IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

W.P.(C) NO. 276/2025 / W.P.(C) NO. 314/2025 / W.P.(C) NO. 284/2025

W.P.(C) NO. 331/2025 / W.P.(C) NO. 269/2025

IN THE MATTER OF:

IN RE: THE WAQF (AMENDMENT) ACT, 2025 (1)

IN RE: THE WAQF (AMENDMENT) ACT, 2025 (2)

IN RE: THE WAQF (AMENDMENT) ACT, 2025 (3)

IN RE: THE WAQF (AMENDMENT) ACT, 2025 (4)

IN RE: THE WAQF (AMENDMENT) ACT, 2025 (5)

AND OTHER CONNECTED MATTERS

PRELIMINARY COUNTER AFFIDAVIT ON BEHALF OF THE UNION OF INDIA

VOLUME-I

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ADVOCATE FOR THE RESPONDENT- UOI:

SUDARSHAN LAMBA

VOLUME-I

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PRELIMINARY COUNTER AFFIDAVIT ON BEHALF OF UNION OF INDIA

I, Shersha C Shaik Mohiddin, aged about 59 Years, S/o C.M. Shaik Mohiddin, currently working as Joint Secretary, Ministry of Minority Affairs, Government of India, do hereby solemnly affirm and state as follows:

1. That I am authorized to file this Counter Affidavit on behalf of the Respondent, in the aforesaid matter, in my official capacity. On the basis of the available official record, I am fully conversant with the facts of the present case, hence competent to swear this affidavit. The present affidavit is on the basis of information derived from the official records maintained by the Department and the proceedings before the Joint Parliamentary Committee [JPC].

2. That I have read the contents of the writ petitions and other attached documents and I say that the contents therein to the extent they are inconsistent with the submission hereinafter made in this counter-affidavit, are incorrect

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and are denied, unless any averment or contention is specifically admitted or traversed, the same may be treated as denied.

3. That I have perused the present writ petitions filed by the Petitioners and in reply, humbly submit that the present petitions are liable to be dismissed. The Respondent is filing this Preliminary Affidavit to clarify the position before this Hon'ble Court.

4. At the outset it is respectfully submitted that this Affidavit in reply is being filed as a preliminary reply and only to deal with the issues flagged during the earlier hearing on 16.04.2025. I reserve my rights to file a further and detailed affidavit along with further material as and when necessary before further hearing and / or before final hearing.

5. At the further outset, I respectfully raise two preliminary issues for the kind consideration of this Hon'ble Court-

(a) It is submitted that it is a settled position in law that constitutional courts would not stay a statutory provision, either directly or indirectly, and will decide the matter finally. There is a presumption of constitutionality that applies to laws made by Parliament. This presumption would be *a fortiori* when the law has been made on the recommendations of a Joint Parliamentary Committee, by a detailed report prepared after an exhaustive exercise followed by an extensive debate in both Houses of Parliament.

While the Hon'ble Court would undoubtedly have the power to examine the constitutionality of the law, at the interim stage, the grant of an injunction against the operation of any provision of the law, either directly or indirectly, would be violative of this presumption of

constitutionality which is one of the facets of the delicate balance of power between the different branches of the State.

(b) It bears emphasis that the petitions being heard by this Hon'ble Court do not complain of injustice in any individual case that needs to be protected by an interim order in a specific case and no facts or specific details are given. The petitions challenge the law on general averments of legislative overreach primarily in relation to rights under Article 25 and 26 of the Constitution for the people belonging to the Muslim community generally. While this Hon'ble Court would examine these challenges when the cases are heard, a blanket stay [or a partial stay] without being aware of the adverse consequences of such an order in a generality of cases [even on members of the Muslim community itself] were the petitions to be unsuccessful would, it is submitted, be uncalled for, especially in the context of the presumption of validity of such laws.

(c) These petitions proceed on the false premise that the amendments take away the any of the rights conferred under Article 25 or 26. The fundamental purpose of the Waqf Act is to confer validity upon such dedications, which were considered to be invalid under common law. When an enactment confers validity, such enactment enjoins certain duties and responsibilities upon such dedications. The primary religious right being the right to make a dedication is not interfered with and neither is the neither is administration of any specific waqf interfered with as the same continues to be vested with the *mutawalli* as per the purpose behind such waqf.

It is submitted that however, in order to enjoy the host of legal protections and statutory benefits conferred by a law that recognises

such dedications [which, but for such law, may well be declared invalid], it is always open to Parliament to lay down a statutory framework to ensure that the statutory protections and benefits are not either overexpansive or misused , and to take away such protection where it is considered to be in public good.

(d) Another aspect of the matter that needs to be considered is the sharp distinction between religious rights and the management of properties that are dedicated to religion. The Waqf Act, 1995 conferred a recognition of waqfs as a valid statutory dedication of property and that remains unchanged continuing to protect the religious rights of a Muslim individual or a community in general. The secular provisions of proving such a dedication, and the management of such properties including preventing their waste or misuse are permissible under the constitutional framework. The new petitions conflate all the rights under Article 25/26 and treat ***mere*** regulation as a violation of the Constitution.

(e) It is submitted that the scope of judicial review, either in a petition under Article 32 or Article 226 challenging a statutory enactment, would be restricted to only two parameters:

(i) The legislative competence of the legislature; and

(ii) The violation of fundamental rights.

6. It is submitted that so far as the legislative competence is concerned, it is not even the case of the Petitioners that the Parliament is incompetent to pass the amending Act. When it is an admitted position before the Court that the competent legislature has passed a Bill, that too after an elaborate and exhaustive exercise as referred below, this Hon'ble Court would not second-

guess the provisions based upon a tentative and prima facie reading of the provisions at an interim stage.

In the above referred two circumstances, this Hon'ble Court may consider not to grant any interim order and hear the main petitions finally.

7. At the further outset, it is respectfully submitted that there are two sets of diametrically opposite petitions filed by two sets of Petitioners before this Hon'ble Court – one challenging the Wakf Act, 1995 in totality [with the 2013 amendments] ["**original petitions**"] and the other set of Petitioners challenging only the 2025 amendments ["**new petitions**"].

It may be noted that interim relief was specifically pleaded and prayed for in the original petitions. However, in none of these petitions has this Hon'ble Court or any other Hon'ble High Court passed any interim order. The said petitions were and have been pending across the constitutional Courts for a considerable time. The original set of petitions based on Article 14 have not been heard in order to take a *prima facie* view of whether the original Act or the 2013 amendments are unconstitutional. It is submitted that this Hon'ble Court and the Hon'ble High Courts maintained a particular degree of judicial consistency while ***not granting any interim order***.

8. It is submitted that on the other hand, the new petitions challenging the 2025 amendments, which were filed even before the 2025 Amendment Bill became an enactment and mentioned before this Hon'ble Court even before the 2025 Amendment Act became operational, are being primarily heard for considering the question of passing an interim order.

Considering the settled constitutional principles of *presumption of constitutionality*, intrinsic value behind democratic processes and high threshold to be met before passing any interim orders, it would be in the fitness of things to decline any interim orders as was done in the original petitions.

It is submitted that considering the two different sets of petitions and two different stances/purviews from which the 1995 Act, the 2013 amendments and the 2025 amendments have, wholly or in part, been challenged by both sets of Petitioners, judicial consistency requires the constitutional Courts to bestow same treatment to both set of petitions as far as interim relief is concerned.

DETAILED EXERCISE UNDERTAKEN AND EXAMINATION OF THE DATA AND VIEWS OF THE STAKEHOLDERS BEFORE THE AMENDMENT

9. It is submitted that the amendments which are questioned in the present batch of petitions are a result of a very comprehensive, in-depth and analytical study by a Committee formed by the Parliament consisting of the members of different political parties to ensure that the Waqf Boards in the country are properly administered, that they function with transparency, that the repeated abuse of waqf legislation which resulted into deprivation of the personal properties of individuals and resulted in the encroachment of government properties [which is nothing but a community property owned collectively by the citizens of India] is prevented, an inclusivity is brought in.

10. It is submitted that before the present impugned amendments, there has been a detailed Executive level and Parliamentary level exercise in order to understand the problems plaguing the previous statutory regime, the consequences, and the appropriate measures that were required to remedy the same. A copy of the data showing a remarkable increase in properties governed by the Waqf Boards post 2013 is annexed herewith and marked as **Annexure R – 1**.

11. It is submitted that there have been reported misuse of waqf provisions to encroach private properties and the government properties. It is really

shocking to know that after the amendment brought in the year 2013, there is 116% rise in auqaf area. It is submitted that right before even Mughal era, pre-independence era and post-independence era, the total of wakfs created was 18,29,163.896 acres of land in India.

Shockingly after 2013, the addition of wakf land is 20,92,072.536 acres.

12. It is submitted that the figures given in **Annexure R – 1** are the figures which are uploaded by the respective waqfs and Waqf Boards voluntarily on WAMSI Portal. It has been the consistent experience that every waqf and every waqf board do not upload the details in public domain with a view avoid transparency and regulatory oversight.

As pointed out hereinunder by insertion of Section 3 B it has become mandatory to upload the details and make everything transparent by putting it in public domain.

A window of 6 months is given to file details of waqfs on the portal and database under Section 3B. Once the updation takes place as per amended Section 3B, the figures will go substantially higher.

13. In other words, till 2013 [i.e. the period which includes Mughal era, pre-independence era and post-independence era], the total area of waqf created were **1829163.896 acres of land**. It is really shocking to note that only after 2013, the addition of waqf lands is **2092072.563 acres** in just 11 years.

In other words, even the first legislation in 1913 is considered, to be the first regulatory measure, 18 lakh acres was occupied by waqf till 2013 i.e. in 100 years [and more if we count pre-1913 era also]. Only between 2013-2024, a phenomenal increase is found and the figure of 20 lakh acres **is additional and not the total figure**. The total comes to **3921236.459 acres of land**.

The increase in waqf properties by 116% itself called for a serious look at statutory architecture of the 1995 Act [specifically as amended by the 2013

amendments] that protected auqaf particularly in the face of serious complaints of land grabbing and encroachments on private lands, government lands, etc. received continuously by the elected representatives coming from all across the country who constitute the Parliament and make the statutory enactment representing the will of the people.

14. The Central Government, therefore, introduced the *Waqf* [Amendment] Bill, 2024 [hereinafter referred to as Bill] and the same was introduced in Lok Sabha on 08.08.2024. The Hon'ble Minister for Minority Affairs considering the significance and importance of the subject matter came to the conclusion that it required an in-depth study. It is submitted that therefore stakeholders' consultation was undertaken by moving a Motion for reference of the Bill to Joint Committee on Waqf Amendment Bill on 09.08.2024. This Motion was passed in Lok Sabha and concurred by the Rajya Sabha.

15. As per the mandate of the House, the Joint Committee on Waqf Amendment Bill, 2024 [hereinafter referred to as the "Joint Parliamentary Committee" or "JPC"] was constituted consisting of 31 elected members from different political parties. It is submitted that many of the petitioners were also the members of the Joint Parliamentary Committee and participated and contributed in every meeting along with other members.

16. As per the mandate of the House, the Committee was to submit its Report to the House by the last date of the first week of the Winter Session. However, considering the in-depth study which was required, extension of time was sought by the JPC and given till the last day of the Budget Session by passing a Motion of Extension by Lok Sabha on 28.11.2024. This again reflected the will of the elected representatives to ensure a detailed study and analysis before the Joint Parliamentary Committee places its Report before the House.

17. The Joint Parliamentary Committee conducted an unprecedented and exhaustive exercise. A Press Communique was issued on 29.08.2024 in national and regional newspapers inviting suggestions and objections to the Bill. The Committee also decided to invite experts / stakeholders and other concerned organisations in particular to give their views freely before the aforesaid 31 Member Committee.

18. It is submitted that the Joint Parliamentary Committee held 36 sittings and heard the views of all concerned stakeholders. The Committee received 97,27,772 memorandums from across the country showing participation from all over the country in this historic law-making process. All the memorandums were forwarded to the Ministry of Minority Affairs for obtaining their comments.

19. It is submitted that the Committee also visited about 10 major cities in the country and undertook personal discussions with experts, stakeholders / concerned organisations, *waqf* boards and the representatives of State Governments as well as State Minority Commissions.

20. The Joint Parliamentary Committee conducted exhaustive deliberations on each issue contained in the Bill. It is submitted that the discussions included 284 stakeholders, 25 State *Waqf* Boards, 15 State Governments, 5 minority Commissions and 20 Ministers / MPs / MLAs etc. The Committee thereafter prepared, considered and adopted the Report consisting of 655 pages by majority. The notes of dissent of 08 members were also placed along with the Report to be placed before the Parliament. A copy of the said Report is enclosed herewith and marked as **Annexure R - 2**.

21. Apart from the representations received by the Joint Parliamentary Committee, the Ministry of Minority Affairs also received representations highlighting the need for legislative amendments which include -

a) Mismanagement of Waqf properties.

b) Deliberate encroachment and unlawful transfer of Waqf land.

c) Inefficient functioning of Waqf Tribunals.

d) Sweeping powers to arbitrarily declare property as Waqf (as per Section 40 of the 1995 Act).

e) Allegations against Waqf Board officials, along with general grievances.

f) Representation from the Ahmadiya community.

22. The Ministry of Minority Affairs which is the nodal Ministry of the Government of India for the Bill also conducted extensive consultations with a wide range of stakeholders like officials of concerned State *Waqf* Boards, representatives of State Governments, Chairpersons and CEOs of State *Waqf* Boards from 19 States / UTs and general public regarding improvement in the management of the *Waqf* to avoid and prevent any misuse of the statutory provisions.

23. The Committee heard the view of representatives from the State Government of

- Maharashtra
- Gujarat
- Andhra Pradesh
- Telangana
- Tamil Nadu
- Karnataka
- Assam
- Odisha
- Madhya Pradesh

- Rajasthan
- Bihar
- West Bengal
- Uttar Pradesh

24. The Committee also held discussions with the representatives of 25 *Waqf* Boards mentioned hereunder and sought written submissions from the remaining *viz*.-

(i) Uttar Pradesh Sunni Waqf Board
(ii) Telangana
(iii) Rajasthan
(iv) Punjab
(v) Haryana
(vi) Uttarakhand
(vii) Delhi
(viii) Maharashtra
(ix) Madhya Pradesh
(x) Gujarat
(xi) Andhra Pradesh
(xii) Kerala
(xiii) Karnataka
(xiv) Tamil Nadu
(xv) Chhattisgarh
(xvi) Assam
(xvii) Manipur
(xviii) Tripura
(xix) Meghalaya
(xx) Odisha
(xxi) Bihar Shia Waqf Board

(xxii) Bihar Sunni Waqf Board

(xxiii) Jharkhand

(xxiv) West Bengal

(xxv) Uttar Pradesh Shia Waqf Board

25. It is submitted that over and above the nodal Ministry *viz*. the Ministry of Minority Affairs, the Committee heard the views of Ministry of Law and Justice, Ministry of Housing and Urban Affairs, Ministry of Road Transport and Highways, Ministry of Railways and Ministry of Culture (Archaeological Survey of India) on the subject of the proposed amendments.

26. The Committee gathered inputs from a wide range of stakeholders, notable amongst whom are the following :

1. All India Sunni Jamiyatul Ulama, Mumbai
2. Indian Muslims of Civil Rights (IMCR), New Delhi.
3. Uttar Pradesh Sunni Central Waqf Board.
4. Rajasthan Board of Muslim Waqf.
5. Zakat Foundation of India
6. Telangana Waqf Board
7. Prof. Faizan Mustafa, Vice Chancellor Chanakya National Law University, Patna
8. All India Pasmanda Muslim Mahaaz, Delhi
9. All India Muslim Personal Law Board (AIMPLB), Delhi
10. All India Sufi Sajjadanashin Council (AISSC), Ajmer
11. Muslim Rashtriya Manch, Delhi
12. Bharat First, Delhi
13. Jamiat Ulama-i-Hind, Delhi
14. Justice in Reality, Cuttack, Odisha
15. Panchasakha Bani Prachar Mandali, Cuttack, Odisha
16. Indian Union Muslim League (IUML)

17. Call for Justice group
18. Waqf Tenant Welfare Association
19. Resident Welfare Association (All Blocks) B.K.Dutt Colony, New Delhi
20. Jamaat-e-Islam-e-Hind, Delhi
21. Muslim Women Intellectual Group led by Dr. Shalini Ali
22. Jamiyat Himaytul Islam
23. Shia Muslim Dharmguru and Intellectual Group
24. Vishwa Shanti Parishad
25. Akhil Bhartiya Adhivakta parishad
26. Anveshak
27. Anjuman-e-Shiateali Dawoodi Bohra Community
28. Muttaheda Majlis-e-Ulema, Jammu and Kashmir (Mirwaiz Umar Farooq)

27. The Committee, while going through a clause by clause reading and discussion found that apart from lack of transparency, lack of professional administration, lack of statutory infrastructure for survey and other problems which defeats the object of *waqf*, large number of properties belonging to the private individuals or entities were being claimed as '*waqf* by user'. It is submitted that despite there being a regime of mandatory registration of all kinds of *waqf* including '*waqf* by user' making registration mandatory almost since a century i.e. since 1923, individuals or organizations used to claim private lands and government lands as *waqf* including under '*waqf* by user' which not only lead to deprivation of valuable property rights of individual citizens but similarly unauthorized claims over public properties.

Waqf by user provision was also criticized by the stakeholders since it allowed properties belonging to government to be wrongfully claimed as *waqf*. As per the data received by the Joint Committee up to 05.09.2024, from 25 out

of 32 Cities / UTs *waqf* boards, a total of 5975 government properties have been declared as *waqf* properties.

28. It is submitted that the Committee deliberated clause-by-clause of the Bill on 27.01.2025 and adopted its final report on 29.01.2025.

The Joint Committee submitted its report to the Hon'ble Speaker of Lok Sabha on 31.01.2025 which was laid in both the Houses of the Parliament on 13.02.2025. The Bill was debated extensively in the Parliament in Both Houses and was passed by the Lok Sabha on 02.04.2025 and by the Rajya Sabha on 03.04.2025. The Bill was notified on 08.04.2025. It was this detailed exercise that ultimately led to the statutory amendments by a competent legislature.

WAQF BY USER AND MANDATORY REGISTRATION PROVISIONS OVER THE PAST CENTURY

29. The '*Waqf*' is defined in Waqf Act, 1995 [as it existed prior to the amendment in 2025] as under :

> **3. Definitions. —**In this Act, unless the context otherwise requires,
>
> **(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;
>
> (ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;
>
> (iii) "grants", including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and
>
> (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;"

30. At the outset it bears emphasis that taking away the statutory protection to a waqf by user does not deprive a person of the Muslim community to create a waqf. It impinges on the form by which such a dedication is to be made, which is the secular dimension of the dedication, and not the right of an individual to dedicate his or her property to God. It is submitted that the concept of '*waqf* by user' was in vogue during the period where the writing or executing deeds for anything was a rare phenomenon.

The following chronology would satisfy this Hon'ble Court that a deliberate, purposeful and intentionally misleading narrative is built very mischievously giving an impression that those *waqf*s [including '*waqf* by user'] which do not have document to support their claims will be affected. This is not only untrue and false but purposefully and deliberately misleading this Hon'ble Court.

The following chronology would satisfy this Hon'ble Court that for being protected as '*waqf* by user' under proviso to Section 3[1][r], no trust, deed or any documentary proof has been insisted upon in the amendment or even prior thereto. The only mandatory requirement for being protected under the proviso is that such '*waqf* by user' should be **registered as on 08.04.2025** since the registration has always been mandatory as per the statute governing *waqf*s since last 100 years. Those, who deliberately evaded or avoided to get '*waqf* by user' registered [despite non-registration being punitive under the statute] cannot claim the benefits of the proviso.

Mussalman Wakf Act, 1923

31. The Central Government [during the British regime] found it necessary to make a statutory provision regulating and governing *waqf*. The situation is reflected from the Statement of Objects and Reasons of the Mussalman Wakf Act, 1923 which is reflected hereunder:-

> "**Statement of Objects and Reasons** – The object of the present Bill is sufficiently indicated by the Preamble to the Bill. For several years passed, there has been a growing feeling amongst the Mahomedan community, throughout the country that the numerous endowments which have been or are being made daily by pious and public-spirited Mahomedans are being wasted or systematically misappropriated by those into whose hands the trust may have come in the course of time. **Instances of such misuse of trust property are unfortunately so very common that a wakf endowment has now come to be regarded by the public as only a clever device to tie up property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty.** In some cases, the mutawallis are persons who are utterly unfit to carry on the administration of wakf and who, by their moral delinquencies bring discredit not merely on the endowment but on the community itself. It is believed that the feeling is unanimous that some step should be taken in order that incompetent and unscrupulous mutawallis may be checked in their career of waste and mismanagement, and that the endowments themselves may be appropriated to the purposes for which they had been originally dedicated.
>
> **In some cases, difficulties have arisen in finding out whether any particular properties are really subject to wakf or not. There are numerous wakf properties all over the country unknown to the public which the mutawallis are treating their own private property and dealing with in any way they think fit or necessary.** It, therefore, seems that there should be a system of compulsory registration requiring a mutawalli to notify to some responsible officer not merely about the fact of the wakf, of which he is the mutawalli, but also the nature and extent and other incidents of the endowment. Further, even where a wakf is well-known and mutawalli is obviously thoroughly incompetent to carry on his duties, the public find a difficulty in instituting suits to remove him from his post by reason of the cumbrous procedure laid down in the Code of Civil Procedure. It is with a view to facilitate the institution of such suits that a provision has been made in the Bill. Lastly, there appears to be a general consensus of opinion amongst the Mahomedans throughout the country

> that there should be some responsible officer, who may go about and find for himself whether the various wakf properties scattered throughout the country are being properly managed or not. It is not intended that Government should be called upon to bear the burden of appointing such an officer or his staff, and a provision has, therefore, been made in the Bill authorizing the Central Committee (to be appointed in pursuance of the provisions of the Bill) to levy a rateable contribution from the mutawallis for the purpose of meeting the cost on entertaining such an officer and his staff."

32. The Mussalman Wakf Act, 1923 was the Central Act extending to the whole of India. It is submitted that in the said Mussalman Wakf Act, 1923, it was made mandatory to get all *waqf* registered. For the said process of registration, it was not mandatory to have a written wakf deed.

33. It was a statutory mandate for Mutawallis to furnish to the **Court** within the local limits of whose jurisdiction the property of the wakf was situated containing the details of the wakf like a description of the *wakf* property, the gross annual income etc. under Section 3 of the Act of 1923. Section 3 of the Mussalman Wakf Act of 1923 reads as under-

> **"Section 3**
>
> **3. Obligation to furnish particulars relating to wakf**. — (1) Within six months from the commencement of this Act every mutawalli shall furnish to the Court within the local limits of whose jurisdiction the property of the wakf of which he is the mutawalli is situated or to any one of two more such Courts, a statement containing the following particulars, namely—
>
> (a) a description of the wakf property sufficient for the identification thereof;
>
> (b) the gross annual income from such property;
>
> (c) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or of the period which has elapsed since the creation of the wakf, whichever period is shorter;
>
> (d) the amount of Government revenue and ceases, and of all rents, annually payable in respect of the wakf property;

(e) an estimate of the expenses annually incurred in the realisation of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (c) relate;

(f) the amount set apart under the wakf for—

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

(ii) purely religious purposes;

(iii) charitable purposes;

(iv) any other purposes; and

(g) any other particulars which may be prescribed.

(2) Every such statement shall be accompanied by a copy of the deed or instrument creating the wakf or, if no such deed or instrument has been executed or a copy thereof cannot be obtained shall contain full particulars, as far as they are known to the mutawalli, of the origin, nature and objects of the wakf.

(3) Where—

(a) a wakf is created after the commencement of this Act, or

(b) in the case of a wakf such as is described in section 3 of the Wakf Validation Act, 1913 (6 of 1913) the person creating the wakf or any member of his family or any of his descendants is at the commencement of this Act alive and entitled to claim any benefit thereunder,

the statement referred to in sub-section (1) shall be furnished, in the case referred to in clause (a), within six months of the date on which the wakf is created or, if it has been created by a written document, of the date on which such document is executed, or, in the case referred to in clause (b), within six months of the date of the death of the person entitled to such benefit as aforesaid, or of the last survivor of any such persons, as the case may be."

The sanctity of this provision mandates providing details. This provision also did not mandate filing of any deed or documents creating *waqf*.

34. The Act thereafter required publication the said details, to obtain full particulars and to ensure that if any person is objecting to the declaration of his

property as a *waqf*, he will have a remedy of protecting his right in the property which, according to him, is wrongly being declared as *waqf*. Section 4 is quoted as under :

> **"Section. 4. Publication of particulars and requisition of further particulars.—**
>
> (1) When any statement has been furnished under section 3, the court shall cause notice of the furnishing thereof to be affixed in some conspicuous place in the Court-house and to be published in such other manner, if any, as may be prescribed, and thereafter any person may apply to the Court by a petition in writing, accompanied by the prescribed fee, for the issue of an order requiring the mutwalli to furnish further particulars or documents.
>
> (2) On such application being made, the Court may, after making such inquiry, if any, as it thinks fir, if it is of opinion that any further particulars or documents are necessary in order that full information may be obtained regarding the origin, nature or objects of the wakf or the condition or management of the wakf property, cause to be served on the muttwalli an order requiring him to furnish such particulars or documents within such time as the Court may direct in the order"

35. It may be relevant to note that the Mussalman Wakf Act, 1923, vested the responsibility of providing the particulars on the Mutawalli. The Mutawalli can be any person who is, for the time being, administering any *waqf* property. A copy of the Mussalman Wakf Act, 1923 is enclosed herewith and marked as **Annexure R – 3.** The statutory regime of *waqf* continued thereafter.

36. It is submitted that the petitioners despite trying to persuade this Hon'ble Court on the ground that they cannot be called upon to produce documents of more than a century vintage, have failed to show that registration of *waqf* had its own sanctity, the details of *waqf*s were required to be placed before the Court [and not before any administrative authority] and such list was to be published.

37. It is submitted that the Act of 1923 [100 years back] required *waqf*s to place before the Court the statements of accounts every year. Section 5 of the Act of 1923 reads as under-

> **5. Statement of accounts.—**Within three months after the thirty-first day of March next following the date on which the statement referred to in section 3 has been furnished and thereafter within three months of the thirty-first day of March in every year, every mutwalli shall prepare and furnish to the Court to which such statement was furnished a full and true statement of accounts, in such form and containing such particulars as may be prescribed, of all moneys received or expended by him on behalf of the wakf of which he is the mutwalli during the period of twelve months ending on such thirty-first 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 wakf:
>
> Provided that the Court may, if it is satisfied that there is sufficient cause for so doing, extend the time allowed for the furnishing of any statement of accounts under this section.

38. The Act of 1923 also mandated audit of the accounts under Section 6 which reads as under:-

> **"6. Audit of account**.—Every statement of accounts shall, before it is furnished to the Court under section 5, be audited—
>
> (a) in the case a wakf the gross income of which during the year in question, after deduction of the land revenue and cesses, if any, payable to the Government, exceeds two thousand rupees, by a person who is the holder of a certificate granted by the Central Government under section 144 of the Indian Companies Act, 1913 (7 of 1913), or is a member of any institution or association the members of which have been declared under that section to be entitled to act as auditors of companies throughout the territories to which this Act applies; or
>
> (b) in the case of any other wakf, by any person authorised in this behalf by general or special order of the said Court.

39. It would be relevant to note that placing the details before the Court was not treated by the Act of 1923 to be a mere empty formality. Considering the Statement of Objects and Reasons quoted hereinabove, the statute mandated that particulars being furnished before the Court under Sections 3, 4 and 5 shall be written in the language of the Court and shall be verified in the manner provided in the Code of Civil Procedure, 1908. Section 8 of the Act reads as under:-

> "**8. Verification.—**Every statement of particulars furnished under section 3 or section 4, and every statement of accounts furnished under Section 5, shall be written in the language of the Court to which it is furnished, and shall be verified in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the signing and verification of pleadings."

40. It is submitted that non-compliance of the statutory provisions of Sections 3, 4, and 5 referred above was made punitive and the person responsible was punishable with fine which may extended to Rs.500 which may be extended to Rs. 2000 [in the year 1923]. Section 10 of the Act reads as under-

> "**10. Penalties.—**Any person who is required by or under section 3 or section 4 to furnish a statement of particulars or any document relating to a wakf, or who is required by Section 5 to furnish a statement of accounts, shall, if he, without reasonable cause the burden of proving which shall lie upon him fails to furnish such statement or document, as the case may be, in due time, or furnishes a statement which he knows or has reason to believe to be false, misleading or untrue in any material particular, or, in the case of a statement of account, furnishes a statement which has not been audited in the manner required by Section 6, be punishable with fine which may extend to five hundred rupees, or, in the case of a second or subsequent offence, with fine which may extend to two thousand rupees.

41. It is submitted that further, the concept of '*Waqf* by user' was in existence even then which is clear from the provincial Acts of that era. To illustrate, Section 6[10] of the Bengal Wakf Act, 1934 reads as under-

"Section 6[10] of the Bengal Wakf Act, 1934

"wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Islamic law as pious, religious or charitable and includes a wakf by user; and "wakif" means any person making such dedication;"

42. It is submitted that despite the existence of the concept of 'waqf by user', the requirement of registration or self-declarations before the Court were made mandatory in order to ensure that the regulatory provisions of the enactments achieve the intended objectives. It is submitted that therefore, there has been a clear and mandatory legislative regime, which has sought to enforce and implement registration requirements on all kinds of waqfs since at least 1923.

Wakf Act, 1954

43. It is submitted that post-independence, the Parliament enacted the Wakf Act, 1954. A copy of the Wakf Act, 1954 [as amended from time to time] is enclosed herewith and marked as **Annexure R – 4.** The concept of '*Waqf* by user' which was already in vogue [with an obligation to register even in absence of any *waqf* deed] came in the Wakf Act, 1954. The relevant provision i.e. Section 3[l] of the Act reads as under

"Section 3[l]

(l) "wakf" means the permanent dedication by a person professing Islam or any other person of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

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

(ii) grants including mashrut-ul-khidmat [muafies, khairati, qazi services, madadmash for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iii) a wakf-alal-aulad; Provided that in the case of a dedication by a person not professing Islam, the Wakf shall be void if, on the death of such person, any objection to such dedication is raised by one or more of his legal representatives:"

44. It is submitted that the scheme of Wakf Act, 1954 again makes it very clear that it was impermissible to have the existence of any *waqf* including '*Waqf* by user' without being registered.

Under Section 4 of the Act of 1954, the State Government was mandated to appoint a Commissioner of *Waqf* to survey the *waqf* property **existing** in the State at the date of commencement of the Act. This obviously applies to '*Waqf* by user' as the definition of '*Waqf*' included '*Waqf* by user'. If there was any real '*Waqf* by user' in existence, it would have been identified in the survey of the respective State Governments through the Commissioners of *Waqf* under Section 4 of the Act. Section 4 of the Act reads as under-

"Section 4

4. Preliminary survey of wakfs. — (1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Wakfs and as many additional or assistant Survey Commissioners of wakfs as may be necessary for the purpose of making a survey of wakf properties existing in the State at the date of the commencement of this Act.

(2) All additional and assistant Survey Commissioners of wakfs shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report in respect of wakfs 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 wakfs in the State, or as the case may be, any part thereof, showing the Shia wakfs and Sunni wakfs separately;

(b) the nature and objects of each wakf;

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

(d) the amount of land revenue, ceases, rates and taxes payable in respect of such property;

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

(f) such other particulars relating to each wakf 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 (5 of 1908) in respect of the following matters, namely:—

(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) any other matter which may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the deed of wakf 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 wakf 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 twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3).

The Commissioner under Section 4, had extremely wide powers.

45. It is submitted that the Act thereafter imposed an obligation upon the *Waqf* Board to examine the report of the Survey Commissioner and to publish in the Office Gazette a list of *waqf*.

This publication was obviously mandated so as to ensure that any *waqf* claims [including claim of '*Waqf* by user'] can be subjected to challenge by an aggrieved party before the competent civil court [which then had the jurisdiction] under Section 6 of the 1954 Act. Sections 5 and 6 of the 1954 Act reads as under-

> **"Section 5**
>
> **5. Publications of list of wakfs.** — (1) On receipt of a report under subsection (3) of Section 4, the State Government shall forward a copy of the same to the Board.
>
> (2) The Board shall examine the report forwarded to it under subsection (1) and publish, in the Official Gazette, a list of wakfs in the State, or as the case may be, the part of the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such particulars as may be prescribed.
>
> **Section 6**
>
> **6. Disputes regarding wakfs**.—(1) If any question arises whether a particular property specified as wakf property in a list of wakfs published under sub-section (2) of Section 5 is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a civil court of competent jurisdiction for the decision of the question and the decision of the civil court in respect of such matter shall be final:

Provided that no such suit shall be entertained by the civil court after the expiry of one year from the date of the publication of the list of wakfs under sub-section (2) of Section 5:

Provided further that in the case of the list of wakfs relating to any part of the State and published or purporting to have been published before the commencement of the Wakf (Amendment) Act, 1969, such suit may be entertained by the civil court within the period of one year from such commencement.

Explanation.—For the purposes of this section and Section 6-A, the expression 'any person interested therein', occurring in sub-section (1) of this section and in sub-section (1) of Section 6-A, shall, in relation to any property specified as wakf property in a list of wakfs published, under sub-section (2) of Section 5, after the commencement of the Wakf (Amendment) Act, 1984, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in than behalf during the course of the relevant inquiry under Section 4."

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(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 of any rules made thereunder.

(4) The list of wakfs published under sub-section (2) of Section 5 shall, unless it is modified in pursuance of a decision of the civil court under sub-section (1), be final and conclusive.

(5) On and from the commencement of the Wakf (Amendment) Act, 1984 in a State, no suit or other legal proceeding shall be instituted or commenced in a civil court in that State in relation to any question referred to in sub-section (1).

Section 6-A [added through an amendment later]

6-A. power of tribunal to determine disputes regarding wakfs. —

(1) If, if after the commencement of the wakf (Amendment) Act, 1984, any question arises whether the particular property specified as wakf property in a list of wakfs published under sub-section (2) of section 5 is wakf property or not or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board of the mutawalli of the wakf, or any person interested therein, ma apply to the tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the tribunal in respect of such matter shall be final:

Provided that—

(a) in the case list of wakfs relating to any part of the State and published or purporting to have been published after the commencement of the wakfs (Amendment) Act, 1984, no such application shall be entertained after the expiry of one year from the date of publication of the list of Wakfs under subsection (2) of section 5; and

(b) in the case of list of wakfs relating to any part of the State and published or purporting to have been published at any time within a period of one year immediately preceding the commencement of the Wakf (Amendment) Act, 1984 such an application may be entertained by the tribunal within the period of one year from such commencement:

Provided after 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 be re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provision of sub-section (5) no proceeding under this section in respect of any wakf shall be stayed by any court, tribunal or other authority by reason of the pendency of any suit, application or of any appeal or other proceeding arising out of any such suit application, appeal or other proceeding.

(3) The wakf commissioner shall not be made a party to any application under sub-section (1).

(4) The list of wakf published under sub-section (2) of section 5, and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of the Wakf (Amendment) Act, 1984, or which is the subject matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be."

Subject to Section 6[4] of the 1954 Act, the Gazette list of *waqf*s published under Section 5 was final.

46. It is submitted that even if for some reason or the other the Survey Commissioner missed a particular *waqf* in his exercise under Section 4, the Act specifically mandated registration of *waqf* itself under Section 25 of the Act. This provision again reflects clearly and categorically that for registration, no written deed of *waqf* is required but the registration will require certain details only. Section 25 of the Act reads as under :

"Section 25

25. Registration. — (1) Every wakf whether created before or after the commencement of this Act shall be **registered** at the office of the Wakf Commissioner.

(2) Application for registration shall be made by the mutawalli:

Provided that such applications may be made by the wakif or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.

(3) An application for registration shall be made in such form and manner and at such place as the Wakf Commissioner may prescribe and shall contain the following particulars, so far as possible—

(a) a description of the wakf properties sufficient for the identification thereof;

(b) the gross annual income from such properties;

(c) the amount of land revenue and ceases, and of all rates and taxes annually payable in respect of the wakf properties;

(d) an estimate of the expenses annually incurred in the realisation of the income of the wakf properties;

(e) the amount set apart under the wakf for—

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

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars prescribed by the Wakf Commissioner.

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

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Wakf Commissioner may require the applicant to supply any further particulars or information that he may consider necessary.

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

(8) In the case of wakfs 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 wakfs created after such commencement, within three months from the date of the creation of the wakf.

(9) Every wakf registered under this section before the commencement of the Wakf (Amendment) Act, 1984 shall be deemed to have been registered on such commencement, at the office of the Wakf Commissioner.

(10) Every application for registration under this section pending immediately before the commencement of the Wakf (Amendment) Act, 1984 before the Board shall, on such commencement, stand transferred to the Wakf Commissioner and the Wakf Commissioner shall deal with such application as if it were an application pending before him."

47. Pertinently, in the Act of 1954, a window was kept for those *waqf* [including '*Waqf* by user'] who could not get themselves registered prior to 1954 under Section 25[8], to get registration within three months from the date of commencement. Any *waqf* including '*Waqf* by user' was under an obligation to get itself registered as '*Waqf* by user' under Section 25 without raising a false pretext that it does not have *waqf* deed or document.

48. It is submitted that Section 26 thereafter mandated maintaining the Register of *Waqf,* which would also mention "class of *waqf*". This is clear from the fact that if there is a '*Waqf* by user', it would be so shown in the register statutorily maintained under Section 26 of the Act. Section 26 of the 1954 Act reads as under :

"Section 26

26. Register of wakfs. — (1) The Wakf Commissioner shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds, when available and the following particulars, namely: —

(a) the class of the wakf;

(b) the name of the mutawalli;

(c) the rule of succession to the office of mutawalli under the wakf deed or by custom or by usage;

(d) particulars of all wakf properties and all title deeds and documents relating thereto;

(e) particulars of the scheme of administration and the scheme of expenditure at the time of registration;

(f) such other particulars as may be prescribed.

(2) The register of wakfs maintained under this section immediately before the commencement of the Wakf (Amendment) Act, 1984 shall be deemed, on such commencement, to be the register maintained by the Wakf Commissioner under sub-section (1)."

49. It is submitted that the sanctity of there being a proper registration of all categories of *waqf*s [including '*Waqf* by user'] was recognized by the Parliament right from 1954. This is reflected from the provisions of Section 27 of the Wakf Act, 1954 which required the Board itself to collect information about the existence of any *waqf*. Section 27 reads as under :

"Section 27

27. Decision if a property is wakf property. — (1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf, it may, after making such inquiry as it may deem fit, decide the question.

(2) The decision of the Board on any question under sub-section (1) shall, unless revoked or modified by a civil court of competent jurisdiction, 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 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is wakf 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 wakf property, call upon the trust or society, as the case may be, either to register such property under this Act as wakf property or show cause why such property should not be so registered:

> 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 civil court of competent jurisdiction."

50. If the Board is satisfied about the existence of the wakf which is avoiding registration, then in terms of the statutory mandate under Section 28, the wakf board can direct *Mutawalli* [which includes any person as per the definition] to apply for registration. Section 28 of the Act reads as under: -

> **"Section 28**
>
> **28. Power to cause registration of wakf and to amend register.** —The Wakf Commissioner may direct a mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may himself cause the wakf to be registered or may at any time amend the register of wakfs.

51. It is submitted that the sanctity of registration has always been realized by the Parliament while making statutory provisions of waqfs. It clearly appears that this mandatory requirement of registration is to take care of two situations –

(i) No waqf property is administered without the administrative supervision of the Waqf Board;

(ii) No person or body misuses waqfs without being subjected to the statutory regulations.

To ensure and emphasise the importance of registration of waqfs, the Wakf Act, 1954 provided for penalties under Section 41 of the Act which reads as under-

Section 41

41. Penalties. —If a mutawalli fails—

(a) to apply for the registration of a wakf;

(b) to furnish statements of particulars or accounts or returns as required by this Act;

(c) to supply information or particulars as required by the Board;

(d) to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto;

(e) to deliver possession of any wakf property, if ordered by the Board or the court;

(f) to carry out the directions of the Board;

(g) * * *

(h) to discharge any public dues; or

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

he shall, unless he satisfies the court that there was reasonable cause for his failure, be punishable with [fine which may extend to two thousand rupees.

(1-A) Notwithstanding anything contained in sub-section (1), if,

—

(a) a mutawalli omits or fails, with a view to concealing the existence of a wakf, to apply for its registration under this Act,

—

(i) in the case of a wakf created before the commencement of the Wakf (Amendment) Act, 1984, within the period specified therefore in sub-section (8) of Section 25 or within a period of one month from such commencement, whichever period expires later; or

(ii) in the case of any wakf created after such commencement, within three months from the date of the creation of the wakf; or

(b) a mutawalli furnishes any statement, return or information to the Wakf Commissioner or the Board, as the case may be, which he knows or has reason to believe to be false, misleading, untrue or, incorrect in any material particular, he shall be punishable with imprisonment for a term

which may extend to six months and also with fine which may extend to five thousand rupees.

(2) No court shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or the Wakf Commissioner or by an officer duly authorised by the Board or the Wakf Commissioner in this behalf.

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

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the fine imposed under sub-section (1), when realised, shall be credited to the Wakf Fund.

(5) In every case where an offender is convicted after the commencement of the Wakf (Amendment) Act, 1984, of an offence punishable under sub-section (1), and sentenced to a fine, the court shall also impose such term of imprisonment in default of payment of fine as is authorized by law for such default."

52. It is submitted that despite having mandatory registration of all Waqfs including "Waqf by user" right from 1923, the menace of deliberate non-registration continued as several waqfs did not wish to come under the statutory regulatory mechanism. This was taken note of by the "Wakf Enquiry Committee" appointed by the Central Government for the purpose of evaluating working of the Wakf Act, 1954 in its final report of 1976.

53. The Committee consisted of the following persons –

a. Sayeed Ahmad – Chairman

b. M.H. Mohsin – Member

c. Ishaq

Later Mr. Zulfikar Alik Khan replaced S.H. Mohsin.

54. The said Committee was also very clear that concealment of waqf and its wilful non-registration is a serious issue. It, therefore, advised –

> "Bar to hear or decide suits
>
> (i) Deliberate concealing of wakfs and wilful failure to have them registered is a deeply prevalent malady affecting the administration of wakfs. Attaching the highest importance to this matter, we have separately provided for imprisonment in such cases as a punitive measure. We consider that a carrot-and-stick policy is also required in the matter; dangling the carrot wherever possible and using the stick whenever it becomes necessary. We consider that, in the implementation of this policy, we have a very salutary provision under Section 31 of the Bombay Public Trusts Act 29 of 1950, which bars the hearing of any suits in respect of a public trust which has not been registered under the Act. We consider that a similar provision is necessary in the Central Wakf Act of 1954, and no Mutawalli who has failed to have wakfs registered as required under the Central Wakf Act of 1954 should be provided with the facility of enforcing any right in a court of law unless he has duly registered his wakf as required under the Act. We, therefore, recommend that a fresh Section 55A may be added to the Central Wakf Act of 1954 on the following lines:
>
> > "(a) 55(1) No suit to enforce a right on behalf of a wakf which has not been registered under this Act shall be heard or decided in any court of law or tribunal."
> >
> > "(2) The provisions of sub-section (1) shall apply to a claim of set-off or other proceedings to enforce a right on behalf of such wakf."

55. Based upon this recommendation, the Parliament amended the Wakf Act, 1954 by Wakf [Amendment] Act, 1984 providing for following amendment inserting Section 55E which read as under: -

> "**55E**. (1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has 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 the commencement of the Wakf (Amendment) Act, 1984, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any court after

> such commencement unless such wakf has been registered, after such commencement, in accordance with the provisions of this Act.
>
> (2) The provisions of sub-section (1) shall apply, as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act."

A copy of the Wakf [Amendment] Act, 1984 is enclosed herewith and marked as **Annexure R – 5.**

The amendment in 1984 Act was not brought into effect though it amended several sections. The reasons for non-implementation are mentioned in the Statement of Objects and Reasons when the Wakf Act, 1995 was enacted.

56. As already mentioned hereinabove, it has always been felt and was for the first time even recorded by a report prepared by the Central Government appointed Committee that non registration is a deliberate act by Wakfs. Even at the cost of repetition the part of the report of Central Government 'Wakf Enquiry Committee" referred above to show that non registration was deliberate and not due to any other reason is reproduced below. The Central Government appointed Committee observed as under as back as in the year 1976 i.e., 50 years ago-

> "(i) Deliberate concealing of wakfs and willful failure to have them registered is a deeply prevalent malady affecting the administration of wakfs. Attaching the highest importance to this matter, we have separately provided for imprisonment in such cases as a punitive measure....."

57. It is submitted that after the Act of 1954, amendments were made in 1959, 1964, 1969 and even in 1984. The amendment though were salutary were not brought into effect by the Central Government since they were opposed by

Muslim community [as mentioned in the Statement of Objects and Reasons of the Wakf Act, 1995 itself].

The Wakf Act, 1995

58. With a view to further streamline the administration of wakf without interfering with the administration of wakf itself, the Parliament enacted the Wakf Act, 1995. A copy of the Waqf Act, 1995 [as originally enacted] is enclosed herewith and marked as **Annexure R – 6.** The 195 Act provided the definition of 'wakf' under Section 3[r] which reads as under (unamended/prior to the 2013 amendment) –

> **"Section 3 [r]**
>
> (r) "wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—
>
> (i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;
>
> (ii) "grants", including mashrut-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and
>
> (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable,
>
> and "wakf" means any person making such dedication;"

59. For the present context it suffices to say that 'Wakf by user' continued to be part of the definition of wakf though the Parliament was fully conscious [as evident from the various reports referred above] that certain persons were not registering wakf deliberately to avoid being under a statutory regime, being answerable, being accountable and to avoid being required to show accounts and transactions of land dealings etc.

60. The legislative policy of ensuring mandatory registration so that no category of wakf goes unnoticed and thereby unregulated by statutory provisions, remained consistent even in Act of 1995. Section 4 of the 1995 Act again mandated each State Government to appoint Survey Commissioners for making "survey of Auqaf" in the State like Section 4 of the 1954 Act. Section 4 of the 1995 Act (as amended by the 2013 Act),reads as under-

> "**Section 4**
>
> 4. Preliminary survey of auqaf. —
>
> (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 (27 of 2013), in case such survey was not done before the commencement of the Wakf (Amendment) Act, 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 (5 of 1908) in respect of the following matters, namely:—

(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.

61. It is submitted that the legislative intent and policy has always been very clear with regard to waqf being registered so that it remains under the statutory regime with respect to its secular aspects like maintenance of accounts, survey of properties, transparent administration, and supervision in case of transfer of property of wakf.

Though Section 4 provided for a survey to be conducted as far back as in the year 1995, the Parliament inserted Section 1A in Section 4 by Act 27 of 2013 giving one more window of one year for the Survey Commissioner to complete the survey so that no waqf of any nature [including 'Waqf by user'] goes unregistered [thereby avoiding, ignoring and defying the regulatory mechanism of regulating its secular aspects of transparent administration, proper accounting of accounts, transparent manner of transfer of property etc.]

62. It is submitted that survey would catch up all existing Auqaf and would be published by the Waqf Board under Section 5 of the Act (as amended by the 2013 Act) which reads as under-

> **"Section 5**
>
> 5. Publication of list of auqaf. — (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.
>
> (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."

63. It is submitted that Section 5 requiring publication clearly had three objects-

(i) To put everyone to notice that a particular property is declared as waqf so as to enable an affected aggrieved party to challenge the same;

(ii) The claim of there being a waqf is recorded in contemporaneous land records so that the owner of every land [if the waqf is not the real owner] come to know about it and take recourse to law;

(iii) No person or entity can claim existence of waqf, if not registered.

This was akin to Section 5 of the 1954 Act

64. It is submitted that Sections 6 and 7 provided for adjudication of disputes regarding waqfs [changed to "Auqaf" - which is plural of Waqf in 2013] like Section 6 of the 1954 Act. If anyone wants to question whether any property is a waqf property or not, he can approach the Waqf Tribunal [which would include any aggrieved person who claims that his property is declared waqf wrongly]. Sections 6 and 7 of the Act (as amended by the 2013 Act) reads as under-

"Section 6

6. Disputes regarding auqaf.—(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:

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.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any waqf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(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.

(4) The list of auqaf shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

Section 7

7. Power of Tribunal to determine disputes regarding auqaf.—(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:

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.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any waqf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1)

(4) The list of auqaf and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of the Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

> Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.

65. It is submitted that the moment Auqaf are identified under Sections 4 and 5, it would be part of the Register of Waqfs, giving an opportunity to an aggrieved party to challenge such registration and the claim of any alleged 'Waqf by user'.

66. The 1995 Act also continues the mandate of registration of all waqf including 'waqf by user' under Section 36 like Section 25 of the 1954 Act. Section 36 of the 1995 Act reads as under:

> **"36. Registration**. — (1) Every waqf, whether created before or after the commencement of this Act, shall be registered at the office of the Board.
>
> (2) Application for registration shall be made by the mutawalli:
>
> Provided that such applications may be made by the waqf or his descendants or a beneficiary of the waqf or any Muslim belonging to the sect to which the waqf belongs.
>
> (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: —
>
> (a) a description of the waqf properties sufficient for the identification thereof;
>
> (b) the gross annual income from such properties;
>
> (c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the waqf properties;
>
> (d) an estimate of the expenses annually incurred in the realisation of the income of the waqf properties;
>
> (e) the amount set apart under the waqf for—
>
> (i) the salary of the mutawalli and allowances to the individuals;
>
> (ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(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 cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the waqf.

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary

(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."

67. It is submitted that a closer scrutiny would show that there is a detailed and elaborate procedure prescribed for getting any wakf [including 'waqf by user'] registered. This provision is not only for proper administration of waqf in the country but serves the salutary purpose of declaration that a particular piece of land or property is registered as waqf. Importantly, even creation of waqf by a deed in writing was optional till it is made compulsory in the present amendment.

Secondly, any person can get the waqf registered and it is not necessary for only the 'wakif' [his descendants or any other body] or Mutawalli to get it registered. Even a beneficiary or any Muslim can get the waqf registered.

Even in 1995, no documents were insisted upon as made clear in Section 36[4].

68. It is submitted that even in case of registration of waqf by user, the law has taken care that an applicant will have to give the following details –

> "(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: —
>
> (a) a description of the waqf properties sufficient for the identification thereof;
>
> (b) the gross annual income from such properties;
>
> (c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the waqf properties;
>
> (d) an estimate of the expenses annually incurred in the realisation of the income of the waqf properties;
>
> (e) the amount set apart under the waqf for—
>
> (i) the salary of the mutawalli and allowances to the individuals;
>
> (ii) purely religious purposes;
>
> (iii) charitable purposes; and
>
> (iv) any other purposes;
>
> (f) any other particulars provided by the Board by regulations.

69. It is submitted that even in case of waqf by user, the application has always been requiring to be accompanied with only particulars of origin, nature and object of the waqf and other details. This is provided under Section 36[4]. Every application made under sub-section [2] is to be mandatorily signed and verified in a manner provided in the Civil Procedure Code as provided under Section 36[5] of the Waqf Act. This shows the legislative intent of the sanctity given to even an application for registration.

70. It is submitted that even after such particulars which are referred above, with an application signed and verified as pleadings under the Code of Civil Procedure, it was / is not open for the Waqf Board to mechanically register the waqf as it was enjoined with a responsibility to conduct an inquiry and to require the applicant to supply further particulars or information which may be necessary.

Most importantly, there has always been a statutory mandate upon the Board, after receipt of the application to verify the correctness of any particulars therein and decided the genuineness and validity and follow the procedure as contemplated under Section 36[7]. This requirement (which existed from the beginning) has always been intended to be more important in case of 'waqf by user'.

71. It is submitted that in case any person goes for registration of 'waqf by user', it was mandatory for the Board to conduct an enquiry and record a specific finding that in fact, the property is used as 'waqf by user', such property matches the description of the property given by the applicant and will have to specify the purpose of the waqf and other details.

This is the sanctity of registration of waqf in general and more importantly its registration when waqf is claimed merely by long use as 'waqf by user'. It is

submitted that if experience has established that absence of a formal dedication creates confusion and at times is contrary to public interest, the change in a law that confers the benefit of recognition upon a dedication of property by limiting it to formal dedications that are registered cannot be a violation of religious rights.

72. It is submitted that Parliament has always maintained a legislative policy of requiring registration of waqf to be mandatory and, therefore, the Legislature while enacting Waqf Act, 1995 also gave the last window for unregistered waqfs to get themselves registered. Section 36[8] in this respect reads as under-

> **"Section 36[8]**
>
> (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."

73. It is submitted that at this juncture, it would be relevant to notice Section 32 and Section 40 of the Wakf Act, 1995. Section 32 provides for powers and functions of the Board. Section 32 reads as under-

> **"32. Powers and functions of the Board. –**
>
> (1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:
>
> Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the school of Muslim law to which the wakf belongs.

Explanation. – For the removal of doubts, it is hereby declared that in this sub-section, "wakf" includes a wakf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

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

(a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every wakf;

xxxx

74. It is submitted that the said provisions clearly provide that as a part of the function of the Board, it is to maintain a record not only relating to waqf but its 'origin', which may or may not be based on any documents.

75. It is submitted that Section 40 of the Act [as it existed prior to the amendment of 2025] to be an additional responsibility upon the Board to collect information regarding any property which it has reason to believe to be a wakf property like Section 27 of the 1954 Act. Section 40 reads as under:-

"40. Decision if a property is wakf property. –

(1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf it may, after making such inquiry as it may deem fit, decide the question.

(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 wakf 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 wakf property, call upon the trust or society, as the case may be, either to register such property under this Act

as wakf property or show cause why such property should not be so registered:

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."

76. Similarly, as was the power in 1954, the Board had the power to direct the Mutawalli to apply for registration under Section 41 which reads as under:-

"41. Power to cause registration of wakf and to amend register.

The Board may direct a mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may itself cause the wakf to be registered or may at any time amend the register of wakfs."

77. It may be pointed out that Section 40 was found to be the most misused provision as the Waqf Board used to, under Section 40 of the Act, declare any property of private individuals or those belonging to the Government as waqf properties.

78. It is submitted that even the change in the management is required to be notified under Section 42. The registration takes within its fold several responsibilities which removes any possibility of fictitious waqfs being in existence. Section 44 of the 1995 Act requires Mutawalli to prepare a budget, finances under the direct management of the Board, submission of accounts under Section 46, auditing of accounts under Section 47, etc. Similar provision existed even before the 1995 Act as stated hereinabove.

79. It is submitted that thus, there exists a historical perspective to highlight why "unregistered" 'waqf by user' are not protected in the proviso to Section

3[1][r]. It is thus clear that those waqfs which have not registered themselves [including 'waqfs by user'] since 1923, 1954, or at least prior to 01.01.1996 [date on which Act of 1995 came in force] nor have they been found to be in existence during the survey by the Survey Commissioner and an independent exercise mandated by law from the State Waqf Board (as explained above) and have no legal existence and any belated claim at this stage is not maintainable. This legislative policy in the proviso has, therefore, a rationale and is not arbitrary.

80. The Act of 1995 also mandated the maintenance of statutory register under Section 37 which would, *inter alia*, contain the 'class of waqf' which would include 'waqf by user'. The said provision also mandates forwarding of the details of register to the 'concerned land revenue office' having jurisdiction over the waqf property.

81. In other words, if a genuine waqf including 'waqf by user' ever existed, it would have passed through the aforesaid process and would find mention of its name at two places:-

(i) Register maintained under Section 37 of the Act of 1995 [as well as register maintained under the Act of 1954 and Court record under the Act of 1923]; and

(ii) In the revenue record of the area.

82. It is submitted that like the previous Acts i.e. the Act of 1923 and the Act of 1954, the Waqf Act of 1995 also provided for penalties if application for registration is not made. The penalties which started with fine has increased to imprisonment. This clearly reflects that non-registration of any kind of waqf (including 'waqf by user') is not acceptable since 100 years. The penalty is both an imprisonment for six months and fine. Section 61 of the Act [prior to 2013 amendment] reads as under:

"61. Penalties. –

(1) If a mutawalli fails to –

(a) apply for the registration of a wakfs;

(b) furnish statements of particulars or accounts or returns as required under this Act;

(c) supply information or particulars as required by the Board;

(d) allow inspection of wakf properties, accounts, records or deeds and documents relating thereto;

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

(f) carry out the directions of the Board;

(g) discharge any public dues; or

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

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 eight thousand rupees.

(2) Notwithstanding anything contained in sub-section (1), if—

(a) a mutawalli omits or fails, with a view to concealing the existing of a wakf, to apply for its registration under this Act,—

(i) in the case of a wakf created before the commencement of this Act, within the period specified therefor in sub-section (8) of section 36;

(ii) in the case of any wakf created after such commencement, within three months from the date of the creation of the wakf; or

(b) a mutawalli furnishes any statement, return, or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular, he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees.

(3) No court, shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer duly authorized by the board in this behalf.

(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 Act.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the fine imposed under sub-section (1), when realised, shall be credited to the Wakf Fund.

(6) In every case where offender is convicted after the commencement of this Act, of an offence punishable under sub-section (1) and sentenced to a fine, the court shall also impose such term of imprisonment in default of payment of fine as is authorized by law for such default."

83. It is submitted that 1995 Act made a salutary provision which categorically reflects the policy behind registration of the waqf being mandatory. The Waqf Act, 1995 took a much-desired step by introduction of Section 87 in the Waqf Act which reads as under:

"Section 87 - Bar to the enforcement of right on behalf of unregistered wakfs.

Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has 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 the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commencement unless such Wakf has been registered, in accordance with the provisions of this Act.

(2) The provisions of sub-section (1) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act."

84. The Parliament, however, introduced a Bill in 2013 [which came into effect on 01.11.2013] and deleted Section 87 and no logic or rationale is available

either in Statement of Objects and Reasons or anywhere else. However, the remaining sections i.e. Sections 4, 5, 6, 7, 36 and 37 remained in the statute.
A copy of the Waqf [Amendment] Act, 2013 is attached herewith and marked as **Annexure R – 7**.

85. The above referred historical background of requirement of registration would satisfy this Hon'ble Court about the rationale in carving out of proviso in Section 2[3][r]. The proviso is to protect only those "waqf by user" which are registered in tune to the prevailing position that mandated all waqfs to be registered. The exception carved out i.e. 'waqf by user' on government land and private property with a clear rationale, object and purpose and in line with Section 3C which provides for a detailed provisions for adjudication concerning government property.

Examination before the Joint Parliamentary Committee

86. It is submitted that the issue of 'Waqf by user' was debated, discussed and stakeholders were consulted in detail. The Joint Parliamentary Committee has examined the history of waqf law in India right from the Islamic period, British colonial period and post-independence period as reflected in paras 1.5 to 1.11 of the Report. A copy of the report of Joint Parliamentary Committee of 18th Lok Sabha of Waqf [Amendment] Bill, 2024 is already enclosed herewith and is marked as **Annexure R – 2.**

This Report was presented to the Hon'ble Speaker on 30.01.2025, was presented to Lok Sabha on 13.02.2025 and was also laid in Rajya Sabha on 13.02.2025.

It is submitted that the original bill as placed before the JPC did not have the proviso to Section 3[1][r]. The JPC, after deliberations and after going

through the above legislative history, suggested the proviso which is accepted by both Houses of the Parliament.

