

THE WAQF AMENDMENT BILL 2024 V. THE WAQF ACT 1995: A COMPARATIVE ANALYSIS OF REFORMS AND CHALLENGES

Marium Shaikh*

ABSTRACT

This article critically examines the Waqf Amendment Bill 2024, introduced by Union Minister Kiran Rijiju on August 8, 2024. The bill was referred to the joint parliament committee in record time to be further scrutinized as many people opposed it.¹ This paper begins with a description of the development of the Waqf Act of 1995 and the assessment of its inefficiency in the regulation of waqf properties. It then delves into the provisions of the amendment such as the transparency measures; the roles of the district collectors; the provision of appeal to the high court; the changes concerning the concept of 'Waqf alal Aulad' and the touch regarding the non-Hindus in the area of Waqf. These changes are thus critically discussed in the paper to assess their potential impacts on the effectiveness and fairness of waqf property management. It also discusses the provision introduction of auditors from the Comptroller and Auditor General (CAG) to address the inefficiencies and corruption. The research analyses the expected impact of such amendments on the administration of waqf by doing a comparative assessment of similar reforms in other domains. Furthermore, the paper also considers the constitutional debates surrounding the bill, with a focus on the opposition concerns about the bill's implications for the rights of the Muslim community under Article 26 of the Indian Constitution. The paper concludes with some considerations of the broader implications of the reforms and suggests taking a balanced approach that protects both the integrity of the administration and the interests of the community.

Keywords: The Waqf Act 1995, Waqf Amendment Bill 2024, Reforms, Criticism.

INTRODUCTION

The Waqf Act 1995, is a landmark for the administration of waqf properties in India. It is meant to safeguard the land which is dedicated to waqf for religious and charitable purposes. Over

*BLS LLB, THIRD YEAR, UNIVERSITY OF MUMBAI.

¹ 'Waqf Bill referred to joint parliamentary panel after Opposition calls it 'draconian' and an attack on the Constitution' (The Hindu, 8 August 2024) < <https://www.thehindu.com/news/national/waqf-bill-referred-to-joint-parliamentary-panel-after-opposition-calls-it-draconian-and-an-attack-on-the-constitution/article68502262.ece>> accessed 9 September 2024

the years, it has become clear that the Act requires a significant update. A number of groups have raised their concerns about the lack of diversity in the presently operating Waqf Boards and Central Waqf Council. They have also pointed out the autocratic powers possessed by Mutawallis (managers of waqf properties), the inadequate and delayed maintenance of accounts, along poor management of finances and minimal income from these Waqf properties.

There are also concerns about the implementation and regulation of laws with the local revenue authorities, as well as handling cases of encroachment on the waqf lands.

The procedure for registration and declaration of waqf properties and assets has long been characterized by time-bar litigations. The lack of judicial review of the tribunals' decisions and the poor standard of survey work has compounded everyone's disgruntlement.

Moreover, Section 40 of the Act, which empowers the board to decide whether the particular property is a waqf property, has been criticized for potential misuse, leading to disputes and tensions among communities². For instance, In Tamil Nadu's Thiruchenthurai Village, the Waqf Board claimed an entire village to be a waqf property which caused distress for local farmers³. Similarly, in the Bengaluru Eidgah Ground and Surat Municipal Corporation cases, the Waqf Board's claims have led to protracted disputes.⁴

To tackle these problems, The Waqf Amendment Bill 2024 has been introduced by the central government in order to patch the holes in the Waqf Act 1995. This amendment promises to increase efficiency and accountability and streamline the implementation processes.

This article will further discuss the comparisons between the provisions of the original Waqf Act 1995 and The Waqf Amendment Bill 2024, along with an analysis of the possible consequences of the changes that occurred and the possible barriers that can hinder the legislation.

² Press Information Bureau, *The objective of the Waqf Properties Act, 1995* (Press Information Bureau, 13 September 2024)

<<https://pib.gov.in/PressNoteDetails.aspx?NoteId=152139&ModuleId=3#:~:text=The%20objective%20of%20the%20Waqf,of%20waqf%20properties%20in%20India>>accessed 9 September 2024.

