

## **KAZIS ACT, 1880**

**12 of 1880**

**[9th July, 1980]**

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"Under the Muhammadan Law the Kazi was chiefly a Judicial Officer. His principal powers and duties are stated at some length in the Hedaya, Book XX. He was appointed by the State, and may be said to have corresponded to our Judge or Magistrate, In addition, however, to his functions under the Muhammadan law, the Kazi in this country, before the advent of British rule, appears to have performed certain other duties, partly of a secular and partly of a religious nature. The principle of these seems to have been preparing attesting and registering deeds of transfer of property, celebrating marriages and performing other rites and ceremonies. It is not apparent that any of these duties were incumbent on the Kazi as such. It is probable that the customary performance of them by him arose rather from his being a public functionary and one known by official position to be acquainted with the law, than from his having, as Kazi, a greater claim to perform them than any one else. Such was the position of the Kazi in this country under Native Government. On the introduction of the British rule. Judges and Magistrates took the place of Kazis, and the Kazi in his judicial

capacity disappeared; but the British Government, though no longer recognising the judicial functions of the Kazi, did not abolish the office. By certain Regulations passed from time to time, the appointment of Kazi-ul-Kuzaat and Kazis by the State was provided for, and the performance of their non-judicial duties was recognised by law. In the case of Bengal, indeed, certain additional duties were imposed on them. The duties of the Kazi under these Regulations comprised some or all of the following, viz.:- (1) preparing and attesting deeds of transfer and other law-papers; (2) celebrating marriages and presiding at divorces; (3) performing various rites and ceremonies; (4) superintending the sale of distrained property and paying charitable and other pensions and allowances. In the course of subsequent legislation, the first and last of the above duties devolved on officers specially appointed for the purpose, and there remained nothing to be performed by the Kazi but the second and third, which were purely ceremonial. Under these circumstances it appeared no longer necessary that the Government should appoint these officers. Accordingly, in 1864, Act 11 of that year, all the Regulations relating to the appointment of Kazis by Government and the duties to be discharged by them were repealed, but in order that it might be clear that no interference with the ceremonial functions of these officers was intended, a section was added to that Act as follows:- "Nothing contained in this Act shall be construed so as to prevent a Kazi-ul-Kuzaat or other Kazi from performing, when required to do so, any duties or ceremonies prescribed by the Muhammadan law (see section 2 of Act 11 of 1864). Certain of his duties having thus survived the passing of Act 11 of 1864, that Kazi is still a functionary of considerable importance in the Muhammadan community. What was originally in some sense an accidental adjunct of his judicial office has become his principal and only duty, and in some parts of the country at least, the presence of a Kazi at certain rites and ceremonies appears now to be considered by Muhammadans essential from their point of view. Act XI of 1864 has, however, raised, a difficulty of a sort which was not anticipated at the time it was passed. As mentioned above, the Kazi was, under Muhammadan law, appointed by the State, and it has been held by the High Courts, both of Bombay and Madras, that the appointment cannot be made except by the State. But as by Act 11 of 1864, the State divested itself of the power of appointment, the preamble of that Act declaring that it was inexpedient that such appointment should be made by

Government, it would seem that no valid nomination to the office can now be made. The inconvenience resulting to Muhammadans from this state of things, has been brought to the notice of Government on several occasions by members of that community, and more particularly by the Muhammadans of Madras Presidency. It is considered that the grant of the relief that is sought, viz., that Government should once more undertake the appointment of Kazis, is but a reasonable concession to the wants of the Muhammadan population. With this object the present Bill has been prepared. It extends in the first instance to Madras only, where the want of duly appointed Kazis appears chiefly to have been felt, but it contains a clause empowering any other Local Government to extend its provisions to the territories administered by it, should the Muhammadans in those territories hereafter request its extension. It confers no legal rights or duties on Kazis. It simply, in order to satisfy the wants of the Muhammadan community, provides for the appointment of Kazis by Government, leaving the position and duties of the Kazis, whatever these may be, as they now are. To prevent any possible misapprehension on this point, a saving clause has been added to the effect that nothing in the Bill confers any judicial or other powers on a kazi, or makes his presence necessary at any marriage or other ceremony at which his presence is not now necessary."- Gazette of India, 1880, Pt. V, p. 21. EXTRACT FROM REPORT OF SELECT COMMITTEE "It has been urged by some of the authorities consulted that the Act should define the duties of the Kazis to be appointed under it, and should give them an exclusive right to perform those duties. Any attempt to do this would, we consider, be altogether outside the scope of the Bill as introduced and referred to us, and would, moreover, give a weight, which they have not at present, to the objections that have been taken to the Bill on the ground that it would practically force upon many persons the services of Kazis whom they did not care to employ. We may add that in many places, owing to the way in which the Muhammadan population is split into sects, not always well defined, it would be almost impracticable to confer upon one or more persons a monopoly of the office. We think it is clear that the Bill should be carefully confined to its original object, namely, that of providing a Kazi appointed by the Government for those who desire to avail themselves of the services of such a Kazi; and, as it has been suggested to us that a Kazi appointed under the Bill as originally framed might possibly be held to have an exclusive claim to perform the duties of a Kazi and to have a right to restrain

others from performing those duties in the local area for which he was appointed we have added a clause to section 4 to make it clear that he will not. The result of the Bill as it now stands will be that there will be a Kazi appointed by the Government for those who choose to avail themselves of his services, but that those who prefer to employ any other so called Kazi will be at liberty to do so. -Gazette of India, 1880, Pt. V, p. 203.