87. The relevant paragraphs from the Joint Parliamentary Committee Report on the question of 'Waqf by user' is reproduced hereunder-

> "3.6.15 Several Stakeholders have expressed before the Committee their misgivings that with the deletion of 'waqf by user' clause, the legal position of all waqf properties especially historical properties would come into question, in response the Ministry of Minority Affairs have categorically clarified before the Committee as under: -
>
> "Sir, Waqf deed is mandatory only for new Waqfs. That is clear in the Act.... Therefore, for registered waqf properties, there is no mandatory requirement for a Waqf deed".
>
> ...
>
> 3.6.17 The Ministry was asked to state categorically how the deletion of Section 3(r)(i) in the Amendment Bill, will impact the protection and management of auqaf specifically historical and unregistered waqf properties that were previously safeguarded under this clause. They also wanted to know how the removal of the "waqf by user" provision would affect the legal status of properties that are currently recognized as waqf solely based on their usage. In reply The Ministry of Minority Affairs have submitted as under:
>
> > "**The removal of this provision does not affect registered Waqf just because they are not having Waqf deed**"
> >
> > "Section 3B (1) & (2) of the Waqf (Amendment) Bill 2024, ensures protection for properties that were declared as Waqf by user prior to the commencement of the Waqf (Amendment) Act, 2024. The details of Waqf and the property dedicated to the Waqf shall be filed on the central portal and database within six months of the Act's commencement. The details required include, inter alia the deed of Waqf, if available. Therefore, for registered Waqf properties, there is no mandatory requirement for a Waqf deed. This ensures that existing registered Waqf properties will not be reopened due to the absence of a Waqf deed".

3.6.18 The Ministry of Law and Justice in their submission has clarified their position on the omission of the 'Waqf by User' provisions and its ramifications as under

> It is submitted that Waqf (Amendment) Bill, 2024 proposes to omit "waqf by user" as the Bill also proposes that every new waqf shall be created by waqf deed only. The "waqf by user" relies heavily on historical usage without formal documentation, which creates ambiguity and unnecessary litigations. The proposed amendment shall apply prospectively.

...

"**The removal of this provision will not adversely affect existing waqf, registered prior to the commencement of the waqf (Amendment) Act 2024**: Section 3B (1) & (2) of the waqf (Amendment) Bill 2024, ensures protection for properties that were declared as waqf by user prior to the commencement of the waqf (Amendment) Act, 2024. The waqf and the property dedicated to the waqf shall file their details on the central portal and database within six months of the Act's commencement. The details required include, among other things, t**he deed of waqf, if available**. Therefore, for registered waqf properties, there is no mandatory requirement for a waqf deed. This ensures that existing registered waqf properties will not be reopened due to the absence of a waqf deed"

88. The Committee, therefore, after the aforesaid elaborate exercise recommended as under-

> "3.7.3 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."

89. It is submitted that therefore, it is too late in the day for anyone to claim today that although it claims to be a genuine waqf, it is still not registered. It is submitted that the above referred legislative history makes it clear that –

(i) A much hyped submission before this Court and elsewhere that waqf [including 'Waqf by user'] cannot be expected to have documents, is a false and mischievous argument;

(ii) While registration of all kinds of waqfs [including 'Waqf by user'] has always been mandatory, the legal regime never required the *waqf deed* as a mandatory condition. In other words, it was mandatory to register 'Waqf by user' even in absence of waqf deed by giving other details since more than 100 years.

(iii) It is not possible to believe in law or on facts that any existing 'Waqf by user' never applied for registration (though mandatory), could not be found out by the State Waqf Board and would escape the scrutiny of the survey conducted under the Wakf Act, 1923, Wakf Act, 1954, Wakf Act, 1995 and the amended Section 6[1][a] in 2013 and thereby could not be registered.

(iv) Those claimants now claiming a property to be 'Waqf by user' are fictitious as they were never found in survey by Survey Commissioner, enquiry conducted by the Waqf Board nor got themselves registered

despite penal provisions being in existence for non-registration since 100 years and several windows given thereafter for registration.

90. It is submitted that further the 2025 amendment has provided under Section 36(1A) that a waqf may now be established only through a valid deed of waqf. It is submitted that the section reads as follows:

> **"Section 36. Registration.—**
>
> xxx
>
> **(1A) On and from the commencement of the Waqf (Amendment) Act, 2025, no waqf shall be created without execution of a waqf deed."**

91. It is submitted that the amendment to Section 36 has not interfered with the status of existing/registered *auqaf* by user. It is submitted that the use of the words "on and from the commencement of the Waqf (Amendment) Act 2025" specifies that the change is prospective in nature. It is submitted that any existing property which has been registered as waqf by user will retain its status. It is submitted that a proviso to that effect has been inserted in Section 3 of the Act by the 2025 Amendment. It is submitted that the proviso states as follows:

> "Provided that the existing waqf by user properties **registered on or before the commencement of the Waqf (Amendment) Act, 2025** 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;"

A copy of the Waqf [Amendment] Act, 2025 is attached herewith and marked as **Annexure R – 8**.

92. It is submitted that the above proviso makes it clear that the mandatory requirement of a 'waqf deed' applies prospectively from the date of the 2025 amendment i.e., if any new waqf is created after 08.04.2025. Waqfs by user registered before the amendment would therefore continue to be treated as waqf in terms of the proviso.

93. It is submitted that the only change introduced by the amendment to Section 36 is that henceforth, the sole means of creating a valid waqf would be through a waqf deed. When the country has entered into a completely different era in 2025, no one can still insist for 'oral' creation of waqf when no other document (sale deed, gift deed, will etc.) is permitted without written form. It is submitted that this change has been introduced in order to ensure that establishment of waqfs can be properly documented. It is submitted that requiring a valid waqf deed would also serve to reduce disputes as to whether a particular property is a waqf property or not and at least after 2025, nobody can say from where they can be expected to produce documents. It is submitted that an exception was provided for pre-existing *auqaf* by user because it was recognised that these were established at a time when documentation was not as prevalent and widely practised as it is at present. It is submitted that with the passage of time, this position has changed and documentation has become simpler and more convenient. It is submitted that keeping in mind this change, the requirement of compulsory *waqf* deed has been introduced.

94. It is submitted that this change is one of the several changes introduced by the amendment act in order to both formalise and modernise the system of managing *auqaf*. It is submitted that the Amendment Act also aims to ensure that waqf properties are properly inventoried and relevant information about the waqf property is made publicly available in order to bring about transparency in the functioning of *auqaf*.

95. In light of the statutory scheme reflected above, no one can have a rightful claim to raise a claim of 'Waqf by user' if it is not registered and if Legislature, in its wisdom, excludes unregistered 'Waqf by user' from the proviso, and thereby takes away a statutory benediction for good reasons. This does not impinge on any religious rights as it does not take away any rights but only

takes away a beneficial legislation being made applicable to the exercise of such a right in such a manner.

96. It is submitted that it is thus clear that arguments challenging the deletion of 'Waqf by user' in the impugned amending Act is unsustainable and purposefully misleading since –

(i) 'Waqf by user' [which are registered] will have no effect and will continue;

(ii) It is not open for anyone to rationally, logically, honestly and statutorily say that we could not get 'Waqf by user' registered because we did not have waqf deed since it never been requirement for registration of 'Waqf by user'.

97. It is submitted that at this juncture, one fundamental question needs to be raised and answered. It is respectfully submitted that for any valid waqf, there are two necessary and mandatory ingredients-

i. Property and a proper owner of the property;
ii. Dedication of the said property for any purpose recognized by the Muslim law as pious, religious or charitable.

98. In case of 'waqf by user', there is bound to be an owner of the property. The long use without any intention to dedicate the property itself cannot be inferred to be dedication. In other words, even in case of 'waqf by user' of any property, there would be an owner of the property whose express or tacit permission to use the property for some purpose recognized by the Muslim law as pious, religious or charitable would be treated as dedication.

99. In absence of such a dedication [either express or implied] there cannot be a valid waqf. It is keeping this principle in mind that right from the year 1923, several laws do not mandate a waqf deed but mandates the applicant to

give details like description of the property etc. The very same statute right from 1923 as well as in 1954 as well as in 1995 requires the Court, Survey Commissioner or the State Waqf Board to conduct an enquiry. The details of property being provided would enable the authorities to undertake this exercise to find out the owner of the property, be it private or government. After having found out the owner of the property, a mutation may be made in the revenue record mentioning the owner of the property and the nature of its usage as 'waqf by user'.

100. It is submitted that if anyone has tried to evade this entire legislative architecture [and acted in gross violation of the same] existing since last 100 years, there is no justification to argue that exclusion of unregistered 'waqf by user' is either arbitrary, unreasonable or without any logic, purpose or intent.

101. It is submitted that if the effect of the section saving only registered 'Waqf by user' is interfered with either directly or indirectly by any interim order, it will not only defeat the object and provision itself, it will result in the following anomalies which the order of any Court cannot lead to :

(i) It will amount to creation of legislative regime by judicial order [and that too an interim order] wherein Parliament has by law, consciously taken it away.

(ii) It would defeat the object, intent and purpose of the Act in general and the 2025 amendments in particular;

This would give a premium to unregistered 'Waqf by user' who have been defying law of the land since more than 100 years though non registration has always been a penal act;

(iii) It would legitimize something i.e. unregistered 'Waqf by user' which is precluded and penalised by law;

(iv) It would be impossible for this Court or for that matter any authority to prevent anyone fictitiously claiming 'Waqf by user' in 2025 though it has never been identified in the statutory process of Survey Commissioner, the process of the Waqf Boards of each State and has never chosen to apply for registration and has never been reflected in any record including revenue records;

(v) It would encourage the mischief which is reflected in the report of Waqf Enquiry Committee in the year 1976 quoted hereinabove which categorically notes that some waqfs are deliberately trying to avoid registration, concealing waqf which affects the administration of waqfs.

(vi) Any interim order will not only cause public mischief but will also harms Muslims as well who are supporting the amendment.

No requirement of Waqf deed for registration for uploading of data

102. It is submitted that the Petitioners have deliberately created a confusion on one vital issue before this Hon'ble Court and elsewhere. It is suggested that, while building up a false narrative in this Hon'ble court and otherwise, that the amended provision demands waqf deeds and other documents.

As pointed out hereinabove, right from the year 1923, the position of law is clear that the existence of the waqf can be established without a waqf deed while getting it registered.

103. In this false narrative building exercise by the Petitioner and others, it is contended that even in 2025 Amendment, the old waqfs are called upon to declare a Waqf Deed. It is submitted that this is a deliberately fostered misconception and mischievous false narration that the law amended in 2025 requires old documents which can never be available.

104. It is submitted that till the amendment of 2025 came, all waqf were required to upload their details on a web portal called 'Waqf Asset Management System of India' [WAMPSI]. It is found that most of the Waqf Boards have been functioning in the most non transparent manner and have either not uploaded the details in public domain or have uploaded partial details in public domain. In an era of transparency, it is absolutely necessary that all details concerning waqf / waqf boards be uploaded in WAMSI portal. It is for this reason that section 3B is added by way of an amendment.

With a view to ensure scrupulous compliance of this provision, section 61 providing for penalties is added for non-compliance with section 3B. this penal provision is made in section 61(1)(a)(v).

105. Apart from the facts narrated hereinabove showing the history right from 1923 even the present amended provision does not require what is being projected as a part of false narrative before this Hon'ble Court and outside. The provision contained in Section 3B is only for the purpose of updating the data base and portal in which the details mentioned therein is to be uploaded. Section 3B reads as under: -

> **"3-B. Filing of details of waqf on portal and database. —**
>
> (1) Every waqf registered under this Act, prior to the commencement of the Waqf (Amendment) Act, 2025, 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:
>
> Provided that the Tribunal may, on an application made to it by the mutawalli, extend such period of six months under this section for a further period not exceeding six months as it may consider appropriate, if he satisfies the Tribunal that he had sufficient cause for not filing the details of the waqf on the portal within such period.
>
> (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;

(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, ceases, rates and taxes annually payable in respect of the waqf properties;

(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;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

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

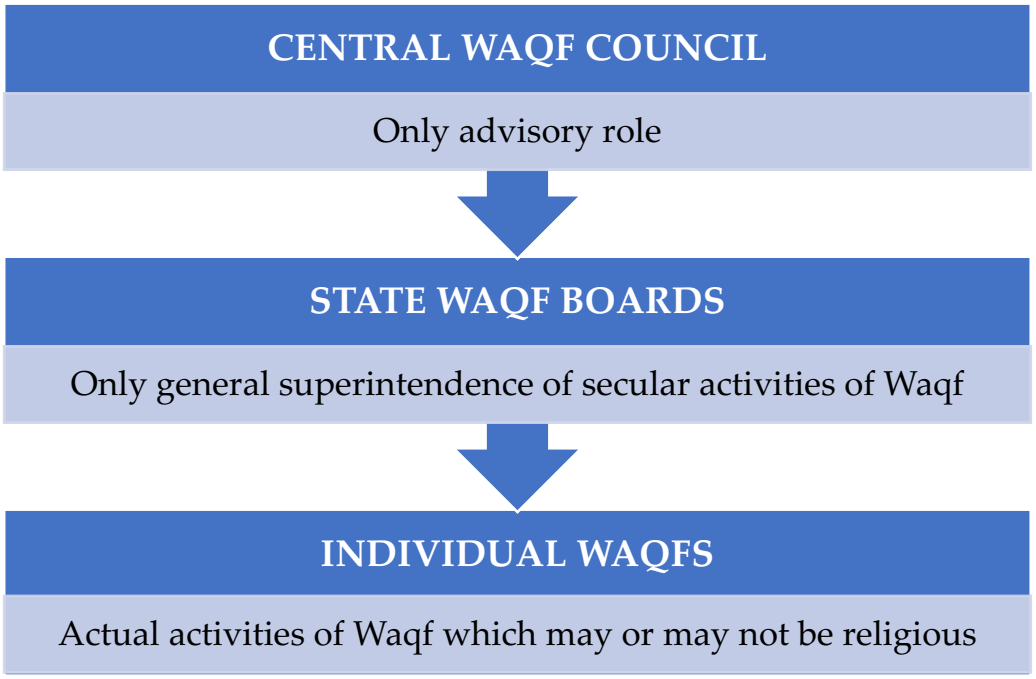
(j) any other particular as may be prescribed by the Central Government."

106. A perusal of the details shown in Section 3B[2][a] to [j] will show that there is no information which is demanded which a genuine waqf cannot have. The provisions of Section 3B merely makes functioning of waqf transparent by making a database open to access with details prescribed under Section 3B[2] and is not a provision for either creating any right or abolishing any right.

CHANGE IN COMPOSITION OF WAQF COUNCIL AND WAQF BOARDS

107. It is submitted that the Waqf Act essentially regulates secular activities of waqf. To understand the distinction between the Waqf Act, 1995 and the other

enactments, it is relevant to note that the Waqf Act operates in a three-tiered structure shown as under-



108. It is submitted that the system of waqf, under the Act, operates in three different spheres.

a. The first sphere is Central Waqf Council. This Council merely exercises advisory role for advising the Central Government. It has nothing to deal with any activity of waqf per se irrespective of whether waqf is a religious waqf or for other religious purposes.

b. The second layer is the State Waqf Board in each State. This Board also exercises regulatory powers concerned secular activities of waqf and provides for an effective and transparent statutory regime for administrating waqf property in accordance with the law. The waqf Board also does not interfere with the religious activities in any specific waqf or charitable activities of any other waqf.

c. The last layer is the individual waqf operating in the country. This waqf, whether for religious purposes or other charitable purposes, is solely

governed by internal management provided by each waqf whether by way of waqf deed or otherwise. It is for the waqf only to decide in all non-secular activities of wakf and its function.

It is submitted that there is no other Central Law, State Waqf Act, 1995, which has a comparable statutory regime ensuring a delegate compliance with Article 25 and Article 26 of the Constitution of India.

Waqf – to be distinguished with other religious institutions

109. At the outset, it may be pointed out that though there is no statutory interference in the waqf *per se* and the first two tiers merely takes care of secular administration of waqfs, the waqfs, by its very nature, can be for non-religious purposes also. There are waqfs for orphans, waqfs for hospitals and health care facilities, waqf for educational institutions, waqf for scholarships, waqf for support of the poor and needy through various programmes. In the emerging world scenario, various innovative forms of waqfs have also emerged such as Cash Waqfs, Corporate Waqfs and Waqfs Sukuk [Islamic bonds].

110. The concept of waqf, therefore, is distinguishable from mere religious denominations or places of worship. This aspect is elaborated hereafter. However, it may be pointed out that Waqf Act, 1995 in general and the amendments made in 2025 in particular merely deals with supervising of administration and secular aspects of waqf and waqf properties which would become clear from the architecture of the Act reflected from the chapters in which the Waqf Act is divided as under :

- **Chapter I**: Preliminary
- **Chapter II**: Survey of Auqaf
- **Chapter III**: Central Waqf Council
- **Chapter IV**: Establishment of Boards and their Functions

- **Chapter V**: Registration of Auqaf
- **Chapter VI**: Maintenance of Accounts of Auqaf
- **Chapter VII**: Finance of the Board
- **Chapter VIII**: Judicial Proceedings

111. It is submitted that none of the provisions attempts to enter into the third tier of Waqf itself [though a waqf may or may not be religious always]. The Act merely takes care of administration, effective management, proper accounting, registration etc. through the first two tiers, without touching upon its essential aspect pertaining to religion.

Change in 2025 Amendment

112. It is submitted that considering the nature of the waqf itself, the Amendment Act has changed the composition of the Central Waqf Council under Section 9 as well as the Waqf Boards created for each state under Section 14. It is submitted that the amended sections provide as follows:

> **"9. Establishment and constitution of Central Waqf Council.—**
>
> (1) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.
>
> (1A) The Council referred to in sub-section (1) shall issued directives to the Boards, on such issues andin such manner, as provided under sub-sections (4) and (5).
>
> (2) The Council shall consist of—
>
> (a) the Union Minister in charge of waqf—Chairperson, ex officio;
>
> (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:—

(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;

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

(e) one Advocate of national eminence;

(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:

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

PROVIDED FURTHER THAT TWO MEMBERS APPOINTED UNDER THIS SUB-SECTION, EXCLUDING EX OFFICIO MEMBERS, SHALL BE NON-MUSLIM.".

(3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be, prescribed by rules made by the Central Government.

(4) The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the Council and it may suo motu call for information on specific issues from the Board, if it is satisfied that there was prima facie evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.

(5) Any dispute arising out of a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the

Supreme Court or a retired Chief Justice of a High Court and the fees and travelling and other allowances payable to the Presiding Officer shall be such as may be specified by that Government.

14. Composition of Board-

(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) Joint Secretary to the State Government dealing with the waqf matters, ex officio;

(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, EXCLUDING EX OFFICIO MEMBERS, 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, 2025 shall continue to hold office as such until the expiry of their term of office.

(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)
(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.

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette."

113. It is submitted that Section 9 provides for the composition of the Waqf Council. Waqf Council is not undertaking any "affairs of religion" but is merely an advisory body to advise Central Government, the State Governments and the Boards on matters concerned working of Boards and due administration of Auqafs.

114. The Council consists of a total of 22 Members [as per the Amendment Act of 2025] out of which a maximum of four can be non-Muslims. The non- Muslim Members are clearly, therefore, in minority.

115. It is submitted that similarly Section 14 [as quoted above] provides for the composition of the State Waqf Board. The functions of the Waqf Board are provided for in Section 32 of the Act which reads as under-

"Section 32

<u>32. Powers and function of the Board</u>.—

(1) Subject to any rules that may be made under this Act, the general superintendence of all auqaf in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the auqaf under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such auqaf were created or intended:

Provided that in exercising its powers under this Act in respect of any waqf, the Board shall act in conformity with the directions of the waqf, the purposes of the waqf and any usage or custom of the waqf sanctioned by the school of Muslim law to which the waqf belongs.

Explanation. —For the removal of doubts, it is hereby declared that in this sub-section, "waqf" includes a waqf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

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

(a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every waqf;

(b) to ensure that the income and other property of auqaf are applied to the objects and for the purposes for which such auqaf were intended or created;

(c) to give directions for the administration of auqaf;

(d) to settle schemes of management for a waqf: Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) to direct—

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

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

(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.

(f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of account of auqaf;

(g) to appoint and remove mutawallis in accordance with the provisions of this Act;

(h) to take measures for the recovery of lost properties of any waqf;

(i) to institute and defend suits and proceedings relating to auqaf;

(j) to sanction lease of any immovable property of a waqf in accordance with the provisions of this Act and the rules made thereunder:

Provided that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction:

Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.

(k) to administer the Waqf Fund;

(l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the waqf property as the Board may, from time to time, require;

(m) to inspect, or cause inspection of, waqf properties, accounts, records or deeds and documents relating thereto;

(n) to investigate and determine the nature and extent of waqf and waqf property, and to cause, whenever necessary, a survey of such waqf property;

(na) to determine or cause to be determined, in such manner as may be specified by the Board, market rent of the waqf land or building;

(o) generally do all such acts as may be necessary for the control, maintenance and administration of auqaf.

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116. It merely exercises superintendence over the functioning of waqfs [which will be administered and managed by Muslims or anyone as desired by Waqif]

It is for this reason that Waqf Boards are always considered to be secular entities dealing with and ensuring proper management and administration of waqfs within its jurisdiction by exercising functions like maintaining record, overseeing the accounting of income, approving budgets etc. All the activities under Section 32 are secular activities and do not touch upon any religious activity of the Waqf.

117. The State Boards consists of a total of 11 Members [as per the Amendment Act of 2025] out of which a maximum of three can be non-Muslims. The non-Muslim Members are clearly, therefore, in minority.

118. It is submitted that there are judicial pronouncements also taking the view that Waqf Board is a secular body and is not a representative body of Muslims.

119. It is further submitted that the relevant Ministry has unequivocally stated the following before the JPC with regard to the interpretation of the proviso concerning non-Muslim members in the Council and the Boards :

> "9.6.6 Further explaining about the inclusion of non-Muslim Members in the Council and responding to the concerns regarding the possibility wherein the Muslim members may be in minority in the Council, the Ministry of Minority Affairs stated as under:
>
> > **".....the changes introduced in the constitution of the Central Waqf Council (CWC) are designed to create two categories: one category exclusively for Muslims (10 members)..... and another category (12 members). Out of this (second) category, two members will be Non-Muslim. Remaining all will be Muslims."**

[This is the response of the Nodal Ministry to the provision in the Bill as placed before the JPC.]

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Observations/Recommendations of the Committee:

> **9.7 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the**

views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs, find that considering the statutory nature of the Central Waqf Council, inclusion of two non-Muslim members will make it more broad based and promote inclusivity and diversity in waqf property management. The Bill has further emphasized upon the participation of Muslim women in the Council. Hence, the Committee accept all the amendments proposed under the Clause. However, it has been brought to the knowledge of the Committee that the presence of non-Muslim ex-officio Members may result in fulfilling the requirement of the proposed amendment whereas this may go against the intent of the proposed amendments. Hence, the following amendment is proposed in second proviso of Clause 9:

> **"Provided further that two members appointed under this sub-section excluding exOfficio members, shall be non-Muslims."**

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Observations/Recommendations of the Committee:

11.7 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs, find that the composition of State Waqf Boards has been expanded to include two non-Muslim members and ensure broader representation from Shia, Sunni and backward Muslim communities which will promote inclusivity and diversity in waqf property management. The Committee feel that nonMuslims can be beneficiaries, parties to disputes, or otherwise interested in waqf matters, which justifies their inclusion in the administration of waqf. Hence, the Committee accept the amendments proposed under the Clause. However, it has been brought to the knowledge of the Committee that the presence of non-Muslim ex-officio Members may result in fulfilling the requirement of the proposed amendment whereas this may go against the intent of the proposed amendments. Hence, the following amendments are proposed in Clause 11:

(1) the proposed sub-Section (1)(e) of Section 14 be substituted as given:

> "Joint Secretary of the State Government dealing with waqf matters-member, ex officio;"

(2) the second provisio to sub-section (1) of Section 14 be amended as given:

> **"Provided further that two members of the Board appointed under this sub-section excluding ex officio members, shall be non-Muslims:"**

120. It is submitted that changes in the composition of the Central Waqf Council (which is only an advisory body) and the Waqf Board (which only supervises secular activities) do no impair the Muslim community's rights under Article 26. The following aspects may be noted in this regard :

a. In case of Central Waqf Council [consisting of total 22 members], maximum of four members can be non-Muslims. If the *ex-officio* chairman i.e. Minister concerned and the Joint Secretary of the Government who is also *ex-officio* are Muslims, then only two members can be non-Muslims.

b. In case of Waqf Board [consisting of total 11 members], maximum of three members can be non-Muslims. If the *ex-officio* Joint Secretary is a Muslim, then only two members can be non-Muslim.

c. Thus, it is clear that non-Muslim members are in a microscopic minority and they are included to give inclusivity and with a view to ensure their participation. Since the secular aspects of waqf administrations may require dealing with issues concerning non-Muslims who are either beneficiaries, aggrieved parties or affected parties.

d. Muslim members will form an overwhelming majority of the Board;

e. The Boards functions are wide ranging and often involves issues which may require dealing with members of other faiths.

121. It is submitted that as stated above, Article 26 does not confer an absolute right to administer a property in accordance with the tenets of religion. It is submitted that in fact this Hon'ble Court has drawn a distinction between practices which are "integral" to religion and practices which though associated

with religion are essentially of a secular nature and the later may be validly regulated by law.

122. It is submitted that before delving into the issue of composition of Boards, it is necessary to make the initial clarification. It is submitted that the concept of religious endowment and perpetual charity is a time-honoured practice across all religions. It is submitted that across all these traditions, the underlying principle is consistent - once property is dedicated for religious or charitable use, it is removed from personal ownership and vested in a legal or sacred trust, to be administered under specific principles of stewardship. It is submitted that waqf, as a concept, encompasses, both endowments and other forms of charities. It is submitted that thus, a suitably tailored regime is the need of the hour. It is respectfully submitted that the State's regulation of such endowments, including under the Waqf Act, the Hindu Religious and Charitable Endowments Acts, and public trust laws, is not a violation of religious freedoms or any principles of arbitrariness. No community can claim as of right the benefits of a statutory protection to its dedications while insisting that even the secular regulatory functions be limited to members of that community.

123. It is submitted that the concept has evolved with time and cannot be merely considered to be limited to the religious institutions and places of worship. Further, in view of this wider understanding of waqf, the parallel with other religious institutions or endowments enactment would be inappropriate. The waqf regime, which is wider and ever evolving, requires a suitably tailored approach rather than lock-stock and barrel lifting of religious endowment approach.

124. The contention regarding composition of Waqf Council and Waqf Boards with inclusion of non-Muslim members in numerical minority. As pointed out

hereinabove and hereunder in Waqf Council, there is a possibility of maximum 04 non-Muslims out of 22. In Waqf Boards of each State, there is a possibility of maximum 03 members who can be non-Muslims [if the ex officio member happens to be a non-Muslim] out of 11 members.

While considering an interim order at the stage where constitutional validity is yet to be determined after extensive arguments one of the most relevant considerations for the court would be as to whether any irreversible situation arise if an interim order is not made. If this consideration is juxtaposed with Section 9 and Section 14, it is clear that here will be no irreversible position even if minority non-Muslim members are appointed.

125. It is submitted that further, as stated above, the Petitioner's parallels with Hindu Endowment Acts existing in few States are unfounded and militate against the broad nature of "Waqf Board" and limited Religious and Endowment enactments in few States. The following points may be noted in this regard :

a. The concept of a waqf is wider and ever evolving – involving religious institutions and other general charitable functions like education, healthcare, orphanage, food to needy etc. Therefore, waqf requires a suitably tailored approach rather than lock-stock and barrel lifting of 'religious endowment' approach.

b. It is submitted that further, not all States have Hindu Religious Endowments laws and in numerous States, the Hindu endowments and other general charities are wholly governed by local laws of Charities/Trusts which deal with all communities in general.

c. Further, comparing a wide panel or collegial bodies of State Boards and National Council [wherein the majority is still with Muslim members], cannot be compared to an individual post like that of the Charity

Commissioner who exercises equivalent powers over all Hindu religion's institutions/Ashrams/Mutts/Temples, etc.

d. Importantly, the creation, management, regulation and maintenance of waqf - which is the primary responsibility of the State Boards often involves dealing with non-Muslim communities and affects their rights, particularly their right to property. In such a scenario, having an inclusive panel with merely three members [out of 11 in Waqf Boards] as non-Muslims and an overwhelming majority of members from Muslim community, balances the constitutional equities on both sides. The same arguments holds good for the advisory body of Waqf Council.

e. It is submitted that Central Waqf Council Rules, 1998 and rules governing waqf boards in each State [to be made by the respective State Governments] can make suitable provisions like Rule 6 of Central Waqf Council Rules, 1998 to deal with any contingency which may arise due to presence of non-Muslim members who are as such in microscopic minority.

f. Further, Hindu endowments or other endowments and enactments regulating the same concern ***only*** the respective community with little to no interaction of the said endowments with members of other communities.

As opposed to the same, the wide nature of waqf ensures that its creation, management, regulation and maintenance results in interactions with members of other communities apart from Muslims. In such a scenario, comparing Waqf Boards with Commissioners/Boards under State laws concerning Hindu endowments would not be an apt comparison. The nature of waqf is ***sui generis*** and requires a suitably tailored approach.

g. It is submitted that except the States where there are State specific general laws for supervision of religious endowments, there are many States in which there are no such specific laws for non-Muslims.

In the Bombay Public Trusts Act, 1950, applicable to States of Maharashtra and Gujarat, which covers both religious and secular public trusts and establishes the Charity Commissioner's office with extensive supervisory authority. It is submitted that under this Act, all public trusts must be registered and are subject to direction, inquiry, inspection, audit, and oversight by the Charity Commissioner under Sections 36, 37, 38 and 39. Further, as per Section 41A, the Charity Commissioner is empowered to issue directions to any trustee of a public trust or any person connected therewith to ensure that such trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust.

Similar position arises in many other States where Hindu / non-Muslim religious institutions are governed by secular Public Charitable Trust Act. In such cases, the Charity Commissioner [by whichever name called and who may loosely be similar to State Waqf Boards] may or may not be a Hindu.

h. Even waqfs used to be under administration, supervision and control of non-Muslim Charity Commissioners in many States. It is respectfully submitted that the Waqf Act, 1954 was not made applicable to the State of Maharashtra till coming into force of Waqf Act, 1995 i.e. on 01.01.1996. In other words, prior to 01.01.1996, Muslim Trusts and Waqfs [except those in the region which were governed by Wakf Act, 1954] were covered and governed by Bombay Trust Act, 1950 and were managed,

administered and supervised by the Charity Commissioner of Maharashtra who may or may not be a Muslim.

126. It is submitted that the functions discharged by the Central Waqf Council and the Waqf Boards are generally administrative in nature. The Council functions as an advisory body to the Central and State Governments while the Boards are responsible are responsible for superintendence, maintenance and regulation of *auqaf*. It is submitted that the Council and the Boards are not responsible for the performance of the religious functions associated with the waqf property. It is submitted that *auqaf* are essentially in the nature of charitable endowments, though under a religious framework. It is submitted that only because *auqaf* are sanctioned in Islam, it does not follow that all waqf-related activity is necessarily religious activity. It is submitted that the administration of waqf properties is essentially a secular function. It is submitted that as administrative bodies, the Council and the Boards' functioning can be regulated by law without causing any interference in the religious aspects of *auqaf*.

127. It is submitted that there is one more reason why the said two provisions will not fall foul on the ground that they enable a minority of members to be non-Muslims. It is reiterated that unlike religious endowments or institutions in some States pertaining to Hindu denomination, waqf can be for non-religious and charitable purposes also. Secondly, the beneficiary of any waqf [normally non-religious waqfs] can be non-Muslims also. Thirdly, Section 72[1][v][f] permits any Muslim to contribute to the charitable object of the waqf.

128. It is submitted that since Muslims are located the world over and in the present economic world scenario where there is evolution even in waqf systems across the world, there is nothing arbitrary if the competent Legislature permits non-Muslims to participate for effective administration of waqfs and thereby

modernize the way in which waqfs are governed in India to keep pace with waqfs in other part of the world. It is submitted that this would further enhance the object and purpose of the Waqfs Act itself.

Management of properties by a mutawalli is largely secular function – Boards are merely regulatory bodies

129. It is submitted that it is important to note that the constitutional Courts have held that even the Muttawali's role is essentially "secular" in nature and cannot be confused with a *Mahant*. In ***Hafiz Mohammad Zafar Ahmad v. U.P. Sunni Central Board of Waqf*, 1964 SCC OnLine All 319 : AIR 1965 All 333**, it was noted as under :

> **51.** The right of a mutwalli is not, in my opinion, equivalent to that of a mahant. A mutwalli's right is purely a right of management of the property and is not a proprietary right. The duties of a mutwalli are purely of a secular character. His duties are not of a religious character. He has no beneficial interest of any kind in the property which he administers while a mahant has such an Interest in the property belonging to the math. A mahant's right is not only a right of management of the property but he holds a beneficial Interest in it. A mutwalli is not the head of a spiritual fraternity while a mahant is. A mutwalli is nothing more than a servant of the founder of the waqf. It was held in *Zam Yar Jung* v. *Director of Endowments*, AIR 1963 SC 985 that:
>
> > "Similarly, the Muslim law relating to trusts differs fundamentally from the English law. The Mohammadan law owes its origin to a rule laid down by the Prophet of Islam; and means "the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings'. As a result of the creation of a wakf, the right of wakif is extinguished and the ownership is transferred to the Almighty. The manager of the wakf is the mutawalli the governor, superintendent, or curator. But in that capacity, he has no right in the property belonging to the wakf; the property is not vested in him and he is not a trustee in the legal sense. Therefore, there is no doubt that the wakf to which the Act applies is, in essential features, different from the trust as is known to English Law.".

130. It is submitted that further, in ***Hafiz Mohammad Zafar Ahmad v. U.P. Sunni Central Board of Waqf*, 1964 SCC OnLine All 319 : AIR 1965 All 333**, has expressly held that the right to manage the property of a waqf by the Board is a secular right. It has been held as under :

> "58. Therefore, a duty has been cast on the Board to be guided by the directions of the waalf While acting under Section 48 of the Act. Therefore it is not correct to urge that under S. 48 the Board has unfettered power to appoint any perron as mutwaui. **The right to manage the property of a waqf is a secular right and is not hit by Article 26 of the Constitution. Under Section 19 of the Act only general superintendence of all waqfs vests in the Board**. The Act does not deprive religious institutions to manage their own affairs either in religious matters or in the administration of property in accordance with law. The Board can only ensure that the waqfs are properly governed and the rights of administration of properties are not taken away by Section 19 of the Act. In my opinion the rulings relied upon by Sri Bashir Ahmad in this connection have no application to the facts of the present case."

131. In ***Syed Fazal Pookoya Thangal v. Union of India*, 1993 SCC OnLine Ker 87 : AIR 1993 Ker 308**, it has been noticed that the Waqf Board do not entail protections under Article 26. It was held as under :

> **"8.** The first point that arises for consideration is whether the Wakf Board, against whom the order Ext. P1 has been passed, can complain of violation of Article 26 of the Constitution of India. Article 26 provides inter alia that subject to public order, morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law. The right conferred under Art. 26 is on a denomination or any section thereof. A "denomination" has been defined in *Commissioner, Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*, AIR 1954 SC 282 (the *Shirur Mutt case*) by the Supreme Court with reference to the meaning of the term in the Oxford Dictionary as "a collection of individuals, classed together under the same name; a religious sect or body having a common faith and organisation and designated by a distinctive name". It was accordingly held that each one of the sects or sub-sects in a religion can be called a religious denomination as it is designated by a distinctive name — in many cases that of its founder — and had a common faith and common spiritual organisation. In *Sardar*

Syedna Tahar Saifuddin Saheb v. *State of Bombay*, AIR 1962 SC 853, Ayyangar, J. in his judgment at paragraph 54 observed that the identity of a religious denomination consists in the identity of its doctrine, creeds and tenets which are intended to ensure the unity of the faith which its adherents profess; and the indentity of the religious views are the bonds of the union which binds them together as one community. There can be no dispute that the rights guaranteed by Article 26 are available only to a denomination. Can the Kerala Wakf Board style itself as a denomination and claim protection under Article 26?. The Kerala Wakf Board is a body established under Section 9 of the Wakf Act 29 of 1954. It is not a collection of individuals or a body having a common faith and organisation. It has been established for the purpose of carrying out the function of supervision and control over the Wakfs in the State. Its functions are delineated in Section 15 of the Wakf Act as the general superintendence of all Wakfs in a State. The provision also specifies that it shall be the duty of the Board so to exercise its powers as to ensure that the Wakfs under its superintendence are properly maintained, controlled and administered and the income thereof duly applied to the objects and for the purposes for which the Wakfs were created or intended. Sub-section (2) of the section specifies some of the functions and powers of the Board without prejudice to the generality of the powers conferred by sub-section (1). The Act contains detailed provisions for the constitution of the Board, its composition, the removal of its members, and the procedure to be followed by it in relation to the discharge of its functions and duties. I shall refer later to the provisions regarding its finances.

9. Sub-section (2) of Section 9 also provides that the Wakf Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to the conditions and restrictions as may be prescribed, and shall by the said name sue and be sued.

10. The Wakf Board is not a conglomeration of individuals. It is not even akin to a company where a number of individuals join together to constitute it. It is a statutory body, pure and simple. It is not a representative body of the Muslim community. It has no soul and no faith, except the faith of dutiful performance of its functions and duties under the Act.

11. It is well known that management of Wakf properties has since long been controlled by the State. Various laws have been enacted from time to time in various parts of the country by either the Central Legislature or the State Legislatures for achiveving this purpose. Wakf properties have thus been the subject of special protection by the State through the enactment of these laws with a view to see that they are properly preserved and that the income therefrom is not frittered, misutilised or diverted for purposes other than those authorised by the

objects of the Wakf. It is the power so exercised by the State that now stands vested in the Wakf Boards in each State, specially established for the purpose. What the Wakf Board does is to carry out functions which were hitherto being undertaken by the State. It is exercising a part of the State's functions and is an instrumentality of the State. The Wakf Board is a creature of the Wakf Act. It has no existence otherwise. It stands or falls with the Wakf Act. It has to exercise those functions and powers which are vested in it under the provisions of the Wakf Act. It is not a collection of individuals, or a sect or body with a common faith which alone will make it a denomination for the purpose of Article 26. If it is not a denomination, it has no rights under Article 26, liable to be violated by Section 4(2) of the Act or the order Ext. P1 by casting the liability to make payment of maintenance to a destitute divorced woman. **Article 26 is therefore out of operation so far as the Wakf Board is concerned."**

132. In ***Syed Shah Muhammad Al Hussaini v. Union of India,*** **1998 SCC OnLine Kar 623**, it was held as under :

"5. **It is well recognised that wakf under the Islamic Law meant dedication of property for purposes recognised by the Muslim law as pious, religious and charitable. Such purposes cannot be given a narrow concept as has been tried to be done by the Petitioner, which if followed would frustrate the purpose for which the property is dedicated by a Muslim. The Act only provides for the better administration of the wakfs and for matters connected therewith or incidental thereto and does not either restrict or control the wakf or the intended purpose or object for which it was created**.

...

9. The learned Counsel appearing for the Petitioner submits that as under Section 14(1)(b)(i) to (iv) persons not fully conversant with Islam can be appointed as Members of the Board, the purpose of the Act is likely to be jeopardised and defeated. **It is submitted that the composition of the Board as contemplated under the Act would defeat the very spirit of the wakf as envisaged under Muslim Law. It is stated that as a Member of Parliament, Member of State Legislature and of the Bar Council is elected by the whole section of the society including non-Muslims, such an elected person cannot really represent the interests of the Muslims or protect the community or preaching of Islam. The argument though apparently looks glittering, but when examined in depth drowns at the bottom of the well requiring no consideration worth the name. The intention of the composition of the Board and the purpose of the Act is to administer the property and not to give representation to the**

Muslim jurists or theologists. The elected Muslim Members have been sought to be included in the Board upon consideration of their obligation and responsibility to the people in general and Muslims in particular. Responsible elected Members of the Parliament, State Legislature and Bar Council are rightly intended and expected to come to the expectation of the law makers and contribute positively for providing better administration of wakfs and for matters connected therewith or incidental thereto.

...

15. Freedom of conscience and religion recognises the right to profess, practise and propagate religion subject to the restrictions imposed by the State on the ground of public order, morality, health, social welfare and reform. Freedom of conscience means to acquire a knowledge or sense of right or wrong, moral judgment that opposes the violation of previously recognised ethical principles, which led to the feelings of guilt if one violates such a principle. Such freedom therefore cannot be connected with any particular religion or of any faith in God. It is commonly understood as the right of a person not to be converted into another man's religion. Article 26 of the Constitution, provides the freedom to manage religious affairs. Every religious denomination or any section thereof have the right to:

(a) establish and maintain institutions for religious and charitable purposes;

(b) manage its own affairs in matters of religion;

(c) own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

Under Clause (d) of Article 26 a religious denomination has a right to own, acquire and administer the property for the purposes to which it was dedicated, but only in accordance with law, which means that the State can regulate the administration of trust properties by means of law enacted validly. What is protected by this Clause is the administration which is required to remain with the religious institution, though it may be regulated by law. The law, which is found to be interfering with matter which are essentially religious is not permissible.

...

17. **The scheme of the Act reflects that Chapter II has been enacted for the purposes of having a survey of the wakfs in the State and the**

publication of such wakfs. Disputes regarding wakfs are intended to be resolved by the Tribunal constituted for the purposes of the Act. Chapter III deals with the establishment and constitution of Central Wakf Council and Chapter IV with the establishment of State Boards and their functions. Section 14, as already noted, prescribes the composition of the board. Section 15 prescribes the term of the office and Section 16 deals with the disqualification of a person to be a Member of the Board Section 23 authorises the State Government to appoint a Chief Executive Officer of the Board in consultation with the Board and by Notification in the Official Gazette. Such an Officer is the ex-officio Secretary of the Board and is to remain under the administrative control of the Board Section 25 deals with the duties and powers of the Chief Executive Officer. The powers and functions of the Board are specified in Section 32. Chapter V deals with the Registration of the Wakfs and Chapter VI with the maintenance of the accounts of the wakfs. Finance of the Board had been dealt with under Chapter-VII and the judicial proceedings under Chapter VIII.

The Scheme of the Act does not in any way show the interference of the State in the matters of religion thus allegedly violating the guarantees as provided under Articles 25 and 26 of the Constitution. The Writ Petition appears to have been filed upon unfounded apprehensions and concocted grounds. The allegations made in the Petition are based upon hypothesis, which have nothing to do with the reality. The object of the Petition apparently does not appear to be genuine or in the interest of the religion for whose benefit it is proclaimed to have been filed. Quashing of Section 14 or any other part of the Act would defeat the very purpose for which the Act was enacted resulting in the mis-management of the wakf property, which would endanger the purpose for which the wakfs are acknowledged 10 have been created and dedicated. All the pleas raised on behalf of the Petitioner being unfounded are liable to be rejected.

No other point was urged on behalf of the Petitioner."

133. It is submitted that presence of non-Muslims in the Waqf Board does not infringe Article 26. It is reiterated that administration of waqf properties is not a "religious" function protected under Article 26. It is submitted that in fact, this would fall in the category of secular functions which are amenable to legislation. It is submitted that a distinction has to be drawn between religious and secular activities associated with waqf.

134. It is submitted that therefore, as stated above the primary need is to obtain a broad based technically competent and capable panel wherein overwhelming majority [minimum 18 out of 22 in Central Waqf Council and minimum 8 out of 11 in Waqf Boards] to Muslims even after the amendment. It is submitted that the Waqf Boards are concerned with the latter category. It is therefore submitted that change in the composition of the Central Waqf Council and the State Waqf Boards does not violate Article 26.

SPECIAL PROVISION CONCERNING GOVERNMENT PROPERTIES

135. It is respectfully submitted that there may not be any dispute about two propositions-

(i) Only a person who is the lawful owner of the property can create a waqf;

(ii) That there cannot be a creation of waqf on Government Property as the Government holds the property for and on behalf of all the citizens of India.

It is submitted that it has been consistently found over a period of time and documented at various levels that government properties and even private properties are declared as waqf properties. It is submitted that this is done under the old regime wherein adequate safeguards were absent.

It is further submitted that in a secular Constitution, where Government Properties are now accorded the status of being held in public trust, to suggest that a beneficial legislation that confers validity on religious dedications should give primacy to such alleged dedications and their administration over property held in trust by the governments for the benefit of the citizens of the country, is utterly misconceived.

136. It is submitted that the provision of Sections 3A, 3B and 3C take care of the said situation which has been prevailing since several decades. It is submitted that there are startling examples whereby the Government lands or even the private lands were declared as waqf properties [in both the cases, obviously, a person making waqf cannot be the owner of the property]. It is submitted that although it may not be appropriate to give examples of such properties as they may be subject of litigation between the claimants of waqf and the rightful owner ,however, one example may suffice. In case of ***Viceroy Hotels Limited and Others v. Telangana State Wakf Board and Others*** **2024 SCC OnLine TS 689**, a claim was made as the property owned by the said Hotel on a prime land in Hyderabad to be 'Waqf by user'. It is submitted that the hotel agitated its claim before the Hon'ble Telangana High Court against Telangana State Waqf Board. Interestingly, the Board had itself determined the property to be not a waqf property in 1958 but they revisited the issue in 2007 and declared it to be waqf property.

The High Court quashed the claimed of the Waqf Board and declared the Hotel to be a lawful owner of the property.

It is submitted that thereafter, the SLP filed by Telangana State Waqf Board was dismissed by this Hon'ble Court in ***SLP(C)*** **7078 of 2025.**

It is submitted that there are several such examples which would show how the 'waqf by user' and the power "declaring any land as waqf *suo motu* by waqf board" has proved to be a safe haven of encroachment of government properties and private properties.

137. It is submitted that it is undisputable that a government land and the private land cannot be the subject matter of waqf, the proviso to Section 3[1][r] made an exception even if the waqf is registered.

138. It is submitted that even in case of registered waqf if there is a dispute pending between the parties, such dispute would be governed by the orders passed by the competent court / adjudicating body.

139. It is submitted that so far as the government land / property is concerned, a new provision is inserted being Section 3C providing for a detailed procedure if any government property is either identified or declared as waqf property before or after the commencement of amendment of 2025.

140. It is submitted that with a view to provide for a procedure where the question concerning whether property is a government property, it was initially provided that the Collector shall decide the dispute. The main objection against this provision was to the effect that the Collector is the head of the district and, therefore, in charge of the revenue records. It was alleged that this would make him a judge in his own cause.

141. It is submitted that the Committee, therefore, recommended that instead of conferment of power upon the Collector, the State Government must designate an officer above the rank of Collector who shall "conduct an enquiry as per law" and determine whether such property is a government property or not and submit his report to the State Government.

142. It is submitted that government land is held in public trust for the benefit of all citizens, and not for the exclusive benefit of any religious community or interest. It is submitted that the State, acting as trustee of public land, is under a constitutional and fiduciary obligation to protect such land from unlawful claims and ensure its availability for public use, infrastructure, welfare schemes, and equitable distribution.

143. It is submitted that the Waqf (amendment) Act, 2025 has inserted Section 3C into the principal Act, which reads as follows:

> "**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
> (2) If any question arises as to whether any such property is a Government property, the State Government may, by notification, designate on Officer above the rank of Collector (hereinafter referred to as the designated officer), who shall conduct an inquiry as per law, and determine whether such property is a Government property or not and submit his report to the State Government:
> Provided that such property shall not be treated as waqf property till the designated officer submits his report.
> (3) In case the designated officer 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.
> (4) The State Government shall, on receipt of the report of the designated officer, direct the Board to make appropriate correction in the records."

144. It is submitted that this provision can never be objected to as it is always open for the competent legislature to provide for an adjudicatory mechanism under which a decision is taken about status of the property for government land after conducting an enquiry and after following principles of natural justice.

If the designated officer determines a property to be a government property, he shall make necessary corrections in the revenue record and submit a report in this regard and the State Government shall carry out the correction in the revenue record accordingly.

145. It is submitted this decision can always be subjected to challenge in accordance with law by the affected party. The aggrieved party can approach the Waqf Tribunal under Section 83 against which the amendment now provides for a full-fledged First Appeal before the High Court. In this regard, Section 83 of the amended Act is reproduced hereunder:

> **83. Constitution of Tribunals, etc.—**
> (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:

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

(2) Any mutawalli 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:

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

(3) Where any application made under sub-section (1) relates to any waqf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the waqf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the waqf or any other person interested in the waqf or the waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such waqf or waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of three members—
(a) one person, who is or has been a District Judge, who shall be the Chairman;

(b) one person, who is or has been an officer equivalent in the rank of Joint Secretary to the State Government—member;
(c) one person having knowledge of Muslim law and jurisprudence—member:

Provided that a Tribunal established under this Act, prior to the commencement of the Waqf (Amendment) Act, 2025, shall continue to function as such until the expiry of the term of office of the Chairman and the members thereof under this Act.

(4-A) 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:
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.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

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

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(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."

146. It is submitted that these safeguards are procedural in nature, aimed at verifying the legitimacy of claims over public land, and do not prohibit lawful waqf dedications or judicially recognized waqfs. It is submitted that the said

provision ensures that historic misclassifications and unsupported assertions of waqf status over public assets are prevented in the future.

147. It is therefore submitted that the rationale for these provisions arises from repeated and documented instances across the country where Waqf Boards had claimed title over government land, public utilities, and protected monuments without deed, survey, or adjudication—relying solely on Board's unilateral records. It is submitted that the said claims included, *inter alia*, waqf claims over Collector's offices, government schools, ASI-protected heritage sites, and land vested in State or municipal authorities.

148. It is further submitted that only because the Designated Officer has been appointed as the authority to inquire into the nature of the property, it does not mean that natural justice has been violated. It is well settled that appointment of an officer to adjudicate claims including claims by the Government is not tainted by bias. For example all the tax laws where the State claims tax from a citizen are administered by officers appointed by the State – the suggestion that their conduct is tainted by bias is absurd.

149. It is submitted that in that regard reference may be made *to* ***Crawford Bayley & Co. v. Union of India,*** **(2006) 6 SCC 25**. It is submitted that in the said case, the challenge on this very ground was to Section 3 of the Public Premises Act which allowed the Government to appoint a person as Estate Officer. This Hon'ble Court stated as follows:

> "In this connection, a reference was made to Delhi Financial Corpn. v. Rajiv Anand [(2004) 11 SCC 625] with regard to personal bias i.e. an officer of the statutory authority has been appointed as an Estate Officer, therefore, they will carry their personal bias. However, this Court in the aforesaid case held that the doctrine "no man can be a judge in his own cause" can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned.

Merely because an officer of a corporation is named to be the authority, does not by itself bring into operation the doctrine, "no man can be a judge in his own cause". For that doctrine to come into play it must be shown that the officer concerned has a personal bias or connection or a personal interest or has personally acted in the matter concerned and/or has already taken a decision one way or the other which he may be interested in supporting."

150. It is submitted in ***Hindustan Petroleum Corpn. Ltd. V. Yashwant Gajanan Joshi,*** **1991 Supp (2) SCC 592**, it was held as under:

"12. We have given our careful consideration to the arguments advanced by learned counsel for the parties and have thoroughly perused the record. There is no provision in the Act prohibiting the Central Government to make an appointment of an employee of the Corporation as competent authority. Apart from determining the compensation, many other functions are assigned to the competent authority and there may be one competent authority for all the above purposes or different persons or authorities may be authorised to perform all or any of the functions of the competent authority under the Act. The scheme of the Act shows that a competent authority has to discharge various and diverse duties under the Act. He has to attend survey of land required for pipeline, verification of land revenue records of the surveyed area, drawing up of panchnama for land, crop, plantation, trees or any other agricultural or non-agricultural activity carried on in the surveyed land or the pipeline, issue of notification under Section 3(1) of the Act, receipt of claims/objections for assessment of damages, disputes etc., issue of clearance to concerned oil company and deciding all the disputes arising out of the authorised persons, power to enter notified lands and various other duties. Thus, such persons becomes a better qualified and experienced person equipped with a proper background to decide the amount of compensation also. We cannot accept the contention of Mr Dholakia that merely because a person is an employee of the corporation, he would have a bias in deciding the compensation under Section 10(1) of the Act.

14. Now we shall consider the question of the appointment of Mrs. A.R. Gadre as competent authority in the present case.... We however wish to make it clear that we do not agree with the general proposition of the High Court that an officer of the Corporation cannot be appointed as a 'competent authority' because he may be biased in favour of the

> Corporation by reason of his employment. In the result we find no force in this appeal and it is accordingly dismissed with no order as to costs."

151. It is submitted that the contention that the government becomes a judge in its own case that would invariably act in a biased or prejudicial manner amounts to stretching the bias rule unacceptably far. It cannot be contended that government appointees would by definition be predisposed to favour the government in all cases and the Supreme Court has in cautioned against such presumptions in the following words in ***State of AP* v. *Narayana Velur Mfg Beedi Factory* (1973) 4 SCC 178**:

> "…. It may be that in certain circumstances such persons who are in the service of the Government may cease to have an independent character if the question arises of fixation of minimum wages in a scheduled employment in which the appropriate Government is directly interested. It would, therefore, depend upon the facts of each particular case whether the persons who have been appointed from out of the class of independent persons can be regarded as independent or not. But the mere fact that they happen to be government officials or government servants will not divest them of the character of independent persons. **We are not impressed with the reasoning adopted that a government official will have a bias, or that he may favour the policy which the appropriate Government may be inclined to adopt because when he is a member of an advisory committee or board he is expected to give an impartial and independent advice and not merely carry out what the Government may be inclined to do. Government officials are responsible persons and it cannot be said that they are not capable of taking a detached and impartial view"**

152. It is further submitted that the function of the designated officer in this regard is limited. It is submitted that in case the officer's report states that the property is Government property, the revenue records will be updated to reflect the same.

It is submitted that the Designated Officer is not making a final determination of rights because it is an established principle that mutation in

the revenue record is only evidence of but not conclusive of ownership. It is submitted that if the Designated Officer determines the property to be a government property under Section 3C(2), it would result in the government being reflected as the owner in the revenue record.

153. It is submitted that it would be open for the affected/aggrieved party in such a case, at any stage, to approach the Waqf Tribunal under Section 83(2) of the Act. It is submitted that the final determination with regard to the title would therefore be made by the Waqf Tribunal or in appeal, by the Hon'ble High Court and the Hon'ble Supreme Court. It is submitted that the final rights of the parties would be subject to the Court's decision. It is submitted that updating of the revenue records as provided for by Section 3C(2) and 3C(3) ensures that the record of rights is accurately maintained.

154. It is submitted that in a democracy governed by the rule of law, land and property vested in the State cannot be alienated without lawful authority and statutory procedure. It is submitted that claims of religious dedication over State land must be subjected to strict scrutiny and cannot override the principle that government property is held in trust for all citizens equally, regardless of religion.

155. It is submitted that Section 3C is consistent with Article 14 of the Constitution, which permits classification based on intelligible differentia. It is submitted that government land, being categorically distinct in its ownership, control, and purpose, constitutes a valid class for separate treatment under law, especially to prevent encroachment or misappropriation under the garb of religious endowment.

It is submitted that by protecting government land through procedural safeguards, the State fulfils its duty under Article 39(b) of the Constitution,

which directs that ownership and control of material resources of the community should be distributed to best serve the common good.

156. It is respectfully submitted that the special provisions to protect government land in the Waqf (Amendment) Act, 2025 are therefore neither arbitrary nor exclusionary, but a well-considered legislative measure to prevent abuse and preserve the integrity of public property.

ESSENTIAL RELIGIOUS ASPECTS REMAIN UNTOUCHED

157. It is submitted that the Waqf (Amendment) Act, 2025 is a constitutionally valid enactment that formalises, harmonises and modernises the pre-existing *waqf* regime with the fundamental rights to freedom of religion guaranteed under Articles 25 and 26 of the Constitution of India. It is submitted that this Act, which amends the *Waqf* Act of 1995, was passed with the objective of modernising the management of *waqf* properties in India through transparent, efficient and inclusive measures.

158. It is submitted that the reforms introduced are directed solely at the secular and administrative aspects of *waqf* institutions – such as property management, record-keeping, and governance structures – without impinging upon any essential religious practices or tenets of the Islamic faith.

It is submitted that, as elaborated below, the Act squarely falls within the permissible regulatory power of the State under Article 26 (which allows legislation in matters of administration of religious property) and Article 25 (which allows regulation of secular activities associated with religion), while fully preserving the autonomy of religious practices protected by Articles 25(1) and 26(b).

159. It is submitted that Articles 25 and 26 establish a balance between an individual's or denomination's right to religious freedom and the State's

authority to enact social welfare and regulatory measures. It is submitted that Article 25(1) guarantees to all persons the freedom of conscience and the right freely to profess, practice, and propagate religion, subject to public order, morality, and health.

It is submitted that Article 26 similarly guarantees to every religious denomination the right to manage its own affairs in matters of religion, establish and maintain institutions, own property, and administer such property. It is submitted that these rights, however, are not absolute and unqualified and the Constitution itself contains explicit clauses recognising the State's power to regulate or restrict non-essential, secular aspects of religious practice and to legislate for regulation, modernisation, formalisation or social welfare even in the realm of religion.

160. Further, it is submitted that Article 25(2)(a) expressly provides that nothing in the right to religious freedom shall prevent the State from making any law "regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice."

It is submitted that as per the constitution bench judgments of this Hon'ble Court this clause was deliberately included by the framers to ensure that activities which not essential to the religion – even if they are carried out by religious institutions or as adjuncts to religion – remain subject to State authorities and legislative oversight. It is submitted that the running of financial affairs, property transactions, and administrative arrangements of a religious endowment are classic examples of such secular activities associated with religion that can be regulated in the interest of public welfare and good governance.

161. It is submitted that Article 26 subjects the administration of religious property to the law of the land by guaranteeing denominations the right to

manage their property "in accordance with law." It is submitted that the constitutional scheme therefore distinguishes between matters of religion – which are inviolable core freedoms – and matters of property or management – which can be overseen and modified by valid legislation.

It is submitted that the constitution benches of this Hon'ble Court have consistently interpreted these provisions to mean that while the freedom to observe and practice essential religious rites is protected, the State retains competence to regulate the secular administration of religious trusts, charities, and endowments in order to prevent misuse and to promote social welfare.

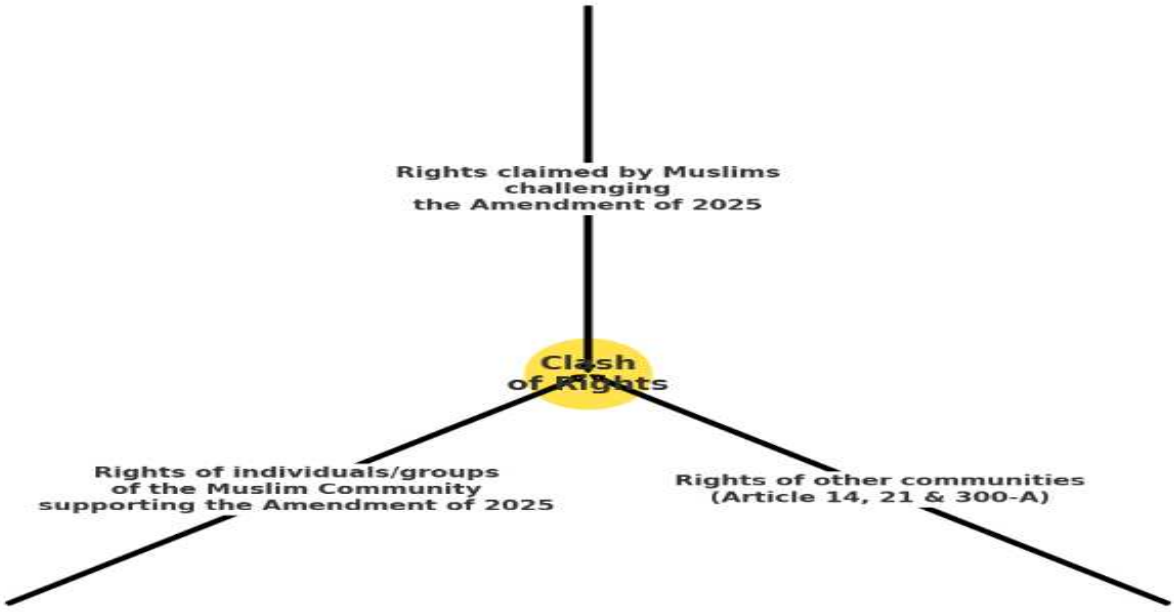
162. It is submitted that the Petitioners are seeking to interpret Article 25 and 26 in a ***silo*** and thereby ventilate only one segment of religious rights at play. However, in the instant case, there are at least 3 segments of fundamental rights which are often overlapping or conflicting and depicted as under :

a. The rights claimed by the Muslims challenging the Amendment of 2025 under Article 25 and 26;

b. The rights of other individual persons/groups of the Muslim faith who are supporting the amendment of 2025 under Article 25 and 26 which seek adequate and proper State regulation over the administration of properties by the Mutawalli's and oversight mechanism's on the functioning of the Boards;

c. The rights under Article 14, 21 and 300-A of members of other communities which are and often affected by the creation, administration and management of Waqf properties;

The following is a pictorial depiction of the said interplay :



163. In the given scenario, the Waqf Act as amended, is to be seen in after adequately synthesising the rights at play in the present case and balancing the equities therein. It is further submitted that in case wherein competing fundamental rights are involved, a unique judicial approach has been adopted by this Hon'ble Court. It is submitted that the Waqf Act is a Central Act which deals with the administration and other secular aspects of waqfs in India.

