Comparative
Issues for Discussion...

- What is Waqf Board- Composition, Tenure of members
- Chairman- Appointment and Removal
- Vacancies in Board invalidate Proceedings?
- Meetings, Committees of Board
- Power and Functions of Board,
- Power of Board concerning Waqf Properties
- Who is empowered to decide if Property is Waqf?
- Delegation of Powers- Extent of Delegation
- Duties? Are Boards performing duties?
- What State or Central Govt can do to correct it?
Misunderstandings...

- Waqf means only landed Properties
- Institutions regd by Charity are not Awqaf
- Waqf Board is Owner of all Properties and can seize
- Govt appoints Chairman of Board
- Can Non Muslim Make Waqf ?
- Govt can take over Waqf Property
- Mutawaali can dispose of Waqf with Charity's permissi
Waqf Types
( Sec- 3r)

• "Waqf" means the permanent dedication by any person of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes:
  • A Waqf by user- mosques, Dargah, Graveyard
  • "Inaam or grants", include mushrut-ul-khidmat.
  • A waqf-al-aulad

"Mansha e Waqf" means purpose of waqf
# Laws concerning Waqf

<table>
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<th>History</th>
<th>Description</th>
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<td>1863</td>
<td>Religious Endowment Act (Wakf validating Act 1913- for Muslims) (Hindu religious and endowment Act, 1927- for Hindus)</td>
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<td>1954</td>
<td>Wakf Act, 1954 (Limited jurisdictions)</td>
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<td>1950</td>
<td>Ind Pub Trust Act/ Bombay PT Act 1950</td>
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<td>1995</td>
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<td>The Waqf Amendment Act 2013</td>
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<td>2014</td>
<td>Waqf properties Lease Rules 2014 amended 2015</td>
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Waqf Boards and Properties?

- 35 Waqf Boards in India,
- UP- Bihar have 2 each
- Properties- India
  - Land in acre
    - India 5,12,000 6,00,000 acre
    - Maha 29000+ 90,000+ acre (60,000 Marath)
    - Largest Property 5,000 acre to Igatpuri Waqf
Authorities

- BOARD (Member’s term of office-5 years)
- Chief Exe. Officer (State Govt. Officer in the rank of at least Dy. Secretary)
- Independent 3 members Judicial Tribunal headed by DJ rank judge with staff
- State Govt. has supervisory Jurisdiction through Minority Dept-
- Central Govt. supervises through CWC and JPC
BOARDS - COMPOSITION (Section-14)

Elected category- (Elected from resp. electoral college)

1.
2.
3.

(Tenure is coterminous with their original post)

- Nominated category- (One each from)

1.
2.
3.

CEO- is an Ex officio - Member Secretary
**BOARD- COMPOSITION**  *(Section-14)*

- No Minister of Center or State shall be a Board member
- In case of UT- 5 - 7 members to be appointed by CG
- If no member in Bar Council then Ex member or Sr Adv
- Two members to be women Category
- There should be at least one Mutawalli member
- Election by system of single transferable vote
- If only one member from MP, MLA, Bar- He can be declared as elected
- Elected members to always more than nominated
- Sunni/Shia members shall be in accordance with no/value Awqa
- Tenure-5Yrs.

Appointments shall be notified in Gazette.
Board member - Meeting, Committees

- Board member can resign by writing to State Govt.
- Member can be disqualified by State Govt under sec 16 if guilty of encroachment on waqf property etc.
- Member can be removed for refusing to act or fails to attend three meetings etc.
- Board can form Committees for specific purpose or areas for supervision of awqaf.
- Meetings at HQ or any place decided.
- Board can meet as many times as needed.
- All questions to be decided by majority.
Chairperson waqf Board

- No Special Provision in Act on Chairperson's Post or powers or functions etc
- When Board is constituted or reconstituted - Meeting shall elect one member as Chairman
- Chairman should be from elected category
- Chairperson to Preside over meetings of Board
- Can be removed by State Govt if Disqualified or fails (Sec-20)
- Removal by Vote of No Confidence (20a)
Chairperson’s Removal by No Confidence

- Resolution not before one year of election
- With Prior permission of Govt
- At least three members to notice
- Quorum of meet- 50%
- Resolution passed with simple majority
- New Chairman can be elected in same meet
- If resolution Fails- No new motion for 6 mth

- No Act or Proceeding of Board invalid in case of vacancy or defect in composition of Board
Case Study in Maharashtra

• Presently the Board member appointed by Govt from Bar member's category - not as per law when there are Muslim members and ex members too.