### **1. Short title :-**

This Act may be called The Kazis Act, 1880;<sup>1</sup>[ \* \* \* \*]. Local extent.- It extends, in the first instance, only to the territories administered by the Governor of Fort St. George in Council.<sup>2</sup>[But the Government of any other State] may, from time to time, by notification in the Official Gazette, extend it to the whole or any part of the territories<sup>3</sup> under its administration.

1. The words "and it shall come into force at once" were repealed by the Repealing and Amending Act, 1914(10 of 1914), Section 3 and Schedule II.

2. Substituted for the words "But the Government of any other Part A State or the Government of a Part C State" by Part B States (Laws) Act, 1951 (3 of 1951), Section 3 and Schedule (1-4-1951).

3. The Act has been extended to certain places in the Bombay Presidency, Bengal, the Uttar Pradesh, the Punjab, the Central Provinces, Assam, Rajasthan, Saurashtra and to the States merged in the State of Madras (see Madras Act 35 of 1949, Section 3). The Act was extended to the Union territory of Himachal Pradesh by Him. Pra. A. L.O., 1948, Himachal Pradesh is a State from 25-1-1971 - See Act 53 of 1970. The Act has now been extended to the State of Karnataka with immediate effect.- See Karnataka Gaz., 11-3-76, Pt. IV, Section 2C (ii), p. 1140. It was extended to the Union territory of Pondicherry by Act 26 of 1968 (with effect from 1-10-1969) and to the Union territory of Laccadive, Minicoy and Amindivi Islands by Regn. 2 of 1970. The islands are now known as Union Territory of Lakshadweep -See Act No. 34 of 1973, Section 3 (1-11-73).

### **2. Power to appoint Kazis for any local area :-**

Wherever it appears to the<sup>1</sup>[State Government] that any considerable number of the Muhammadans resident in any local area desire that one or more Kazis should be appointed for such local area, the<sup>1</sup>[State Government] may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kazis for such local area. If any question arises whether any person has been rightly appointed Kazi under this section, the decision thereof

by the <sup>1</sup>[State Government] shall be conclusive. The <sup>1</sup>[State Government] may, if it thinks fit, suspend or remove any Kazi appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the <sup>1</sup> [State Government] unfit, or personally incapable, to discharge the duties of the office.

1. Substituted for the words "Provincial Government" by A.L.O., 1950.

### **3. Naib Kazis :-**

Any Kazi appointed under this Act may appoint one or more persons as his naib or naibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any naib so appointed. When any Kazi is suspended or removed under section 2, his naib or naibs (if any) shall be deemed to be suspended or removed, as the case may be.

### **4. Nothing in Act to confer judicial or administrative powers; or to render the presence of Kazi necessary; or to prevent any one acting as Kazi :-**

Nothing herein contained, and no appointment made hereunder, shall be deemed-

(a) to confer any judicial or administrative powers on any Kazi or Naib Kazi appointed hereunder; or

(b) to render the presence of a Kazi or Naib Kazi necessary at the celebration of any marriage or the performance of any rite or ceremony; or

(c) to prevent any person discharging any of the functions of a Kazi.

### **5. Duty of every person officiating as kazi at a marriage to give inspection and true copies of documents in his possession relating to the marriage and disqualification for failure to perform this duty :-**

(1) It shall be the duty of every person, who officiates as a Kazi or Naib Kazi (whether he is appointed by the State Government under

this Act or not) at the celebration of any marriage, to maintain a proper record of the marriage or marriages attended by him in that capacity, and, if so required by or on behalf of either of the parties to the marriage, to give inspection and duly certified true copies of the documents in his possession relating to the marriage, like the Nikah Nama, on payment of reasonable fees therefor, not exceeding such maximum rates of fees as may be specified in this behalf by the State Government, by notification in the Official Gazette, in respect of inspection and certified copies of any document or class of documents.

(2) If on a complaint received from or on behalf of the either of the parties to a marriage, the State Government is satisfied, after giving him an opportunity of being heard, that the person who officiated as a Kazi or Naib Kazi at the marriage is guilty of misconduct in the discharge of the duty cast on him under sub-sec. (1), the State Government may, by order published in the Official Gazette, declare that he shall be disqualified for officiating as a Kazi or Naib Kazi at any marriage, for such period, not exceeding three years, as may be specified in the order". - Mah. Act 21 of 1978, Section 5 (9-10-1978).