³ Kanishka Singharia, "In Tamil Nadu, Waqf board claims ownership of an entire village. There's a temple too" (Hindustan Times, 15 September 2022) <<https://www.hindustantimes.com/india-news/in-tamil-nadu-waqf-board-claims-ownership-of-an-entire-village-there-s-a-temple-too-101663245541768.html>>Accessed 9 September 2024.

⁴ 'Explainer on Waqf Amendment Bill 2024' (Press Information Bureau Government of India, 3 September 2024) <<https://pib.gov.in/PressNoteDetails.aspx?NoteId=152139>> Accessed 9 September 2024

THE CONCEPT OF WAQF

According to Islamic law, Waqf occurs when someone donates property for religious or charitable purposes. The Act defines Waqf as a permanent dedication by any person, of any movable or immovable property for any purpose recognized by Muslim Law as religious, pious, or charitable.⁵

In simple words, in Islamic law, a person can Waqf his property if he desires to use it for religious or charitable causes. If a certain property is declared a Waqf, then the ownership of the property is transferred to Allah and therefore, the donor cannot revoke the same. Waqf can be done through written documents or oral agreements. In case a property is used for a charitable or religious purpose for a significant period, it can also be established as a waqf property.⁶ The person dedicating the property is known as the Waqif. Almost all Islamic traditions state that the Waqif cannot have any interest in the property. The Waqf property cannot be utilized for private gain but is to be employed solely for religious objectives. The management of the waqf property is attributed to a person known as Mutawalli, who cannot alter the purpose of the waqf or sell it.

UNDERSTANDING WAQF BOARD

Waqf Board is an official body that is formed as per the provisions of the Waqf Act, 1995. It is responsible for the management and administration of Waqf properties in India.⁷ These boards ensure that the waqf assets are utilized for their intended purpose, for instance in the maintenance of Mosques and Madrasas, and supporting other charitable activities.

Each Indian state has its own Waqf board. There are a total of 32 State Waqf boards, and Sunni and Shia boards are different entities. The Waqf Board is the third-largest landowner in India, following the Indian Railways and the Armed Forces. A Central Waqf Council exists at the national level. The Waqf Board owns 9.4 lakh acres of land across India and holds over 8.5

⁵ The Waqf Act 1995, s. 3(r)

⁶ 'Explained: How a waqf is created, and the laws that govern such properties' (The Indian Express, 17 October 2019) <<https://indianexpress.com/article/explained/explained-how-a-waqf-is-created-and-the-laws-that-govern-such-properties-6072476/>> Accessed 9 September 2024

⁷ 'Explainer on Waqf Amendment Bill 2024' (Press Information Bureau Government of India, 3 September 2024) <<https://pib.gov.in/PressNoteDetails.aspx?NoteId=152139>> Accessed 9 September 2024

lakh immovable properties. The property holdings of the Waqf Board have grown significantly over time.⁸

OVERVIEW OF THE WAQF ACT 1995

The Waqf Act of 1995, is a legislation passed on November 22, 1995. It establishes the Waqf Boards to administer the Waqf properties effectively in a transparent manner.

Furthermore, a Central Waqf Council is established to oversee and administer the waqf properties and utilize the waqf assets for the welfare of the community. The Central Waqf Council serves as an advisory body to the government on issues related to waqf property management.⁹ This Act was amended in 2013 to strengthen the powers of the Waqf Board which became a cause of concern.

This Act details the powers and duties of the Waqf Council, State Waqf Boards, and Chief Executive Officer, as well as the responsibilities of Mutawalli.¹⁰ It also outlines the authority and limitations of a Waqf Tribunal, which functions as a civil court within its designated area of operation. These tribunals are recognized as civil courts under the provision of the Code of Civil Procedure, 1908¹¹. They are required to perform the same duties and have the same power as a civil court. The decisions of the tribunal are final and binding¹². Thus, any matter that needs to be resolved by a tribunal cannot be referred to a civil court or appealed to a higher court.

The ongoing amendments in the Waqf Act indicate the increasing demand for improvement in the governance of the Waqf properties. These transformations have raised controversies on religious liberties and state authority thus raising concern about potential interferences by the state in religious affairs.

