

IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) No. ____ OF 2025
UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

IN THE MATTER OF:

ASSOCIATION FOR THE PROTECTION
OF CIVIL RIGHTS.

...PETITIONER

VERSUS

UNION OF INDIA & ORS

...RESPONDENTS

PAPER BOOK

(For Index: Kindly See Inside)

ADVOCATE FOR THE PETITIONERS: MR. ADEEL AHMED

INDEX

SL. No.	Particulars of document	Page No. of part to which it belongs		Remarks
		Part I (Contents of Paper Book)	Part II (Contents Of file alone)	
(i)	(ii)	(iii)	(iv)	(v)
	Court Fee			
1.	Office Report on Limitation			
2.	Listing Performa	A1-A2	A1-A2	
3.	Cover Page of Paper Book		A2	
4.	Index of Record of Proceedings		A3	
5.	Defect List		A4	
6	Note Sheet		NS1to	
7.	Synopsis and List of Dates	B-D		
8.	PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA	1-29		
9.	<u>ANNEXUREP-1</u> A copy of the (Amendment) Bill, 2024	30-69		
10.	<u>ANNEXUREP-2</u> A copy of the relevant portion of the Sachar Committee Report	70-90		
11.	F/M		91	
12.	Vakalatnama		92	

LISTING PROFORMA

SECTION:

The case pertains to (Please tick/check the correct box):

- Central Act: (Title) NA
- Section : NA
- Central Rule : (Title) NA
- Rule No(s): NA
- State Act: (Title) NA
- Section: NA
- State Rule : (Title) NA
- Rule No(s): NA
- Impugned Interim Order: (Date) N.A.
- Impugned Final Order/Decree: N.A.
- High Court: (Name): N.A.
- Names of Judges: N.A.
- Tribunal/Authority ; (Name) NA

1. Nature of matter: Civil

2. (a) Petitioner/appellant No.: ASSOCIATION FOR THE PROTECTION
OF CIVIL RIGHTS.

(a) e-mail ID: NA

(b) Mobile phone number: NA

3. (a) Respondent No. 1: **UNION OF INDIA AND ORS.**

(b) e-mail ID: NA

(c) Mobile phone number: NA

4. (a) Main category classification: 18

(b) Sub classification: 1807

5. Not to be listed before: NA

6. (a) Similar disposed of matter with citation, if any, & case details: **No similar disposed of matter.**

(b) Similar pending matter with case details: **No similar matter pending.**

CIVIL. Matters: yes

7. (a) Whether accused/convict has surrendered: NA

FIR No. NA

Date: NA

Police Station: NA

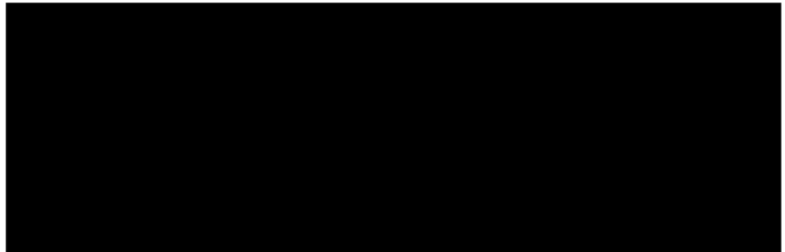
Sentence Awarded: NA

- Sentence Undergone: NA
8. Land Acquisition Matters: NA
- (a) Date of Section 4 notification: NA
- (b) Date of Section 6 notification: NA
- (c) Date of Section 17 notification: NA
9. Tax Matters: State the tax effect: NA
10. Special Category (first petitioner/appellant only): NA
- Senior citizen > 65 years SC/ST Woman/child Disabled Legal Aid case In custody:
11. Vehicle Number (in case of Motor Accident Claim matters): NA
12. **Whether there was/is litigation on the same point of law, if yes, details thereof: NO.**

Date: 05/04/2025

ADEEL AHMED

Advocate-On-Record for petitioner(s)



B

BRIEFSYNOPSIS

The petitioner respectfully seek the indulgence of this Hon'ble Court to challenge the constitutionality of the Unified Waqf Management Empowerment, Efficiency, and Development Bill, 2025 (hereinafter referred to as the "UMEED Bill"). The proposed Bill directly violates Articles 14, 25, 26, and 300A of the Constitution, along with the preambular values that constitute the bedrock of our democratic and secular framework.

The Principle Act, 1995, has already established a comprehensive legal framework for the management and administration of Waqf properties, as affirmed by various judicial precedents of this Hon'ble Court. Any inefficiencies in the functioning of Waqf Boards or Mutawallis can be effectively addressed through discussions and the appointment of advisors, as recommended by the Sachar Committee Report, 2006. The drastic overhaul proposed by the UMEED Bill is not only unnecessary but also an alarming interference into the religious affairs of the Muslim community diluting the fundamental purpose of Waqf which is a practice deeply rooted in Quranic references and the Hadith since the time of Prophet Mohammad (PBUH).

The Bill, hastily passed by the Lok Sabha on 3rd April 2025 and the Rajya Sabha on 4th April 2025, is now on the brink of receiving Presidential assent. However, its provisions pose a grave danger to the autonomy and effectiveness of the Waqf Board, particularly through the insertion of Section 40, which severely undermines the principles of natural justice enshrined in the parent Act.

C

Moreover, the unjustified omission of Section 3(i)(r), which upholds the Waqf by User doctrine, constitutes a deliberate weakening of the legal recognition granted to Waqf properties.

This Hon'ble Court has previously acknowledged and validated this doctrine in *M. Siddiq v. Mahant Suresh Das* (**The Ayodhya Verdict**). The removal of this provision, therefore, represents an attempt to erode the foundational principles protecting Waqf properties and disrupts the delicate balance between religious autonomy and state oversight.

That the petitioner humbly submits that the UMEED Bill, 2025, is an unconstitutional and unjustified legislative overreach that must be struck down in the interest of upholding the fundamental rights, Individual freedom and religious autonomy guaranteed under the Constitution of India.

Hence the present Petition.

LIST OF DATES

Date	Events
1863	The Colonial government enacted the Religious Endowments Act to regulate trusts and Endowments in India.
1913	The Mussalman Waqf Validating Act was enacted to declare the rights of Mussalmans to make settlements of property by way of Waqf in favour of their families, children and descendants.
1930	The Validating Act of 1913 was given retrospective application by the 1930 Act.

D

1995	The Waqf Amendment Act, 1995 Act replaced the earlier law, establishing stronger administrative control through Waqf Boards.
2006	Sachar Committee Report was published acknowledging the encroachment of Waqf properties by the Individuals and the Government.
2013	The Waqf Amendment Act, 1995 was amended.
2014-2019	The Waqf Amendment Act, 1995 was amended.
August, 2024	The Unified Waqf Management, Empowerment, Efficiency, and Development (UMEED) Bill (hereinafter referred to as the 'Amendment Bill') was introduced.
August, 2024	The Amendment Bill was sent to the Joint Parliamentary Committee for consultation.
March, 2025	The Waqf Amendment Bill was passed by both the houses of the Parliament awaiting Presidential Assent as on 5 th March, 2025.
	Hence the present Petition.

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

WRIT PETITION (C) No. OF 2025

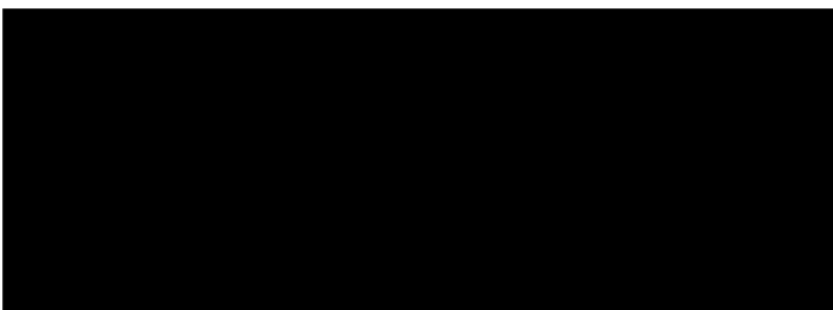
(A Writ of Mandamus under Article 32 of the Constitution of India)

IN THE MATTER OF:-

ASSOCIATION FOR THE PROTECTION OF CIVIL RIGHTS.

THROUGH ITS AUTHORIZED REPRESENTATIVE

MALIK MOHTASIM KHAN



...PETITIONER

VERSUS

1. UNION OF INDIA
THROUGH CABINET SECRETARY
RASHTRAPATI BHAWAN, NEW DELHI-110004
2. UNION OF INDIA
THROUGH ITS SECRETARY,
MINISTRY OF HOME AFFAIRS NORTH BLOCK,
NEW DELHI-110001
3. UNION OF INDIA
THROUGH ITS SECRETARY,

MINISTRY OF LAW AND JUSTICE
SHASTRI BHAWAN
NEW DELHI-110001

...RESPONDENTS

**PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA**

**TO
THE HON'BLE CHIEF JUSTICE OF INDIA AND
HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA**

**THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED**

MOST RESPECTFULLY SHOWETH:

1. The Petitioner Association for Protection of Civil Rights (hereinafter referred to as APCR) is a registered non-governmental organization working for the protection of constitutional rights and secular governance in India. The Petitioner, through this writ petition under Article 32 of the Constitution of India, seeks to challenge the constitutional validity of the Waqf Amendment Bill, 2024 (hereinafter referred to as (The Amendment Bill, by way of repealing the Waqf Act 1995 (hereinafter referred to as the principle Act) affecting the fundamental rights guaranteed under Articles 14,25 and 26 and 300A of the Constitution of India.

1A. The Petitioner has no personal interest in the present matter and is filing this petition in the larger public interest to uphold the rule of law, principles of Natural justice, welfare policy of the state protecting the constitutional and statutory rights of the citizens. That the petitioner is a social worker with an annual income of [REDACTED] holding AADHAR-[REDACTED]. The petitioner has been consistently filing income tax returns and undertakes to submit any costs imposed by this Hon'ble Court.

a) That the instant writ petition is based on the information/documents which are in public domain.

b) That there is no civil, criminal, revenue or any litigation involving the petitioners, which has or could have a legal nexus with the issues involved in the PIL

1B. The Petitioner has no other equally efficacious remedy except to approach this Hon'ble Court by way of present Writ Petition. All annexures annexed to the Writ Petition are true copies of their respective originals.

1C. The Petitioner has not filed any other Petition either before this Hon'ble Court or any other High Court for seeking same or similar relief.

BRIEF FACTS OF THE CASE:

2. That the Waqf (Amendment) Bill, 2024 was introduced in Lok Sabha on August 8, 2024. It amends the Waqf Act, 1995 (hereinafter referred to as the

“principle Act”). The proposed bill regulates waqf property in India and defines waqf as an endowment of movable or immovable property for purposes considered pious, religious, or charitable under Muslim law. Every state is required to constitute a Waqf Board to manage waqf. The (Amendment) Bill, 2024 renames the principle Act to ‘United Waqf Management, Empowerment, Efficiency and Development Bill, 2024’.

A copy of the (Amendment) Bill, 2024 is attached herewith as **Annexure P-1at page no. To)**

3. That the principle 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 Amendment Bill states that only a person practicing Islam for at least five years may declare a waqf. It clarifies that the person must own the property being declared. It removes waqf by user. It also adds that *waqf-alal-aulad* must not result in denial of inheritance rights to the donor’s heir including women heirs.
4. That the Joint Parliamentary Committee on the Waqf (Amendment) Bill, 2024 (Chair: Mr. Jagdambika Pal) submitted its report in the Lok Sabha.

Key observations and recommendations of the Committee include:

5. **Waqf-by-user:** Under the principle Act, waqf can be created through: (i) **declaration**, (ii) **endowment at end of the line of succession**, and (iii) **recognition based on long term use of a property**. Creation of waqf through use is termed waqf by user. **The (Amendment) Bill removes waqf by user.** The Committee noted that the proposed amendment raises ambiguities around whether existing waqf by user properties would cease to be waqf. It recommended providing that the removal of waqf-by-user will only apply prospectively. The Joint Parliamentary Committee clarified that if there is any dispute on the property, then that will be considered.
6. **Proof of practicing Islam:** The principle Act allows any person to create waqf. The Amendment Bill states that only a person practicing Islam for at least five years may declare a waqf. The Committee recommended adding that only persons showing or demonstrating that they have been practicing Islam for at least five years can create waqf.
7. **Identification of government property:** The Amendment Bill states that government property declared as waqf will cease to be waqf. As per the Ministry of Minority Affairs, as of September 2024, 5,973 government properties in 25 states were declared as waqf. The Amendment Bill empowers the collector to determine the ownership of property and submit a report to the state government. The Committee noted several objections to the collector

being given these powers. These included objections against the definition of a collector being wide enough to include officers equal to the deputy collector. It recommended replacing the collector with an officer above his rank, chosen by the state.

8. Application for registration of Waqf: *The principle Act provides for application for registration of waqf as prescribed. The Amendment Bill mandates applying for registration with the Board through a portal and database. If not registered under the provisions of the Bill in six months, no legal proceedings can be instituted for enforcing any right related to such waqf. The Committee noted that the time given is inadequate for all stakeholders to represent. It recommended allowing legal proceedings after six months if the Court is satisfied that the applicant had sufficient cause for not applying within the prescribed period.*

9. Composition of Waqf Tribunal: *The principle Act provides for a Tribunal to adjudicate waqf related disputes. It consists of three members, one of whom is an expert in Muslim law. The Amendment Bill removes this expert from the Tribunal, and makes it a two-member body. The Committee recommended including the expert in Muslim law to ensure that the Tribunal remains a three-member body*

10. The Amendment 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, he will update the revenue records.
11. That the principle Act provides for appointment of a Survey Commissioner and additional commissioners to survey waqf. The Amendment Bill instead empowers Collectors to do the survey. Pending surveys will be conducted as per the state revenue laws.
12. The principle 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. It further requires that all Council members be Muslims, and at least two must be women. The (Amendment) 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. Following members must be Muslims: (i) representatives of Muslim organisations, (ii) scholars in Islamic law, and (iii) chairpersons of Waqf Boards.
13. That the principle Act provides for 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 Amendment Bill instead

empowers the state government to nominate one person from each of the above background 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.

14. That the Amendment Bill states that two Muslim members must be women thereby limiting the representation of women in the Board. While the principle Act doesn't create any limitation on the representation of women in Board.
15. That the principle 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.
16. That the Amendment Bill removes the (ii) provision i.e. 'a person knowledgeable in Muslim law and jurisprudence' from the Tribunal without any rational justification thereby eliminating the praxis of Academic discourse and Intellectual upliftment of the community delegating the jurisprudential responsibility to non-experts. 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 joint secretary to the state government.

17. That in the principle Act, decisions of the Tribunal are final and appeals against its decisions in Courts were partially restricted. The High Court can consider matters on its own accord, on an application by the Board, or an aggrieved party. The (Amendment) Bill omits provisions deeming finality to Tribunal's decisions. Tribunal's orders may be appealed in the High Court within 90 days.

18. That the Amendment 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 principle Act, state government may get the accounts of waqfs audited at any point. The Amendment Bill empowers the central government to get these audited by the CAG or a designated officer.

19. The detailed comparison of the Act is as follows:

S. No.	Provision / Subject	The Waqf Act, 1995	The Waqf (Amendment) Bill, 2024
1.	Short Title of the Act	"Waqf Act, 1995"	Renamed as "Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995"

2.	Definition of Waqf (Sec 3(r))	Any dedication for purposes recognized by Muslim law. Included <i>waqf by user</i> .	Only Muslims practicing Islam for 5+ years can create waqf. <i>Waqf by user</i> omitted. Ownership of property by waqif is mandatory.
3.	Creation of Waqf (New Sec 3A)	No such explicit provision.	Only lawful owners can create waqf. Waqf-alal-aulad cannot deny inheritance rights, especially of women heirs.
4.	Filing on Central Portal (New Sec 3B)	No portal. Paper-based system.	Mandatory filing of waqf and property details on a central portal within 6 months.
5.	Government Property (New Sec 3C)	Could be disputed or claimed as waqf.	Government property cannot be declared as waqf. Disputes to be settled by Collector.
6.	Types of Waqf	Sunni and Shia waqf.	Addition of "Aghakhani waqf" and "Bohra waqf".
7.	Survey Authority (Sec 4)	Survey Commissioner conducted waqf property surveys.	Power shifted to District Collector, using revenue law procedures.
8.	List of Auqaf (Sec 5)	List prepared post-survey, published in Gazette.	Now must also be uploaded on the central portal within 15 days of Gazette publication.
9.	Mutation Procedure (Sec	No clear public notice requirement.	Mandatory 90-day public notice in 2 newspapers

	5(3))		(one in regional language) before mutating land records.
10.	Disputes on Auqaf (Sec 6 & 7)	Tribunal's decision was final. 1-year limitation.	Tribunal's finality removed. Limitation extended to 2 years with possible condonation.
11.	Central Waqf Council Composition (Sec 9)	Only Muslims; minimum 2 women.	Broadened to include 2 non-Muslims; categories include MPs, Muslim orgs, judges, lawyers, scholars, professionals.
12.	Separate Boards (Sec 13)	One Board per State.	State may create separate Boards for Bohras and Aghakhani.
13.	State Waqf Board Composition (Sec 14)	No non-Muslims; members from electoral colleges.	Up to 11 members. Minimum: 2 women, 2 non-Muslims, representation from Sunni, Shia, Bohra, Aghakhani, OBC Muslims.
14.	Board Meetings (Sec 17)	No fixed frequency.	Must meet at least once a month.
15.	CEO of Board (Sec 23)	Rank not fixed; must be Muslim.	Full-time CEO must be of Joint Secretary rank; religious identity not specified.
16.	Creation of Waqf (Sec 36)	Waqf could be created orally.	Waqf creation now requires a written deed.

17.	Waqf Registration (Sec 37)	Deed optional. Survey Commissioner verifies.	Deed mandatory. Verification by Collector. Certificate issued via portal.
18.	Legal Proceedings for Unregistered Waqfs (New Sec 36(10))	Allowed.	Prohibited after 6 months of commencement of the Act.
19.	Tribunal Structure (Sec 83)	One-member Tribunal; decision final.	Two members (Judge + Joint Secy-level officer). Appeal lies to High Court within 90 days. Chairperson can act alone if needed.
20.	Powers of Tribunal	Could stay orders of Board/CEO.	Stay powers curtailed; time limits enforced (6 months + 6 months max).
21.	Encroachment Powers (Sec 33)	Tribunal could stay eviction pending appeal.	Power to stay removed; appeal available.
22.	Disqualification of Mutawalli (New Sec 50A)	Few grounds.	Includes conviction ≥ 2 years), encroachment, mismanagement, prior removal, insolvency, unsound mind, etc.
23.	Audit Threshold (Sec 47)	Annual income above \square 50,000.	Raised to 1,00,000. Panel of auditors from State Govt.
24.	Audit by CAG (Sec 47)	Not specified.	Central Govt can order audit by CAG or other designated officer.

