

## WAQF BOARD: CHANGES BOARD

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**Yug Raman Srivastava\***

### WAQF BOARDS IN INDIA

The Waqf boards are established by the government of India in different states. In India, there are 30 Waqf boards in different states. The work designated to these Waqf Boards is to manage the properties which are charitable endowments donated by individuals, groups, etc. They are the third largest landholder in India. They administer more than eight lakh acres of land. The board was established under the Waqf Act 1995. Several amendments came under this act in the years 2013, 2016, and 2020. Recently, in the year 2024, a bill was presented to change 44 sections in the Waqf Act 1995 and to abolish the Waqf Act 1923. The new bill aims to promote some major changes including the representation in the board along with the name of the act as well as omission of section 40 of the 1995 act etc.

### HISTORICAL CONTEXT

The context of the Waqf Board originates from Islamic tradition and the practice is mentioned in the teachings of the Quran and Hadith, established during the reign of Prophet Muhammad. However, the term Waqf is not mentioned in the Quran. The idea of waqf in India dates back to the Delhi Sultanate when Sultan Muizuddin Sam Ghaor dedicated two villages in favour of the Jama Masjid of Multan and handed its administration to Shaikhul Islam. The Mughal Empire in South Asia (16th to 19th centuries) also saw the proliferation of waqf institutions. In pre-British India, waqf was also closely linked to conversion and religious as well as cultural appropriation.

During the British era, the importance of Waqf properties was recognized and administrative structures were established to manage them. The Bengal Code Regulation XIX of 1810 was aimed to manage the rents and produce for the upkeep of mosques, temples, and public buildings. Similarly, Madras Code Regulation VII of 1817 came and focused on the same for the Madras Presidency. The British Government also enacted the Religious Endowments Act of 1863, which included the formation of local committees and court intervention when required in these matters. Similarly, several pieces of legislation came including the

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\*BA LLB, FIRST YEAR, RAJIV GANDHI NATIONAL UNIVERSITY OF LAW, PATIALA PUNJAB.

Charitable Endowments Act 1890 and the Charitable and Religious Trusts Act 1920. In 1894, a judgment came in the Abdul Fata Mahomed Ishak v Russomoy Dhur case which led to the formation of the Mussalman Wakf Validating Act 1913. Further amendments were brought to the Bengal Waqf Act 1934 and the Bihar Waqf Act.

### **AMENDMENTS AFTER 1947**

After the independence of India, several amendments came in and brought changes as per the needs of the people and the governments. Some amendments are followed:

Waqf Amendment Act 1959 – This amendment brings several provisions to focus on the management of waqfs and the powers of the Waqf Board.

Waqf Amendment Act 1964 – This amendment focuses on improving the governance of waqfs, including the members of the board and the functions.

Waqf Amendment Act 1984 – This amendment focuses on providing more autonomy to Waqf Boards and simplifying the procedures for their functioning.

Waqf Amendment Act 1995 – This Amendment focuses on increasing transparency and accountability in the management of waqf properties. It also focuses on the financial management of waqf institutions.

Waqf Amendment Act 2013 – This amendment focuses on the establishment of a Waqf Tribunal to resolve disputes related to waqf properties. It also focuses on encroachment and misuse of waqf properties.

Waqf Amendment Act 2019 – This Amendment focuses on strengthening the regulatory framework for waqfs, including provisions for better management, accountability, and transparency.

### **NEW CHANGES IN THE BILL**

- The newly formed government of India has brought major changes through the Waqf (Amendment) Bill 2024 introduced in the Lok Sabha by the Union Ministry of Minority Affairs, Kiren Rijju. The bill seeks to amend the Waqf Act 1995. The bill renames the act as the United Waqf Management, Empowerment, Efficiency, and Development Act 1995.

- The act allows waqf to be formed by: (i) declaration, (ii) recognition based on long-term use (waqf by user), or (iii) endowment when the line of succession ends (waqf-alal-aulad). The Bill states that only a person practising Islam for at least five years may declare a waqf. It further states that the person must own the property being declared. It removes waqf by the user. It also adds that waqf-alal-aulad must not result in the denial of inheritance rights to the donor's heir including women heirs.
- The bill states that any government property identified as waqf will cease to be so. The Collector of the area will determine ownership in case of uncertainty, and submit a report to the state government. If deemed a government property, will update the revenue records.
- The bill removes the provision that the Waqf Board requires to identify and determine the property as waqfs.
- The act provides for the appointment of a survey commissioner and additional commissioners to survey waqf. The new bill now empowers Collectors to do the survey. The pending surveys will be conducted as per state revenue laws.
- The Act constitutes the Central Waqf Council to advise the central and state governments and Waqf Boards. The Union Minister in charge of Waqf is the ex-officio chairperson of the Council. The Act requires that all Council members be Muslims, and at least two must be women. The Bill instead provides that two members must be non-Muslims. MPs, former judges, and eminent persons appointed to the Council as per the Act need not be Muslims. The following members must be Muslims: (i) representatives of Muslim organizations, (ii) scholars in Islamic law, and (iii) chairpersons of Waqf Boards. Of the Muslim members, two must be women.
- The Act provides for the election of up to two members each from electoral colleges of Muslim: (i) MPs, (ii) MLAs and MLCs, and (iii) Bar Council members, from the state to the Board. The Bill instead empowers the state government to nominate one person from each of the above backgrounds to the Board. They need not be Muslims. It adds that the Board must have: (i) two non-Muslim members. and (ii) at least one member each from Shias, Sunnis, and Backward classes of Muslims. It must also have one member each from Bohra and Agakhani communities if they have waqf in the state. The Act provides that at least two members must be women. The Bill states

that two Muslim members must be women.