⁸ Explainer on Waqf Amendment Bill 2024' (Press Information Bureau Government of India, 3 September 2024) < <https://pib.gov.in/PressNoteDetails.aspx?NoteId=152139>> Accessed 9 September 2024

⁹ 'Introduction' (Central Waqf Council) < <https://centralwaqfcouncil.gov.in/content/introduction>> Accessed 9 September 2024

¹⁰ Abanti Bose, 'Understanding the essential provisions of the Waqf Act, 1995' (Ipleaders, 28 August 2020) < <https://blog.ipleaders.in/understanding-the-essential-provisions-of-the-waqf-act-1995>> Accessed 9 September 2024

¹¹ The Waqf Act 1995, s. 83(5)

¹² The Waqf Act 1995, s. 83(7)

THE WAQF AMENDMENT BILL 2024

Given repeated instances of mismanagement, the Modi government proposed the Waqf (Amendment) Bill, 2024, which contains 44 proposed amendments, sparking controversy.

The Muslim bodies and opposition parties have also claimed that the bill is anti-constitutional. They argue that the bill is draconian and targets minorities.¹³ The government, however, insists that it's meant to boost transparency and efficiency in Waqf Boards. The debate continues as both sides try to balance religious freedom with effective governance.

The bill proposes to rename the Waqf Act of 1995 as “the United Waqf Management, Empowerment, Efficiency, Development Act (UMEED).”¹⁴

It seeks to enhance the management of Muslim waqf properties in India. One of the main focuses of the bill is to promote inclusivity by ensuring that the Waqf Board has two non-Muslim and two Muslim women members.¹⁵ This creates a more diverse and balanced decision-making body.

Also, the role of the Collector has been empowered and his functions are increased; the overall control by the government of these properties is enhanced. The proposed amendments also aim to enhance the criteria and procedures for donating properties to waqf boards. This will involve stricter verification processes for donations in terms of legality and eligibility of the properties that are donated which will possibly minimize some cases of fraudulent donations or inappropriate ones.

One of the most significant proposals of the bill is that within six months of the Amendment Act 2024 taking effect, all the currently operating waqfs are required to file their details on the portal and database.¹⁶ It's now mandatory for all waqf properties to be registered on the portal and properties already registered have six months to meet this new requirement.

¹³ ‘Opposition strongly opposes Waqf bill; calls it draconian, attack on Constitution’ (Deccan Herald, 8 August 2024) <<https://www.deccanherald.com/india/opposition-strongly-opposes-waqf-bill-calls-it-draconian-attack-on-constitution-3142470>> Accessed on 10 September 2024

¹⁴ The Waqf (Amendment) Bill 2024, cl 2

¹⁵ *Ibid*, cl 9(g)

¹⁶ The Waqf (Amendment) Bill 2024, cl 4

The bill aims to modify the functioning of waqf tribunals, which handle legal disputes related to waqf properties.¹⁷ It also makes the appeals process more accessible, allowing people to take the Tribunal decisions to the High Court, and giving them an additional chance for review.¹⁸

The Collector will also update the records of revenues and report to the state government making the management of these properties more transparent.¹⁹

In terms of how waqf properties are created, the bill clarifies that oral dedications or waqf namas are no longer valid.²⁰ Another important change is the creation of separate Waqf Boards for the Bohra and Aghakhani communities,²¹ which weren't previously recognized in the same way as Sunni and Shia boards.

Additionally, the bill takes a strong stand on inheritance rights by ensuring that the heirs of donors, including women, are not denied their rights.²² This corrects previous issues where waqf properties could be used for charitable purposes after the donor's heirs had passed.

COMPARISON OF REFORMS

1. Enhancing Transparency

The 2024 Waqf Amendment Bill has sought to bring notable changes to the management of the Waqf properties with the ultimate intent of improving accountability and transparency.

An important area of reform is the creation of an online portal for registration of waqf properties. This new system will ensure that information pertaining to the Waqf properties is regularly updated on the portal as well as easily accessible thus increasing the transparency level.²³ On the other hand, the Waqf Act 1995 lacked a regularly updated and centralized online database which often led to inefficiencies.