25.	Annual Contribution to Board (Sec 72)	7% of net income.	Reduced to 5%.
26.	Board's Power to Declare Waqf Property (Sec 40)	Board could decide if a property was waqf.	Provision omitted. Power removed.
27.	Appeals & Limitation (Sec 107-108)	Limitation Act excluded.	Sections omitted; Limitation Act, 1963 now applies.
28.	Land Acquisition (Sec 91)	Refers to Land Acquisition Act, 1894.	Updated to Right to Fair Compensation and Transparency in Land Acquisition Act, 2013.
29.	Publication of Board Orders (Sec 48)	No such requirement.	Mandatory publication of Board's proceedings and orders.
30.	Penalty on Mutawalli (Sec 61)	Low fines; no jail.	Penalty: ₹20,000 – ₹1,00,000 + up to 6 months imprisonment for non-compliance.
31.	Power to Frame Schemes (Sec 69)	No requirement of public notice.	Requires notice to affected persons + public.
32.	Evacuee Waqf Property (Sec 108 & 108A)	Special provisions existed.	Entire section omitted.
33.	Override Clause (Sec 104)	Act overrides other laws.	Omitted.
34.	Central Rule-Making (New Sec 108B)	Rules Primary by States.	Central Government empowered to make rules for multiple aspects,

			especially regarding the portal
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20. That the Joint Parliament Committee rejected the recommendations of the Petitioner and unanimously passed the Bill in contravention of the fundamental rights of the petitioner enshrined in the constitution.

21. Thus being aggrieved, the Petitioners with leave of this Hon'ble Court are filing the present writ petition under Article 32 of the Constitution of India on inter-alia the following grounds:-

GROUND

1. BECAUSE the principal Act sufficiently governs religious endowments, the substitution of its title is both misleading and contrary to the fundamental purpose of the Act. The term Waqf has deep-rooted religious, historical, and cultural significance, and its erasure reflects a colonial mindset aimed at diluting indigenous legal traditions under the guise of modernization. The Quran speaks of *Infaq fi Sabilillah*, meaning "spending in the way of Allah," reinforcing that Waqf is a perpetual act of charity. The term Waqf (plural: Auqaf) literally means property dedicated "in the name of God", a concept firmly rooted in Islamic law and tradition. Hadith evidence confirms its permanence: The Prophet Muhammad (PBUH) advised: "*Habbis-il-aslawasabbil-is-samarat*" (*Freeze the corpus and let the usufruct flow*),

indicating that Waqf assets should remain inalienable while their benefits serve the community perpetually.

Renowned legal scholar **Dr Tahir Mahmood** notes that Islamic law was systematically displaced under colonial rule, and attempts to redefine Waqf reflect a continuation of that erasure. British colonial administrators frequently altered the terminology of indigenous legal institutions to bring them in line with European legal constructs, undermining their original religious and cultural intent. The current global discourse on decolonization highlights that reclaiming indigenous knowledge systems is essential for undoing colonial distortions.

Moreover, postcolonial scholars such as **Gayatri Spivak and Edward Saeed** emphasize that language and terminology are central tools of colonial control. The Global South is actively engaged in decolonizing its legal and intellectual traditions, yet this legislative change reflects a redundant and regressive colonial sentiments to erase historical legacies and religious symbols under the garb of ‘modernization.’ While the legislature advocates for restoring ‘indigenous institutions’ in other spheres, this amendment reinforces colonial language and frameworks. The original title of the principle Act does not create any burden on beneficiaries or the legal community. There is no compelling legal, administrative, or social necessity

to replace the term Waqf, a universally recognized concept in both Islamic law and Indian jurisprudence. This renaming serves no functional purpose except to dilute the identity of an Islamic institution, which raises questions about the underlying legislative intent. The substitution of the term Waqf is not a neutral change—it is a deliberate attempt to rewrite history and dismantle the cultural legacy of colonized communities. If the legislature is truly committed to decolonization, it must respect historical legal traditions rather than erasing them systematically. The title must remain unchanged to uphold the religious and cultural integrity of Waqf and protect it from unnecessary colonial reinterpretations.

2. **BECAUSE** the proposed Bill violates Article 14 of the Constitution as it discriminates arbitrarily by providing unfettered powers to the Waqf Board without adequate checks and balances, thereby creating a special legal regime without rational classification. In *State of West Bengal v. Anwar Ali Sarkar, (1952)1 SCC*, the Hon’ble Supreme Court in para 6 held that *“it can be well settled that the principle underlying the guarantee in Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of difference of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there shall be no discrimination between one person and another if as regards the subject matter of the legislation their*

position is substantially the same. This brings in the question of classification. As there is no infringement of the equal protection rule, if the law deals alike with all of a certain class, the legislature has the undoubted right of classifying persons and placing those whose conditions are substantially similar under the same rule of law, while applying different rules to persons differently situated.”

Furthermore the Hon’ble Court stated in para 85 that *“Mere classification however is not enough to get over the inhibition of the article. The classification must not be arbitrary but must be rational, that is to say, it must not be based on some qualities or characteristics which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (ii) that the differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are the distinct things and what is necessary is that there must be a nexus between them.”* (Emphasis Supplied).

- 3. BECAUSE** the proposed Bill fails to meet the reasonable classification test as upheld by this Hon’ble Court in **West Bengal v. Anwar Ali Sarkar (1952)**, it stands in clear violation of Article 14 of the Constitution. The principle of equality before the law demands that any classification must be based on intelligible differentia and bear a rational nexus to the objective of

the law. However, this amendment arbitrarily interferes with the religious affairs of the Muslim minority, while similar restrictions do not apply to non-Muslim religious institutions, thereby failing the test of fairness, reasonableness, and non-discrimination. The inclusion of Non-Muslims in the religious affairs of the Muslim minority is not a step toward 'inclusivity' rather, it dilutes the autonomy of an already underrepresented community in India's institutional framework. The Sachar Committee Report (2006), presents compelling evidence of the abysmal socio-economic status and severe underrepresentation of Muslims in public institutions. In contrast, non-Muslim charitable institutions actively prohibit Muslim participation in their religious affairs, highlighting the discriminatory impact of this amendment.

For instance, in Uttar Pradesh, Kerala, Karnataka, and Tamil Nadu, only Hindus are permitted to be members of Hindu endowment institutions. If the government truly seeks religious inclusivity, then similar provisions should be enforced uniformly across all communities. However, targeting only Waqf institutions for such an inclusion violates the principles of neutrality and secular governance.

Furthermore, any forced interference in religious administration risks igniting communal and social unrest, thereby threatening the secular fabric of the

Constitution. It is neither justified nor necessary to impose such provisions when no similar demands are being placed on non-Muslim religious institutions. This selective encroachment on minority rights must therefore be struck down in the interest of justice, fairness, and constitutional integrity.

4. BECAUSE the proposed Bill directly infringes upon the fundamental rights guaranteed under Articles 25 and 26 of the Indian Constitution, it constitutes an unconstitutional encroachment upon the religious autonomy of the Muslim community.

- a. Article 25 guarantees the right to freely profess, practice, and propagate religion. The concept of Waqf is deeply rooted in Islamic teachings, serving as an essential religious practice. The Quran (Surah Al-Baqarah, 2:261) highlights the virtue of perpetual charity, stating: *"The example of those who spend their wealth in the way of Allah is like a seed of grain that sprouts seven ears; in every ear, there are a hundred grains."*

This verse underscores Waqf's fundamental role in Islamic tradition as a means of perpetual charity and community welfare.

- b. Article 26 grants religious denominations the fundamental right to establish and manage their own religious and charitable institutions. The Hadith of Prophet Muhammad (PBUH) further affirms Waqf's

permanent and inalienable nature: *"When a person dies, his deeds come to an end except for three: Sadaqah Jariyah (ongoing charity), beneficial knowledge, or a righteous child who prays for him."* (Sahih Muslim, Hadith 1631). This establishes Waqf as a permanent religious duty, ensuring continuous benefit to society. In *Sahih Al-Bukhari (Hadith 2764)*, Caliph Umar ibn Al-Khattab (RA) sought the Prophet's (PBUH) advice regarding a piece of land. The Prophet (PBUH) advised: *"If you like, make the property inalienable and give its produce as charity."* This Hadith provides a direct precedent for Waqf, proving that its inalienability is a religious obligation.

5. BECAUSE The Hon'ble Supreme Court in *M. Siddiq v. Mahant Suresh Das, (2019) 9 SCC 1* while acknowledging the Doctrine of **Waqf by User**, the Hon'ble Court stated in para 732, *"that a Waqf is a dedication of a movable or immovable property for a religious or charitable purpose recognised by Muslim law. Ordinarily, a Waqf is brought into existence by an expressed act of dedication in the form of declaration. Upon pronouncing the declaration, the property sought to be dedicated is divested from the Wakif as the person making the dedication and vests in the Almighty, Allah. A Waqf is a permanent and irrevocable dedication cannot be rescinded at a later date. The property of a validly created waqf is inalienable and cannot be sold or leased for private gain. Muslim law does not require an express declaration of a Waqf in every case. The dedication resulting in a waqf may also be reasonably inferred from the facts and circumstances of a case or*

*from the conduct of the wakif. In the absence of an express dedication, the existence of a waqf can be legally recognised in situations where property has been the subject of public religious use since time immemorial. This concept of a waqf by user has also found statutory recognition in Section 3(r) of the Waqf Act,1995. “The doctrine of waqf by user received judicial recognition in the decision of the Privy Council in *The Court of Wards for the property of Makhdum Hassan Bakhsh v Ilahi Bakhsh*. The case concerned a public graveyard in Multan where a prominent Muslim saint was buried. The Court of Wards, acting for the property of **Makhdum Bakhsh**, proposed to sell certain property within the area of the graveyard on which no graves existed. The Muslim residents of Multan sought an injunction restraining the proposed sale on the ground that the entire graveyard was inalienable waqf property due to its long use as a public graveyard of the Muslim community.*

*The Privy Council recognised that absent an express deed or act of dedication, a waqf can be recognised by long use. The above decision was followed by the Oudh Chief Court in **Abdul Ghafoor v Rahmat Ali**. The plaintiffs sought a declaration that the suit property was a public graveyard and the defendant was not entitled to construct any structure on it. The graveyard in question had been closed to the public by the Municipal Board for forty years. The defendant argued that the plaintiffs had not established the use of the graveyard till the suit in question, and that by non-use for forty years, it had lost its characteristic as a waqf.*

“736. In some cases, courts were faced with a situation where property was used as waqf property since time immemorial and it was not practical to seek formal proof in the form of a deed of declaration. A specific document

of dedication may be unavailable after a long lapse of time but the use of the property for public religious or charitable purpose may have continued since time immemorial. Hence, despite the absence of an express deed of dedication, where the long use of the property as a site for public religious purpose is established by oral or documentary evidence, a court can recognise the existence of a waqf by user. The evidence of long use is treated as sufficient though there is no evidence of an express deed of dedication.”

The question whether the use of a building or property for public religious worship has satisfied the legal requirements to be recognised as a public waqf is a matter of evidence. It is a —matter of inference for the court, having examined the evidence on record, to determine whether the use of the property has been for sufficiently long and consistent with the purported use to justify the recognition of a public waqf absent an express dedication. Given the irrevocable, permanent and inalienable nature of a waqf, the evidentiary threshold for establishing a waqf by user is high, as it results in a radical change in the characteristics of ownership over the property.”

738. The principle of a waqf by user has also found recognition in the jurisprudence of this Court in the case of **Faqir Mohamad Shah v Qazi Fasihuddin Ansari**. 739. Our jurisprudence recognises the principle of waqf by user even absent an express deed of dedication or declaration. Whether or not properties are waqf property by long use is a matter of evidence. The test is whether the property has been used for public religious worship by those professing the Islamic faith. The evidentiary threshold is high, in most cases requiring evidence of public worship at the property in question since time immemorial. In **Faqir Mohamad Shah**, it was admitted that the old mosque was waqf property. The court subsequently examined

the evidence on record to determine whether the structures forming the new mosque 'built on property adjoining the 'old mosque' had also been used for public religious worship. It is on this basis that this Court held portions of the 'new mosque', in conjunction with the 'old mosque', to be a composite waqf property." (Emphasis Supplied)

6. BECAUSE the proposed Bill unjustly undermines the **well-settled doctrine of Waqf by User**, which has been consistently upheld by the Hon'ble Supreme Court as a fundamental principle in Waqf law. The omission of Section 3(r) from the principal Act is not only contrary to established judicial precedents but also sets a dangerous precedent for the arbitrary exclusion of long-recognized religious rights. Moreover, the Joint Parliamentary Committee (JPC) has acknowledged that the effect of the deleted provision will apply prospectively, except in cases where disputes already exist. However, this additional proviso opens the floodgates to frivolous litigation, placing an unjust burden on individuals seeking to protect their legitimate rights over Waqf properties. Such an unnecessary amendment encroaches upon rights guaranteed under Article 300A of the Constitution, which ensures the protection of property rights.
7. BECAUSE the omission is not merely unnecessary but arbitrary, as it jeopardizes vast tracts of Waqf property that have historically served religious and charitable purposes for the Muslim community and other non-

Muslim communities as well. It is particularly concerning that other Non-Muslim institutions continue to exercise similar provisions, while only the Muslim minority's rights stand to be diluted through this legislative change. This selective amendment of Waqf property sets a dangerous and discriminatory precedent, undermining the fundamental principles of equality, religious freedom, and protection of minority rights constantly reiterated in the Constituent Assembly and in the postcolonial constitution. To uphold the validity and sanctity of judicial precedent and to protect the constitutional rights of the Muslim community, the omission of Waqf by User and the Act itself must be reconsidered. A failure to do so risks disrupting centuries of religious and community-based endowments, further alienating a significant section of Indian society.

8. BECAUSE the Joint Parliamentary Committee Recommendation clarifies the position of Waqf by User that, *“Regarding the amendments proposed in the definition of waqf, the Committee have observed that the proposed omission of ‘waqf by user’ through Clause 3(ix) (b) of the Amending Bill, have created apprehensions among various stakeholders and the Muslim community at large regarding the status of the existing ‘waqf by user’ which largely includes properties used for religious purposes. The Committee, in order to evade such apprehensions propose that a proviso clearly specifying*

that the omission of ‘waqf by user’ from the definition of the waqf will apply prospectively, that is, the cases of existing waqf properties already registered as ‘waqf by user’ will not be reopened and will remain as waqf properties, even if they do not have a waqf deed. This would however be subject to the condition that the property wholly or in part must not be involved in a dispute or be a government property. Accordingly, the following amendment to Clause 3(ix) is proposed: “(e) the following proviso shall be inserted, namely: - “Provided that the existing waqf by user properties registered on or before the commencement of Waqf (Amendment) Act, 2024 as waqf by user will remain as waqf properties except that the property, wholly or in part, is in dispute or is a government property.”

9. The exclusion of disputed properties from recognition as waqf will escalate frivolous litigation by individuals or entities seeking to challenge existing waqf claims. Disputes over waqf properties will arise drastically, leading to prolonged legal battles and uncertainty over religious properties. By excluding government properties, the amendment allows the state to take over lands previously recognized as waqf by user. This could affect mosques, *dargahs*, graveyards, and religious institutions built on lands now considered “government property.” There is also a risk of arbitrary classification of waqf lands as government property to facilitate acquisition.

The amendment undermines the long-standing doctrine by placing additional conditions on recognition. Historically, waqf properties were determined by continuous religious use, not by formal deeds or ownership records. This sudden shift in legal interpretation will weaken the waqf system in a nutshell. **The Sachar Committee Report (2006) already highlighted the socio-economic disadvantages faced by Muslims.** If waqf properties are excluded based on government claims or disputes, it will lead to a systematic decrease in religious and community assets available for the Muslim community.

A copy of the relevant portion of the Sachar Committee Report is attached as **Annexure P-2 at page no. to)**

Consequently, the Waqf Board will face operational difficulties in protecting or managing Waqf properties that were once waqf by user. It will require new documentation, legal verification, or government approvals, slowing down its role in safeguarding religious assets. While the amendment attempts to clarify the status of existing waqf by user properties, the conditions attached will lead to increased disputes, potential government takeovers, and a dilution of waqf rights, in addition to the restriction of religious freedom and minority rights embedded in the Constitution.

10. That in view of the above it is in the interest of justice and equity, the Petitioner seeks to pray following directions from this Hon'ble Court under Article 32 of the Constitution.

PRAYER

In the circumstances it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Issue a writ or direction declaring the Unified Waqf Management, Empowerment, Efficiency and Development (UMEED) Bill, 2024 to be in violation of Article 14, 25, 26 and 300A of the Constitution and striking down the same.
- b. Issue a writ or direction declaring that the Unified Waqf Management, Empowerment, Efficiency and Development (UMEED) Bill, 2024 is unconstitutional, being in violation of the Part III of the Indian Constitution.
- c. Pass such other and further order/orders as are deemed fit and proper in the facts and circumstances of the case.

FOR WHICH ACT OF KINDNESS, THE PETITIONER SHALL AS INDUTY BOUND, EVER PRAY

Drawn By

Taqdees Fatima
Advocate
Atul Yadav
Advocate
New Delhi

Filed By



Adeel Ahmed
Advocate for the Petitioner

Filed On: 05/04/2025

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
WRIT PETITION (CIVIL) NO..... OF 2025

IN THE MATTER OF:

Association for Protection of Civil Rights

Through its authorized representative

Malik Mohtasim Khan

....Petitioner

Versus

Union of India & Ors.

....Respondents

AFFIDAVIT

I, Malik Mohtasim Khan working as General Secretary of Association for

Protection of Civil Rights its registered address at

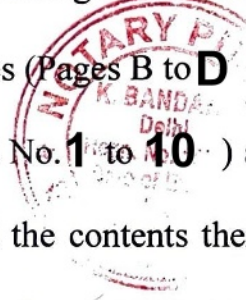
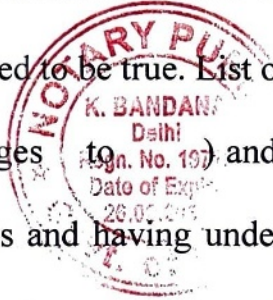
as

presently at New Delhi do hereby solemnly affirm and state as under:-

1. That I am the authorized Authorized Signatory of the above mentioned Petitioner organization and am well conversant with the facts and circumstances of the present case.
2. That the petitioner organisation as well as its authorized representative does not have any personal gain, private motive, or oblique reason in filing the present Public interest Litigation.



2. I say that the facts stated therein are true to my knowledge based on record of the case, which is believed to be true. List of Dates (Pages B to **D**), Writ Petition with Affidavit (Pages **to**) and (Para No. **1** to **10**) and the I.As and Misc. applications and having understood the contents there of, I say that the facts stated therein are true to my knowledge and belief based on record of the case, which is believed to be true.



IDENTIFIED
VERIFICATION

05 APR 2025

DEPONENT

Verified at New Delhi on this the 5 day of April, 2025 that the contents of the aforesaid affidavit are true to my knowledge based on the record of the case, no part of it is false and nothing material has been concealed there from.