164. It is submitted that the reforms introduced are directed at the secular and administrative aspects which may at best be ***connected with*** religious beliefs and not beliefs themselves. It is submitted that 2025 Amendment Act ***does not impinge upon any essential religious practices or tenets of the Islamic faith***. It is submitted that how to create a waqf, for what purpose a waqf is to be created and how the waqf is to function internally, is wholly untouched. It is submitted that it would be erroneous to claim that all form of dedications like Waqf by user, are part of fundamental right of communities. Further, all such forms of dedications cannot be held to be falling within the umbrella of ***essential religious practice***. Further, the Advisory Council and State Boards, do not

conduct a "religious function" rather regulate or supervise or oversee secular aspects of *waqf* – primarily administration of properties.

165. In that regard it is submitted that charity in and of itself cannot be an essential aspect of religion, even though charity may be encouraged by the tenets of the religion. It is submitted that the creation, management and operation of endowments is a purely secular exercise. In ***John Vallamattom and Another v. Union of India,* (2003) 6 SCC 611**, it has been held

> "40. Coming to the last argument raised by the petitioners' counsel it may be stated that in the instant case, this Court is not concerned with the right of a person to freedom of conscience but is only concerned with a question as to whether by reason of Section 118 of the Indian Succession Act the right of Christians to profess, practise and propagate religion is violated. Article 25 is subject to the other provisions contained in Part III of the Constitution of India. What was thought of by the Constitution makers while conferring right to profess, practise and propagate religion was that freedom of conscience be supplemented by freedom of unhampered expression of spiritual conviction. Article 25 provides freedom of 'profession' meaning thereby the right of the believer to state his creed in public and freedom of practice meaning his right to give it expression in forms of private and public meaning his right to give it expression in forms of private and public worships [See Stainislaus Rev. v. State of M.P. **]. A disposition towards making gift for charitable or religious purpose may be a pious act of a person but the same cannot be said to be an integral part of any religion.** It is not the case of the petitioners that the religion of Christianity commands gift for charitable or religious purpose compulsory or the same is regarded as such by the community following Christianity. The petitioner has not been able to place any material to show that disposition of property for religious and charitable purposes is an integral part of Christian religious faith.
>
> **41. Disposition of property for religious and charitable purpose is recommended in all the religions but the same cannot be said to be an integral part of it.** If a person professing Christian religion does not show any inclination of disposition towards charitable or religious purposes, he does not cease to be a Christian. Even certain practices adopted by the persons professing a particular religion may not have anything to do with the religion itself."

It is submitted that in the same case, the concurring judgement of His Lordship Justice Sinha stated as follows

> **"47 Message of charity and compassion is to be found in all religions without any exception. Only because charity and compassion are preached in every religion, the same by itself would not be a part of the 'religious practice' within the meaning of Article 25 of the Constitution of India.**
>
> **48. Thus, the Religion of Christianity encouraging the Christians to practice charities to attain spiritual salvation is of not much relevance for this purpose. Such preaching are also found in Bhagavat Geet and Upanishad**
>
> 54. Renouncement of world by a person following any religion is necessarily not the essential practice of the religion which is meant for commonness. Gandhiji also said renouncement and enjoy
>
> 55. Such preaching for renouncement from the word have no co-relation with the tenets of Article 25 of the Constitution of India.

166. Thus, it is submitted that the proposed analogy or comparison with State Acts governing religious endowments would not be fully justified. It is submitted that, this question was pointedly raised by the Joint Parliamentary Committee and the Central Government has given detailed answers both on facts and on law. A perusal of paras 9.6.1 to 9.6.4 would show that these aspects are examined by the Joint Parliamentary Committee.

167. It is submitted that further, the 2025 Amendment Act squarely falls within the permissible regulatory power of the State. It is submitted that an important doctrinal tool developed by this Hon'ble Court is the "essential religious practices" test in this regard. In ***Commr. Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) 1 SCC 412**, [***Shirur Mutt*** Case] [Mehr Chand Mahajan (C.J), Bijan Kumar Mukerjea, Sudhi Ranjan Das, Vivian Bose, Ghulam Hasan, N.H. Bhagwati and T.L. Venkatarama Ayyar, JJ. (delivered by Bijan Kumar Mukherjea, J.)- **7 Judges**] this Hon'ble

Court, clearly laid bare the distinction between Article 26(b) and Article 26(d) [which is the relevant provision in the present case]. The Petitioners are designedly confusing the two and it goes against the settled law under Article 26. It was held as under :

> **"17.** The other thing that remains to be considered in regard to Article 26 is, what is the scope of clause (b) of the article which speaks of management "of its own affairs in matters of religion"? The language undoubtedly suggests that there could be other affairs of a religious denomination or a section thereof which are not matters of religion and to which the guarantee given by this clause would not apply. The question is, where is the line to be drawn between what are matters of religion and what are not?
>
> **18.** It will be seen that besides the right to manage its own affairs in matters of religion, which is given by clause (b), the next two clauses of Article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. **The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion.** The latter is a fundamental right which no legislature can take away, **whereas the former can be regulated by laws which the legislature can validly impose**. **It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of the Article applies. What then are matters of** religion? The word "religion" has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an American case [Davis v. Beason, 1890 SCC OnLine US SC 43 : 33 L Ed 637 : 133 US 333 at p. 342 (1890)] , it has been said "that the term religion has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His being and character and of obedience to His will. It is often confounded with cultus of form or worship of a particular sect, but is distinguishable from the latter". We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon Article 44(2) of the Constitution of Eire and we have great doubt whether a definition of "religion" as given above could have been in the minds of our Constitution makers when they framed the Constitution. Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well-known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines

> which are regarded by those who profess that religion as conducive to their spiritual well-being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."

168. In ***Ratilal Panachand Gandhi V. State Of Bombay*, 1954 SCR 1055** [***Ratilal Panachand Gandhi*** case] [Mehr Chand Mahajan (C.J), Bijan Kumar Mukerjea, Sudhi Ranjan Das, Vivian Bose, Ghulam Hasan JJ. (delivered by Bijan Kumar Mukherjea, J.)- **5 Judges**] on which considerable reliance has been placed by the Petitioners, this Hon'ble Court indeed held that the right of administration cannot be taken away altogether and vested in a secular authority. The said position does not arise in the present case as the *mutawalli* who is the actual manager of the *waqf* remain a religious person. The Petitioner have confused the *regulatory* Boards under the Act with managers of properties. It is submitted that it is clear that the Boards do not have any managerial powers over the waqfs created and neither can it be stated that the waqfs created vest in the Boards in any manner. Thus, the argument of the Petitioner in this regard, is misplaced and deserves to be rejected. It may be noted that following the relevant passage of the said case, furthers the case of the Respondent and is quoted as under:

> "**10.** Article 25 of the Constitution guarantees to every person and not merely to the citizens of India, the freedom of conscience and the right freely to profess, practise and propagate religion. This is subject, in every case, to public order, health and morality. Further exceptions are engrafted upon this right by clause (2) of the article. Sub-clause (a) of clause (2) saves the power of the State to make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and sub-clause (b) reserves the State's power to make laws providing for social reform and social welfare even though they might interfere with religious practices. Thus, subject to the restrictions which this article imposes, every person

has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people. **What sub-clause (a) of clause (2) of Article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices.**

11. So far as Article 26 is concerned, it deals with a particular aspect of the subject of religious freedom. Under this article, any religious denomination or a section of it has the guaranteed right to establish and maintain institutions for religious and charitable purposes and to manage in its own way, all affairs in matters of religion. Rights are also given to such denomination or a section of it to acquire and own movable and immovable properties and to administer such properties in accordance with law. The language of the two clauses (b) and (d) of Article 26 would at once bring out the difference between the two. In regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. **On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but here again it should be remembered that under Article 26(d), it is the religious denomination itself which has been given the right to administer its property in accordance with any law which the State may validly impose**. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26(d) of the Constitution

12. The moot point for consideration, therefore, is where is the line to be drawn between what are matters of religion and what are not? Our Constitution-makers have made no attempt to define "what religion" is and it is certainly not possible to frame an exhaustive definition of the word "religion" which would be applicable to all classes of persons. As has been indicated in the Madras case referred to above, the

definition of "religion" given by Fields, J. in the American case of Davis v. Beason [133 US 333] does not seem to us adequate or precise. "The term 'religion'" thus observed the learned Judge in the case mentioned above, "has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His Will. It is often confounded with cultus or form of worship of a particular sect, but is distinguishable from the latter". It may be noted that "religion" is not necessarily theistic and in fact there are well known religions in India like Buddhism and Jainism which do not believe in the existence of God or of any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion to be conducive to their spiritual well being, but it would not be correct to say, as seems to have been suggested by one of the learned Judges of the Bombay High Court, that matters of religion are nothing but matters of religious faith and religious belief. A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well. We may quote in this connection the observations of Latham, C.J. of the High Court of Australia in the case of Adelaide Company v. Commonwealth [67 CLR 116, 124] where the extent of protection, given to religious freedom by Section 116 of the Australian Constitution came up for consideration.

"It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil Government should not interfere with religious opinions, it nevertheless may deal as it pleases with any acts which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears to me to be difficult to maintain this distinction as relevant to the interpretation of Section 116. The section refers in express terms to the exercise of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion.

In our opinion, as we have already said in the Madras case, these observations apply fully to the provision regarding religious freedom that is embodied in our Constitution.

13. Religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. Thus if the tenets of the Jain or the Parsi religion lay down that certain rites and ceremonies are to be performed at certain times and in a particular manner, it cannot be said that these are secular activities partaking of commercial or economic character simply because they involve expenditure of money or employment of

> **priests or the use of marketable commodities.** No outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate. Of course, the scale of expenses to be incurred in connection with these religious observances may be and is a matter of administration of property belonging to religious institutions; and if the expenses on these heads are likely to deplete the endowed properties or affect the stability of the institution, proper control can certainly be exercised by State agencies as the law provides. We may refer in this connection to the observation of Davar, J. in the case of Jamshed ji v. Soonabai [33 Bom 122] and although they were made in a case where the question was whether the bequest of property by a Parsi testator for the purpose of perpetual celebration of ceremonies like Muktad baj, Vyezashni, etc., which are sanctioned by the Zoroastrian religion were valid charitable gifts, the observations, we think, are quite appropriate for our present purpose. "If this is the belief of the community" thus observed the learned Judge, "and it is proved undoubtedly to be the belief of the Zoroastrian community,—a secular Judge is bound to accept that belief—it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind". These observations do, in our opinion, afford an indication of the measure of protection that is given by Article 26(b) of our Constitution.
>
> **14.** The distinction between matters of religion and those of secular administration of religious properties may, at times, appear to be a thin one. But in cases of doubt, as Chief Justice Latham pointed out in the case [Vide Adelaide Company v. The Commonwealth, 67 CLR 116, 129] referred to above, **the court should take a common sense view and be actuated by considerations of practical necessity**. It is in the light of these principles that we will proceed to examine the different provisions of the Bombay Public Trusts Act, the validity of which has been challenged on behalf of the appellants."

169. Further, in ***Sri Venkataramana Devaru and Others V. State of Mysore and others,*** **1958 SCR 895** [now famously known as the ***Devaru*** case] [Sudhi Ranjan Das, C.J., T.L. Venkatarama Aiyar, Syed Jafer Imam, A.K. Sarkar and Vivian Bose, JJ. (delivered by T.L. Venkatarama Aiyar)- **5 Judges**] this Hon'ble Court had analysed the interplay between Article 26 and Article 25(2)(b) and held that there must be harmonious construction of the enabling provision

under Article 25(2)(b) and Article 26. The following is the relevant passage of the said case:

> **28.** And lastly, it is argued that whereas Article 25 deals with the rights of individuals, Article 26 protects the rights of denominations, and that as what the appellants claim is the right of the Gowda Saraswath Brahmins to exclude those who do not belong to that denomination, that would remain unaffected by Article 25(2)(b). This contention ignores the true nature of the right conferred by Article 25(2)(b). That is a right conferred on "all classes and sections of Hindus" to enter into a public temple, and on the unqualified terms of that Article, that right must be available, whether it is sought to be exercised against an individual under Art 25(1) or against a denomination under Article 26(b). The fact is that though Article 25(1) deals with rights of individuals, Article 25(2) is much wider in its contents and has reference to the rights of communities, and controls both Article 25(1) and Article 26(b).
>
> **29. The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction. Applying this rule, if the contention of the appellants is to be accepted, then Article 25(2)(b) will become wholly nugatory in its application to denominational temples, though, as stated above, the language of that Article includes them. On the other hand, if the contention of the respondents is accepted, then full effect can be given to Article 26(b) in all matters of religion, subject only to this that as regards one aspect of them, entry into a temple for worship, the rights declared under Article 25(2)(b) will prevail. While, in the former case, Article 25(2)(b) will be put wholly out of operation, in the latter, effect can be given to both that provision and Article 26(b). We must accordingly hold that Article 26(b) must be read subject to Article 25(2)(b).**
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> **32.** We have held that the right of a denomination to wholly exclude members of the public from worshipping in the temple, though comprised in Article 26(b), must yield to the overriding right declared by Article 25(2)(b) in favour of the public to enter into a temple for worship. But where the right claimed is not one of general and total exclusion of the public from worship in the temple at all times but of exclusion from certain religious services, they being limited by the rules of the foundation to the members of the denomination, then the question is not whether Article 25(2)(b) overrides that right so as extinguish it, but whether it is possible

— so to regulate the rights of the persons protected by Article 25(2)(b) as to give effect to both the rights. If the denominational rights are such that to give effect to them would substantially reduce the right conferred by Article 25(2)(b), then of course, on our conclusion that Article 25(2)(b) prevails as against Article 26(b), the denominational rights must vanish. **But where that is not the position, and after giving effect to the rights of the denomination what is left to the public of the right of worship is something substantial and not merely the husk of it, there is no reason why we should not so construe Article 25(2)(b) as to give effect to Article 26(b) and recognise the rights of the denomination in respect of matters which are strictly denominational, leaving the rights of the public in other respects unaffected."**

170. In ***Durgah Committee, Ajmer And Another V. Syed Hussain Ali And Others*, (1962) 1 SCR 383** [***Durgah Committee*** case] [P.B. Gajendragadkar, A.K. Sarkar, K.N. Wanchoo, K.G. Das Gupta and N. Rajagopala Ayyanagar, JJ. (delivered by P.B. Gajendragadkar)- **5 Judges**], the Hon'ble Supreme Court held that in order for any practice to be treated as a part of religion it must be regarded by the said religion as its essential and integral part. The Court also for the first time shunned the practices it regarded as "superstitious" to not fall under the umbrella of Article 25. It was held as under :

"33. We will first take the argument about the infringement of the fundamental right to freedom of religion. Articles 25 and 26 together safeguard the citizen's right to freedom of religion. Under Article 25(1), subject to public order, morality and health and to the other provisions of Part 3, all persons are equally entitled to freedom of conscience and their right freely to profess, practise and propagate religion. This freedom guarantees to every citizen not only the right to entertain such religious beliefs as may appeal to his conscience but also affords him the right to exhibit his belief in his conduct by such outward acts as may appear to him proper in order to spread his ideas for the benefit of others. Article 26 provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

The four clauses of this article constitute the fundamental freedom guaranteed to every religious denomination or any section thereof to manage its own affairs. It is entitled to establish institutions for religious purposes, it is entitled to manage its own affairs in the matters of religion, it is entitled to own and acquire movable and immovable property and to administer such property in accordance with law. What the expression "religious denomination" means has been considered by this Court in Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [(1954) SCR 1005] . Mukherjea, J., as he then was, who spoke for the Court, has quoted with approval the dictionary meaning of the word "denomination" which says that a "denomination" is a collection of individuals classed together under the same name, a religious sect or body having a common faith and organisation and designated by a distinctive name. The learned Judge has added that Article 26 contemplates not merely a religious denomination but also a section thereof. Dealing with the questions as to what are the matters of religion, the learned Judge observed that the word "religion" has not been defined in the Constitution, and it is a term which is hardly susceptible of any rigid definition. Religion, according to him, is a matter of faith with individuals or communities and it is not necessarily theistic. It undoubtedly has its basis in a system of pleas or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, but it is not correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress (pp. 1023, 1024). Dealing with the same topic, though in another context, in Venkataramna Devaru v. State of Mysore [(1958) SCR 895] Venkatarama Aiyar, J. spoke for the Court in the same vein and observed that it was settled that matters of religion in Article 26(b) include even practices which are regarded by the community as part of its religion, and in support of this statement the learned Judge referred to the observations of Mukherjea, J., which we have already cited. **Whilst we are dealing with this point it may not be out of place incidentally to strike a note of caution and observe that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Article 26. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are**

> **found to constitute an essential and integral part of a religion their claim for the protection under Article 26 may have to be carefully scrutinised; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and no other**.
>
> ...

171. In ***Tilkayat Shri Govindlalji Maharaj V. State Of Rajasthan And Others*, (1964) 1 SCR 561** [***Govindlalji Maharaj*** case] [Bhuvaneshwar Prasad Sinha (C.J.), A.K Sarkar, K.C. Das Gupta, N. Rajagopala Ayyangar and J.R. Mudholkar, JJ. (delivered by Bhuvaneshwar Prasad Sinha (C.J.)- **5 Judges**], this Hon'ble Court was dealing with the validity of a legislation specifically enacted for regulation / administration of a religious institution. This Hon'ble Court after noting the nature of temples and the manner of worship amongst the Vallabha sect, decided the question whether the philosophical doctrine of the Vallabha school prohibits the existence of a public temple.

Critically the Hon'ble Court, while seeking to segregate what constitutes a religious practice and what constitutes a secular practice held that obviously secular matters claimed to be part of religion cannot have the protection of Article 25 and 26. The following is the relevant passage of the said case:

> **57.** In deciding the question as to whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not. **This formula may in some cases present difficulties in its operation. Take the case of a practice in relation to food or dress. If in a given proceeding, one section of the community claims that while performing certain rites white dress is an integral part of the religion itself, whereas another section contends that yellow dress and not the white dress is the essential part of the religion, how is the Court going to decide the question? Similar disputes may arise in regard to food. In cases where conflicting evidence is produced in respect of rival contentions as to competing religious practices the Court may not be able to resolve the dispute by a blind application of the formula that the community decides which practice in an intergral part of its religion, because the community may speak with more than one voice and the formula would, therefore, break down. This question will always have to be**

decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion. It is in the light of this possible complication which may arise in some cases that this Court struck a note of caution in the case of Dungah Committee Ajmer v. Syed Hussain Ali [(1962) 1 SCR 383 at p. 411] and observed that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Article 26.

58. In this connection, it cannot be ignored that what is protected under Articles 25(1) and 26(b) respectively are the religious practices and the right to manage affairs in matters of religion. **If the practice in question is purely secular or the affair which is controlled by the statute is essentially and absolutely secular in character, it cannot be urged that Article 25(1) or Article 26(b) has been contravened.** The protection is given to the practice of religion and to the denomination's right to manage its own affairs in matters of religion. Therefore, whenever a claim is made on behalf of an individual citizen that the impugned statute contravenes his fundamental right to practise religion or a claim is made on behalf of the denomination that the fundamental right guaranteed to it to manage its own affairs in matters of religion is contravened, it is necessary to consider whether the practice in question is religious or the affairs in respect of which the right of management is alleged to have been contravened are affairs in matters of religion. If the practice is a religious practice or the affairs are the affairs in matter of religion, then, of course, the right guaranteed by Article 25(1) and Article 26 (b) cannot be contravened.

59. It is true that the decision of the question as to whether a certain practice is a religious practice or not, as well as the question as to whether an affair in question is an affair in matters of religion or not, may present difficulties because sometimes practices, religious and secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because as is well known, under the provisions of ancient Smritis, all human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character. As an illustration, we may refer to the fact that the Smritis regard marriage as a sacrament and not a contract. Though the task of disengaging the secular from the religious may not be easy, it must nevertheless be attempted in dealing

with the claims for protection under Articles 25(1) and 26(b). If the practice which is protected under the former is a religious practice, and if the right which is protected under the latter is the right to manage affairs in matters of religion, it is necessary that in judging about the merits of the claim made in that behalf the Court must be satisfied that the practice is religious and the affair is in regard to a matter of religion. In dealing with this problem under Articles 25(1) and 26(b), Latham C.J.'s observation in Adelaide Company of Jehovah's witnesses Incorporated v. Commonwealth [67 CLR 116 at p. 123] that "what is religion to one is superstition to another", on which Mr Pathak relies, is of no relevance. **If an obviously secular matter is claimed to be matter of religion, or if an obviously secular practice is alleged to be a religious practice, the Court would be justified in rejecting the claim because the protection guaranteed by Article 25(1) and Article 26(b) cannot be extended to secular practices and affairs in regard to denominational matters which are not matters of religion, and so, a claim made by a citizen that a purely secular matter amounts to a religious practice, or a similar claim made on behalf of the denomination that a purely secular matter is an affair in matters of religion, may have to be rejected on the ground that it is based on irrational considerations and cannot attract the provisions of Article 25(1) or Article 26(b). This aspect of the matter must be borne in mind in dealing with true scope and effect of Article 25(1) and Article 26(b).**

61. That leaves one more point to be considered under Article 26(d). It urged that the right of the denomination to administer its property has virtually been taken away by the Act, and so, it is invalid. It would be noticed that Article 26(d) recognises the denomination's right to administer its property but it clearly provides that the said right to administer the property must be in accordance with law. Mr Sastri for the denomination suggested that law in the context is the law prescribed by the religious tenets of the denomination and not a legislative, enactment passed by a competent legislature. In our opinion, this argument is wholly untenable. In the context, the law means law passed by a competent legislature and **Article 26(d) provides that though the denomination has the right to administer its property, it must administer the property in accordance with law**. In other words, this clause emphatically brings out the competence of the legislature to make a law in regard to the administration of the property belonging to the denomination. It is true that under the guise of regulating the administration of the property by the denomination, the denomination's right must not be extinguished or altogether destroyed. That is what this Court has held in the case of the Commissioner Hindu Religious Endowments, Madras and Ratilal Panachand Gandhi v. State of Bombay [1954 SCR 1055] .

> **62.** Incidentally, this clause will help to determine the scope and effect of the provisions of Article 26(b). Administration of the denomination's property which is the subject-matter of this clause is obviously outside the scope of Article 26(b) Matters relating to the administration of the denomination's property fall to be governed by Article 26(d) and cannot attract the provisions of Article 26(b). Article 26(b) relates to affairs in matters of religion such as the performance of the religious rites or ceremonies, or the observance of religious festivals and the like; it does not refer to the administration of the property at all. **Article 26(d) therefore, justifies the enactment of a law to regulate the administration of the denomination's property and that is precisely what the Act has purported to in the present case. If the clause "affairs in matters of religion" were to include affairs in regard to all matters, whether religious or not, the provision under Article 26(d) for legislative regulation of the administration of the denomination property would be rendered illusory**."

172. It is submitted that thus, not every activity or custom vaguely related to religion is afforded constitutional protection – only those practices that are fundamental or essential to the religion fall within the protective ambit of Articles 25 and 26. It is submitted that this Hon'ble Court has laid down that in deciding what is an essential part of a religion, the tenets and doctrines of that religion must be looked at and only practices that are integral to the faith (for example, prescribed religious rituals, forms of worship, or core beliefs) are placed beyond legislative interference, whereas practices or activities which are not essential or are merely secular aspects connected with some religious rationale can be regulated or reformed by the State.

173. In this regard, it may be noted that Act which ended the hereditary right of succession to the office of Archakas even if the Archakas are otherwise qualified in the State of Tamil Nadu, has been upheld by a constitution bench of this Hon'ble Court. In ***Seshammal and Others Etc. v. State of Tamil Nadu*, (1972) 2 SCC 11 [*Seshammal* case]** [S.M. Sikri (C.J.), A.N. Grover, A.N. Ray, D.G. Palekar and M.H. Beg, JJ. (delivered by D.G. Palekar J.)- **5 Judges**], this Hon'ble

Court held that because the *archaka* owes his appointment to a purportedly secular authority [the Board or trustees], the act of his appointment would be essentially secular and merely because the said *archakas* perform a religious function it cannot be said that the appointment is a part of a religious practice or a matter of religion. The following is the relevant passage of the said case:

> **"20. Mr Palkhivala** on behalf of the petitioners insisted that the appointment of a person to a religious office in accordance with the hereditary principle is itself a religious usage and amounted to a vital religious practice and hence falls within Articles 25 and 26. In his submission, priests, who are to perform religious ceremonies may be chosen by a temple on such basis as the temple chooses to adopt. **It may be election, selection, competition, nomination, or hereditary succession.** He, therefore, contended that any law which interferes with the aforesaid basis of appointment would violate religious freedom guaranteed by Articles 25 and 26 of the Constitution. In his submission the right to select a priest has an immediate bearing on religious practice and the right of a denomination to manage its own affairs in matters of religion**. The priest is more important than the ritual and nothing could be more vital than chosing the priest.** Under the pretext of social reform, he contended, the State cannot reform a religion out of existence and if any denomination has accepted the hereditary principle for chosing its priest that would be a religious practice vital to the religious faith and cannot be changed on the ground that it leads to social reform. **Mere substitution of one method of appointment of the priest by another was, in his submission, no social reform.**
>
> **21.** It is true that a priest or an Archaka when appointed has to perform some religious functions but the question is whether the appointment of a priest is by itself a secular function or a religious practice. Mr Palkhivala gave the illustration of the spiritual head of a math belonging to a denomination of a Hindu sect like the Shankaracharya and expressed horror at the idea that such a spiritual head could be chosen by a method recommended by the State though in conflict with the usage and the traditions of the particular institution. Where, for example, a successor of a Mathadhipati is chosen by the Mathadhipati by giving him mantra-deeksha or where the Mathadhipati is chosen by his immediate disciples, it would be, he contended, extraordinary for the State to interfere and direct that some other mode of appointment should be followed on the ground of social reform. Indeed this may strike one as an intrusion in the matter of religion. But we are afraid such an illustration is inapt when we are considering the appointment of an Archaka of a temple. The Archaka

has never been regarded as a spiritual head of any institution. He may be an accomplished person, well versed in the Agamas and rituals necessary to be performed in a temple but he does not have the status of a spiritual head. Then again the assumption made that the Archaka may be chosen in a variety of ways is not correct. The Dharam-karta or the Shebait makes the appointment and the Archaka is a servant of the temple. It has been held in K. Seshadri Aiyangar v. Ranga Bhattar [ILR 35 Mad 631] that even the position of the hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee can enquire into the conduct of such a servant and dismiss him for misconduct. As a servant he is subject to the discipline and control of the trustee as recognised by the unamended Section 56 of the principal Act which provides "all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause". **That being the position of an Archaka, the act of his appointment by the trustee is essentially secular. He owes his appointment to a secular authority. Any lay founder of a temple may appoint the Archaka. The Shebaits and Managers of temples exercise essentially a secular function in choosing and appointing the Archaka. That the son of an Archaka or the son's son has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary Archaka can claim any right to the office.** See Kali Krishan Ray v. Makhan Lal Mookerjee [ILR 50 Cal 233] , Nanabhai Narotamdas v. Trimbak Balwant Bhandare [(1878-80) Vol. 4, Unreported printed Judgments of the Bombay High Court, p. 169] and Maharanee Indurjeet Kooer v. Chundemun Misser [16 WR 99] . **Thus the appointment of an Archaka is a secular act and the fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular. It would only mean that in making the appointment the trustee is limited in respect of the sources of recruitment. Instead of casting his net wide for selecting a proper candidate, he appoints the next heir of the last holder of the office. That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious practice or a matter of religion**."

174. It is submitted that this Hon'ble Court in ***Sri Jagannath Temple Puri Management Committee and Another v. Chintamani Khuntia and Others,***

(1997) 8 SCC 422 [*Shri Jagannath Temple* case] [J. J.S. Verma, J. Suhas C. Sen and j. S.P. Kurdukar], has held that if there is a financial or economic activity connected with religious activities, the State can make law to regulate the same. The Hon'ble Court has held that the management of the temple is a secular act and the control of the activity of various servants, the disciplinary powers over such servants, the manner of payment of remuneration to such servants cannot be struck down as violative of Article 25 and 26. The following is the relevant passage of the said case:

> **"29.** It is true that placing of the Hundis at different parts of the Temple has the possibility of reducing the income of the Mekaps, but simultaneously, their duties and responsibilities have also diminished. They do not have to keep guard over the Hundis nor do they have to collect and deposit the offerings made in the Hundis with the Temple authority. Collection of money also carries with it the responsibility for accounting for the money collected. All these onerous obligations now stand reduced. It is not the case of the Sevaks that they have been asked to work without any pay. Therefore, in our view, there cannot be any question of violation of any religious right guaranteed by Articles 25 and 26 of the Constitution.
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> **xxx**
>
> **32.** A further aspect of the case is that the Puri Jagannath Temple is a very ancient structure which needs to be maintained properly. One of the objects of creation of Shri Jagannath Temple Funds is to maintain the Temple and also to do various other charitable works including training of Sevaks and providing medical relief, water and sanitary arrangement for the worshippers and the pilgrims and constructing buildings for their accommodation. Money is needed for all these purposes. The Temple Committee had adopted certain measures like placing closed receptacles in place of Gadu and also Hundis to ensure proper collection of the offerings. The monies are to be used for charitable purposes. The Sevaks cannot be heard to complain that their property and also religious rights had been taken away in the process. The placing of the Hundis may restrict their activities and also reduce their share in the offerings but that does not amount to abridgement of any religious or property right of the Sevaks.
>
> **xxx**
>
> **35.** All these provisions go to show that the Sevaks are appointed by the Administrator and have to do the jobs assigned to them by the Administrator. The Administrator has the power to take disciplinary proceedings against them whenever necessary. The Administrator has

also been empowered to prepare a schedule of the employees of the Temple and fix their salaries etc. these provisions again go to show that the Sevaks are essentially servants of the Temple. The status of the Sevaks cannot by any means be equated with that of a Mahant or a Shebait. The Sevaks do not have any interest in the properties of the Temple which they may have to guard. They have certain duties during the seva-puja but they are not allowed to touch the deities. They have to clean the throne keeping their feet at the edge of the throne. They have to collect whatever Veta and Pindika is thrown on the throne, standing on the ground stretching their hands as far as they can reach. They bring golden ornaments from the Bhandar Mekaps for use in the three Dhupas and give them to the puja pandas and after the puja they take back the ornaments and deposit the same in the Bhandar daily. They also bring the sandal paste from the storehouse and give the same to the three Pandas. After the ritual is over, they deposit the silver plate in the Bhandar. They also bring camphor for light and remain present at the time of closure of the doors and sleep near the doors. These duties performed by the Sevaks are connected with the seva-puja but the actual seva-puja is not done by the Sevaks. The collection of offerings including monies lying scattered inside the Temple and also on the throne of the deities have nothing to do with the seva-puja. These duties are performed after the seva-puja is completed. **The collection of monies and other offerings inside the Temple cannot be treated as a practice of religion by the Sevaks. They were simply discharging their duties assigned to them for remuneration**. **Every activity inside the Temple cannot be regarded as a religious practice. Moreover, sub-clause (2) of Article 25 of the Constitution has specifically reserved the right of the State for making any law "regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice". If there is any financial or economic activity connected with religious practice, the State can make law regulating such activities even though the activity may be associated with religious practice. In the instant case, we are of the view that the various duties assigned to the Sevaks are nothing but secular activities, whether associated with religious practice or not. Moreover, the State Legislature has, in any event, power to frame laws for regulating collection and utilisation of the offerings of monies made inside the Temple by the devotees.**

49. A review of all these judgments goes to show that the consistent view of this Court has been that although the State cannot interfere with freedom of a person to profess, practise and propagate his religion, the State, however, can control the secular matters connected with religion. **All the activities, in or connected with a temple are not religious activities. The management of a temple or maintenance of discipline and order inside the temple can be controlled by the State.** If any law is

> passed for taking over the management of a temple it cannot be struck down as violative of Article 25 or Article 26 of the Constitution. **The management of the temple is a secular act.** The temple authority may also control the activities of various servants of the temple. The disciplinary power over the servants of the temple, including the priests, may be given to the temple committee appointed by the State. The temple committee can decide the quantum and manner of payment of remuneration to the servants. Merely because a system of payment has been prevalent for a number of years, it is no ground for holding that such system must continue for all times. The payment of remuneration to the temple servants was not a religious act but was of purely secular nature."

175. In ***S. Narayana Deekshitulu v. State of A.P.,*** **(1996) 9 SCC 548**, taking a step further on the issue of appointment of archakas, this Hon'ble Court, held as under :

> "119. **The real question, therefore, is whether appointment of an archaka is governed by the usage and whether hereditary succession is a religious usage? If it is religious usage, it would fall squarely under Article 25(1)(b) of the Constitution.** That question was posed in Seshammal case [(1972) 2 SCC 11 : (1972) 3 SCR 815] wherein this Court considered and held that though archaka is an accomplished person, well-versed in the Agamas and rituals necessary to be performed in a temple, he does not have the status of a head of the temple. He owes his appointment to Dharmakarta or Shebait. He is a servant of the temple. In K. Seshadri Aiyangar v. Ranga Bhattar [ILR 35 Mad 631 : 21 MLJ 580] the Madras High Court had held that status of hereditary archaka of a temple is that of a servant, subject to the disciplinary power of the trustee who would enquire into his conduct as servant and would be entitled to take disciplinary action against him for misconduct. As a servant, archaka is subject to the discipline and control of the trustee. The ratio therein was applied and upheld by this Court and it was held that under Section 56 of the Madras Act archaka is the holder of an office attached to a religious institution and he receives emoluments and perks according to the procedure therein. This Court had further held that the act of his appointment is essentially a secular act. He owes his appointment to a secular authority. Any lay founder of a temple may appoint an archaka. The Shebait or Manager of temple exercises essentially a secular function in choosing and appointing the archaka. Continuance of an archaka by succession to the office from generation to generation does not make any difference to the principle of appointment. No such hereditary archaka can claim any right to the office. Though after appointment the archaka

performs worship, it is no ground to hold that the appointment is either religious practice or a matter of religion. It would thus be clear that though archaka is normally a well-versed and accomplished person in the Agamas and rituals necessary to be performed in a temple, he is the holder of an office in the temple. He is subject to the disciplinary power of a trustee or an appropriate authority prescribed in the regulations or rules or the Act. **He owes his existence to an order of appointment — be it in writing or otherwise. He is subject to the discipline on a par with other members of the establishment. Though after appointment, as an integral part of the daily rituals, he performs worship in accordance with the Agama Shastras, it is no ground to hold that his appointment is either a religious practice or a matter of religion. It is not an essential part of religion or matter of religion or religious practice. Therefore, abolition of the hereditary right to appointment under Section 34 is not violative of either Article 25(1) or Article 26(b) of the Constitution.**

121. The next question is whether abolition of the emoluments attached to the office is invalid in law? Shri Parasaran has forcefully and with vehemence at his command repeatedly argued that appointment of archaka and right to receive emoluments or share in the offerings is an integral usage and practice prevalent in Madras Province from centuries. In Seshammal case [(1972) 2 SCC 11 : (1972) 3 SCR 815] the usage was not an issue since the hereditary right or usage or practice was not avoided in the Madras Act. Section 34(1)(b) has done away with the appointment on usage or custom; when the appointment is on the basis of usage and custom which acquired the status of law and is a part of religious practice, Section 34(1)(b) is unconstitutional. It is true that in Seshammal case [(1972) 2 SCC 11 : (1972) 3 SCR 815] the issues whether appointment of an archaka should be made on the basis of custom or usage prevalent in an institution or whether such appointment is in contravention of Article 25(1) or Article 26(b) of the Constitution were not directly addressed. **So long as the statute did not intervene regulating the secular appointment of an archaka, the appointment according to prevailing usage or custom was upheld by the courts. Consequently, the right to succession or appointment remained valid. But with the statutory intervention, unless the custom or usage is held an integral part of the religion, the legislature has power to regulate the appointment of an archaka or other office-holder. In view of the settled legal position that the appointment of an archaka is a secular act, the previous custom or practice or usage in making an appointment to the office of an archaka is regulated under the Act. As an object in that behalf the hereditary right or custom or usage, prevalent in that behalf, was statutorily abolished**."

176. It is submitted that in ***Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P.,*** **(1997) 4 SCC 606**, it was held as under :

> **"28. The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos/Creator and realise his** spiritual self. Sometimes, practices religious or secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti, human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One hinges upon constitutional religious model and another diametrically more on traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a tool of social engineering and an instrument of social change evolved by a gradual and continuous process. As Benjamin Cardozo has put it in his Judicial Process, life is not logic but experience. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination all be the progress of law. **Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired.** There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. **All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc.** The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the

practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State. Whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question. And whether hereditary archaka is an essential and integral part of the Hindu religion is the crucial question.

31. The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of the religion. In Seshammal case [Seshammal v. State of T.N., (1972) 2 SCC 11] on which great reliance was placed and stress was laid by the counsel on either side, this Court while reiterating the importance of performing rituals in temples for the idol to sustain the faith of the people, insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the deity. This Court also recognised the place of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtained in the temple. Shri P.P. Rao, learned Senior Counsel also does not dispute it. It was held that Articles 25 and 26 deal with and protect religious freedom. Religion as used in those articles requires restricted interpretation in etymological sense. Religion undoubtedly has its basis in a system of beliefs which are regarded by those who profess religion to be conducive to the future well-being. It is not merely a doctrine. It has outward expression in acts as well. **It is not every aspect of the religion that requires protection of Articles 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be protected under the Constitution in the garb of religion. Articles 25 and 26 must be viewed with pragmatism**. By the very nature of things it would be extremely difficult, if not impossible, to define the expression “religion” or “matters of religion” or “religious beliefs or practice”. Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non-

religious activity. The right to observe and practise rituals and right to manage in matters of religion are protected under these articles**. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are an integral part of religion are protected. It is a well-settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation. This Court upheld the A.P. Act which regulated the management of the religious institutions and endowments and abolition of hereditary rights and the right to receive offerings and plate collections attached to the duty.**

34. It is then contended that abolition of the right to manage the Temple as Mahant is offensive of their right to religious practice and management of the Temple. This controversy is no longer res integra. This Court in Pannalal Bansilal Pitti v. State of A.P. [(1996) 2 SCC 498] was to decide the validity of the provisions of the A.P. Act in the matter of abolishing the right of hereditary trustees and appointment of the Executive Officer and non-hereditary trustee. In Sri Sri Sri Lakshamana Yatendrulu v. State of A.P. [(1996) 8 SCC 705] this Court was to decide the constitutionality of Sections 50 to 55 of the said A.P. Act dealing with action against erring Mathadhipati, maintenance of accounts and removal of Mathadhipati for misconduct and filling up of the resultant vacancies. After elaborate consideration, the provisions were upheld as valid and constitutional. Diverse provisions of the A.P. Act, 1987 were upheld. We need not reiterate them once over and to avoid burdening the judgment, we adopt the reasons given therein and agree with the same. For the same reasons, the need to examine in detail aforequoted provisions is obviated. Accordingly, we hold that the contention that some of the persons have customary and hereditary rights as archakas and that the Act extinguishes their rights and so is violative of Articles 25 and 26(b) and (d) of the Constitution, is untenable and devoid of substance.

40. The Government kept its control only on the secular side as the Temple is one of the important Hindu Temples in the State of U.P. and in Bharat. Properties and endowments vest in the deity, Lord Shri Vishwanath. The management of the Temple by mahant/panda/archaka is not their property. The Act has merely changed the management from pandas to the Board. Only the right of management in the pandas has been extinguished from the appointed day and placed in the Board for better and proper management. It is not vested in the State nor the State acquired it for itself. In other words, the affairs of Lord Shri Vishwanath Temple by pandas/mahant have become extinct and the Board has assumed the management. This entrustment of

> **management cannot be said to constitute acquisition of the property or extinguishment of right to property. In the light of the above, there is need to give restrictive interpretation to the word "religious faith" and "religion" so as to allow the pandas to manage the Temple both on temporal part and deny them the secular part of the management of the Temple. The ratios laid in Pannalal case [(1996) 2 SCC 498] , Lakshamana case [(1996) 8 SCC 705] and Narayana case [(1996) 9 SCC 548] do not apply to the Act in question."**

177. In ***Bashir Ahmed v. State of West Bengal*, 1975 SCC OnLine Cal 109 : AIR 1976 Cal 142 at page 145,** the Hon'ble High Court of Calcutta considered the constitutionality of the Bengal Wakf Act, 1934. The Bengal Wakf Act, 1934, provides definitions of Wakf as well as Wakf-al-al-aulad. Wakf is defined under Section 6(10) as follows:—

> "Wakf means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Islamic law as pious, religious or charitable and includes a wakf by user; and "Wakif" means any person making such dedication;

Wakf-al-al-aulad is defined by Section 5(11) as follows:

> "Wakf-al-al-aulad" means a wakf under which not less than seventy-five per cent. of the net available income is for the time being payable to the wakif for himself or any member of his family or descendants.

The Hon'ble High Court of Calcutta held as under:

> **" 14. <u>The question, therefore, in this case that would have to be decided is whether under Article 25 of the Constitution the right to freedom of religion as contemplated by clause (1) of that Article had in any way been interfered with. As I read the provisions of the present Act in question I do not find in any way any interference with the freedom of conscience or the right to freely profess, practise or propagate the religion.</u>** <u>Indeed the matters of control which have been vested in the Commissioner or in the Board of Wakf are matters regulating or restricting the economic and the financial activity associated with the religious practice. Article 26 ensures freedom to manage religious affairs. That freedom includes the right to establish and maintain institutions of religion and for charitable purpose and to manage its own affairs in matters of religion, to own and acquire movable and immovable property and administer such property in accordance with law. None of these</u>

> rights, in my opinion, have been interfered with. **The right of administration as mentioned by the Supreme Court must remain with the religious body, but it should be administered in accordance with law. Law regulating the management is permissible under clause (d) of Article 26 of the Constitution. I am therefore, unable to accept that there has been violation of any provisions of the Article 25 or Article 26 of the Constitution by the provisions of the Bengal Wakf Act, 1934 as amended by the amending Act of 1973. The provisions of the Act to which I have referred to hereinbefore are essentially provisions for the preservation, protection, and improvement of the Wakf properties. These, in my opinion, do not destroy the right of management of the Wakf properties."**

178. It is submitted that applying this test to the issues at hand, the act of creating a *waqf* (endowing property for religious or charitable purposes) is indeed a practice encouraged in Islam; however, the manner in which *waqf* properties are administered, accounted for, or supervised is not a matter of religious doctrine but rather a matter of secular management. It is submitted that none of the essential Islamic tenets prescribes a specific immutable method of maintaining *waqf* records, conducting audits, or constituting management boards – these are organizational frameworks that can evolve with time and circumstances.

179. It is submitted that managing the large number of *waqf* properties across the country – which include land, buildings, and financial assets dedicated to charitable and religious causes – involves significant secular activities: maintaining accurate records, preventing misappropriation, resolving disputes, and ensuring that the income is used for the intended charitable purposes such as education, healthcare, and assistance to the needy. Further, such properties often deal with rights of people of other communities and their claims to some such properties. The regulation of such properties therefore may have a public order aspect as well. In any event, it is submitted that regulatory

powers of the State clearly keep the essential religious practices, as recognised by this Hon'ble Court, untouched.

180. It is submitted that therefore, regulations aimed at improving transparency, accountability, and efficiency in *waqf* administration do not touch upon any essential religious practice. It is submitted that the core religious aspect – dedication of property for charitable/religious use and the use of income for pious or welfare purposes – remains fully protected and unchanged; the Act does not alter the religious obligation or spiritual nature of *waqf* in any way, but only addresses the incidental secular mechanisms surrounding it.

181. It is submitted that indeed, the Constitution makers had cautioned that if every activity done by a religious institution were deemed sacrosanct, even purely secular practices could be immunized from needed regulation under the guise of religion. It is submitted that to prevent such an outcome, this Hon'ble Court, has held that non-essential religious matters – such as the administration of assets, financial expenditure, or the appointment of functionaries even if connected to religious activities, can fall under the regulatory expanse. It is submitted that as per the judgments mentioned above, any activity which may even be related with religion but does not form the essence of religious faith, are amenable to State regulation.

182. Further, as a matter of constitutional interpretation, it is necessary to note the opinion of the eleven-judge bench of this Hon'ble Court in ***T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481**, with regard to the interplay of Article 25 and 26 and other provisions of the Constitution. It may be noted that while this opinion is not complete in itself, but provides a clear indication that Article 26, cannot exist in isolation as per Indian constitutional law jurisprudence. It is submitted that the relevant part is quoted as under :

> **"221.** It was also urged that if the framers of the Constitution intended to carve out an exception to Article 30(1), they could have used the words "subject to the provisions contained in Article 29(2)" in the beginning of Article 30(1) or could have used the expression "notwithstanding" in the beginning of Article 29(2) and in absence of such words it cannot be held that Article 29(2) is an exception to Article 30(1). Reference in this regard was made to Articles 25 and 26 which contained qualifying words. In fact, the structural argument was based on the absence of qualifying words either in Article 29(2) or 30(1). This argument based on the structure of Articles 29(2) and 30(1) has no merit. In fact, it overlooks that the intention of the framers of the Constitution was to confer rights consistent with the other members of the society and to promote rather than imperil national interest. It may be noted that there is a difference in the language of Articles 25 and 26. The qualifying words of Article 25 are "subject to public order, morality and health and to the other provisions of this Part". The opening words of Article 26 are "subject to public order, morality and health". **The absence of the words "to the other provisions of this Part" as occurring in Article 25 in Article 26 does not mean that Article 26 is over and above other rights conferred in Part III of the Constitution. In Durgah Committee v. Syed Hussain Ali [AIR 1961 SC 1402 : (1962) 1 SCR 1402] and Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan [AIR 1963 SC 1638 : (1964) 1 SCR 561] it has been held that Article 26 is subject to Article 25 irrespective of the fact that the words "subject to other provisions of this Part" occurring in Article 25 are absent in Article 26**. For these reasons, it must be held that even if there are no qualifying expressions "subject to other provisions of this Part" and "notwithstanding anything" either in Article 30(1) or Article 29(2), Article 30(1) is subject to Article 29(2) of the Constitution."

183. It is submitted that thus, it is clear that by the express omission of the phrase '**other provisions of Part III'**, it cannot be said that the right under Article 26 would be subject to other provisions of Part III going by literal construction. It is submitted that all rights under Part III of the Constitution interact with each other and shape each other's content.

184. In light of the above, it may be noted that the Waqf (Amendment) Act, 2025 very clearly limits itself to secular dimensions (like record management, procedural reforms, and administrative structure) and not any matters of ritual, prayer, or fundamental Islamic obligations. It is submitted that therefore the

Act, by confining itself to non-essential practices, steers well clear of infringing the religious freedoms guaranteed by the Constitution.

185. It is submitted that the Waqf (Amendment) Act, 2025 is a textbook example of legislation that falls within the authorization of Article 26 and the protective clause of Article 25. It is submitted that Parliament, in enacting this Amendment has exercised its constitutionally sanctioned power to intervene in the secular, economic and administrative activities associated with a religious endowment for the purpose of social welfare, reform, and public order.

186. It is submitted that, similarly, under Article 26(d), while a religious denomination (in this context, the Muslim community or sub-communities thereof regarding their *waqf* institutions) has the right to administer property, it is explicitly subject to the condition that such administration must be in accordance with law. It is submitted that the phrase "in accordance with law" in Article 26(d) is a clear constitutional permissibility for the Legislature to impose reasonable regulations on how trust property dedicated for religious purposes is managed, so long as the law does not divest the community of the ownership of that property or prevent the use of the property for religious/charitable purposes.

187. It is submitted that the Waqf (Amendment) Act, 2025 affirms this boundary and in no manner whatsoever seek to transfer ownership or administration of *waqf* assets to the government nor does it dictate that *waqf* properties be used for secular purposes. It is submitted that it merely regulates the management of those assets to ensure they are effectively used for the very religious and charitable purposes for which they were endowed. It is submitted that this is precisely the kind of legislative action that the Constitution permits – even encourages – under the rubric of ensuring that religious activities and

activities associated therewith are managed in the public interest and in furtherance of social welfare.

188. As stated above, Indian constitutional jurisprudence from the early years post-Independence to recent years, has upheld a number of statutory frameworks governing religious institutions, recognising that State oversight of financial and administrative matters is compatible with religious freedom so long as the legislation does not interfere in internal religious affairs. It is submitted that in fact, the enactments upheld were directly related to the administration of the religious institutions. It is submitted that the constitutional validity of state regulations in the secular aspects of religious institutions has been consistently affirmed by this Hon'ble Court and has been applied to all religious communities and denominations in the country. It is submitted that such regulatory control reflects a long-standing policy rationale of safeguarding the public interest in religious and charitable activities and ensuring that trust property is used in accordance with its actual intended purpose.

189. It is submitted that in case of *waqf*s – owing to its unique expansive and ever evolving nature: the State's role as regulator and facilitator through this Act is constitutionally compliant. It is submitted that by enacting uniform procedures and accountability measures for *waqf* institutions, the Parliament has acted to prevent abuses, protect the sanctity of *waqf* property, and ensure that the benefits of these endowments reach the community, all of which fall within the scope of reasonable regulation under Articles 25 and 26. It is submitted that the Act, therefore, should also be seen as a law for social welfare and reform in the context of religious endowments – an initiative that strengthens the integrity and efficacy of *waqf* institutions without encroaching upon religious doctrine or worship.

EMPOWERING PROVISO UNDER SECTION 2

190. It is submitted that as per the hearing which took place on 16.04.2025, the issues of immediate concern were debated where the court *prima facie* felt that on certain issues there was an apprehension about irreversible change by the time the matter is heard finally.

191. In this category, three questions were flagged which are already responded hereinabove. The following two contentions would not be a subject matter of any interim order as it does not adversely affect anyone and may need a final hearing. However, since some of the Petitioners did flag the provisions of Section 2, the same is answered briefly hereunder.

192. It is submitted that the following is the amendment made to Section 2 of the Waqf Act [bold part introduced by the amendment] -

> "2. Application of the Act.—Save as otherwise expressly provided under this Act, this Act shall apply to all auqaf whether created before or after the commencement of this Act:
> Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer to which the Durgah Khawaja Saheb Act, 1955 (36 of 1955) applies.
>
> **Provided further that nothing in this Act shall, notwithstanding any judgement, decree or order of any court, apply to a trust (by whatever name called) established before or after the commencement of this Act or statutorily regulated by any statutory provision pertaining to public charities, by a Muslim for purpose similar to a waqf under any law for the time being in force**."

193. It is submitted that the said amendment to Section 2 of the Waqf Act, 1995, as introduced by the Waqf (Amendment) Act, 2025, marks a transformative legislative step in affirming the constitutional rights of individuals professing Islam in India to exercise freedom of religion, conscience, and association, by broadening the legal avenues through which charitable dedications may be made.

194. Freedom to exercise religion includes freedom to choose the format in which the religious affairs of a particular denomination will be governed. Mandating Muslim citizens of India to limit themselves to doing charity or serving their religion only through the medium of Waqf is neither desirable nor constitutional. A Muslim citizen of a secular nation can always choose to create either a private trust or a public charitable trust and choose to be governed by different legislations governing trusts. This proviso takes care of protection of the said fundamental rights of all Muslims.

195. The Waqf Amendment Act, 2025, provides that any "trust" whether constituted prior to or after the commencement of Act of 2025, shall not be subject to the Waqf Act, 1995.

196. As per the Joint Parliamentary Committee Report ("**JPC**") of 2025, a proviso was added to address the concerns of the the Agakhani and Bohras community, who while being a part of the Shia Community, have their own unique governance systems governed by the religious authority of the *al-Dai al-Mutlaq* that is recognised by the United Kingdom*[Dawat-E-Hadiyah Act, 1993]*, Shri Lanka *[the Dawat-E-Hadiyah (Sri Lanka) (Incorporation) Act, 1994*]. It is submitted that Dawoodi Bohra Community had sought a complete exclusion from the provisions of any legislation including the Waqf Act of 1995 that regards all their dedications as Waqfs and seeks to brings properties dedicated to charity or for the good of the community, under the administration of the Waqf Board. These communities do not follow the practice of appointing a Mutawalli, and specially in the case of the Dawoodi Bohras' the Dai Ul Muttalaq who is believe by them to be the Vicegerent of the Imam in Seclusion, is in the capacity of a sole trustee of all their dedications. According to them, making his role subject to a Waqf Board would be contrary to the faith and essential religious practices of the Dawoodi Bohra Community protected under Article

25 and 26 of the Constitution of India. The relevant portion of the JPC Report is reproduced below:

> "Further, the Committee agree with the submissions made by the Dawoodi Bohra and Aghakhani Communities which although parts of the larger Shia Muslim Community, have a distinct set of religious doctrines and practices. As a minority within the Shia community, the Dawoodi Bohras follow a unique governance system that revolves around the religious authority of the al-Dai al-Mutlaq. In this respect, the Ministry have suggested for amendments in Section 2 of the Principal Act by providing that this Act shall not apply to a trust established by a Muslim under any law for the time being in force. Consequently, the Committee recommend that the following proviso may be inserted in Section 2 of the principal Act."

197. It is submitted that the newly inserted second proviso to Section 2 of the Act explicitly excludes from the application of the Waqf Act any trust (by whatever name called) that is established either before or after the commencement of the Act, and that is regulated by a statutory provision pertaining to public charities, even if such trust is created by a Muslim for purposes similar to a waqf.

198. It is submitted that in 1963, this Hon'ble Court in ***Nawab Zain Yar Jung and Others v. The Director of Endowments and Others*, 1963 (1) SCR 469**, held as under:

> **"Having noticed this broad distinction between the wakf and the secular trust of a public and religious character, it is necessary to add that under Muslim Law there is no prohibition against the creation of a trust of the latter kind. Usually, followers of Islam would naturally prefer to dedicate their property to the Almighty and create a wakf in the conventional Mohammadan sense. But that is not to say that the follower of Islam is precluded from creating a public religious or charitable trust which does not conform to the conventional notion of a wakf and which purports to create a public religious charity in a non-religious secular sense. This position is not in dispute."**
>
> xxx
>
> "It is thus clear that the purpose for which a wakf can be created must be one which is recognised by Muslim law as pious, religious or charitable,

and the objects of public utility which may constitute beneficiaries under the wakf must be objects for the benefit of the Muslim community."

199. It is submitted that in ***Maharashtra State Board of Wakfs v. Yusuf Bhai Chawala,*** **(2012) 6 SCC 328,** this Hon'ble Court granted interim protection against the order of the Hon'ble High Court of Bombay, wherein the Hon'ble High Court directed the Charity Commissioner under Bombay Public Trust Act 1950 to continue to administer Muslim Waqf properties including the properties registered as trust properties with him under the Bombay Public Trust Act, 1950, until the Waqf Board under the Waqf Act of 1995 is constituted. This Hon'ble Court created a distinction between Waqf Properties and Trust, and stayed the operation of the order of the Hon'ble High Court and held as under:

"**38.** There is a vast difference between Muslim wakfs and trusts created by Muslims. The basic difference is that wakf properties are dedicated to God and the "wakif" or dedicator does not retain any title over the wakf properties. As far as trusts are concerned, the properties are not vested in God. Some of the objects of such trusts are for running charitable organisations such as hospitals, shelter homes, orphanages and charitable dispensaries, which acts, though recognised as pious, do not divest the author of the trust from the title of the properties in the trust, unless he relinquishes such title in favour of the trust or the trustees. At times, the dividing line between public trusts and wakfs may be thin, but the main factor always is that while wakf properties vest in God Almighty, the trust properties do not vest in God and the trustees in terms of deed of trust are entitled to deal with the same for the benefit of the trust and its beneficiaries

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41. Accordingly, at this stage, we direct that in relation to wakf properties, as distinct from trusts created by Muslims, all concerned, including the Charity Commissioner, Mumbai, shall not permit any of the persons in management of such wakf properties to either encumber or alienate any of the properties under their management, till a decision is rendered in the pending special leave petitions."

200. In ***Maharashtra State Board of Wakfs v. Sk. Yusuf Bhai Chawla,*** **2022 SCC OnLine SC 1653**, which is the final judgment held as under :

> **"137.** Therefore, it is true as contended by Dr. Singhvi, learned senior counsel, and also Shri Harish Salve, learned senior counsel **that this Court has maintained a distinction between a public Trust and a Wakf. The view taken by this Court has been that while it is open to a Muslim to create a Wakf and ordinarily, there would be the prospect of a Reward for dedicating property by way of Wakf, it would be entirely left to a Muslim to take a decision as to whether he should adopt the device provided by an English Trust or make the familiar dedication by way of Wakf. It may be also true that there is merit in the contention of the writ petitioners, that Article 25 provides a choice as to the manner in which a person may exercise his rights viz., as to whether he should resort to creating a Wakf or a Trust.**
>
> **
>
> 174. As to whether an institution is a Wakf or a public Trust is a mixed question of fact and law. This means it becomes a duty of whosoever upon whom the duty falls, to ascertain whether it is either and to carefully attend to the terms of the document by which the Trust is evidenced if there is such a document and find the facts and thereafter the law must be applied. The paramount feature which perhaps would figure in this inquiry would be the properties being vested either by a Trust, in the case of a Trust, for a trustee to deal with the property as such. Whether there is no power of sale, or inalienability may be a factor which may tilt the matter in favour of the institution being a Wakf provided other features which are indispensable are also present. It is no doubt true that the Amending Act of 1964, amending the words 'Beneficiary' making clear what was always the correct principle of Muslim law that fruits of a Wakf is not to be cribbed cabined and confined to the Muslim community would in the context of the object being public utility, narrow down the distinction between a trust and a wakf.
>
> **
>
> **213.** This brings us to other aspect which has been canvassed before us. Section 112 of the Act provides for repeal. There is not much controversy before us that Section 112 by virtue of the repeal it provides for would effect a repeal of the provisions of the 1950 Act insofar as it relates to public Trusts which are Wakfs. The Charity Commissioner, in effect, when it issued clarification which was challenged before the High Court also initially only stated that according to Section 43 of the Act Wakfs which are registered as Public Trusts should not be tried under the 1950 Act. As far as this understanding of the Charity Commissioner goes subject to what we will presently indicate, we would take the view that there is a distinction between a Trust and a Wakf. We have already highlighted the differences.

> It is a matter to be tested on a conspectus of various features and after complying with the law as to whether what is registered as a public Trust is, in fact, a Wakf or not. No doubt, all public Trusts which have been registered by way of a deeming provision under Section 28 of the 1950 Act will necessarily have to be treated as Wakfs. This is on the principle that once a Wakf is created unless it be a case where the title is extinguished by way of exercise of power of eminent domain by the State, the title of the Almighty though by implication cannot cease. We can state the position otherwise to be that once a Wakf, always a Wakf."