One of the most criticized aspects of the bill is the requirement that all properties registered under the Waqf Act 1995 must upload all the details and other assets on the portal within six

¹⁷ Geetam Acharya 'The Waqf (Amendment) Bill, 2024' (IMPR, 2 September 2024)

<<https://www.impriindia.com/insights/waqf-amendment-bill-2024> /> Accessed 9 September 2024

¹⁸ The Waqf (Amendment) Bill 2024, cl 35(f)

¹⁹ *Ibid*, cl 4

²⁰ *Ibid*, cl 18 (a)

²¹ *Ibid*, cl 10

²² *Ibid*, cl 4

²³ Waqf (Amendment) Bill 2024, cl 3 (vi)

months of the 2024 Amendment taking effect.²⁴ If they fail to do so within the required time frame then the property will no longer be recognized as a waqf property. There is a significant debate surrounding the six-month time frame. Many are arguing that it is too short for digital registration.

Another notable change is that the state governments are required to publish the notified list of waqf properties (auqaf) online within fifteen days of its appearance in the Official Gazette²⁵ in order to make the information more transparent to the public. This was not mandated by the Principal Act.

Additionally, the 2024 Amendment demands the revenue authorities to issue a 90-day public notice before making any changes to land records that involve waqf properties. This notification is to be published in two newspapers daily, one of which should be in the local language.²⁶ This provision, absent in the Waqf Act, gives an opportunity for affected parties to raise objections or concerns

2. Strengthening Legal and Administrative Process

The waqf dedications have also changed significantly. The oral dedications of Waqf which were allowed under the Waqf Act 1995, are now prohibited. As per the new bill, in order to form any new waqf it is obligatory to write a formal document known as the waqf nama or waqf deed.²⁷ This ensures that there is more legal clarity and does away with the informal ways of dedications being made orally.

The Waqf Act 1995, provides an option for situations where no waqf deed exists or a copy is unavailable, It allows the applicants to submit as much detail as possible about the waqf's origins and objectives.²⁸ However, the new bill removes this provision, making it compulsory for all waqf dedications to have a formal deed²⁹, thus tightening the rules for waqf registration.

The 2024 Amendment also aims to replace the survey commissioner with the collector, by providing the collector the authority to conduct surveys in compliance with the state's revenue

²⁴ Waqf (Amendment) Bill 2024, cl 4

²⁵ Waqf (Amendment) Bill 2024, cl 6 (c)

²⁶ Waqf (Amendment) Bill 2024, cl 6 (d)

²⁷ Waqf (Amendment) Bill 2024, cl 18 (a)

²⁸ The Waqf Act 1995, s. 36 (4)

²⁹ The Waqf (Amendment) Bill 2024, cl 18(c)

laws.³⁰ This means that all the powers that have been given to the survey commissioner shall now be vested in the collector. The collector shall now have the same power as the civil court. He shall be given immunity from legal proceedings,³¹ which was given to the survey commissioner in the Principal Act.

In the 1995 Act, the board was given the authority to make inquiries regarding the genuineness and validity of applications. This inquiry will now be conducted by the collector, and he will submit a report to the board.³² This change is debated to be a reduction in the power of the Waqf Board.

The Waqf Amendment Bill 2024 proposes to remove section 40 of the Waqf Act 1995³³. This section currently gives the Waqf Board the authority to decide if a property is a Waqf property or not. It states, “The Board may itself collect information regarding any property which it has reason to believe to be waqf property and if any question arises whether a particular property is waqf property or not or whether a waqf is a Sunni waqf or a Shia waqf, it may, after making such inquiry as it may deem fit, decide the question.”³⁴

The Waqf Act 1995, originally stated that the legal process for managing waqf properties would continue regardless of any court cases³⁵, This provision has now been omitted in the 2024 amendment.³⁶ The new amendment specifies that if there is a question about whether a property is a government property or a waqf property, the collector will investigate and decide the dispute. Additionally, the bill further specifies that the property in question shall not be treated as waqf property till the Collector submits his report.³⁷

3. Revising Governance and Representation

Section 23 (1) of the 1995 Act requires that the Chief Executive Officer (CEO) of the board must be a Muslim. The state government will select the individual from a panel of two names suggested by the board and must hold a rank not lower than that of the Deputy Secretary to the State.³⁸ However, the Amendment Bill proposes that "There shall be a full-time Chief

