

WAQF BILL 2.0: UNPACKING THE AMENDMENTS AND THEIR IMPLICATIONS

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INTRODUCTION

Waqf literally translates to "holding," "detention," "prohibition," and confinement¹. Economically speaking, waqf entails rerouting money and other resources from present use into future-oriented and productive assets that provide income for people's or society's collective future usage. Therefore, waqf is a hybrid of saving and investing that boosts the economy's accumulation of capital, both financial and human.

India's historic Waqf Act of 1995 is a piece of legislation that controls the regulation, management, and administration of Waqf holdings. An Act to provide for the better administration of Auqaf and for matters connected therewith or incidental thereto². There have been progressive amendments to the act since the post-independence era which aimed at strengthening the framework and regulating the transparency of waqf boards in India. Recently the Waqf Bill 2024 was introduced by Union Minister of Minority Affairs Kiren Rijju in the Parliament.

Amidst mounting complaints over the mishandling of Waqf holdings, lack of transparency, and insufficient community representation, the revisions have been made at a crucial moment. In an effort to address these problems, the updated legislation proposes steps to improve community engagement, expedite administration, and improve accountability. However, the modifications have also spurred discussion and brought up significant issues on the Waqf boards, the government's role, and stakeholders' rights would be affected by its enactment.

OVERVIEW OF THE BILL

The Waqf Act applies to all the waqf properties in India, especially for those dedicated to religious, charitable, or philanthropic purposes. The act is divided into 10 chapters, each

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¹ IWAQF (n.d.) Story [online] <https://www.iwaqf.net/story/> last accessed on 17 August 2024

² Waqf Act 1995 (Act No 43)

addressing different queries. The proposed bill aims to rename the existing Waqf Act of 1995 to the Unified Waqf Management, Empowerment, Efficiency, and Development Act. This proposed rebranding symbolizes a broader effort to enhance oversight and management of waqf properties nationwide³.

The Bill has key changes to the act in terms of Waqf Management and Administration. Most notably, it replaces the current system of Survey Commissioners with that of the Collectors to survey waqf properties. This amendment is done to take the leverage of the Collector's local knowledge to ensure smooth processing of the waqfs. Furthermore, the Bill transfers the power of determination of waqf property from the Waqf Board to the Collector, who would investigate and provide a report to the state government.

The Bill also alters the composition of members of the Waqf Boards. Earlier only Muslims were allowed to be a part of the waqf board but the current bill encourages the participation of non-Muslim members, delegates from different Muslim sects, specialists in Islamic law and even Muslim women.

Similarly, the Bill reconstitutes Tribunals, replacing the member competent in Muslim law with a present or former officer of the level of Joint Secretary in the state government. Additionally, by strengthening monitoring and auditing procedures, the Bill gives the central government the authority to establish regulations for waqf Board registration, account publishing, and proceedings. To provide better accountability and transparency, it also permits the central government to audit waqf finances through the Comptroller and Auditor General (CAG) or another approved individual.

In order to promote a more inclusive and representative administration of waqf properties, the Bill also permits the formation of separate Waqf Boards for the Agakhani and Bohra sects⁴, in addition to the current arrangements for the Sunni and Shia sects.

³ Business Today (2024) 'Centre introduces Waqf Amendment Bill 2024: What is the bill about, key features and more', Business Today, 8 August, para 2. Last accessed on 17 August 2024

<https://www.businesstoday.in/india/story/centre-introduces-waqf-amendment-bill-2024-what-is-the-bill-about-key-features-and-more-440689-2024-08-08>

⁴ PRS India (2024) 'The Waqf (Amendment) Bill, 2024', PRS India,

[https://prsindia.org/billtrack/the-waqf-amendment-bill-2024#:~:text=The%20Waqf%20\(Amendment\)%20Bill%2C%202024%20was%20introduced%20in%20Lok.or%20charitable%20under%20Muslim%20law.](https://prsindia.org/billtrack/the-waqf-amendment-bill-2024#:~:text=The%20Waqf%20(Amendment)%20Bill%2C%202024%20was%20introduced%20in%20Lok.or%20charitable%20under%20Muslim%20law.)