• There is no Chairperson at present.

• The ex Chairman was from nominated category.

• Board was mostly without Chairperson.

• Petition filed in HC for invalidating Board as incomplete.
Functions and Duties of Board

- Board Registration and maintain record
- Administer awqaf
- Control Management, Elections
- Protection and recovery of waqf
- Development of Properties
- Remove Encroachments
- Watch Transfer of Properties
- Take Properties under Direct Control
- Philanthropic work by Waqf
- Utilise surplus income as per mansha e waqf
- Pension to Divorcees
- Pension to Widows
- Remuneration to Imaam
- Scholarship Schemes
- Run Educational/ Health Inst
Section 36 - All properties found in survey or otherwise and institutions are to be entered in register u/s 37.

Sec. 40 - Power to investigate and declare the property as waqf – with Board.

Sec. 43 - Properties already registered under previous Acts are deemed waqf.
Illegal Alienation

Sec 51 - Lease of Waqf property without prior sanction of Board shall be void.
- Any sale, gift, exchange, mortgage shall be void ab initio.

Sec 52 - Board, after enquiry, will send requisition to the Collector to obtain and deliver possession.
- Collector to pass order and take possession.
- Appeal against order of collector lies to Tribunal.
Lease of Waqf

- Lease beyond 30 years will be void
- Lease of one to thirty years need prior sanction of Board, otherwise void.
- Resolution of Board passed with 2/3 majority
- Lease of 1-30 yrs. should be done by inviting bids for property having monthly rent less than Rs.1000
- Amount should not be below the reserved price
- Agriculture lease not to exceed three years
- Board to inform lease matter to State Govt.
Encroachments

Sec 54
- CEO to issue show cause, enquire and make application to Tribunal to get order of eviction
- Tribunal to enquire and pass order
- If encroacher fails to vacate, CEO can evict

Sec. 55
Enforcement of tribunal's order of encroachment by local executive magistrate
Case Study - MSWB

Board not properly Constituted- No meetings
No Regular CEO from last more than 5 Yrs.
No Properly constituted Regional/ Dist. offices
Depleting Strength of Staff
Pendency of Registration
Pendency of change reports/Committees
No action on Restoration/ Encroachment Removal
Unmanageable - People frustrated- want Charity C
Case Studies..

- Anjuman Islam, Haji Ali Dargah
- Igatpuri land - 5000 acres
- Nasik Masjid property - 2500 cr.
- A'Nagar Bara Imam - 35 acre cityland
- Nagpur - 21 Acre land in city
- Nanded 50 acres land adjoining city
- Jalna city on Waqf land
- Mumbai, Pune, Osmanabad, Beed, Parbhani...
Role of Activists

- Create Pressure Group to Press Govt. to appoint a CEO
- Create "All India Waqf Service" as per Sachar Report
- Registration of waqf properties for protection
- Watch on Transfer, Lease cases, revise old rents/lease
- Press for Restoration of Waqf
- Watch over Encroachments
- Felicitate and watch over Resurvey
- Force local management to develop property and spend on welfare activities - Nagpur case
Tu Raaz-E-Kun Fakan Hai, Apni Ankhon Par Ayan Ho Ja
Khudi Ka Raazdan Ho Ja, Khuda Ka Tarjuman Ho Ja

You are the secret of creation, see yourself in your eyes;
Share the secret of your own self, become the spokesman of God.

Hawas Me Kar Diya Tukre Tukre Nu-E-Insan Ko Akhuwat Ka Byan Ho Ja, Mohabbat Ki Zuban Ho Ja

Greed has split mankind into little pieces;
Become the statement of brotherhood, become the language of love.