ **Appointment of Standing Committees and sub-committees**

- Two standing Committees are to be appointed with the Vice-Chairperson as the head with the members as prescribed by the bye-laws for matters related to finance. The Chairperson presides the meeting when present.
- Sub-Committees as determined by the bye-laws can be appointed.
- Section 11 of the Act deals with this provision.

➤ **Disqualification to become a member of Committee**

Section 12 of the Act deals with the disqualification of members. A person is disqualified if he is,

- Not a citizen of India.
- Not a Muslim, other than *ex-officio* members.
- Less than 25 years.
- Of unsound mind.
- Undischarged insolvent.
- Convicted of an offence of moral turpitude.
- Removed from his office as member or by a competent authority.

➤ **Resignation of Chairperson, Vice-Chairperson and members**

- The resignation can be signed and addressed to the Central Government under Section 13.
- **Removal of Chairperson, Vice-Chairperson and members**
 - Under Section 14 the Central government may remove any member of the Committee,
 - Subject to disqualification under Section 12.
 - Refuses to act for the Committee or acts in a manner prejudicial to the interests of the pilgrimage.
 - Fails to attend three consecutive meetings without reasonable excuse.
 - Removal from the post of Chairperson or Vice-Chairperson leads to removal from being a member.
- **Filling of a casual vacancy**
 - Vacancy upon removal, resignation or death of a member requires to be fulfilled by nomination or election as required and the office would be held till the time the original member would have held.
 - This provision also applies for filling of casual vacancy under Section 15.
- **Chief Executive Officer and other employees**
 - Under Section 16, a person above the rank of Deputy Secretary to the Government from the Muslim Officers panel shall be appointed as the Chief Executive Officer.
 - He shall be the *ex-officio* Secretary of the Committee and be appointed for 3 years and may extend up to 1 year.
 - He should work according to the functions prescribed and in case of difference in opinion of the CEO and the Committee it should be brought to the notice of the Central government.
 - Any other employees can be appointed with sanction from the government with conditions as prescribed by law.

B. STATE HAJ COMMITTEE

- **Establishment and Incorporation**
 - The Central Government by notification authorizes a State Government to constitute a State Haj Committee as laid under Section 17. The name of the committee would be [Name of the State] Haj Committee.

- If in any case, the Central Government thinks that a State or Union Territory does not need a separate Haj Committee then it may empower the Haj Committee of any nearby state to deal with the issues of pilgrims of the former state and give representation on behalf of that state.
- Committee is a corporate body having the power acquire, hold and dispose any movable or immovable property or creating a charitable trust and to sue and be sued but the provisions of this act would be above all these rights.
- The joint committees of two or more States/Union Territories can be constituted subject to an agreement between 1. two or more nearby states 2. Central Government with two or more states. These Joint Committees would be exist for a specified period in the agreement and would require renewal for further period, if any.
- These agreements would be published in the Official Gazette of the respective States/Union Territories, as the case may be.
- Any reference made in the present act in context of State Haj Committee would include Joint Committees.

➤ **Composition**

- The State Government shall nominate a batch 16 members for state committee as prescribed under Section 18.
 - 3 Muslim members
 - a) Member of Parliament from the State
 - b) State Legislative Assembly
 - c) Legislative Council, if exists
 - 3 Muslim member from local bodies of the State
 - 3 experts on the Muslim law, one of whom must be a Shia Muslim
 - 5 members from various Muslim organizations
 - Chairperson of the Wakf Board
 - Executive Officer would be an ex-officio member of the committee

The above mentioned rule for number would not be applicable to committees for a U.T. or Joint Committees. The composition of such committees would be as prescribed.

- In case of not having any Muslim member in cl. (a) and (b) in above mentioned part or no legislative assembly exists, nomination can be made in a manner prescribed.

➤ **Notification of members**

- The State Government shall compulsorily publish names of the individual nominated for State Haj Committees in its Official Gazette according to Section 19.

➤ **Term of Office**

- Except ex-officio member and members filling casual vacancies, the term of office would be 3 year for all members. The period would commence from the date of publication of their names in the Official Gazette of the State.
- Section 20 states that the allowances and other terms and conditions in regard to Chairperson and member would be as prescribed.

➤ **Chairperson**

- The State Government shall within 45 days of publication of names, organize the first meeting of the Committee. In this meeting, a Chairperson would be elected from the member of the Committee under Section 21.

The ex-officio member would not be entitled to take part in the election.