Last accessed on 18 August 2024

THE RATIONALE BEHIND THE AMENDMENT

The waqf board is currently the 3rd largest economy after Indian Railways and Armed Forces.⁵ Currently, there are over 8.72 lakh immovable waqf properties listed on the Waqf Management System of India (WAMSI) portal of the Union Ministry of Minority Affairs, ranging from graveyards and mosques to orchards and educational institutions.⁶ Yet in India, the condition of Muslims has been deteriorating with time. Most of the Muslim communities struggle to get basic necessities and have been facing the worse socio-economic conditions in society.

The main function of waqf in Islam is to act as a charity organization by allocating property for moral and religious objectives. Waqf properties should ideally provide financial support for mosques, educational costs, and other needs that benefit the underprivileged. However, several investigations and surveys show that the waqf system has fallen short of its objectives.

A harsh reality is shown by studies like the National Sample Survey Office (NSSO) Reports, Oxfam India Report⁷ (2019), United Nations Development Programme (UNDP) Report⁸ (2018), Sachar Committee Report⁹ (2006), and India Human Development Survey (IHDS) Reports. The Muslim minority in India still faces major socioeconomic obstacles, such as poverty, restricted access to education, and subpar healthcare, despite the waqf's admirable goals.

The amendment seeks to solve these challenges by instituting changes to minimize corruption, increase transparency, and improve waqf property administration. By doing this, it aims to enhance the socioeconomic circumstances of Muslim communities in India by utilizing the waqf system's enormous potential.

⁵ Fatima H (2022) 'India's 3rd largest landlords, Waqf boards are beset with litigations, demolitions, bias', The Print, <https://theprint.in/ground-reports/indias-3rd-largest-landlords-waqf-boards-are-beset-with-litigations-demolitions-bias/2134572/> Last accessed on 18 August 2024

⁶ ibid

⁷ Oxfam India. (2019). India's Inequality Crisis. <https://www.oxfamindia.org/Mind-Gap-State-of-Employment-in-India>

⁸ UNDP. (2018). Human Development Indices and Indicators: 2018 Statistical Update. <https://hdr.undp.org/content/statistical-update-2018> last accessed on 18 August 2024

⁹ Government of India. (2006). Social, Economic and Educational Status of the Muslim Community of India <https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/7830578798.pdf> Last accessed on 18 August 2024

HINDRANCE OF CORRUPTION

The widespread corruption and immoral behaviour rooted in the Waqf Board is one of the main causes of its failure to achieve its purpose. Illegal land transactions, embezzlement, and poor administration have devastated the waqf system. Waqf properties are no longer under control due to corrupt activities; many are either being sold or inhabited unlawfully. The mutawalli system, intended to administer waqf holdings, has been abused for personal benefit. Roughly just a small portion of waqf properties' potential earnings is really being used for what it was designed to.

There have been several instances from all over India where the board person was suspended for allegedly misusing their powers to exploit the waqf properties. In Karnataka, a 2012 state minorities commission report alleged that waqf property worth Rs 2 lakh crore was illegally transferred with the collusion of waqf board members, Congress leaders, and other officials since 2001¹⁰. This report, tabled in the Karnataka assembly in 2020, was dismissed by Congress as “politically motivated”.

According to the 2006 Sachar Committee report, waqf boards own land valued at Rs 1.2 lakh crore, which could provide Rs 12,000 crore a year for the Muslim community. Rather, approximately Rs 163 crore is being generated because of mismanagement and encroachments.

The Delhi Waqf Board has been plagued by accusations of corruption and poor administration for several years. However, things reached a breaking point in April when the former chairman Amanatullah Khan, the leader of the Aam Aadmi Party, was detained in connection with a money laundering case involving anomalies in recruitment.

In addition to hampering the socioeconomic advancement of Muslim communities, corruption and poor administration of Waqf Boards have also damaged public confidence in the organization. It is high time that the government restores the original purpose and integrity of the Waqf system, strict reforms and accountability mechanisms are necessary to solve these concerns.