ATTESTED
NOTARY PUBLIC

DEPONENT

ANNEXURE P-1**Bill No. 109 of 2024****THE WAQF (AMENDMENT) BILL, 2024**

A

BILL

further to amend the Waqf Act, 1995.

BE it enacted by Parliament in the Seventy-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Waqf (Amendment) Act, 2024.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

43 of 1995.

2. In section 1 of the Waqf Act, 1995 (hereinafter referred to as the principal Act), in sub-section (1), for the word “Waqf”, the words “Unified Waqf Management, Empowerment, Efficiency and Development” shall be substituted.

Amendment of section 1.

Amendment of
section 3.

3. In section 3 of the principal Act,—

(i) after clause (a), the following clause shall be inserted, namely:—

‘(aa) “Aghakhani waqf” means a waqf dedicated by an Aghakhani waqif;’;

(ii) after clause (c), the following clause shall be inserted, namely:— 5

‘(ca) “Bohra waqf” means a waqf dedicated by a Bohra waqif;’;

(iii) after clause (d), the following clause shall be inserted, namely:—

‘(da) “Collector” includes the Collector of land-revenue of a district, or the Deputy Commissioner, or any officer not below the rank of Deputy Collector authorised in writing by the Collector;’; 10

(iv) after clause (f), the following clauses shall be inserted, namely:—

‘(fa) “Government Organisation” includes the Central Government, State Governments, Municipalities, Panchayats, attached and subordinate offices and autonomous bodies of the Central Government or State Government, or any organisation or Institution 15 owned and controlled by the Central Government or State Government;

‘(fb) “Government property” means movable or immovable property or any part thereof, belonging to a Government Organisation;’; 20

(v) in clause (i), the words “, either verbally or” shall be omitted;

(vi) after clause (k), the following clause shall be inserted, namely:—

‘(ka) “portal and database” means the waqf asset management system or any other system set up by the Central Government for the registration, accounts, audit and any other detail of waqf and the Board, as may be prescribed by the Central Government;’; 25

(vii) for clause (l), the following clause shall be substituted, namely:—

‘(l) “prescribed”, means prescribed by rules made under this Act;’; 30

(viii) clause (p) shall be omitted;

(ix) in clause (r),—

(a) in the opening portion, for the words “any person, of any movable or immovable property”, the words “any person practising Islam for at least five years, of any movable or immovable property, having ownership of such property,” shall be substituted; 35

(b) sub-clause (i) shall be omitted;

(c) in sub-clause (iv), after the word “welfare”, the words “, maintenance of widow, divorced woman and orphan in such manner, as may be prescribed by the Central Government,” shall be inserted; 40

(d) in the long line, for the words “any person”, the words “any such person” shall be substituted.

Insertion of new
sections 3A, 3B
and 3C.

4. After section 3 of the principal Act, the following sections shall be inserted, namely:—

“3A. (1) No person shall create a waqf unless he is the lawful owner of the property and competent to transfer or dedicate such property.

Certain conditions of waqf.

(2) The creation of a waqf-alal-aulad shall not result in denial of inheritance rights of heirs, including women heirs, of the waqif.

5 3B. (1) Every waqf registered under this Act, prior to the commencement of the Waqf (Amendment) Act, 2024, shall file the details of the waqf and the property dedicated to the waqf on the portal and database, within a period of six months from such commencement.

Filing of details of waqf on portal and database.

10 (2) The details of the waqf under sub-section (1), amongst other information, shall include the following, namely:—

(a) the identification and boundaries of waqf properties, their use and occupier;

(b) the name and address of the creator of the waqf, mode and date of such creation;

15 (c) the deed of waqf, if available;

(d) the present mutawalli and its management;

(e) the gross annual income from such waqf properties;

(f) the amount of land revenue, cesses, rates and taxes annually payable in respect of the waqf properties;

20 (g) an estimate of the expenses annually incurred in the realisation of the income of the waqf properties;

(h) the amount set apart under the waqf for—

(i) the salary of the mutawalli and allowances to the individuals;

25 (ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(i) details of court cases, if any, involving such waqf property;

30 (j) any other particular as may be prescribed by the Central Government.

3C. (1) Any Government property identified or declared as waqf property, before or after the commencement of this Act, shall not be deemed to be a waqf property.

Wrongful declaration of waqf.

35 (2) If any question arises as to whether any such property is a Government property, the same shall be referred to the Collector having jurisdiction who shall make such inquiry as he deems fit, and determine whether such property is a Government property or not and submit his report to the State Government:

40 Provided that such property shall not be treated as waqf property till the Collector submits his report.

(3) In case the Collector determines the property to be a Government property, he shall make necessary corrections in revenue records and submit a report in this regard to the State Government.

45 (4) The State Government shall, on receipt of the report of the Collector, direct the Board to make appropriate correction in the records.”

Amendment of
section 4.

5. In section 4 of the principal Act,—

(a) for the marginal heading, the marginal heading “Survey of auqaf.” shall be substituted;

(b) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Any survey of auqaf pending before the Survey Commissioner, on the commencement of the Waqf (Amendment) Act, 2024, shall be transferred to the Collector having jurisdiction and the Collector shall make the survey in accordance with the procedure in the revenue laws of the State, from the stage such survey is transferred to the Collector, and submit his report to the State Government.”;

(c) sub-sections (1A), (2) and (3) shall be omitted;

(d) in sub-section (4), in the opening portion, for the words “Survey Commissioner”, the word “Collector” shall be substituted;

(e) in sub-section (5), after the words “Sunni waqf”, the words “or Aghakhani waqf or Bohra waqf” shall be inserted;

(f) sub-section (6) shall be omitted.

Amendment of
section 5.

6. In section 5 of the principal Act,—

(a) in sub-section (1), for the word, brackets and figure “sub-section (3)”, the word, brackets and figure “sub-section (1)” shall be substituted;

(b) in sub-section (2), after the words “Shia auqaf”, the words “or Aghakhani auqaf or Bohra auqaf” shall be inserted;

(c) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(2A) The State Government shall upload the notified list of auqaf on the portal and database within fifteen days from the date of its publication in the Official Gazette under sub-section (2).

(2B) The details of each waqf shall contain the identification, boundaries of waqf properties, their use and occupier, details of the creator, mode and date of such creation, purpose of waqf, their present mutawallis and management in such manner as may be prescribed by the Central Government.”;

(d) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The revenue authorities, before deciding mutation in the land records, in accordance with revenue laws in force, shall give a public notice of ninety days, in two daily newspapers circulating in the localities of such area of which one shall be in the regional language and give the affected persons an opportunity of being heard.”;

(e) in sub-section (4), after the words “time to time”, the words “on the portal and database” shall be inserted.

Amendment of
section 6.

7. In section 6 of the principal Act,—

(a) in sub-section (1),—

(i) after the words “Sunni waqf”, the words “or Aghakhani waqf or Bohra waqf” shall be inserted;

(ii) the words “and the decision of the Tribunal in respect of such matter shall be final” shall be omitted;

(iii) in the first proviso, for the words “one year”, the words “two years” shall be substituted;

(iv) the second proviso shall be omitted;

5 (b) in sub-section (3), for the words “Survey Commissioner”, the word “Collector” shall be substituted.

8. In section 7 of the principal Act, in sub-section (1),—

Amendment of section 7.

(i) after the words “Sunni waqf”, the words “or Aghakhani waqf or Bohra waqf” shall be inserted;

10 (ii) the words “and the decision of the Tribunal thereon shall be final” shall be omitted;

(iii) in the first proviso, for the words “one year” wherever they occur, the words “two years” shall be substituted;

(iv) in the second proviso, for the words “Provided further that”, the following shall be substituted, namely:—

15 “Provided further that an application may be entertained by the Tribunal after the period of two years specified in the first proviso, if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period:

Provided also that”.

20 9. In section 9 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment of section 9.

“(2) The Council shall consist of—

(a) the Union Minister in charge of waqf—Chairperson, *ex officio*;

25 (b) three Members of Parliament of whom two shall be from the House of the people and one from the Council of States;

(c) the following members to be appointed by the Central Government from amongst Muslims, namely:—

30 (i) three persons to represent Muslim organisations having all India character and national importance;

(ii) Chairpersons of three Boards by rotation;

(iii) one person to represent the mutawallis of the waqf having a gross annual income of five lakh rupees and above;

(iv) three persons who are eminent scholars in Muslim law;

35 (d) two persons who have been Judges of the Supreme Court or a High Court;

(e) one Advocate of national eminence;

40 (f) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine;

(g) Additional Secretary or Joint Secretary to the Government of India dealing with waqf matters in the Union Ministry or department—member, *ex officio*:

45 Provided that two of the members appointed under clause (c) shall be women:

Provided further that two members appointed under this sub-section shall be non-Muslim.”.

Amendment of
section 13.

10. In section 13 of the principal Act, for sub-section (2A), the following sub-section shall be substituted, namely:—

“(2A) The State Government may, if it deems necessary, by notification in the Official Gazette, establish a separate Board of Auqaf for Bohras and Aghakhani.”.

Amendment of
section 14.

11. In section 14 of the principal Act,—

(a) for sub-sections (1), (1A), (2), (3) and (4), the following sub-sections shall be substituted, namely:—

“(1) The Board for a State and the National Capital Territory of Delhi shall consist of, not more than eleven members, to be nominated by the State Government,—

(a) a Chairperson;

(b) (i) one Member of Parliament from the State or, as the case may be, the National Capital Territory of Delhi;

(ii) one Member of the State Legislature;

(c) the following members belonging to Muslim community, namely:—

(i) one mutawalli of the waqf having an annual income of one lakh rupees and above;

(ii) one eminent scholar of Islamic theology;

(iii) two or more elected members from the Municipalities or Panchayats:

Provided that in case there is no Muslim member available from any of the categories in sub-clauses (i) to (iii), additional members from category in sub-clause (iii) may be nominated;

(d) two persons who have professional experience in business management, social work, finance or revenue, agriculture and development activities;

(e) one officer of the State Government, not below the rank of Joint Secretary to that State Government;

(f) one Member of the Bar Council of the concerned State or Union territory:

Provided that two members of the Board appointed under clause (c) shall be women:

Provided further that two of total members of the Board appointed under this sub-section shall be non-Muslim:

Provided also that the Board shall have at least one member each from Shia, Sunni and other backward classes among Muslim Communities:

Provided also that one member each from Bohra and Aghakhani communities shall be nominated in the Board in case they have functional auqaf in the State or Union territory:

Provided also that the elected members of Board holding office on the commencement of the Waqf (Amendment) Act, 2024 shall continue to hold office as such until the expiry of their term of office.

5 (2) No Minister of the Central Government or, as the case may be, a State Government, shall be nominated as a member of the Board.

(3) In case of a Union territory, the Board shall consist of not less than five and not more than seven members to be nominated by the Central Government under sub-section (1).”;

10 (b) for sub-section (6), the following sub-section shall be substituted, namely:—

15 “(6) In determining the number of members belonging to Shia, Sunni, Bohra, Aghakhani or other backward classes among Muslim communities, the State Government or, as the case may be, the Central Government in case of a Union territory shall have regard to the number and value of Shia, Sunni, Bohra, Aghakhani and other backward classes among Muslim auqaf to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.”;

(c) sub-section (8) shall be omitted.

20 **12.** In section 16 of the principal Act, for clause (d), the following clause shall be substituted, namely:—

Amendment of section 16.

“(d) he has been convicted of any offence and sentenced to imprisonment for not less than two years”;

25 **13.** In section 17 of the principal Act, in sub-section (1), after the words “shall meet”, the words “at least once in every month” shall be inserted.

Amendment of section 17.

14. Section 20A of the principal Act shall be omitted.

Omission of section 20A.

15. In section 23 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment of section 23.

30 “(1) There shall be a full-time Chief Executive Officer 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.”.

16. In section 32 of the principal Act,—

Amendment of section 32.

(a) in sub-section (2), in clause (e), the *Explanation* and the proviso shall be omitted;

35 (b) in sub-section (3), the words “and the decision of the Tribunal thereon shall be final” shall be omitted.

17. In section 33 of the principal Act,—

Amendment of section 33.

40 (a) in sub-section (4), in the proviso, the words, brackets and figure “and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3)” shall be omitted;

(b) sub-section (6) shall be omitted.

18. In section 36 of the principal Act,—

Amendment of section 36.

45 (a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) On and from the commencement of the Waqf (Amendment) Act, 2024, no waqf shall be created without execution of a waqf deed.”;

(b) in sub-section (3),—

(i) in the opening portion, for the words “in such form and manner and at such place as the Board may by regulation provide”, the words “to the Board through the portal and database” shall be substituted;

(ii) for clause (f), the following clause shall be substituted, 5
namely:—

“(f) any other particulars as may be prescribed by the Central Government.”;

(c) in sub-section (4), the words “or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as 10
they are known to the applicant, of the origin, nature and objects of the waqf” shall be omitted;

(d) for sub-section (7), the following sub-sections shall be substituted, namely:—

“(7) On receipt of an application for registration, the Board shall 15
forward the application to the Collector having jurisdiction to inquire the genuineness and validity of the application and correctness of any particulars therein and submit a report to the Board:

Provided that if the application is made by any person other than the person administering the waqf, the Board shall, before registering 20
the waqf, give notice of the application to the person administering the waqf and shall hear him if he desires to be heard.

(7A) Where the Collector in his report mentions that the property, wholly or in part, is in dispute or is a Government property, the waqf in relation to such part of property shall not be registered, 25
unless the dispute is decided by a competent court.”;

(e) in sub-section (8), the proviso shall be omitted;

(f) after sub-section (8), the following sub-sections shall be inserted, namely:—

“(9) The Board, on registering a waqf, shall issue the certificate 30
of registration to the waqf through the portal and database.

(10) No suit, appeal or other legal proceeding for the enforcement of any right on behalf of any waqf which have not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after 35
expiry of a period of six months from the commencement of the Waqf (Amendment) Act, 2024.”.

Amendment of
section 37.

19. In section 37 of the principal Act,—

(a) in sub-section (1),—

(i) in the opening portion, after the word “particulars”, the words “in 40
such manner as prescribed by the Central Government” shall be inserted;

(ii) in clause (f), for the words “provided by regulations”, the words “prescribed by the Central Government” shall be substituted;

(b) in sub-section (3), after the words “land record office shall”, the words “before deciding mutation in the land records, in accordance with 45
revenue laws in force, shall give a public notice of ninety days, in two daily newspapers circulating in the localities of such area of which one shall be in the regional language and give the affected persons an opportunity of being heard, then” shall be substituted.

20. Section 40 of the principal Act shall be omitted.

Omission of section 40.

21. In section 46 of the principal Act, in sub-section (2),—

Amendment of section 46.

(a) for the word “July”, at both the places where it occurs, the word “October” shall be substituted;

5 (b) for the words “in such form and containing such particulars as may be provided by regulations by the Board of all moneys received”, the words “in such form and manner and containing such particulars as may be prescribed by the Central Government, of all moneys received from any source” shall be substituted.

10 22. In section 47 of the principal Act,—

Amendment of section 47.

(a) in sub-section (1),—

(i) in clause (a),—

(A) for the words “fifty thousand rupees”, the words “one lakh rupees” shall be substituted;

15 (B) after the words “appointed by the Board”, the following shall be inserted, namely:—

“from out of the panel of auditors prepared by the State Government:

20 Provided that the State Government shall, while preparing such panel of auditors, specify the remuneration to be paid to such auditors;”;

(ii) for clause (b), the following clause shall be substituted, namely:—

25 “(b) the accounts of the waqf having net annual income exceeding one lakh rupees shall be audited annually, by an auditor appointed by the Board from out of the panel of auditors as specified in clause (a);”;

(iii) in clause (c), the following proviso shall be inserted, namely:—

30 “Provided that the Central Government may, by order, direct the audit of any waqf at any time by an auditor appointed by the Comptroller and Auditor-General of India, or by any officer designated by the Central Government for that purpose.”;

35 (b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) On receipt of the report under sub-section (2), the Board shall publish the audit report in such manner as may be prescribed by the Central Government.”;

(c) in sub-section (3), both the provisos shall be omitted.

40 23. In section 48 of the principal Act,—

Amendment of section 48.

(a) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) The proceedings and orders of the Board under sub-section (1) shall be published in such manner as may be prescribed by the Central Government.”;

(b) in sub-section (3), the words, brackets and figure “and the Tribunal shall not have any power to stay the operation of the order made by the Board under sub-section (1)” shall be omitted;

(c) sub-section (4) shall be omitted.

Insertion of new section 50A.

24. After section 50 of the principal Act, the following section shall be inserted, namely:—

Disqualification of mutawalli.

“50A. A person shall not be qualified for being appointed, or for continuing as, a mutawalli, if he—

(a) is less than twenty-one years of age;

(b) is found to be a person of unsound mind;

(c) is an undischarged insolvent;

(d) has been convicted of any offence and sentenced to imprisonment for not less than two years;

(e) has been held guilty of encroachment on any waqf property;

(f) has been on a previous occasion—

(i) removed as a mutawalli; or

(ii) removed by an order of a competent court or Tribunal from any position of trust either for mismanagement or for corruption.”.

Amendment of section 52.

25. In section 52 of the principal Act, in sub-section (4), the words “and the decision of the Tribunal on such appeal shall be final” shall be omitted.

Amendment of section 52A.

26. In section 52A of the principal Act,—

(a) in sub-section (1),—

(i) for the words “rigorous imprisonment”, the word “imprisonment” shall be substituted;

(ii) in the proviso for the words “be vested in the Board”, the words “be reverted back to the waqf” shall be substituted;

(b) sub-section (2) shall be omitted;

(c) sub-section (4) shall be omitted.

Amendment of section 55A.

27. In section 55A of the principal Act, in sub-section (2), in the proviso, the words “and the decision of the Tribunal thereon shall be final” shall be omitted.

Amendment of section 61.

28. In section 61 of the principal Act,—

(a) in sub-section (1),—

(i) clauses (e) and (f) shall be omitted;

(ii) for the long line, the following shall be substituted, namely:—

“he shall, unless he satisfies the court or the Tribunal that there was reasonable cause for his failure, be punishable with a fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees.”;

5 (b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) If a mutawalli fails to—

(i) deliver possession of any waqf property, if ordered by the Board or the Tribunal;

10 (ii) carry out the directions of the Collector or the Board;

(iii) do any other act which he is lawfully required to do by or under this Act;

(iv) provide statement of accounts under section 46;

(v) upload the details of waqf under section 3B,

15 he shall be punishable with imprisonment for a term which may extend to six months and also with a fine which shall not be less than twenty thousand rupees but which may extend to one lakh rupees.”.

29. In section 64 of the principal Act,—

Amendment of section 64.

(a) in sub-section (1),—

20 (i) for clause (g), the following clause shall be substituted, namely:—

“(g) has failed, without reasonable excuse, to maintain regular accounts for one year or has failed to submit, within one year, the yearly statement of accounts, as required by section 46; or”;

25

(ii) after clause (k), the following clause shall be inserted, namely:—

“(l) is a member of any association which has been declared unlawful under the Unlawful Activities (Prevention) Act, 1967.”;

37 of 1967.