- The power to elect a Chairperson lies with the State Government in case the Committee is not able to elect its Chairperson.
- The election of Chairperson would be notified by the State Government in Official Gazette.
- The term of a Chairperson would be 3 years and not more than 2 consecutive terms
- A casual vacancy of office of Chairperson would be filled in terms of sub-section 1 and 2 of section 21 of the Act.

➤ **Reconstitution**

- The steps for reconstitution of the Committee should be initiated by the State Government at least 4 months before expiry of the term of present Committee under Section 22.
- Re-nomination of a member can be done for not more than 2 years but only 50 percent of the members can be re-nominated for a second term.

➤ **Disqualification to be a member of the State Committee**

Disqualification of members of the State Committee is dealt in Section 23 of the Act. A person is disqualified if he is,

- Not a citizen of India.

- Not a resident of that State
- Not a Muslim, other than *ex-officio* members u/s 18(1)(vi).
- Less than 25 years.
- Of unsound mind.
- Undischarged insolvent.
- Convicted of an offence of moral turpitude.
- Removed from his office as member or by a competent authority.

➤ **Resignation of Chairperson and members**

- The resignation can be signed and addressed to the State Government under Section 24.

➤ **Removal of Chairperson, Vice-Chairperson and members**

- Under Section 25 the State government may remove any member of the Committee,
 - Subject to disqualification under Section 23.
 - Refuses to act for the Committee or acts in a manner prejudicial to the interests of the pilgrimage.
 - Fails to attend three consecutive meetings without reasonable excuse.

Removal from the post of Chairperson or Vice-Chairperson leads to removal from being a member.

➤ **Filling of a casual vacancy**

- Section 26 states that vacancy upon removal, resignation or death of a member requires to be fulfilled by nomination or election as required and the office would be held till the time the original member would have held.

This provision also applies for filling of casual vacancy under Section 15.

➤ **Duties of the State Committee (Section 27)**

- To implement the policy in interest of pilgrims.
- To assist pilgrims in the transportation from their home state and exit point in India and accommodation at the exit point.
- To discharge all duties prescribed by State Government.

➤ **Meetings of State Committee**

- Section 28 of the Act prescribes the details regarding meetings of the State Committee.

- The Committee meets thrice a year, twice before Haj day and once after it.
- The meetings can be held when one-third of the members deem necessary or when the Chairperson deems fit.
- Matters are to be decided by majority vote and by the vote of the Chairperson in case of equal votes.

➤ **Executive Officer and other employees**

- Under Section 29, a Muslim (preferably) person above the rank of Deputy Secretary to the State Government shall be appointed as the Chief Executive Officer.
- He shall be the Secretary of the Committee.
- He should work according to the functions prescribed and in case of difference in opinion of the Executive Officer and the Committee, he shall brought it to the notice of the State government and decision of State Government would be final in such scenario.
- Any other employees can be appointed with sanction from the State government who are fit to fulfil the objectives of the Act.
- The terms of office of officers and other employees would be as prescribed.

C. FINANCE, ACCOUNTS AND AUDIT

➤ **Central Haj Fund**

- Committee has its own fund as laid under Section 30.
- The proceeds of following would be credited to this fund:
 - Fees and Service Charges for
 - Registration of Application for Haj
 - Travel passes to Pilgrims
 - Money collected for performance of Haj
 - Income from deposits and investment
 - Sale of effects and unclaimed money of deceased pilgrims.
 - Loan by Central/State Government or any other source approved by Central Government.
 - Amount present at the commencement of this Act in the Haj Fund and Indigent Pilgrims Fund under this Act.

➤ **Application of Central Haj Fund**

- Fund is Subject to provisions of this Act and under the control and management of the Committee under Section 31.
- The fund shall be applied for following purposes:
 - Pay and allowances to CEO and other employees.
 - Payment of charges and expenses occurred in fulfilling section 9.
 - Any other expense of the Committee or State Committee approved by Central government.

➤ **State Haj Fund**

- State Committee also has its own fund under Section 33.
- The proceeds of following would be credited to this fund:
 - Money paid or grant by the Committee.
 - Loan or any other source approved by State Government.
 - Amount legally due from any source.
 - Amount present at the commencement of this Act in the State Haj Fund.

➤ **Accounts and Audit**

- According to Section 34, the Committee/State Committee as under shall be to:
 - Maintain proper accounts.
 - Other relevant records.
 - Annual statement in the manner prescribed by Central/State Government, as the case may be.
- Examination and audit by Auditors approved by the Central/State Government, as the case may be.
- Audit report to be presented before Parliament in case of Central Haj Fund and before State Legislature in case of State Haj Fund.