³⁰ *Ibid*, cl 5(b)

³¹ *Ibid*, cl 38

³² *Ibid*, cl 18(d)

³³ *Ibid*, cl. 20

³⁴ The Waqf Act 1995, s.40

³⁵ The Waqf Act 1995, s. 6(2)

³⁶ Waqf (Amendment) Bill 2024, cl. 7 (a)(iv)

³⁷ Waqf (Amendment) Bill 2024, cl. 4

³⁸ The Waqf Act 1995, s.23(1)

Executive Officer (CEO) of the Board to be appointed by the State Government and who shall be not below the rank of Joint Secretary to the State Government."³⁹ The bill removes the requirement that the Chief Executive Officer must be Muslim, which means a non-Muslim could now be appointed to the position. Some critics worry that this might be an issue because non-Muslims may not fully understand the Islamic principles and practices important for managing these religious properties effectively.⁴⁰

The Amendment Bill also proposes to remove the requirement to have a member with knowledge of Muslim law and jurisprudence in the tribunal, as stated in section 83(4) of the 1995 Act. 'The tribunal will now consist of a chairman who is or has been a District Judge and a member who is or has been an officer equivalent to the rank of Joint Secretary to the State Government'⁴¹, as per the proposals of the new bill. This brings to question whether the tribunal is in a position to provide sufficient attention to the questions of waqf as it would ideally require an Islamic specialized background.

For the first time, the council will include two Muslim women and two non-Muslim members, which will ensure a broader representation.⁴² This is a marked departure from the Waqf Act 1995 where the non-Muslims had no role.

Additionally, the 1995 Act provided for a separate Board of Auqaf for Sunni and Shia.⁴³ However, the 2024 Amendment has empowered the state governments for the formation of separate Waqf boards for Aghakhani as well as Bohra communities to initiate actions for their specific needs.⁴⁴

4. Addressing Social Welfare

In terms of social welfare, the Waqf Act allowed the income from waqf properties to support education and development in cases of failure of succession⁴⁵. The new amendment broadens

³⁹ Waqf (Amendment) Bill 2024, cl. 15

⁴⁰ Asad Rehman, "Waqf Act: 'Constitution empowers religions to manage their affairs. How can you put non-Muslim in Waqf bodies?', says AIMPLB member" (The Indian Express, 9 August 2024) <<https://indianexpress.com/article/political-pulse/aimplb-member-maulana-khalid-rasheed-farangi-mahali-waqf-bodies-interview-9501702/>> Accessed 11 September 2024

⁴¹ Waqf (Amendment) Bill 2024, cl 35 (c)

⁴² Waqf (Amendment) Bill 2024, cl 9(g)

⁴³ The Waqf Act 1995, s.13 (2A)

⁴⁴ Waqf (Amendment) Bill 2024, cl.10

⁴⁵ The Waqf Act 1995, s.3 (r)(iv)

this provision to include support for the maintenance of widows, divorced women as well as well as orphans adding a broader focus on social welfare.⁴⁶

5. Revising Property and Legal Definitions

The definition of Waqf has been tightened in the 2024 Amendment. The 1995 Act, defines Waqf as “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.”⁴⁷ This definition implies that both Muslims and non-Muslims can create a waqf. However, the new bill modifies this provision and requires that only a person who has practised Islam for at least 5 years can dedicate a property as waqf.⁴⁸ This means that while non-Muslims are barred from creating a waqf, they can still manage it.

In the principal Act, the definition of waqf includes a provision stating that any piece of property endowed as waqf shall remain a waqf, even if it is not utilized for the intended purpose.⁴⁹ This provision has now been omitted.⁵⁰

A fundamental principle of waqf is that once a property is declared as waqf under the Waqf Act of 1995, it cannot be revoked⁵¹. The new provision in the Amendment, Section 3C (1), states that ‘any government property identified or declared as a waqf property before or after the commencement of this Act shall not be deemed to be a waqf property.’⁵² This means that any property which at the initial instance was claimed to be a government property and later on after investigation was found to be a waqf property the property will be relinquished to the government. This amendment empowers the district collector with full discretion for determining the nature of the property whether it is a waqf or government land.