201. This Hon'ble Court held that this would be a matter to be decided on the terms of a document [Pa 156] and that this question is a mixed question of fact and law [Pa 174], this Hon'ble Court held that this was an issue to be considered in the survey. [Pa 178,] and further that the Waqf Board had the power to go into the question whether the property of Trust is indeed so or is a Wakf property [Pa 202]. In order correct this, the amendment clarifies that nothing in Act shall apply to Trusts, and having altered the basis of the law, validates all the acts in the past by which Trusts have been functioned as such and invalidates all enquiries by the Waqf Board into Trusts specially those registered under the various laws, as parliament has now clarified that the Waqf Act was never intended to anoint the Waqf board with powers to enquire into the validity of Trusts.

202. It is submitted that this carve-out is both constitutionally important, empowering choice of an individual and is jurisprudentially progressive. It recognises the right of a Muslim individual to exercise his/her discretion in choosing the most appropriate legal framework—whether under *waqf* law or under trust law—for administering charitable assets in accordance with their beliefs and intended purposes.

203. It is submitted that prior to this amendment, Muslims creating charitable institutions—even if meant for public welfare and not for religious purposes per se—risked such institutions being automatically subjected to the

supervisory framework of the Waqf Act, 1995 merely because the founder was a Muslim or because the purpose resembled that of a *waqf*.

204. It is submitted that such automatic categorisation, in the absence of a conscious dedication as *waqf* and willingness to be governed by the 1995 Act, infringed upon the Muslim individual's freedom of religion [Article 25] and autonomy over property [Article 300A], often leading to administrative overreach and unwanted classification.

205. It is thus submitted that said amendment to Section 2, for the first time legislatively clarifies that Muslims are not bound to utilise the *waqf* framework to establish public charitable institutions, even if the purpose mirrors traditional *waqf* objectives such as aiding the poor, promoting education, or serving religious causes, provided they choose to establish such institutions under another law, like the Indian Trusts Act, 1882, or state public charitable trusts laws.

206. It is submitted that this restores and reinforces the essential freedom under Article 25(1) of the Constitution, which guarantees freedom of conscience and the right freely to profess, practice, and propagate religion. It is submitted that freedom of religion includes the freedom not to be compelled to act in a religious manner or under a religious regime such as *waqf*, particularly when engaging in secular charitable acts.

207. It is submitted that the amendment equally furthers the rights under Article 26(a) and 26(d), which confer upon every religious denomination the right to establish institutions for charitable purposes and to administer property in accordance with law. It is submitted that by allowing Muslims to establish charitable entities outside the framework of *waqf*, this amendment affirms that such rights are not confined to religiously managed institutions and that the law must accommodate alternative secular regulatory mechanisms.

208. It is submitted that the amendment also furthers the principle of equality under Article 14, by ensuring that Muslims, like members of other religious communities, have the equal right to choose whether to bring their charitable acts under general/secular trust law or under a religious statute. It is submitted that this avoids arbitrary classification and prevents discrimination based on religion, as the choice of legal structure for public charity should rest with the donor and not with the administrative authorities or the personal faith of the founder.

209. It is submitted that the amendment serves a clarificatory, enabling and empowering purpose, by empowering Muslims from the prior ambiguities that allowed Waqf Boards to claim supervisory jurisdiction over institutions that were neither registered as waqf nor intended to be waqf, but merely bore a resemblance in purpose and created by a Muslim. It is submitted that this preserves the sanctity of waqf as a religious institution while recognising the pluralism of charitable expressions.

210. It is submitted that by respecting the individual Muslim's choice to opt for secular charitable legal structures rather than a religious endowment governed by the Waqf Act, the amendment advances personal liberty, religious freedom, and property autonomy—all of which are foundational to India's constitutional framework. It is submitted that this development is consistent with the broader legislative philosophy underpinning the Waqf (Amendment) Act, 2025, which seeks to streamline the Waqf framework, clarify its boundaries, and ensure that it governs only those institutions that are consciously and lawfully created as waqf. It is submitted that this is not only a matter of administrative propriety, but also one of constitutional fidelity, as it affirms that no religious identity can be the basis of restricting the avenues available for lawful secular charity.

211. It is submitted that the second proviso to Section 2 is thus a progressive and inclusive provision that strengthens the constitutional guarantees enshrined under Articles 14, 25, and 26, while protecting individuals from administrative overreach and ensuring they remain free to express charity in forms that align with their conscience, religious interpretation, or secular objectives.

212. It is submitted that the proviso is clarificatory and seeks to make obvious something that was already intrinsic in the pre-amendment regime. Having done so the Legislature can amend the law so as to remove the basis on which a judgment was passed. On such amendment, the judgment would lose its binding force. The judgment, though furthers the intent behind the proviso, if it is taken to be otherwise the said judgment is based upon the unamended Waqf Act, 1995 and by inserting the proviso, the Parliament have changed the circumstances and thereby, taken away the basis (if at all). The leading judgement in this regard is the case of ***Shri Prithvi Cotton Mills v. Broach Borough Municipality*, (1969) 2 SCC 283**. In ***Prithvi Cotton*** **[supra]**, the Bombay Municipal Boroughs Act levied a tax on land and buildings. While this tax was being contested before the Court and while the appeal was pending, the Legislature of the State of Gujarat enacted a Validating Act concerning the Municipality's authority to impose taxes. Chief Justice Hidayatullah [as he then was] opined that the Legislature possesses the authority to validate statutes and enact retrospective laws. However, in order to validate an unlawfully imposed tax, the validating act must address the underlying reason for the ineffectiveness or invalidity of the tax. The mere competence of the Legislature to impose taxes is insufficient and the Validating Act must substantially modify the circumstances under which the judgment was rendered to such an extent

that the judgment could not have been reached in the altered circumstances. It was held as under :

> **"1. M. HIDAYATULLAH, C.J.**—These matters arise under Article 226 of the Constitution and are appeals by certificate granted by the High Court of Gujarat against its judgment and order, dated September 10, 1966. The Appellant 1 is a Company which has spinning and weaving mills at Broach and manufactures and sells cotton yarn and cloth. Respondent 1 is the Broach Borough Municipality constituted under Section 8 of the Bombay Municipal Boroughs Act, 1925. In Assessment Years 1961-62, 1962-63 and 1963-64 the Municipality purporting to act under Section 73 of the Bombay Municipal Boroughs Act, 1925 and the Rules made thereunder imposed a purported rate on lands and buildings belonging to the respondents at a certain percentage of the capital value. Section 73 of the Act allows the Municipality to levy "a rate on buildings or lands or both situate within the municipal borough". The Rules under the Act applied the rates on the basis of the percentage on the capital value of lands and buildings. The assessment lists were published and tax was imposed according to the rates calculated on the basis of the capital value of the property of the appellant and bills in respect of the tax were served. The writ petitions were filed to question the assessment and to get the assessment cancelled.
>
> **2.** During the pendency of the writ petitions the Legislature of Gujarat passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963. As a result the writ petitions were amended and the Validation Act was also questioned. The appellants also filed a second writ petition questioning the validity of the Validation Act under Articles 19(1)(f)(g) and 265 of the Constitution. By the order under appeal here both the writ petitions were dismissed although a certificate of fitness was granted.
>
> **3.** The Validation Act was presumably passed because of the decision of this Court reported in Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad. [(1964) 2 SCR 608] In that case the validity of the Rules framed by the Municipal Corporation under Section 73 were called in question, particularly Rule 350-A for rating open lands which provides that the rate on the area of open lands shall be levied at 1 per centum on the valuation based upon capital value. Dealing with the word "rate" as used in these statutes, it was held by this Court that the word "rate" had acquired a special meaning in English legislative history and practice and also in Indian legislation and it meant a tax for local purposes imposed by local authorities. The basis of such tax was the annual value of the lands or buildings. It was discussed in the case that there were three methods by which the rates could be imposed: the first was to take into account the actual rent fetched by the land or building where it was actually let; the second was, where it was not let, to take rent based on hypothetical tenancy, particularly in the case of buildings; and the third was where neither of these two modes was available, by valuation based on capital value from which annual value had to be found by applying suitable percentage which might not be the same for lands and buildings. It was held that in Section 73 the word "rate" as used must have

been used in the special sense in which the word was understood in the legislative practice of India before that date. Rule 350-A which laid the rate on land at a percentage of the valuation based upon capital was therefore declared ultra vires the Act itself. In short, the word "rate" was given a specialised meaning and was held to mean a kind of impost on the annual letting value of property, if actually let out, and on a notional letting value if the property was not let out. The Legislature of Gujarat then passed the Validation Act seeking to validate the imposition of the tax as well as to avoid any future interpretation of the Act on the lines on which Rule 350-A was construed. The Act came into force on January 29, 1964. After defining the expressions used in the Act and providing for its application, the Act enacted Section 3 which concerned validation of impositions and collections of taxes or rates by Municipalities in certain cases. That section reads as follows:

> "3. Validation of imposition and Collection of taxes or rates by municipalities in certain cases.—Notwithstanding anything contained in any judgment, decree or order of a Court or Tribunal or any other authority, no tax or rate assessed or purporting to have been assessed by a municipality under the relevant municipal law or any rules made thereunder on the basis of the capital value of a building or land, as the case may be, or on the basis of a percentage of such capital value, and imposed, collected or recovered by the municipality at any time before the commencement of this Act shall be deemed to have been invalidly assessed, imposed, collected or recovered by reason of the assessment being based on the capital value or the percentage of the capital value, and not being based on the annual letting value, of the building or land, as the case may be, and the imposition, collection and recovery of the tax or rate so assessed and the provisions of the rules made under the relevant municipal law under which the tax or rate was so assessed shall be valid and shall be deemed always to have been valid and shall not be called in question merely on the ground that the assessment of the tax or rate on the basis of the capital value of the building or land, as the case may be, or on the basis of a percentage of such capital value was not authorised by law; and accordingly any tax or rate, so assessed before the commencement of this Act and leviable for a period prior to such commencement but not collected or recovered before such commencement, may be collected and recovered in accordance with the relevant municipal law, and the rules made thereunder."

If this section is valid then the imposition cannot be questioned and the short question which arises in this case is as to the validity of this section. It is not denied that a Legislature does possess the power to validate statutes and to pass retrospective laws. It is, however, contended that the Validation Act is ineffective in carrying out its avowed object. This is the only point which falls for consideration in these appeals.

4. Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a Legislature sets out to validate a tax declared by a court to be illegally **collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said**

to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating Law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the Validating Law for a valid imposition of the tax.

6. The Legislature in Section 73 had not authorised the levy of a tax in this manner but had authorised the levy of a rate. That led to the discussion whether a rule putting the tax on capital value of buildings answered the description of the impost in the Act, namely, "a rate on buildings or lands or both situate within the Municipal borough". It was held by this Court that it did not, because the word "rate" had acquired a special meaning in legislative practice. Faced with this situation the Legislature exercised its undoubted powers of redefining "rate" so as to equate it to a tax on capital value and convert the tax purported to be collected as a "rate" into a tax on lands and buildings. The Legislature in the Validation Act, therefore, provided for the following matters. First, it stated that no tax or rate by whichever name called and laid on the capital value of lands and buildings must be deemed to be invalidly assessed, imposed, collected or recovered simply on the ground that a rate is based on the annual letting value. Next it provided that the tax must be deemed to be validly assessed, imposed, collected or recovered and the imposition must be deemed to be always so authorised. The Legislature by this

> enactment retrospectively imposed the tax on lands and buildings based on their capital value and as the tax was already imposed, levied and collected on that basis, made the imposition, levy collection and recovery of the tax valid, notwithstanding the declaration by the Court that as "rate", the levy was incompetent. The Legislature not only equated the tax collected to a tax on lands and buildings, which it had the power to levy, but also to a rate giving a new meaning to the expression "rate", and while doing so it put out of action the effect of the decisions of the courts to the contrary. The exercise of power by the Legislature was valid because the Legislature does possess the power to levy a tax on lands and buildings based on capital value thereof and in validating the levy on that basis, the implication of the use of the word "rate" could be effectively removed and the tax on lands and buildings imposed instead. The tax, therefore, can no longer be questioned on the ground that Section 73 spoke of a rate and the imposition was not a rate as properly understood but a tax on capital value. In this view of the matter it is hardly necessary to invoke the 14th clause of Section 73 which contains a residuary power to impose any other tax not expressly mentioned."

213. In the case of ***Government of AP v. Hindustan Machine Tools,*** **(1975) 2 SCC 274**, the Kuthbullapur Gram Panchayat had imposed a house tax. The Hon'ble High Court had determined that the building constructed by the Respondent did not fall within the definition of a "house". However, subsequently, the definition of "house" was retrospectively amended by the Legislature to include factories. It is submitted that this Hon'ble Court upheld the retrospective change in definition of a "house", which included factories and since the building owned by the Respondent was classified as a factory, the tax imposition was upheld.

214. In the case of ***State of Mysore v. Fakkrusahab Babusahab Karanandi,*** **(1977) 1 SCC 666**, the Respondent was charged with an offence under the Mysore Excise Act. The Judicial Magistrate had declined to take cognizance of the case on the grounds that Section 60(b) of the Act, as amended by Mysore Ordinance No. 4, required the complaint to be filed by an Excise Officer. However, in the said case, the chargesheet was filed by the local Police. Subsequently, another amendment was introduced to restore the original

provision, operating retrospectively. It is submitted that this Hon'ble Court, speaking through J. Bhagwati [as he then was], explained that the effect of the second amendment was to nullify the Ordinance's deletion of the words "or police" and to reinstate the original provision. The legal fiction established by the second amendment had to be given full effect, and therefore, the words "or police" were deemed to have always been included in the provision.

215. It is submitted that in ***Madan Mohan Pathak v. Union of India*****, (1978) 2 SCC 50**. This Hon'ble Court, in the said judgement, while addressing the constitutional validity of the Life Insurance Corporation (Modification of Settlements) Act, 1976, enacted by Parliament in response to a decision by the Calcutta High Court declaring an impost or tax invalid, emphasized that regardless of the constitutional validity of the impugned Act, the Life Insurance Corporation was obligated to adhere to the writ of mandamus issued by the Calcutta High Court. It was emphasised the benefits of rights recognized by the Calcutta High Court's judgment could not be indirectly revoked under Section 3 of the impugned Act in a selective manner. It was held that if the right conferred by the judgment independently is sought to be nullified, then Section 3 would be invalid for encroaching upon judicial power.

216. In ***Bakhtawar Trust and Others v. M.D Narayan and Others*****, (2003) 5 SCC 298**, the challenge was to the Bangalore City Planning Area Zonal Regulations (Amendment and Validation) Act, wherein the maximum height of buildings was increased and previously illegal constructions were regularized. It was held that that Parliament and State legislatures have plenary powers within their field and can legislate, both prospectively and retrospectively. It was clarified that retrospective legislation may be used to validate Acts by curing defects in them, rendering ineffective judgments of the Court that declared the Acts invalid. It was noted that in validating Acts, the alteration

must be made in such a way that it is not possible for the Courts to reach the same verdict under the changed legislative landscape. Further, it was clarified that if the Legislature validates an action which was declared invalid by a Court, it must first remove the basis of invalidity and then validate the action instead of merely declaring the relevant judicial pronouncement invalid. It was held as under :

> "**14.** The validity of any statute may be assailed on the ground that it is ultra vires the legislative competence of the legislature which enacted it or it is violative of Part III or any other provision of the Constitution. It is well settled that Parliament and State Legislatures have plenary powers of legislation within the fields assigned to them and subject to some constitutional limitations, can legislate prospectively as well as retrospectively. This power to make retrospective legislation enables the legislature to validate prior executive and legislative Acts retrospectively after curing the defects that led to their invalidation and thus makes ineffective judgments of competent courts declaring the invalidity. It is also well settled that a validating Act may even make ineffective judgments and orders of competent courts provided it, by retrospective legislation, removes the cause of invalidity or the basis that had led to those decisions.
>
> **15.** The test of judging the validity of the amending and validating Act is, whether the legislature enacting the validating Act has competence over the subject-matter; whether by validation, the said legislature has removed the defect which the court had found in the previous laws; and whether the validating law is consistent with the provisions of Part III of the Constitution.
>
> **25. The decisions referred to above, manifestly show that it is open to the legislature to alter the law retrospectively, provided the alteration is made in such a manner that it would no more be possible for the Court to arrive at the same verdict. In other words, the very premise of the earlier judgment should be uprooted, thereby resulting in a fundamental change of the circumstances upon which it was founded.**
>
> **26. Where a legislature validates an executive action repugnant to the statutory provisions declared by a court of law, what the legislature is required to do is first to remove the very basis of invalidity and then validate the executive action. In order to validate an executive action or any provision of a statute, it is not sufficient for the legislature to declare that a judicial pronouncement given by a court of law would not be binding, as the legislature does not possess**

that power. A decision of a court of law has a binding effect unless the very basis upon which it is given is so altered that the said decision would not have been given in the changed circumstances."

217. In ***Bhubaneshwar Singh v. Union of India,*** **(1994) 6 SCC 77,** it was held as under :

> **"11. From time to time controversy has arisen as to whether the effect of judicial pronouncements of the High Court or the Supreme Court can be wiped out by amending the legislation with retrospective effect. Many such Amending Acts are called Validating Acts, validating the action taken under the particular enactments by removing the defect in the statute retrospectively because of which the statute or the part of it had been declared ultra vires. Such exercise has been held by this Court as not to amount to encroachment on the judicial power of the courts. The exercise of rendering ineffective the judgments or orders of competent courts by changing the very basis by legislation is a well-known device of validating legislation. This Court has repeatedly pointed out that such validating legislation which removes the cause of the invalidity cannot be considered to be an encroachment on judicial power. At the same time, any action in exercise of the power under any enactment which has been declared to be invalid by a court cannot be made valid by a Validating Act by merely saying so unless the defect which has been pointed out by the court is removed with retrospective effect. The validating legislation must remove the cause of invalidity. Till such defect or the lack of authority pointed out by the court under a statute is removed by the subsequent enactment with retrospective effect, the binding nature of the judgment of the court cannot be ignored.**

218. In ***Comorin Match Industries (P) Ltd. v. State of T.N.,*** **(1996) 4 SCC 281,** it was held as under :

> **"24. This case does not lay down that after a judgment has been pronounced on the basis of an Act, the provisions of that Act cannot be amended so as to cure the defect pointed out in the judgment retrospectively. The effect of the amending Act of 1969 is not to overrule a judgment passed by a court of law, which the legislature cannot do. What the legislature can do is to change the law on the basis of which the judgment was pronounced retrospectively and thereby nullify the effect of the judgment. When the legislature**

enacts that notwithstanding any judgment or order the new law will operate retrospectively and the assessments shall be deemed to be validly made on the basis of the amended law, the legislature is not declaring the judgment to be void but rendering things or acts deemed to have been done under amended statute valid notwithstanding any judgment or order on the basis of the unamended law to the contrary. The validity to the assessment orders which had been struck down by the Court, is imparted by the amending Act by changing the law retrospectively.

219. In ***Indian Aluminium Co. v. State of Kerala,*** **(1996) 7 SCC 637**, it was held as under:

> **"56.** From a resume of the above decisions the following principles would emerge:
>
> (1) The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transactions and require the court to give effect to them;
>
> (2) The Constitution delineated delicate balance in the exercise of the sovereign power by the legislature, executive and judiciary;
>
> (3) In a democracy governed by rule of law, the legislature exercises the power under Articles 245 and 246 and other companion articles read with the entries in the respective lists in the Seventh Schedule to make the law which includes power to amend the law.
>
> (4) Courts in their concern and endeavour to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order that rule of law permeates to fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free play in their joints so that the march of social progress and order remains unimpeded. The smooth balance built with delicacy must always be maintained;
>
> (5) In its anxiety to safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made;
>
> **(6) The court, therefore, needs to carefully scan the law to find out: (a) whether the vice pointed out by the court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements; (b) whether the legislature has competence to validate the law; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution.**

(7) The court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the legislature. Therefore, they are not encroachment on judicial power.

(8) In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. **The changed or altered conditions are such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid.** It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date. The legislature can change the character of the tax or duty from impermissible to permissible tax but the tax or levy should answer such character and the legislature is competent to recover the invalid tax validating such a tax on removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorise its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the court or the direction given for recovery thereof.

(9) The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it **but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the legislature must have competence to do the same.**

57. Considered from these perspectives, the question is: whether Section 11 can answer the tests laid down hereinbefore. It is seen that the duty was collected under an order made in exercise of Section 3 of the Essential Articles Act and it was held to be not a tax but a duty for the benefit of KSEB. That duty being a compulsory exaction for the benefit of public exchequer is a tax. Duty on supply of electricity was declared to be an additional burden and a levy within Entries 26 and 27 of List II, subject to Entry 33 of List III (Concurrent List). Duty is an additional burden and partakes the character of a tax. Entry 53 of List II (State List) empowers the State Legislature to impose tax on consumption or sale of electricity. It is, therefore, a compulsory exaction for the benefit of the Revenue. Therefore, it is an additional tax in the form of a duty under the Act. The vice pointed out in Chakolas case [(1988) 2 KLT 680] has been removed under the Act. Consequently, Section 11 validated the

> invalidity pointed out in Chakolas case [(1988) 2 KLT 680] removing the base. In the altered situation, the High Court would not have rendered Chakolas case [(1988) 2 KLT 680] under the Act. It has made the writ issued in Chakolas case [(1988) 2 KLT 680] ineffective. Instead of refunding the duty illegally collected under invalid law, Section 11 validated the illegal collections and directed the liability of the past transactions as valid under the Act and also fastened liability on the consumers. In other words, the effect of Section 11 is that the illegal collection made under invalid law is to be retained and the same shall now stand validated under the Act. Thus considered, we hold that Section 11 is not an incursion on judicial power of the court and is a valid piece of legislation as part of the Act."

220. It is submitted that this Court has made similar jurisprudential declarations in ***Vijay Mills Limited and Others vs State of Gujarat,*** **(1993) 1 SCC 345;** ***Bhubaneshwar Singh and Another vs Union of India and Others,*** **(1994) 6 SCC 77;** ***Comorin Match Industries vs State of T.N.,*** **(1996) 4 SCC 281;** ***State of T.N. vs Arooran Sugars Ltd,*** **(1997) 1 SCC 326;** ***State of HP vs Narain Singh,*** **(2009)13 SCC 165;** ***Goa Foundation vs State of Goa,*** **(2016) 6 SCC 602.** ***Chevitti Venkanna Yadav vs State of Telangana*****-(2017) 1 SCC 283**.

221. It is submitted that more recently, in ***Madras Bar Association v. Union of India & Anr.,*** **(2022) 12 SCC 455**, a Writ Petition had been filed seeking a declaration that Sections 12 and 13 of the Tribunal Reforms (Rationalization and Conditions of Service) Ordinance, 2021, and Sections 184 and 186(2) of the Finance Act, 2017, as amended by the Tribunal Reforms (Rationalization and Conditions of Service) Ordinance, 2021, were ultra vires Articles 14, 21, and 50 of the Constitution of India, as they were supposedly violative of the principles of separation of powers and independence of the judiciary, apart from being contrary to the principles laid down by this Court in previous cases. After discussing the entire case law, this Court summarised the position of law as under :

i. The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment.

ii. The test for determining the validity of a validating legislation is that the judgment pointing out the defect, could not have been passed if the altered position as sought to be brought in by the validating statute, existed before the Court at the time of rendering its judgment.

iii. Nullification of mandamus by an enactment would be an impermissible legislative exercise.

222. It is submitted that further, the declaration had no relation whatsoever with the Constitution or any constitutional principle. It was a purely statutory interpretation which would not survive once the statute [which was the soil on which the judgment was based] has been changed. It is submitted that therefore, the judgment in ***Maharashtra Waqf 2022 supra*** would not cast any shadow over proviso to Section 2 inserted by the Amendment Act 2025.

VERY HIGH THRESHOLD FOR ANY INTERIM RELIEF

223. It is submitted that the attempt of the various Petitioners which seek to challenge the constitutional validity of the various clauses of the Waqf (Amendment) Act, 2025 on the grounds of Article 14, 15, 21, 25, 26, 29, 30 and 300A is against the basic tenets of judicial review in the country. It is submitted that the same amounts to treating the law as unconstitutional at an interim stage which is impermissible. It is submitted that here exists a presumption of constitutionality which was settled as long back as in ***Chiranjit Lal Chowdhuri v. Union of India, 1950 SCR 869*** **[Para 11, 45, 46, 67]**; ***Ram Krishna Dalmia v. Justice S.R. Tendolkar, 1959 SCR 279*** **[Para 11]**; ***Mohd. Hanif Quareshi v. State of Bihar, 1959 SCR 629*** **[Para 15]**; ***Special Courts Bill, 1978, In re, (1979) 1 SCC***

***380* [Para 72.9]**; ***B. Banerjee v. Anita Pan, (1975) 1 SCC 166* [Para 12]**; ***Karnataka Bank Ltd. v. State of A.P., (2008) 2 SCC 254* [Para 19]**.

224. It is further submitted that no interim order can be granted which has the effect of staying the statute and the said principle has been settled by this Hon'ble Court in ***Bhavesh D. Parish v. Union of India,* (2000) 5 SCC 471**, Paras 30-31, wherein it was held as under:

> "30. Before we conclude there is another matter which we must advert to. It has been brought to our notice that Section 45-S of the Act has been challenged in various High Courts and a few of them have granted the stay of provisions of Section 45-S. When considering an application for staying the operation of a piece of legislation, and that too pertaining to economic reform or change, then the courts must bear in mind that unless the provision is manifestly unjust or glaringly unconstitutional, the courts must show judicial restraint in staying the applicability of the same. **Merely because a statute comes up for examination and some arguable point is raised, which persuades the courts to consider the controversy, the legislative will should not normally be put under suspension pending such consideration**. It is now well settled that there is always a presumption in favour of the constitutional validity of any legislation, unless the same is set aside after final hearing and, therefore, the tendency to grant stay of legislation relating to economic reform, at the interim stage, cannot be understood. The system of checks and balances has to be utilised in a balanced manner with the primary objective of accelerating economic growth rather than suspending its growth by doubting its constitutional efficacy at the threshold itself.
>
> 31. While the courts should not abrogate (*sic* abdicate) their duty of granting interim injunctions where necessary, equally important is the need to ensure that the judicial discretion does not abrogate from the function of weighing the overwhelming public interest in favour of the continuing operation of a fiscal statute or a piece of economic reform legislation, till on a mature consideration at the final hearing, it is found to be unconstitutional. It is, therefore, necessary to sound a word of caution against intervening at the interlocutory stage in matters of economic reforms and fiscal statutes."

225. Similarly, in ***Siliguri Municipality v. Amalendu Das*, (1984) 2 SCC 436**, [Para 2-4], it was held as under:

> "2. We are constrained to make the observations which follow as we do feel dismayed at the tendency on the part of some of the High Courts to grant interlocutory orders for the mere asking. Normally, the High Courts should

not, as a rule, in proceedings under Article 226 of the Constitution grant any stay of recovery of tax save under very exceptional circumstances. The grant of stay in such matters, should be an exception and not a rule.

3. It is needless to stress that a levy or impost does not become bad as soon as a writ petition is instituted in order to assail the validity of the levy. So also there is no warrant for presuming the levy to be bad at the very threshold of the proceedings. The only consideration at that juncture is to ensure that no prejudice is occasioned to the rate payers in case they ultimately succeed at the conclusion of the proceedings. This object can be attained by requiring the body or authority levying the impost to give an undertaking to refund or adjust against future dues, the levy of tax or rate or a part thereof, as the case may be, in the event of the entire levy or a part thereof being ultimately held to be invalid by the court without obliging the tax-payers to institute a civil suit in order to claim the amount already recovered from them. On the other hand, the Court cannot be unmindful of the need to protect the authority levying the tax, for, at that stage the Court has to proceed on the hypothesis that the challenge may or may not succeed. The Court has to show awareness of the fact that in a case like the present a municipality cannot function or meet its financial obligations if its source of revenue is blocked by an interim order restraining the municipality from recovering the taxes as per the impugned provision. And that the municipality has to maintain essential civic services like water supply, street lighting and public streets etc. apart from running public institutions like schools, dispensaries, libraries etc. What is more, supplies have to be purchased and salaries have to be paid. The grant of an interlocutory order of this nature would paralyze the administration and dislocate the entire working of the municipality. It seems that these serious ramifications of the matter were lost sight of while making the impugned order.

4. We will be failing in our duty if we do not advert to a feature which causes us dismay and distress. On a previous occasion, a Division Bench had vacated an interim order passed by a learned Single Judge on similar facts in a similar situation. Even so when a similar matter giving rise to the present appeal came up again, the same learned Judge whose order had been reversed earlier, granted a non-speaking interlocutory order of the aforesaid nature. This order was in turn confirmed by a Division Bench without a speaking order articulating reasons for granting a stay when the earlier Bench had vacated the stay. We mean no disrespect to the High Court in emphasizing the necessity for self-imposed discipline in such matters in obeisance to such weighty institutional considerations like the need to maintain decorum and comity. So also we mean no disrespect to the High Court in stressing the need for self-discipline on the part of the High Court in passing interim orders without entering into the question of amplitude and

width of the powers of the High Court to grant interim relief. **The main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation keeping in mind the presumption regarding the constitutionality of the legislation and the vulnerability of the challenge, only in order that no irreparable injury is occasioned. The Court has therefore to strike a delicate balance after considering the pros and cons of the matter lest larger public interest is not jeopardized and institutional embarrassment is eschewed."**

226. The same dictum was laid down in ***Health for Millions v. Union of India,*** **(2014) 14 SCC 496**, wherein it was held as under:

"13. We have considered the respective arguments and submissions and carefully perused the record. Since the matter is pending adjudication before the High Court, **we do not want to express any opinion on the merits and demerits of the writ petitioner's challenge to the constitutional validity of the 2003 Act and the 2004 Rules as amended in 2005 but have no hesitation in holding that the High Court was not at all justified in passing the impugned orders ignoring the well-settled proposition of law that in matters involving challenge to the constitutionality of any legislation enacted by the legislature and the rules framed thereunder the courts should be extremely loath to pass an interim order.** At the time of final adjudication, the court can strike down the statute if it is found to be ultra vires the Constitution. Likewise, the rules can be quashed if the same are found to be unconstitutional or ultra vires the provisions of the Act**. However, the operation of the statutory provisions cannot be stultified by granting an interim order except when the court is fully convinced that the particular enactment or the rules are ex facie unconstitutional and the factors, like balance of convenience, irreparable injury and public interest are in favour of passing an interim order.**

...

15. A reading of the impugned orders leaves no manner of doubt that while granting interim relief to the writ petitioners, the High Court did not apply its mind to any of the ingredients, the existence of which is sine qua non for such orders. The High Court overlooked the fact that the consumption of tobacco and tobacco products has huge adverse impact on the health of the public at large and, particularly, the poor and weaker sections of the society which are the largest consumers of such products and that unrestricted advertisement of these products will attract younger generation and innocent minds, who are not aware of grave and adverse consequences of consuming such products.

...

17. We have no doubt that the Central Government and the State Governments across the country are alive to the serious and grave consequences of advertising tobacco and various products manufactured by using tobacco. They know that the consumption of these products will result in rapid increase in the number of cancer patients and huge proportion of the Budget earmarked for health of the common man will have to be used for treating the patients of cancer."

227. Further, in ***State of U.P. v. Hirendra Pal Singh,*** **(2011) 5 SCC 305**, it was held as under:

"Leave granted. These appeals have been filed against the interim orders passed by the High Court of Allahabad (Lucknow Bench) dated 4-9-2008 in Writ Petition No. 7851 (MB) of 2008 and dated 30-11-2009 in Writ Petition No. 11170 (MB) of 2009, by which the High Court has stayed the operation of amended provisions of the U.P. Legal Remembrancer Manual (hereinafter called "the LR Manual") and further directed the State Government to consider the applications for renewal of the all District Government Counsel whose term had already expired, resorting to the unamended provisions of the LR Manual and they be allowed to serve till they attain the age up to 62 years.

...

13. In *Bhavesh D. Parish* v. *Union of India* [(2000) 5 SCC 471 : AIR 2000 SC 2047] this Court observed that (SCC p. 486, para 26) while considering the constitutional validity of statutory provisions, the court should be very slow in staying the operation of the statutory provisions. It is permissible for the court to interfere at interim stage "only in those few cases where the view reflected in the legislation is not possible to be taken at all". Thus, the court should not generally stay the operation of law.

14. In *Siliguri Municipality* v. *Amalendu Das* [(1984) 2 SCC 436 : 1984 SCC (Tax) 133 : AIR 1984 SC 653] this Court had taken note of the fact that the High Court had been passing stay orders in some cases involving the same question of law and facts though it vacated the interim orders passed earlier in some of the identical cases. In the said case, the validity of statutory provision was under challenge. This Court observed that the High Court should exercise self-restraint in passing interim orders, for maintaining consistency in similar cases.

15. The Court in *Siliguri Municipality case* [(1984) 2 SCC 436 : 1984 SCC (Tax) 133 : AIR 1984 SC 653] observed as under : (SCC p. 439, para 4)

"*4*. **... The main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation keeping in mind the**

presumption regarding the constitutionality of the legislation and the vulnerability of the challenge, only in order that no irreparable injury is occasioned. The Court has therefore to strike a delicate balance after considering the pros and cons of the matter lest larger public interest is not jeopardised and institutional embarrassment is eschewed."

...

18. Admittedly, this Court has stayed the operation of the interim orders passed by the High Court in a large number of identical cases and all such orders have been placed on record. Some of such cases are SLP (C) No. 32910 of 2009 dated 14-12-2009; SLP (C) No. 35279 of 2009 dated 5-1-2010; and SLP (C) No. 11261 of 2010 dated 23-4-2010.

...

25. This Court in *Bhagat Ram Sharma* v. *Union of India* [1988 Supp SCC 30 : 1988 SCC (L&S) 404 : (1988) 6 ATC 783 : AIR 1988 SC 740] explained the distinction between repeal and amendment observing that amendment includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act prefaces to amend; if it is extensive, it repeals and re-enacts it."

228. Similarly, this Hon'ble Court in ***Dr. Jaya Thakur and Ors. v. Union of India and Anr.,*** **(2024) 9 SCC 538**, [Para 10, 12, 13, 14, 20], held as under:

"**10.** We would not, at this stage, go into the depth and details of the challenge to the vires of Section 7(1) of the 2023 Act. The judgment in Anoop Baranwal [Anoop Baranwal v. Union of India (Election Commission Appointments), (2023) 6 SCC 161] notices the appointments of the CEC and ECs made from the 1950s till 2023, [See Anoop Baranwal (Election Commission Appointments), (2023) 6 SCC 161, paras 63-72.] but this Court intervened in the absence of any legislation. Article 324(2) postulates the appointment of the CEC and ECs by the President of India in the absence of any law made by Parliament. The judgment in Anoop Baranwal [Anoop Baranwal v. Union of India (Election Commission Appointments), (2023) 6 SCC 161] records that there was a legislative vacuum as Parliament had not made any enactment as contemplated in Article 324(2). Given the unique nature of the provision and absence of an enactment, this Court had issued directions constituting the Selection Committee as a pro tem measure. This is clear from the judgment, which states that the direction shall hold good till a law is made by Parliament.

...

12. It is well-settled position of law that in matters involving constitutionality of legislations, courts are cautious and show judicial restraint in granting interim orders. Unless the provision is ex facie unconstitutional or manifestly violates fundamental rights, the statutory provision cannot be stultified by granting an interim order [Health for Millions v. Union of India, (2014) 14 SCC 496 : (2015) 1 SCC (Cri) 422] . Stay is not ipso facto granted for mere examination or even when some cogent contention is raised. Suspension of legislation pending consideration is an exception and not the rule. The said principle keeps in mind the presumption regarding constitutionality of legislation as well as the fact that the constitutional challenge when made may or may not result in success.

13. The courts do not, unless eminently necessary to deal with the crises situation and quell disquiet, keep the statutory provision in abeyance or direct that the same be not made operational. However, it would not be appropriate to pen down all situations as sometimes even gross or egregious violation of individual Fundamental Rights may on balance of convenience warrant an interim order. The Courts strike a delicate balance to step-in in rare and exceptional cases, being mindful of the immediate need, and the consequences as to not cause confusion and disarray.

14. The applicant petitioners urge that this Court may by an interim order direct fresh selection with the CJI as a member of the Selection Committee. This would be plainly impermissible, without declaring Section 7(1) as unconstitutional. Further, we would be enacting or writing a new law replacing or modifying Section 7(1) of the Act, as enacted by Parliament, if such a contention were accepted.

15. Moreover, any interjection or stay by this Court will be highly inappropriate and improper as it would disturb the 18th General Election for the Lok Sabha which has been scheduled and is now fixed to take place from 19-4-2024 till 1-6-2024. Balance of convenience, apart from prima facie case and irreparable injury, is one of the considerations which the Court must keep in mind while considering any application for grant of stay or injunction. Interlocutory remedy is normally intended to preserve status quo unless there are exceptional circumstances which tilt the scales and balance of convenience on account of any resultant injury. In our opinion, grant of stay would lead to uncertainty and confusion, if not chaos. That apart, even when the matter had come up earlier and the applications for stay were pressed, we had refused to grant stay.

...

> **20.** Having regard to the aforesaid position, we are not inclined to accept the prayer for grant of stay. Accordingly, the applications seeking stay are dismissed. We would clarify that the observations in this order are tentative and are not to be treated as final and binding, as the matter is sub judice."

229. It is submitted that therefore, when the Legislature has acted and enacted a law, which is to be presumed to be constitutional, replacing the regime so established would be impermissible. It is submitted that the said exercise either at an interim stage or at the final stage would be impermissible. Any order in the nature of one sought by the Petitioners, would amount to a stay of the Amendment Act, validly passed by the Parliament at an interim state, which is an exercise impermissible within the confines of judicial review envisaged under the Constitution. It is submitted that there is no case made out for interim relief and the prayers of the petitioners in that regard deserve to be rejected.

230. It is submitted that by removing major legal issues, the Amendment Act reaffirms that identification, classification, and regulation of waqf property must be subject to legal standards and judicial oversight. It is submitted that the legislative design of the Waqf (Amendment) Act, 2025 ensures that no person is denied access to courts, and that the decisions affecting property rights, religious freedom, and public charity are made within the bounds of fairness and legality. It is submitted that through these changes, the Amendment Act brings judicial accountability, transparency, and fairness.

231. It is submitted that, in light of the above, the Waqf (Amendment) Act, 2025 clearly stands on firm constitutional ground and does not violate any provisions of Part III. It is submitted that the Act respects the essential religious practices of the Muslim community by leaving matters of faith and worship untouched, while legitimately regulating the secular, administrative facets of *waqf* management as authorised by the Constitution. It is submitted that the reforms introduced serve compelling objectives of transparency,

accountability, social welfare, and inclusive governance, which are in harmony with the values of the Constitution and the public interest.

232. It is submitted that the Parliament has acted within its domain to ensure that religious endowments like *waqf* are managed in a manner that upholds the trust reposed in them by the faithful and the society at large, without trespassing on religious autonomy. It is submitted that therefore, the Waqf (Amendment) Act, 2025 is a valid and lawful exercise of legislative power, one that strengthens the institution of *waqf* and aligns it with constitutional principles, and facilitates the wholesome realisation of *waqfs* in the contemporary era.

233. It is submitted that the present limited affidavit is bona fide and in the interest of justice.

DEPONENT

शेरशा सी. शैख मोहिद्दीन / Shersha C. Shaik Mohiddin
संयुक्त सचिव / Joint Secretary
अल्पसंख्यक कार्य मंत्रालय
Ministry of Minority Affairs
भारत सरकार / Government of India
नई दिल्ली / New Delhi

VERIFICATION

Verified at New Delhi on this 24th day of April, 2025 that the contents of the above Affidavit are correct and true to the best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT

शेरशा सी. शैख मोहिद्दीन / Shersha C. Shaik Mohiddin
संयुक्त सचिव / Joint Secretary
अल्पसंख्यक कार्य मंत्रालय
Ministry of Minority Affairs
भारत सरकार / Government of India
नई दिल्ली / New Delhi

NOTARY GOVERNMENT OF INDIA SUDHIR MITTAL NOTARY PUBLIC NEW DELHI REG.No.756 NOTARIAL

Solemnly Affirmed/Sworn before Me

Notary Public, New Delhi, India

24 APR 2025

Reg No 273/2025 ID-Holder of I/c No Y-2400200143777

ANNEXURE R-1

All Waqf Type Properties Data

State Waqf Board	No. of Properties-2013	No. of Properties-added from 2014 to 2025	Percentage Increase in Properties	Total Area (Acres) in 2013	Total Area added from 2014 to 2025	Percentage increase in Area from 2014 to 2025	Total Property	Total Area as on date
Andaman and Nicobar Waqf Board	35	116	331.4%	39.88262	138.20603	346.5%	151	178.08865
Andhra Pradesh State Waqf Board	390	14295	3665.4%	9153.86912	47081.73659	514.3%	14685	56235.60571
Assam Board of Waqfs	325	2329	716.6%	5583.68737	1035.03085	18.5%	2654	6618.71822
Bihar State(Sunni) Waqf Board	1626	5263	323.7%	38452.90077	130694.0281	339.9%	6889	169146.9289
Bihar State(Shia) Waqf Board	322	1428	443.5%	9654.41147	19351.96518	200.4%	1750	29006.37665
Chhattisgarh State Waqf Board	2006	2224	110.9%	12200.16422	147.17851	1.2%	4230	12347.34273
Chandigarh Waqf Board	13	21	161.5%	7.88174	16.2821	206.6%	34	24.16384
Delhi Waqf Board	9	1038	11533.3%	0.03698	28.04889	75848.8%	1047	28.08587
Dadra and Nagar Haveli Waqf Board	0	30	0.0%	0	4.40694	0.0%	30	4.40694
Gujarat State Waqf Board	3074	36866	1199.3%	20980.80756	43084.97513	205.4%	39940	64065.78269
Himachal Pradesh Waqf Board	1202	4141	344.5%	1422.73313	7426.88465	522.0%	5343	8849.61778
Haryana Waqf Board	8853	14416	162.8%	14906.11747	20710.34838	138.9%	23269	35616.46585
Jharkhand State (Sunni) Waqf Board	0	698	0.0%	0	1085.16284	0.0%	698	1085.16284
Jammu and Kashmir Auqaf Board	1	32532	3253200.0%	0.4199	31405.11085	7479188.1%	32533	31405.53075
Karnataka State Board of Auqaf	3899	58931	1511.4%	8131.17865	544383.795	6695.0%	62830	552514.9736
Kerala State Waqf Board	23092	30303	131.2%	17117.8422	19877.63028	116.1%	53395	36995.47248
Lakshadweep State Waqf Board	345	551	159.7%	32.86798	110.94111	337.5%	896	143.80909
Maharashtra State Board of Waqfs	15590	21111	135.4%	81799.59194	119306.184	145.9%	36701	201105.7759
Meghalaya State Board of Waqfs	51	7	13.7%	922.48747	0.386	0.0%	58	922.87347
Manipur State Waqf Board	471	536	113.8%	67.95963	183.91108	270.6%	1007	251.87071
Madhya Pradesh Waqf Board	13842	19690	142.2%	540861.2406	109769.535	20.3%	33532	650630.7756
Odisha Board of Waqfs	4563	5751	126.0%	12183.39907	11377.52348	93.4%	10314	23560.92255
Punjab Waqf Board	28071	47894	170.6%	25466.1129	36326.54513	142.6%	75965	61792.65803
Puducherry State Waqf Board	414	279	67.4%	236.63856	116.03992	49.0%	693	352.67848
Rajasthan Board of Muslim Waqfs	23126	7769	33.6%	476393.7812	1583.15558	0.3%	30895	477976.9368
Tamil Nadu Waqf Board	43623	22469	51.5%	484221.4407	167352.4554	34.6%	66092	651573.896
Tripura Board of Waqfs	675	2139	316.9%	259.42	746.88909	287.9%	2814	1006.30909
Telangana State Waqf Board	0	45682	0.0%	0	40928.37772	0.0%	45682	40928.37772
Uttarakhand Waqf Board	916	4472	488.2%	315.91945	1401.81434	443.7%	5388	1717.73379
U.P. Sunni Central Board of Waqfs	12914	204247	1581.6%	33315.87268	650919.9306	1953.8%	217161	684235.8033
U.P. Shia Central Board of Waqfs	0	15386	0.0%	0	20002.65326	0.0%	15386	20002.65326
West Bengal Board of Waqfs	17946	62862	350.3%	35407.34496	46743.21333	132.0%	80808	82150.55829
Total	207394	665476	320.9%	1829136.01	2073340.345	113.4%	872870	3902476.356

ANNEXURE R-2

LOK SABHA

REPORT OF THE JOINT COMMITTEE ON WAQF (AMENDMENT) BILL, 2024

EIGHTEENTH LOK SABHA

सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI
JANUARY, 2025/ MAGHA, 1946 (SAKA)

LOK SABHA

REPORT OF THE JOINT COMMITTEE ON WAQF (AMENDMENT) BILL, 2024

(EIGHTEENTH LOK SABHA)

Presented to the Hon'ble Speaker on 30.01.2025

Presented to Lok Sabha on 13.02.2025

Laid in Rajya Sabha on 13.02.2025

LOK SABHA SECRETARIAT

NEW DELHI

JANUARY, 2025/ MAGHA, 1946 (SAKA)

JCWAB 2024 No.01

Price **: Rs. .....**

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COMPOSITION OF JOINT COMMITTEE ON THE WAQF (AMENDMENT) BILL, 2024

Shri Jagdambika Pal - Chairperson

MEMBERS

Lok Sabha

2. Dr. Nishikant Dubey
3. Shri Tejasvi Surya
4. Smt. Aparajita Sarangi
5. Dr. Sanjay Jaiswal
6. Shri Dilip Saikia
7. Shri Abhijit Gangopadhyay
8. Smt. D. K. Aruna
9. Shri Gaurav Gogoi
10. Shri Imran Masood
11. Dr. Mohammad Jawed
12. Shri Mohibbullah
13. Shri Kalyan Banerjee
14. Shri A. Raja
15. Shri Lavu Sri Krishna Devarayalu
16. Shri Dileshwar Kamait
17. Shri Arvind Sawant
18. Shri Mhatre Balya Mama Suresh Gopinath
19. Shri Naresh Ganpat Mhaske
20. Shri Arun Bharti
21. Shri Asaduddin Owaisi

Rajya Sabha

22. Shri Brij Lal
23. Dr. Medha Vishram Kulkarni
24. Shri Gulam Ali
25. Dr. Radha Mohan Das Agrawal
26. Dr. Syed Naseer Hussain
27. Shri Mohammed Nadimul Haque
28. Vacant*
29. Shri M. Mohamed Abdulla
30. Shri Sanjay Singh
31. Dr. Dharmasthala Veerendra Heggade

* vice Shri V. Vijayasai Reddy resigned from the Membership of Rajya Sabha w.e.f 25.01.2025.

SECRETARIAT

1.	Shri J. M. Baisakh	Joint Secretary
2.	Shri Sanjay Sethi	Director
3.	Smt. Swati Parwal	Deputy Secretary
4.	Smt. Banani Sarker Joshi	Under Secretary
5.	Ms. Deepika	Under Secretary
6.	Ms. Jisha James	Under Secretary
7.	Shri Inam Ahmed	Committee Officer
8.	Ms. Melody Vungthiansiam	Committee Officer
9.	Shri Mohammad Saleem	Committee Officer
10.	Shri Anand Prakash	Assistant Committee Officer
11.	Shri Vikash Kumar	Assistant Committee Officer
12.	Shri Mohammad Irfan	Senior Secretariat Assistant
13.	Shri Naulesh Kumar	Secretariat Assistant
14.	Shri Naveen Punia	Secretariat Assistant
15.	Shri Ram Das Yadav	Senior Reprographer
16.	Shri Keshar Singh	MTS Grade-I
17.	Shri Vijay Singh	MTS Grade-II
18.	Shri Subhash Bhatta	Work Attendant Grade-I

REPRESENTATIVES OF MINISTRY OF MINORITY AFFAIRS

1.	Dr. Chandra Shekhar Kumar	Secretary
2.	Shri Shersha C. Shaik Mohiddin	Joint Secretary
3.	Shri S.P. Singh Teotia	Director

REPRESENTATIVES OF MINISTRY OF LAW & JUSTICE

1.	Dr. Rajiv Mani	Secretary
2.	Shri Diwakar Singh	Additional Secretary
3.	Ms. Sunita Anand	Additional Secretary
4.	Shri Shanti Bhushan	Deputy Legislative Counsel

INTRODUCTION

I, the Chairperson of the Joint Committee on the Waqf (Amendment) Bill, 2024 to which 'The Waqf (Amendment) Bill, 2024' was referred, having been authorized by the Committee to present the Report on their behalf, present this Report with the Bill as reported by the Joint Committee annexed thereto.

2. The Waqf (Amendment) Bill, 2024 was introduced in Lok Sabha on 8th August, 2024. The Motion for reference of the Bill to a Joint Committee of both the Houses of Parliament was moved in Lok Sabha on 9th August, 2024 by Shri Kiren Rijiju, the Minister of Minority Affairs, (Appendix-I) and concurred by the Rajya Sabha on the same day. (Appendix-II).

3. As per the motion moved in the House, the Joint Committee was to make a report to the House till the last day of the first week of the Winter Session, 2024. The Committee were given extension of time for presentation of the Report till last day of the Budget Session. A Motion of Extension in this regard was moved in Lok Sabha on 28.11.2024. (Appendix-III)

4. Keeping in view the importance of the Bill and its wide ranging implications, the Committee decided to call memoranda to obtain the views from public in general and experts/stakeholders and other concerned organisations in particular on the provisions of the aforesaid Bill. Accordingly, a press communiqué inviting memoranda from them was issued on 29th August, 2024 in national and regional newspapers through the Central Bureau of Communication. The Committee received 97,27,772 memoranda in total, through both physical and digital mode. A statement of memoranda which were forwarded to the Ministry of Minority Affairs for obtaining comments has been appended as Annexure-B.

5. The Joint Committee held Thirty Six sittings wherein, they heard the views/suggestions of the representatives of various Ministries/Departments viz. Ministries of Minority Affairs, Law and Justice, Railways (Railway Board), Housing and Urban Affairs, Road Transport and Highways, Culture (Archaeological Survey of India), State Governments, State Waqf Boards and experts/stakeholders. Sitting wise list of witnesses who appeared before the Joint Committee for oral evidence is enclosed as Annexure-A.

6. The Committee also undertook three study visits: (i) Mumbai, Ahmedabad, Hyderabad, Chennai and Bengaluru from 26th September to 1st October, 2024; (ii) Guwahati and Bhubaneswar from 9th to 11th November, 2024; and (iii) Patna, Kolkata and Lucknow from 18th to 21st January, 2025 wherein informal discussions with experts/stakeholders/other concerned organizations, Waqf Boards and the representatives of State Governments and State Minority Commissions were held. (Annexures C and D).

7. The Committee conducted exhaustive deliberations on the subject which included interaction with 284 stakeholders, 25 State Waqf Boards, 15 State Governments, 5 Minorities Commission and 20 Ministers/MPs/MLAs/MLCs.

8. Thereafter the Joint Committee completed Clause by Clause consideration of all Clauses of the Bill at their 37th sitting held on 27th January, 2025 and amendments moved by the Members were put to vote and adopted by Majority Votes as reflected in the Minutes of the Sitting from Page No. 534 to 543. The Bill as reported by the Joint Committee is appended as Appendix VI.

9. The Joint Committee, in their 38th sitting held on 29th January, 2025 considered and adopted the draft report comprising of 655 pages by a majority vote reflected in the Minutes from Page No. 544 to 546 and authorized the Chairperson to present the report on their behalf. The Committee also decided that one copy of the proceedings of the sittings of the Committee and two copies each of the memoranda as received by the Committee on the Bill from various stakeholders and replies received from the Ministry of Minority Affairs may be placed in the Parliament Library for reference of the Members of Parliament, after the Report has been presented to Parliament.

10. Eight Notes/minutes of dissent have been received from the Twelve Members of the Joint Committee comprising of 281 pages attached at Appendix-V.

11. The Joint Committee wish to express their thanks to the representatives of the Ministry of Minority Affairs and Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) who appeared before the Joint Committee and placed their considered views to the points raised by the Members of the Joint Committee during the sittings held in connection with examination of the Bill. The Joint Committee would also like to express their sincere thanks to the representatives of other Union Ministries, State Governments/UTs/Waqf Boards and other experts/stakeholders who appeared before the Joint Committee and candidly presented and submitted their views about the impact of various provisions of the Bill.

11. The Secretarial assistance to the Committee was provided by the Lok Sabha Secretariat and a special Cell had been created for this purpose. The Joint Committee also like to acknowledge the sincere and devoted efforts made by the Officers of Lok Sabha Secretariat in facilitating conduct of all the sittings of the Joint Committee and for preparing the draft Report. The Committee place on record their deep appreciation for the commendable work done by S/Shri J.M. Baisakh, Joint Secretary; Sanjay Sethi, Director; Smt. Swati Parwal, Deputy Secretary; Smt. Banani Sarker Joshi, Under Secretary; Ms. Deepika, Under Secretary; Ms. Jisha James, Under Secretary; Inam Ahmed, Committee Officer; Ms. Melody Vungthiansiam, Committee Officer; Mohammad Saleem, Committee Officer; Anand Prakash, Assistant Committee Officer; Vikash Kumar, Assistant Committee Officer; Mohammad Irfan, Senior Secretariat Assistant; Naulesh Kumar, Secretariat Assistant, Naveen Punia, Secretariat Assistant; Ram Das Yadav, Senior Reprographer; Keshar Singh, MTS Grade-I; Vijay Singh, MTS Grade-II and Subhash Bhatta, Work Attendant Grade-I.

NEW DELHI
29th January, 2025
9 Magha, 1946 (SAKA)

JAGDAMBIKA PAL
CHAIRPERSON,
JOINT COMMITTEE ON THE
WAQF (AMENDMENT) BILL, 2024

CHAPTER I

INTRODUCTORY

Concept of 'Waqf'

'Waqf' has been defined as the permanent dedication by any person of any movable or immovable property for any purpose recognised by Muslim Law as pious, religious or charitable. (*Section 3(r) of The Waqf Act, 1995*).The term "Waqf" and its plural form, auqaf, are derived from the Arabic root verb,"Qif", which has the basic meaning of "to stop" or "to hold". Another interpretation links it to the word "waqafa," which carries a similar meaning.

1.2 The concept of 'waqf' is rooted in Islamic laws and traditions. It refers to an endowment made by a Muslim for charitable or religious purposes, such as building mosques, schools, hospitals, or other public institutions. Another defining feature of a waqf is that it's inalienable *ie.* it cannot be sold, gifted, inherited or encumbered. Therefore once a property is divested from the waqif, i.e., the creator of a waqf, it vests in God and as per Islamic belief since God is ever lasting, so is the 'waqf property'

1.3 While the word 'waqf' is not mentioned in the Holy Quran , yet several Holy Quranic verses (ayahts) emphasize the importance of charity,giving in the way of God and supporting the welfare of the community, which are closely related to the idea of waqf, example,

'Encouragement to Give in Charity Surah Al-Baqarah (2:261),
Spending for the Sake of Allah Surah Al-Baqarah (2:267),
Sustaining Charitable Deeds Surah Aale-Imran (3:92) ,
Helping Others through Charity Surah Al-Baqarah (2:177),' etc

1.4 While the holy Quran sets the foundation for charitable giving, the practice of waqf is more directly derived from Hadiths .One of the most well-known Hadiths regarding waqf is Sahih al-Bukhari 2737 which serves as the basis for the Islamic institution of Waqf, showing how wealth and property can be dedicated to charity, and the income generated from the endowment is continuously used for good deeds.

Evolution of Waqf in India

1.5 The concept of Waqf was introduced to India with the arrival of Islam and the establishment of Muslim rule. The history of Waqf in India can be broadly divided into three key eras: the Islamic period, the British colonial period, and the post-independence era.

Islamic Period- 2nd Century A.H. (8th Century CE):

1.6 During Muslim rule in India Waqf properties were under strict central control, with the monarch as the supreme authority. While there was some decentralization with provincial and district officers, like the Sadr-e Subah and Sadr-e-Sarkar, managing Waqf properties, but the ultimate control remained with the central authority.

British Colonial Period (Pre-Independence Legislations)

1.7 As compared to the Medieval era, during the British period, there was a gradual shift towards decentralization in respect of administration of Waqf properties.Some of the regulations introduced by the British include:-

1810: The Bengal Code Regulation XIX of 1810 sought to manage the rents and produce for the upkeep of mosques, temples and public buildings . This marked the beginning of minimal state interference in Waqf property administration by the British .

1817: The Madras Code Regulation VII of 1817 was introduced for the due appropriation of the rents and produce of lands granted for the support of mosques, Hindu temples and colleges, or other public purposes in Fort St. George Presidency.

1863: Religious Endowments Act - Formalized the policy of non-interference in religious endowments, including Waqf properties. It brought an end to control of government and introduced management by local committees with a provision for intervention by Civil Courts, whenever needed.

1890: Charitable Endowments Act, 1890-It was enacted during British rule in India to provide a legal framework for the management and administration of charitable endowments. This Act applied to both religious and non-religious charitable institutions and was intended to ensure that

funds and properties dedicated for charitable purposes were properly managed, safeguarded, and utilized in accordance with the objectives of the donor or trust deed.

1.8 Apart from these legislations, the British government also enacted the following laws to specifically deal with Muslim practice of wakf:-

1913: Mussalman Waqf Validating Act 1913–The first legislation which officially recognized the concept of Waqf in India. It (a) legalized Waqf-alal-Aulad (family Waqf) by recognizing that a Waqf could be created for both the benefit of the family and for charitable purposes. (b) Ensured that after the death of the beneficiaries (family members), the property would revert to charitable or religious uses as per Islamic law. (c) The Act helped to protect Waqf properties from inheritance disputes and the application of colonial property laws that could otherwise challenge their legal status.

1923: **The Mussalman Wakf Act of 1923** was one of the earliest effort by the British government to regulate Muslim wakfs, driven by concerns over mismanagement. It required trustees to maintain and submit accounts, helping protect wakf properties from misuse and preventing unauthorized sales or mortgages.

1930: Mussalman Waqf Validating Act 1930 - Provided retrospective validity to all family auqaf and extended the Act's applicability across India.

1934:Bengal Waqf Act 1934 - Established a mechanism for supervising waqfs in Bengal, leading to the creation of the Bengal Waqf Board.

1935: Mussalman Waqf (Bombay Amendment) Act - Amended the 1923 Act to enhance waqf management and its application to the Bombay Presidency .

1936:United Provinces Muslim Waqfs Act - Created the Central Waqf Board in Uttar Pradesh, followed by similar legislation in Bihar in 1948.

1939: **Hyderabad Endowment Regulation Act-** The Princely state of Hyderabad passed the Hyderabad Endowment Regulation Act in 1939.

1943:Delhi Waqf Board Established - Further expansion of Waqf Boards in India with the creation of the Delhi Waqf Board.

Post-Independence Legislations

1.9. The Indian Constitution assigned the administration of trusts and religious endowments to both Central and State governments, necessitating uniform legislation for Waqf management.

1954: **Wakf Act, 1954** - The Waqf Act of 1954 , the first post-independence legislation was introduced to regulate and manage Waqf properties and to ensure that the income generated from these properties was used for their intended charitable or religious purposes.

1959, 1964, 1969: **Amendments to the Wakf Act, 1954**–Over time, several issues emerged under the 1954 Waqf Act, including mismanagement, poor and faulty record keeping, lack of transparency, inadequate government oversight, and conflicts with state laws. While amendments addressed some concerns, the need for further reforms remained.

1976- While the Wakf Amendment Bill of 1969 was pending, there was a call for a committee to assess Waqf administration and recommend changes. In 1976, the Indian Government established the Waqf Inquiry Committee to examine the management of Waqf properties and the effectiveness of the 1954 Act. The Committee's report revealed significant issues, including corruption, encroachment, and the need for reforms in Waqf administration.