30

(b) in sub-section (4), the words “and the decision of the Tribunal on such appeal shall be final” shall be omitted.

30. In section 65 of the principal Act, in sub-section (3), for the words “As soon as possible”, the words “Within six months” shall be substituted.

Amendment of section 65.

35 **31.** In section 67 of the principal Act,—

Amendment of section 67.

(a) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) Any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal.”;

40

(b) in sub-section (6), in the second proviso, the words “and the order made by the Tribunal in such appeal shall be final” shall be omitted.

32. In section 69 of the principal Act,—

Amendment of section 69.

(a) in sub-section (3), the second proviso shall be omitted;

(b) in sub-section (4), the following proviso shall be inserted, namely:—

“Provided that no such order shall be made under this sub-section unless a written notice inviting objections from the person likely to be affected and general public, in such manner as may be prescribed by the State Government.”.

Amendment of section 72.

33. In section 72 of the principal Act,—

(a) in sub-section (1), for the words “seven per cent.”, the words “five per cent.” shall be substituted;

(b) in sub-section (7), the words “and the decision of the Board thereon shall be final” shall be omitted.

Amendment of section 73.

34. In section 73 of the principal Act, in sub-section (3), the words “and the decision of the Tribunal on such appeal shall be final” shall be omitted.

Amendment of section 83.

35. In section 83 of the principal Act,—

(a) in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that any other Tribunal may, by notification, be declared as the Tribunal for the purposes of this Act.”;

(b) in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that if there is no Tribunal or the Tribunal is not functioning, any aggrieved person may appeal to the High Court directly.”;

(c) for sub-section (4), the following shall be substituted, namely:—

“(4) Every Tribunal shall consist of two members—

(a) one person, who is or has been a District Judge, who shall be the Chairman; and

(b) one person, who is or has been an officer equivalent in the rank of Joint Secretary to the State Government—member:

Provided that in case of absence of a member, Chairman of the bench may exercise the jurisdiction, powers and authority of the Tribunal:

Provided further that a Tribunal established under this Act, prior to the commencement of the Waqf (Amendment) Act, 2024, shall continue to function as such until the expiry of the term of office of the Chairman and the members thereof under this Act.”;

(d) in sub-section (4A), the following proviso shall be inserted, namely:—

“Provided that tenure of the Chairman and the member shall be five years from the date of appointment or until they attain the age of sixty-five years, whichever is earlier.”;

(e) in sub-section (7), the words “final and” shall be omitted;

(f) for sub-section (9), the following sub-section shall be substituted, namely:—

“(9) Any person aggrieved by the order of the Tribunal, may appeal to the High Court within a period of ninety days from the date of receipt of the order of the Tribunal.”.

36. In section 84 of the principal Act,—

Amendment of
section 84.

(a) after the words “decision in writing”, the words “within six months from the date of application” shall be inserted;

(b) the following proviso shall be inserted, namely:—

5 “Provided that if the matter is not decided within six months, the Tribunal may decide the matter within a further period of six months for the reasons to be recorded in writing as to why the matter was not decided within the said period of six months.”.

37. In section 91 of the principal Act,—

Amendment of
section 91.

10 (a) in sub-section (1),—

1 of 1894.

(i) for the words and figures “the Land Acquisition Act, 1894”, the words and figures “the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” shall be substituted;

30 of 2013.

15 (ii) for the words “three months”, the words “one month” shall be substituted;

1 of 1894.

(b) in sub-section (3), for the words and figures “under section 31 or section 32 of the Land Acquisition Act, 1894”, the words and figures “under section 77 or section 78 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” shall be substituted;

30 of 2013.

20

(c) in sub-section (4),—

1 of 1894.

25 (i) for the words and figures “under section 31 or section 32 of the Land Acquisition Act, 1894”, the words and figures “under section 77 or section 78 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” shall be substituted;

30 of 2013.

30 (ii) for the words “shall be declared void if the Board”, the words “shall be kept in abeyance relating to portion of the property claimed by the Board, if the Board” shall be substituted;

(iii) the following proviso shall be inserted, namely:—

“Provided that the Collector after hearing the parties concerned shall make the order within one month of the application of the Board.”.

35 **38.** In section 100 of the principal Act, for the words “Survey Commissioner”, the word “Collector” shall be substituted.

Amendment of
section 100.

39. In section 101 of the principal Act, in the marginal heading and in sub-section (1), for the words “Survey Commissioner” occurring at both the places, the word “Collector” shall be substituted.

Amendment of
section 101.

40 **40.** Section 104 of the principal Act shall be omitted.

Omission of
section 104.

41. Sections 107, 108 and 108A of the principal Act shall be omitted.

Omission of
sections 107,
108 and 108A.

42. After section 108A as so omitted of the principal Act, the following section shall be inserted, namely:—

Insertion of new
section 108B.

45 “108B. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power of Central
Government to
make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, the Central Government may make rules for all or any of the following matters, namely:—

(a) the waqf asset management system for the registration, accounts, audit and other details of waqf and Board under clause (ka), 5 and the manner of payments for maintenance of widow, divorced woman and orphan under sub-clause (iv) of clause (r), of section 3;

(b) any other particulars under clause (j) of sub-section (2) of section 3B;

(c) the manner in which details of waqf to be uploaded under 10 sub-section (2B) of section 5;

(d) any other particulars under clause (f) of sub-section (3) of section 36;

(e) the manner in which the Board shall maintain the register of auqaf under sub-section (I) of section 37; 15

(f) such other particulars to be contained in the register of auqaf under clause (f) of sub-section (I) of section 37;

(g) form and manner and particulars of the statement of accounts under sub-section (2) of section 46;

(h) the manner for publishing audit report under sub-section (2A) 20 of section 47;

(i) the manner of publication of proceedings and orders of Board under sub-section (2A) of section 48;

(j) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall 25 be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any 30 modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously 35 done under that rule.”

Amendment of section 109.

43. In section 109 of the principal Act, in sub-section (2),—

(a) clause (ia) shall be omitted;

(b) clause (iv) shall be omitted;

(c) in clauses (via) and (vib), for the word and figures “section 31” at both the places where they occur, the word and figures “section 29” shall be 40 substituted;

(d) after clause (xviii), the following clause shall be inserted, namely:—

“(xviiiia) the manner of giving notice inviting objections under proviso to sub-section (4) of section 69;”.

Amendment of section 110.

44. In section 110 of the principal Act, in sub-section (2), clauses (f) and (g) 45 shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Waqf Act, 1995, was enacted to provide for the better administration of Auqaf and for matters connected therewith or incidental thereto. However, during the course of implementation of the Act, it is felt that the Act has not proved effective in improving the administration of auqaf.

2. Based on the recommendations of the High-Level Committee under the chairmanship of Justice (Retired) Rajinder Sachar and the Report of the Joint Parliamentary Committee on Waqf and Central Waqf Council and after having detailed consultation with other stakeholders, comprehensive amendments were made in the Act in the year 2013. Despite the amendments, it has been observed that the Act still requires further improvement to effectively address issues related to the powers of the State Waqf Boards, registration and survey of waqf properties, removal of encroachments, including the definition of the “waqf” itself.

3. In view of the above, it has been felt necessary to amend the said Act with the aim to overcome the shortcomings and to enhance the efficiency of the administration and management of the waqf properties. Therefore, it is proposed to introduce in Parliament a Bill which seeks to address these issues comprehensively and achieve the intended objectives for effective management, empowerment, and development of waqf properties. The Bill, *inter alia*, provides for the followings, namely:—

(a) renaming of the Waqf Act, 1995 as the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995;

(b) clearly define “waqf” as waqf by any person practicing Islam for at least five years and having ownership of such property;

(c) ensuring that the creation of waqf-alal-aulad does not lead to the denial of inheritance rights to women;

(d) omitting the provisions relating to the “waqf by user”;

(e) providing the functions of the Survey Commissioner to the Collector or any other officer not below the rank of Deputy Collector duly nominated by the Collector for the survey of waqf properties;

(f) providing for a broad based composition of the Central Waqf Council and the State Waqf Boards and ensuring the representation of Muslim women and non-Muslims;

(g) providing for establishment of separate Board of Auqaf for Boharas and Aghakhani;

(h) providing for representation of Shia, Sunni, Bohra, Agakhani and other backward classes among Muslim communities;

(i) streamlining the manner of registration of waqfs through a central portal and database;

(j) providing for a detailed procedure for mutation as per revenue laws with due notice to all concerned before recording any property as waqf property;

(k) omitting section 40 relating to the powers of Board to decide if a property is waqf property;

(l) decreasing the annual contribution from seven per cent. to five per cent. payable to the Board by mutawalli of every waqf having the net annual income of not less than five thousand rupees;

(m) providing for filing of accounts of waqf by mutawallis to the Board through a central portal for better control over their activities;

(n) reforming the Tribunal structure with two members and providing for appeals against the orders of the Tribunal to the High Court within a specified period of ninety days;

(o) omission of section 107 so as to make the Limitation Act, 1963 applicable to any action under the Act; and omission of sections 108 and 108A relating to special provision as to evacuee waqf properties and Act to have overriding effect.

4. The notes on clauses explain the various provisions of the Bill.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;

The 6th August, 2024.

KIREN RIJJU.

Notes on Clauses

Clause 1 of the Bill seeks to provide for short title and commencement of the proposed legislation.

Clause 2 of the Bill seeks to amend section 1 relating to short title and commencement so as to amend the short title of the Act from “the Waqf Act, 1995”, to “the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995”.

Clause 3 of the Bill seeks to amend section 3 relating to definition so as to amend and substitute some definitions and provide new definitions in section 3, such as Aghakhani waqf, Bohra waqf, Collector, Government Organisation, Government property, etc.

Clause 4 of the Bill seeks to insert new sections 3A, 3B and 3C relating to certain conditions of waqf, filing of details of waqf on portal and database; and wrongful declaration of waqf. It provides for certain conditions of waqf, filing of details of waqf on portal and database and prevention of wrongful declaration of waqf.

Clause 5 of the Bill seeks to substitute section 4 relating to preliminary survey of waqf to replace the Collector in place of the Survey Officers, so as to confer powers upon the Collector to make the survey in accordance with the procedure in revenue laws of the State.

Clause 6 of the Bill seeks to amend section 5 relating to publication of list of auqaf so as to insert new sub-sections (2A) and (2B) to provide uploading of the notified list of auqaf on the portal and database within fifteen days. It further substitutes sub-section (3) which provides for making public notice of ninety days before deciding mutation of land records.

Clause 7 of the Bill seeks to amend section 6 relating to disputes regarding auqaf so as to insert the words “Aghakhani waqf or Bohra waqf” after the words “Sunni waqf”; and to omit that the expression “and the decision of the Tribunal in respect of such matter shall be final”.

Clause 8 of the Bill seeks to amend section 7 relating to power of Tribunal to determine disputes regarding auqaf so as to include therein Aghakhani waqf or Bohra waqf; and to omit that the expression “and the decision of the Tribunal in respect of such matter shall be final”.

Clause 9 of the Bill seeks to amend section 9 relating to establishment and constitution of Central Waqf Council so as to provide the composition broad-based by making provision for including two members from non-Muslim community.

Clause 10 of the Bill seeks to amend section 13 relating to incorporation so as to provide the establishment of a separate Board of Auqaf for Bohras and Aghakhanis if deemed necessary.

Clause 11 of the Bill seeks to amend section 14 relating to composition of Board so as to make the composition of the State Waqf Board broad-based *inter alia* making provisions for two members from non-Muslim community.

Clause 12 of the Bill seeks to amend section 16 relating to disqualification for being appointed, or for continuing as, member of the Board so as to include the conviction of two years imprisonment and more for any offence as a ground for disqualification.

Clause 13 of the Bill seeks to amend section 17 relating to meeting of Board so as to provide that the meeting of the Board to be held at least once in every month.

Clause 14 of the Bill seeks to omit section 20A relating to removal of Chairperson by vote of no confidence.

Clause 15 of the Bill seeks to amend section 23 relating to appointment of Chief Executive Officer and his term of office and other conditions of service so as to provide the Chief Executive Officer is to be not below the rank of Joint Secretary to the State Government and omit the requirement of him being a Muslim.

Clause 16 of the Bill seeks to amend section 32 relating to powers and function of the Board to omit *Explanation* and proviso to clause (e) in sub-section (2) to provide for giving of opportunity of being heard to the party affected; and to omit in sub-section (3) the expression “and the decision of the Tribunal in respect of such matter shall be final”.

Clause 17 of the Bill seeks to amend section 33 relating to powers of inspection by Chief Executive Officer or person authorised by him so as to omit in the words in the proviso in sub-section (4) of section 33 related to “and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3)”; and to omit sub-section (6).

Clause 18 of the Bill seeks to amend section 36 relating to registration to provide that after the commencement of the proposed legislation, no waqf shall be created without execution of a waqf deed.

Clause 19 of the Bill seeks to amend section 37 relating to register of auqaf providing for the maintenance of register of auqaf by the Board in the prescribed manner.

Clause 20 of the Bill seeks to omit section 40 related to “Decision if a property is waqf property”.

Clause 21 of the Bill seeks to amend section 46 relating to submission of account of auqaf.

Clause 22 of the Bill seeks to amend section 47 relating to audit of account of auqaf so as to substitute the expression “one lakh rupees” in place of “fifty thousand rupees”.

Clause 23 of the Bill seeks to amend section 48 relating to Board to pass orders on auditors report to provide that the proceedings and orders of the Board shall be published in such manner as may be prescribed by the Central Government.

Clause 24 of the Bill seeks to insert new section 50A relating to “Disqualification of Mutawalli”.

Clause 25 of the Bill seeks to amend section 52 relating to recovery of waqf property transferred in contravention of section 51 so as to omit the words in sub-section (4) related to decision of Tribunal on such appeal shall be final.

Clause 26 of the Bill seeks to amend section 52A relating to penalty for alienation of waqf property without sanction of Board provide for imprisonment instead of rigorous imprisonment; and to omit sub-sections (2) and (4) related to offence being cognizable and non-bailable .

Clause 27 of the Bill seeks to amend section 55A relating to disposal of property left on waqf property by unauthorised occupants.

Clause 28 of the Bill seeks to amend section 61 related to penalties *inter alia* to provide penalty to be twenty thousand rupees which may extend to one lakh rupees for certain failure by the mutawallis.

Clause 29 of the Bill seeks to amend section 64 relating to removal of Mutawalli as so to provide that if without reasonable cause fails to maintain regular accounts for one year instead of two years or fail to submit within one year instead of in consecutive two years; and to provide further that the Mutawalli shall be removed if is a member of any association which has been declared unlawful under the Unlawful Activities (Prevention) Act, 1967; and also to omit the words that the decision of the Tribunal on such appeal shall be final.

Clause 30 of the Bill seeks to amend section 65 relating to assumption of direct management of certain auqaf by the Board for submitting report by the Board within a period of six months.

Clause 31 of the Bill seeks to amend section 67 relating to supervision and supersession of committee of management to provide that aggrieved person may within sixty days of the order of the Board appeal to the Tribunal; and to omit the words relating of the finality of order made by the Tribunal.

Clause 32 of the Bill seeks to amend section 69 related to power of Board to frame scheme for administration of waqf so as to omit sub-section (3) and insert a proviso in sub-section (4) that no such order shall be made under this sub-section unless a written notice inviting objections from the person likely to be affected and general public, in such manner as may be prescribed by the State Government.

Clause 33 of the Bill seeks to section 72 relating to annual contribution payable to Board replacing the contribution to five per cent. in place of seven per cent.

Clause 34 of the Bill seeks to amend section 73 related to power of Chief Executive Officer to direct banks or other person to make payments and to omit the expression “and the decision of the Tribunal on such appeal shall be final”.

Clause 35 of the Bill seeks to amend section 83 relating to constitution of Tribunals, etc., so as to modify the composition of the Tribunal; and provide that if there is no Tribunal or the Tribunal is not functioning, any aggrieved person may appeal to the High Court directly; and to further provide that in absence of one member, the Chairman of the bench may exercise the jurisdiction, powers and authority of the Tribunal. It also provides that the Tribunals already existing prior to the commencement of proposed legislation shall continue to function till the expiry of the term of office. It also provides that the tenure of the Chairman and member to be for five years from the date of appointment or until the age of sixty-five years, whichever is earlier. It also provides the appeal to High Court within ninety days from the date of order of Tribunal.

Clause 36 of the bill seeks to amend section 84 relating to Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision. It provide that if the matter is not decided within six months, the Tribunal may decide the matter within a further period of six months for the reasons to be recorded in writing as to why the matter was not decided within the said period of six months.

Clause 37 of the Bill seeks to amend section 91 relating to proceedings under Land Acquisition Act 1 of 1894 so as to substitute the reference of the Land Acquisition Act with the reference of “the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”; and to substitute the period of “three months” with the period of “one month”.

Clause 38 of the Bill seeks to amend section 100 relating to protection of action taken in good faith so as to include within its scope the Collector in place of Survey Commissioner.

Clause 39 of the Bill seeks to amend section 101 relating to Survey Commission, members and officers of the Board deemed to be public servant so as to include within its scope the Collector in place of Survey Commissioner.

Clause 40 of the Bill seeks to omit section 104 related to application of Act to properties given or donated by persons not professing Islam.

Clause 41 of the Bill seeks to omit sections 107, 108 and 108A relating to Act 36 of 1963 not to apply for recovery of waqf properties; special provision as to evacuee properties; Act to have overriding effect.

Clause 42 of the Bill seeks to insert new section 108B relating to power of Central Government to make rules.

Clause 43 of the Bill seeks to amend section 109 relating to power to make rules.

Clause 44 of the Bill seeks to amend section 110 relating to powers to make regulations by the Board.

FINANCIAL MEMORANDUM

The Bill, if enacted, would not involve any financial expenditure either recurring or non-recurring from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 41 of the Bill seeks to insert a new section 108A which confers power upon the Central Government to make rules. The matters on which rules may be made, *inter alia*, relate to—(a) the waqf asset management system for the registration, accounts, audit and other details of waqf and Board under clause (ka), and the manner of payments for maintenance of widow, divorced woman and orphan under sub-clause (iv) of clause (r), of section 3; (b) any other particulars under clause (j) of sub-section (2) of section 3B; (c) the manner in which details of waqf to be uploaded under sub-section (2A) of section 5; (d) any other particulars under clause (f) of sub-section (3) of section 36; (e) the manner in which the Board shall maintain the register of auqaf under sub-section (1) of section 37; (f) such other particulars to be contained in the register of auqaf under clause (f) of sub-section (1) of section 37; (g) form and manner and particulars of the statement of accounts under sub-section (2) of section 46; (h) the manner for publishing audit report under sub-section (2A) of section 47; (i) the manner of publication of proceedings and orders of Board under sub-section (2A) of section 48; and (j) any other matter which is required to be, or may be, prescribed.

2. The rules made by the Central Government under section 108A of the Act, shall be laid as soon as they are made, before each House of Parliament.

3. The matters in respect of which rules may be made are matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE
EXTRACTS FROM THE WAQF ACT, 1995
(43 OF 1995)

* * * * *

CHAPTER I

PRELIMINARY

1. (I) This Act may be called the Waqf Act, 1995.