Section 20A of the Principal Act provides that the chairperson of the board can be removed by a vote of no confidence.⁵³ The new bill removes this provision⁵⁴. This means that now the chairperson cannot be removed by a vote of no confidence.

⁴⁶ Waqf (Amendment) Bill 2024, cl.3(r)(ix)

⁴⁷ The Waqf Act 1995, s.3(r)

⁴⁸ Waqf (Amendment) Bill 2024, cl. 3(ix)

⁴⁹ The Waqf Act 1995, s.3 (r)(i)

⁵⁰ Waqf (Amendment) Bill 2024, cl 3(ix)

⁵¹ The Waqf Act 1995, s.3 (r)

⁵² Waqf (Amendment) Bill 2024, cl 4

⁵³ The Waqf Act 1995, s.20A

⁵⁴ Waqf (Amendment) Bill 2024, cl. 14

6. Improving Oversight and Management

The Waqf Act of 1995 gave tribunals significant power, stating that ‘their decisions are final and binding upon the parties and it shall have the force of a decree made by a civil court.’⁵⁵

This provision raises concerns because the order of the Tribunal cannot be challenged in a higher court thereby giving significant power in the hands of the Tribunal. However, the proposed amendment bill seeks to address this issue by allowing appeals to the High Court against the order of the Tribunal within 90 days of receiving the decision⁵⁶. This amendment introduces a check on the Tribunal process and provides a chance to appeal against what might be considered an unfair/wrong decision.

The Waqf Act of 1995 recognizes the concept of Waqf-alal-aulad which allows the benefits of the waqf property to be allocated to the founder’s family. However, this comes with a condition whereby once the lineage of the family ceases then the income generated from the property should be spent publicly for religious and charitable causes as recognized by the Muslim law to make sure that the property remains serving the public once there are no more beneficiaries.⁵⁷ The proposed amendment Bill aims to protect inheritance rights, particularly for women as it ensures that the formation of a waqf cannot bar the rightful heirs from receiving their share.⁵⁸

Previously, the 1995 Act tasked the state-level Waqf Boards with audit of waqf properties. However, These Boards often encountered inefficiency and corruption problems which led to mismanagement issues. Thus, the Amendment Bill has attempted to address these issues by providing the auditors from Comptroller and Auditor General (CAG) to audit any waqf at any time by the order of the Central Government.⁵⁹ This new approach will possibly increase transparency and ensure better financial oversight.

7. Modifying Penalties and Financial Contributions

Section 52(A) of the Waqf Act, 1995 states that anyone who sells or takes over waqf property without getting prior approval from the Board could face up to two years of rigorous

⁵⁵ The Waqf Act 1995, s. 83(7)

⁵⁶ Waqf (Amendment) Bill 2024, cl. 35(f)

⁵⁷ The Waqf Act 1995, s.3 (r)(iv)

⁵⁸ Waqf (Amendment) Bill 2024, cl 4

⁵⁹ Waqf (Amendment) Bill 2024, cl 22 (a)(iii)

imprisonment.⁶⁰ However, the new amendment bill suggests removing the word "rigorous,"⁶¹ meaning imprisonment would still be a penalty, but it may not be as harsh as before.

The original Act states that the Mutawalli of every waqf with an annual income of at least five thousand rupees must contribute up to seven per cent of that income to the Waqf Board for its services. The net annual income may be defined as the total annual receipts from all sources including donations and offerings which are not included in the waqf's main funds.⁶²

However, in the new amendment, this contribution has been reduced from seven per cent to five per cent.⁶³

ANALYSIS

Comparing the major differences between the original Waqf Act of 1995 and the Waqf Amendment Bill 2024, it is clear that there is a shift in the management and administration of the Waqf property. This bill is aimed at addressing inadequacies and challenges of mismanagement, corruption and inefficiency prevailing in the waqf board as well as to attain the goals of efficient management and development of the waqf properties.⁶⁴ However, one can debate if the given amendment actually achieves the intended goal. The proposed Waqf Amendment Bill 2024, has met a lot of criticisms from the opposition parties, legal minds and Muslims in the country!