D. POWERS

➤ **Pilgrim Passes and Levy Fees**

- A travel document called 'Pilgrim pass' is issues to all the pilgrims under Section 35 which exempts them from the provision of Section 3 of the Passports Act, 1967.
- Fees are levied for registration and other related matters in consultation with the Committee, by the Central Government.

➤ **Supersession of Committee**

- Section 36 of the Act gives the Central Government powers to supersede the Committee for a period specified in the order if the performance is defaulted or powers are abused.
- The Government has to give the Committee a reasonable opportunity to show cause.
- When the Committee is superseded:
 - The members are required to vacate the office.
 - During the supersession, the government appoints an Officer who is conferred with all the powers and duties of the Committee.
 - The properties of the Committee vest with the government.
- The order and reasons of the supersession is laid before the House of Parliament as soon as the order has been made.
- The State Government is entitled to the powers as mention in this Section to be exercised at the state level for the State Haj Committees.

➤ **Office of Profit**

- The Central and the State Committees shall not hold any office of profit as laid under Section 37.

➤ **Vacancies not to Invalidate Proceedings**

- According to Section 38, the proceedings of the Committee would not be invalid merely because of a vacancy in the position of the members or any defect.

➤ **Public Servants**

- According to Section 39, the members of the Committee are deemed to be public servants under the meaning laid down in Section 21 of the IPC.

➤ **Indemnity (Section 40)**

- No legal proceedings can be held against any member of the Committee including the Chairperson and the Vice-Chairperson for any act done in good faith under the Act except without prior permission from the Government.

➤ **Power to Amend Schedule**

- The schedule can be amended with a notification in the Official Gazette, if the Government deems fit under Section 41.

- A copy of the notification is laid before the House of Parliament.

➤ **Redressal of Grievances**

- As laid under Section 42, any pilgrim has the right to seek redressal from the Committee by making a representation.

➤ **Properties and Other Rights**

- Under Section 43, the assets, rights, leaseholds, powers, authorities and privileges and all properties and all other rights and interests in or arising out of such properties that were in the ownership, power or control of Haj Committee, Mumbai, constituted under the Haj Committee Act, 1959 (51 of 1959) vest with the Committee in both the Central and the State Haj Committees.
- The liabilities of the previous Committee are also transferred to the Central and State Committees, as the case may be.
- The Committee substitutes the previous Committee as a party to any contract or legal proceedings.

➤ **Rule Making Powers**

- The Government has the powers to make any rules in furtherance of the Act without prejudice to the foregoing powers and make rules for any matters as prescribed under Section 44 of the Act.
- These rules are presented before the House of Parliament and the changes as recommended by the Houses are to be incorporated.

➤ **Bye-Laws Making Powers**

- The Committee has the power under Section 45 to make bye-laws that are consistent with the provisions of the Act for:
 - Powers and duties of the Vice-Chairperson.
 - Providing for the publication of the proceedings or any matter of pilgrim interest.
 - Rules of procedure for business transaction.
 - Powers and functions of Standing Committee.
 - Any matter necessary consistent with the provisions of this Act
- The bye-laws are to be submitted to the Central Government and come into force only after their confirmation and shall be published in the Official Gazette.

➤ **Delegation Powers**

- The Section 46 lays down that the Committee by general or special order can delegate to the members or CEO with conditions and limitations specified in the order.

➤ **Rule Making Powers of the State Government**

- According to Section 47, the State Government in consultation with the Central government can make rules in respect of State Committees.
- The rules provide for the various matters laid under sub-section 2 of the Section.
- The rules are to be laid before the legislature as soon as they are made.

➤ **Employees**

- The officers and employees of the existing Committees are transferred to the Committees incorporated under this Act with designation and remuneration as decided by the Committee, provided that it is not disadvantageous to the employee, but under the rules and conditions of the previous Committee.

➤ **Good Faith Action**

- Any action taken under this Act by any officer or employee, done with good faith, will not be made subject to any legal proceedings.