* * * * *

3. In this Act, unless the context otherwise requires,—

* * * * *

(i) “mutawalli” means any person appointed, either verbally or under any deed or instrument by which a waqf has been created, or by a competent authority, to be the mutawalli of a waqf and includes any person who is a mutawalli of a waqf by virtue of any custom or who is a naib-mutawalli, khandim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being, managing or administering any waqf or waqf property:

Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office-bearer of such committee or corporation:

Provided further that the mutawalli shall be a citizen of India and shall fulfil such other qualifications as may be prescribed:

Provided also that in case a waqf has specified any qualifications, such qualifications may be provided in the rules as may be made by the State Government;

* * * * *

(l) “prescribed”, except in Chapter III, means prescribed by rules made by the State Governments;

* * * * *

(p) “Survey Commissioner” means the Survey Commissioner of Waqf appointed under sub-section (1) of section 4 and includes any Additional or Assistant Survey Commissioners of Auqaf under sub-section (2) of section 4;

* * * * *

(r) “waqf” means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

(i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;

* * * * *

(iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law,

and “waqif” means any person making such dedication;

* * * * *

Short title,
extent and
commencement.
Definitions.

CHAPTER II

SURVEY OF AUQAF

Preliminary
survey of auqaf.

4. (1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Auqaf and as many Additional or Assistant Survey Commissioners of Auqaf as may be necessary for the purpose of making a survey of auqaf in the State.

(1A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013, in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:

27 of 2013.

Provided that where no Survey Commissioner of Waqf has been appointed, a Survey Commissioner for auqaf shall be appointed within three months from the date of such commencement.

(2) All Additional and Assistant Survey Commissioner of Auqaf shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Auqaf.

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of auqaf existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:—

(a) the number of auqaf in the State showing the Shia auqaf and Sunni auqaf separately;

(b) the nature and objects of each waqf;

(c) the gross income of the property comprised in each waqf;

(d) the amount of land revenue, cesses, rates and taxes payable in respect of each waqf;

(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each waqf; and

(f) such other particulars relating to each waqf as may be prescribed.

(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

5 of 1908.

(a) summoning and examining any witness;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record from any court or office;

(d) issuing commissions for the examination of any witness or accounts;

(e) making any local inspection or local investigation;

(f) such other matters as may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular waqf is a Shia waqf or Sunni waqf and there are clear indications in the deed of waqf as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of waqf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of ten years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3):

Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.

5. (1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.

Publication of list of auqaf.

(2) The Board shall examine the report forwarded to it under sub-section (1) and forward it back to the Government within a period of six months for publication in the Official Gazette a list of Sunni auqaf or Shia auqaf in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

(3) The revenue authorities shall—

(i) include the list of auqaf referred to in sub-section (2), while updating the land records; and

(ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records.

(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.

6. (1) If any question arises whether a particular property specified as waqf property in the list of auqaf is waqf property or not or whether a waqf specified in such list is a Shia waqf or Sunni waqf, the Board or the mutawalli of the waqf or any person aggrieved may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Disputes regarding auqaf.

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of auqaf:

Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.

* * * * *

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

* * * * *

7. (1) If, after the commencement of this Act, any question or dispute arises, whether a particular property specified as waqf property in a list of auqaf is waqf property or not, or whether a waqf specified in such list is a Shia waqf or a Sunni waqf, the Board or the mutawalli of the waqf, or any person aggrieved by the publication of the list of auqaf under section 5 therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Power of Tribunal to determine disputes regarding auqaf.

Provided that—

(a) in the case of the list of auqaf relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of auqaf; and

(b) in the case of the list of auqaf relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

* * * * *

CHAPTER III

CENTRAL WAQF COUNCIL

Establishment
and constitution
of Central Waqf
Council.

9. (1) * * * * *

(2) The Council shall consist of—

(a) the Union Minister in charge of waqf—*ex officio* Chairperson;

(b) the following members to be appointed by the Central Government from amongst Muslims, namely:—

(i) three persons to represent Muslim organisations having all India character and national importance;

(ii) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine;

(iii) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;

(iv) Chairpersons of three Boards by rotation;

(v) two persons who have been Judges of the Supreme Court or a High Court;

(vi) one Advocate of national eminence;

(vii) one person to represent the mutawallis of the waqf having a gross annual income of rupees five lakhs and above;

(viii) three persons who are eminent scholars in Muslim Law:

Provided that at least two of the members appointed under sub-clauses (i) to (viii) shall be women.

* * * * *

CHAPTER IV

ESTABLISHMENT OF BOARDS AND THEIR FUNCTIONS

Incorporation.

13. (1) * * * * *

(2A) Where a Board of Waqf is established under sub-section (2) of section 13, in the case of Shia waqf, the Members shall belong to the Shia Muslim and in the case of Sunni waqf, the Members shall belong to the Sunni Muslim.

* * * * *

Composition of
Board.

14. (1) The Board for a State and the National Capital Territory of Delhi shall consist of—

(a) a Chairperson;

(b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of—

(i) Muslim Members of Parliament from the State or, as the case may be, the National Capital Territory of Delhi;

(ii) Muslim Members of the State Legislature;

(iii) Muslim members of the Bar Council of the concerned State or Union territory:

Provided that in case there is no Muslim member of the Bar Council of a State or a Union territory, the State Government or the Union territory administration, as the case may be, may nominate any senior Muslim advocate from that State or the Union territory, and

(iv) mutawallis of the auqaf having an annual income of rupees one lakh and above.

Explanation I.—For the removal of doubts, it is hereby declared that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.

Explanation II.—For the removal of doubts it is hereby declared that in case a Muslim member ceases to be a Member of Parliament from the State or National Capital Territory of Delhi as referred to in sub-clause (i) of clause (b) or ceases to be a Member of the State Legislative Assembly as required under sub-clause (ii) of clause (b), such member shall be deemed to have vacated the office of the member of the Board for the State or National Capital Territory of Delhi, as the case may be, from the date from which such member ceased to be a Member of Parliament from the State or National Capital Territory of Delhi, or a Member of the State Legislative Assembly, as the case may be;

(c) one person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government;

(d) one person each from amongst Muslims, to be nominated by the State Government from recognised scholars in Shia and Sunni Islamic Theology;

(e) one person from amongst Muslims, to be nominated by the State Government from amongst the officers of the State Government not below the rank of Joint Secretary to the State Government;

(IA) No Minister of the Central Government or, as the case may be, a State Government, shall be elected or nominated as a member of the Board:

Provided that in case of a Union territory, the Board shall consist of not less than five and not more than seven members to be appointed by the Central Government from categories specified under sub-clauses (i) to (iv) of clause (b) or clauses (c) to (e) in sub-section (I):

Provided further that at least two Members appointed on the Board shall be women:

Provided also that in every case where the system of mutawalli exists, there shall be one mutawalli as the member of the Board.

(2) Election of the members specified in clause (b) of sub-section (I) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed:

Provided that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board:

Provided further that where there are no Muslim Members in any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the ex-Muslim Members of Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall constitute the electoral college.

(3) Notwithstanding anything contained in this section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.

(4) The number of elected members of the Board shall, at all times, be more than the nominated members of the Board except as provided under sub-section (3).

* * * * *

(6) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia auqaf and Sunni auqaf to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

* * * * *

(8) Whenever the Board is constituted or reconstituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

* * * * *

Disqualification for being appointed, or for continuing as, a member of the Board.

16. A person shall be disqualified for being appointed, or for continuing as, a member of the Board if—

* * * * *

(d) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

* * * * *

Meetings of the Board.

17. (1) The Board shall meet for the transaction of business at such time and places as may be provided by regulations.

* * * * *

Removal of Chairperson by vote of no confidence.

20A. Without prejudice to the provisions of section 20, the Chairperson of a Board may be removed by vote of no confidence in the following manner, namely:—

(a) no resolution expressing a vote of confidence or no confidence in any person elected as Chairperson of a Board shall be moved except in the manner prescribed and twelve months have not elapsed after the date of his election as a Chairperson and be removed except with the prior permission of the State Government;

(b) notice for no confidence shall be addressed to the State Government stating clearly the grounds on which such motion is proposed to be moved and shall be signed by at least half the total members of the Board;

(c) at least three members of the Board signing the notice of no confidence shall personally present to the State Government, the notice together with an affidavit signed by them to the effect that the signatures on no confidence motion are genuine and have been made by the signatories after hearing or reading the contents of the notice;

(d) on receipt of the notice of no confidence, as provided hereinabove, the State Government shall fix such time, date and place as may be considered suitable for holding a meeting for the purpose of the proposed no confidence motion:

Provided that at least fifteen days notice shall be given for such a meeting;

(e) notice for meeting under clause (d) shall also provide that in the event of no confidence motion being duly carried on or, election of the new Chairperson, as the case may be, shall also be held in the same meeting;

(f) the State Government shall also nominate a Gazetted Officer (other than an officer of the department which is concerned with the supervision and administration of the Board) to act as presiding officer of the meeting in which the resolution for no confidence shall be considered;

(g) the quorum for such a meeting of the Board shall be one-half of the total number of members of the Board;

(h) the resolution for no confidence shall be deemed to be carried out, if passed by a simple majority of the members present;

(i) if a resolution for no confidence is carried out, the Chairperson shall cease to hold office forthwith and shall be succeeded by his successor who shall be elected by another resolution in the same meeting;

(j) election of the new Chairperson shall be conducted under clause (i), in the meeting under the chairmanship of the said presiding officer referred to in clause (f), in the following manner, namely:—

(A) Chairperson shall be elected from amongst the elected members of the Board;

(B) nomination of candidates shall be proposed and seconded in the meeting itself and election after withdrawal, if any, shall be held by method of secret ballot;

(C) election shall be held by simple majority of the members present in the meeting and in case of equality of votes, the matter shall be decided by drawing of lots; and

(D) proceedings of the meeting shall be signed by the presiding officer;

(k) new Chairperson elected under clause (h) shall hold the office only up to the remainder of the term of the Chairperson removed by the resolution of no confidence; and

(l) if the motion for passing the resolution of no confidence fails for want of quorum or lack of requisite majority at the meeting, no subsequent meeting for considering the motion of no confidence shall be held within six months of the date of the previous meeting.

* * * * *

23. (1) There shall be a full-time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette, from a panel of two names suggested by the Board and who shall not be below the rank of Deputy Secretary to the State Government, and in case of non-availability of a Muslim officer of that rank, a Muslim officer of equivalent rank may be appointed on deputation.

Appointment of Chief Executive Officer and his term of office and other conditions of service.

* * * * *

Powers and
function of the
Board.

32. (1) * * * *

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be—

* * * *

(e) to direct—

(i) the utilisation of the surplus income of a waqf consistent with the objects of waqf;

(ii) in what manner the income of a waqf, the objects of which are not evident from any written instrument, shall be utilised;

(iii) in any case where any object of waqf has ceased to exist or has become incapable of achievement, that so much of the income of the waqf as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:

Provided that no direction shall be given under this clause without giving the parties affected, an opportunity of being heard.

Explanation.—For the purposes of this clause, the powers of the Board shall be exercised—

(i) in the case of a Sunni waqf, by the Sunni members of the Board only; and

(ii) in the case of a Shia waqf, by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;

* * * *

(3) Where the Board has settled any scheme of management under clause (d) or given any direction under clause (e) of sub-section (2), any person interested in the waqf or affected by such settlement or direction may institute a suit in a Tribunal for setting aside such settlement or directions and the decision of the Tribunal thereon shall be final.

* * * *

33. (1) * * * *

(4) A mutawalli or other person aggrieved by such order may, within thirty days of the receipt by him of the order, appeal to the Tribunal:

Provided that no such appeal shall be entertained by the Tribunal unless the appellant first deposits with the Chief Executive Officer the amount which has been determined under sub-section (3) as being payable by the appellant and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3).

* * * *

(6) The order made by the Tribunal under sub-section (5) shall be final.

* * * *

Powers of
inspection by
Chief Executive
Officer or
persons
authorised by
him.

CHAPTER V

REGISTRATION OF AUQAF

36. (1) * * * * * Registration.

(3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain the following particulars:—

* * * * *

(f) any other particulars provided by the Board by regulations.

(4) Every such application shall be accompanied by a copy of the waqf deed or if no such deed has been executed or a copy thereof can not be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the waqf.

* * * * *

(7) On receipt of an application for registration, the Board may, before the registration of the waqf make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the waqf property, the Board shall, before registering the waqf, give notice of the application to the person administering the waqf property and shall hear him if he desires to be heard.

(8) In the case of auqaf created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of auqaf created after such commencement, within three months from the date of the creation of the waqf:

Provided that where there is no Board at the time of creation of a waqf, such application will be made within three months from the date of establishment of the Board.

37. (1) The Board shall maintain a register of auqaf which shall contain in respect of each waqf copies of the waqf deeds, when available and the following particulars, namely:— Register of auqaf.

* * * * *

(f) such other particulars as may be provided by regulations.

* * * * *

(3) On receipt of the details as mentioned in sub-section (2), the land record office shall, according to established procedure, either make necessary entries in the land record or communicate, within a period of six months from the date of registration of waqf property under section 36, its objections to the Board.

* * * * *

40 (1) 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. Decision if a property is waqf property.

(2) The decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final.

(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 or under the Societies Registration Act, 1860 or under any other Act, is waqf property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is waqf property, call upon the trust or society, as the case may be, either to register such property under this Act as waqf property or show cause why such property should not be so registered:

2 of 1882.

21 of 1860.

Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.

(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.

Submission of
accounts of
auqaf.

46. (1) * * * * *

(2) Before the 1st day of July next, following the date on which the application referred to in section 36 has been made and thereafter before the 1st day of July in every year, every mutawalli of a waqf shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be provided by regulations by the Board, of all moneys received or expended by the mutawalli on behalf of the waqf during the period of twelve months ending on the 31st day of March, or, as the case may be, during that portion of the said period during which the provisions of this Act, have been applicable to the waqf:

Provided that the date on which the annual accounts are to be closed may be varied at the discretion of the Board.

Audit of
accounts of
auqaf.

47. (1) The accounts of auqaf submitted to the Board under section 46 shall be audited and examined in the following manner, namely:—

(a) in the case of a waqf having no income or a net annual income not exceeding fifty thousand rupees, the submission of a statement of accounts shall be a sufficient compliance with the provisions of section 46 and the accounts of two per cent. of such auqaf shall be audited annually by an auditor appointed by the Board;

(b) the accounts of the waqf having net annual income exceeding fifty thousand rupees shall be audited annually, or at such other intervals as may be prescribed, by an auditor appointed by the Board from out of the panel of auditors prepared by the State Government and while drawing up such panel of auditors, the State Government shall specify the scale of remuneration of auditors;

(c) the State Government may, under intimation to the Board, at any time cause the account of any waqf audited by the State Examiner of Local Funds or by any other officer designated for that purpose by that State Government.

* * * * *

(3) The cost of the audit of the accounts of a waqf shall be met from the funds of that waqf:

Provided that the remuneration of the auditors appointed from out of the panel drawn by the State Government in relation to auqaf having a net annual income of more than fifty thousand rupees shall be paid in accordance with the scale of remuneration specified by the State Government under clause (c) of sub-section (1):

Provided further that where the audit of the accounts of any waqf is made by the State Examiner of Local Funds or any other officer designated by the State Government in this behalf, the cost of such audit shall not exceed one and a half per cent. of the net annual income of such waqf and such costs shall be met from the funds of the auqaf concerned.

48. (1) * * * *

(3) No application made under sub-section (2) shall be entertained by the Tribunal unless the amount certified by the auditor under sub-section (2) of section 47 has first been deposited in the Tribunal and the Tribunal shall not have any power to stay the operation of the order made by the Board under sub-section (1).

(4) The order made by the Tribunal under sub-section (2) shall be final.

* * * *

52. (1) * * * *

(4) Any person aggrieved by the order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the Tribunal within whose jurisdiction the property is situate and the decision of the Tribunal on such appeal shall be final.

* * * *

52A. (1) Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time being in force, be vested in the Board without any compensation therefor.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 any offence punishable under this section shall be cognizable and non-bailable.

* * * *

(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.

* * * *

55A. (1) * * * *

(2) Where any property is sold under sub-section (1), the sale proceeds shall, after deducting the expenses relating to removal, sale and such other expenses, the amount, if any, due to the State Government or a local authority or a corporate authority on account of arrears of rent, damages or costs, be paid to such person, as may appear to the Chief Executive Officer to be entitled to the same:

Provided that where the Chief Executive Officer is unable to decide as to the person to whom the balance of the amount is payable or as to the appointment of the same, he may refer such dispute to the Tribunal and the decision of the Tribunal thereon shall be final.

* * * *

61. (1) If a mutawalli fails to—

* * * *

(e) deliver possession of any waqf property, if ordered by the Board or Tribunal;

(f) carry out the directions of the Board;

* * * *

Board to pass orders on auditor's report.

Recovery of waqf property transferred in contravention of section 51.

Penalty for alienation of waqf property without sanction of Board.

Disposal of property left on waqf property by unauthorised occupants.

Penalties.

he shall, unless he satisfies the court or the Tribunal that there was reasonable cause for his failure, be punishable with fine which may extend to ten thousand rupees for non-compliance of clauses (a) to (d) and in case of non-compliance of clauses (e) to (h), he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to ten thousand rupees.

* * * * *

Removal of mutawalli.

64. (1) Notwithstanding anything contained in any other law or the deed of wakf, the Board may remove a mutawalli from his office if such mutawalli—

* * * * *

(g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or

* * * * *

(4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (i) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

* * * * *

Assumption of direct management of certain auqaf by the Board.

65. (1) * * * * *

(3) As soon as possible after the close of every financial year, the Board shall send to the State Government a detailed report in regard to every waqf under its direct management, giving therein—

(a) the details of the income of the waqf for the year immediately preceding the year under report;

(b) the steps taken to improve the management and income of the waqf;

(c) the period during which the waqf has been under the direct management of the Board and explaining the reasons as to why it has not been possible to entrust the management of the waqf to the mutawalli or any committee of management during the year; and

(d) such other matters as may be prescribed.

* * * * *

Supervision and supersession of committee of Management.

67. (1) * * * * *

(4) Any order made by the Board under sub-section (2) shall be final:

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal.

* * * * *

(6) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the waqf, and every such order for the removal of any member shall be served upon him by registered post:

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the committee may, within a period of thirty days from the date of service of the order on him, prefer an appeal against such order to the

Tribunal and Tribunal may, after giving a reasonable opportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by the Board and the order made by the Tribunal in such appeal shall be final.

* * * * *

69. (1) * * * *

(3) Every order made under sub-section (2) shall be published in the prescribed manner, and, on such publication shall be final and binding on the mutawalli, and all persons interested in the waqf:

Provided that any person aggrieved by an order made under this section may, within sixty days from the date of the order, prefer an appeal to the Tribunal and after hearing such appeal, the Tribunal may confirm, reverse or modify the order:

Provided further that the Tribunal shall have no power to stay the operation of the order made under this section.