1984: **Waqf Amendment Act** – was enacted based on the Wakf Inquiry Committee's recommendations, but had limited implementation since only 2 provisions were accepted namely (i) Increasing the period of limitation for filling suits in respect of waqf properties in adverse possession from 12 years to 30 years and (ii) Application of provisions of Waqf Act 1954, to the evacuee properties.

1995: **Waqf Amendment Act** - After careful consideration of the objections to the 1984 Act and holding extensive discussions with Muslim community leaders, it was decided to introduce a comprehensive Bill on Waqf matters incorporating the key features of the 1954 Act and provisions of the 1984 Act where consensus was reached. A comprehensive Wakf Act 1995 was enacted and the Act of 1954 along with Amendment Acts were repealed. It was a comprehensive legislation aimed at better Waqf administration.

2006: Prime Minister's High Level Committee for preparation of Report on Social, Economic and Educational status of the Muslim Community of India (Sachar Committee) submitted their Report. The Report highlighted inefficiencies in waqf management and suggested reforms, including better financial practices and increased representation.

2008: A Joint Parliamentary on Waqf Board headed by Shri K Rahman Khan in their 9th Report emphasized the need for transparency, better documentation, and computerization of Waqf properties.

2013: **Waqf Amendment Act, 2013** - This amendment aimed to enhance transparency, further tighten rules on leasing Waqf properties, and improve the functioning of Waqf Boards by mandating the appointment of professionals with expertise in law and finance. It also introduced stricter provisions for waqf management, including penalties for encroachments and better representation on Waqf Boards.

Waqf (Amendment) Bill, 2024

1.10 Over the past decade since the 2013 Amendment to the Waqf Act, various concerns about the management of Waqf Boards have been raised, necessitating remedial action. Various rigid measures introduced in 2013, lead to widespread distress and increase in litigation. Concerns regarding inefficient administration of auqaf necessitated need of further amendments in Waqf Act, 1995. Key issues that necessitated the Waqf (Amendment) Bill, 2024 include:

a) Complaints regarding the appointment of Mutawalli/Management Committees, encroachment, mismanagement, misuse of power, and poor record-keeping.
b) The need to rationalize State Waqf Board powers, including broader, nomination-based membership, and the inclusion of non-Muslim members to improve management.
c) Reducing the contribution from Auqaf to State Waqf Boards from 7% to 5% of net annual income, allowing Auqaf to better serve their charitable and religious purposes.
d) Extensive litigation, particularly regarding land ownership, calls for a more effective Tribunal system to reduce court cases.
e) Manual and paper-based registration processes delay operations; there is a need for full computerization to improve oversight of income and expenditure.

f) The survey of auqaf remains incomplete a decade after the amendment, with some states yet to begin.

1.11 Additionally, several representations were submitted to the Ministry, highlighting the need for legislative amendments. These include:

a) Mismanagement of Waqf properties.
b) Deliberate encroachment and unlawful transfer of Waqf land.
c) Inefficient functioning of Waqf Tribunals.
d) Sweeping powers to arbitrarily declare property as Waqf (as per Section 40 of the 1995 Act).
e) Allegations against Waqf Board officials, along with 279 general grievances.
f) Representation from the Ahmadiya community.

1.12 Besides, the above, the Ministry also took into cognizance the numerous questions/ queries raised by Members of Parliament on the functioning of the Waqf Act, 1995.

1.13 Therefore, with an intention to review the Waqf Act, 1995, the Ministry of Minority Affairs, the nodal Ministry for the Bill, conducted extensive consultations with a wide range of stakeholders as detailed below:-

Date &Place	**All stakeholders / Public**	**All stakeholders / Public Agreed points for making suitable changes in proposed**
13.07.2023 Mumbai	Representative from general public concerning improved management of waqf;	• Improvement in constitution of Waqf Boards- Making State Waqf Boards (SWBs) broad based, CEO being full time and Sr. Officer of State Government. • Improvement in Waqf Management System of India (WAMSI) Portal- to provide manpower assistance to the SWBs for making entries in the Waqf Management System of India (WAMSI)Portal
24.07.2023 Lucknow, Uttar Pradesh	Officials of concerned State Waqf Board and general public.	
20.07.2023 Scope	State Government's representative, Chairperson	

Complex, New Delhi	and CEOs of State Waqf Boards from 19 (States/UTs).	•Efficient Management and Utilization of Waqf properties • Survey and mutation must • Litigation - Strengthening of Tribunals such as two member Tribunal and to declare any Tribunal to function as Waqf Tribunal • Appeal in High Court; • Efficient Financial management • Role and responsibilities of Mutawalli- Rationalize terms and condition for appointment of Mutawalli.
07.11.2023 Vigyan Bhawan, New Delhi	State Government Representative, Chairperson and CEOs of State Waqf Boards.	

1.14 The proposed Bill is a comprehensive legislative effort aimed at modernizing waqf administration, reducing litigation, and ensuring the efficient management of waqf properties. The proposed amendments intend to address the shortcomings of Waqf Act, 1995 and rectify the anomalies introduced by the 2013 (Amendment) Act.

1.15 In view of the above, the Government introduced in Lok Sabha on 08 August, 2024, the Waqf (Amendment) Bill, 2024 (Bill No. 109 of 2024), further to amend the Waqf Act, 1995 while introducing the same the Minister-in-charge of the Bill proposed constituting a Joint Committee and referring the Bill to it. Subsequently, a motion was moved and adopted by Lok Sabha on 09 August, 2024 for the constitution of a Joint Parliamentary Committee for the purpose of examination of the Bill and report to the House by the last day of the first week of the Winter Session, 2024. A motion was also moved in and adopted by Rajya Sabha on 09 August, 2024 concurring with the recommendation of Lok Sabha for nomination of Members from Rajya Sabha to the Joint Parliamentary Committee. A Joint Committee of both Houses of Parliament consisting 21 Members from Lok Sabha and 10 Members from Rajya Sabha under the Chairpersonship of Shri Jagdambika Pal, MP, Lok Sabha was constituted on 13 August, 2024 to examine the Bill and report.

1.16 As mentioned above, the Joint Committee had to present the Report on the Bill by the last day of the first week of the Winter Session, 2024. However in view of the fact that a very large number of organizations were yet to present their views in front of the Committee and the enormity of the assigned task and the exercise undertaken, the Committee sought extension of time from the House for the finalisation of the Report. Accordingly, motion was moved in Lok Sabha on 28 November, 2024, seeking extension of time which were adopted by the House. As per the extension granted, the Joint Committee would present the Report to the House by the last day of the Budget Session .

1.17 In the process of the examination of the Bill, the Committee, in their first Sitting on August 22, 2024, decided to issue a Press Communique on 29th August, 2024 inviting views/suggestions from the Stakeholders/Experts/Public at large on the proposed amendments contained in the Bill. In response to that, an unprecedented number of submissions of more than 92.28 lakh Memoranda were received through email/post and scrutinised by the Committee.

1.18 Further, for seeking wider consultation, the Committee undertook three Study Visits to directly hear from the Interest groups/Stakeholders/Public Representatives/Waqf Boards, Minority Commissions and State Governments. The first Study Visit was undertaken to Mumbai, Ahmedabad, Hyderabad, Chennai and Bengaluru from 29 September, 2024 to 01 October, 2024. The Second Study Visit was undertaken to Guwahati and Bhubaneshwar from 09 November to 11 November, 2024. The Third Study visit was undertaken to Patna, Kolkata and Lucknow from 18 January, 2025 to 21 January, 2025.

1.19 Apart from the aforesaid Memoranda received against the Press Communique, the Committee also received views/suggestions from other Stakeholders/Public representatives through various other sources *viz*. directly, during Study Visits or through Members. A comprehensive list of Stakeholders/Organisations/Associations/Individuals from whom Memoranda were received, examined and considered by the Committee is given at Annexure C .

1.20 Apart from receiving Memoranda and undertaking Study Visits, the Committee also took oral evidence/heard the views of the Public Representatives/Experts/Organisations/Associations /Official stakeholders.

1.21 The Committee also heard the views of the representatives of the State Governments of Maharashtra, Gujarat, Andhra Pradesh, Telangana, Tamilnadu, Karnataka, Assam, Odisha , Madhya Pradesh, Rajasthan, Bihar, West Bengal and Uttar Pradesh on the amendments proposed in the Bill. During the Study Visits and at Delhi, the Committee held discussions with the representatives of twenty five Waqf Boards mentioned below and sought written submissions from the remaining.

(i)	Uttar Pradesh Sunni Waqf Board,	(ii)	Telangana,
(iii)	Rajasthan	(iv)	Punjab,
(v)	Haryana	(vi)	Uttarakhand
(vii)	Delhi	(viii)	Maharashtra
(ix)	Madhya Pradesh,	(x)	Gujarat
(xi)	Andhra Pradesh	(xii)	Kerala
(xiii)	Karnataka	(xiv)	Tamilnadu
(xv)	Chhattisgarh	(xvi)	Assam
(xvii)	Manipur	(xviii)	Tripura
(xix)	Meghalaya	(xx)	Odisha
(xxi)	Bihar Shia Waqf Board	(xxii)	Bihar Sunni Waqf Board
(xxiii)	Jharkhand	(xxiv)	West Bengal
(xxv)	Uttar Pradesh Shia Waqf Board		

Further, besides the nodal Ministry, i.e., the Ministry of Minority Affairs, the Committee heard the views of the Ministry of Housing and Urban Affairs, Ministry of Road Transport and Highways, Ministry of Railways and the Ministry of Culture (Archaeological Survey of India) on the proposed amendments**.**

1.22 The Committee obtained Background Note, Written Reply, Post-Evidence Information/Clarification and other requisite documents from the Ministries of Minority Affairs, Law & Justice (Department of Legal Affairs and Legislative Department) and other above-stated Ministries. The Committee also took oral evidences of the representatives of the aforesaid Ministries/Departments on 22.08.2024, 05.09.2024, 06.09.2024, 15.10.2024, 21.10.2024,

29.10.2024, 21.11.2024, 27.11.2024 and 05.12.2024 . The representatives of the Ministries/Departments of Minority Affairs and Law & Justice however remained present in all the sittings of the Committee.

1.23 Additionally, the Committee gathered inputs from a wide range of stakeholders. The following table outlines the Committee's sessions that contributed to the development of its report:-

Sitting No.	Date	Ministry/Expert/Stakeholder	Duration of the Sitting
1	22.08.2024	Ministry of Minority Affairs	02 hrs 55 min.
	22.08.2024	Ministry of Minority Affairs	03 hrs 25 min
2	30.08.2024	1. All India Sunni Jamiyatul Ulama, Mumbai 2. Indian Muslims of Civil Rights (IMCR), New Delhi.	03 hrs 15 min.
3	30.08.2024	1. Uttar Pradesh Sunni Central Waqf Board. 2. Rajasthan Board of Muslim Waqf.	05 hrs 10 min
4	05.09.2024	Ministry of Housing and Urban Affairs.	03 hrs 20 min.
5	05.09.2024	1. Ministry of Road Transport and Highways; 2. Ministry of Railways.	03 hrs 05 min.
6	06.09.2024	Archaeological Survey of India, Ministry of Culture	03 hrs 30min.
7	06.09.2024	1. Zakat Foundation of India 2. Telangana Waqf Board .	04 hrs 10 min.
8	19.09.2024	1. Prof. Faizan Mustafa, Vice Chancellor Chanakya National Law University, Patna 2. All India Pasmanda Muslim Mahaaz, Delhi	04 hrs 05 min
9	19.09.2024	All India Muslim Personal Law Board (AIMPLB), Delhi	04 hrs 55 min.
10	20.09.2024	All India Sufi Sajjadanashin Council (AISSC), Ajmer	03 hrs 35 min.

11.	20.09.2024	1. Muslim Rashtriya Manch, Delhi 2. Bharat First, Delhi	04 hrs 10 min
12	14.10.2024	Jamiat Ulama-i-Hind, Delhi	03 hrs 30 min
13	14.10.2024	1. Shri Anwar Manippadi, former Chairman, Karnataka State Minorities Commission 2.Shrimahant Sudhirdas Maharaj, President, Shri Kalaram Temple, Nasik 3.Shri Vishnu Shankar Jain, Advocate, Supreme Court of India 4. .Shri Ashwini Kumar Upadhyay, Advocate, Supreme Court of India 5.Ms. Amita Sachdeva, Advocate and President, Hindu Janajagruti Samiti, Goa 6. Shri Chetan Dahanajaya Rajhansa, National Spokesperson, Sanatan Sanstha, Goa	04 hrs 45 min
14	15.10.2024	1. Ministry of Minority Affairs 2. Ministry of Law & Justice	06 hrs 50 min
15	15.10.2024	1. Ministry of Minority Affairs 2. Ministry of Law & Justice	06 hrs 45 min
16	22.10.2024	1. Justice in Reality, Cuttack, Odisha 2. Panchasakha Bani Prachar Mandali, Cuttack, Odisha	02 hrs 10 mins
17	22.10.2024	1. Indian Union Muslim League (IUML)	03 hrs 55 mins
18	28.10.2024	1. Punjab Waqf Board 2. Haryana Waqf Board	03 hrs
19	28.10.2024	1. Uttarakhand Waqf Board 2. Call for Justice group 3. Waqf Tenant Welfare Association 4. Resident Welfare Association (All Blocks) B.K.Dutt Colony, New Delhi	04 hrs and 30 min
20	29.10.2024	Delhi Waqf Board	03 hrs 30 mins
21	29.10.2024	Ministry of Minority Affairs	01 hr 20 min
22	04.11.2024	1. Jamaat-e-Islam-e-Hind, Delhi 2. Muslim Women Intellectual Group led by Dr. Shalini Ali	02 hrs 30 min

23	04.11.2024	1. Jamiyat Himaytul Islam 2. Shia Muslim Dharmguru and Intellectual Group 3. Vishwa Shanti Parishad	04 hrs 30 min
24	05.11.2024	(i) Akhil Bhartiya Adhivakta parishad (ii) Anveshak	03 hrs 50 min
25	05.11.2024	(i) Anjuman-e-Shiateali Dawoodi Bohra Community (ii) Dr Mohammad Hanif Ahmad (Asociate prof, AMU, Aligarh) (iii) Dr Imran Chudhary and Group	03 hrs
26	21.11.2024	Ministry of Minority Affairs	05 hrs 35 mins
27	27.11.2024	Ministry of Minority Affairs	02 hrs 30 mins
28	05.12.2024	Ministry of Minority Affairs	02 hrs 55 mins
29	11.12.2024	Darul Uloom Deoband	02 hrs 55 mins
30	18.12.2024	All India Shia Personal Law Board	01 hrs 40 mins
31	19.12.2024	1. **Syed Abubaker Naqvi** 2. Ms. Reshma Husain 3. Shri Irshad Ali 4. Shri Mohammad Haneef Khan 5. Shri Abdul Aziz Khan 6. Shri Mohammed Saleem Chhipa 7. Shri Ahsan Ali 8. Shri Mehfooz Ali Khan 9. Shri Saleem Ahmed 10. Shri Fazle Kareem Sahu 11. Shri Sadik 12. **Prof. (Dr.) Mahrukh Mirza** 13. Shri Afroz Alam 14. Shri Raza Husain 15. Ms. Farha Faiz 16. Shri Inam Ali Zaidi 17. Shri Mohammad Yusuf Dar 18. Mirza Mohd. Ali Raza	02 hrs 35 mins

32	26.12.2024	State Government of Karnataka	02 hrs 20 mins
33	26.12.2024	State Government of Madhya Pradesh and State Government of Rajasthan	02 hrs 25 mins
34	27.12.2024	Sitting adjourned as a mark of respect on the sad demise of former Prime Minister Dr Manmohan Singh .	15 Mins
35	24.01.2025	Muttaheda Majlis-e-Ulema, Jammu and Kashmir (Mirwaiz Umar Farooq)'	01 hrs 40 mins
36	24.01.2025	Lawyers for Justice	01 hrs 25 mins
37	27.01.2025	Clause-by-Clause consideration of the 'Waqf (Amendment) Bill, 2024	01 hrs 15 mins
38	29.01.2025	Consideration and Adoption of Draft Report on the 'Waqf (Amendment) Bill, 2024'.	01 hr
TOTAL DURATION			**128 hrs 10 mins**

1.24 Thus, based on the written and oral depositions of both official and non-official witnesses, inputs gathered during the Study Visits and from large number of Memoranda received from various sources, the Committee have examined the Bill minutely and given their considered opinion/suggestion as enumerated in the succeeding paragraphs.

CHAPTER II

CLAUSE BY CLAUSE EXAMINATION OF THE WAQF (AMENDMENT) BILL, 2024

CLAUSE- 1

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

1.2 The Clause 1 of the Bill reads as:

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

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

Justification/explanation given by the Ministry of Minority Affairs

1.3 Implementation of this Act will come in force from the date of notification in the Official Gazette and this Act will be called Waqf (Amendment) Act, 2024.

Observations/Recommendations of the Committee

1.4 No amendment is proposed in the said clause dealing with the short title and commencement of the proposed legislation.

CLAUSE- 2

2. The Clause 2 of the Bill proposes to amend the Section 1 of the Principal Act.

Relevant provisions of the Principal Act

2.1 Existing provisions of Section 1 are as under:

"Short title, extent and commencement.—

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

(*2*) It extends to the whole of India.

(*3*) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein, be construed as reference to the commencement of that provision in such State or area."

Provisions Proposed in the Amendment Bill

2.2 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 WaqfManagement, Empowerment, Efficiency and Development" shall be substituted.

Justification/explanation given by the Ministry of Minority Affairs

2.3 The justification furnished by the Ministry for the proposed amendment is as under:

"The name of the Act has been changed to reflect its updated focus on improving the management of waqf properties, empowerment of stakeholders relevant to management of waqf properties, improving the efficiency in survey, registration and case disposal process, and development of waqf properties. While the core purpose remains to manage waqf properties, the aim is to implement modern and scientific methods for better governance."

Gist of submissions by various Waqf Boards:

2.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Gujarat Waqf Board:- The amendment from Waqf Act 1995 to Unified Waqf Management Empowerment, Enforcement and Growth Act-1995 is against basic religious, constitutional rights and natural rights of Muslims.

(ii) Andhra Pradesh Waqf Board:- The word 'Waqf' itself is meaningful specifying that any movable or immovable property is dedicated/endowed permanently, which is a permanent dedication Endowment to Almighty for pious, charitable purpose only. The Amendment does not unify any management nor empower Waqf administration rather it empowers the Government at the cost of Waqf board.

(iii) Telangana State Wakf Board:- There is no justification for changing the name. While it may appear as cosmetic in nature the words used in the enactment itself are misleading as there is no "unification" "empowerment", "efficiency" or "development".

(iv) Karnataka Waqf Board:- The term "Waqf" has an emotional binding among the members of the Muslim community and any change to its name is not acceptable.

(v) Rajasthan Waqf Board:- The word Waqf has no synonym and means the permanent transfer of any movable or immovable property in perpetuity. Therefore, the name of the Act should be only "Waqf Act" and the only amendment in it can be that the Act should be made "Indian Waqf Act".

(vi) Kerala State Waqf Board:- There is no requirement to alter the name as the current nomenclature is sufficient and every amendment/ act subsequent to the Waqf Act, 1954 has been named the Waqf Act only.

(vii) West ~~Bengal~~ Waqf Board: -The Billis an attempt to diminish the waqf properties and dilute the name "waqf" which is for benefit of the human beings and service of humanity.

(viii) Bihar Shia and Sunni Waqf Board :- The change in title dilutes and minimizes the significance of Waqf and the title of the Waqf Act 1995 should be kept intact.

Suggestions/comments by various stakeholders and experts:

2.5 Important suggestions/comments received from various stakeholders and experts is summarised as under:

i. Waqf is an integral part of Islamic culture and religion and the word aptly conveys its meaning whereas the new, elaborate name (UMEED) does not improve efficiency or reflect the bill's provisions.

ii. The proposed name, "Unified Waqf Management, Empowerment, Efficiency and Development (UMEED)," while well-intentioned, focuses on administrative efficiency and development, potentially at the expense of the religious and charitable objectives that Waqf traditionally serves. The Waqf system is not merely about Management and development; it is about fulfilling a religious obligation to serve the community. Changing the name could shift the focus away from the secular values, leading to a misinterpretation of the role and function of Waqf properties.

iii. Renaming the Act dilutes the purpose of Waqf as intended in Islamic law and undermines the historical and religious significance attached to the term "Waqf". The original name of the Waqf Act,1995 should be retained to preserve the religious and cultural significance of Waqf within the community.

iv. The concept of 'WAQF' is complete in itself and there is no need to qualify it or artificially beautify it. The name justifies the content and intent of the Act hence renaming the Bill is unnecessary.

v. Renaming the Act dilutes the significance of Waqf.

vi. The proposed amendment does not expand the scope of the Act. As this Bill seeks to amend the Waqf Act of 1995, it should retain the same name for consistency.

vii. The new name reflects the bill's broader aim to enhance the management and efficiency of Waqf boards and properties, with a focus on empowerment, development, and effective administration.

viii. This change (of name) is not merely symbolic. It reflects the broad scope and aspirations of the amendments and sends a clear message that the management of Waqf properties is not only about safeguarding religious endowments but also about empowering communities, enhancing efficiency, and promoting development.

ix. The name change reflects the intention to improve the waqf system, improve its governance, strengthen waqf governance, increase efficiency and promote the development of waqf properties.

Examination by the Committee

2.6.1 During the detailed examination of the Bill, the Ministry of Minority Affairs, which serves as the nodal ministry responsible for the legislation, was specifically asked to provide a thorough explanation for the change in the nomenclature of the amending Bill. The Committee sought to understand the rationale behind departing from the established name, particularly whether the new title reflects a substantive shift in the scope or objectives of the legislation. Additionally, the Ministry was asked to clarify whether the change in nomenclature signifies a reorientation of the legislative approach to Waqf management, or if it is merely a formal update

that does not impact the core principles of the original Act. In their reply, the Ministry have stated as under:

> "The name change reflects the Act's updated objectives. It emphasizes better management, empowerment, efficiency, and development of Waqf properties. The core purpose remains the same: to manage Waqf properties, but in a more modern and scientific and transparent manner.
>
> The "Unified Waqf Management, Empowerment, Efficiency and Development" is to visualize the objectives of the Amendment Bill. "

2.6.2 The query aimed to understand whether the inclusion of terms such as 'empowerment,' 'efficiency,' and 'development' represents a shift in the approach to Waqf management, or if these objectives had already been incorporated and promoted under prior laws governing Waqf properties. The Ministry's in their response have stated as follows:

> "The Act's name has been changed to reflect its updated focus on improving the management of waqf properties as following;
>
> Key issues observed in management of Waqf properties:
>
> a. <u>Unified Waqf Management:</u>
> • Incomplete survey of Waqf properties.
> • Significant backlog of litigations in Tribunal and Waqf Boards
> • Improper account, auditing and monitoring of Mutawallis.
> • The mutation of all Waqf properties has not been done properly.
>
> To overcome these issues, now in the Amendment Act the collector's role related to the survey (Sec 4), registration (Sec 36), mutation (Sec 5 and 37), encroachment (Sec 54, 55) and other related matters, is defined in a unified manner.
>
> b. <u>Empowerment of Central Waqf Council and State Waqf Boards</u> :-
> Inclusion of diverse groups like non-Muslim, other Muslim communities, other backward classes among Muslim communities etc in the decision making. (Section 9, 13 and 14)
>
> c. <u>Efficiency of State Waqf Boards.</u>
>
> i. Earlier, manual and paper-based registration process were time-consuming, prone to errors and difficult to monitor.
>
> ii. No fixed timelines for disposal of Litigation cases in the Tribunal. To overcome these issues, the portal(Section 3(ka)) will be given statutory status which will

mandate uploading of registration, account, audit and other details of waqf. Tribunal also has to dispose the cases within fixed timelines. (Section 84 proviso)

d. Development of Auqaf

(Section 65(3)) Section 65 is being amended to make it time bound to file the report within six months. Waqf Amendment Bill, 2024 mandates that the Board has to submit details of steps taken for improving the management and income of Waqf properties,to the State Government within six months. This will significantly enhance the efficiency and development of Waqf assets.

Also, Section 32(4) is being retained, which provides that "where the Board is satisfied that any waqf land, which is a waqf property, has the potential for development as an educational institution, shopping centre, market, housing or residential flats and the like, market, housing flats and the like, it may serve upon the mutawalli of the concerned waqf a notice and takeover the property for execution of the works from Waqf fund or from the finances which may be raised on the security of the properties of Waqf concerned."

Observations/Recommendations of the Committee

2.7 The Committee, after thorough deliberation on the proposal and considering the views of experts, stakeholders, and the Ministry of Minority Affairs, concurs with the change in the nomenclature of the Waqf Act to the "Unified Waqf Management, Empowerment, Efficiency, and Development Act." The updated name effectively reflects the evolving priorities and challenges in Waqf management, emphasizing unified administration, inclusivity, operational efficiency, and proactive development. This nomenclature encapsulates the Amendment Bill's vision, addressing systemic gaps while promoting modern, transparent, and accountable governance in the Waqf management. The Committee recommend its adoption as an essential step toward aligning Waqf management with contemporary needs and practices.

CLAUSE-3

3. The Clause 3 of the Bill proposes to amend the Section 3 of the Principal Act.

Relevant provisionsof the Principal Act:

3.1 Existing provisions of Section 3 are as under:

"**Definitions.--**In this Act, unless the context otherwise requires—

(a) "beneficiary" means a person or object for whose benefit a Waqf is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law:

(b) "benefit" does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli;

(c) "Board" means a Board of Waqf established under sub-section (1), or as the case may be, under sub-section (2) of section 13 and shall include a common Waqf Board established under section 106;

(d) "Chief Executive Officer" means the Chief Executive Officer appointed under sub-section (1) of section 23;

(e) "Council" means the Central Waqf Council established under section 9;

(ee) "encroacher" means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board;

(f) "Executive Officer" means the Executive Officer appointed by the Board under sub-section (1) of section 38;

(g) "list of auqaf" means the list of auqaf published under sub-section (2) of section 5 or contained in the register of auqaf maintained under section 37;

(h) "member" means a member of the Board and includes the Chairperson;

(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, khadim, 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;

(j) "net annual income", in relation to a waqf, means net annual income determined in accordance with the provisions of the *Explanations* to sub-section (1) of section 72;

(k) "person interested in a waqf" means any person who is entitled to receive any pecuniary or other benefits from the waqf and includes—

(i) any person who has a right to offer prayer or to perform any religious rite in a mosque, idgah, imambara,dargah, khanqah, peerkhana and karbala, maqbara, graveyard or any other religious institution connected with the waqf or to participate in any religious or charitable institution under the waqf;

(ii) the waqif and any descendant of the waqif and the mutawalli;

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

(m) "regulations" means the regulations made by the Board under this Act;

(n) "Shia waqf" means a waqf governed by Shia Law;

(o) "Sunni waqf" means a waqf governed by Sunni Law;

(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;

(q) "Tribunal", in relation to any area, means the Tribunal constituted under sub-section (1) of section 83, having jurisdiction in relation to that area;

(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;

(ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;

(iii) "grants", including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(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;

(s) "waqfdeed" means any deed or instrument by which a waqf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied;

(t) "Waqf Fund" means a waqf fund formed under sub-section (1) of section 77.

Provisions Proposed in the Amendment Bill

3.1 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: —

'(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;';

(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 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;';

(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;';

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

'(l) "prescribed", means prescribed by rules made under this Act;';

(viii) clause (p) shall be omitted;

(ix) (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;

(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;

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

Justification/explanation given by the Ministry of Minority Affairs

3.3.1 The justification furnished by the Ministry for the proposed amendment is as under:

3.3.2 For inclusion of the Aghakhani Waqf and Bohra Waqf

"Aghakhani Waqf means a Waqf dedicated by an Aghakhani waqif.

Bohra Waqf means a Waqf dedicated by a Bohra waqif."

3.3.3 For inserting definition of'Collector'

"Section 3 (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 authorized in writing by the Collector."

3.3.4 For inserting definition of 'Government Organisation'

"Section 3 (fa) defines Government organization."

3.3.5 For inserting definition of 'Government property'

"Section 3(fb) defines Government Property".

3.3.6 For the omission of verbal appointment of Mutawallis

"As per Sec 36(1A) of Amendment Bill 2024, requirement of Waqf deed is made compulsory for creating new Waqf, and mention of the details of Mutawalli is needed to be recorded in the Waqf Deed. Hence, the provision for oral appointment of Mutawalli is being omitted. A specimen of the Deed of Waqf is at **Annexure E**."

3.3.6 For the issue of Portal and Database

"The establishment of a "Portal and Database" for the registration, accounting, auditing, and other relevant details of waqf properties and Boards, as determined by the Central Government, has been proposed. This portal will serve as the central repository for all information, ensuring that the data remains securely stored and easily accessible. The aim of creating this portal and database is to streamline the waqf registration process and automate the entire lifecycle of a waqf, beginning with its initial registration and extending through its management and oversight."

3.3.7 For amendment in Section 3 (l)- "prescribed", means prescribed by rules made under this Act

"Central Government is prescribed to make rules under section 108B and State Governments is prescribed to make rules under section 109 of the Waqf (Amendment) Bill, 2024.

Central Government (Sec 108-B) The Central Government can make rules in respect of the Waqf asset management system, registration, accounts, audit and other details of Waqf and Board under Section 3 (ka), the manner of payment for maintenance of widow, divorced woman and orphan under sub-clause (iv) of Section 3(r); manner in which details of Waqf to be uploaded, manner in which the Board shall maintain the register of auqaf under section 37(1), form and manner and particulars of the statement of accounts under section 46(2), manner for publishing audit report under section 47(2A), manner of publishing and proceedings orders of Board under section 48(2A) and any other matter which is required to be or maybe prescribed.

State Government (Sec 109) The State Government can make *inter-alia* the following rules;

a. Qualifications for mutawalli appointment. (Section -3(i))

b. Terms and conditions of service of the CEO(Section- 23(2))

c. The manner in which service of notice issued and manner in which any inquiry is to be made under Section54(1) & (3)d. The form in which annual report is to be submitted and the matters related to the content under Section-98.

Timely drafting of rules as prescribed under the Act by the Central Government and the State Government will ensure proper administration of auqaf."

3.3.8 For omission of clause (p) defining "Survey Commissioner"

"Definition of Survey Commissioner is being omitted as the responsibility of survey is being transferred to Collector. (Section- 4(1))"

3.3.9 For amendment in Section 3 (r) related to dedication of Waqf by anyperson practising Islam for at least five years

"The proposed Amendment changes the definition of Waqf,'Waqf' can be dedicated by any person practising Islam for at least five years, of movable or immovable property, having ownership of such properties, for any purpose recognised by the Muslim law as pious, religious or charitable and includes

(i) a shamlat-patti, shamlat Deh, Jumla Malkan or by any other name entered in a revenue record

(ii) grants including Mashrat-ul-khidmat

(iii) Waqf-alal-aulad'

The proposed Amendment changed the definition of waqf "waqf can be dedicated by any person **practising Islam for at least five years,** of movable or immovable property, **having ownership** of such properties, for any purpose recognised by the Muslim law as pious, religious or charitable and includes (ii) a shamlatpatti, shamlat Deh, Jumla Malkan or by any other name entered in a revenue record (iii) grants including Mashrat-ul-khidmat (iv) 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 **, maintenance of widow, divorced women and**

orphan in such manner as may be prescribed by the Central Government and such other purposes as recognised by Muslim law.

Therefore, the key changes are as follows:

(i) Waqif has to be any person, who is practising Islam for at least five years.

(ii) Waqif has the ownership of movable or immovable property.

(iii) Waqf by user, is no longer included within the ambit of Waqf definition.

(iv) The scope of waqf-alalaulad is being augmented."

3.3.10 For omission of Section 3(r)(i) dealing with 'waqf by user'

"The Waqf Act of 1954 was the first major law to regulate waqf properties in independent India which mentions that "Waqf includes a waqf by user". It may imply that if a property has been used for pious, religious or charitable purposes for a long time continuously it can be treated as a Waqf, even without the documentation, survey, mutation and related processes as per the provisions of the Waqf Act.

Waqf Act 1995 States that "Waqf includes 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."

The Waqf Amendment Act 2013 kept the same concept and only changed the spelling from "wakf" to "waqf".

Now in the proposed amendment Bill, this provision has been omitted.

There are several issues related to the concept of 'waqf by user' namely: -

"1. **Without Documentation:** Waqf by user refers to a situation where property declared as a Waqf has not been done through a formal documentation but because it has been used for pious, religious or charitable purposes for long time. Example: Salem Muslim Burial Ground Protection Committee v. State of Tamil Nadu (2023) The Supreme Court held that a notification declaring a list of Auqaf shall only be published after completion of the process as laid down under Section 4 of the Waqf Act, 1995. This section provides for two surveys, settlement of disputes arising thereto and the submission of the report to the State Government and to the Board. Thus, conducting of the surveys before declaring a property to be Waqf was held to be a sine qua non or a necessary condition to establish a valid Waqf.

2. **Private Property:** Many properties belong to private individuals or entities but are claimed as Waqf under Waqf-by-user. An example of this is the case of Viceroy

Hotels Limited and Others vs Telangana State Wakf Board, Hyderabad and Others (WP No. 8431 and 11730 of 2014). The Viceroy Hotel case involved a legal dispute between the Telangana State Waqf Board and the hotel owners, with the Board claiming the land as Waqf property. Despite the Board's own determination in 1958 that the property was not Waqf land, they revisited the issue in 2007 with an addendum notification. The hotel owners challenged these claims, and the courts consistently ruled against the Board. In April 2024, the Telangana High Court quashed the Waqf Board's claims, stating the proceedings were beyond their jurisdiction. The Court reaffirmed that the land was not Waqf property and invalidated the Board's attempt to expand its claims through an improper legal notice.

3. **Government Property**: Waqf by user provision has also been criticized for allowing properties that belong to Government to be wrongfully claimed as Waqf. In Surat (2021), the Gujarat Waqf Board declared the Surat Municipal Corporation headquarters as Waqf property, despite it being a Government building. As per data received on 05.09.2024 from 25 out of 32 States/ UTs Waqf Boards, a total of 5973 government properties have been declared as Waqf properties. This dataset does not cover data from 7 States/ UTs viz. Bihar (Shia), Chandigarh, Karnataka, Kerala, Odisha, Telangana and Uttar Pradesh (Sunni) as it has not been received from respective State Waqf Boards in this context."

ASI informed the Committee that 280 protected monuments have been declared as waqf properties.

MoHUA informed the JPC during their presentation on 05.09.24, 108 properties under control of Land and Development Office, 130 properties under control of Delhi Development Authority and 123 properties in the public domain were declared as waqf properties and brought into litigation.

The total number of properties under encroachment are 58,898 as per WAMSI portal.

There are 5,220 cases in Tribunal/other courts relating to encroachment and 1,340 related to alienation, out of 19,207 total cases in Tribunals and other courts, as on September 2024 in WAMSI, which totals to 6,560 cases.

Litigation Records as per WAMSI Portal (As of Sept-2024)	
Total records of Litigation cases (At Waqf Boards)	12,792
Total records of Litigation cases (Tribunal & Other Courts)	19,207
Total No. of cases of Alienation	1,340
Total No. of Encroachment Cases	5220

One reason for these cases may be the ambiguous ownership or title of Waqf properties, often declared based on long-term usage without deeds or proper documents. As reported on WAMSI portal, For 30 States/UTs- there are 32 Boards, the States/UTs reported are 8.72 lakhs properties out of which 4.02 lakhs are waqf by user. For remaining waqf the Ownership Rights Establishing Documents (deeds) have been uploaded on Portal for 9279 cases and 1083 Waqf deeds have been uploaded. As presently uploading of deeds is voluntary, hence in many cases Waqf boards are not uploading deeds.

These instances highlight the need for reforms in the Waqf definition. The **removal of this provision does not affect registered waqf just because they are not having Waqf deed.**

State- wise details of encroachment is at **Annexure F."**

3.3.11 <u>For amendment in Section 3(r)(iv)dealing with definition of waqf-alal-aulad</u>.

"The basic purpose of waqf-alal-aulad is to partly provide benefit to the family or the descendants of the waqif and partly for charitable, religious or pious purposes. When the line of succession fails, the entire income of the Waqf shall be spent on education, development and welfare as per existing provision section 3 (r) (iv).

It has been further informed that under the provisions of the amended clause the scope of benefit will be further expanded for maintenance of the following:

(1) Widow
(2) Divorced Women
(3) Orphans."

<u>Gist of submissionsby various Waqf Boards:</u>

3.4 A gist of submissions/objections by various Waqf Boards of States/UTs on the amendments given in the clause are as under:

3.4.1 <u>On the inclusion of the Aghakhani Waqf and Bohra Waqf</u>

(i) Andhra Pradesh Waqf Board: - The provision to separately define Agha Khani waqf and Bohra waqf and to have a separate board for is basically unreasonable and will lead to divisions among Muslims. Shia and Sunni wakfs were, earlier, differentiated because they are governed by different religious ethics, edicts but Aghakhani and Bohra are both governed by Shia edict only

and hence creating a new class of waqf is not advisable. Moreover, in the State of A.P there are no created waqfs of Aghakhani and Bohra sects registered with the state Waqf Board.

(ii) Karnataka State Board of Auqaf: -The proposed amendment to include "Aghakhani waqf" and "Bohra waqf" in the definitions would lead to disputes and litigations. Since the Waqf Act, 1995 recognizes two kinds of Waqf viz., Sunni Waqf and Shia Waqf and these two categories under its sweep includes various sects of the Muslim community this is divisive in nature and run contrary to the very objective of unifying the Waqfs.

(iii) Delhi Waqf Board:- The proposed amendment is forward looking and promotes eclectic nature of the society by providing for spaces for Aghakhani and Bohra Communities. There are already spaces provided for Shia and Sunni communities.

(iv) Maharashtra Waqf Board:- Introduction of sectoral waqfs within the community may lead to fragmentation of the community, which may lead to disharmony within Muslims. Moreover, Aghakhanis and Bohras are a part of the Shia sect of the Muslim community for whom there is a separate Board in place.

(v) TelenganaStateWaqf Board:- Section 3(i) & Amendment to Section 13: The bill seeks to make a division/create castes in the Muslim communities.

(vi) Madhya Pradesh Waqf Board:- There is no requirement of a separate Aghakhani and Bohra Board since both of them fall under the Shia denomination.

3.4.2 <u>On insertion of definition of'Collector'</u>

(i) Andhra Pradesh Waqf Board:- There is no objection about the definition, but definitely objectionable about the unreasonable and arbitrary role of the Collector in the proposed amendments.

(ii) Karnataka State Board of Auqaf:- Section 3(da) is unwarranted and mischievous in nature. The definition of "Collector" is inserted to give sweeping powers to the Government to overturn the declaration of Waqf properties which was done by following the due process of law.

(iii) Uttar Pradesh Sunni Waqf Board& Uttar Pradesh Shia Waqf Board:- This may be omitted as it will lead to District Minorities Welfare Officer and other Non-Revenue Officers

having the rank but no revenue experience/authority. The words "Officer not below the rank of" may be omitted. Nobody other than a Revenue Officer should be kept within the definition of "Collector".

3.4.3 On insertion of definition of 'Government Property'

(i) Karnataka Board of Auqaf:- The term "Government Property" under the proposed amendment of Section 3(fb) is defined as "the moveable or immoveable property of or belonging to Government organization". This is done with a malafide intention and oblique motive in order to deprive the Muslim community of the waqf properties under the guise of its being labelled as government properties. In view of such malafide intention writ large in the proposed amendment, it is strongly opposed and liable to be rejected.

3.4.4 On the omission of verbal appointment of Mutawallis

(i) Andhra Pradesh Waqf Board:- Removing appointment of Mutawalli verbally is not correct and will create chaos. When oral gifts of Muslims are permissible as per transfer of property act, the verbal appointment of Mutawalli should be accepted. It interferes with a person's right to deal with his property. There are no records or deeds about many ancient waqfs and so it is not known that what will be status of those Mutawallis.

(ii) Telangana State Wakf Board:- The practise of oral succession of Mutawalliship is a prevalent practice which has been going on from times immemorial. To draw a parallel an oral gift by a Muslim is recognised under Section 129 of the Transfer of Property Act. The proposed Amendment wants to interfere in the administration of Waqf and as such is trying to take away this well recognised practice.

(iii) Karnataka State Board of Auqaf :- The proposed omission of the word "verbally" from the definition of "Mutawalli" in Section 3(i) is contrary to the tenets of Muslim Law which provides for appointment of mutawalli under oral deposition in the presence of two witnesses.

(iv) Maharashtra Waqf Board:- These words may be retained and not omitted from the existing Wakf Act, 1995. The possibility of creation of oral Hiba or Waqf cannot be ruled out, since even the oral bequest is valid under Muslim Law. For instance, a person who may be bedridden or on his deathbed would be precluded from creating a waqf.

(v) Tamil NaduWaqf Board:- It is suggested that the words in clause (i) of Section 3 "either verbally" which is proposed to be omitted shall have a cascading effect on the basic principle of Shariat. Islamic Law provides for various modes of Transfer of property of which one is by way of oral gift called as Hiba. The Sharia recognizes oral transfer in the presence of witnesses. This has also been recognized under the Transfer of Property Act, 1882. Therefore omission of any actions on verbal mode will itself destroy the basic feature of Sharia.

(vi) Kerala Waqf Board:- As per the proposed amendment, the right to appoint a Mutawalli orally/by word of mouth/verbally is omitted. As per the law on Waqf, a waqif(dedicator) can appoint a Mutawalli either verbally or under any deed or instrument by which a waqf is created. It is part and parcel of the concept of oral waqf, permissible under the law on Waqf. Even the case of Islamic will/Osyat, is recognized by in law. Therefore, appointment of a Mutawalli by word of mouth is part of a custom or usage having the force of law .

(vii) Tripura Waqf Board:- "Mutawalli" should not be appointed verbally.

(viii) Bihar Sunni Waqf Board:- The omission of the word "either verbally or" is not correct in view of the definition of Waqf where it nowhere imposes restrictions for creation of Waqf by verbal declaration.

(ix) West Bengal Waqf Board:- Oral declaration has been totally taken away and held to be impermissible which is contrary to the basic principles of Mohammedan Law which permits oral gift or Hiba-Bil-Iwaz. Mohammedan Law being a customary law and in view of Shariat Application Act, 1937, the accepted propositions cannot be nullified now.

3.4.5 <u>On the issue of Portal and Database</u>

(i)Andhra Pradesh Waqf Board:- In principle not objectionable, but it is better that the portal and database is managed by the State government.

(ii) Karnataka State Board of Auqaf:-The proposed insertion under the definition (ka) "portal and database" is intended to bring in the data base of the Central Government ignoring the existing data with the respective State Boards. The insertion is, therefore, intended to create arbitrary powers at the hands of the Central Government and is discriminatory in nature since

none of the other religious denominations have such portals and data base systems attributed to Central Government.

(iii) Madhya Pradesh Waqf Board:- Supports this Clause.

(iv) Telangana State Wakf Board:- Introduction of the portal or database is welcomed provided that the same is done in line with the existing records instead of redoing the exercise by giving unfettered powers to the collector.

(v) Kerala Waqf Board:- There exists a database of waqf property maintained by each State Government/State Waqf Boards and hence there is no legal necessity for the amendment, insisting a new portal.

(vi) Rajasthan Waqf Board:- After the Wakf Act 1954 came into effect, the State Government appointed a wakf Survey Commissioner and published the wakf properties in the Gazette. It is improper to reportalize and database them.

(vii) Uttar Pradesh Sunni Waqf Board & Uttar Pradesh Shia Waqf Board:- The Board has serious objections to the creation of a portal for the registration, accounts, audit or other details of the waqf and the Board by the Central Government. In the forthcoming sections even a delay in uploading the requisite data upon the portal has been made punishable. These rigors are wholly unwarranted and unreasonable. There is no such mechanism for Trusts governed either by the Indian Trusts Act, 1882; The Religious Endowments Act, 1863; The Charitable Endowments Act, 1890; The Charitable and Religious Trusts Act, 1920 etc. A Waqf and a Trust must be treated at par and waqfs must not be subjected to such rigorous treatment and interference by the Government.

(viii) Tripura Waqf Board:- "Portal and database" will certainly be helpful.

3.4.6 <u>On omission of clause (p) defining "Survey Commissioner"</u>

(i) Andhra Pradesh Waqf Board:- Abolition of Survey commissioner and giving these powers to the Collector is arbitrary and unreasonable. This may result in manipulation of status of Waqf properties. If any institution other than Survey Commissioner is empowered for conducting

survey, the Waqf perspective or Islamic perspective would be missing which would cause in erosion of Waqf properties.

(ii) Karnataka State Board of Auqaf :- The proposed omission of 3(p) "Survey Commissioner" is intended to replace him with the "Collector" and therefore the proposed amendment is against the very spirit of the Waqf Act right from the year 1913. The meticulous survey process being done by the Survey Commissioner under the present Act has worked very well. There will be a conflict of interest in case a common authority is entrusted with the work of Survey Commissioner and therefore, the omission is not in the interest of waqf properties.

(iii) Madhya Pradesh Waqf Board:- Agreeable to this Clause

(iv) Maharashtra Waqf Board:- May not be deleted since there are circumstances and occasions when Survey of auqaf is required to be done by a dedicated survey commissioner. Hence, the Act can have both Collector and Survey Commissioner defined in it.

3.4.7 <u>On amendment in Section 3(ix)(r) related to dedication of Waqf by any person practising Islam for at least five years</u>

(i) Andhra Pradesh Waqf Board:- Deleting the provision for making a Waqf by non Muslim or neo-Muslim, is against the basic principles of ownership of property. If a non-Muslim wants to make a mosque or dedicate his property for the purposes of Muslims out of good will, he should not be prohibited as it interferes with his right to deal with his property. Similarly there should not be any compulsion for a person to wait for five years after converting to Islam, for creating a Waqf from his own properties.

(ii) Kerala Waqf Board:- By the definition, a person who is not professing Islam or not a Muslim cannot dedicate property in favour of a waqf. The omission of the term "any person" will have a far-reaching consequence as it prohibits a person otherwise competent to dispose a property as per his wish. It is violative of the civil right person as well as the constitutional right guaranteed to a person who had attained the age of majority to hold and dispose a property as per his will. As per the law of Waqf, a person having ownership and otherwise competent to transfer a property can dedicate it to a waqf. Therefore, the prescription of five-year time is without any

reason/logic and will be against the fundamental tenets of the law on Waqf. The general law of the land such as Contract Act and Transfer of property Act permits any person who attained the age of majority to dispose or otherwise transact a property as per his will.

(iii) Karnataka State Board of Auqaf:- The proposed amendment under Section 3(r) is a serious violation of fundamental rights enshrined in the constitution as there can be no law prohibiting a person to deal with his own properties as he deems fit. In addition, the term "practicing Islam for 5 years" is prone to misuse. Further, this amendment is bereft of any rationale or logic. Once a person enters the fold of Islam, he/she is bound by its tenets, obligations, duties, privileges restrictions and prescriptions and such a person cannot be prevented from exercising any pious or charitable activities. There cannot be any distinction between a born Muslim and a person who embraces Islam. A person owning a property has liberty to use the property as he likes. This amendment sought to put fetters to his religious freedom and is violative of Fundamental rights guaranteed under Article 25 of the Constitution. The proposed amendment is therefore liable to be rejected.

(iv) Madhya Pradesh Waqf Board:- Agree with the Amendment.

(v)Maharashtra Waqf Board:- The phrase 'practising Islam' is quite subjective and it is open to various interpretations. Further, the threshold period of 5 years would be difficult to ascertain conclusively. This may become a contentious issue and lead to various litigations and institution of court proceedings, merely to seek a declaration in that regard. Also, determination of such facts may affect communal harmony.

(vi) Rajasthan Waqf Board:- The amendment of the words "any person" is unnecessary and against the Indian Constitution.

(vii) Uttar Pradesh Sunni Waqf Board&Uttar Pradesh Shia Waqf Board:- Though it has no practical impact and will not affect the institution of waqf at all but the same is strongly opposed being absurd and inconsistent with the spirit of the law of the land. It is based on false narrative, propaganda and perception as if non-Muslims having properties are forced to convert to Islam and to create a waqf of their properties. It is also against the idea of universal brotherhood to prohibit a non-Muslim from donating to a waqf and curtails one’s personal

liberty, as such is violative of the fundamental rights as enshrined in our Constitution. There is no mechanism to determine the duration/length of practising Islam of a person.

(viii) Tamil Nadu Waqf Board:- The proposed amendment will be in conflict with Section 3 and 4 of the Muslim Personal (Shariat) Application Act, 1937 (Act XXVI OF 1937). Section 3 of the 1937 Act makes it clear that the person who satisfies the prescribed authority that he is a Muslim and he is competent to enter into contract within meaning of Section 11 of Indian Contract Act, 1872 and that he is a resident of India, such person shall have the right of application of Personal Law available to Muslims under Section 2. And therefore he is invested with the right freely to profess and practice his religion under Article 25 of the Constitution of India.

(ix) Telangana State Waqf Board:- Section 3(r) introduces the requirement that a Muslim "practising Islam for five years" be eligible. Questions have been raised about the basis for determining who qualifies as a practising Muslim and the significance of this five-year period. Concerns have also been expressed about whether this provision implies that official certification would be needed to validate one's right to property, potentially allowing for properties to be taken over by simply declaring that the individual was "not a practicing Muslim" at the time of dedication. This provision is seen as problematic and open to misuse.

(x) Tripura Waqf Board:- Irrespective of caste and creed, all should be allowed to dedicate property to waqf . Other amendments are acceptable.

(xi) West Bengal Waqf Board:- this bill discourages people to create waqf, or to dedicate properties in the name of Almighty for the religious institutions which they are entitled to create, propagate and maintain within the meaning of article 25 and 26 of our Constitution.

(xii) Jharkhand Waqf Board:- It creates a distinction between persons practicing as a Muslim for less than five years and those who have done so for more than five years. The rationale behind this distinction is not clear and discriminatory in nature. In the absence of a clear purposes for such distinction, this may violate Article 14 of the Constitution.

3.4.8 On omission of Section 3(r)(i) dealing with 'waqf by user'

(i) Andhra Pradesh Waqf Board:- Waqf by user refers to the protection provided to ancient Waqfs that lack formal deeds or records, with a legal basis supporting this tradition. Under Muslim Personal Law, oral gifts, or 'Hiba', are permitted. While Section 123 of the Transfer of Property Act mandates that all gifts of immovable property must be in writing, Section 129 of the same Act exempts gifts made by Muslims from this requirement, allowing such gifts to be made orally.

Many Waqfs were made orally and only evidence of such gift is by user that is the property was used as such. In fact, user is only evidence of making of oral Waqf and therefore Waqf by user is a legally perfect concept and construction. 'Apparent easement' under Indian Easements Act 1882 is similar example of recognition of user status.

(ii) Telangana State Waqf Board:- Simply because of the reason of the absence of Waqf deed /instrument, properties used for pious, religious or charitable purposes since a long or immemorial time and without having any Waqf deed or instrument does not lose the character of waqf. What is important is the purpose it serves rather than the mode of its creation. No Waqf property or place of worship of the Muslims would be safe from unwarranted claims if this omission by way of the present amendment is allowed to stand. Therefore, the concept of Waqf-by-User is required to be retained as it is in the interest of the Waqf.

(iii) Madhya Pradesh Waqf Board:- Deletion of the Waqf by User clause may give rise to disputes with regard to graveyards, mosques, mazaars, etc.

(iv) Karnataka State Board of Auqaf:- Wakfs have been in existence from times immemorial, they are being used as places of worship, burial grounds, Eidgas, and many wakf properties are by its nature 'wakf by user". The proposed amendment omitting "waqf by user" from the purview of the definition of waqf is against the tenets of Muslim Law and is against the very spirit of Waqf Act.

(v) Maharashtra Waqf Board:- A waqf by user is not identified to be a wakf in the Bill, which impliedly, enables the Government to take over on numerous waqf properties which have been utilized for centuries merely because of the inaccessibility of the waqf deed. Moreover, the

Bill does not provide for treatment of the existing Waqf by User and waqfs created verbally which are in numerous, as on date. Instead of omitting clause (i) to Section 3(r) of the principal Act and providing for cessation of a waqf by user, such waqfs may be allowed to be identified as waqf subject to the verification by Collectors.

(vi) Kerala Waqf Board:- The concept of waqf includes "waqf by user". It is proposed to omit the same. The concept of oral waqf is embedded in the law on waqf and the amendment will be one cutting the root of the customs or usages having the force of law. There are so many properties, which by uninterrupted use from time immemorial, have been elevated to the status of user waqf and were entered as such in the revenue records. By the omission of the term "waqf by user" it will have adverse effect on such waqf institutions involved in such auqaf.

(vii) Uttar Pradesh Sunni Waqf Board:- The deletion of a waqf by user from the definition clause of the Act is extremely objectionable as a waqf by user is an essential part of the institution of waqf. 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. As a fallout of severing of a "waqf by user" from the definition of waqf lakhs of graveyard, mosques, shrines, Khanqahs, etc. would cease to be waqfs which would give rise to complete anarchy and confusion.

(viii) Punjab Waqf Board:- Any dedication made must be in accordance with the use as regulated by any law for the time being in force. Provided that if dedication is made in for a purpose not permissible under any law for the time being in force, the property may be put to such use as is permissible and usufruct thereof shall be used for the purpose for which dedication was made.

It was suggested that if any property was declared as waqf after survey by the Government under the provisions of waqf act, 1954 or the waqf act 1995 or any property declared as waqf which was reflected as being of Muslim religious or charitable use in revenue record at any time prior to the enactment of the WaqfAct, 1954 shall not be called into question under this provision.

Provided further that the properties which were declared as waqf after survey by the revenue department of the concerned state shall also not be called into question under this provision.

(ix) Rajasthan Waqf Board:- Deleting 'waqf by user' in section 3(r)(i) is wrong. In Rajasthan, all the rulers, some of them were Nawabs and some were non-Muslims, waqf was done by them. If 'waqf by user' is deleted then there is no document to establish the status of such auqaf.

(xiii) Haryana Waqf Board:- The proposed omission of waqf by user and by mandating that a waqf can only be created by execution of a waqf deed, which will not be beneficial as there are large number of waqf properties in the nature of graveyards, mosques, dargahs, imambaras, etc. which are being used as such since decades and centuries and these waqfs may be categorised as waqfs by user. At present the Haryana Waqf Board is having survey reports and Gazette notifications supplied by the Government itself in support of such waqfs.

(xiv) Jharkhand Waqf Board :-The Bill removes waqf by user. It is unclear whether this change will only apply prospectively or if it would also apply retrospectively to existing waqf by user properties. If the latter, then existing waqf by user properties may cease to be waqfs.

(xv) West Bengal State Waqf Board :- Should remain as it is.

3.4.9 <u>On amendment in Section 3(r)(iv)dealing with definition of waqf-alal-aulad</u>

(i) Andhra Pradesh Waqf Board:- Discretion should be vested with the Waqf Board to include many other needs and necessities to be attended considering the requirement.

(ii) Kerala Waqf Board:- In the case of "Waqf alalaulad", only when the line of succession of the waqif family fails, the Board can interfere in the matter as to how to spend the income of waqf for such other purposes recognized by law on Waqf. The Government or Board cannot dictate as to how to deal with a property involved in the waqf as against the wishes of the waqif. However, the Board by its collective wisdom, can take appropriate decision as how to manage the auqaf under its control and how to utilise the surplus income of the waqf consistent with the object of a waqf, when the original object of a waqf has ceased to exist or become incapable of

achievement, in accordance with the local conditions/ requirements. Clause (g) of sub-section (4) provides that the Waqf Fund can also be used for maintenance of Muslim women when so ordered by a court under the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986. Thus there is already a statutory requirement under the Act to that effect.

(iii) Uttar Pradesh Sunni Waqf Board:- This amendment is against the very concept of waqf as a waqf property is neither alienable nor heritable. It will nullify the waqf-alal-aulad itself.

(iv) Karnataka State Board of Auqaf:- The proposed amendment under Section 3(r)(iv), after the word "welfare", are to insert the words "maintenance of widow, divorced woman and orphan in such manner, as may be prescribed by the Central Government", tantamount to the deprivation of powers of the Board.

(v) Rajasthan Waqf Board:- Amendment in the said section is against the law. Because Waqf is a kind of donation and no condition can be imposed on the donor.

Suggestions/commentsfurnished by variousstakeholders and experts:

3.5.1 A gist of suggestions/comments received from various stakeholders and experts is summarised as under:

3.5.2 On the inclusion of the Aghakhani Waqf and Bohra Waqf

i. Muslim community is so much diversified socially, economically and educationally. To give adequate protection to all 73 sects of Islam some other types of Waqfs should also get place in the Act.
ii. A Dawoodi Bohra waqf is different from other waqfs in its creation and administration. Regarding creation, a Dawoodi Bohra Muslim vests the property in the al-Dai al-Mutlaq, who thereafter, consecrates the property by permanently dedicating it to Allah. This is different from other Shia and Sunni Muslims who may directly dedicate property to Allah. Regarding administration,as the Sole Trustee, the al-Dai al-Mutlaq has the exclusive rights to manage, administer, control and protect the trusts, waqfs, institutions and properties under his sole direction. This is different from a mutawalli of a general Shia or Sunni waqf who is only a manager. And the powers and duties of a Mutawalli are subject to the provisions of the Waqf Act, 1995 and the Waqf Board, and he can be removed or replaced by the board.

The Waqf (Amendment) Bill, 2024 fails to recognise the distinctiveness of the Dawoodi Bohra Community, nor provides for its special treatment. It treats dissimilar communities similarly. Thus, the Dawoodi Bohra community has sought a complete exclusion from the purview of the Waqf Act, 1995.

3.5.3 On the omission of verbal appointment of Mutawallis

i. This Clause seeks to exclude 'Oral waqf' from the ambit of waqf which is interpreted as an interference in the Islamic provisions.
ii. Under Islamic Law,waqf can be created through a verbal declaration without the need for a written document. The person simply states their intention to dedicate the property as a wakf.
iii. If the proposed amendment is accepted, the waqif who dedicated property as waqf orally cannot appoint a mutawalli to manage it. Oral contract is valid in India as per Sec 10 of the Indian Contract Act and also as per Sec 53 of Transfer of Property Act. This change may lead to increased disputes and litigation over the validity of Waqf properties. If individuals believe they established Waqf verbally but cannot prove it with written documentation, it could result in conflicts that require legal resolution, straining the community and the judicial system.

3.5.4 On the issue of Portal and Database

i. One of the notable changes in this proposed Waqf (Amendment) Bill is the introduction of a central portal and database for waqf properties. This is an effort to prepare the waqf administration for the 21st century by leveraging technology to ensure transparency and accountability. Every newly registered or existing Waqf will be required to update its details on this platform, providing both the government and the public with a clear and hopeful vision of how these assets are being utilised.
ii. The requirement for detailed registration and frequent updates on a centralized portal could add significant bureaucratic overhead. Smaller waqf institutions with limited resources might struggle to comply with these requirements, leading to administrative burdens.
iii. This proposed insertion is unreasonable and arbitrary and violates the basic concept as the Central Government is seeking to take over the entire process. The Waqf Board under the

existing law can be authorized to undertake the entire process if at all the portal and database needs to be introduced in relation to Waqf properties. Introducing Central Government's role for registration, accounts, audit, or any other details of Waqf and the Board is clear violation of the Waqf properties. Waqf is a private, religious, charitable properties which includes Mosques, Qabristan, Orphanage, etc. must be free to be managed and administered by religious denominations. The same cannot be administered like the proposed amendment as prescribed by Central Government

iv. It is admired that the definition of "portal and data base" has been proposed to be inserted as (ka) in section 3, but similar provision should be also inserted for the State Government to keep the account of the property and audit of the same after registration.

v. Mutawalli can be removed for non-Filing but no other adverse consequence would follow. Some liability be created for officials if they fail to upload within a prescribed time limit- WAMSI achieved just less than 50% digitization in 15 years.