The bill proposes that the record of all the properties must be digitised by the respective Waqf boards within a strict timeframe of six months from the amendment has been made.⁶⁵ Although the demand for higher levels of transparency, especially if supported by technologies for implementing accountability is greatly appreciated, it is the strict deadline that is referred to as being unreasonably inflexible and unrealistic. The given task may be extremely challenging for many Waqf boards. It is also important to consider that a lot of these boards are situated in rural areas that lack the necessary technological infrastructure and manpower to undertake and complete such a massive task within the specified time. This has raised concerns that many Waqf properties might lose their legal status which would consequently lead to the loss of

⁶⁰ The Waqf Act 1995, s. 52A (1)

⁶¹ Waqf (Amendment) Bill 2024, cl 26(a)

⁶² The Waqf Act 1995, s.72 (1)

⁶³ Waqf (Amendment) Bill 2024, cl 33(a)

⁶⁴ Waqf (Amendment) Bill 2024, pg 15

⁶⁵ Waqf (Amendment) Bill 2024, cl 4

recognition as Waqf properties. This would also result in a loss of control over Waqf assets, which could then potentially be taken over by the government. AIMIM's President, Asaduddin Owaisi has publicly criticized the bill claiming that it aims to seize Waqf assets⁶⁶.

The new bill significantly enhances the power and authority of the district collector. The survey commissioner has been replaced by the collector granting them the responsibility to survey in accordance with the state's revenue laws, which is specified in the 'notes on clauses' in the 2024 Amendment Bill. However, it is important to note that the survey commissioner is also appointed by the state government under Section 4(1) of the Waqf Act.

In addition to this, the bill proposes to give the collector the critical responsibility of determining whether a property is a waqf property or a government property. Collectors are also needed to alter the records of revenues that result from such determinations.⁶⁷

This increased role of collectors, as proposed in the new bill, has sparked concern and criticism. Many experts have this belief that concentrating such authority in the hands of the collector could lead to biased decisions favouring the state, due to the fact that the collector is a government official and he may have vested interests to uphold.

There is also a significant issue with the current situation regarding overburdened collectors within public administration. Now, laying the additional responsibilities of the waqf to the collector, on their extensive workload, I believe this could lead to inefficiencies. It also seems counterproductive, especially since the bill was aimed at improving efficiency in waqf property management.

The proposal to include two non-muslim members in the Board⁶⁸ and the omission of the requirement of the Chief Executive Officer to be a Muslim is intended to enhance inclusivity and representation.⁶⁹ Although this is meant to diversify the Boards, this has caused debates stating that since waqf properties are of a religious nature, they should be run by Muslims only. Furthermore, the proposed bill removes the necessity for a member with expertise in Muslim law and jurisprudence in the tribunal⁷⁰, which is mandated under Section 83(4) of the 1995

⁶⁶ The Times of India "New bill aims to grab Waqf assets: Owaisi" (Times of India, 26 August 2024) <<https://timesofindia.indiatimes.com/city/hyderabad/new-waqf-amendment-bill-2024-owaisi-accuses-modi-govt-of-targeting-muslim-properties/articleshow/112789431.cms>> Accessed 12 September 2024.

⁶⁷ Waqf (Amendment) Bill 2024, cl 4

⁶⁸ Waqf (Amendment) Bill 2024, cl 9 (g)

⁶⁹ Waqf (Amendment) Bill 2024, cl 15

⁷⁰ Waqf (Amendment) Bill 2024, cl 35 (c)

Act. ‘The Muslims view this change as a deliberate exclusion of their community from key decision-making positions’.⁷¹

The proposal to include non-muslims in the board has ignited a lot of controversy among the Muslims who believe that, since the properties belong to Waqf which is a religious entity, the management must also be among the people of that community. The opposition parties have also voiced their opposition, arguing that allowing non-Muslims in Waqf management infringes on the Muslim community's rights.⁷²

The consideration of inclusivity here is important, but we need to ensure that it is being applied consistently. If the intention is to achieve inclusivity in the religious bodies, should this policy equally apply to all religious bodies, including Temple boards? And more importantly, whether this approach will jeopardise the sovereignty of the religious minorities who already face challenges in safeguarding their institutions? The real issue here is not just about representation, but also whether it challenges the religious significance and management of the Waqf properties.