¹⁰ Fatima, H. (2022) 'India's 3rd largest landlords, Waqf boards are beset with litigations, demolitions, bias', The Print <https://theprint.in/ground-reports/indias-3rd-largest-landlords-waqf-boards-are-beset-with-litigations-demolitions-bias/2134572/> Last accessed on 19 August 2024

GOVERNMENT INTERVENTION: A DOUBLE-EDGED SWORD?

As stated earlier the Waqf Amendment Bill 2024 has been introduced in the Parliament by the Union Minister of Minority Affairs Kiren Rijju who is from the Bhartiya Janatha Party. Since its introduction, the bill has sparked intense political debate and allegations in the country. Critics contend that the bill is an attempt, driven by political motivations, to marginalize the Muslim minority in India and to implement the Uniform Civil Code (UCC) in the country.

Congress Lok Sabha MP KC Venugopal has submitted a notice to oppose the bill which had been introduced. They strongly dissented from the bill¹¹ claiming that they believed it to be an attempt to "usurp the powers of the state waqf boards" and that it was an "attack on the federal structure of the country". Additionally, the Congress party alleged that the bill was being brought in haste and without proper consultation with the stakeholders, including the state waqf boards and the Muslim community.¹² They also expressed concerns that the bill would lead to the centralization of power and undermine the autonomy of the state waqf boards. Other opposition parties like the Samajwadi Party, TMC, NCP, and DMK have also expressed their opposition.

Several concerns have been raised by the contents of the bill. One of the main worries is that it might cause Muslim communities to lose their sovereignty by undermining Muslim personal law which undermines the basic principles of the constitution like secularism and diversity. Centralizing power over Waqf boards also weakens the autonomy of Muslim communities by disempowering them. As the amendment emphasises using Waqf holdings for "public purposes", there have been concerns regarding the possible abuse for ideological or political goals. Some consider the bill to be an election ploy by the BJP to strengthen its Hindu support base and construct a polarizing narrative.

TOWARDS A MORE INCLUSIVE FUTURE

It is essential to strike a balance between addressing issues like corruption, poor management, and a lack of transparency in waqf administration and making sure that the

¹¹ Business Standard. (2024) 'Government to introduce Waqf Amendment Bill 2024 in Lok Sabha today', Business Standard, https://www.business-standard.com/india-news/government-to-introduce-waqf-amendment-bill-2024-in-lok-sabha-today-124080800026_1.html

¹² Ibid

rights and autonomy of Muslim communities are safeguarded. Though the bill addresses multiple problems in the system, it is crucial to ensure that the bill does not compromise the basic rights and interests of the Muslim community. If it ever did so, then it would hamper the fundamental principles of the Constitution like secularism, sovereignty and diversity. The government must engage in meetings with stakeholders, particularly state waqf boards, Muslim organizations, and civil society groups, to address the concerns and apprehensions around the bill and seek recommendations from Muslims who are well-versed in Islam.

If the intent of the government behind introducing the bill is to increase its Hindu support base, then the government needs to refrain from such a move, as it could be seen as a dictatorial apprehension of power potentially increasing communal tensions and undermining the country's secular fabric. The government's actions are highly questionable as they may have serious consequences for both communities, potentially leading to increased tensions, mistrust, and social unrest. This could take us back to the independence era of civil wars between the two religions. Prioritizing the secularism, inclusion, and diversity enshrined in the Constitution is crucial, as opposed to pursuing a divisive agenda that can hardly result in short-term political gains. Instead, the government should focus on engaging in constructive dialogue with Muslims. This not only strengthens the waqf administration but also promotes trust and cooperation between the communities ensuring the benefits.

The government must also acknowledge that the waqf system is an essential component of Muslim identity and culture and that any attempts to subvert or manipulate it for political purposes will be harmful to the social and general well-being of the community. In the end, the passage of the bill and its implementation depends on the government's willingness to hold sincere discussions, give inclusivity top priority, and uphold the values of diversity and secularism. By doing this, we can build a society that is more just and peaceful, allowing all communities to prosper and advance the country.