(4) The Board may, at any time by an order, whether made before or after the scheme has come into force, cancel or modify the scheme.

* * * * *

CHAPTER VII

FINANCE OF THE BOARD

72. (1) The mutawalli of every waqf, the net annual income of which is not less than five thousand rupees, shall pay annually, out of the net annual income derived by the waqf, such contributions, not exceeding seven per cent. of such annual income, as may be prescribed, to the Board for the services rendered by such Board to the waqf.

Explanation I.—For the purposes of this Act, “net annual income” shall mean the gross income of the waqf from all sources, including nazars and offerings which do not amount to contributions to the corpus of the auqaf, in a year after deducting therefrom the following, namely:—

(i) the land revenue paid by it to the Government;

(ii) the rates, cesses, taxes and licence fees, paid by it to the Government or any local authority;

(iii) expenditure incurred for all or any of the following purposes, in respect of lands directly under cultivation by the mutawalli for the benefit of the waqf, namely:—

(a) maintenance of, or repairs to, irrigation works, which shall not include the capital cost of irrigation;

(b) seeds or seedlings;

(c) manure;

(d) purchase and maintenance of agricultural implements;

(e) purchase and maintenance of cattle for cultivation;

(f) wages for ploughing, watering, sowing, transplanting, harvesting, threshing and other agricultural operations:

Provided that the total deduction in respect of an expenditure incurred under this clause shall not exceed twenty per cent. of the income derived from lands belonging to the waqf:

Provided further that no such deduction shall be permitted in respect of waqf land given on lease, by whatever name called, whether *batai* or share cropping or any other name;

Power of Board to frame scheme for administration of waqf.

Annual contribution payable to Board.

(iv) expenditure on sundry repairs to rented buildings, not exceeding five per cent. of the annual rent derived therefrom, or the actual expenditure, whichever is less;

(v) sale proceeds of immovable properties or rights relating to, or arising out of immovable properties, if such proceeds are reinvested to earn income for the waqf:

Provided that the following items of receipts shall not be deemed to be income for the purposes of this section, namely:—

(a) advances and deposits recovered and loans taken or recovered;

(b) deposits made as security by employees, lessees or contractors and other deposits, if any;

(c) withdrawals from banks or of investments;

(d) amounts recovered towards costs awarded by courts;

(e) sale proceeds of religious books and publications where such sales are undertaken as an un-remunerative enterprise with a view to propagating religion;

(f) donations in cash or kind or offerings made by the donors as contribution to the corpus of the waqf:

Provided that interest on income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income;

(g) voluntary contributions received in cash or kind for a specific service to be performed by the waqf and expended on such service;

(h) audit recoveries;

Explanation II.—In determining the net annual income for the purposes of this section, only the net profit derived by any waqf from its remunerative undertakings, if any, shall be taken as income, and in respect of its non-remunerative undertakings, such as, schools, colleges, hospitals, poor homes, orphanages or any other similar institutions, the grants given by the Government or any local authority or donations received from the public or fees collected from the pupils of educational institutions shall not be taken as income.

* * * * *

(7) Any mutawalli who is aggrieved by the assessment or revision made by the Chief Executive Officer, under sub-section (6), may prefer an appeal to the Board within thirty days from the date of the receipt of the assessment or revision of return and the Board may, after giving the appellant a reasonable opportunity of being heard, confirm, reverse or modify the assessment or revision or the return and the decision of the Board thereon shall be final.

* * * * *

Power of Chief Executive Officer to direct banks or other person to make payments.

73. (1) * * * * *

(3) Any bank or other person who is ordered under sub-section (1) to make any payment may, within thirty days from the date of the order, prefer an appeal against such order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

* * * * *

CHAPTER VIII

JUDICIAL PROCEEDINGS

Constitution of Tribunals, etc.

83. (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant

or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.

(2) Any mutawalli or person interested in a waqf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the waqf.

* * * * *

(4) Every Tribunal shall consist of—

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member;

and the appointment of every such person shall be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as *ex officio* members shall be such as may be prescribed.

* * * * *

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

* * * * *

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

84. Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a waqf or waqf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute.

Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision.

* * * * *

91. (1) If, in the course of proceedings under the Land Acquisition Act, 1894 or under any law for the time being in force relating to the acquisition of land or other property, and before an award is made, in case the property under acquisition is waqf property, a notice of such acquisition shall be served by Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.

Proceedings under Act 1 of 1894.

Explanation.—The reference to the Collector in the foregoing provisions of this sub-section shall, in relation to any other law referred to therein, be construed, if the Collector is not the competent authority under such other law to make an award of the compensation or other amount payable for acquisition of

land or other property thereunder, as a reference to the authority under such other law competent to make such award.

* * * * *

(3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2), no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard. 1 of 1894.

(4) Any order passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard, shall be declared void if the Board, within one month of its coming to know of the order, applies in this behalf to the authority which made the order. 1 of 1894.

* * * * *

Protection of action taken in good faith.

100. No suit or other legal proceeding shall lie against the board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

Survey Commissioner, members and officers of the Board, deemed to be public servants.

101. (1) The Survey Commissioner, members of the Board, every officer, every auditor of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

* * * * *

Application of Act to properties given or donated by persons not professing Islam for support of certain waqf.

104. Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a waqf being—

(a) a mosque, idgah, imambara, dargah, khangah or a maqbara;

(b) a Muslim graveyard;

(c) a choultry or a musafarkhana,

then such property shall be deemed to be comprised in that waqf and be dealt in the same manner as the waqf in which it is so comprised.

* * * * *

Act 36 of 1963 not to apply for recovery of waqf properties.

107. Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any waqf or for possession of any interest in such property.

Special provision as to evacuee waqf properties.

108. The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of section 2 of the Administration of Evacuee Property Act, 1950 which immediately before it became such evacuee property within the said meaning was property comprised in any waqf and, in particular any entrustment (whether by transfer of any documents or in any other manner and whether generally or for specified purpose) of any such property to a Board made before the commencement of this Act in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment had operated to— 31 of 1950.

(a) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (1) of section 11 of the Administration of Evacuee of Property Act, 1950, with effect from the date of such entrustment, and 31 of 1950.

(b) authorise such Board to assume direct management of the waqf concerned for so long as it might deem necessary.

108A. The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to have overriding effect.

109. (1) * * * * *

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely—

* * * * *

(ia) other particulars which the report of the Survey Commissioner may contain under clause (f) of sub-section (3) of section 4;

* * * * *

(iv) the manner of election of members of the Board by means of a single transferable vote, under of sub-section (2) of section 14;

* * * * *

(via) the period within which the mutawalli or any other person may produce documents related to waqf properties under sub-section (2) of section 31;

(vib) the conditions under which an agency of the Government or any other organisation may supply copies of records, registers and other documents under sub-section (3) of section 31;

* * * * *

110. (1) * * * * *

Powers to make regulations by the Board.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely—

* * * * *

(f) the forms of application for registration of Auqaf further particulars to be contained therein and the manner and place of registration of Auqaf under sub-section (3) of section 36;

(g) further particulars to be contained in the register of Auqaf under Section 37;

* * * * *

LOK SABHA

A
BILL
further to amend the Waqf Act, 1995.



True Copy

(Shri Kiren Rijiju, Minister of Minority Affairs)

ANNEXURE P-2

Social, Economic and Educational Status of the Muslim Community of India



A Report



Prime Minister's High Level Committee
 Cabinet Secretariat
 Government of India
 November, 2006



Social, Economic and Educational Status of the Muslim Community of India

A Report



**Prime Minister's High Level Committee
Cabinet Secretariat
Government of India**

November, 2006



Leveraging Community Initiatives: The Case of Wakfs

1. Introduction

The Chapters in this Report bring to the fore a considerable amount of deficits in a number of socio-economic and developmental measures that were empirically evaluated for the Muslim community in comparison with the other SRCs. Since such deficits are faced by all poor people, efforts to bring about improvement in the condition of Muslims would require additional funds to be earmarked from the ongoing programmes, such as the Sarva Shiksha Abhiyan (SSA), Public Health Programmes, JawaharLal Nehru National Urban Renewal Mission (JNNURM) etc and increased allocations to institutions of higher learning. It is increasingly recognized that additional investments and fresh programme initiatives can receive a boost from community involvement and financial participation of the local area resources that can be accessed through the process of bequests and donations, also known as the third sector activity. In fact, community participation in terms of physical contribution of resources can facilitate the implementation of many programmes like provision of land to establish schools and ICDS centres in villages, urban fringes and slums. That can also take care of the requirement of playground to establish even a primary school. Similarly, promotion of special help groups (SHGs) and micro-financial institutions (MFIs) require both institutional and financial resources to be contributed by the community groups.

It is in this context that the initiatives of the Muslim community to enhance its welfare should be seen. The initiatives relating to Madarsas were discussed in Chapter 4. The other important community-specific initiative relates to Wakfs. To earmark a part of what one has earned or inherited and set it apart in perpetuity for charitable purposes is considered an act of piety. As such, generous Muslims adhering to the principles of 'endowment' embedded in Islam often bequeath large and valuable acreage of properties in the name of God. The proceeds from these properties are dedicated to meet the exclusive needs of the poor and also to the perpetual maintenance of the bequeathed property. This type of property

The proceeds from Wakf properties are dedicated to meet the exclusive needs of the poor and also to the perpetual maintenance of the bequeathed property



bequests made by Muslims is called 'Wakf'.

The objectives of Wakfs recognized in Islam as religious, pious and charitable include, though are not limited to, the following:

- Establishing, maintaining and fostering the educational institutions, hostels, libraries, sports facilities and so on. Awarding of scholarships so as to promote education.
- Providing health care, relief and financial aid to all poor including the victims of communal riots and natural disasters.
- Construction of musafir khanas and marriage halls for community use.
- Maintenance of mosques, dargahs, graveyards and consolidation of Wakf properties.
- Financial support to poor widows, indigent and physically handicapped persons; arranging the marriage of indigent girls and maintenance of divorced women.
- Payment of salary to Imams and Muazzins as ordered by Supreme Court.

The objectives of Wakfs in Islam are recognized as religious, pious and charitable

The person who so dedicates his or her property is known as Waakif and the person nominated by the Waakif to manage the affairs of the Wakf property is known as Mutawalli. Apart from landed (often agricultural) and built up commercial and residential properties, Wakfs in India include Mosques, Dargahs, Khanqahs, Maqbaras, Ashoorkhanas, Qabristans (graveyards), Takiyas, Idgahs, Imambaras, Anjumans and so on.

The Britishers who were finding ways to subdue Muslim resistance passed Land Resumption Act taxing Wakf lands and thus dealing a crushing blow to Muslim traditions. "An amount of 1.1 million pounds was thus collected in taxes in Bengal from formerly tax-exempt lands. A large part of this sum was derived from lands (hitherto) held rent free by Musalmans or by Mohammadan foundations. The panic and hatred which ensued have stamped themselves forever on the rural records. Hundreds of ancient families were ruined and the educational system of the Musalmans which was almost entirely maintained by such grants, received its death blow. The Mohammadan foundations suffered the most."¹ Although the Wakf is a perpetual bequest, the Mutawallis, often tend to have almost absolute control over the income generated from it.

2. Economic Potential of Wakf Assets in India

The Committee asked all the state Wakf Boards and Central Wakf Council to provide data on the nature, type and distribution of Wakf properties especially taking the location factor into account². It was expected that such data would be routinely available as the Wakf surveys of the properties have to be undertaken on a regular basis as per the Act. However, the information was not available as in many states

1. The Politicization of Islam by Keman H. Karpal, 2001

2. A large number of Wakfs are located in prime areas such as the central city wards and mohallas. Incidentally, all reference in this chapter is to public Wakfs (in no case to family Wakfs known as Wakf-'al-al-aulad)



such surveys were not up-to-date. Data on the income from rental and other sources were also sought. A roundtable brainstorming workshop was held in Delhi to get first hand information and views about the Wakfs across India. The chairpersons and CEOs of Wakf Boards, a few academics and practitioners of Wakf law and former chairpersons of Wakf Boards participated. The Committee also received a number of representations from mutawallis and their associations.

There are more than 4.9 lakh registered Wakfs spread over different states and union territories of India³. Large concentration of the Wakf properties is found in West Bengal (148,200) followed by Uttar Pradesh (122,839). Other states with a sizeable number of Wakfs are Kerala, Karnataka and Andhra Pradesh (see Table 11.1)⁴. The total area under Wakf properties all over India is estimated at about 6 lakh acres and the book value at about Rs 6,000 crores. However, the market value of these properties will be higher manifold. For instance, a recent estimate of the current value of Wakf properties in Delhi alone is in excess of Rs. 6,000 Crores (Rs. 60 billion). A good number of the Wakf properties in urban areas are found to be located in city centres where the current value is many times more than the book value⁵. However, the current annual income from these properties is only about Rs. 163 crores, which amounts to a meagre rate of return of 2.7 per cent. Of this amount the Wakf Boards are entitled to receive a share at the rate of 7% which is used for the working expenses of the Wakf Boards. The remaining amount is expected to be spent on the stated objectives of the respective Wakfs.

As the book values of the Wakfs properties are about half a century old, the current value can safely be estimated to be several times more and the market value of the Wakf properties can be put at Rs. 1.2 lakh crores (1,200 billion). If these properties are put to efficient and marketable use they can generate at least a minimum return of 10 per cent which is about Rs. 12,000 crores per annum. It has emerged from the data presented in Table 11.2, that wherever the Wakf lands have been put to efficient use they have generated an average return of about 20 per cent⁶. It is obvious, therefore, that if some of these Wakf properties situated in prime locations across the country are developed and put to commercial use, their market value and annual income will shoot up. The enhanced Wakf income could be utilized to upgrade the educational status and improve other human development dimensions of the beneficiaries of Wakfs. This is being done even now but such success stories are few and far between. The Committee would, however, like to put a caveat here. The optimum utilization of Wakf properties would require proper administrative back up by the central and state governments as well as legislative support by way of crucial amendments to the Wakf Act and some other pieces of existing legislation.

There are more than 4.9 lakh registered Wakfs spread over the country but the current annual income from these properties is only about Rs. 163 crores, which amounts to a meagre rate of return of 2.7 per cent

3. Many Wakfs have multiple properties.

4. Information in respect of other states (though smaller in size) could not be received by the Committee in time to be included in this report.

5. A large number of Wakf properties are also agricultural land.

6. The loans provided by the central Wakfs Council to State Wakf Boards for investment and development produced a rate of return of just about 20 per cent as the 21st century unfolded itself.

Table 11.1: Properties Gazetted as Wakfs in Indian States

States	Area (acre)	No. of properties	Book Value (in lakhs)	Total Current Income of all the properties	7% share of Wakf Board
West Bengal	59090	148200	16000	457	32
Uttar Pradesh	15000	122839	15200	1214	85
Kerala	22410	36500	135586	803	56
Andhra Pradesh	145512	35703	8135	388	326
Karnataka	18033	28731	-	1288	90
Maharashtra	92207	23566	4185	443	31
Gujarat	8792	22485	600	381	27
Rajasthan	153180	19543	196755	8314	58
Madhya Pradesh	-	15000	-	-	-
Haryana	20895	11929	1125	500	500
Punjab	1778	11243	1589	596	596
Tamil Nadu	34388	7057	165072	1385	97
Bihar	-	2459	2000	33	2
Uttaranchal	-	2032	285	268	19
Delhi	152	1977	-	67	5
Pondicherry	425	589	179	118	8
Assam	190	168	110	35	2
Total	572052	490021	546821	16290	1934

Source: As per information received by the Prime Minister's High Level Committee from State Wakf Boards in 2005-06.

Table 11.2 Returns to Investment in Wakf Properties in India

State	Loan given (Rs. in lakhs)	Annual Return before Development (Rs. in '000)	Annual Return after Development (Rs. in '000)	Increase in Return after Development (%)	Rate of Return to Loan
Kerala	49.8	96	877.7	814	15.7
Bihar	23.8	5.8	459	7,814	19.0
Karnataka	633.7	1,087.8	12,001	1,003	17.2
Maharashtra	41	9.7	590	5,988	14.2
Andhra Pradesh	58.7	30.7	1,160	3,681	19.2
Rajasthan	3.2	--	106	--	32.9
Madhya Pradesh	75.4	85	2,512	2,855	32.2
Tamil Nadu	191.4	720.3	3,747	420	15.8
Orissa	188.1	60.4	4,232	6,907	22.2
Punjab	17.6		666		37.9
INDIA	1241.6	2,086	25,760.7	1,135	19.1

Data : S.K Rashid (2005) - Protection, Maintenance and Development of Awqaf in India (with special reference to Rajasthan), Institute of Objective Studies, New Delhi: pp 74-85.



3. Constraints on the Fulfillment of Wakf Objectives

To safeguard the existence of a large number of Wakf properties in India, a comprehensive Wakf Act was passed by Parliament in 1954. Over the years, during the process of the implementation of the Wakf Act, many lacunae and loopholes were noticed and the Wakf Inquiry Committee recommended amendments that were incorporated in the Wakf Act of 1995. Despite these efforts, the management of the Wakf Boards and the properties remains unsatisfactory. This is due to inadequate empowerment of the State Wakf Boards and the Central Wakf Council.

3.1 Organizational Constraints

Though there are conscientious Mutawallis too, yet there instances where Wakfs are treated by Mutawallis as their personal properties. From dargahs the offerings are sometimes appropriated by them. In any case, Mutawallis are classically known for not coming forward to seek grants or loans from Central Wakf Council or Wakf Boards for the development of the Wakf properties. Proposals for educational institutions are replaced by them for construction of shops. Rental is negotiated at low level in lieu of extraneous considerations. Despite the above mentioned efforts, the management of the Wakf Boards and the properties remain unsatisfactory due to inadequate empowerment of the State Wakf Boards and Central Wakf Council. Wakf properties which sub-serve the larger public interest should be protected as such. However, Wakf properties where specific religious rites are observed because of the importance of the site should be respected. Such a policy will lead to effective social cohesion and economic development. Therefore an effort should be made not to include such properties in land acquisition.

Non-availability of Records

The records of Wakf properties are not well maintained and are prone to the vagaries of weather, mutilation and loss. This calls for immediate remedial action. These should be digitized under a Government programme. The Central Government may consider special grants through the Central Wakf Council to undertake this task and supervise the quality of documentation. In spite of listing of Wakfs in statutory surveys often the properties are not registered as Wakfs in revenue records and in the records of the Local Self Governments. These lacunae and inaction on the part of the state governments are the source of prolonged litigation.

Encroachments on Wakf Properties

Encroachments on the Wakf properties are made not only by private persons but also by the government and its agencies as was brought to the notice of the Committee across the country. The encroachments are in two forms - (1) an absolute usurpation of property with no rents or other payments of any sort; and (2) those where the occupying party pays a nominal rent which has not been revised for decades. The number of private encroachments is very large. They are scattered all over the country and are often involved in litigation. Focussed attention is, therefore, called for on encroachments by the State that is the custodian of the Wakf interests.