➤ **Removal of Difficulties**

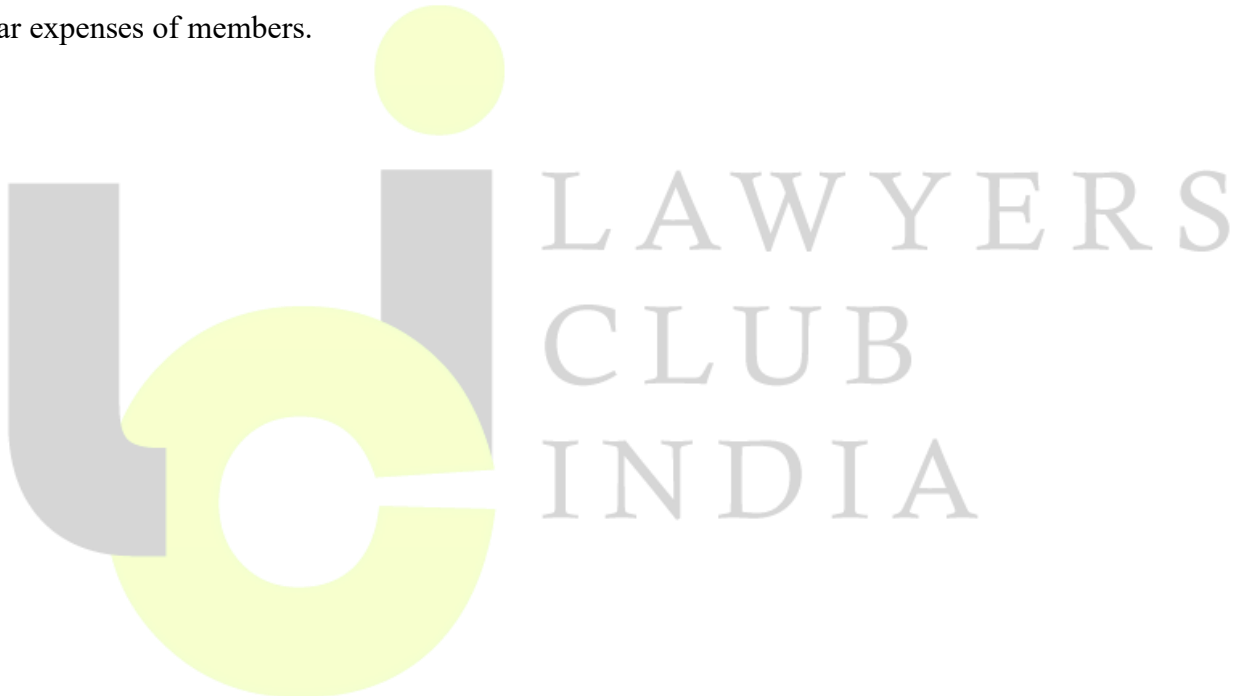
- The Government has the power to remove any difficulties arising are that not consistent with the provisions of the Act and would not be made after the expiry of 2 years of commencement of the Act as provided under Section 50.
- The order made under this Section is to be laid down before the House of Parliament.
- Giving Directions
- The Central Government has the power to issue direction for the Central and the State Committees under Section 51 of the Act.

E. Repeal

- The Haj Committee Act of 1959 has been repealed by this Act under Section 52 and the Committee had to function, till it is dissolved, as it would have if the Act had not been repealed.
- The actions taken under the Act would not stand invalid after the commencement of the new Act.

F. CASE REFERENCE

In the case of **Union of India v. Rafique Shaikh Bhikan and Ors.**, issues regarding the accommodation in Saudi Arabia, Constitution of the Committee and vacancy of the Chairman post. The proceedings were initiated under Articles 27, 25 and 26 of the Constitution. Long-term accommodation on lease basis for a term of not less than 5 years had been directed to be taken. A Committee constituted by government officials had failed to secure such long-term accommodation. Therefore, a committee with some non-official members was constituted and given the said task. Joint Secretary of Gulf and Haj were directed to give information in regard to formation of said Committee. Since, the post of Chairman of Committee was vacant, other members were directed to continue work without waiting for said appointment and the Central Government was directed to bear expenses of members.



5. THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019

- This Act is divided into three chapters and comprises of eight sections.
- Chapter I talks about the extent of this act and consists of Section 1 and Section 2.
- Chapter II speaks of the declaration of Talaq by the Muslim husband to be void and illegal and consists of Section 3 and Section 4.
- Chapter III deals with the Protection of the rights of married Muslim women. It consists of Sections 5, 6, and 7.