- The Act requires states to constitute Tribunals to address disputes over waqf. The Chairman of these Tribunals must be a Judge of the rank equivalent to a Class-1, District, Sessions, or Civil Judge. Other members include (i) a state officer equal to an Additional District Magistrate, and (ii) a person knowledgeable in Muslim law and jurisprudence. The Bill removes the latter from the Tribunal. It instead provides the following as members: (i) a current or former District Court judge as its chairman, and (ii) a current or former officer of the rank of joint secretary to the state government.
- Under the Act, decisions of the Tribunal are final, and appeals against its decisions in Courts are prohibited. The High Court can consider matters on its own accord, on an application by the Board, or an aggrieved party. The Bill omits provisions deeming finality to the Tribunal's decisions. Tribunal's orders may be appealed in the High Court within 90 days.
- The Bill empowers the central government to make rules regarding: (i) registration, (ii) publication of accounts of waqf, and (iii) publication of proceedings of waqf Boards. Under the Act, the state government may get the accounts of waqfs audited at any point. The Bill empowers the central government to get these audited by the CAG or a designated officer.
- The Act allows for the establishment of separate Waqf Boards for Sunni and Shia sects if Shia waqf constitutes more than 15% of all waqf properties or waqf income in the state. The Bill also allows separate waqf boards for Aghakhani and Bohra sects.

## LEGAL IMPLICATIONS

1. The new amendments brought some major changes and stricter compliance to prevent the misuse of the waqf properties and to ensure transparency in the waqf board.
2. The act promotes inclusivity, and diversity and addresses all the sects of the community in Waqf-related affairs and management.
3. The ongoing disputes might be addressed in the bill; at the same time, they may lead to a

rise in the number of cases being petitioned in the respective courts by the various stakeholders.

4. There may be an interference of the court by way of the judicial review process, as the bill might get challenged due to the infringement of religious freedom protected under the constitution of India.

5. The amendments may trigger constitutional challenges, particularly under Articles 25 and 26 of the Indian Constitution, which protect religious freedoms. If the amendments are perceived as infringing on the rights of religious denominations to manage their affairs, there could be significant litigation in this area.

6. Since the Waqf properties exist across all the states, this may lead to inter-state disputes and may lead to conflicts in jurisdiction due to the states opting for different mechanisms and interpretations.

7. The new amendments in the Waqf Act may conflict with different statutes including some state-specific land laws, transfer of property act, Indian Trust act, etc. The disputes may arise due to the overlapping of different jurisdictions and may lead to the rise of litigation from different stakeholders in court.

8. The existing legal precedents may be overturned or reinterpreted. This could lead to uncertainty in how older cases are treated and affect ongoing legal disputes that were based on prior interpretations of the law.

## CONCLUSION

The Waqf amendment bill brought many changes, with legal and social implications. The bill brought inclusivity and diversity, led to the rise of legal issues, and contradicted statutes and orders. The Waqf amendment bill mostly focuses on the governance and management of the Waqf boards and properties. The bill further addresses the provision that was earlier misused related to the identification of waqfs properties, now the provision is being removed. The bill also constitutes the Central Waqf Council to advise the states and centre in related matters and promotes the inclusiveness of two non-Muslim members and two women on the board.

However, the amendments may impact articles 25 and 26 of the Indian Constitution, the

focus of the articles is on the rights related to religious affairs, and if the amendments were found to contradict the provisions or the rights then it may lead to the interference of the respective courts for the judgments or suggestion raised for the question of law. The Waqf board further led to interstate disputes and the conflict of the respective jurisdictions.

Further, the name of the bill has also changed intending a centralized, transparent, and accountable system to handle waqf-related affairs. The amendment further sets stricter criteria to declare a property 'Waqf' including the requirement that only a person practising Islam for at least five years can declare a waqf, and the removal of waqf by the user is a significant departure from previous practices.

In essence, while the Waqf Amendment Bill seeks to modernize the Waqf administration and promote transparency and accountability, it also opens the door to numerous legal and constitutional challenges that will likely require judicial interpretation and resolution. The success of these reforms will depend on how effectively they balance governance improvements with respect for religious rights and how they navigate the complex legal landscape governing Waqf properties across India. The balance between improving governance and respecting religious autonomy will be a delicate one, with courts likely playing a crucial role in interpreting and resolving conflicts arising from the new law. The long-term success of these reforms will depend on how effectively they are implemented and how well they manage the competing interests of various stakeholders in the waqf system.

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