The 2024 Amendment Bill also proposes to remove the finality of the tribunal's decision and allow the appeals to be filed with the high court within 90 days of receiving the tribunal's order.⁷³ This change is much needed because it introduces the possibility of judicial review.

Section 40 of the Principal Act gave the Waqf Board the authority to determine whether a property was waqf or not. The appeals against the board's decisions went to the tribunal, whose decisions were then final. This often led to concerns, particularly regarding allegations of land encroachment by the board. Now, with the new provision for appeals, there is a chance for these issues to be reviewed judicially. However, some argue that since waqf matters are inherently religious, the tribunal should retain final authority.

The new bill also proposes replacing “rigorous imprisonment” with “imprisonment” and removing the terms “cognizable” and “non-bailable” from the Waqf Act of 1995.⁷⁴

⁷¹ Arshad Azmi ‘*There is an agenda behind Waqf Amendment Bill*’ (Makhtoob Media, 14 Sep 2024) <<https://maktoobmedia.com/features/there-is-an-agenda-behind-waqf-amendment-bill/>> Accessed 15 September 2024.

⁷² Chandrashekar Srinivasan, “Opposition Targets Non-Muslims Provision, More In Draconian Waqf Bill”(NDTV, 8 August 2024)< <https://www.ndtv.com/india-news/waqf-amendment-bill-parliament-6291509>> Accessed 15 September 2024

⁷³ Waqf (Amendment) Bill 2024, cl 35 (f)

⁷⁴ Waqf (Amendment) Bill 2024, cl. 26(a)

Even though this may seem to reduce the severity of punishments for offences concerning Waqf properties, it is important to notice that imprisonment for terms of up to two years is still provided. Furthermore, section 52A (1) provides that whenever any Waqf property has been alienated the Waqf Board shall have control over such property without any liability to pay anything to the offender. This means that only particular features of the penalties evolved whereas the rest of the consequences persist. However, the amendments could possibly weaken the accountability by eradicating ‘cognizable’ and ‘non-bailable’, and soften the severe penalties designed to safeguard Waqf properties.

The bill also includes proposed amendments to the concept of Waqf alal aulad. Waqf alal aulad is established with the belief that once the family line ends, the property should go towards charitable causes. The new amendment ensures that heirs, including women, are not deprived of their rights,⁷⁵ which is definitely a positive step. Still, it does provoke some thoughts at least when comparing it to other legislations like the Hindu Succession Act or Uttarakhand Uniform Civil Code, in which individuals are free to choose their heirs over the property, be it sons, daughters, grandchildren, etc. Certainly, this amendment doesn’t affect those laws, but it does highlight a broader question: whether similar protections should be applied uniformly across all legal frameworks in India.

CONCLUSION

The Waqf Act of 1995 was an important step towards regulating waqf properties by providing a structured framework for their management. Nonetheless, it has been criticized over the years mainly because of its flaws which include inefficiency and lack of adequate provisions for accountability and monitoring. The challenges we’ve seen point to a need for a major update in how waqf properties are managed.

The Waqf Amendment Bill 2024 is a huge step in this direction. It aims to fix issues from the 1995 Act with new measures like audits by CAG-appointed auditors, better transparency, and updated appeal procedures. The idea is to make the system more effective and fair, thereby solving many long-standing problems.

However, some people are concerned. They argue that certain parts of the bill might interfere with the Muslim community’s right to manage its religious affairs, a right protected by Article

⁷⁵ Waqf (Amendment) Bill 2024, cl 4

26 of the Indian Constitution. The reforms like the removal of traditional practices and the inclusion of non-Muslims in decision-making bodies question the practical implication of such change on community rights.

To move ahead effectively, we need to find the right balance. While the proposed changes have positive intentions, it's important to ensure they don't compromise the rights of the community or the proper management of waqf properties. This will require a careful and thoughtful approach, addressing the need for reform while respecting the community's independence in order to avoid any unintended negative consequences.

The success of the Waqf Amendment Bill 2024 will largely depend on how well it tackles past issues while ensuring fairness and protecting community rights. By approaching these challenges thoughtfully, we can create a system that not only addresses existing issues but also respects the core values of waqf management.