3.5.5 <u>On omission of clause (p) defining "Survey Commissioner"</u>

i. Survey Commissioner/Settlement Commissioner is the highest officer of the states so far as survey is concerned and is competent person to head the survey. Collector is a Revenue Officer and he is not expert in the field of survey, therefore, Settlement Commissioner is required to be retain as Survey Commissioner.

ii. The shift of survey responsibilities from Survey Commissioners to District Collectors aims to improve efficiency and accountability in the waqf survey process. District Collectors have greater administrative authority, resources, and access to local records, allowing them to better manage and monitor waqf land.

iii. The amendment should be revised to reinstate the provision that establishes the role of the Survey Commissioner. This role is essential for ensuring specialized oversight and management of Waqf properties, allowing for a nuanced understanding of both legal and religious aspects.

3.5.6 On amendment in Clause 3 (ix) (r) related to dedication of Waqf only by such persons practising Islam for at least five years

i. The condition of a person practising Islam for last five years is unconstitutional. State and its authorities cannot be concerned to check the religion of the donor of Waqf properties. There is no mechanism to identify "who is a Muslim" or a "Practising Muslim" except for the fact that the individual himself states this fact. In this background, the Collector or any other officer of State cannot be given this power to determine whether a self-acquired property was given in Waqf by Muslim or a Non-Muslim. This will amount to violation of individual's freedom of conscience and free profession, practice and propagation of religion.

ii. "Practising Islam for at least five years" is an affront to the Muslim community. In no other statute such provision is there for any other community. Also, if a non-Muslim wishes to contribute to the charitable cause like Waqf, s/he should not be debarred. Hence this proposal should be dropped.

iii. Discrimination against New Converts: The requirement that only a practising Muslim for at least five years can create a Waqf marginalizes new converts to Islam, violating Islamic principles of equality and inclusion within the faith. It also adds a danger of requiring a "certificate of practice" which will be another level of both marginalization and otherization.

iv. While definition of Waqf as given in the Waqf Act, 1995 is "the permanent dedication by any person, of any movable or immovable property for any purpose recognised by Muslim law as pious, religious or charitable", a lot of traditions, customs and rituals prevalent in Dargahs for a very long time are different and are not able to be contained in this definition or are not found in the Muslim law as pious, religious or charitable. Therefore, there is a need for a separate law for these Dargahs and their connected Waqfs, to preserve their true nature, unique and old traditions, customs and rituals.

v. Certifying someone's religious practice could lead to disputes and possible misuse of the provision. It remains unclear who would certify such practice, and this could open up legal challenges in cases where the waqif's religious adherence is questioned after the dedication of property.

vi. Moreover, this clause could face legal challenges under Article 14, which ensures equality before the law, as it imposes unequal standards on individuals based on the length of their religious practice.

vii. In the introductory section, it is proposed to replace the words "any person, of any movable or immovable property" with the phrase "any person who has been professing and practising the Shia Muslim, Sunni Muslim, Aghakhani Muslim, or Bohra Muslim faith for at least five years and is competent to contract." Additionally, the following criteria are recommended:

(a-ii) The individual is born to Muslim parent(s),

(a-iii) The individual has either lived with Muslim parents or has been raised by a separated Muslim parent until the age of 18 (in cases where the parents were married under the Special Marriage Act, 1954), and

(a-iv) The individual is not married to a non-Muslim under the Special Marriage Act, 1954.

viii. This Five years period should be extended to Seven Years as the process of waqf is irreversible or only Muslim by birth should be allowed to waqf his property.

ix. Upon converting to any religion, an individual becomes a full member of that community, with equal rights and powers. Conversion itself is lawful, with only forced conversions being restricted in certain states. Furthermore, conversion does not alter one's relationship with their property. Since conversion is a private decision and ownership is a private right, public law should not dictate how individuals choose to use or transfer their property.

x. There is no mechanism to verify whether a man or a woman is practicing Islam for five years or more. It is a subjective matter which cannot be objectively verified. Hence, it is proposed that the definition clause be suitably amended to stipulate that only a person who is Muslim by birth can create a waqf.

3.5.7 <u>On omission of Section 3(r)(i) dealing with 'waqf by user'</u>

i. This proposed deletion is unreasonable and inappropriate. The proposed amendment to remove the concept of 'waqf by user' is completely arbitrary deletion. Religious and charitable places adopt the nature of the religious usage like Mosque, Graveyard, etc. and by mere usage of it, it becomes Waqf for a defined purpose provided that the land is owned by the waqif before the waqif dedicates it for the said purpose. Muslim law does not require an express declaration of a waqf in every case.

ii. The meaning of 'Waqf by User' is - 'if the property has been in use since time immemorial'. The Hon'ble Supreme Court has already clarified the meaning of 'waqf by user'. It means, 'since time immemorial'. Immemorial means beyond memory. The meaning which has been given by the Hon'ble Apex Court is 'beyond memory' -- may be fifty years or hundred years.

iii. Traditionally, these properties were recognized as waqf based on long-term usage. With this provision omitted, such lands may no longer automatically qualify as waqf, leading to potential legal disputes and challenges for communities that have used these areas for centuries.

iv. Should be replaced by "use for the Period of 12 Years as per the Limitation Act".

v. We welcome proposed Section 3 (A) which deletes earlier provision regarding waqf by user. Waqf by user was one of the most misused provision in the Waqf Act.

vi. "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."***(M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das*, (2020) 1 SCC 1 : 2019 SCC OnLine SC 1440 at page 695).** This concept of a waqf by user has also found statutory recognition in Section 3(r) of the Waqf Act, 1995.

vii. "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 [Faqir Mohamad Shah v. Qazi Fasihuddin Ansari, AIR 1956 SC 713]

viii. Especially in Uttar Pradesh, Delhi, and other areas, 95% of the old and large waqfs will be affected, and they will be lost because, particularly, the documents of some of the centuries-old large mosques cannot be found today.Similarly, the mosque and the land attached to it will no longer remain waqf. Under the existing Act, they are considered to be valid auqaf, which is why, to this day, those places of worship and the land attached to them are largely protected. Waqf by user, as a judicial doctrine and rule of evidence, is also recognised and approved by the five judge bench of the Supreme Court in the Babri Masjid Case.

3.5.8 <u>For amendment in Section 3(r)(iv)dealing with definition of waqf-alal-aulad</u>

i. The intention of the waqif is paramount. This will create confusion and would result in a conflict where the waqif has himself made a provision in the waqf deed for applying the income of the waqf to a particular purpose or purposes when the line of succession fails.

ii. In Waqf alal-aulad, maintenance of widow, divorced woman and orphan is not only sought to be added but the methodology will be decided by the Central Government. This again in an interference in the Personal Law.

iii. This is a welcoming restrictions on Waqf- alal-Aulad. Several Muslim countries have abolished/ restricted it to two or three Generations

iv. Inheritance rights of women are well established in Islam as is the right of the person to create Waqf-alal-aulad. The said amendment curtails the right of Muslims on both counts and is impinging on Muslim Personal Laws.

v. It is proposed in sub-section 2 of section 3A in the bill of the Principal Act that the creation of waqf-alal-aulad shall not result in denial of inheritance of heirs including the women heirs in the waqf, but the original section 3(r)(iv) of the Principal Act has defined "waqf-alal-aulad" which can be created as waqf to the extent of property dedicated for any purpose recognized by Muslim Law for pious religious or charitable provided the

line of succession fails". If the word "when the line of succession fails" continues in sub-clause (iv) and at the same time, proposed sub-section 2 of section 3(A) is enacted, there will be contradiction between two clauses because the line of succession when fail, the waqf can be created but in the proposed bill when the line of succession still survives with the heirs including women heirs, the necessary definition of "waqf-lal-aulad" seems to be futile. Therefore, the proposal to amend sub-section 2 of section 3A although is most welcome but the provision in the Principal Act that "the line of succession fails" requires for the committee to decide whether to remove the same or make some other provision.

vi. This violates article 26 and 29 of the Constitution and the proposal needs to be dropped.

vii. The concept of waqf-alal-aulad was used to deny rights to women heirs. In this background the proposed amendment which clarifies that waqf-alal-aulad must not result in denial of inheritance rights to the donors' heirs including women heirs is a welcome step. This was necessary to ensure gender justice and avoiding discrimination to women heirs as many scholars' express opinion that family waqf was resorted to defeat women's rights to inheritance and for the aggrandisement of a family. The proposed provision thus makes a balancing act between right to create family waqf and rights of women to inherit.

viii. Whereas, in Islam, the validity of waqf depends on the intentions of the person making the waqf; they can dedicate it to any charitable purpose they wish. The same cannot be altered by anyone.

Examination by the Committee

3.6.1 Several stakeholders and Waqf Boards have expressed that both the Aghakhani and Bohra communities fall under the broad category of the Shia Muslims and hence creation of a separate Waqf Board for them will lead to societal Divisions among the Muslim community. On this issue the Ministry has submitted as given:

> "The proposed Amendment further expands the representation of other communities (Aghakhani and Bohra communities). As per the Section 13(2)(A) the establishment of separate Waqf Boards (wherever needed) for Aghakhani and Bohra, will help in giving fair representation to these communities in managing

their waqf properties. Moreover, it has been clarified that the decision on the criterion for establishment of Bohra and Agakhani Boards has been left to the State Government to decide."

3.6.2 The Ministry was queried regarding the rationale behind the decision to grant Collectors a more prominent role in the management of Waqf properties. In its response, the Ministry submitted as given:

"Collector being the head of the land record administration in the district, and having the required resources and expertise, will help in ensuring the authenticity of the land transaction including Government land. He will conduct an enquiry determining the status of property being Government or not and submit the report to the State Government and no further power of adjudication has been given to Collector from the powers of Waqf Board".

3.6.3 In respect of defining Government property, the Ministry have stated as given:

"As per State Waqf Boards data received on 05.09.2024, a total of 5973 government properties have been declared as waqf properties in 25 out of 32 States/ UTs Waqf Boards.(This dataset does not cover data from 7 States/ UTs viz. Bihar (Shia), Chandigarh, Karnataka, Kerala, Odisha, Telangana and Uttar Pradesh (Sunni) as it has not been received from respective State Waqf Boards in this context)."

3.6.5 As per Archaeological Survey of India, many State Waqf Board has issued notifications (in later dates) declaring Protected Monuments as 'Waqf Property' which have resulted in conflict in exercise of powers delegated under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASR) Act, 1958. An indicative list of protected monuments notified as waqf is attached at **Annexure G**.

3.6.6 The Ministry of Housing and Urban Affairs have stated in their submission as under:-

"After 58 years of land acquisition, in exercise of the powers under Sub-Section (2) of Section 5 of the Wakf Act, 1954, based on a Survey done by Commissioner Wakf, declared a large number of properties(land) which also included 108 Properties under the control of L&DO and 138 properties under the control of DDA as Waqf Properties and brought into litigation".

3.6.7 Supporting the insertions of Sections 3 (fa &fb) , Ministry of Housing and Urban Affairs in their submission have stated as under

> "Under the definition of "Government Organisation", all Government and Government-controlled organisations have been brought under its ambit. Similarly, any movable and immovable property owned by such Government organizations has been defined as "Government Property". These proposed clauses were absent in the Wakf Act 1995 or Wakf Act 1954, leading to claims by Waqf Board on Government Properties, overlapping with the provisions of other legislations. Now that "Government Property" has been defined, it lays the bedrock of the provisions for the manner of treatment of Government properties in the context of Wakf Act in the subsequent sections."

3.6.8 The Committee was also informed by the Ministry of Road Transport and Highways that Government property as proposed under Section 3(fb) in the Waqf (Amendment) Bill, 2024 should also include land acquired as defined under Section 3D (2) of the National Highways Act, 1956. They have however supplanted that the nature of waqf land acquired under the provisions of the National Highways Act, 1956 varies from structure to mosque to graveyard. The compensation paid in such cases is always determined fairly under the provisions of the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act). They have further submitted:

> "It has also been assured that all possible efforts are made to avoid acquisition of sensitive Waqf properties such as graveyard, eidgah and mosques. In exceptional cases where alignment cannot be altered due to engineering constraints such properties are acquired through the District Administration which takes the local Waqf Board and the community in confidence and works out a consensual approach to the appropriate relocation/ reconstruction of structures and delivery of possession."

3.6.9 Regarding proposed introduction of a portal and database, the Ministry stated that one of the key drivers behind the Amendment Bill was the incomplete submission of Waqf-related details on the WAMSI (Waqf Assets Management System of India) portal. The Ministry highlighted that the lack of comprehensive and accurate data on the portal posed significant challenges in ensuring efficient management and oversight of Waqf properties.

3.6.10 The Ministry have stated that the portal and online registration system, can significantly enhance the management and administration of waqf properties.

3.6.11 The Committee sought clarification on the rationale for the requirement that only individuals who have practiced Islam for at least five years are eligible to dedicate a waqf. They also requested an explanation of the term “practicing Muslim” within this context and asked whether there is a distinction between being a "Muslim" and a “practicing Muslim.” The Committee emphasized the need for clear definitions to avoid potential ambiguities or misinterpretations that could affect individuals' eligibility to establish waqf properties.

3.6.12 In their reply the Ministry have stated that for practicing Islam for a period of 05 years ‘no certification is required’. A reasonable time period of 5 years is prescribed so that the person concerned has reasonable time for faith in the religion.

The Ministry have also clarified the change from allowing "any person" to dedicate property to waqf to requiring "any person practicing Islam of 5 years" to do so is a proposal made after, considering the original legislative intent post-Independence. (Waqf can be made by a person professing Islam). Therefore, the proposal is mainly to restore the earlier definition that existed before the Amendment Act, 2013.The Ministry have furnished a chart showing the definition of Waqf in various Acts since 1954 which is given below:

Sec 3(l) Wakf Act, 1954

Sec 3(l) “wakf” means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes...

Sec 3(r) Wakf Act, 1995

Sec 3(r) “wakf” means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious religious or charitable and includes...

Sec 3(r) Waqf Act, 1995 (as Amended in 2013)

“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…

Sec 3(r) Waqf Amendment Bill 2024

“Waqf” means the permanent dedication by any person practising Islam for at least five years, of any movable or immovable property, having ownership of such property,” for any purpose recognised by the Muslim law as pious, religious or charitable and includes…

3.6.13 The Ministry have further clarified as under

"Any aggrieved person can approach competent court of law for redressal of grievances".

3.6.14 On the question ofthe rationale for preventing non-Muslims from donating for the noble causes for other communities and whether such practices have resulted in unfair or corrupt practices in the name of the waqf, the Ministry have replies as under.

> "As per Section 72(1)(v)(f) of the Waqf Act, 1995 there is no restriction on donations in the form of movable property/cash or in kind by Non-Muslims. Non-Muslims cannot create waqf, as per the sec 3(r) of the Waqf (Amendment) Bill, 2024."

3.6.15 Several Stakeholders have expressed before the Committee their misgivings that with the deletion of 'waqf by user' clause, the legal position of all waqf properties especially historical properties would come into question, in response the Ministry of Minority Affairs have categorically clarified before the Committee as under :-

> "Sir, Waqf deed is mandatory only for new Waqfs. That is clear in the Act…. Therefore, for registered waqf properties, there is no mandatory requirement for a Waqf deed".

3.6.16 The Ministry has further clarified:

> "Section 39(3) provides that if the Board has reason to believe that any building or property used for religious purposes, instruction, or charity—whether before or after the commencement of this Act—has ceased to be used for that purpose, they must apply to the Tribunal for an order directing the recovery of possession of such building or property.
> It implies that Waqf Board can approach Tribunal for recovery of possession of building or property which was used for religious purposes, instructions, or charities and has ceased to be used for that purpose."

3.6.17 The Ministry was asked to state categorically how the deletion of Section 3(r)(i) in the Amendment Bill, will impact the protection and management of auqaf specifically historical and unregistered waqf properties that were previously safeguarded under this clause. They also wanted to know how the removal of the "waqf by user" provision would affect the legal status of properties that are currently recognized as waqf solely based on their usage. In reply The Ministry of Minority Affairs have submitted as under:

"The removal of this provision does not affect registered Waqf just because they are not having Waqf deed"

"Section 3B (1) & (2) of the Waqf (Amendment) Bill 2024, ensures protection for properties that were declared as Waqf by user prior to the commencement of the Waqf (Amendment) Act, 2024. The details of Waqf and the property dedicated to the Waqf shall be filed on the central portal and database within six months of the Act's commencement. The details required include, **inter alia the deed of Waqf, if available**. Therefore, for registered Waqf properties, there is no mandatory requirement for a Waqf deed. This ensures that existing registered Waqf properties will not be reopened due to the absence of a Waqf deed".

3.6.18 The Ministry of Law and Justice in their submission has clarified their position on the omission of the 'Waqf by User' provisions and its ramifications as under

It is submitted that Waqf (Amendment) Bill, 2024 proposes to omit "waqf by user" as the Bill also proposes that every new waqf shall be created by waqf deed only. The "waqf by user" relies heavily on historical usage without formal documentation, which creates ambiguity and unnecessary litigations. The proposed amendment shall apply prospectively.

3.6.19 To a query on how omission of Waqf by User will impact the manner in which Muslims currently manage their Waqf properties they have further stated as under :-

It is submitted that the proposed amendment omitting section 3 (r) (i) (waqf by user) is applicable with the prospective effect and amendment in section 36 proposes that no new waqf can be created without a waqf deed.

3.6.20 One stakeholder in their submission has cited Supreme Court judgments (M. Siddiq (D) Thrlrs Versus Mahant Suresh Das & Ors 2020 (1) SCC 1) and other judgements that uphold the concept of 'waqf by user', emphasizing that properties used for public religious worship over time can be deemed waqf, even in the absence of formal dedication. The Committee sought the views of the Ministry as to how the proposed amendment account for this jurisprudence, and what alternative legal provisions will ensure that long used religious properties remain protected. The Ministry of Minority Affairs have replied as under:-

"Section 39(3) provides that if the Board has reason to believe that any building or property used for religious purposes, instruction, or charity—whether before or after the commencement of this Act—has ceased to be used for that purpose, they must apply to the Tribunal for an order directing the recovery of possession of such building or property.

Section 39(4) The Tribunal may, if it is satisfied, after making such inquiry as it may think fit, that such building or other place-

(a) is Waqf property;

b) has not been acquired under any law for the time being in force relating to acquisition of land or is not under any process of acquisition under any such law, or has not vested in the State Government under any law for the time being in force relating to land reforms; and

(c) is not in the occupation of any person who has been authorized by or under any law for the time being in force to occupy such building or other place, make an order-

(1) (i) directing the recovery of such building or place from any person who may be in unauthorized possession thereof, and

(2) (ii) directing that such property, building or place be used for religious purpose or instruction as before, or if such use is not possible, be utilized for any purpose specified in sub-clause (iii) of clause (e) of sub-section (2) of section 32.

It implies that Waqf Board can approach Tribunal for recovery of possession of building or property which was used for religious purposes, instructions, or charities and has ceased to be used for that purpose."

3.6.21 On the question that several state laws related to Hindu religious endowments allow for temples and other religious structures to be recognized based on their usage. Similarly, various state laws governing Hindu religious institutions, such as the Odisha Hindu Religious Endowments Act, 1951 and the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, recognize religious endowments based on usage, the Ministry have submitted as under :-

"Waqf Administration is not purely religious but a socio religious institution (Sachar Committee Report 2006). The Waqf Act 1995 is central legislation meant to regulate matters related to administration of waqf properties.

The duties, functions, and powers of the Central Waqf Council are to oversee the functioning of the State Waqf Boards and for calling information from or direct State Boards to correct any irregularities in functioning. It also plays an advisory role. It does not exercise direct control over waqf property itself.

Furthermore, State Waqf Board shall exercise its powers under this Act to ensure that the Auqaf under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes of which such Auqaf were created or intended.

The functions of the Central Waqf Council and State Waqf Boards clearly shows that it is not entirely religious practise and regulation or restricting any economic, financial, political or other secular Activity which may be associated with religious practice, can be regulated by the State.

Sec 96 of the Waqf Act 1995 clearly mentions power of Central Government to regulate secular activities of auqaf in relation to the functioning of Central Waqf Council and State Waqf Boards. "Secular activities" shall include social, economic, educational and other welfare activities".

3.6.22 The Ministry of Law and Justice have also clarified this point as under :-

"It is submitted that there is no specific Central Act to regulate Hindu community custom and usage in relation to creating religious Endowment. In the case of Nawab Zain Yar Jung and Others v. The Director of Endowments and Others, 1963 (1) SCR 469, the Apex court has explained the difference between waqfs and religious endowments. The court stated:This question has been considered by the Privy Council in Vidya Varuthi Thirtha v. Balusami Ayyar. Mr. Ameer Ali who delivered the judgment of the Board observed that "it is to be remembered that a "trust" in the sense in which the expression is used in English law, is unknown to the Hindu system, pure and simple. Hindu piety found expression in gifts to idols and images consecrated and installed in temples, to religious institutions of every kind, and for all purposes considered meritorious in the Hindu social and religious system ; to Brahmins, Goswamis, Sanyasis, etc... When the gift is directly to an idol or a temple, the seisin to complete the gift is necessarily effected by human agency. Called by whatever name, he is only the manager or custodian of the idol or the institution.... In no case is the property conveyed to or vested in' him, nor is he a trustee in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for maladministration."

They have further clarified as under :-

"Besides above, there is one difference that waqf property cannot be alienated through sale, gift, mortgage, etc. whereas as per section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 to 1959), Hindu religious

endowment have the right of alienation subject to approval of the Government. It is henceforth submitted that the Waqf is different from a religious endowment. The religious endowment is created for specific religious or charitable purpose whereas the dedication of waqf is the endowment of property to Allah for the pious, religious or charitable purpose and it is irrevocable as recognised by the Muslim law. The purpose of the Waqf Act, 1995 is for the better administration of auqaf and the matters connected thereto for the purpose of its proper and uniform maintenance and regulation.

Therefore, administration of property cannot be equated with a practice of a particular religion. The waqf and the Hindu temples and other religious institutions are regulated through the statutes either by the State Legislature or the Centre to regulate their activities and manage their affairs. The Hindu temples and properties are governed under the State religious institutions and charitable endowments institutions laws. Whereas auqaf are governed under a central legislation, i.e. Waqf Act, 1995.

3.6.23 It was noticed that many waqf properties have been established over time through community use without formal dedication, reflecting both cultural and religious traditions. They therefore desired to know the potential consequences of removing the concept of 'waqf by user' on the preservation of historically significant properties that have served as religious and charitable endowments for centuries. The Ministry were asked to state as to how they intended to reconcile 'The Ancient Monuments and Archaeological Sites and Remains Act' (or AMASR Act) with the proposed Waqf Amendment Bill, 2024 in this regard. In their reply the Ministry of Minority Affairs have stated that:

> "3C(2) to 3C(4) lays down the process of validation of Government lands (like ancient monuments and archaeological sites). The Collector will dispose the cases following the due process and submit his report to State Government".

Observations/Recommendations of the Committee

3.7.1 The Committee, after thorough deliberation on the amendments proposed to existing definitions and on the inclusion of new definitions proposed in the clause under examination and after taking into consideration the views and suggestions of various

stakeholders and the justification furnished by the nodal Ministry, are of the view that proposed definitions of Collector, Government Organisations, Government Property, portal and database and amendments to the definition of mutawalli and waqf are in tandem with the other amendments proposed in the Bill with the intention to streamline the waqf property management, reduction in the number of litigations, expanding the scope of beneficiaries of waqf, etc. Thus, the Committee have decided to accept the amendments proposed except for amendment proposed vide Clause 3(ix).

3.7.2 Regarding the proposed amendment stipulating that only a person practicing Islam for at least five years will be permitted to dedicate any movable or immovable property as waqf, the Committee proposes the following amendment to Clause 3(ix)(a):

> **"In the opening portion, for the words "any person, of any movable or immovable property", the words "any person showing or demonstrating that he/she is practicing Islam for at least five years, of any movable or immovable property, having ownership of such property and that there is no contrivance involved in the dedication of such property,"**

3.7.3 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."

3.7.4 Further, as regards the amendments to the definition of 'waqf-alal-aulad' wherein through proposed amendments the scope of benefit will be further expanded for maintenance of widow, divorced woman and orphan in such a manner, as may be prescribed by the Central Government, the Committee after considering various submissions recommend that the intention of the waqif should be taken into account while deciding the beneficiaries of a waqf. Accordingly, following amendment to Clause 3(ix)(c) is proposed:

"(c) in sub-clause (iv), after the word "orphan", the words ", <u>if waqif so intends</u>," shall be inserted.

CLAUSE-4

4. The Clause 4 of the Bill proposes to insert new sections after Section 3 of the Principal Act.

Provisions Proposed in the Amendment Bill

4.1 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.

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

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.

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

(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;

(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;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

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

(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.

(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:

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.

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

Justification/explanation given by the Ministry of Minority Affairs

4.2.1 The justification furnished by the Ministry for the proposed amendment is as under:

4.2.2 For creation of waqf by lawful owner of property

"Section 3A (1) provides that no person shall create a waqf unless he is the lawful owner of the property and competent to transfer or dedicate such property. Introduction of 3A is necessary to justify that a lawful owner and competent to transfer, can only make permanent dedication of the property as waqf. Competent to transfer means person competent to transfer property as per Section 7 of Transfer of Property Act 1882. Therefore, now it is being made compliant to the Transfer of Property Act, 1882.

The salient features of Transfer of Property Act, 1882 are as follows:-.

Competency to contract: The person must be legally competent to enter a contract. This generally means the person should be of sound mind, not a minor, and not disqualified from contracting by any law.

Entitlement to Transferable Property: The person must have the legal right to the property they intend to transfer. This could be through ownership or authorization to dispose of the property.

Manner of Transfer: The transfer can be done either wholly or in part, and either absolutely or conditionally. The transfer must be carried out in the manner allowed and prescribed by the law in force at the time."

4.2.3 For'waqf-alal-aulad' not denying inheritance rights to hiers

"Under section 3A(2) it is stated that the creation of 'waqf-alal-aulad' shall not result in denial of inheritance rights of heirs, including women heirs. The intended socio-economic consequences are to ensure that the all the heirs of the waqif including women heirs get a fair share in inheritance and when the line of succession ends, the benefit of the waqf reaches to wider sections of society and waqif shall be lawful owner of the property."

4.2.4 For updation of information on portal and database

"3B (1) & (2) of the Waqf (Amendment) Bill 2024, ensures protection for properties that were registered as waqf prior to the commencement of the waqf (Amendment) Act, 2024. The details of waqf and the property dedicated to the waqf shall be filed on the portal and database within six months of the Act's commencement.

The details required include, *inter-alia* the deed of waqf, if available. Therefore, for registered waqf properties, there is no mandatory requirement for a waqf deed.

As per Waqf Amendment Bill 2024, Sec 3B (1)&(2) for auqaf registered before the Waqf (Amendment) Act, 2024, they must submit details about the waqf and its dedicated property on the designated portal and database within six months of the Act's commencement.

These details should *inter-alia* include the following particulars:

- The identification and boundaries of waqf properties, their use and occupier;
- The name and address of the creator of the waqf, mode and date of such creation;
- The deed of waqf, if available

As reported on Waqf Assets Management System of India (WAMSI) portal, for 30 States/UTs- there are 32 Boards, the total area of waqf immovable properties as available on the WAMSI portal is 38.16 lakh acres (the Boards have uploaded data in different units, which have been converted into acres) excluding UP Sunni waqf land because of apparently erroneous entries. This area of land pertains to 3,56,051 waqf Estates, (having 8,72,328 waqf properties) the details of which are already uploaded on the WAMSI portal.

This data only needs to be uploaded on the portal after the commencement of waqf (amendment) Act 2024.

As on 30th September, 2024, WAMSI Portal contains details of the 3,56,051 registered waqf Estates (8,72,328 waqf properties). As per Section 3B of the Waqf Amendment Bill, every waqf registered under this Act shall file the details of the waqf and the properties dedicated to the waqf on the portal and data within the period of six months. This statutory requirement can ensure that all waqf property details are regularly updated and maintained on a Central portal and database, thereby enhancing transparency. In view of above, the amendment Bill proposed for completion of updation work in 6 months."

4.2.5 <u>For Wrongful Declaration of Government property as waqf property</u>

"As per the Bill 2024, the Section 3C shall have retrospective effect. Any Government property identified or declared as waqf property, before or after the commencement of this Act, shall not be deemed as waqf.

It is submitted that under the proposed amendment to insert section 3C, only the burden of proof has been shifted to the person/organization who is claiming such property of the waqf. It is not correct that Government property cannot be claimed to be waqf property, however, to deal with the case of wrongful declaration of government property as a waqf property, legal procedure as specified under sub-sections (2), (3) and (4) of the said section shall be followed for such determination.

As per data received on 05.09.2024 from 25 out of 32 States/UTs waqf Boards, a total of 5973 government properties have been declared as waqf properties.

Collector being the head of the land revenue administration will help in validation of government land. In the case of Laxman Purshottam Pimputkar v. State of Bombay, AIR 1964 SC 436, the Court held that order of the Collector if, had to be supported by reasons in writing and therefore, could be made only after holding an inquiry which implied a hearing by the Collector to the contesting parties and the consideration of oral and documentary evidence adduced by them. Hence it is not violative of Article 14 of the Constitution.

- ASI informed that 280 protected monuments have been declared as waqf properties.
- MoHUA informed the JPC during their presentation on 05.09.24, 108 properties under control of Land and Development Office, 130 properties under control of Delhi Development Authority and 123 properties in the public domain were declared as waqf properties and brought into litigation.

Furthermore, Sec 83(2) provides the right to any person aggrieved to approach Tribunal. As per the proposed Amendment, if there is no Tribunal or the Tribunal is not functioning, any aggrieved person may appeal to the High Court directly."

Now in the proposed Amendment, the functions have been given to the collector for due validation of Government land and expeditious survey of Auqaf. In case the said property is a Government property, the State Government on the receipt of the report will direct the State waqf Board to make corrections in the records (waqf register).This provision will help in validating the government land and reducing litigation."

Gist of submissions by various Waqf Boards:

4.3.1 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

4.3.2 On creation of waqf by lawful owner

(i) Andhra Pradesh waqf Board:- No objection, existing position is also the same. This is just being highlighted with a doubt that waqfs are being created without owning the property.

(ii) Karnataka State Board of Auqaf:- Under the Islamic law, the properties dedicated as waqf shall have to be done its respective owners and Islam doesn't permit anyone else to dedicate properties as waqf.

(iii) Kerela Waqf Board:-The proposed sub-section (1) is a replica of the law on waqf. Therefore, there is no legal necessity for such an amendment.

(iv) RajasthanWaqf Board:- Section 3(A)(2) of the amended Act is against the law because every waqf is a legal gift.

4.3.3 On 'waqf-alal-aulad' not denying inheritance rights

(i) Andhra Pradesh waqf Board:- There may not be any objection rather it is desirable.

(ii) Karnataka State Board of Auqaf:- The proposed amendment under Section 3A(2) is bereft of any rationale or logic. Once a person enters the fold of Islam is bound by its tenets, obligations, duties, privileges restrictions and prescriptions. This amendment puts fetters to his freedom and is violative of Fundamental rights guaranteed under Article 25 and Article 300A of the Constitution.

(iii) Kerala WaqfBoard:- The proposed sub-section (2) is totally unconnected with the object of the Act, viz, management/administration of a property. In fact, it imposes certain restrictions on ones' right to dispose a property. The fundamental concept of law on waqf is that 'once a waqf always a waqf. Hence nobody including the legal heirs cannot challenge its validity after the death of the waqif. Pending cases before the Board/Tribunal will be adversely affected by this amendment. The law on waqf and law on inheritance are different personal law subjects and therefore, they shall be dealt with separately according to Shariat law. Therefore, Parliament cannot, under the guise of waqf management, impose a new condition which was not stipulated in the personal law on waqf.

(iv) Maharashtra Waqf Board:- This proposed amendment by way of proposed Section 3A(2), undermines the religious sanctity of waqf and introduces legal ambiguity into a practice that has been clearly defined in Islamic law for centuries. We suggest that language may be amended to "(2) The creation of a waqf-alal-aulad shall not result in denial of inheritance rights of heirs,

including women heirs, of the waqif, except as provided by the Muslim Law governing such waqif and his/her heirs."

(v) Rajasthan Waqf Board:- When a waqfkar/donor donates his property, he does so by terminating his rights and those of his successors because after the donation of the donor, the property becomes vested in the purpose of the donation and the rights of the donor himself are also extinguished.

(vi)Uttar Pradesh Sunni Waqf Board:- This amendment is against the very concept of waqf as a waqf property is neither alienable nor heritable. It will nullify the waqf-alal-aulad itself.

(vii)Bihar Sunni Waqf Board& Bihar Shia Waqf Board :- This amendment gives right of inheritance. The property of waqf cannot be parted through inheritance; however, heirs of waqif can be a beneficiary as per waqfnama.

(viii) **West Bengal State Waqf Board :** - Inheritance is applicable only in a personal and secular property of the properties where the person is an owner. After death of the owner, his legal heirs can only inherit the property of the deceased. But in the concept of waqf where the waqf is validly made, claim of inheritance is a foolish approach and completely beyond the law.

4.3.4 Filing of Details of waqf on Portal And Database

(i) Andhra Pradesh waqf Board:- It is not practicable as the required details may not be available for many ancient waqfs and perhaps only meant to create uncertainty about such waqfs.

(ii) Karnataka State Board of Auqaf:- The proposed insertion under Section 3B(1) & (2) is arbitrary and virtually impracticable. The amendment is liable to be rejected.

(iii) Punjab Waqf Board:- a) the name and address of the creator of the waqf, mode and date of such creation; b) the deed of waqf, if availableshould be mandatory for waqf by deed, for waqf by user as proposed in this document, revenue record or proof of existence prior to enforcement of Act of 1954 or survey sheet supported by revenue record should be allowed. It is not possible to know the exact date of creation of the historical Masjids or those that were left post partition incidents.

(iv) Kerela Waqf Board:- The details of registered waqf have already been entered in a portal called WAMSI, which is being maintained by the Board as per the directions of the Central Government. As per the provisions of the Act, two lists of Auqafs are available in a State, namely:- (1) the waqf list maintained by the State Government after survey. Such a list is published in the Gazette after complying detailed survey procedure envisaged in Chapter II. Since, it is a Gazette publication the conclusiveness of validity of such a publication will apply as provided in the Bharatiya Sakshya Adhiniyam, 2023.

(2) A Register of Auqafs is maintained by Waqf Board under section 37. In short, there exists a database of waqf property maintained by each State Government/State Waqf Boards and hence there is no legal necessity for the amendment, insisting a new portal.

(v)Maharashtra WaqfBoard:- It is suggested that time period for filing details of registered waqfs and properties dedicated to the waqf on the portal should be one year from the date of creation and establishment of a functional portal. This is being suggested for practical reasons and for the sake of effective implementation of the provisions of the proposed act.

(vi) Rajasthan Waqf Board:- After the Waqf Act 1954 came into effect, the State Government appointed a waqf Survey Commissioner and published the waqf properties in the Gazette. It is improper to re-portalize and database them. After that, for the waqf that came into existence after the Waqf Act, 1995 came into effect, the State Government appointed a Survey Commissioner and conducted surveys, which are yet to be notified. In this, a period of 6 months is inevitable.

It is unnecessary to include this section because Sections 36 and 37 of the Waqf Act, 1995 provide for recording of full details of the property and the properties are already recorded with full details. Insertion of Section 3(b)(2) will create unnecessary confusion.

(vii)Uttar Pradesh Sunni Waqf Board:- We have serious objections to the creation of a portal for the registration, accounts, audit or other details of the waqf and the Board by the Central Government.

(viii)Bihar Sunni Waqf Board:- Six month is not sufficient. It should be increase from six months.

4.3.5 Wrongful Declaration of Government property as waqf property

(i) Andhra Pradesh Waqf Board:- This does not specify that who will identify and what will be the limitation period for this identification. This is to open a flood gate of claiming every waqf property as government property. Because wherever, as per the old Act, objection period of one year after the publication in gazette is over the notification has attained finality and cannot be opened. Any Act cannot reopen retrospective action which has been done legally.

(ii) Karnataka State Board of Auqaf:- The proposed insertion of Section 3C(1)(2)(3)(4) is arbitrary and *ultra-vires* as it disturbs the settled issues and virtually nullifies 1965 and subsequent notifications. It takes away the force behind section 52, 54 and 104B of the WaqfAct 1995. Inbuilt redressal mechanism will be totally affected. It is a well settled principle of law that the revenue authorities are not empowered to decide the title of the properties. This will result in a situation wherein the Collector would become a complainant and a judge as well, on his own cause which is opposed to the law of the land, principles of natural justice, equity and fair play. Wakfs have been in existence from times immemorial and they are being used as places of worship, burial grounds, Eidgas, etc. They predate the Registration Act of 1908 and the land survey conducted in India during 1802 to 1852. Even in cases where documents were available, they have been lost due to antiquity, illegibility, etc of documents in custody of the Government and waqf institution as well. If the Collector is given unbridled power to adjudicate upon the title of the declared and notified waqf properties, the board will be reduced to the status of a mute spectator and this will result in great prejudice caused to all waqfs. Needless to say, that the proposed amendment is violative of fundamental rights.

(iii) Telengana Waqf Board:- The Government can conduct an inquiry as it deems fit and irrespective of the usage or existence declare that this is government property and change the revenue records.

The Supreme Court has said that Revenue Authorities cannot decide title. Here the Collector or a Deputy Collector has been given the power to decide its own title. This is against the basic principles of natural justice that no man should be a judge in his own cause.

(iv) Punjab Waqf Board:-It is suggested that a new proviso be inserted:

"Provided that any property declared as waqf after survey by the Government under the provisions of Waqf Act, 1954 or the Waqf Act 1995 or any property declared as waqf which was reflected as being of Muslim religious or charitable use in revenue record at any time prior to the enactment of the Waqf Act, 1954 shall not be called into question under this provision."

"Provided further that the properties which were declared as waqf after survey by the revenue department of the concerned state shall also not be called into question under this provision."

(v) Kerela Waqf Board:-By the amendment, a retroactive effect is given to the provision and that there is every chance for unsettling the settled cases which may create chaos in society. It is a deliberate move to create rift between State Government and a particular religious group. The State Government is the competent authority to take decision as how to dispose their property/land for other public purposes.

(vi)Maharashtra Waqf Board:- Granting the Collector, who is a government officer, to solely identify and decide on the ownership of properties to decide whether they belong to the Government or not is a one-sided mechanism to favor the interests of the Government. The said amendment gives undue powers to the Government to appropriate waqf properties without following due procedure of law. Additionally, the said provision gives the Collector the said power retrospectively to form such a decision on properties which have already been declared waqf properties before the commencement of the Act.

As already available in prevailing laws, the ownership of any waqf property can be decided by the competent authority in the instance any dispute arises in such a case.

(vii)Rajasthan Waqf Board:- 3(c)(1) is unnecessary and misleading. Many properties used for Muslim purposes are by nature waqf properties and cannot be treated as government properties. Giving the power to the Collector to determine the waqf property under Section 3(c)(2, 3, 4) is against the law and is contrary to the Waqf Act. For determining the waqf properties, a special Waqf Tribunal has been constituted in the court in which the subordinate officer of the High Court is of the District Judge cadre.

(viii) Uttar Pradesh Sunni Waqf Board:- The Collector himself being a functionary of the State the question must be referred to the Tribunal or a Civil Court.

The question if a property is a waqf property or a Government property can only be adjudicated upon in a judicial proceeding by a competent court of law. There is no provision for affording an opportunity of hearing to the person interested in the waqf and the Collector is required to decide the question unilaterally. There must be a provision for appeal against the report of the Collector. The status of waqf would cease to exist automatically the moment a question is referred to the District Magistrate and the consequences of not treating the property to be a waqf property till the Collector submits is report would be chaotic. There is strong likelihood of sheer abuse of this provision.

There is no time limit prescribed for submission of report by the Collector and the Collector may keep the same pending for whatever period. The scope of judicial review is completely missing which may lead to anarchism. The power to decide the question must be given to the Tribunal or the Civil Court.

(ix)Bihar Sunni Waqf Board:- The immovable properties were in use from hundreds of years and these waqf properties were not claimed by the descendents of the donor in successive Revenue Surveys. So, these were continuously marked as Government properties while these were private at the time of donation. Keeping the word "before" will not be factually correct. The waqf properties which are being used for hundreds of years even before the independence will become disputed. This will leads to a possibility of disturbing social harmony and law and order problem of the State.

A large number of private properties donated (as waqf) turned into government properties in consecutive Revenue Surveys. Secondly, if during the dispute resolution, use of said properties in religious works like offering of Namaz or burial of dead bodies, etc are prevented then social harmony and law and order shall be affected.

Suggestions/comments by various stakeholders and experts

4.4.1 Important suggestions/comments received from various stakeholders and experts are summarised as under:

4.4.2 On creation of waqf by lawful owner

(i) This Bill also addresses a longstanding issue in waqf administration: the conditions under which property can be endowed as waqf. The amendment stipulates that only the legal owner can endow property as waqf.

(ii) It is suggested that the conditions under 3 (r) may also be added to this clause so that it reads as "3A. (1) No person shall create a waqf unless he is an exclusive & lawful owner of the property, a Muslim as per section 3 clause (r) above, competent to contract and competent to transfer or dedicate such property.

(iii) This proposed insertion is unconstitutional and arbitrary.

(iv) To Clause 3A (1) of the amending bill a note should be added to the following effect *"(1A) On and from the commencement of the waqf (Amendment) Act, 2024, no waqf shall be created without the execution of a waqf deed."*

(v) This provision is in accordance with the law of waqf under Muslim Personal Law.

4.4.3 On 'waqf-alal-aulad' not denying inheritance rights

(i) By enabling descendants of any degree to claim shares in properties already consecrated as waqf, the Waqf Bill, 2024 attempts to redefine 'waqf-alal-aulad'. This redefinition could complicate the inheritance rights of female legal heirs, contradicting core principles of Muslim law. Furthermore, it conflicts with various provisions of the Transfer of Property Act, of 1882, particularly Section 18, which asserts that the desires and intentions of the deceased consecrator shall govern the endowed properties in perpetuity.

(ii) It ensures that the creation of "waqf-al-Aulad"— primarily a family waqf—does not infringe upon the inheritance rights of heirs, especially women. This is a significant step towards ensuring gender equality within the framework of Islamic endowments.

(iii) This condition shall result in regulating one's freedom to use his or her property in the way he or she wants to use the same. This provision is unconstitutional.

4.4.4 On filing of Details of waqf on Portal and Database

(i) This provision is an unnecessary regulatory measure. For an existing waqf, since last hundreds of years, this kind of provision cannot be made workable. There will be innumerable waqf properties which are 'waqf by user' for which express deed of declaration is not mandatory requirement.

(ii) In case the waqf deed is not available & the property belongs to a non-Muslim person, a Non-Governmental Property held by a non-Muslim society/ trust/ organization/ institution/ body/ association/ non-Muslim place of worship or involved in community or public welfare or a property of archaeological importance not yet been notified by the Archaeological Survey of India and related such property, the Board shall forward an application for obtaining a no objection certificate to the District Judge, the District Judge after satisfaction regarding the genuineness, validity and correctness of particulars therein shall issue a no objection certificate, which shall be uploaded in place of the deed. Where the District Judge in his inquiry finds that the property, wholly or in part, is in dispute or a Government property, the waqf in relation to such part of property shall not be registered and, unless the dispute is decided by a competent court & the custodian of the property under such dispute shall be as per the directions of the court."

(iii) Six months time for filling details on the portal is too short and must be enhanced to five years.

(iv) In view of proposed Section 3A whereby only a lawful owner of the property competent to transfer or dedicate such property can create a waqf, title deeds have necessarily to be included in proposed section 3B(2).

(v) Many waqf boards and managing bodies, especially in smaller towns or rural areas, might face difficulties due to the digital divide.Consider extending the compliance deadline to a minimum of 5 years to ensure all waqfs have sufficient time to meet the filing requirements without undue burden.Offer support, particularly to small and underfunded waqfs, to help them digitize records and meet compliance requirements effectively.

(vi) In case of non-compliance, verification by the competent authority will take place and if the ownership or entitlement of waqf property could not be verified appropriate legal action should be prescribed as per law against the surveyor.

4.4.5 Wrongful Declaration of Government property as waqf property

(i) Collector is a direct representative of the Government. He is an executive officer. Determination of title is a judicial or at least a quasi-judicial function. Such a wide discretion cannot be given to the Collector. Any dispute of wrong registration may be dealt with by the Tribunals and Courts as per prevailing law in the country.

(ii) This proposed insertion is unconstitutional and arbitrary.

(iii) Proposed Section must be within the realms of the Civil Court rather than Collector. Court may direct collector to submit his report but any declarations regarding ownership must be made by the competent court only. Or a National Enquiry Commission should be constituted to review the ownership of the waqf Properties across the country.

(iv) District Collectors, being general administrative over burden officers, might not have the expertise required to handle complex waqf-related legal issues. There is also concern about the potential for political interference and bias in these decisions.

(v) After the words “correction in the records” the following may be added: and the Board shall thereupon carry out the necessary corrections within one month of the receipt of such directions from the State Government.

(vi) While the collector’s role in overseeing land records and disputes is acknowledged, mechanisms must be in place to ensure an independent and fair resolution when the government itself is involved.

(vii) The Collectorcannot be presumed to understand all religious significance of waqf, and therefore, cannot render appropriate protection.

Examination by the Committee

4.5.1 When asked to explain the concept of waqf-alal-aulad, the Ministry has submitted as under

> "The basic purpose of waqf -alal-aulad is to partly provide benefit to the family or the descendants of the Waqif and partly for charitable, religious or pious purposes When the line of succession fails, the entire income of the waqf shall be spent on education, development and welfare as per existing provision section 3 (r) (iv)".

4.5.2 To a query on the evolution of legislation on 'waqf-alal-aulad, the Ministry have provided as under :-

> "1. Privy Council Ruling (1894): The Privy Council ruled that waqf-alal-Aulad was invalid because waqf should serve public religious or charitable purposes, not just family benefits. This decision caused dissatisfaction among Indian Muslims.
>
> 2. Mussalman Wakf Validating Act (1913): In response to the dissatisfaction, the 1913 Act was passed to legalize waqf-alal-Aulad. It allowed family auqaf, where income benefited the family first, but required the waqf to eventually serve charitable purposes after the family line ended.
>
> 3. The Mussalman Wakf Act 1923 did not consider waqf-alal-aulad created as per Mussalman waqf Validating Act 1913 as waqf.
>
> 4. The Mussalman Wakf Validating Act, 1930,was enacted to provide retrospective effect to the Mussalman Wakf Validating Act of 1913. It not only restored the provision of Act of 1913 but also gave it a retrospective effect.
>
> 5. Waqf Act of 1954: States that "a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable;"
>
> 6. Waqf Act of 1995: States that "a Wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, and "wakif" means any person making such dedication."
>
> 7. Waqf Amendment Act 2013: States that "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"

4.5.3 The Ministry was asked to clarify whether till the time the line of descendants continue, is a 'waqf-alal-aulad' registered with the Waqf Board and if it is registered, then does it pay the existing 7% contribution to the Waqf Board. The Ministry clarified as given:-

> "waqf-alal-aulad having pious, charitable and religious purpose, to that extent they have to pay (not exceeding) 7% contribution on the net annual income of not less than Rs. 5000, derived by the waqf. Waqf-alal-aulad are registered with the Board".

4.5.4 To a query on how the insertion of provisions related to Waqf -alal-Aulad impacts the present legal position, the Ministry of Law and Justice have clarified as under :-

> "It is submitted that this enables that the creation of waqf-alal-aulad will not result in denial of inheritance rights of legal heirs of the wakif, including women. Furthermore, the purpose of creating waqf-al-aulad will also include the maintenance of widow, divorced woman and orphan".

4.5.5 To a query on how the government would monitor and ensure compliance of section 3A (2) of the Waqf (Amendment) Bill, 2024; so that creation of Waqf-alal-aulad does not deny the inheritance rights of heirs including those of women especially in rural or less regulated areas.

They have clarified as under :-

> "It is submitted that the Government does not intend to regulate inheritance or succession of Muslims. The proposed amendment provides enabling framework for ensuring the protection of substantive right of heirs including women heirs as per their personal laws".

4.5.6 To a query on how will the centuries old waqf properties procure deeds, in case they have to get themselves mandatorily registered within 6 months, the Ministry of Minority Affairs in a written answer have clarified as under:-

> "As per waqf Amendment Bill 2024, Sec 3B (1)&(2) For auqaf registered before the Waqf (Amendment) Act, 2024, they must submit details about the waqf and its dedicated property on the designated portal and database within six months of the Act's commencement.
>
> These details should inter-alia include the following particulars:
>
> 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;
> c) <u>The deed of waqf, if available.</u>"

The Ministry have further clarified as given:

> "For the existing registered waqf properties, deed is not mandatory. The waqf deed execution is compulsory for new waqf that will be created after the commencement of the Waqf (Amendment) Act, 2024, Section 36(1A).
>
> Further, as per Section 43 of the Waqf Act, 1995, any waqf which has been registered before the commencement of the Waqf Act 1995, it shall not be necessary to register the waqf under the provisions of this Act and any such registration made before such commencement shall be deemed to be registration made under this Act.
>
> From the above, it is submitted that for the existing registered waqf properties, deed is not mandatory. The specimen Form to be uploaded containing details of waqf properties are given along with Waqf Act 1995 and specimen copy of Waqf Deed which is being mandatory under this bill for the new registration of waqf, are reproduced below:-
>
> As on date, WAMSI Portal contains details of the 3,56,051 registered waqf Estates, the details of which are already uploaded on the WAMSI portal. This data only needs to be uploaded by the respective waqf boards in consultation with respective Mutawallis after the commencement of waqf (amendment) Act 2024".

4.5.7 To a query on the doubts raised by several stakeholders regarding the non-availability of deed of several historical and older waqfs which were being used under 'waqf by user' and now with the omission of waqf by user, how the clause 3B1 and B2 would impact them, the Ministry have submitted as under:-

> "**The removal of this provision will not adversely affect existing waqf, registered prior to the commencement of the waqf (Amendment) Act 2024:** Section 3B (1)&(2) of the waqf (Amendment) Bill 2024, ensures protection for properties that were declared as waqf by user prior to the commencement of the waqf (Amendment) Act, 2024. The waqf and the property dedicated to the waqf shall file their details on the central portal and database within six months of the Act's commencement. The details required include, among other things, **the deed of waqf, if available**. Therefore, for registered waqf properties, there is no mandatory requirement for a waqf deed. This ensures that existing registered waqf properties will not be reopened due to the absence of a waqf deed"

4.5.8 The Committee sought clarification from the Ministry regarding the number of waqf properties registered with it that were established through deeds and whether the Ministry held possession of all such deeds.

> "The Ministry have further informed that, according to the waqf Assets Management System of India (WAMSI) portal, there are 32 waqf Boards across 30 States and Union Territories. These Boards collectively reported 8.72 lakh (872,000) waqf properties, of which 4.02 lakh (402,000) properties are waqf by user designation. For the remaining waqf properties, Ownership Rights Establishing Documents (or deeds) have been uploaded on the WAMSI portal for 9,279 cases. Additionally, 1,083 waqf deeds have also been uploaded. Since uploading these deeds is currently voluntary, many waqf Boards have not yet uploaded all relevant documents to the portal."

4.5.9 The Ministry has however clarified that the waqf deed execution will be compulsory for new waqf created after the commencement of the waqf (Amendment) Act, 2024. [Sec 36(1A)]

> "After the proposed Amendment, no new waqf shall be executed without execution of waqf deed. The details required include, inter alia, the deed of waqf, if available. Therefore, for registered waqf properties, there is no mandatory requirement for a waqf deed. Sir, also there is another provision under Section 39(3) of the waqf Act, 1995. Section 39(3) provides that if the Board has reason to believe that any building or property used for religious purposes, instruction, or charity – whether before or after the commencement of this Act – has ceased to be used for that purpose, they must apply to the Tribunal for an order directing the recovery of possession of such building or property. It implies that waqf Board can approach Tribunal for recovery of possession of building or property which was used for religious purposes, instructions, or charities and has ceased to be used for that purpose."

4.5.10 To a question on the documents that are uploaded for the registration of waqf property on the WAMSI portal, the Ministry have stated that under Section 3B(2) of the Bill the following details are required to be uploaded on portal:

S.No.	Requirement
1	Identification and boundaries of waqf properties, including use and occupier.

2	Creator's details: name, address, mode, and date of waqf creation.
3	Deed of waqf, if available
4	The present mutawalli and its management
5	Financial Information - Gross annual income from waqf and Annual Land Revenue, ceases, rates and taxes
6	Expense estimate - annual realization of waqf property income.
7	Allocation of waqf funds: - Mutawalli salary and individual allowances - Religious purposes - Charitable purposes - Other purposes
8	Litigation status: details of ongoing court cases involving waqf properties.
9	Any other additional information as required by Central Government

4.5.11 To a query on Government property not being claimed to be waqf property *ab initio* and the need for provision such as Section 3(C), the Ministry have submitted as under :-

"It is submitted that under the proposed amendment to insert section 3C, only the burden of proof has been shifted to the person/organization who is claiming such property of the waqf. It is not correct that Government property cannot be claimed to be waqf property, however, to deal with the case of declaration of government property as a waqf property, legal procedure as specified under sub-sections (2), (3) and (4) of the said section shall be followed for such determination. As per data received on 05.09.2024 from 25 out of 32 States/ UTs Waqf Boards, a total of 5973 government properties have been declared as waqf properties. Collector being the head of the land revenue administration will help in validation of government land".

4.5.12 The Ministry was asked the need for having clause 3C when there are pre-existing laws and mechanisms for recovery of government land from unlawful possession of waqf and what

new element was being included through proposed amendments, the Ministry have submitted as under:

> "The waqf Amendment Bill 2024 being a law dealing with waqf properties exclusively and needs a specific provision for recovery of government properties. As per the provisions of the Amended Waqf Bill, the Collector is to make an enquiry to ascertain/ determine whether such property is a Government property of not. Once it is ascertained that such property is a Government property after due inquiry then only the Collector validates such property as Government property. The proposed enquiry process is reasonable because in many cases, the ownership documents for waqf properties are not available or may not clearly indicate nature of ownership (whether waqf or Government). Pre-existing laws do not provide specific mechanism to deal with unclear ownership situations, particularly involving waqf. Therefore, the pre-existing laws are not helpful for recovery of government land from unlawful possession of waqf".

4.5.13 The Ministry of Housing and Urban Affairs supporting this clause have submitted as under:

> "The provisions of section 3C(1) prohibits the declaration of Government property as Waqf property. Further, the provisions of Section 3C(2) and 3C(3) propose to put into place a just and apt mechanism empowering the collector concerned, who is the legal custodian of the land revenue records, to make inquiry and determine the status of a property as Government property or otherwise. In the eventuality of the Collector determining a property as Government property a report is to be sent by him after making the necessary corrections in the revenue records, to the State Government. Therefore, the provisions under Section 3C(2) and 3C(3) do not bestow upon the collector un-tramelled powers in this regard.
>
> Hence, the amendments at Section 3C(1), 3C(2) and 3C(3) proposed by way of the present bill would obviate unilateral declaration of even Government properties as wakf properties. These provisions for Government properties also lend transparency and credibility to the entire process of title determination"
>
> For the purposes of illustration and for exploring the matters of overlapping jurisdiction, and identifying the consequential difficulties, the case of Land Acquisition for the National Capital is explained.
>
> i. The former colonial Government issued a Notification No. 775 dated 21-12-1911 under the provisions of the Land Acquisition Act of 1894 for acquiring 126 villages in 2 mouzas i.e Delhi Tehsil and Ballabhgarh Tehsil, admeasuring about 451 sq km (approx.) in and around Delhi for the construction of a new capital city. The said acquisition process was duly completed with the payment of full compensation and hence under the provisions of the Land Acquisition Act the said lands vested in the Government from the year 1911-15, free from all encumbrances.

ii. Thereafter in the year 1954 the Waqf Act was passed by the Parliament. In the year 1969 the Waqf Commissioner acting under the new law carried out a survey. The Delhi Waqf Board during 1970-77 in an act of haste, declared a number of government owned properties as 'Waqfs' under Section 5(2) of the Waqf Act, 1954 through a Gazette notification.

iii. This matter was challenged in Addl. Sessions court and Judgment/ Decree in suits for declaration dated 31st January, 1974 **(Annexure H)** stated that:

"this suit coming on this day for final disposal before me in the presence of the advocates of plaintiff and defendant. It is observed that the plaintiff suit is decree for declaration is hereby passed in favour of plaintiff against the defendant to the effect that the property in dispute is the property of the Union of India and the inclusion of the same in the list of wakf published in the impugned gazette notification is wrongful illegal null and void and is not binding on the plaintiff-government. No order as to costs."

iv. It is germane to note that this anomaly could creep in and occur because of Section 3 (l)(i), Section 5 (3), 40 ,Section 107, and 108A of Wakf Act 1954. It is further pertinent to mention here that the Waqf Act 1995 has provisions of overlapping jurisdiction with the Land Acquisition Act 1894, which has resulted in bringing into dispute such land over which the Government had already acquired an unimpeachable title upon conclusion of the statutory process of land acquisition under the Act of 1894. This foisted upon the Government various litigations.

v. In this context, a case in point is that of the Zabta Ganj Mosque (details at **Annexure H**). The Delhi Waqf Board declared this property, which was acquired under Land Acquisition Act 1894, as Waqf property in 1970. In fact, the property was also mutated in favour of "Sarkar Daulatmadar" after its acquisition. Yet, after 58 years of land acquisition, in the exercise of the powers under Section 5(2) of the Wakf Act, 1954, based on a Survey done by Commissioner Waqf. Consequently, the Delhi Waqf Board, vide Notification No. 166/69 dated 10th December, 1969 published in the Delhi Gazette dated 16th April, 1970 in Delhi Gazette (page no. 308, Sl. No. 17) declared the Zabta Ganj Mosque as Waqf Property. This ignores the very fact that these were that the property in question was given under an agreement between Governor General in Council and the Sunni Majlis-e- Aukaf (formed under the Delhi Muslim Wakf Act 1943) executed in 1945 for being used for religious purpose as a mosque. The deed of agreement unequivocally mentioned that the ownership of the land vested in the Government. There were restrictions imposed under the said deed of agreement with regard to carrying out alterations/repairs of the existing building(s) without the prior sanction of the Government, construction of shops without the prior consent of the Chief Commissioner, use of the property as residence without prior permission of the Government, etc. Thus, despite there being no hindrance in use of Zabta Ganj Mosque as a Mosque, yet Zabta Ganj Mosque was declared as Waqf property, as detailed above, and ownership and title of Government land was sought to be unilaterally undermined in the process. Therefore, the Section 3C(1), Sec 36(7A) in

the proposed amendment is crucial to avoid such wrongful declaration of Government Properties as Waqf property.

To sum up, Waqf Act 1995 renders revenue records as secondary evidence when it comes to establishing property rights and therefore, to maintain parity, uniformity and prevent contradiction, this responsibility being shifted to the Collector is a reformative step.

The aforesaid proposed sections in Waqf (Amendment) Bill 2024, would prevent wrongful declaration of Government properties. At the same time a competent court would have the authority to adjudicate the matter. This would establish judicial supremacy in this domain.

Therefore, this Ministry supports the insertion of Section 3(fa), Section 3(fb), Section 3C (1), 3C (2) and 3C (3), Section 5(2A), 5(2B), Section 36(7A); the deletion of Section 3 (l)(i), Section 3 (r)(i), Sec 40, Section 107 and 108A and the substitution of Section 4, Section 5 (3) and Sec 37(3)"

4.6.14 As per Archaeological Survey of India, many State Waqf Board has issued notifications (in later dates) declaring Protected Monuments as 'Waqf Property' which have resulted in conflict in exercise of powers delegated under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASR) Act, 1958. An indicative list of protected monuments notified as waqf is attached at **Annexure G**. And the details of litigation on protected monuments claimed as 'Waqf property' is given at **Annexure F**.