The management of the Wakf Boards is unsatisfactory due to inadequate empowerment of the State Wakf Boards and Central Wakf Council

Encroachments by the State who is the custodian of the Wakf interests is common



The attitude of the state governments and their agencies has resulted in large scale abrogation of the cherished and charitable objectives of the Wakfs

A list of properties which are gazetted as Wakf properties⁷ but are currently under the unauthorized occupation by the governments and their agencies submitted to the Committee is presented in Box 11.2. (An illustrative list of properties claimed to be under unauthorized and illegal occupation by the private as well as the government agencies from all over India can be found in Appendix 11.1). It would be seen that the attitude of the state governments and their agencies has resulted in large scale abrogation of the cherished and charitable objectives of the Wakfs for which such endowments were created. In fact encroachment by the State on the Wakf lands, besides causing embarrassment to the authorities and emboldening private encroachers, has stood in the way of reform and reconstruction. As early as nineteen seventies Prime Minister Indira Gandhi wrote a letter to the Chief Ministers asking them to either vacate or pay to the Wakf Boards the market value of the Wakf properties. Alternatively, the directive was to pay lease rent at market rents for the Wakf properties encroached upon by the governments and their agencies (See Box 11.3).

Box 11.2
Some instances of unauthorized occupation of gazetted Wakfs by Governments and their agencies reported to the Committee by various state Wakf Boards during 2005-06

State	No. of Wakf properties
Delhi ⁸	316
Rajasthan	60
Karnataka	42
Madhya Pradesh	53
Uttar Pradesh	60
Orissa	53

Note: This is not an exhaustive list of properties.

7. The list provided to the Committee is not exhaustive and further details can be obtained from the respective state Wakf Boards.

8. Archaeological Survey of India, Delhi Development Authority, Railways, Cantonment, Delhi Police, Central Public Works Department, New Delhi Municipal Committee, Delhi Municipal Corporation, Delhi Transport Corporation, Delhi Jal Board and Lady Harding Medical College and Hospital.



Box 11.3

Prime Minister Indira Gandhi's letter addressed to the Chief Ministers

APPENDIX VII

No. 71-PMO/76

New Delhi, March 26, 1976

I have been concerned for some time about improving the administration of Wakfs. The State Governments must ensure that Wakfs are properly maintained and administered by the State Wakf Boards in terms of the Wakf Act of 1954. The following are some matters which require your urgent attention.

For a variety of reasons, including unsettled conditions after partition, a large number of Wakf properties have gone into the adverse possession of private parties as well as State Government departments and local bodies. The Wakf Boards could well start legal proceedings against the concerned State Government Departments. Obviously such litigation would not be desirable. Hence you should settle the issue on an administrative basis. As far back as 1961, we had made the following three concrete suggestions for quick settlement of such cases:

- (i) Where feasible, the Wakf property should be vacated and handed over to the Wakf concerned;
- (ii) Where costly buildings have been put up on the land and their vacation is not feasible, the State Governments may enter into permanent leases with the Wakf Boards, after paying to the Boards the bulk of the market value as premium; or
- (iii) In the alternative, the State Governments may arrange to make over the fair market value of the lands to the Boards, which will relinquish their rights over the land if in their direct management, or obtain from the Mutawallis concerned with their consent, the necessary deeds of relinquishment.

I understand that the Wakf Boards have sent your Government lists of Wakf properties in the possession of Government departments and local bodies. Please see that these are dealt with as suggested above. A periodic review should be undertaken and a monthly report sent to me and to the Minister for Wakfs.

Most Wakf properties are leased out on very nominal price which cannot be increased because of Rent Control Acts. In its Interim Report the Wakf Inquiry Committee has suggested that all public Wakfs serving a religious or charitable purpose or for that matter all public trusts and endowments belonging to any community, should be exempted from the provisions of the Rent Control Acts. The Committee rightly felt that Wakfs, which are not meant to benefit individuals, should be treated differently from individual landlords. I understand that at the suggestion of the Centre, the States of Andhra Pradesh, Kerala, Karnataka and Tamil Nadu have already agreed to exempt public Wakf properties from their respective Rent Control Acts. Please look into the possibility of making a similar exemption in your State.

Yours sincerely,

(Sd)

(INDIRA GANDHI)

To attain the objective of putting the Wakf properties to optimum use, fresh institutional support is essential

The importance of stricter monitoring of the Wakf management in general and the vacation of encroachments in particular cannot be over-emphasized

3.2 Present day Management of Wakfs

To attain the objective of putting the Wakf properties to optimum use fresh institutional support is essential. Presently state Wakf Boards comprise Muslim MPs, MLAs and some others. They may not be necessarily equipped with the technical expertise and knowledge required to exploit the Wakf resources optimally. The importance of stricter monitoring of the Wakf management in general and the vacation of encroachments in particular cannot be over-emphasized. The respective state governments have remained indifferent for many years and the matter once again received the Parliament's attention and a Joint Parliamentary Committee was constituted during 1996-2006. The comprehensive recommendations of this JPC are yet awaited. However, its reports in respect of nine states (Tripura, Manipur, Maharashtra, Goa, Assam, Meghalaya, Dadra & Nagar Haveli, Pondicherry, Lakshadweep) and Ajmer Dargah Act are available on the Web :-<http://RAJYASABHA.NIC.IN/BOOK2/REPORTS/WAKF/REPORTSLIST.HTML>

Mandate of the Joint Parliamentary Committee on Wakfs - 1996-2006

1. Assess, ascertain and identify the Wakf properties in the country.
2. Identify the Wakf properties which have been encroached upon in various States and Union Territories and to suggest ways to retrieve the property.
3. Identify the Wakf properties illegally gifted, transferred, mortgaged, leased or sold etc. and to suggest ways to fix responsibility and to retrieve the property.
4. Suggest ways and measures for proper utilization of the Wakf properties.
6. Ascertain the status of implementation of the Wakf Act 1995 by various State Governments.
7. Suggest such amendments to the Wakf Act 1995 as may be considered necessary, so as to achieve its objectives including retrieval of the Wakf properties encroached upon.
8. To examine the functioning of the Central Wakf Council and suggest suitable measures for making it effective.
9. To look into the working of the State Wakf Boards and recommend suitable measures for their proper and smooth functioning.
10. Suggest suitable legislative measures to realize all or any of the above objects.

General Issues and Constraints: Problems Faced by State Wakf Boards

Various State Wakf Boards brought to the notice of the Committee a number of problems out of which a selected few are presented here as examples. Such occurrences are detrimental to the interests of Wakf and also infringe the entitlement of its designated beneficiaries in particular and the poor in general.

Private Occupation of Prime Wakf Properties:

Often Wakf properties are situated in the heart of a town / city. These are



commercially valuable assets of the Wakf Boards and should be available for appropriate development and enhancement of the revenues. However, such properties have often been occupied either by corporations or third parties. An effective methodology would need to be evolved for expeditious settlement of such disputes⁹.

Over-ruling or Conflicting Orders by State Governments

The Minorities Department of U. P. Government has unauthorisedly passed orders over-ruling the quasi-judicial orders given by the Wakf Board a copy of the most recent example of the UP government over ruling the Wakf Boards orders is available with the community. The Department has, in this way, been staying over-ruling and vacating the Board orders. Such actions are ultra vires the Wakf Act. Both Sunni and Shia Boards drafted and submitted in 2004 the proposed Rules for the functioning of the Wakf Board and for implementation of the Wakf Act 1995. But the Department has yet to take action thereupon. While the U.P. Government could be advised to look into the matter, the Wakf Act 1995 may be amended to prevent such interference.

Transfer of Records and Jurisdiction

Due to non-transfer, delay in transfer or confusion in administrative jurisdiction Wakf properties often suffer from mismanagement. Clarity would have to be brought about both administratively and by legislation so as to improve Wakf management. See example in the footnote below¹⁰.

Undoing the Trifurcation of Punjab Wakf Board

Till 2004 there was a combined Wakf Board for Punjab, Haryana, Himachal Pradesh and Chandigarh. The Wakf resources of all these states were pooled together and were being utilized for the people of erstwhile undivided Punjab. This

Due to non-transfer, delay in transfer or confusion in administrative jurisdiction Wakf properties often suffer from mismanagement

9. One case of mis-utilisation of prime Wakf property is that of Sajan Lal Shia Wakf property located in the heart of the city of Hyderabad. It was a graveyard and is now under the occupation of the prestigious Viceroy Hotel. The latter is not even accepting that it is a Wakf property and is not allowing the Surveyor of Wakfs to discharge his duty. Similarly, Prince Ghulam Mohammad Wakf Estate situated at a prime location in Kolkata was on lease favouring the Shaw Wallace Company on a meager rent since 1906. The lease was terminated by the Wakf Board in 1984. The lessee approached the High Court where the matter is pending for the last 22 years. For the intervening period the High Court decided that an amount of Rs. 25,000/- per month should be paid as occupation charges to the Wakf Board. However, the market rental is of the order of Rs. 10 lakhs per annum.

10. The case of Maharashtra Wakf Board is placed below; however these problems vary across states and contexts. Maharashtra: Before the commencement of the Wakf Act 1995 in Maharashtra, all the Muslim trusts and Wakfs (except those in Marathwara Region which were governed by Wakf Act 1954) were covered under the purview of Bombay Public Trusts Act 1950 and were handled by the Charity Commissioner of Maharashtra. However, the Wakf Act 1995 was enforced from 1 January 1996. It was thus mandatory for the Charity Commissioner of Maharashtra to transfer all the Mosques, Idgahs, Imambaras, Dargahs, Khanqahs, Maqbaras and graveyards etc to the Maharashtra Wakf Board. In the meanwhile even the Wakf Survey Commissioner completed his job and the State Government published the list of Wakfs under section 5(2) of the Wakf Act 1995 in the Government Gazette on 13 November 2003. The Charity Commissioner was directed to transfer the amount collected by him from Wakf properties after the jurisdiction over them stood transferred to the Wakf Board. The Charity Commissioner ignored the legislative-cum-administrative mandate as well as the Wakf Minister's direction and has continued to collect a share from the Wakf income. After persistent follow up by the Wakf Board, the Charity Commissioner has transferred only part of the record to the Wakf Board in 2006. Hence the interests of the Wakfs are being jeopardized as proper follow up is not possible in various legal cases as well as complaints received by the Wakf Board cannot be properly investigated in the absence of complete record. In some cases the Charity Commissioner is also alienating Wakf properties without jurisdiction.¹⁰



Many states have huge amounts that are outstanding but not paid to the Wakf Boards for various reasons

provided the required flexibility in fiscal matters vis-à-vis the general welfare and particularly the provision of educational & vocational institutions and medical facilities etc. However, the trifurcation of the Wakf Board entailed huge enhancement of administrative expenditure as now there are three separate Boards and corresponding administrative infrastructure. There are 11,000 Wakf properties in Punjab but not many Muslims to take advantage there from. Haryana has a huge Mewat belt where large number of Muslims are among the most backward in the country. But they can no longer enjoy the usufruct of prime Wakf properties situated in Punjab. The people of Himachal Pradesh and Chandigarh are now practically bereft of the welfare measures hitherto available to them. The Committee analysed the representations made to it in this regard and studied the issue. It is of the view that the Central Government may revert to the status quo ante and undo the trifurcation of the erstwhile Punjab Wakf Board.

Outstanding Amounts due to Wakfs

Many states have huge amounts that are outstanding but not paid to the Wakf Boards for various reasons. For example, Maharashtra Wakf Board informed the Committee that the state Government owes an amount of Rs 81,68,285/- and associated interest to the Maharashtra Wakf Board against acquisition of properties in Aurangabad, Jalna, Parbhani, Nanded, Beed, Osmanabad, Latur, Pune, Nasik, Amrawati, Sangli, Nagpur, Ahmednagar and Dhule¹¹. It is necessary that appropriate directives should be incorporated in the Wakf Act with respect to the payment of the outstanding dues within a reasonable time.

Non-implementation of the JPC Recommendations

There are a number of situations in which even the recommendations given by the Joint Parliamentary Committee have not been implemented

There are a number of situations in which even the recommendations given by the Joint Parliamentary Committee have not been implemented. Following is one such case study: In Shillong, Umshyrpi College was established in 1994 by Muslims of Meghalaya. For a long time the College Committee has been requesting the State Government to withdraw the acquisition proceedings in respect of the Wakf land at Grove Side, Keating Road, Shillong and to allot it to the College for its expansion. The Wakf Board and the Mutawalli of the Wakf concerned, namely Golam Rahman Wakf Estate, have approved the proposal. Even the Joint Parliamentary Committee recommended it to the Chief Minister and the Union Minister of Welfare wrote to him in this regard. But this work has not yet been done though the land required by the College is lying in disuse. The Central Government may consider taking up the matter with Meghalaya Government and asking the latter to pass necessary order withdrawing the acquisition proceedings in respect of the said property and allotting it to Umshyrpi College¹².

A Case Study of National Capital Territory of Delhi

The Government of India acquired large areas of land between 1911 and 1915 for

11. Letter no. MSBW/REG/668/2006 of the CEO, Maharashtra State Wakf Board of Wakfs addressed to the Committee

12. Letter No. MSWB/PMO/2005-06/1029 dated 08 August 2005 of Meghalaya Board of Wakfs addressed to the Committee.



construction of the New Capital/Extension of Delhi city. A number of Wakf properties were also acquired although compensation was not received or accepted in case of many of these properties. In 1940, individual agreements were made by the Government of India in 42 cases with the Sunni-Majlis-e-Auqaf (predecessor of Delhi Wakf Board) permitting the use of the properties for religious purposes. By notification in the Delhi Gazette in 1970 a large number of properties, including those under agreement, were declared as Wakf properties. This was challenged by over 300 suits in the District Courts by the Land & Development Officer (L&DO) and the Delhi Development Authority (DDA), both under the Ministry of Urban Development, Government of India.

Between 1974 and 1984 four high-powered committees examined the disputes between the parties. The matter was also examined by a Group of Ministers comprising six Cabinet ministers. A Committee of Officers including representatives from the Ministry of Works and Housing, Ministry of Home Affairs, Delhi Development Authority, Land & Development Officer and the Delhi Wakf Board surveyed the properties in detail to assess the nature of each property in the context of the requirements for development of the capital city. They verified that in the case of 123 properties it was clear that they could be classified as Wakf properties and recommended that they be transferred to the Delhi Wakf Board. The Government of India approved the recommendation of the Committee on 31.1.84 and ordered the transfer of 123 properties (61 in the control of L&DO and 62 in the control of the DDA). Besides these 123 properties, it was found by the Committee of Officers that there were 40 other properties which were also Wakf properties but which were situated inside government properties such as the public parks. It was decided that in respect of these properties the ownership would continue to vest with the government and the Delhi Wakf Board would be permitted to use them as Wakf properties.

A number of Wakf properties were also acquired although compensation was not received or accepted in case of many of these properties

In spite of the above mandates, as a consequence of a writ petition, the Delhi High Court on 1st June 1984 ordered that 'status quo regarding the property should be maintained and possession should be retained by the government. The Union of India has stated in its reply before the High Court that, only after thorough scrutiny of the notified Wakf properties and verification at site, it was decided to transfer to the Delhi Wakf Board only such properties which were:

- i. Clearly Wakf in nature,
- ii. Not required for public utilities and
- iii. Could clearly be separated from the adjacent public buildings.
- iv. The transfer of Wakf properties to Delhi Wakf Board is for their effective management and in the public interest.
- v. Wakf properties that did not exist at site but had been notified in the Gazette were ignored.

Accordingly all disputes between the Government agencies and the Delhi Wakf Board had come to an end and all pending cases from both sides were to be



The Delhi Wakf Board has effectively been deprived of the use of its valuable properties

High legislative, administrative and judicial priority should be accorded to Wakf in order to improve the management of about five lakhs Wakf properties spread across India

withdrawn from the courts. However, due to the interim stay of 6th June 1984 no further action has been taken in this regard. It is sad that even after 22 years and 112 listings of the case the matter is not heard due to lack of enthusiasm on the part of the Government.

During the intervening 22 years the Wakf properties have been extensively encroached upon and this is an ongoing process. It would be seen that the Delhi Wakf Board has effectively been deprived of the use of its valuable properties. It has been unable to generate resources from its assets to discharge its statutory Wakf obligations and is currently impoverished.

In 2003 the market value of these 123 properties was estimated at about Rs.3,000 crores by the petitioners. Property prices in Delhi have since doubled. Therefore these, Wakf properties could now be valued at Rs.6,000 crores. Due to the protracted litigation their economic value could not be tapped. If the commercial potential is now exploited it could generate enough resources to meet many needs of the Muslim community in Delhi. The Government of India may consider instructing its law officer to take active interest in the matter and have the long pending court matter disposed off at the earliest. This could be done by getting the legal support upgraded and imparting the overdue urgency to the finalization of this case.

4. Overcoming Constraints: Some Recommendations

4.1 Organizational Reforms

This chapter brings to light the importance of Wakf as a socio-religious institution almost equivalent to the present day 'non-government organizations' involved in welfare activities. However, at present, the management of Wakf properties is seriously impaired both due to high incidence of litigation and poor management. Often important Wakf cases, and thereby valuable properties, are lost because of lack of financial and administrative resources. Therefore strengthening Wakf Boards administratively with necessary financial and legal backup is absolutely necessary. High legislative, administrative and judicial priority should be accorded to Wakf in order to improve the management of about five lakhs Wakf properties spread across India. Governments both at the centre and in the states have, perhaps because of their heavy preoccupations, found it fit just to maintain the status quo, without realizing the high potential that Wakfs have both for generating wealth and meeting the welfare requirements of the poor and the needy. With appropriate legislative and legal empowerment as indicated in this chapter, the management of Wakf properties can be revitalized so as to make them not only financially viable but also rewarding. Following are some recommendations designed to improve the management and functioning of the Wakfs across India.

It appears to be essential to provide a technical advisory body for development of Wakf properties both at the state and national levels. This body may comprise representatives from state Wakfs Boards, area experts from institutions such as



School of Planning and Architecture, National Institute of Design and IITs and academics such as sociologists, economists, financial and legal experts. A representative from appropriate government department should also be part of this body. Any Wakf property whose current undeveloped market value is estimated to be Rs.1 crore or more, or whose area is more than one bigha in urban and above 2 acres in rural parts of India should be referred to the Technical Advisory Body. All Wakf properties should be developed, mortgaged or encumbered only with the concurrence of the State or Central Technical Advisory Body as the case may be.