A. History of the Legislation

- The Supreme Court on 22 August 2017, in the case of Shayara Bano v. Union of India and other related matters, in a majority judgment of 3:2, set aside the practice of *talaq-e-biddat* (three pronouncements of talaq, at the same time) practiced by some husband to divorce their wives.
- This judgment gave a boost to liberate Indian Muslim women from the age-old practice of the capricious and whimsical method of divorce, by some Muslim men, leaving no room for reconciliation.
- The petitioner in the case challenged, inter alia, talaq-e-biddat on the ground that the said practice is discriminatory and against the dignity of women. The judgment vindicated the position taken by the Government that talaq-e-biddat is against constitutional morality, the dignity of women and the principles of gender equality, as also against gender equity guaranteed under the Constitution.
- Despite the Supreme Court setting aside talaq-e-biddat, there were reports of divorce by way of talaq-e-biddat from different parts of the country. It could be seen that setting aside talaq-e-biddat by the Supreme Court did not work as any deterrent in bringing down the number of divorces by this practice among certain Muslims.
- It was then felt that there is a need for the State to take an action and give effect to the order of the Supreme Court and to redress the grievances of victims of illegal divorce.
- Therefore, to protect the rights of married Muslim women who are being divorced by [triple talaq](#), a Bill, namely, the Muslim Women (Protection of Rights on Marriage) Bill, 2017, was introduced, and passed by, the Lok Sabha on the 28th December 2017 and was pending in Rajya Sabha.

- As the Bill was pending for consideration in Rajya Sabha and the practice of divorce by triple talaq (i.e., talaq-e-biddat) was continuing, there was an urgent need to take immediate action to prevent such practice by making stringent provisions in the law.
- Since both Houses of Parliament were not in session and circumstances existed which render it necessary for the President to take immediate action in the matter, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018, with some new changes was promulgated on the 19th September 2018.
- In order to replace the said Ordinance, the Muslim Women (Protection of Rights on Marriage) Bill, 2018 was introduced in Lok Sabha on the 17th December 2018 and was passed by that House on the 27th December 2018. However, the Bill could not be taken up for consideration in Rajya Sabha and both Houses were adjourned.
- As both Houses of Parliament were again not in session and the practice of divorce by triple talaq (i.e. talaq-e-biddat) was continuing, to give continued effect to the provisions of the aforesaid Ordinance, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 was promulgated on the 12th January 2019.
- Subsequently, to replace the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019, necessary official amendments to the Muslim Women (Protection of Rights on Marriage) Bill, 2018 were moved in Rajya Sabha. However, the Bill could not be taken up for consideration in Rajya Sabha and both Houses were adjourned.
- Since both the Houses of Parliament were not in session, to give continued effect to the provisions of the aforesaid Ordinance, the Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019 was promulgated on the 21st February 2019.
- Thereafter, the Sixteenth Lok Sabha was dissolved on the 25th May 2019 and the Muslim Women (Protection of Rights on Marriage) Bill, 2017 and the Muslim Women (Protection of Rights on Marriage) Bill, 2018 pending in Rajya Sabha lapsed.
- Accordingly, to replace the Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019, the Muslim Women (Protection of Rights on Marriage) Bill, 2019 was introduced in the parliament.
- The Bill was finally passed by both the houses and received the assent of the president and it became an act on 31st July 2019.

B. Talaq under this Act

Chapter II of the Act deals with the Talaq with the heading- Declaration of Talaq to be void and illegal.

- Section 3 of this Act says, that, any pronouncement of talaq by words either spoken or written or in electronic form or in any other manner by a Muslim husband upon his wife should be void and illegal.
- Section 4 of this Act talks about punishment for pronouncement of talaq.
It says any husband who pronounces talaq upon his wife as it is referred to in section 3 of this act then he will be punished for a period of time with imprisonment which may extend to three years and will also be liable for fine.

C. Protection of Rights under this Act

Chapter III of this Act talks about the Protection of Rights of Married Muslim Women.

- Section 5 of the Act talks about the Subsistence allowance for the married Muslim women on whom talaq is pronounced.
It says that a married Muslim woman who is divorced (talaq) by her husband is entitled to get an amount of subsistence allowance from her husband for herself and her dependent children as may be determined by the Magistrate.
- Section 6 of the Act speaks of the Custody of the Minor children
This section says that in case the divorced is pronounced by the husband then the married Muslim woman shall be entitled to have the right to have custody of her minor children, in such manner as may be determined by the Magistrate.
- Section 7 of the Act, in accordance with the Code of Criminal Procedure, 1973, elucidates that:
 - a) It says that if any information related to an offense punishable under this act is given to the officer-in-charge of the police station by the married Muslim woman upon whom the talaq is pronounced or any person related to her by blood or marriage, then such offense shall be considered as a cognizable offense.
 - b) It says that an offense punishable under this act shall be considered as a compoundable offense at the instance of the married Muslim women upon whom talaq is pronounced with the permission of the Magistrate on the terms and conditions that he may determine.

c) This section says that if a person is accused of an offense under this Act, then he shall not be released on bail unless the magistrate after hearing, the married Muslim woman upon whom talaq is pronounced, is satisfied that there are reasonable grounds for granting bail to the accused on an application filed by the accused.

[Muslim Law of Marriage](#)



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