4.6.15 ASI have also submitted before the Committee that the Waqf Board also restricts them from carrying out conservation/maintenance works in such protected monuments. There are various instances where waqf authorities have carried out several additions and alterations in the original structure of protected monuments by themselves, which adversely hampers the authenticity and integrity of the protected monuments, some of which are mentioned below:

a. Dual authority at monument of national importance gives rise to conflicts and administrative issues. The representatives of waqf or Committee members involved in the monument sometimes take decisions unilaterally which are in conflict with the ASI policy. In some cases, even entry of ASI staff is restricted in certain parts of a monument on the pretext of privacy. Sometimes, waqf claim their ownership over the monument, which leads to management issues.
b. The representative of waqf or Committee members or Muttawalli associated with the monument sometimes allow photography, guiding, sale

of materials etc. in protected monuments in contravention of AMASR Act, 1958. In case of Dargah of Chistiya Maulin, Fatehpur Sikri, the Dargah Committee has issued guide licenses. This has been objected by local guides holding licenses from competent authority.

c. Representative of waqf or other related persons involved in the monument have undertaken construction, additions or alterations within premises of protected monuments or occupied portions of the monument. All these activities are in contravention of the provisions of AMASR Act, 1958. Eg.Jama Masjid, Jaipur and Dasturkhan's Masjid at Astodia.
d. In some monument, commercial activities are allowed by the representative of waqf or Committee members involved. Further, additions & alteration in the original structure of monument have been taken up to make shops so that they can be rented out for commercial activities. All these activities hamper routine conservation / maintenance of the monument. Eg. Atala Masjid, Jaunpur , where the management committee does not let the ASI to perform any conservation work. New constructions have been done in eastern, northern and southern side of the mosque by the management committee. Shops have also been developed on either sides of the main entrance. They did not allow ASI to fix any Protection Notice Board at the monument. ASI had approached District Administration for removal of the encroachments.
e. In Lal Masjid at Jaunpur, repairs and renovation work is being carried out by the management committee without informing the ASI. It is very difficult even to enter such monuments. Therefore, number and nature of encroachments could not be ascertained.
f. Sometimes other functions, activities, etc. are allowed in the monument. Installation of fittings and fixtures, instruments and devices (like loud speakers, coolers, lights fixtures, etc.) in the masonry of the monument leads to the disintegration / weakening of the masonry and also mar the aesthetic value of the monument.
g. All the above said activities are in violations of AMASR Act, 1958 and also jeopardize the proper maintenance of the monument in its original form.

4.6.16 To the query as to which are the amendments proposed in the Bill that could address the specific issues or difficulties faced by the ASI, the Ministry of Culture submitted as under:

> "In this regard, it is requested that a specific clause may be inserted as suggested below:
> After Section 3C of the waqf (Amendment) Bill, 2024 the following section may be inserted, namely:-
> "3D. Any declaration or notification issued under this Act or under any previous law in respect of waqf properties, shall be *void ab-intio*, if such properties were either a protected monument or a protected area, at the time of such declaration or

notification, under the provisions of the Ancient Monuments Preservation Act, 1904 or the Ancient Monuments and Archaeological Sites and Remains Act, 1958".

4.6.17 Several stakeholders have expressed their reservations with enhancing the role of collectors especially in waqf property dispute resolution. Since property disputes often involve complex legal and administrative issues,the Ministry were asked to reply how the Collector's involvement as the head of the land and revenue division in a district may expedite waqf property dispute resolutions:

"Section 3C(2)- (4) It lays down the process of validation of Government land following the due process. If there is any dispute over whether a property is a Government property, it should be referred to the Collector with jurisdiction. The Collector will conduct an inquiry and determine the property's status, then submit a report to the State Government. Until the report is submitted, the property will not be considered waqf property. If the Collector concludes that the property is Government property, he must update the revenue records and report to the State Government.

Collector being the head of the land record administration in the district, and having the required resources and expertise, will help in ensuring the authenticity of the land transaction including Government land. He will conduct an enquiry determining the status of property being Government or not and submit the report to the State Government and no further power of adjudication has been given to Collector from the powers of Waqf Board.

Collector has been given several functions in the existing Act as following:

• Section 7(6): Collector to recover the damages as arrears of land revenue as decided by the Tribunal.

• Section 28 provides for the implementation of the decisions of the Board.

• Section 34 provides for the recovery of the amount that Mutawalli has misappropriated, misapplied or fraudulently retained etc.

• Section 52(1)(2) and (4) relates to the recovery of the property by the Collector based on the requisition of the Board. Any person aggrieved can appeal against the same to the Tribunal.

• Section 52(5) provides the collector to obtain possession of the property if the order has not been complied.

• Section 68(2) provides for the duty of Mutawalli or committee to deliver possession of records etc.

• Section 91(1) provides the mechanism under the Land Acquisition Act, 1894 to serve a notice of acquisition by Collector to the Board within the time limit of three months. This notice gives the Board three months to participate in the proceedings and make representations.

• Sec 109(2)(xii)- This provision states that the Collector must follow the rules in Section 52 to recover property transferred in violation of the Act. If property is transferred against the Act's rules, the Collector is responsible for getting it back using the procedures in Section 52.

Now in the proposed Amendment, additional functions as following have been given to the collector:

(i) for due validation of Government 3C(2) to 3C(4)- It lays down the process of validation of Government land. Collector will dispose the case following the due process and submit his report to State Government.

(ii) Survey- Sec 4(1) and 4(4)- After the commencement of the Act, Collector instead of Survey Commissioner will make survey following the revenue laws of the State and the report shall be submitted to the State Government. The responsibilities previously held by the Survey Commissioner under the waqf Act, 1995 such as overseeing the survey of waqf properties, will now be managed by the Collector.This change aims to streamline the process and integrate it with the existing administrative framework, as Collectors are already involved in various land and property-related matters.

(iii) Mutation -Sec 5(3) – The revenue authority, before deciding mutation in land records, in accordance with Revenue laws in force, shall give a public notice of 90 days, in two daily news papers 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.

(iv) Registration -Section 36(7) of the Waqf Amendment Bill, 2024 specifies that the Collector must inquire into the genuineness and validity of the waqf application before registration. This amendment aims to ensure that only legitimate waqf properties are registered, enhancing transparency and accountability in the management of waqf assets.

Collector has to function as per the provisions of the Act. Furthermore, Section 83(2) provides the right to any person aggrieved from the report of the Collector may approach Tribunal".

4.6.18 The Ministry of Housing and Urban Affairs supporting this clause have submitted as under:

The proposed amendment under Section 4 of the Bill provides for substitution of the "Survey Commissioner" by the "Collector". Under the extant legislative dispensation under the Waqf Act 1995 as also under the waqf Act 1954, survey of

Waqf properties is carried out by the Survey Commissioner. This survey finally culminates in declaration of property as Waqf through a Gazette Notification. However, it is the Collector concerned who has the custody of revenue records, thereby making the Collector aptly placed to undertake the survey as envisaged under the Waqf Act. Such beneficial official position vis-a vis the revenue records is not available to the Survey Commissioner.Hence the proposed amendment in Section 4, as is being introduced by the present Bill is a much-needed rectification.

Observations/Recommendations of the Committee

4.7.1 The Committee, after thorough deliberation on the amendments proposed to defining certain conditions of creating a waqf, accept the amendment defining the condition of making a waqf that only a lawful owner of a property can dedicate it as waqf is acceptable.

4.7.2 As regards the conditions stated for creation of waqf-alal-aulad, the Committee have proposed further amendments. Accordingly, the following amendment is recommended in Clause 3A(2).

"after the word 'Waqif' the words 'or any other rights of persons with lawful claims' shall be inserted.

4.7.3 As regards the proposed new Section 3B (1) and (2) regarding filing of details of every registered waqf properties on the portal and database within six months and the details that needs to be filed, the Committee while accepting list of details to be filed on the portal as given in Clause 3B(2), are of the opinion that a window should be kept open for filing of details of the registered waqf property even after the lapse of the period of six months in genuine cases by making the following amendment to the proposed Section 3B(1) under Clause 4:

"Provided that Tribunal may, on an application made to it by the Mutawalli, extend the period of six months under this section for such period as it may consider appropriate, if he satisfies the Tribunal that he had sufficient cause for not filing the details of the waqf on the portal within such period."

4.7.4 On the new Section 3C(1) dealing with wrongful declaration of waqf, the Committee accept the recommendation that any government property identified as or declared as waqf property, shall not be deemed to be a waqf property. Nonetheless, the Committee have received strong objection on the proposal of delegating the power of determining whether a property is a waqf property or Government property to the Collector. The Committee feel that in such a scenario the decision of appointing an official to conduct an inquiry in cases of wrongful claims on government property by Waqf Board should be left to the State Government. The Committee therefore, recommend the following amendments to the proposed Sections 3C (2), (3) and (4):

(i) In Clause 4, in the newly proposed Section 3C(2), after the words 'Government property,' for the words "the same shall be referred to the Collector having jurisdiction who shall make such inquiry as he deems fit,", the words, "State Government may by notification designate an Officer above the rank of Collector hereinafter called the designated officer, who shall conduct an inquiry as per law," shall be substituted;

(ii) In Clause 4, in proviso to Section 3C(2), the word "Collector" be substituted with the word "designated officer";

(iii) In Clause 4, in proposed Section 3C(3), the word "Collector" be substituted with the word "designated officer";

(iv) In Clause 4, in proposed Section 3C(4), the word "Collector" be substituted with the word "designated officer".

CLAUSE- 5

5. The Clause 5 of the Bill proposes to amend the Section 4 of the Principal Act.

Relevant provisions of the Principal Act:

5.1 Existing provisions of Section 4 are as under

"**Preliminary survey of auqaf.—**

(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:

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:—

(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."

Provisions Proposed in the Amendment Bill

5.2 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.

Justification/explanation given by the Ministry of Minority Affairs

5.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Clause 5 of the Bill seeks to substitute section 4 in the Principal Act relating to preliminary survey of waqf. The responsibilities previously held by the Survey Commissioner under the Waqf Act, 1995 such as overseeing the survey of Waqf properties, will now be managed by the Collector. Collector being the head of the land revenue administration in the district, and having the required resources and expertise, will help in ensuring the proper survey of the auqaf properties and quick updates to land records, in accordance with the procedure in revenue laws of the State. This change aims to streamline the process and integrate it with the existing administrative framework, as Collectors are already involved in various land and property-related matters."

Gist of submissions by various Waqf Boards:

5.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under

(i) Haryana Waqf Board:- In Haryana, a comprehensive three-tier system is already in place for the survey of Waqf properties. This system involves the coordinated efforts of Divisional Commissioners across all revenue divisions, alongside Deputy Commissioners and Sub-Divisional Magistrates in each revenue sub-division, with additional support from the relevant Tehsildars and Naib-Tehsildars. Together, these officials are tasked with conducting thorough and accurate surveys of Waqf properties, ensuring proper oversight and accountability at every administrative level.

(ii) Andhra Pradesh Waqf Board:- If any institution other than the Survey Commissioner conducts the survey, the waqf perspective or Islamic perspective would be missing, leading to the erosion of waqf properties. Surveying waqf properties requires not only technical knowledge of survey operations but also the verification and reconciliation of Waqf and Revenue records. This process is challenging and time-consuming; Collectors and District officers lack the time to manage their regular duties, which could result in the survey and registration of new Waqfs being delayed. Survey Commissioners are typically IAS officers, often more senior than Collectors.

The amendment empowers the collector with the role of Survey Commissioner regarding the pending surveys. This shall be against the legal principles as a person/agency cannot be judge of his own cause. It is also settled law that Revenue authorities cannot decide title of a land. Title can only be decided by Civil Courts or Waqf Tribunal in particular. Abolishing the provision to do a second survey for omitted Waqf properties will only help the encroachers and land grabbers.

(iii) Telangana State Wakf Board:-Transferring the powers of the Survey Commissioner to the Collector is opposed on the grounds that survey of Waqf properties requires special and dedicated attention and notifying the properties expeditiously. If this work is assigned to Collectors, it will enormously enhance their work load and delay the process of notifying the properties.

On the issue of reopening of surveys, under the old Act notified Waqf properties cannot be tinkered with unless there is an Order from the Competent Authority. Omission of 4(1A), 4(2) and 4(3) of the Principal Act is one of the most serious issues which will give Government sweeping powers in respect of any property.

(iv) Uttarakhand Waqf Board:- The suggested system is already in place in the state of Uttarakhand and has been notified. All applications received are sent to District Magistrate to provide information on few points which include information regarding to ownership of land, dispute, encroachment etc.

For the properties which are already registered as waqf, case to case analysis may be carried out and they may be kept out of the ambit of new waqf survey as most of these properties have been listed only after the Government notification .

A time line for the survey of waqf properties should be introduced .

(v) Madhya Pradesh Waqf Board:- If all the district collectors are made survey commissioners in place of one survey commissioner in the state, the survey will be conducted legally on time and only the legal properties will be able to be registered as Waqf property.

In the event of a re-survey, questions will be raised on the earlier survey conducted by the District Collector and Waqf Survey Commissioner and there will be a possibility of a dispute. It is therefore suggested to survey those properties which are registered as Waqf but not surveyed

previously and that before registering the Waqf properties, obtaining the NOC of the District Collectors can be made mandatory.

(vi) Karnataka State Board of Auqaf:- The Preliminary Survey of Auqaf is done under the supervision of Survey Commissioner. This process indicates the exact boundaries and extent of waqf land before notifying the land under section 5 of Waqf Act. Removal of Preliminary Survey will lead to incomplete data, inability to issue any Corrigendum, if need be and will lead to unnecessary litigations.

The proposed substitution of the term "Collector" in place of Survey Commissioner would seriously affect the better administration of waqf properties since the Survey Commissioner functions as a State Authority having jurisdiction over all the Collectors.

There is no necessity of transferring the survey cases which are before the Survey Commissioner to the Collectors as the Survey Commissioner functions as a state authority having jurisdiction over all the Collectors.

The proposed omission of sub-sections (1A), (2) and (3) will have serious repercussion on the list of Auqaf already maintained by the State Government and the respective Boards of Auqaf, in accordance with law.

The proposed omission of sub-section (6) is to be retained since subsequent surveys are required for movable and immovable properties which are going to be dedicated and it is a continues process for which the data base of such properties has to be notified, maintained and updated.

(vii) Maharashtra Waqf Board:- The removal of the office of the Survey Commissioner would prove detrimental to Waqf board, since the same would be replaced by the Collector, who is an appointee of the Central Government. The Collector, with the power of determining whether a property is waqf or not, would favour the interests of the Central Government, thereby bringing in Governmental control and regulation on a subject matter purely under the personal laws of the Muslim community.

The collector is not an expert on personal laws involving Waqf and may not be an independent party in such cases, thus creating prejudice and bias against Muslim community when dealing with waqf properties.

Additionally the collector is not an expert on personal laws involving Waqf and may not be an independent party in such cases. Hence appointment of the collector into this office would create prejudice and bias against Muslim community when dealing with waqf properties.

(viii) Kerala State Waqf Board:- Collectors are already overburdened with multiple functions under various laws and survey being an activity which requires special expertise. It may therefore not be possible for Collectors to perform their additional function effectively in a time bound manner.Survey and allied activities fall within the exclusive legislative domain of State Government.

(ix) Uttar Pradesh(Sunni) Waqf Board:- "I must bring to the notice of all of you that the Survey Commissioner in Uttar Pradesh is the Principal Secretary Minority Affairs, earlier the Principal Secretary Revenue. There is no separate officer as Survey Commissioner. The Additional Survey Commissioner for a district is the Collector of that district. That is there for the last 50 years. It was done by the Collectors of the districts."

The U P Sunni Waqf Board while supporting the this clause have submitted that in respect of the Survey of auqaf the Collector should authorize only a Deputy Collector who is a Revenue Officer for the same instead of a district officer who may be a Government doctor, a District Minority Welfare Officer, District Disabled Welfare Officer, etc.

(x) Tamil Nadu Waqf Board:- The survey Commissioner appointed under Waqf Act, 1995 itself is vested with enough powers. The State Government under the Waqf act, 1995 maintains a list of Auqaf as required.

(xi) Rajasthan Waqf Board:- The amendments made in 4 (a and b) are unnecessary and against the law. The Survey Commissioner is appointed by the State Government, who is a subordinate officer of the State Government, and is specifically appointed for survey. Giving his powers to the Collector is erroneous and improper as the Collector has additional burden of other works.

Suggestions/comments by various stakeholders and experts:

5.5 Suggestions/comments received from various stakeholders and experts is summarised as under:

i. The Waqf Bill, 2024, intends to grant absolute authority to the Collector while withdrawing powers from the Survey Commissioner of the State. The Survey Commissioner is typically a senior officer within the state government's revenue department and is often more senior than the district Collector.

ii. The amendment reduces the power of the Settlement Commissioner by transferring authority to the Collector, a junior authority, for land measurement and decisions related to Waqf property. This change might lead to a dilution of authority and create inconsistencies, as the Collector is expected to follow the Survey Commissioner's records without the same level of authority to measure land or assess Waqf properties.

iii. Transferring the Waqf Board's authority to identify and protect Waqf properties to Government authorities, would result in widespread appropriation and encroachment of Waqf lands by private parties or Government entities, effectively stripping the Muslim community of its religious and charitable endowments.

iv. The Collector is head of Government machinery in a district and as per Second Administrative Reforms Commission Report, he is already overburdened. Survey Commissioner is a specialised officer of the Government itself as opposed to Collector who is a Generalist. However, detailed qualifications for the Survey Commissioners post needed to be laid down.

v. Waqf survey should be done by a committee constituted by the District Officer instead of the District Officer. It should include the Waqf Mutawalli and two Pasmanda Muslim members of the concerned committee.

vi. The Collector should not have the final authority in matters concerning the identification and registration of Waqf properties and his role should be limited to an advisory or supportive function, under the direction of the Waqf Survey Commissioner.

vii. The shift of survey responsibilities from Survey Commissioners to District Collectors aims to improve efficiency and accountability in the waqf survey process. District Collectors have greater administrative authority, resources, and access to local records, allowing them to better manage and monitor waqf land.

viii. In a move that changes the power dynamics, the responsibility for surveying Waqf properties has been transferred from the Survey Commissioner to the District Collector.

This change in the management of Waqf properties may create doubts and suspicions within the Muslim community.

Examination by the Committee

5.6.1 The Ministry have stated that amendments to section 4 (1) of the Principal Act are in line with the given Recommendations No 13.47 of the Joint Parliamentary Committee on Waqf and Central Waqf Council, 2008 relating to Survey of Waqf properties and accordingly, the survey of auqaf is now being transferred to the Collector who is the head of the Revenue Department at the District level.

> "The Committee has been given to understand that in some of the States the survey work is being handed over midway, to the Department of Minority Affairs. The Committee is of the view that the Department of Minority Affairs will not be able to do the survey on its own without the survey staff of the Revenue Department, which is actually qualified to conduct surveys. The Committee feels that this is another move to shirk the responsibility and to delay the survey or to do a poor-quality survey. The Committee is of the view that the Revenue Department of the state cannot abdicate its responsibility to conduct survey and recommends that the State Governments should associate the revenue survey staff in conducting the survey of the Wakf properties in the State."

5.6.2 When the Ministry was questioned about the status of survey of auqaf in various States and UTs under the 1995 Act, they have replied as given:

> "The Auqaf survey is pending in majority of the States, with 5 States/ UTs reported that no survey has been conducted, these include: Gujarat, Jharkhand, Rajasthan, Uttar Pradesh (Sunni), Uttarakhand while 4 States/ UTs have not furnished information, these include: Delhi, Karnataka, Odisha, Telangana, and Uttar Pradesh (Shia). In many cases, waqf properties have not been properly mutated. The manual, paper-based registration process is time-consuming. There are numerous complaints about the excessive powers of State Waqf Boards and a significant backlog of litigation in Tribunals, indicating a need for a comprehensive overhaul of judicial oversight.

Sl No.	Status of Survey	States
1.	Conducted	Andaman & Nicobar Islands, Andhra Pradesh, Assam, Chandigarh, Lakshadweep, Manipur, Meghalaya,

		Puducherry, Tripura
2.	Some Rounds Conducted, Others Under Process	Haryana, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra
3.	No Survey Conducted	Gujarat, Jharkhand, Rajasthan, Uttar Pradesh (Sunni), Uttarakhand
4.	No Information Provided	Delhi, Karnataka, Odisha, Telangana, Uttar Pradesh (Shia)
5.	Under Process	Chhattisgarh, Dadra & Nagar Haveli, Himachal Pradesh, Punjab, Tamil Nadu, West Bengal
6.	Yet to be Started	Bihar

5.6.3 On the question of issues with implementation of survey related provisions of the principal Act which warranted the proposed amendments, the Ministry have submitted as under :-

> "The following deficiencies were noticed during implementation of Waqf Act 1995, as amended in 2013 which warranted these amendments.
>
> - Manual and Paper based registration process which is time consuming, prone to errors and difficult to monitor.
> - Incomplete survey of Waqf properties.
> - Incomplete submission of details on WAMSI portal.
> - The mutation of all Waqf properties has not been done properly."

5.6.4 To a query on whether the proposed amendments to provisions laid down in section 4(1) dealing with transfer of responsibility from Survey Commissioner to Collector, would withstand judicial scrutiny of pending litigations before the Supreme Court seeking directions to complete the survey of the Waqf property, the Ministry furnished the following reply:

> "The pending litigations will be decided by the Supreme Court, and the order will be complied with. The Collector is duty bound to honour the directions orders of the Hon'ble Supreme Court."

5.6.5 Property disputes often involve complex legal and administrative issues, particularly concerning land records and governance. In light of this, the Ministry were asked whether involving the Collector, as the head of the land and revenue division in a district, could help expedite resolutions. To this, the Ministry responded as given:

> "Collector being the head of the land record administration in the district, and having the required resources and expertise, will help in ensuring the authenticity of the land transaction including Government land. He will conduct an enquiry determining the status of property being Government or not and submit the report to the State Government and no further power of adjudication has been given to Collector from the powers of Waqf Board".

5.6.6 Several stakeholders have expressed misgivings about the entrusting the work of survey of Auqaf to the collector since the post of collector is already overburdened. Opinions have also been expressed that survey being an activity which requires special expertise, it may not be possible for Collectors to perform their additional function effectively and in a time bound manner. In this context the Ministry have stated as under:

> "This change aims to streamline the process and integrate it with the existing administrative framework, as Collectors are already involved in various land and property-related matters".

5.6.7 To a query on the assurance needed to be given to the Muslim community regarding the fairness and neutrality in the functioning of District Collector as survey officer for waqf properties, the Ministry have clarified that the function of the collector for survey and registration will integrate professional expertise available with the Collector's office and increase authenticity of the land transaction. They have further stated that the Collector, being a public servant is duty bound to function with objectivity and act as per the provisions of the Act. Furthermore, Section 83(2) provides the right to any person aggrieved from the report of the Collector to approach the Tribunal.

Observations/Recommendations of the Committee

5.7.1 The Committee, after careful and comprehensive deliberation on the proposals outlined in the clause under examination, including an evaluation of the views and suggestions provided by stakeholders and the justification presented by the Ministry of Minority Affairs, acknowledge the merit in the proposed amendments. These amendments aim to transfer the responsibilities previously assigned to the Survey Commissioner under the Waqf Act, 1995, such as overseeing the survey of Waqf properties, to the Collector. Under the proposed framework, the Collector, instead of the Survey Commissioner, will

conduct the survey in accordance with the revenue laws of the respective State and submit the report to the State Government. The Committee find that this adjustment will streamline the survey process and better align it with the existing administrative framework. Significantly, the function of the Collector for survey and registration will integrate professional expertise available with the Collector's office and increase authenticity of the land transactions. Given that Collectors are already deeply involved in matters related to land and property within their jurisdictions, this change is expected to exhibit objectivity, enhance efficiency, reduce redundancies, and ensure a more integrated approach to the management of Waqf properties. Recognizing these advantages, the Committee endorses the proposed amendment in the clause as a pragmatic and administratively sound measure.

CLAUSE- 6

6. The Clause 6 of the Bill proposes to amend the Section 5 of the Principal Act.

Relevant provisions of the Principal Act

6.1 Existing provisions of section 5 are as under:

"Publication of list of auqaf.--- (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.

(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."

Provisions Proposed in the Amendment Bill

6.2 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.

Justification/explanation given by the Ministry of Minority Affairs

6.3 The justification furnished by the Ministry for the proposed amendments are as under:

"Clause 6 of the Bill seeks to amend section 5 relating to publication of list of auqaf to insert new sub-sections to provide uploading of the notified list of auqaf on the portal and database within fifteen days of the publication in the official gazette. It further provides for making public notice of ninety days before deciding mutation of land records.

Earlier Section 4 (3) provided survey report of auqaf to be submitted to the State Government by the Survey Commissioner.Since Section 4(3) is omitted and Section- 4(1) is modified to substitute Survey Commissioner by Collector and Collector will submit survey report to State Government, therefore, the reference of **sub-section (3)** of section 4 is changed to **sub-section (1)** of Section 4.

As per Sec 5(1) after receiving the survey report from the Collector, the State Government shall forward a copy to the Board.

Section 5(2): The Board will examine the report and send it back to the State Government within six months. This report will then be published in the Official Gazette and will contain a list of Sunni or Shia waqf properties in the State.

In the Waqf Amendment Bill 2024, Aghakhani Auqaf and Bohra Auqaf have been added to the list that the Board sends to the State Government for publication in the official Gazette.

Section- 5(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 Section 5(2). This will bring transparency and timely publication of notified list of auqaf.

Section 5(2B) -provides that notified list of auqaf will contain the details relating to 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. This will help in efficient and transparent management of waqf properties.

Section 5(3) of the Waqf Amendment Bill, 2024 provides that after publication of the list of auqaf and uploading of the same on the portal, the Revenue authorities will give 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,before deciding the mutation. This will ensure transparency in the mutation process of the auqaf properties."

Gist of submissions by various Waqf Boards:

6.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under.

(i) Madhya Pradesh Waqf Board:- The practice of publication of decisions of the MP Waqf Board in 2 newspapers has been implemented since 2023.

(ii) Maharashtra Waqf Board:- It is suggested that time period for uploading details of registered waqfs and properties dedicated to the waqf on the portal should be one year from the date of creation and establishment of a functional portal. This is being suggested for practical reasons and for the sake of effective implementation provisions of the proposed act.

(iii) Andhra Pradesh Waqf Board:- There may not be any objection.

(iv) Karnataka Waqf Board:- Regarding their views on Clause 6, the same has already been mentioned in relation to clauses 4 and 5 above.

The proposed substitution to sub-section (3) of Section 5 is unwarranted and arbitrary. The Provision under section 128 and 129 of Karnataka Land Revenue Act 1964 provides detail procedure for mutating the entries in the revenue records and therefore it is inappropriate to prescribe different rules of mutation for Waqf properties as it amounts to discrimination.

The Publication of Public notice in two daily newspapers will lead to unnecessary litigations and inordinate delay.

(v)Rajasthan Waqf Board:- Adding sub-section (2B) to section 5 is unnecessary as this provision already exists in sections 36 and 37 of the Wakf Act.

Adding sub-section (3) to section 5 is unnecessary and illegal as the Government notification is final and the concept for notification is taken in law that every person is informed about it.

(vi) Uttar Pradesh(Sunni) Waqf Board:- The issue of Mutation must be in line with identical land laws prevalent in the State. As per the land laws of Uttar Pradesh, a thirty days' notice for mutation proceedings is provided in analogous statutory provisions.

(vii) Telangana State Waqf Board:- In the name of electronically updating the Waqf records, the Government is contemplating a re-inquiry for the property to be listed as Waqf. The Revenue record could have been made in consonance with the published/notified Gazette. The same is not done and an opportunity is given to persons who have got their names entered in the revenue records by unfair means to question the validity of the waqf.

Regarding the provision to give a 90 days' notice in 2 daily newspapers before deciding mutation by revenue authorities , the State waqf board has submitted that the list of auqaf is intentionally being interfered with in order to remove many properties from the list of auqaf for whatever reason the Government decides.

(viii) Punjab State Waqf Board:- Mutations are never automatic and mechanical in nature. All revenue laws have specific provisions for summoning and hearing the concerned parties and procedure for summoning is already laid down in the acts itself. This includes personal summons, summons through registered post and alternate methods of summoning including publication if required. Most of the times summoning is completed in a month. Contested mutations, as in Punjab, are heard by SDM and at times may take more than a year to decide. Prescribing a separate public notice with there being appropriate safeguards in revenue law itself is uncalled for and will result in higher pendency in revenue courts also without any benefits. Even otherwise for all purposes, a months' notice is legally deemed appropriate. This will probably be the first law prescribing such a long period for public notice. While waqf falls under concurrent list, Land is a state subject under the seventh schedule of constitution and central Government can't make any provision that over rules any of the provisions in the state act. It would be unconstitutional to that extent. Further on the issue of Mutation, it is stated that land is a state subject and the manner in which summoning is to be done under the land revenue acts has already been legislated by states. This Act can't provide for a manner of mutation different than the one already provided under state statute.

Important suggestions/comments by various stakeholders and experts:

6.5 Important suggestions/comments received from various stakeholders and experts is summarised as under.

i. The details of each waqf to be entered in the portal/database should contain all title /ownership documents and particulars of the original Creator/Waqif in addition to the parameters already present in the Bill.

ii. The Government should not be authorized to upload the notified list of Auqaf, rather this is the function of the Waqf Board This proposed insertion is arbitrary and discriminatory.

If there is any sale deed, or transfer deed in relation to properties between two individuals, as per land revenue rules, no such publication is required for recording mutation in Revenue Records. Neither for any other religious properties, such publications are required.

This provision is sought to be arbitrarily imposed only on Waqf properties, with sole intention to create disputes on Waqf properties at the stage of mutation.

This provision again is arbitrary and discriminatory and the same must be in line with identical land laws prevalent in the State

iii. This is completely contrary to the provisions of the Land Revenue Code. There is a risk of excessive Central Government control, limiting local authorities' autonomy over waqf properties.

The 90-day public notice requirement, while ensuring transparency, could delay necessary actions and strain local resources. Additionally, the demand for notices in two newspapers may be impractical in areas with limited access to print media.

iv. The period of uploading the notified list of Auqaf may be modified as 'SIX MONTHS' as it will be difficult to upload the details of Waqfs to the data base in fifteen days.

Examination by the Committee

6.6.1 To an observation that though the surveys were conducted after the implementation of the Waqf Act, 1954, steps were not taken to get the mutations / making entry in the revenue records of all the properties done.The Ministry have stated that under the new Amendment Bill, the District Collector is now involved in survey and registration of waqf which will facilitate smooth mutation of properties.

6.6.2 On the concerns raised that process of survey and registration of waqf is opaque and often the affected persons did not have any knowledge that their property has been declared as waqf property by the State Waqf Boards, the Ministry in their reply have stated that as per the procedure laid down in Sec 5(3) and Sec 37(3) in the proposed Bill, now before deciding mutation in the land records, in accordance with revenue laws in force, the revenue authorities will have to give public notice of ninety days, in two daily newspapers and opportunity of being heard.

6.6.3 Several stakeholders have, however, submitted before the Committee that insertion of this procedure will actually further delay the mutation of the revenue records.The Ministry responded to this concern as under:

> "Issuing a public notice before the mutation of properties as Waqf ensure transparency, accountability, and protection of individual rights. This step allows rightful property owners and stakeholders to raise objections or provide evidence, upholding the principles of natural justice and preventing wrongful classification. It also aims to provide opportunity to affected parties to be informed and heard before any changes are made to land records involving waqf properties".

6.6.4 As per the amendment to Section 5(3), "The revenue authorities, before deciding mutation in the land records, in accordance with revenue laws in force, shall give a public notice of 90 days…." To the concerns expressed that the proposed notice period would further delay the mutation of waqf properties and whether this amendment will be applicable to all such waqf properties which have been declared waqf before the enactment of proposed Bill but have not been mutated in land records, the Ministry responded as given:

> "Issuing a public notice before the mutation of properties as waqf ensures transparency, accountability, and protection of individual rights. This step allows rightful property owners and stakeholders to raise objections or provide evidence, upholding the principles of natural justice and preventing wrongful classification.
>
> It also aims to provide opportunity to affected parties to be informed and heard before any changes are made to land records involving waqf properties."

Observations/Recommendations of the Committee

6.7 The Committee, after comprehensive deliberation on the proposals outlined in the clause under examination, acknowledge the merit in the proposed amendments wherein detailed procedure with defined timeline for publication of list of auqaf in the Official Gazette, uploading of list on the portal and mutation in land records has been brought out. These amendments ensure transparency and accountability in the management of waqf properties, hence, accepted by the Committee except for amendment proposed in sub-section (2) of Section 5 through Clause 6 (c) which proposes insertion of new sub-section 2(A). It is recommended that the time period proposed for uploading the notified list of auqaf on the portal and database after its publication in the Official Gazette by the State Government may be revised from fifteen days to ninety days. Accordingly, the following amendment is recommended in Clause 6(c):

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

CLAUSE-7

7. The Clause 9 of the Bill proposes to amend the Section 6 of the Principal Act.

Relevant provisions of the Principal Act:

7.1 Existing provisions of Section 6 are as under:

"**Disputes regarding auqaf.**--- (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:

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.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any waqf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(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.

(4) The list of auqaf shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1)."

Provisions Proposed in the Amendment Bill

7.2 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;

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

Justification/explanation given by the Ministry of Minority Affairs

7.3 The justification furnished by the Ministry for the proposed amendment is as under:

“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”.

Aghakhani and Bohra waqf have been added to the types of waqf that can be disputed.

The finality of Tribunal decisions has been removed, allowing appeals to the High Court within 90 days, from the Tribunal’s order. This will expand the scope of judicial remedie and allow for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes.

The Amendment Bill 2024 Sec 6(1) first proviso provides that no suit in respect of the above shall be entertained by the Tribunal after the expiry of two years from the date of the publication of the list of auqaf. The change of timeline from one year to two years, is to provide fair opportunity to aggrieved party to file a suit in Tribunal.

The Amendment Bill 2024 Sec 6(1) second proviso 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 Sec 4(6), (as the provision of second survey has been omitted).

The Waqf Amendment Bill, 2024 proposed Survey Commissioner to be substituted by Collector in Sec 6(3) hence it is a consequential change as certain legal protection specified in the Act is being given to the Collector in due discharge of public duties.”

Gist of submissions by various Waqf Boards:

7.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under::

(i)Andhra Pradesh Waqf Board:- It is obvious that the proposed amendments that the government wants to curtail the powers and effectiveness of the Tribunal. Removing the finality of Tribunals order not only dilutes the efficacy of Waqf Tribunal but also helps in perpetuating the wakf disputes.

One year to challenge a gazette notification itself is more than reasonable period. Extending it further to two years will only harm Waqf interests.

(ii) Gujarat State Waqf Board:- An aggrieved person from the order of waqf board may file claim in tribunal and the decision of tribunal must be full and final. But in new bill it has entire procedure is neglected and it is likely to hamper the common lay man. Common man will have to suffer a lot due to that.

(iii) Karnataka Waqf Board:- The proposed omission of the finality of the Tribunal's decision in sub-section 1 of section 6 will lead to multiplicity of litigations since there is no appellate forum prescribed.

The proposed substitution in the first proviso of section 6, for the words "one year", the words "two years" will result in delaying of justice and it is against the basic principle of administration of justice.

The Omission of the proviso to sub-section (1) of section 6 will open the flood gates of unnecessary litigation.

The proposed substitution of the word "Collector" for words "Survey Commissioner", in sub-section (3) of section 6 has already been countered under Clauses 5 and 6.

(iv) Kerala Waqf Board:- It is proposed to omit the finality clause. Survey is an activity to be completed in a time bound manner. By the amendment, such dispute that may arise in connection with survey will remain without settlement for long period which will be against the best interest

of waqf institutions. Therefore, it can be viewed only as a mischievous move and hence it may be reconsidered.

(v)Madhya Pradesh Waqf Board:- By completely abolishing the Waqf Tribunal in the above section and introducing this system in all the district courts, it will be easier to get justice quickly and all kinds of problems will be eliminated.

(vi)Maharashtra Waqf Board:- W.r.t to the proposed omission, i.e., "and the decision of the Tribunal on such appeal shall be final" as mentioned in various places in the entire Bill should not be made for the reason that the Tribunal's orders are amenable to Civil Revision before the High Court even as on date.

The said amendment also increases the time period to initiate a suit in the Tribunal by an entire year, which increases the chances of prolonged frivolous and multifarious litigations against the Waqf Board.

(vii)Punjab Waqf Board:- The Act proposes to do away with the finality of the orders of the tribunal in multiple provisions including section 6, 32, 33, 52, 55A, 67. Constituting a tribunal, the orders of which are not final seems like an innovation as orders or almost all the tribunals are final in nature and they can still be challenged by way of civil revision. Any error by tribunal is always corrected by High Court through Civil revision and therefore omitting these words doesn't make any sense except that it will result in further encroachment of waqf properties. This provision is only going to increase the litigation and put both Board as well as lessees to harassment.

(viii)Rajasthan Waqf Board:- Amendment in section 6 is against the law. The decision of the tribunal which does not have an appellate authority is final but there is a provision to challenge it in the High Court. This provision is given in section 83(9) of the Wakf Act.

(ix)Tamilnadu Waqf Board:- The constitution of Tribunal and its purpose will be defeated if the decision of the Tribunal does not attain finality. Further this will only result in defeating the primary object of the Waqf Act.

(x)Telengana Waqf Board:- The decision of the Tribunal in respect of such matter shall be final', is being omitted from both Sections 6 & 7 to take away the power of the judiciary and

hand it over to the executive. This is clearly against the constitutionally recognised principle of "Separation of Powers".

Further, by giving leeway to litigant to approach the tribunal to entertain a dispute in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4 is highly unwarranted.

The very object to finality of litigation and conclusiveness of the nature of the waqf is severely prejudiced. It will open the pandoras box of speculative litigations which the waqf Institutions, Mutawallis and Waqf Board simply cannot defend.

(xi) Bihar Sunni Waqf Board and Bihar Shia Waqf Board:- The amendment is contrary to other enactments which provides power of Tribunal as its decision shall be final. Thus omission can caused prejudice to the working of Tribunal.

Important suggestions/comments by various stakeholders and experts:

7.5 Important suggestions/comments received from various stakeholders and experts is summarised as under:

i. The omission of the phrase "and the decision of the Tribunal thereon shall be final" weakens the decisiveness of the Tribunal's rulings on Waqf matters. This removal introduces uncertainty, allowing for the possibility of further legal challenges or appeals, which can drag disputes on indefinitely. .

ii. Suggestion is to replace the Tribunal with Competent Court wherever it occurs in the Bill. In the first proviso, for the words "one year", the words "three years" is suggested.

iii. The existing Section 6(1) empowers an aggrieved person to challenge the dispute as to whether a particular property is Waqf or not where limitation period is one year to file a Suit before the Tribunal. Now, this amendment proposes to make the period to file a suit in a 2-year period. This is again to give relaxation in favor of those who want to act against the institution of Waqf**.**

iv. The word 'Tribunal' be deleted wherever occurring since the property rights of the citizens have to be determined by Civil Court within the sweep of Section 9 of CPC and Tribunal cannot be a substitute of Civil Court.

A 3-tier judicial system has been recognized by the Constitution *viz*.-

• Civil Court- Original Jurisdiction to try every civil dispute constituted under Chapter-VI (Subordinate Courts).
• High Court- under Appellate, Revisional and Original Jurisdiction under Article 226 and 227 of the Constitution of India. and
• Supreme Court- under Appellate Articles 132, 133, 134A, 136 of the Constitution and Original Jurisdiction under Article 32 of the Constitution.

Thus from the scheme of the Constitution, it is clear that every case of civil nature has to be entertained and decided by the Civil Court having original jurisdiction and such power cannot be abrogated and conferred on a non-judicial or quasi-judicial authority.It is thus suggested that wherever the word Tribunal occurs, the same be substituted by the word 'Civil Judge, Senior Division.

v. In section 6(1) of the Principal Act, it is proposed to omit the sentence "and the decision of the Tribunal thereof shall be final". In section 6(1), it appears that the omission has been proposed to give further forum to make appeal against the decision of the Tribunal but there should be provision who should be the Appellate Authority.

Examination by the Committee

7.6.1 The Ministry in the justification furnished for inclusion of 'Agakhani waqf and Bohra waqf' in sub-section (1) of Section 6, have stated that Agakhani Waqf and Bohra Waqf are proposed to be added to the types of waqf that can be disputed. Proposal related to creation separate Boards for the two sects has been examined extensively under Clause 10 and hence, not repeated here.

7.6.2 The issues related to the tribunals and omission of the finality of the Tribunal's decisions have beendealt extensively in the portion related to examination of Clause 35 which deals with Section 83 of the Principal Act and hence, not repeated here.

7.6.3 Further, the issue of substitution of 'Survey Commissioner' with 'Collector' has already been dealt under Clause 5.

Observations/Recommendations of the Committee

7.7.1 The Committee support the extension of the time period for instituting a suit in the Tribunal on any dispute regarding the nature of waqf, from one year to two years from the date of publication of the list of auqaf as the amendment ensures fair access to justice. However, the Committee are of the opinion that there can be delays in filing suits in such cases due to various reasons and thus, recommend that the Tribunals shall have power to condone delays beyond the proposed two-year period for entertaining applications regarding disputes over waqf properties, on a case-to-case basis. Accordingly, following amendment to Clause 7(a) (iv) is proposed:

"For the second proviso, the following proviso shall be substituted, namely:-

> **"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."**

7.7.2 The other proposed amendments in Clause 7 are merely consequential, therefore, the Committee accept them as it is.

CLAUSE 8

8. The Clause 8 of the Bill proposes to amend the Section 7 of the Principal Act.

Relevant provisions of the Principal Act:

8.1 Existing provisions of Section 7 are as under:

"Power of Tribunal to determine disputes regarding auqaf.—

(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:

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 ofauqaf 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 finallydecided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any waqf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of auqaf and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of the Act or which is the subject-

matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence."

Provisions Proposed in the Amendment Bill

8.2 In section 7 of the principal Act, 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 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: —

"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".

Justification/explanation given by the Ministry of Minority Affairs

8.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Sec 7 of the Waqf Amendment Bill, 2024 provides that in the existing list of auqaf, Aghakhani waqf or Bohra waqf is being included and consequently the Tribunal's power has been expanded to handle disputes involving Aghakhani and Bohra waqf.

The finality of the Tribunal's decision relating to disputes regarding determination of auqaf has been removed, allowing appeals to the High Court within 90 days, which will expand the scope

of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes.

The Amendment Bill 2024, Section 7(1), revises the timeline for filing disputes in the Tribunal extending it from one to two years to give aggrieved parties a fair opportunity and adequate time to file suit with the Tribunal.

For lists of auqaf published after the Act's commencement, applications must be filed within two years from the publication date. For lists published up to two years before the Act's start, applications may be filed within two years from commencement of this Act. Additionally, the Tribunal can accept applications filed after two years if the applicant, including the Board or Mutawalli, shows valid reasons for the delay for not making the application within such period."

Gist of submissions by various Waqf Boards:

8.4 A gist of submissions/objections by various Waqf Boards of States/UTs on the issue of finality of the Tribunal's decision have been covered under clause 7 and clause 35. Submission on other amendment is as given:

(i) Andhra Pradesh Waqf Board:- By giving power to the tribunal to entertain a dispute beyond the two-year period for 'sufficient cause' which itself is very subjective, the very object to finality of litigation and conclusiveness of the nature of the waqf is severely prejudiced. It will open the pandoras box of speculative litigations which the Waqf Institutions.

Suggestions/comments by various stakeholders and experts:

8.5 A gist of suggestions/comments received from various stakeholders and experts on the issue of finality of the Tribunal's decision have been covered under clause 7 and clause 35.

Examination by the Committee

8.6.1 The Ministry in the justification furnished for inclusion of 'Agakhani waqf and Bohra waqf' in sub-section (1) of Section 7, have stated that in the existing list of auqaf, Aghakhani

waqf or Bohra waqf is being included and consequently the Tribunal's power has been expanded to handle disputes involving Aghakhani and Bohra waqf. The proposal related to creation separate Boards for the two sects has been examined extensively under Clause 10 and hence, not repeated here.

8.6.2 The issues related to the tribunals and omission of the finality of the Tribunal's decisions have beendealt extensively in the portion related to examination of Clause 35 which deals with Section 83 of the Principal Act and hence, not repeated here.

Observations/Recommendations of the Committee

8.7.1 The Committee agree with the proposed amendment to proviso (a) of Section 7(1) of the Waqf Act 1995, which extends the time period for approaching the Tribunal from one year to two years. This extension ensures that aggrieved parties are provided with a fair and reasonable opportunity to present their cases. The provision allowing the Tribunal to accept late applications upon the presentation of valid reasons further ensures that deserving cases are not dismissed merely due to time limitation.Thus, in view of the submissions made by the Ministry of Minority Affairs and the fact that the other proposed amendments are merely consequential, the Committee accept the amendments proposed in Section 7 of the Act as it is.

CLAUSE- 9

9. The Clause 9 of the Bill proposes to amend the Section 9 of the Principal Act.

Relevant provisions of the Principal Act:

9.1 Existing provisions of Section 9 are as under:

"Establishment and constitution of Central Waqf Council.—(*1*) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.

(*1A*) The Council referred to in sub-section (*1*) shall issue directives to the Boards, on such issues and in such manner, as provided under sub-sections (*4*) and (*5*).

(*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.

(3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be, prescribed by rules made by the Central Government.

(4) The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the Council and it may suo motu call for information on specific issues from the Board, if it is

satisfied that there was prima facie evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.

(5) Any dispute arising out of a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court or a retired Chief Justice of a High Court and the fees and travelling and other allowances payable to the Presiding Officer shall be such as may be specified by that Government."

Provisions Proposed in the Amendment Bill

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

"(2) The Council shall consist of—

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

(*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:—

(*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;

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

(e) one Advocate of national eminence;

(*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*:

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."

Justification/explanation given by the Ministry of Minority Affairs

9.3 The justification furnished by the Ministry for the proposed amendment is as under:

"The Central Waqf Council's composition has been broadened to include two non-Muslim members, promote inclusivity and diversity in waqf property management.

The chairperson, who is the ex-officio Minister of Minority Affairs, can also be a non-Muslim. Sec 96 of the Waqf Act 1995 clearly mentions power of Central Government to regulate secular activities of auqaf in relation to the functioning of Central Waqf Council and State Waqf Boards. "Secular activities" shall include social, economic, educational and other welfare activities."

Gist of submissions by various Waqf Boards:

9.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) UP Sunni Central Waqf Board:- Out of total 22 Members of the Council including the Chairman, 10 Members have mandatorily to be Muslims, 2 Members have mandatorily to be non-Muslims, whereas the religious order of the remaining 10 Members has not been specified and they may, therefore, be non-Muslims, if appointed by the Government. Under these circumstances 12 out of 22 Members of the Board may be non-Muslims and the Muslim Members will be in minority. This amendment must be omitted altogether.

(ii) Rajasthan Board of Muslim Waqf:- Proposed amendment is against the Constitution. Non-Muslims cannot be made members of Central Waqf Council because Waqf and Waqf Act are related only to Muslims and their properties.

(iii) Telangana Waqf Board:- The proposed amendments aim at ensuring that eventually Waqf properties should be managed by Hindu. The compulsory induction of two non-Muslim members is only a first step. The composition of Central Waqf Council is sought to be changed in such a way that majority of members could be non-Muslims.

(iv) Andhra Pradesh State Waqf Board:- The proposed amendment may result into the Council being run by non-muslims. This is illogical and also discriminatory because similar supervisory bodies constituted under Section 152 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 do not make any provision for non Hindu members and not only that but insist on the members to not only being Hindus but devout Hindus.

(v) Chhattisgarh State Waqf Board:- Appointing non-Muslim Members in the Central Waqf Council would amount to interfering in the management of religious affairs of the Muslims which is violation of Article 26 of the Constitution of India.

(vi) Kerala State Waqf Board:- Parliament cannot make a law in such a way to give representation to any other community in the committees/organizations meant for a particular religious group. It will create a rift between different religious communities. It is violative of Article 26 and Article 14 of the Constitution of India and also against the law declared by the Hon'ble Supreme Court and High Court in this behalf.

(vii) Maharashtra State Board of Waqf:- Waqf being purely a matter of personal law, the introduction of non Muslims in the said council would affect the sanctity of Waqf as a religious practice. It is pertinent to note that the counter part of the Waqf Act in the Hindu community, which are the various Dewasom Acts, only allow individuals who are Hindus to be a part of the Dewasom Board. The said position has even been upheld by the High Court of Kerala in 2019 in P.S Sreedharan Pillai vs. State of Kerala. Further, for instance, in Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987; only a person who professes Hindu religion is entitled to be a part of the Board under the said Act. Drawing a corollary, no Non - Muslim should be allowed to be either a part of the Council or Board concerning Waqfs. Further, w.r.t Clause (g) and addition of Non-Muslim Members is frustrating the scheme of management by giving independent statutory powers and control to the Government, which will bring in Government regulation in the decision making power of the Wakf and its management.

(viii) Madhya Pradesh State Waqf Board:- It is unclear that 2 members will be non-Muslim under clause (c) or 2 members will be non-Muslims out of a total of 22 members under the said section 9.

(ix) Tamil Nadu Waqf Board:- Non-Muslim Members cannot be able to give effective suggestions or opinions to the Council for deciding the issues relating to the objectives of the Waqf Institutions.

(x) Gujarat State Waqf Board:- In new amendment Bill, Section 9 provides for representation of waqf Mutawallis - one (1) person having income of Rs. 5,00,000/- or more annually. There are waqf trust registered in innumerable numbers in the country and only one member is suggested. In case of only one representative for this number of waqf, it is likely to cause loss to trust mutawallis and hence there should be atleast 03 (three) members of Mutawalli class and category. Moreover, regarding appointment of Non- Muslim, it is stated that it is unconstitutional. Hence, such amendment must be cancelled.

(xi) Karnataka State Board of Auqaf:- The proposed amendment is directly in the teeth of Article 16(5) of the Constitution of India and therefore *ultra-vires*. The proposed amendment is liable to be rejected.

(xii) Haryana Waqf Board:- The proposed amendments in Sections 9 will not be beneficial for the Central Waqf Council.

(xiii) Tripura Board of Waqf:- Tripura Board of Waqf has stated that it has no issues with the proposed amendments under this Clause.

(xiv) Meghalaya State Waqf Board:- The Waqf Act was enacted to govern the properties owned by Muslims and who have given the properties as waqf so that future sale of the property or misuse of the property cannot be made by the inheritent (Mutawalli).

(xv) Bihar State Sunni Waqf Board and Bihar State Shia Waqf Board:- There are laws in UP, Kerala, Karnataka, Tamil Nadu saying that those managing the affairs of Hindu religious properties must necessarily be professing Hindu religion. Similarly, the waqf properties should be managed by Muslims. The inclusion of Non-Muslims in the composition is not legal in the light of the other religious acts such as Hindu Endowment Act, the Bihar Hindu Religious Trust Act, and other detailed Acts governing religious trusts and bodies.

(xvi) Board of Auqaf, West Bengal:- All are nominated. But, number of Muslim Members is lesser than others. There should be provision for Chairperson of every Waqf Board to be ex-officio member of the Central Waqf Council, then only all the states of Union of India shall have the chance of representation.

(xvii) Jharkhand State Sunni Waqf Board: The provision that non-Muslim can be a part of the Waqf Council is directly an attack on the faith and freedom of religion.

Important suggestions/comments by various stakeholders and experts:

9.5 Important suggestions/comments received by various stakeholders and experts are summarised as under:

i) The introduction of non-Muslim members in Waqf management violates Articles 14, 25, 26 and is void under Article 13. The regularity measures to be undertaken by the State under Clause 2 of Article 25 cannot be extended to make strict regulatory control by state mechanisms in relation to the properties in the nature of Waqf.

ii) The appointment of non-Muslim members could be seen as interference in the religious affairs of the Muslim community.

iii) The proposed Bill contradicts established legal precedents across several Indian States. This amendment is against the principles of trust and endowment laws in India. For instance, the Uttar Pradesh Hindu Public Religious Institutions (Management and Regulation) Act; the Uttar Pradesh Sri Kashi Vishwanath Temple Act, 1983; the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules; the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997; the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959; the Bihar Hindu Religious Trusts Act, 1950; the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987; the Orissa Hindu Religious Endowments Act, 1951; all mandate that those managing Hindu religious properties must necessarily profess the Hindu religion. Similar laws apply to Sikh endowments in Haryana, Punjab, and Delhi.

iv) The Central Waqf Council should have a retired Supreme Court Judge as its Member to ensure judicial oversight.

v) Adequate representation be given to members from Sufi background in Central Waqf Council.

vi) Instead of including women of general Muslim Caste in the Central Waqf Council, there should be a provision to include extremely backward Muslim women and non-Muslim women as well.

vii) It is a welcome step to include Non – Muslims in the Central Waqf Council but similar provisions in many other Religious Charitable & Endowment Acts are missing. Demands of inclusion of Non-Hindus and Non-Sikhs would unnecessarily create opposition from Hindu and Sikh Communities.

viii) Women are already member. The above mentioned Provision amended in 2013 mandated inclusion of 2 women. Centre always had the discretion to appoint more women as there was no Prohibition and term 'Person' includes women. It was upon the Central Government to appoint them.

ix) While promoting gender diversity is commendable, the implementation must ensure that women are genuinely empowered and not merely token representatives.

x) The highest body of the Waqf, i.e., Central Waqf Council (CWC) has been deprived of the mandatory 20 Muslim members and Muslim Secretary. This is violation of Section 9 of the Waqf Act, 1995. It is also important to note that the internal management of CWC is financed from income of Waqfs (out of mandatory 1% of annual income contributed by every state Waqf Board).

xi) According to Section 9 of the Waqf Act, 1995, the Ministry of Minority Affairs has delayed a straightforward administrative task for over six months. Since February 3, 2023, they have failed to reconstitute the Central Waqf Council. The last notification, S.O. 343 (E), was issued on January 24, 2022. Yet, despite these delays, the Minister

assured Parliament that the process was ongoing in response to Rajya Sabha Unstarred Question No. 720, dated July 26, 2023.

xii) The Ministry reduced the Central Waqf Council's term from five years to one year without following the proper rule-making procedure under Section 12 of the Waqf Act.

xiii) There should be a Shia Waqf Council in India because separate Shia Waqf Board is not there in every State.

xiv) There should be minimum of two women in the Council.

Examination by the Committee

9.6.1 On being asked about the logic and rationale behind inclusion of Non-Muslim Members in the Central Waqf Council and if such inclusion violates Article 14, 25 and 26 of the Constitution, the Ministry of Minority Affairs, in its written reply submitted the following:

"Article 14 of the Indian Constitution mandates that the State shall not deny, to any person, equality before the law or the equal protection of the laws within the territory of India. The proposed amendment does not violate Article 14.

Article 25 of the Indian Constitution grants all individuals the freedom of conscience and the right to freely profess, practice and propagate religion. This right is subject to public order, morality and health. It ensures religious freedom.

Article 26 provides that every religious denomination or section has the right to establish and maintain institutions for religious and charitable purposes, manage its own religious affairs, own and acquire property, and administer that property in accordance with the law, all subject to public order, morality and health.

Section 3 of the Principal Act defines beneficiary as -(a) "beneficiary" means a person or object for whose benefit a waqf is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law.

Section 3(k) defines persons as "person interested in a waqf" means any person who is entitled to receive any pecuniary or other benefits from the waqf and includes-
(i) any person who has a right to "offer prayer" or to perform any religious rite in a mosque, idgah, imambara, Durgah**,** khanqah, peerkhana and karbala, maqbara, graveyard

or any other religious institution connected with the waqf or to participate in any religious or charitable institution under the waqf;

a) According to the Section 3(a) of Waqf Act 1995, "beneficiary" can be Non-Muslim.

b) They can also be considered "persons interested" in accordance with Section 3(k) of the Act since they can offer prayer/perform any religious rite in Dargah, etc.

c) They can also make donation to Waqf institutions under Section 72(1)(v)(f) of the Waqf Act, 1995.

d) Non-Muslims can also be party in litigation related to Waqf matters.

e) Section 96 of the Waqf Act 1995 clearly mentions power of Central Government to regulate secular activities of auqaf in relation to the functioning of Central Waqf Council. "Secular activities" shall include social, economic, educational and other welfare activities.

Hence, their representation in the CWC helps in giving fair representation to these stakeholders (Beneficiary, Any Person Interested, Donor, Litigant). Their inclusion in the CWC can make it more inclusive leading to better governance.

The duties, functions, and powers of the Central Waqf Council are to oversee the functioning of the State Waqf Boards and for calling information from or direct State Boards to correct any irregularities in functioning. It also plays an advisory role. It does not exercise direct control over waqf property itself.

Furthermore, State Waqf Board shall exercise its powers under this Act to ensure that the Auqaf under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes of which such Auqaf were created or intended.

In the case of **Syed Fazal Pookoya Thangal vs Union of India (UoI) And Ors. (Kerala High Court), AIR1993KER308**, it was held:

*"The Wakf Board is not a conglomeration of individuals. It is not even akin to a company where several individuals join to constitute it**. It is a statutory body, pure and simple**. It is not a representative body of the Muslim community. It has no soul and no faith, except the faith of dutiful performance of its functions and duties under the Act."*

It is well known that management of Wakf properties has since long been controlled by the State. Various laws have been enacted from time to time in various parts of the country by either the Central Legislature or the State Legislatures for

achieving this purpose. Wakf properties have thus been the subject of special protection by the State through the enactment of these laws with a view to see that they are properly preserved, and that the income therefrom is not frittered, mis-utilised or diverted for purposes other than those authorised by the objects of the Wakf.

In this context **Allahabad High Court (Hafiz Mohammad Zafar Ahmad v. UP Central Sunni Board of Waqf, Lucknow AIR 1965 All 333, per DD Seth, J.)** held that:

"The right of a Mutawalli is not, in my opinion, equivalent to that of a mahant. A Mutawalli's right is purely a right of management of the property and is not a proprietary right. ***The duties of a Mutawalli are purely of a secular character. His duties are not of a religious character.***

He has no beneficial interest of any kind in the property which he administers while a mahant has such an Interest in the property belonging to the math. A mahant's right is not only a right of management of the property but he holds a beneficial Interest in it. A Mutawalli is nothing more than a servant of the founder of the Waqf."

Further in the case of **Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan, 1964 SCR (1) 561**, one of the grounds for challenging the Nathdwara Temple Act was that Section 5 (3) allows the Collector to be part of the board even if he is not a Hindu. It was held by a Five Judge Bench that right to manage the properties of the temple is purely a secular matter and cannot be regarded as the religious practice.

The functions of the Central Waqf Council clearly show that it is not entirely religious practise but also administration of the Waqf properties. So, the matters regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice, can be regulated by the State. Hence, it is not a violation of Article 14 of the constitution.

As per Waqf Act, 1995, the chairperson of Central Waqf Council can be a non-Muslim, being an ex-officio.

Therefore, limited involvement of non-Muslims in the Council does not infringe upon the religious practices

<u>Precedents and comparative practices</u>

Additionally, there are precedents, such as the Bodh Gaya Temple Act, where Hindus are included alongside Buddhists in managing religious institutions.

Bodh Gaya Temple Act, 1949: This Act provides for the formation of a Government-constituted Committee to manage the Bodh Gaya Temple, illustrating an

organized approach to religious property management. The Committee consists of a Chairman and eight members, all nominated by the State Government.

Religious Representation: Four members are Buddhists, and four are Non-Buddhist i.e. Hindus, including the Mahanth, ensuring balanced religious representation.
Chairman: The District Magistrate of Gaya serves as the ex-officio Chairman. If the District Magistrate is non-Hindu, a Hindu Chairman is nominated by the State. This structured approach demonstrates the practicality and constitutionality of including members from different religious backgrounds in managing religious properties, which is relevant to the inclusion of non-Muslims in State Waqf Boards.