- **Woman Representation:** It is of utmost importance to provide for atleast two women each in the Central Wakf Council and each state Wakf Board. Besides providing gender equity this will help in improving direct access to welfare measures for women and children.
- **Composition of the Central Wakf Council (CWC):** A Union Minister occupies the position as the ex-officio President of the Central Wakf Council. Given his preoccupations, often the Council is not able to prepare and take timely action on matters of urgency. It is, therefore, proposed that a full time President should be appointed from out of eminent persons like retired high court judges, chancellors and vice chancellors of central universities and former chiefs of state Wakf Boards. The President may hold office for a period of three years. The other members of the Central Wakf Council could be nominated from a list of eminent Muslims drawn from various professions such as architects, doctors, lawyers, chartered accountants and academicians. The representation of MPs and MLAs as at present may be combined and their gross number in each state Wakf Board may be reduced from the existing four to two. The Secretary of the Central Wakf Council should be an officer of the rank of at least Joint Secretary to Government of India so that meaningful and effective communication and interaction with government authorities is facilitated. In order to be effective, this officer must have a good knowledge of Wakf matters, Muslim scriptures and proficiency in Urdu.
- **State Wakf Boards:** The chairmen and members of the state Wakf Board can be selected from a list of eminent persons in each state. For example, a retired high court judge, the former vice chancellors, and those who have established Muslim educational institutions of repute should be considered for appointment in the Wakf Board. The other members of the Wakf Boards can be nominated from a list of Muslim professionals drawn from various professions such as the architects, doctors, lawyers, chartered accountants and academicians. The representation of MPs and MLAs as at present may be combined and their gross number in each state Wakf Board may be reduced from the existing four to two. The Act does not provide any qualification for a person to be appointed by the state Government as Chief Executive Officer of the Board. It has been found that in cases where the Chief Executive Officer is not high ranking in the hierarchy of state bureaucracy the interests of the Wakf

It is of utmost importance to provide for atleast two women each in the Central Wakf Council and each state Wakf Board

The chairman and members of the state Wakf Board can be selected from a list of eminent persons in each state



The government may, consider creating a new cadre of officers with knowledge of Islamic law to deal with the specific affairs of the Wakfs efficiently

A National Wakf Development Corporation may be constituted by the central Government with a revolving corpus fund of Rs 500 crores

Board often suffer. It is, therefore, necessary that the Chief Executive Officer must be full time and must rank with senior officers of the state Government. Ideally a Class I Officer of All India or Central Services directly recruited through UPSC should be appointed as CEO.

- **Group-A Officers for Wakfs:** There is strong case to create a new cadre of officers to manage the affairs of State Wakf Boards and Central Wakf Council. It is estimated that up to 200 Group-A officers are needed to service the Wakfs affairs across India. The government may, therefore, consider creating a new cadre of officers to be recruited by the UPSC so that they can deal with the specific affairs of the Wakfs efficiently. Such officers, however, should have the knowledge of Islamic law and Urdu, as most of the documents relating to Wakfs are in that language. Some officers of this cadre could, subject to the concurrence of the Central Haj Committee, be seconded to the Central and State Haj Committees for giving them administrative support.
- **Maintenance of Accounts:** It is recommended that all the Wakfs are compulsorily brought under the scheme of 'financial audit'.
- **National & State Wakf Development Corporations:** A National Wakf Development Corporation may be constituted by the central Government with a revolving corpus fund of Rs 500 crores. It would also be advisable to seek out matching funds to be added to the corpus from the community and NGOs. The CMD of this corporation should be well versed in Muslim religious practices and be proficient in Urdu. The corporation may continue providing financial and technical help for development of Wakf properties with a view to enhance Wakf resources. Similar corporations should be established in all the states.
- **Ajmer Dargah Act needs to be amended:** Wakf Act 1954 was amended in 1995. Now some more amendments are being suggested in this Report. However, Dargah Khwaja Saheb Ajmer Act 1955 has never been amended while the problems there are same as in the case of all other Wakfs in the rest of India. Hence it is necessary to introduce comprehensive changes in Dargah Khwaja Saheb Ajmer Act also.

4.2 Legal and Administrative Remedies

- **Removal of Avoidable Judicial Dichotomy:** Amendment of Wakf Act Section (6) sub-section (1) : The Supreme Court in Board of Muslim Wakf, Rajasthan vs Radha Kishan and Others stated that where a non-Muslim is in possession of a certain property his right, title and interest therein can not be put in jeopardy merely because the property is included in the list of Wakfs. Such a person is not required to file a suit (within a period of one year) for declaration of his title, as required in the Wakf Act. That is to say, the special rule of limitation laid down in the proviso to sub-section (1) of Section 6 is not applicable to non-Muslims. Such interpretation is detrimental to the interests of Wakf and may well tend to encourage encroachments. Section 6 may therefore be amended to avoid the



confusion and the amendment should be given retrospective effect from the date of notification of the property as Wakf. In section 6(1) of the Wakf Act 1995 after the expression "or any person interested therein" the following words may be added "irrespective of his / her / its religion".

- **Enhanced Lease Period:** Increase the maximum period of lease of Wakf properties from 3 to 30 years where the property is used by registered charitable societies or trusts for building and/or running educational or health care institutions, or for other social and economic developmental purposes consistent with the objects of the Wakf (if any specified) and as permissible under Islamic law.
- **Define 'Encroacher':** The definition of 'Encroacher' needs to be inserted in Section 3. This definition should say that 'Encroacher' means "any person occupying the Wakf premises without the authority of law and includes a person whose tenancy, lease or license has expired or has been terminated by the Board, or who has altered the property leased out or occupied by him without the prior written permission of the Wakf Board concerned". The inclusion of this definition will help the Wakf Boards in removing encroachments. Secondly, a person occupying the Wakf premises should be included in the definition of "person interested". Thirdly, the "Wakf premises" should be defined to mean "any Mosque, Graveyard, Mazar, Takiya, Eidgah, Imambara, Dargah, Khanqah, Maqbara, Anjuman and land appurtenant or belonging to them, the property dedicated for their maintenance, the property purchased from their income, the land, garden, well, baoli, school, hospital and other institutions dedicated as Wakf and the passages used leading to the Wakf premises". This definition will help in the proceedings under Section 54, for removal of unauthorised occupants of Wakf property.
- **Rent Control Act:** Often the Rent Control Act (RCA) provides protection to the tenants in such a way that the owners lose incentive to develop and maintain properties. Wakf properties are in the purview of RCAs in most of the states¹³. Thus the application of the RCA to Wakfs is damaging the noble interests of Wakfs and hurting the entitlements of the beneficiaries. Therefore, an amendment exempting the Wakf properties from the purview of the RCA within the Wakf Act is urgently needed. This can be done by introducing an over-riding provision in the Wakf Act.
- **Extension of Time for Recovery from Adverse Possession:** The Public Wakf (Extension) of Limitation Act, 1959 facilitated the recovery of properties forming part of public Wakfs by way of suits. Under the said Act the time for filing suits for recovery of Wakf properties against adverse possession was extended till 31st December 1970. Various states extended the said time further; these are as follows :

Increase the maximum period of lease of Wakf properties from 3 to 30 years where the property is used for education, health care and other purposes consistent with the objects of the Wakf and as permissible under Islamic law

An amendment exempting the Wakf properties from the purview of the Rent Control Act within the Wakf Act is urgently needed

13. For example, the Wakfs are taken out of the purview of RCA in Uttar Pradesh and Andhra Pradesh.

Bihar & UT Delhi	till	31st December 1985
Haryana	till	31st December 1975
Madhya Pradesh	till	31st December 1983
Himachal Pradesh	till	31st December 1978
Orissa	till	31st December 1981
Rajasthan	till	31st December 1980
West Bengal	till	31st December 1976

Failure on the part of the State and statutory bodies entrusted with safeguarding...administering Wakf properties has caused disquiet in the Muslim community

However, since 1947, most state Wakf Boards were either not properly constituted or were not sufficiently equipped to utilise or take advantage of the periods of extension of limitation. Although the administration and supervision of public works is the statutory obligation of the State, often for very long periods there has existed a virtual vacuum or absence of Wakf administration. Consequently, a large number of Wakf properties have been subjected to adverse possession and suits for recovery of the same have become time-barred. Therefore, the period of limitation should be extended till 2035 with retrospective effect. Otherwise, very valuable properties would stand unfairly encroached upon and appropriated by strangers. This would be tantamount to a collective failure of the State Wakf machinery. Due to their inaction or insufficient action the government would be deemed to be a party to the undue loss/shrinking of Wakf properties. Such failure on the part of the State and/or the statutory bodies entrusted with safeguarding/managing/developing/administering Wakf properties has caused disquiet in the Muslim community.

- **The Ancient Monuments and Archeological Sites and Remains (AMASR) Act, 1958:** This Act has often been at cross purposes with the Wakf Act. Very often the former has an over riding effect. There are innumerable cases where the Wakf property, despite being a place of worship and of religious reverence, cannot be touched by the Wakf Board because it is declared as protected monument¹⁴. Given the present state of large number of Wakf properties under the control of the Archeological Survey of India (ASI), it would only be proper if their lists are annually reviewed and their condition is assessed in a joint meeting of senior officers of the ASI with the representatives of the Central Wakf Council. The minutes should be signed by both the parties, copies should be preserved by both of them as well as the ministries concerned. An indicative list of properties which are under the physical control of the ASI but but are gazetted as Wakf properties can be found in Appendix 11.1.
- **Thika Act :** The West Bengal Assembly in 1981 enacted a Thika and Other Tenancies and Lands (Acquisition and Regulations) Act popularly known as Thika Act which was amended in 2001. By virtue of this Act the tenants of a large number of properties across the state became their owners. While the Act exempts the application of Thika Act to the government and municipal

14. The reference is to properties which are already gazetted as Wakf properties but are under the control and occupation of the Archeological Survey of India. The reference made here is not to such properties which have historical monuments such as the Taj Mahal, Qutab Minar and Humayun's Tomb, etc.



properties, the same benefit was not extended to cover the Wakf properties. Consequently the Wakf Board lost a large number of properties and income there from. Efforts have been made by the Wakf Board and NGOs to seek exemption of Wakf land from the Thika Act. The West Bengal Government may be advised to accord the solicited exemption.

- The Committee is of the firm view that law should not be used for acquiring Wakf properties and recommends that to ensure this on permanent basis the Government should take appropriate action.
- **Wakf Rules:** Even after a lapse of eleven years since the Wakf Act 1995 was enacted, a large number of states have not framed the Wakf Rules; this is one of the main reasons for non-implementation of the provisions of the Wakf Act and perpetuation of corruption and lack of accountability. Refresher training courses are to be offered regularly so that the staff of the State Wakf Boards are adequately trained. This work could be supervised by the Central Wakf Council.

4.3 Enabling Legal Provisions

- **Amendments to Wakf Act 1995**

The Committee suggests that the following issues should be dealt with in the Wakf Act 1995 in such a way that the state Wakf Boards become effective and are empowered to properly deal with the removal of encroachment of Wakf properties. Additionally it has been observed that the Wakf Tribunals as notified in the Wakf Act have been found to be not as effective as they were envisaged to be (Section 83 and 84). The primary reason is that the members of the state judicial service who preside over the Wakf Tribunals normally hold dual or multiple charges, i.e., as district, sessions or civil judge. Consequently, they have paucity of time in attending to Wakf matters and the Tribunals in some instance sit only a few days in a month. It is common knowledge that delay in adjudication of properties especially suffering from encroachment / unauthorized construction/ illegal occupation / misuser creates its own resultant problems. Additionally the Wakf Board is deprived of the legitimate use of and profits accruing from the property. It would therefore be appropriate to amend Section 83 (4) of the Wakf Act to specify that the Wakf Tribunal will be manned by full time presiding officer appointed exclusively for Wakf purposes. The Wakf Tribunal would also have the power to give the interim relief and award damages etc., as the case may be.

According to the the Islamic precepts the ownership of Wakfs rests only with God, the Mutawallis are the managers of the properties and the usufruct is meant only for the poor and needy. These principles do not get reflected in a number of other laws that have relevance to proper implementation of the Wakf Act. Wakf deserves to get benefited in two ways: firstly, some enactments that are found in various laws need to be amended to facilitate the functioning of Wakfs and, secondly there are a few other Acts that offer empowerment in

The Committee is of the firm view that law should not be used for acquiring Wakf properties and recommends that to ensure this on permanent basis the Government should take appropriate action

Wakf Tribunal should be manned by full time presiding officer appointed exclusively for Wakf purposes



The Public Premises (Eviction of Unauthorized Occupation) Act, 1971 should be applied to remove encroachment from Wakf properties and arrears of rent, at market rates, should be recovered as arrears of land revenue

The exemption of Wakf properties from some enactments would serve the greater philanthropic purpose of Wakf properties

such a way that Wakf Boards can take advantage of by getting legally empowered. The state level examples for both the above types are given below:

- **Public Premises (Eviction of Unauthorized Occupants) Act**

All Wakfs as notified in the Gazette should be treated as public premises. Wakfs are meant for a large section of the public. Some activities of Wakfs such as running schools, orphanages, monthly financial assistance to the needy, are philanthropic and secular in nature. Any encroachment on these properties should be treated like encroachment on government land. The Public Premises (Eviction of Unauthorized Occupation) Act, 1971 should be applied to remove encroachment from Wakf properties and arrears of rent, at market rates, should be recovered as arrears of land revenue.

- **Other Legal Structures which can empower Wakfs**

As stated in the beginning of this chapter the character of Wakf properties is quite different from privately held properties. The ownership of Wakf properties is vested in God, understood in mundane sense as an artificial juridical person. And, the usufruct invariably belongs to the downtrodden, the poor and the needy. Yet, the state and central legislation, does not usually take cognizance of such difference. While the exemption of Wakf properties from some enactments would serve the greater philanthropic purpose of Wakf properties, appropriate though minor amendments in the following Acts would strengthen the functioning of the Wakfs without in any way hurting their general public objective. Government may like to take necessary action after consulting Wakf Boards and enlightened public opinion.

Some of such enactments are:

- Rent Control Act, Land Reforms Act
- Agricultural Land Ceilings Act
- Urban Land Ceiling Act
- Registration of Properties Act
- Tenancy Act
- Stamp Duty Act
- Court Fee Act
- Income-tax Act
- Private Forest Vesting & Assignments Act

5. Summing up

This chapter brings to light the deeper malaise and misuse of the Wakf properties both by individuals and institutions. Such a state of affairs exists due to a number of organizational, managerial and legal impediments. The information provided above should be sufficient to initiate corrective action especially by the governments and the legal system which will enable the Wakfs to put the properties to good use for expanding and augmenting and putting at a proper level the welfare activities of Wakfs. This would supplement to some extent the broad based



ameliorative endeavours of the State which necessarily have a massive magnitude. This will also be a step towards self-reliance by the Muslim community. It is possible to use the Wakf properties to put in place world class facilities such as universities and colleges, hospitals and health centers and convention centers. The properties can also be used to put up old age homes, polytechnics, and coaching centres.

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IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL/ORIGINAL/APPELATE JURISDICTION

WRIT PETITION (C) No. OF 2025

IN THE MATTER OF:

Association for Protection of Civil Rights

Through its authorized representative

Malik Mohtasim Khan

...Petitioner

Versus

Union of India & Ors.

...Respondents

INDEX

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1.	Writ Petition with Affidavit And Annexure P-1 and P-2			

FILED ON: 05.04.2025

Filed by:

Office: Chamber No.14
(Old Block) Supreme Court
New Delhi.



(ADEEL AHMED)
Advocate for Petitioner
CODE – 2734
Mob- 8585908959

e-mail: adeelbox@gmail.com

VAKALATNAMA
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION
CRL ORIGINAL

SPECIAL LEAVE PETITION [CIVIL/CRL] NO. OF
TRANSFER/WRIT PETITION [CIVIL/CRL] NO. OF
APPEAL/REVIEW/CONTEMPT [CIVIL/CRL] NO. OF
*Association for the protection
of civil rights (APCR)* PETITIONER [S]
Versus
Union of India RESPONDENT[S]

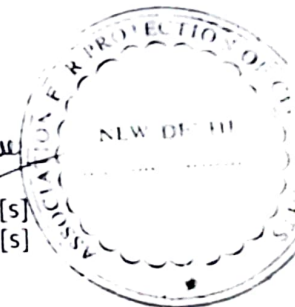
I/We *Malik Mohtasim Khan* the Petitioner[s]/Appellant[s]/Respondent[s] in the above Petition/Appeal hereby appoint and retain **Mr. Adeel Ahmed**, Advocate, Supreme Court, to act and appear for me/us in the above Petition/Appeal and on my/our behalf to conduct and prosecute the same and all the proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceeding in taxation and application for Review, to file and obtain return of documents and to deposit and receive money on my/our behalf in the above Petition/Appeal and to represent me/us and to take all necessary steps on my/our behalf in the above matter. I/We agree to ratify all acts done by the aforesaid, Advocates in pursuance of this authority. I/We further authorise him to engage any other Advocate(s) on my/our behalf or to enter into agreement or to agree for arbitration.

Dated this the 4th day of April 2025

Verified & Accepted


Advocate
Supreme Court

M. @ Adeel
Petitioner[s]/Appellant[s]
Respondent[s]



To
The Registrar,
Supreme Court of India
New Delhi.

Sir,

Kindly entered my appearance on behalf of the petitioner(s)/respondent(s).



(ADEEL AHMED)
Advocate for the petitioner(s)/respondent(s)

14, Lawyers Chamber
Supreme Court of India
New Delhi
Code No.2734
Mob- 8585908959
adeelbox@gmail.com

*Advocate
Taqdees Falihi
D/6595
9773690803*



భారత ప్రభుత్వం

Government of India



Aadhaar no. issued:

మాలిక్ మోహ్తసిం ఖాన్
Malik Mohtasim Khan
పుట్టిన తేదీ/DOB: 05/02/1967
పురుషుడు/ MALE

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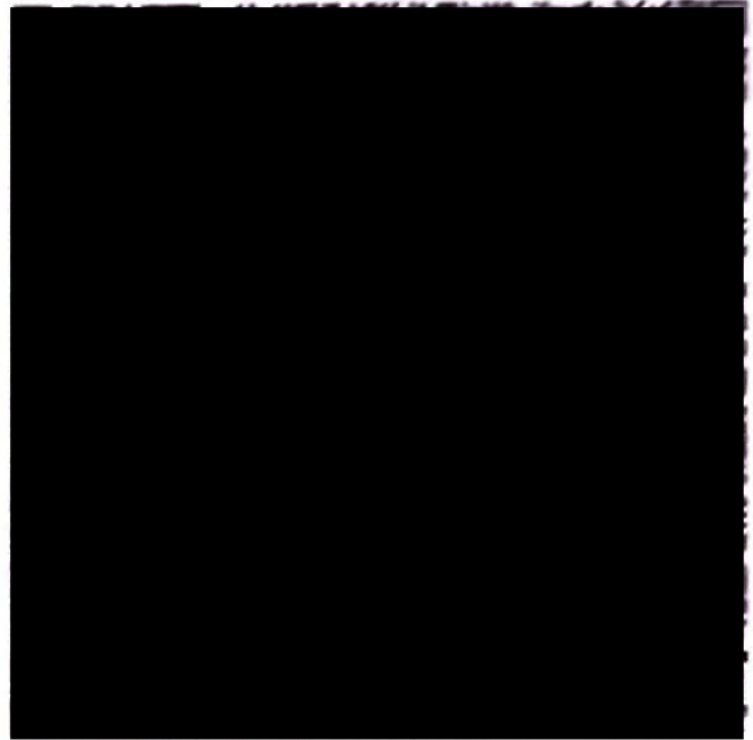
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భారత విశిష్ట గుర్తింపు ప్రాధికార సంస్థ

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