Shri Amarnath Ji Act 2000:

In the board administrating the Amarnath Ji Shrine under Section 4 (relating to constitution of the Board) of the Shri Amarnath Ji Act, 2000 (Act No. XVIII 2000), the Shrine Board Members apart from other members consist of three persons who have distinguished themselves in administration, legal affairs or financial matters.

That Section 4 (iii) does not mention that distinguished person in the field of administration, legal affairs or financial matters have to be necessarily a Hindu.

Hence, inclusion of Non-Muslim members in Section 9(2) does not violate Article 25 & 26 of the Constitution; rather including two non-Muslim members can help in promoting inclusive governance."

9.6.2 On the question of constitutionality with respect to the inclusion of Non-Muslim Members in the Central Waqf Council, the Ministry of Law and Justice, in its written reply submitted the following:

"It is submitted that the proposed amendments in Waqf (Amendment) Bill, 2024 are not in violation of the Constitutional Principles. In our Constitution, the Preamble envisages India as a secular country. The Constitution further provides the Fundamental Rights under Part III, which are the basic guarantees to citizens and persons to ensure that the objectives of Preamble of the Constitution be achieved and fulfilled in true sense.

The objective of the Waqf Act, 1995 is for the purpose of better administration of waqf and for matters connected thereto. Under Section 96 of the Wakf Act, 1995, the Central Government has the power to regulate secular activities of the waqf and perform functions including, to lay down general principles and policies for proper administration

and coordination of functions of Central Waqf Council and the Waqf Board under the different States.

The inclusion of non-muslim members in the Central Waqf Council and Waqf Board is not a violation of articles 25 and 26 of the Constitution.

Article 25 of the Constitution provides as under:

"***25. Freedom of conscience and free profession, practice and propagation of religion***

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which maybe associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

Article 26 of the Constitution provides:

"26. Freedom to manage religious affairs

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law."

Article 25 distinguishes between religious practices and secular activities associated with religious institutions. The State has the authority to regulate or restrict secular activities that may be associated with religious practices, such as economic, financial, political or other secular activity unrelated to the core aspects of religion. Article 26 includes the right of religious denominations or any section thereof to manage their own religious affairs, including establishing and maintaining religious institutions, as long as they do not violate any other laws or public order.

In the case of **Shri Jagannath Temple Puri Management Committee v. Chintamani, AIR 1997 SC 3839**, the Supreme Court has observed that state cannot interfere with person's right to profess, practice and propagate his religion. However, all the activities in or connected with the temple are not a religious activity. The management of temple or maintenance of discipline and order inside the temple can be controlled by the State. If any law is passed for taking over the management of the temple it cannot be struck down of violative of articles 25 and 26 since the management of the temple is a secular act.

In the case of **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, MANU/SC/0136/1954**, the Supreme Court dealt with the power of the State to intervene in the administration of religious institutions. The Supreme Court held that while the State can regulate and supervise the administration of religious institutions, it should not interfere with the essential religious practices of a denomination unless they are deemed to be socially harmful or against public order.

Article 26(c) details the right of religious denomination to own and acquire movable and immovable property. The state can regulate the property of a religious denomination by law. Article 26(d) provides the religious denomination with the right to administer such property in accordance with law. The State can regulate the administration of the property belonging to the religious entity. It is also important to understand that the state cannot altogether take away the right of the administration from the religious institution.

In the case of **Seshammal v. State of Tamil Nadu, MANU/SC/0631/1972**, the hereditary post of Archakas and Mathadhipatis (an archaka is a person who is

accomplished and well-versed in the agamas and rituals) of Hindu temples in Tamil Nadu challenged the validity of Tamil Nadu Religious and Charitable Endowments Act, 1970 for the violation of Right to Freedom to manage religious affairs. The Supreme Court decided that the post of Archaka is secular. The appointment of Archaka is not a religious practice nor is it an integral part of a religion.

In the case of **N. Adithayan v. Travancore Devaswom Board, 2002 AIR SCW 4146**, the question was whether non-Brahmins can be appointed as a priest in a temple. The Supreme Court while deciding the question held that the Brahmins do not have the monopoly over performing rituals in a temple. The court also added that non-Brahmins can be appointed as a priest as long as he is well versed in his job.

In the case of **Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan, 1964 SCR (1) 561,** one of the grounds for challenging the Act was that Section 5 (3) allows the Collector to be part of the board even if he is not a Hindu. It was held by a Five Judge Bench that right to manage the properties of the temple is purely a secular matter and cannot be regarded as the religious practice and hence does not violate Article 25 and 26 (b) of the Constitution. Hence, a member of the Board can be of different religion and the same does not contravene the religious fundamental rights enshrined in the Constitution.

In the case of **Syed Fazal Pookoya Thangal v. Union Of India and Ors. (Kerala High Court), AIR 1993 KER 308**, it was held:

"10. The Wakf Board is not a conglomeration of individuals. It is not even akin to a company where a number of individuals join together to constitute it. It is a statutory body, pure and simple. It is not a representative body of the Muslim community. It has no soul and no faith, except the faith of dutiful performance of its functions and duties under the Act.

11. It is well known that management of Wakf properties has since long been controlled by the State. Various laws have been enacted from time to time in various parts of the country by either the Central Legislature or the State Legislatures for achieving this purpose. Wakf properties have thus been the subject of special protection by the State through the enactment of these laws with a view to see that they are properly preserved and that the income therefrom is not frittered, misutilised or diverted for

purposes other than those authorised by the objects of the Wakf. It is the power so exercised by the State that now stands vested in the Wakf Boards in each State, specially established for the purpose. What the Wakf Board does is to carry out functions which were hitherto being undertaken by the State. It is exercising a part of the State's functions and is an instrumentality of the State. The Wakf Board is a creature of the Wakf Act. It has no existence otherwise. It stands or falls with the Wakf Act. It has to exercise those functions and powers which are vested in it under the provisions of the Wakf Act. It is not a collection of individuals, or a sect or body with a common faith which alone will make it a denomination for the purpose of Article 26. If it is not a denomination, it has no rights under Article 26".

In the case of **Basheer vs. State of West Bengal AIR 1976 CAL. 142**, the Calcutta High Court held:

"12. The question, therefore, for this case that would have to be decided is whether under Article 25 of the Constitution the right to freedom of religion as contemplated by clause (1) of that Article had in any way been interfered with. As I read the provisions of the present Act in question, I do not find in any way any interference with the freedom of conscience or the right to freely profess, practise or propagate the religion. Indeed the matters of control which have been vested in the Commissioner or in the Board of Wakf are matters regulating or restricting the economic and the financial activity associated with the religious practice."

Therefore, Waqf is not a religious denomination in accordance with Article 26 of the Constitution.

So, the matters regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice under Article 25 (2) (a) of the Constitution can be regulated by the State.

Therefore, the proposed amendments to include two Non-Muslim persons in the Central Waqf Council and State Waqf Boards are not in violation of articles 25 and 26 of the Constitution. Also, the Waqf also performs secular functions as per Section 96 of the Waqf Act, 1996. The operation of Waqf Act, 1995 impacts a large number of non-Muslim population and further the purpose of waqf also includes charitable purpose. The proposed amendments of inclusion of non-Muslim is for the better administration and

management of varied functions performed by the State Waqf boards and the Central Waqf Council and majority representation has been given to class of representatives who are Muslims. The Hindu temples and other religious institutions are governed under the State religious institutions and charitable endowments institutions laws, whereas auqaf are governed under a central legislation, i.e. Waqf Act, 1995."

9.6.3 On being asked whether the Ministry is considering allowing Muslim members in other religious institutions such as temples, gurudwaras and churches, the Ministry of Minority Affairs submitted the following:

"At present, there is no Central Government Act administered by this Ministry on matter related to Temples, Gurudwaras and Churches, hence, there is no such proposal for allowing Muslims in their management."

9.6.4 On being asked whether the Government would appoint a non-Hindu in a temple trust, the Ministry of Minority Affairs furnished the following:

"The Temple Act/Endowment boards are constituted by State Legislations. In some of the State Hindu Endowments Acts, Non-Hindus are also allowed to be a member.

For example: 1. Shri Amarnath Ji Shrine Act 2000: In the board administrating the Amarnath Ji Shrine under Section 4 (relating to constitution of the Board) of the Shri Amarnath Ji Shrine Act, 2000 (Act No. XVIII 2000), the Shrine Board Members apart from other members consist of three persons, who have distinguished themselves in administration, legal affairs or financial matters.
As per Section 4 (iii) of the said Act, there is no mention that distinguished person in the field of administration, legal affairs or financial matters must be necessarily a Hindu.

2. UP Shri Badrinath and Shri Kedarnath Temples Act, 1939: This Act outlines the composition of the committee responsible for managing these temples. This committee consists of a mix of elected and nominated members. Specifically, seven members are nominated by the State Government, and there is no mention that those must be necessarily Hindu.

These examples demonstrate that in the interest of Hindu institution, including Non-Hindus can be considered to expand the talent pool and also to make it more inclusive."

9.6.5 On being asked if the concerned government officials were happened to be Non-Muslims, would it still be insisted that non-Muslim members should also be included, the Ministry of Minority Affairs submitted the following:

> "As per Section 9(2)(a), the Union Minister in charge of auqaf shall serve as the ex-officio Chairperson of CWC.
>
> While Section 9(2)(g) designates the Additional Secretary or Joint Secretary to the Government of India, responsible for Waqf matters in the Union Ministry or Department, as an ex officio member.
>
> If both of these individuals are non-Muslim, no additional non-Muslim members are required, as the proviso to Section 9(2) stipulates that two members appointed under this subsection shall be non-Muslims.
>
> However, if these two individuals are Muslim, then two non-Muslim members will be appointed from other categories listed in this section."

9.6.6 Further explaining about the inclusion of non-Muslim Members in the Council and responding to the concerns regarding the possibility wherein the Muslim members may be in minority in the Council, the Ministry of Minority Affairs stated as under:

> "…..the changes introduced in the constitution of the Central Waqf Council (CWC) are designed to create two categories: one category exclusively for Muslims (10 members)……. and another category (12 members). Out of this (second) category, two members will be Non-Muslim. Remaining all will be Muslims."

9.6.7 When asked to clarify about the provision related to appointment of Chairpersons of three Boards by rotation in Central Waqf Council, the Ministry of Minority Affairs submitted the following:

> "These three Boards refer to the State Waqf Boards, whose Chairpersons will occupy three seats in the Central Waqf Council by rotation, for a term of three years.
>
> The State Government may, if deemed necessary, establish a separate board of Auqaf for Bohra and Agakhani under Section 13(2)(A) and their Chairperson may also be part of Central Waqf Council by rotation."

9.6.8 On being asked whether women representation in the Central Waqf Council as mandated by the principal Act was ensured, the Ministry of Minority Affairs stated as under:

"Yes, it is being ensured and now representation of Muslim women is being made mandatory because of addition of non-Muslim category in the composition of CWC."

9.6.9 With respect to appointment of women, on being asked about the reasons for decreasing the categories from 8 under section 9(2)(b) of the Principal Act to 4 in the proposed Bill, the Ministry of Minority Affairs, in its written reply, stated as under:

"Sachar Committee Recommendations to provide for at least two women each in the Central Waqf Council and each State Waqf Board have been retained in the proposed Bill. Besides providing gender equity, this will help in improving direct access to welfare measures for women and children.

As per section 9 (2), in other categories (12 members), there is no bar for nomination of women members. Proviso to section 9(2)(c), ensures that two Muslim women shall be members. Hence, there can always be more than two women members."

9.6.10 On being asked about the appointment to the post of Secretary of the Council, the Ministry of Minority Affairs stated the following:

"One of the Sachar Committee recommendations was:

".....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."

On this basis, the provision was made in Rules 7(1) and (1-A) in CWC Rules, 1998 (as amended in 2012), that there shall be a Secretary to the Council, who shall be Muslim, and the Chairperson shall make appointment to the post of Secretary which shall be equivalent to a Group-A post of the Central Government, on such terms and conditions as may be determined by the Central Government.

No change is proposed in the Rules 7 (1-A) of the CWC Rules for appointment of Secretary to the CWC who shall be Muslim."

9.6.11 On the issue of increasing the representation of mutawalli in the Central Waqf Council from one to three, the Ministry of Minority Affairs submitted as given:

"The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.

As per the amendment made to Section 9(c) in Waqf (Amendment) Bill, 2024 the following members to be appointed by the Central Government from amongst Muslims, namely:— (10 members in Muslim category)

(i) three persons to represent Muslim organizations 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.

Keeping in view the objective of setting up the Central Waqf Council, the composition is broad based."

9.6.12 As per Clause 9 of the Waqf (Amendment) Bill, 2024, Chairpersons of three Boards by rotation are to be appointed by the Central Government in the Central Waqf Council from amongst Muslims and as per Clause 11 of the Waqf (Amendment) Bill, 2024, religious order of the Chairperson of the Board has not been specified. On being asked whether it mean if the Chairperson of a Waqf Board happens to be non-Muslim, he/she can't become Member of Central Waqf Council, the Ministry of Minority Affairs stated as under:

"The changes introduced in the constitution of the Central Waqf Council (CWC) is designed to create two distinct categories: one exclusively for Muslims (10 members) as explained below :-c) the following members to be appointed by the Central Government from amongst Muslims, namely:— (10 members in Muslim category) (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; Out of the above members , two will be Muslim women and another category (12 members). Out of this category two members will be Non-Muslim. Remaining all will be Muslim the Union Minister in-charge of waqf Chairperson, ex officio ;(b) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States(d) two persons who have been judges of the Supreme Court or a High Court;(e) one Advocate of national eminence; (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; .

Two Women-Sachar Committee Recommendations to provide for at least two women each in the Central Waqf Council and each State Waqf Board have been retained in the proposed bill. Besides providing gender equity, this will help in improving direct access to welfare measures for women and children. As per section 9 (2), in other categories (12 members) there is no bar for nomination of women members only

restriction is there will be two Non-Muslim. Proviso to section 9(2) (c), ensures that two Muslim women shall be members. Representation of Muslim women is being ensured.

As is evident, the changes introduced to the constitution of the Waqf Board is designed to create two distinct categories: one exclusively for Muslims (4 members) i.e, (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 Panchayat: Provided that in case there is no Muslim member available from any of the categories in sub-clause (c) to (i) to (ii), additional members from category sub-clause (iii) may be nominated: Provided that two of total members of the Board appointed under in the clause (c), shall be women and another category (7 members), out of this category 2 members will be non-Muslim, remaining will be Muslims. a) a Chairperson;(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; 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 the State Government;(f) one Member of the Bar Council of the concerned State or Union territory: Provided further that two of the 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; Two Women: Sachar Committee Recommendations to provide for at least two women in State Waqf Board, have been retained. Besides providing gender equity, this will help in improving direct access to welfare measures for women and children, and out of the above members, two will be Muslim women. Now representation of Muslim women is being ensured. As per section 14(1) in other category there is no bar for nomination of women members. Only restriction is that there will be two Non-Muslim members. The composition of State Waqf Boards has been expanded to include two non- Muslim members, ensuring broader representation from Shia, Sunni, Bohra, Aghakhani, and backward Muslim communities which will promote inclusivity and diversity in waqf property management.

In the existing Section 14(2), Election of members of the Boards etc, is being omitted. As per Amendment Bill members will now be nominated by the State government. State government can appoint members with specialized knowledge in governance, law and Waqf related matters. This will help in effective and efficient management of Waqf properties."

Observations/Recommendations of the Committee:

9.7 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the justification

given by the Ministry of Minority Affairs, find that considering the statutory nature of the Central Waqf Council, inclusion of two non-Muslim members will make it more broad based and promote inclusivity and diversity in waqf property management. The Bill has further emphasized upon the participation of Muslim women in the Council. Hence, the Committee accept all the amendments proposed under the Clause. However, it has been brought to the knowledge of the Committee that the presence of non-Muslim ex-officio Members may result in fulfilling the requirement of the proposed amendment whereas this may go against the intent of the proposed amendments. Hence, the following amendment is proposed in second proviso of Clause 9:

> **"Provided further that two members appointed under this sub-section excluding ex-Officio members, shall be non-Muslims.".**

CLAUSE - 10

10. The Clause 10 of the Bill proposes to amend the Section 13 of the Principal Act.

Relevant provisions of the Principal Act:

10.1 Existing provisions of Section 13 are as under:

"Incorporation—(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of Auqaf under such name as may be specified in the notification:

Provided that in case where a Board of Waqf has not been established, as required under this sub-section, a Board of Waqf shall, without prejudice to the provisions of this Act or any other law for the time being in force, be established within six months from the date of commencement of the Wakf (Amendment) Act, 2013 (27 of 2013).

(2) Notwithstanding anything contained in sub-section (1), if the Shia auqaf in any State constitute in number more than fifteen per cent. of all the auqaf in the State or if the income of the properties of the Shia auqaf in the State constitutes more than fifteen per cent. of the total income of properties of all the auqaf in the State, the State Government may, by notification in the Official Gazette, establish a Board of Auqaf each for Sunni auqaf and for Shia auqaf under such names as may be specified in the notification.

(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.

(3) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued."

Provisions Proposed in the Amendment Bill

10.2 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 Aghakhanis."

Justification/explanation given by the Ministry of Minority Affairs

10.3 The justification furnished by the Ministry for the proposed amendment is as under:

"This clause allows the State Government to establish separate Waqf Boards for Bohra and Aghakhani, if necessary, providing specific management for these communities' waqf properties.

Section 13(2A) of the principal Act is being substituted as the Board will now be inclusive by induction of non-Muslims, Aghakhani, Bohra and other backward classes among Muslim communities. [3rd Proviso to Section 14(1)]"

Gist of submissions by various Waqf Boards:

10.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) **Rajasthan Board of Muslim Waqf:-** Under Section 13, it is not necessary to form a separate board for Agakhani and Bohras because Agakhani and Bohras are also a part of the Muslim community. There is no difference of opinion in the entire Muslim community regarding the nature of Waqf.

(ii) **Telangana Waqf Board:-** This provision is basically malafide and prima facie meant to create divisions among Muslims. Shia and Sunni Waqfs were, earlier, differentiated because they are governed by different religious edicts, but Agakhani and Bohra waqf both are governed by Shia edict only and hence creating new class is nothing but divisive. Hence, insertion of the above two classes of Muslim Community is *per se* not desirable.

(iii) **Andhra Pradesh State Waqf Board:-** This provision is basically unreasonable and will lead to divisions among Muslims. Both Agakhani and Bohra waqf both are governed by Shia edict only and hence creating new class is not advisable. Moreover in the State of Andhra Pradesh, there are no created Waqfs of Agakhani and Bohra sects registered with the state Waqf Board. The Shia, Aghakhani, Bohra Waqfs have no reference to Islam.

(iv) **Maharashtra State Board of Waqf:-** Introduction of sectoral waqfs within the community may lead to fragmentation of the community, which may lead to disharmony within Muslims. Moreover, Agakhanis and Bohras are a part of the Shia sect of the Muslim community for whom there is a separate Board in place. Likewise, Sunni Board is different and separately exists as on date. It is apprehended that if such further sub-division is done, various other sects such as Sufis or Wahabis etc., may felt outcast and ignored due to which, such people from those sects in the Muslim community may challenge the said provision/vires of this Section before the High Court. Hence, specific inclusion of sub-sects which is nothing but adding one more layer in the respective sects which could lead to community division and thus this amendment becomes 'divisive' in nature which cannot be an intent of the legislature.

(v) **Madhya Pradesh State Waqf Board:-** Where Shia is mentioned, there can be Bohra and Aghakhani. But, sects like Deobandh and Barelvi can also demand this in the future. Earlier, there was a separate board on the condition of having more than 15 percent income, it would be appropriate to establish a separate board on the basis of percentage of income.

(vi) **Karnataka State Board of Auqaf:-** The proposed amendment to include "Agakhani Waqf" and "Bohra Waqf" would definitely open the Pandora box and would be an open invitation to have more disputes and litigations. Presently, the Waqf Act, 1995 recognizes, as mandated under the Muslim Law, two kinds of waqf viz., Sunni Waqf and Shia Waqf and these two categories under its sweep includes various sects of the Muslim community.

The definition of Agakhani Waqf and Bohra Waqf now included in the amendment is mischievous and divisive in nature and run contrary to the very objective of unifying the waqfs. Furthermore, the Waqfs are classified as per the governing law of sunni and shia respectively and not on the basis of the school of thought perceived by the waqif.

This classification of two categories of waqfs is discriminatory to other sects of Muslims who followed the different school of thought under the Islamic jurisprudence. Therefore, the said amendment is liable to be rejected.

(vii) **Delhi Waqf Board:-** The proposed amendment is forward looking and promotes eclectic nature of the society by providing for spaces for Agakhani and Bohra Communities.

(viii) **Tripura Board of Waqf:-** Tripura Board of Waqf has stated that it has no issues with the proposed amendments under this Clause.

(ix) **Board of Auqaf, West Bengal:-** It should be on the basis of number of such Waqf Estates.

Important suggestions/comments by various stakeholders and experts:

10.5 Important suggestions/comments received by various stakeholders and experts are summarised as under:

i) The amendment proposes the creation of a new Waqf board for the Agha Khani community, despite the small number of properties they control. This is seen as unnecessary and an excessive expenditure, potentially aimed at regularizing Agha Khani properties.

ii) Request for establishment of a separate Dargah Board, similar to those proposed for Aghakhani and Bohra Waqfs.

iii) Request for creation of a separate Sufi Shah-Malang Waqf Board.

iv) Diversity is good and welcome. Separate Board can be justified as Non-Bohras or Agakhanis may assert their right.

v) Potential creation of separate Waqf Boards for the Bohra and Aga Khani communities recognizes the unique needs of different Muslim communities and allows for more tailored governance of their religious endowments.

vi) Bohras and Aghakhanis are offshoots of the Shia sect, and their Waqf properties have traditionally been managed under Shia Waqf Boards. By creating separate boards, the amendment could divide Shia Waqf governance, weakening the collective management and oversight of Shia Waqf properties.

vii) While the Bill permits the establishment of separate Waqf Boards for Aghakhani and Bohra sects, it fails to clarify the criteria and procedures for such divisions.

viii) Muslim community is so much diversified socially, economically and educationally. To give adequate protection to all 73 sects of Islam, some other types of Waqfs should also find place in the Act.

ix) Even if Waqf Board comprises solely of members of the Dawoodi Bohra Community, it would be unworkable. A member of the community would have to treat the word and deed of the al-Dai al-Mutlaq as sacrosanct and would never be a part of a body that can doubt much less question the al-Dai al-Mutlaq.

x) Dawoodi Bohra Community has sought exclusion from the provisions of any legislation that brings properties dedicated to charity or for the good of the community, under the administration of the Waqf Board since that would be contrary to the faith and essential religious practices of the Dawoodi Bohra Community protected under Article 25 and 26 of the Constitution of India. The Dawoodi Bohra Community has thus, sought a complete exclusion from the Waqf Act, 1995.

xi) The Dawoodi Bohra Community would welcome an exclusion like the exclusion accorded to the Dargah Khwaja Saheb, Ajmer and would welcome an initiative to have a separate legislation like there is for the Dargah Khwaja Saheb, Ajmer.

xii) The United Kingdom has recognised the position of the al-Dai-al-Mutlaq by enacting the Dawat-E-Hadiyah Act, 1993 (United Kingdom) and Sri Lanka has recognised the position

of the al-Dai al-Mutlaq by enacting the Dawat-E-Hadiyah (Sri Lanka) (Incorporation) Act, 1994.

xiii) An alternative framework is to recognise the al-Dai al-Mutlaq as a sole corporation and confer upon him the power to frame regulations for the recording of, and upkeep and maintenance of the Waqfs/Trusts of the Dawoodi Bohra Community.

xiv) The Ismaili Muslims are colloquially referred to as the 'Agakhanis' or the 'Khojas'.

xv) The Ismaili Muslims should be exempted from the jurisdiction of any Waqf Board under the Bill (and the resultant Act), and thus be kept completely outside the Bill's (and the resultant Act's) purview.

Examination by the Committee

10.6.1 On being asked about the definition of Bohras and Aghakhanis, the Ministry of Minority Affairs stated as under:

> "They are the denominations of Muslim. As per proposed Bill, Agakhani Waqf means a waqf dedicated by an Agakhani waqif. Bohra Waqf means a waqf dedicated by a Bohra waqif."

10.6.2 On being asked about the rationale behind establishment of separate Waqf Board for sub-sects in Islamic community, the Ministry of Minority Affairs stated as under:

> "In the existing Act, there is a provision of separate board for Shia and Sunni. The proposed Amendment further expands the representation of other communities (Aghakhani and Bohra communities).
>
> As per the Section 13(2A), the establishment of separate Waqf Boards (wherever needed) for Aghakhani and Bohra, will help in giving fair representation to these communities in managing their waqf properties and will enhance inclusiveness and diversity in the waqf management.
>
> For Example, as per section 13(2), If Shia Auqaf make up more than 15% of all Auqaf in a State, or their income exceeds 15% of total Auqaf income, the State Government may establish separate Board for Sunni and Shia Auqaf by official notification.

As per section 13(2A) the State Government may, if it deemed necessary by notification, establish a separate board of Auqaf for Bohras and Agakhanis.

In the present amendment, there is no such proposal to provide separate waqf boards for each sub sect in Islamic community."

10.6.3 Explaining about the considerations based on which any sect is permitted to have a Waqf Board of its own, the Ministry of Law and Justice, stated the following:

"It is submitted that under section 13 of Waqf Act, 1995, the State Government has the power to establish a Board. The proposed amendment enables the State Government to constitute separate Boards for Agakhanis and Bohras. If a State Government feels that there is a need for separate Board for Agakhanis and Bohras, it may constitute such Board."

10.6.4 Explaining about the reasons for the new terminology being introduced through the Bill and if it amounts to sub-classification, the Ministry of Law and Justice, stated the following:

"It is submitted that the rationale for dividing the waqfs boards into different sects is to provide a proper representation to these sects. Also, the same is not in violation of Article 14 of the Constitution. In the case of **Maulana Kureshi Gulam Mustafa v. Union of India (Uoi) and Ors., AIR 2002 GUJ 252**, a similar issue has been framed.

The main ground of challenge to the provisions of sections 13, 14, 32(a), 38, 61, 72 and 104 of the Act was that in the Constitution of the Wakf Board believers of Muslim faith had been divided into two broad categories 'Sunnies' and 'Shias' in their respective Wakf. The High Court held that:

"23. ... Mere non-recognition of a sect of Muslim in the provisions of the Wakf Act does not constitute any infringement or threat to the fundamental rights guaranteed to all sects of Muslims under Articles 25 and 26 of the Constitution….

...It may be found necessary by the Legislature to better protect and maintain Sufi Wakfs by giving them separate Board or representation on the existing Wakf Boards to remove from their minds, any kind of apprehension or fear and from orthodox sects of Muslim community."

Hence, the sub classification of the Waqf Board into different sect is not in violation of Article 14 of the Constitution and it's for representation and inclusiveness of different sects and communities."

10.6.5 On being asked about the methods of conciliation or arbitration or any other alternative dispute resolution in case of Waqf claims and counter claims by two or more sects, the Ministry of Minority Affairs submitted the following:

"For any kind of dispute, the parties may go to Tribunal under Section 83(1)."

10.6.6 On being asked about the extension of benefits of waqf to Durgahs, the Ministry of Minority Affairs furnished the following:

"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 as per Section 3(r) of the Waqf Act, 1995 as amended in 2013.

Vide Section 36(1A) of the proposed Bill, waqf deed has been made mandatory for creation of waqf.

Dargahs which are registered as waqf will be covered under the provisions of the Waqf Act.

There is no legal bar in making any donation to Waqf institutions under Section 72(1)(v)(f) of the Waqf Act, 1995."

10.6.7 In response to a question about the reasons for specifically including Aghakhani Waqfs and Bohra Waqfs in the Bill, particular basis for this distinction and how does the inclusion of the Agakhanis and Bohra communities address their historical and cultural contributions to waqf properties, the Ministry of Minority Affairs stated as under:

"In the existing Act there is a provision of separate board for Shia and Sunni. The proposed Amendment further expands the representation of other communities (Aghakhani and Bohra communities). As per the Section 13(2A), the establishment of separate Waqf Boards (wherever needed) for Aghakhani and Bohra, will help in giving fair representation to these communities in managing their waqf properties.

As per section 13(2), If Shia auqaf make up more than 15% of all auqaf in a State, or their income exceeds 15% of total auqaf income, the State Government may establish separate Boards for Sunni and Shia auqaf by official notification.

It has been left to the State Government to decide on the criterion for establishment of Bohra and Agakhani Boards.

A representation dated 26.10.2023, was received from the Dawoodi Bohra community, expressing concerns about the treatment of their public trusts in the State of Maharashtra. Dawat-e-Hadiyah has informed that they have been operating as Public Charitable Trusts of the Dawoodi Bohra Community under the Maharashtra Public Trust Act, 1950, till Waqf Act, 1995 was made applicable. Accordingly, these trusts have been administered in the manner prescribed under the Maharashtra Public Trust Act, 1950, i.e., seeking the prior permission of the Charity Commissioner, whenever required."

10.6.8 On the submission of the Dawoodi Bohra community for their exclusion from the Waqf Amendment Act, 1995 and the Waqf (Amendment) Bill, 2024, the Ministry of Minority Affairs submitted the following:

"**Section 2 of the Waqf Act, 1995 (as amended in 2013):** Application of the Act. - Save as otherwise expressly provided under this Act, this Act shall apply to all Auqaf whether created before or after the commencement of this Act:
Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer to which the Durgah Khawaja Saheb Act, 1955 (36 of 1955) applies.

It is proposed to amend Section 2 as follows:
Application of the Act. - Save as otherwise expressly provided under this Act, this Act shall apply to all auqaf whether created before or after the commencement of this Act, **except an auqaf/trust established and managed by Dawoodi Bohra Community.**
Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer to which the Durgah Khawaja Saheb Act, 1955 (36 of 1955) applies.

Justification: 1) The Dawoodi Bohra Community, although part of the larger Shia Muslim Community, has a distinct set of religious doctrines and practices. As a minority within the Shia community, the Dawoodi Bohras follow a unique governance system that revolves around the religious authority of the al-Dai al-Mutlaq.

2) In the Dawoodi Bohra faith, the al-Dai al-Mutlaq is both the spiritual and administrative leader. He is the sole trustee of the community's properties, managing them through appointed managers (Muntazimeen). His authority is absolute, and his decisions are considered sacrosanct and beyond challenge. This centralized control is fundamental to the Dawoodi Bohra religious identity.

3) For the Dawoodi Bohra Community, the directives of the al-Dai al-Mutlaq are considered equivalent to divine command. Adhering to any external authority, including a Waqf Board, would violate this principle. Hence, the imposition of Waqf Board oversight would force the community to compromise its religious doctrines, making compliance with the Waqf Act unfeasible.

4) To preserve the Dawoodi Bohra Community's religious integrity, an exemption from the Waqf Act, 1995 is necessary. This exemption would respect their unique religious governance, which centralizes authority in the al-Dai al-Mutlaq, ensuring that their faith and practices remain intact without interference from regulatory frameworks that conflict with their beliefs.

5) Countries like the United Kingdom and Sri Lanka have acknowledged the significance of the position of Al-Dai Al-Mutlaq by enacting specific legislation. The Dawat-e-Hidayat Act of 1993 (United Kingdom) and the Dawat-E-Hadiyah (Sri Lanka) (Incorporation) Act, 1994 (Sri Lanka) provide formal legislative recognition to the status and authority of Al-Dai Al-Mutlaq. These laws demonstrate a clear recognition of the religious and administrative roles held by this position, ensuring that the responsibilities and leadership functions associated with Al-Dai Al-Mutlaq are protected and upheld within a legal framework."

10.6.9 With respect to the demand for creation of a separate Dargah Waqf Board and Waqf Board for Sufi Shah-Malang Community, the Ministry stated that there is no such information available with the Ministry of Minority Affairs in this regard.

Observations/Recommendations of the Committee

10.7.1 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the replies given by the Ministry of Minority Affairs, find that separate Boards for Bohra and Aghakhani communities will give them the necessary independence needed for managing the affairs of their respective community as per their distinct religious doctrines and practices. The amendment is, thus, accepted.

10.7.2 Further, the Committee agree with the submissions made by the Dawoodi Bohra and Aghakhani Communities which although parts of the larger Shia Muslim Community, have a distinct set of religious doctrines and practices. As a minority within the Shia community, the Dawoodi Bohras follow a unique governance system that revolves around the religious authority of the al-Dai al-Mutlaq. In this respect, the Ministry have suggested for amendments in Section 2 of the Principal Act by providing that this Act shall not apply to a trust established by a Muslim under any law for the time being in force. Consequently,

the Committee recommend that the following proviso may be inserted in Section 2 of the principal Act:-

> **"Provided further that nothing in this Act shall, notwithstanding any judgement, decree or order of any court, apply to a trust (by whatever name called) established before or after the commencement of this Act or statutorily regulated by any statutory provision pertaining to public charities, by a Muslim for purposes similar to a Waqf under any law for the time being in force."**

CLAUSE-11

11. The Clause 11 of the Bill proposes to amend the Section 14 of the Principal Act.

Relevant provisions of the Principal Act:

11.1 Existing provisions of Section 14 are as under:

"Composition of Board.—(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 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;

(1A) 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 (1):

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 (1) 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).

* * * * [Sub-section (5) omitted by Waqf (Amendment) Act, 2013]

(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.

* * * * [Sub-section (7) omitted by Waqf (Amendment) Act, 2013]

(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.

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette."

Provisions Proposed in the Amendment Bill

11.2 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.

(*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*).";

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

"(*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.

Justification/explanation given by the Ministry of Minority Affairs

11.3 The justification furnished by the Ministry for the proposed amendment is as under:

"The composition of State Waqf Boards has been expanded to include two non-Muslim members, ensuring broader representation from Shia, Sunni, Bohra, Aghakhani, and backward Muslim communities which will promote inclusivity and diversity in waqf property management.

Even under the principal Act, non-Muslims can be beneficiaries, parties to disputes, or otherwise interested in waqf matters, justifying their inclusion in the administration of waqf. Section 96 of the Waqf Act 1995 clearly mentions power of Central Government to regulate secular activities of auqaf in relation to the functioning of

Central Waqf Council and State Waqf Boards. "Secular activities" shall include social, economic, educational and other welfare activities."

Gist of submissions by various Waqf Boards:

11.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) UP Sunni Central Waqf Board and UP Shia Central Waqf Board:- The democratic set-up of the Board is completely gone as all the Members and the Chairman have to be nominated by the State Government and no Members shall be elected by any electoral college which is against the very spirit of the Act. Converting an elected body to a nominated one is wholly against the spirit of the democracy and Constitution of India.

The institution of waqf is essentially a religious institution which is governed by the personal laws of Muslims. Its supervision and superintendent by a body comprising of non-Muslim members is exceedingly disturbing and unacceptable. There is no such provision in any law governing the religious institutions of any other faith or religious order.

There is no rationale behind the reduction of numbers of Members of Parliament and Members of State Legislature. The provision of having a maximum 2 Members of Parliament and 2 Members of State Legislature must be retained.

Out of total 11 members of the Board, 4 Members have mandatorily to be Muslims, 2 Members have mandatorily to be non-Muslims whereas the religious order of the remaining 5 Members has not been specified and they may, therefore, be non-Muslims, if appointed by the State Government. Under these circumstances, seven out of eleven Members of the Board may be non-Muslims and the Muslim Members will be in minority in the Boards.

There is no such class as "other backward classes" of waqfs. How will the value and number be determined? This amendment must be omitted altogether.

(ii) Rajasthan Board of Muslim Waqf:- Amendments to Section 14 of the Waqf Act are violation of Articles 25 to 31 of the Constitution. Waqf properties belong to Muslims and their religion and religious activities and only Muslims can be represented in the board of their properties. No one other than Muslims has rights in Waqf properties. Inclusion of persons from

communities other than Muslims in the board of Waqf properties of Muslim community is against Articles 25 and 26 of the Indian Constitution.

(iii) Telangana Waqf Board:- The provision for inclusion of two non-Muslim members and non-specification of other members in several categories may result into the Waqf board being run by non-Muslims.

This is also discriminatory because similar supervisory bodies constituted under Section 152 of Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987; do not make any provision for non-Hindu members and not only that but insist on the members to not only being Hindus but devout Hindus.

In addition to the above, the provision of elected Board has been deleted and the proposed Bill provides that all the Waqf board members will be nominated, obviously to fill up the board with the henchmen of the government.

It is anachronistic because when the general trend in democracy is to move from nomination to election, the proposal to move from elected to nominated board is incomprehensible for any person having faith in democracy.

(iv) Andhra Pradesh State Waqf Board:- This is a significant, serious and deeply concerned matter for functioning of the Wakf Board.

(i) All the wakf board members will be nominated obviously to fill up the board with the henchmen of the government.

(ii) When the general trend in democracy is to move from nomination to election, the proposal to move from elected to nominated board is anachronistic.

(iii) Seven out of eleven members can be non-muslims.

(iv) Chairperson of Wakf Board need not be a muslim.

This is highly undemocratic and objectionable.

Chairman shall also be nominated and hence there is no provision of vote of no confidence against chairman even if he indulges in corruption or anti-muslim acts, etc.

In total contrast, section 3(2) of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 provides:

(2) The Commissioner, the Additional Commissioner and every Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner appointed under sub-section (1) exercising the powers and performing the functions as aforesaid in respect of religious institutions or endowments, shall be a person professing Hindu religion and shall cease to exercise those powers and perform those functions when he ceases to profess that religion.

As a matter of fact, constitution of nominated Waqf Boards were excluded and constitution of elected Boards included in the Waqf Act, 1995 (Amendment Act) in a democratic manner due to criticism by various stake holders.

(v) Chhattisgarh State Waqf Board:- At present, under Section 14 of the Waqf Act, 1995 which deals with composition of State Waqf Board, the minimum numbers of Members is 7 and maximum is 13. Out of 7, 4 have to be Elected and 3 to be nominated. Likewise out of 13, 8 are to be elected and 5 are to be nominated. As such primacy is given to Democratic Process of Administration and Supervision in Waqf Board management. Even in appointment of Chairperson under Section 14 (8) of Waqf Act, 1995; the person has to be elected by the members of the Waqf Board. By the present amendment, all the 11 Members of the State Waqf Board are to be nominated by the State Government. India is a Socialist, Secular, democratic Republic. The Waqf Act is based on Democratic process and election is an important feature of the Waqf Act. By totally excluding election in the constitution of State Waqf Board and replacing it by nomination would be against the democratic set-up and would amount to virtually repealing the Waqf Act, 1995 and replacing it by a totally new Act under the garb of amendment. Appointment of two non-Muslim Members in the State Waqf Board would amount to interfering in the management of religious affairs of the Muslims and thereby violating Article 26 of the Constitution.

(vi) Kerala State Waqf Board:- It is proposed now that all the members are to be "nominated" by the State Government. Thus, indirect government control will be there in the Board, which will be against the democratic functioning of the State Boards. Board is a body having so many quasi-judicial functions and therefore, it is advisable to retain the present set up of electing members from various electoral colleges.

Now, all members of the Board are from among the muslim community itself. The Board is entrusted with powers not only for administration of waqf property but it has to involve in affairs connected with religious matters. Therefore, the present structure of electing members from among the community should be reserved as before. As per the proposed amendment, the members specified in clause (c) of sub-section (1) alone will be from the community. That apart, the second proviso to clause (f) of sub-section (1) provides that two of the total members of the Board shall be non-muslims. Thus the amendment is beyond the law making power of the Parliament and hence it is against Article 26 and 14 of the Constitution.

As per sub-section (8) of section 14 of the Act, the Chairman of the Board is elected by the members of the Board from among themselves. Now it is proposed to omit that provision and even the Chairman can be nominated by the State Government which is nothing but hijacking the Board through undue governmental control and will be against the democratic principles and transparency in election.

(vii) Maharashtra State Board of Waqf:- As matters before the Waqf Board are related to the waqf institution and it involves issues related to the Masjid, Dargha & kabrastan, and hence it requires Islamic knowledge. Therefore, two Non-Muslims Members cannot be nominated.

Further, the deletion of Section 14 (iii) of the Principle Act is not proper, because the Board has quasi-judicial powers. Hence, in order for the Board to effectively decide the matters before it, at least two interpreters of the law or persons from the legal fraternity would be required to keep the Board updated about the law.

To ensure democratic principles and to make the voice of the elected representatives a determining factor in the decisions of the Board, all members of the Board cannot be nominated by the Government.

Further, the deletion of Sub Section (8) is against the democratic fabric of the Republic of India. The Chairman of the Board, has to be an elected office, in order to keep principles of Democracy alive within the Board and to ensure smooth functioning of the same.

(viii) Madhya Pradesh State Waqf Board:- According to the above section, out of the minimum seven members for the formation of the board, four were from the elected category and

three were from the nominated category, so the formation could not be done as per our requirement. By nominating all the seven members in the said section, a suitable board will be made with appropriate persons as per the government.

The category with an income of more than 1 lakh rupees was determined in the year 1995. The income of waqf has increased in the last 29 years, so in view of that, it would be appropriate to make Rs 5 lakh mandatory in the said category.

(ix) Tamil Nadu Waqf Board:- It is submitted that the proposed amendment in proviso to Section 14 of the Principal Act with respect to the inclusion of two non-Muslim members in the composition of the Board does not have any sound reasoning or any rationale behind such inclusion. The inclusion of non-Muslim members though not be objected, the requirement of eligibility of such members to be experts in matter relating to Islam should be inserted.

(x) Gujarat State Waqf Board:- As there are more than 13000 Waqf Trusts registered in Gujarat State Waqf Board it would be appropriate that at least 2 (two) board members shall be there from the category of Mutawalli.

In every state sunni and shia from the Muslim community are represented in waqfs. According to the old law for each of shia and sunni communities, person specializing in the theologies of the sunni and shia communities shall be nominated by the government.

In section 14 (1), provision has been made to appoint two women from sub-section (c). It is recommended that if two women candidates are appointed from sub-sections (a) to (f), the field of selection will be wider and more qualified candidates can be found.

Among the 2 (two) members appointed under the sub-section, it is recommended/ proposed to give priority to select/appoint the members from the Muslim community.

(xi) Karnataka State Board of Auqaf:- The proposed amendment to section 14 of the Waqf Act, 1995 so as to introduce the inclusion of non-Muslim members in the State Waqf Board is directly in the teeth of Article of 16(5) of the Constitution of India and therefore *ultra-vires* and does not stand to reason since all other religious bodies of similar nature are represented by the respective members of their own religion. The proposed amendment takes away this basic right

of franchise and arbitrarily introduces the nomination of members at the whims and fancies of the Government. Hence the proposed amendment is liable to be rejected.

(xii) Haryana Waqf Board:- The proposed amendments in Section 14 will not be beneficial for the State Waqf Boards.

(xiii) Uttarakhand Waqf Board:- To maintain the spirit of Waqf, it is suggested to maintain the Muslim Character of the State Waqf Boards. All the members of State Waqf Board should be selected from the persons practising Islam. In the State of Uttarakhand for Shri Badrinath Kedarnath Temple Committee, no non-Hindu member is allowed. Similar provision has been done in the Uttarakhand Char Dham Devsthanam Management Act. Similarly, non-Sikh member is not allowed to be on board of the Shiromani Gurdwara Parbandhak Committee.

(xiv) Delhi Waqf Board:- It is a positive development that non-Muslims are also being made part of the Waqf Board to represent the views of wholesome society.

(xv) Tripura Board of Waqf:- Election of members from each of the electoral colleges is troublesome process . Nomination by the State Government is best solution. Two or more elected members from the Municipalities or Panchayats is a good initiative towards diversification.

(xvi) Meghalaya State Waqf Board:- The Waqf Act was enacted to govern the properties owned by Muslims and who have given the properties as waqf so that future sale of the property or misuse of the property cannot be made by the inheritent (Mutawalli).

(xvii) Bihar State Sunni Waqf Board and Bihar State Shia Waqf Board:- Election should not be replaced by nomination by the State Government.

Also, there are laws in UP, Kerala, Karnataka, Tamilnadu, etc. providing that those managing the affairs of Hindu religious properties must necessarily be professing Hindu Religion. Similarly, the Waqf properties should be managed by Muslims. The inclusion of Non-Muslims in the composition of the Board is not legal in the light of the other religious acts such

as Hindu Endowment Act, the Bihar Hindu Religious Trust Act, and other detailed Acts governing religious trusts and bodies.

If the provision of reconstitution of the Board is omitted, then how the Board will function.

(xviii) Board of Auqaf, West Bengal:- By the propositions to delete the word "Muslim" Members in the clauses of Section 14, it may so happen all the Board members are Non-Muslims at a given point of time. In case of Muslim Properties, Non-Muslims will govern the scenario, whereas there shall be no Muslim representation in the properties of other community. There should be no Non-Muslim in the Board.

It is also highly derogatory that all members would be nominated. Earlier provisions are found justified where elected members are more in number, than the nominated members, and that approach is more justified to support the democratic view.

(xix) Jharkhand State Sunni Waqf Board: The waqf (amendment) bill 2024 lacks equality between Muslims, Hindu and Sikh religions. The amendment suggest appointment of non-Muslim members, Chief Executive Officer and other officers/staffs is discriminatory and in violation ofArticle 14 of the Constitution of India. The proposed bill violates Article 30 of the Constitution as well which empowers minorities to administer their own institutions. In this context reference of other laws is as under:-

1) The Uttar Pradesh Shri Kashi Viswanath Temple Act 1983;

2) The Tamil Nandu Hindu Religious and Charitable Endowments (Tamil Nada Act 25 of 1954) Act 1954;

3) The Andhra Pradesh Charitable and Hindu Religious Institution and Endowments Act 1987 (Act 30 of 1987);

4) The Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997;

5) The Orissa Hindu Religious Endowments Act, 1951;

6) The Sikh Gurudwara Act, 1925.

<u>Important suggestions/comments furnished by various stakeholders and experts:</u>

11.5 Important suggestions/comments received from various stakeholders and experts are summarised as under:

i) Article 30 provides minorities the right to establish and administer educational institutions of their choice. While this article specifically pertains to educational institutions, the principle of autonomy in managing minority affairs, including religious institutions like Waqf Boards, can be inferred from this provision. The appointment of non-Muslim members undermines this autonomy.

ii) The amendment allows for members to be nominated rather than elected, leading to concerns about the representation of Waqf beneficiaries. There is dissatisfaction with the lack of an electoral process, which might result in board members who do not adequately represent the interests of the Waqf beneficiaries, particularly in municipalities and Panchayat Samities.

iii) The amendment does not clearly define the role of non-Muslims in Waqf Boards, raising concerns about their involvement.

iv) The proposed Bill, which includes the participation of non-Muslims in the Waqf Boards that oversee and manage religious endowments and properties specific to the Muslim community, contradicts established legal precedents across several Indian States. For instance, the Uttar Pradesh Hindu Public Religious Institutions (Management and Regulation) Act; the Uttar Pradesh Sri Kashi Vishwanath Temple Act, 1983; the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997; the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959; the Bihar Hindu Religious Trusts Act, 1950; the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987; the Orissa Hindu Religious Endowments Act, 1951; all mandate that those managing Hindu religious properties must necessarily profess the Hindu religion. This reflects a consistent legal standard that religious institutions should be managed by individuals who belong to the same faith.

v) The proposed amendment removes the requirement for elected representatives on Waqf Boards, allowing State Governments to nominate members unilaterally. This stifles the democratic process and reduces the Muslim community's influence over the management of Waqf properties.

vi) Adequate representation may be given to members from Sufi Background in State Waqf Board.

vii) Representation of women and Pasmanda (OBC) Muslim community should be ensured in the Waqf Board so that their problems and concerns get a proper representation.

viii) The tenure of the Chairman and Members of the Waqf Board should be three years only and it should be under the Ministry of Minority Affairs.

ix) There should be a provision for representation of non-Muslims in the State Waqf Boards and the Committees formed by the Boards.

x) Instead of including women of general Muslim Caste in the Waqf Boards of the States, there should be a provision to include extremely backward Muslim women and non-Muslim women as well.

xi) It is a welcome step to include Non–Muslims in the State Waqf Boards but similar provisions in many other Religious Charitable & Endowment Acts are missing. Demands of inclusion of Non-Hindus and Non-Sikhs would unnecessarily create opposition from Hindu and Sikh Communities.

xii) The proposed amendments to Section 14 significantly undermine the autonomy of the State Waqf Boards. The amendment to Section 14 places complete control of the Waqf Board in the hands of the State Government, requiring that all members of the Waqf Board be nominated rather than elected. This disempowers the Waqf Board and enables the State Government to appoint members of its choosing, rather than allowing the community to

elect their representatives. Consequently, this amendment fails to provide genuine representation for the Muslim community. Nominated members are always subject to the "doctrine of pleasure" and are essentially political appointees. This brings in instability to the system. Apart from this, a democratic setup is always the preference and the Hon'ble Supreme Court has emphasized on this aspect holding that such elected members must outnumber the nominated members.

xiii) Furthermore, the proposed amendment allows for the appointment of two non-Muslim members to the Waqf Board, which violates Article 26 of the Constitution. Non-Muslims cannot not have any role in the management of religious and charitable institutions of Muslims or their supervision, especially given that they are currently prohibited from dedicating any property, whether movable or immovable, as waqf property.

xiv) The Bill also makes a bold move towards democratising the formation of Waqf Boards. For the first time, representatives of Muslim sects-Sunni, Shia, Bohra, and Aghakhani-along with members of non-Muslim communities and women, will be included in the State Waqf Boards. This inclusivity is crucial in a diverse society like India, where Waqf properties hold significance for various communities.

xv) The proposed inclusion of non-Muslim members in Waqf Boards is in direct conflict with the Shariat law principle that only Muslims can manage Waqf properties. This also violates the established practices in other religious endowments in India, such as Hindu Endowments and Gurudwara Prabhandak Committees, where members must belong to the faith. This provision is discriminatory, as it undermines the religious rights of the Muslim community to manage their religious assets independently.

xvi) The Waqf Board should be reconstituted as a quasi-public institution, rather than being solely a Muslim or Minority Organization. Representation within the Waqf Board should include Members from all Muslim Sects.

xvii) The government can nominate or appoint members from various groups, including Pasmanda and OBC communities, as long as they meet qualification criteria. Non-Muslims do not have the right to exclude members from sects like Bohra, Aghakhani, or other Muslim denominations if they are eligible.

xviii) Ensuring that Muslim women have a voice in waqf management is a significant step toward gender equality in decision-making. Women's representation in waqf governance will bring diverse perspectives, improve transparency, and ensure that women's needs and interests are adequately represented in the management of charitable assets. Including women, along with members from different communities, will help break the cycle of insularity that has allowed for mismanagement in the past. Their presence in waqf governance will act as a safeguard, promoting more responsible and inclusive decision-making.

xix) In Islamic history, women have played an important role in charitable activities, including the establishment of waqf properties. Notable figures such as Khadijah bint Khuwaylid, the wife of Prophet Muhammad (PBUH), and other women from the Prophet's household were known for their involvement in trade and charity. Islamic law does not restrict women from participating in waqf management; instead, it encourages their active involvement in serving the community. Therefore, this proposed amendment aligns with Islamic values of inclusion and justice.

xx) The participation of non-Muslims, such as Hindus, in waqf management does not pose any threat or create conflict. On the contrary, it reflects the inclusive spirit of waqf governance and fosters inter-religious harmony. Including non-Muslims in waqf governance can promote trust and transparency. Waqf properties are often intertwined with the broader community's welfare, and having representatives from various religious groups ensures that all stakeholders have a voice in the decision-making process. This inclusivity will strengthen the governance of waqf properties and ensure that they serve the public good without bias.

xxi) Women should be given a place in the Waqf Committees.

xxii) Waqf Boards should cease to exist & all the Waqf property be held in the hands of the Waqif or legal heirs of the Waqif while still be continuing as a Waqf property dedicated to the welfare of society.

Examination by the Committee

11.6.1 Clarifying about the maximum strength of Members in a State Waqf Board, the Ministry of Minority Affairs stated as under:

> "The 1995 Act is silent about the maximum number of members unlike the 1954 Act which mentioned that the board shall consist of eleven members."

11.6.2 On being asked about the logic and rationale behind inclusion of Non-Muslim Members in the Waqf Boards and if such inclusion violates Article 14, 25 and 26 of the Constitution, the Ministry of Minority Affairs, in its written reply submitted the following:

> "Article 14 of the Constitution mandates that the State shall not deny, to any person, equality before the law or the equal protection of the laws within the territory of India. The proposed amendment does not violate Article 14.
>
> Article 25 of the Indian Constitution grants all individuals the freedom of conscience and the right to freely profess, practice and propagate religion. This right is subject to public order, morality and health. It ensures religious freedom.
>
> Article 26 provides that every religious denomination or section has the right to establish and maintain institutions for religious and charitable purposes, manage its own religious affairs, own and acquire property, and administer that property in accordance with the law, all subject to public order, morality and health.
>
> Section 3 of the Principal Act defines beneficiary as -(a) "beneficiary" means a person or object for whose benefit a waqf is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law.
>
> Section 3(k) defines persons as "person interested in a "waqf" means any person who is entitled to receive any pecuniary or other benefits from the waqf and includes- (i) any person who has a right to "offer prayer" or to perform any religious rite in a mosque, idgah, imambara, Durgah**,** khanqah, peerkhana and karbala, maqbara, graveyard or any

other religious institution connected with the waqf or to participate in any religious or charitable institution under the waqf;

a) According to the Section 3(a) of Waqf Act 1995, "beneficiary" can be Non-Muslim.

b) They can also be considered "persons interested" in accordance with Section 3(k) of the Act since they can offer prayer/perform any religious rite in Dargah etc.

c) They can also make donation to Waqf institutions under Section 72(1)(v)(f) of the Waqf Act, 1995.

d) Non-Muslims can also be party in litigation related to Waqf matters.

e) Section 96 of the Waqf Act 1995 clearly mentions power of Central Government to regulate secular activities of auqaf in relation to the functioning of Central Waqf Council and State Waqf Boards. "Secular activities" shall include social, economic, educational and other welfare activities.

Hence, their representation on the Board helps in giving fair representation to these stakeholders (Beneficiary, Any Person Interested, Donor, Litigant). Their inclusion on the Waqf Boards can make it more inclusive leading to better governance.

The duties, functions, and powers of the Central Waqf Council are to oversee the functioning of the State Waqf Boards and for calling information from or direct State Boards to correct any irregularities in functioning. It also plays an advisory role. It does not exercise direct control over waqf property itself.

Furthermore, State Waqf Board shall exercise its powers under this Act to ensure that the Auqaf under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes of which such Auqaf were created or intended.

In the case of **Syed Fazal Pookoya Thangal vs Union Of India (UoI) And Ors. (Kerala High Court), AIR1993KER308,** it was held:

> *"The Wakf Board is not a conglomeration of individuals. It is not even akin to a company where several individuals join to constitute it. It is a statutory body, pure and simple. It is not a representative body of the Muslim community. It has no soul and no faith, except the faith of dutiful performance of its functions and duties under the Act."*

It is well known that management of Wakf properties has since long been controlled by the State. Various laws have been enacted from time to time in various parts of the country by either the Central Legislature or the State Legislatures for achieving this purpose. Wakf properties have thus been the subject of special protection by the State through the enactment of these laws with a view to see that they are properly

preserved, and that the income therefrom is not frittered, mis-utilised or diverted for purposes other than those authorised by the objects of the Wakf.

In this context **Allahabad High Court (Hafiz Mohammad Zafar Ahmad v. UP Central Sunni Board of Waqf, Lucknow AIR 1965 All 333, per DD Seth, J.)** held that:

"The right of a Mutawalli is not, in my opinion, equivalent to that of a mahant. A Mutawalli's right is purely a right of management of the property and is not a proprietary right. The duties of a Mutawalli are purely of a secular character. His duties are not of a religious character.

He has no beneficial interest of any kind in the property which he administers while a mahant has such an Interest in the property belonging to the math. A mahant's right is not only a right of management of the property but he holds a beneficial interest in it. A Mutawalli is nothing more than a servant of the founder of the Waqf."

Further in the case of **Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan, 1964 SCR (1) 561**, one of the grounds for challenging the Nathdwara Temple Act was that Section 5 (3) allows the Collector to be part of the board even if he is not a Hindu. It was held by a Five Judge Bench that right to manage the properties of the temple is purely a secular matter and cannot be regarded as the religious practice.

The functions of the State Waqf Boards clearly shows that it is not entirely religious practise but also administration of the Waqf properties. So, the matters regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice, can be regulated by the State. Hence, it is not a violation of Article 14 of the Constitution.

As per Waqf Act, 1995, the chairperson of Central Waqf Council can be a non-Muslim, being an ex-officio. Therefore, limited involvement of non-Muslims in these boards does not infringe upon their religious practices

Precedents and comparative practices

Additionally, there are precedents, such as the Bodh Gaya Temple Act, where Hindus are included alongside Buddhists in managing religious institutions.

Bodh Gaya Temple Act, 1949: This Act provides for the formation of a Government-constituted Committee to manage the Bodh Gaya Temple, illustrating an organized approach to religious property management. The Committee consists of a Chairman and eight members, all nominated by the State Government.

Religious Representation: Four members are Buddhists, and four are Non-Buddhist i.e. Hindus, including the Mahanth, ensuring balanced religious representation.

Chairman: The District Magistrate of Gaya serves as the ex-officio Chairman. If the District Magistrate is non-Hindu, a Hindu Chairman is nominated by the State. This structured approach demonstrates the practicality and constitutionality of including members from different religious backgrounds in managing religious properties, which is relevant to the inclusion of non-Muslims in State Waqf Boards.

Shri Amarnath Ji Act 2000:

In the board administrating the Amarnath Ji Shrine under Section 4 (relating to constitution of the Board) of the Shri Amarnath Ji Act, 2000 (Act No. XVIII 2000); the Shrine Board Members apart from other members consist of three persons who have distinguished themselves in administration, legal affairs or financial matters.

That Section 4 (iii) does not mention that distinguished person in the field of administration, legal affairs or financial matters have to be necessarily a Hindu.

Hence inclusion of Non-Muslim members does not violate Article 25 & 26 of the Constitution; rather including two non-Muslim members can help in promoting inclusive governance."

11.6.3 On the question of constitutionality with respect to the inclusion of Non-Muslim Members in the Waqf Boards, the Ministry of Law and Justice, in its written reply submitted the following:

"It is submitted that the proposed amendments in Waqf (Amendment) Bill, 2024 are not in violation of the Constitutional Principles. In our Constitution, the Preamble envisages India as a secular country. The Constitution further provides the Fundamental Rights under Part III, which are the basic guarantees to citizens and persons to ensure that the objectives of Preamble of the Constitution be achieved and fulfilled in true sense.

The objective of the Waqf Act, 1995 is for the purpose of better administration of waqf and for matters connected thereto. Under Section 96 of the Wakf Act, 1995, the Central Government has the power to regulate secular activities of the waqf and perform functions including, to lay down general principles and policies for proper administration and coordination of functions of Central Waqf Council and the Waqf Board under the different States.

The inclusion of non-muslim members in the Central Waqf Council and Waqf Board is not a violation of articles 25 and 26 of the Constitution.

Article 25 of the Constitution provides as under:

"***25. Freedom of conscience and free profession, practice and propagation of religion***

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which maybe associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

Article 26 of the Constitution provides:

"26. Freedom to manage religious affairs

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law."

Article 25 distinguishes between religious practices and secular activities associated with religious institutions. The State has the authority to regulate or restrict secular activities that may be associated with religious practices, such as economic,

financial, political or other secular activity unrelated to the core aspects of religion. Article 26 includes the right of religious denominations or any section thereof to manage their own religious affairs, including establishing and maintaining religious institutions, as long as they do not violate any other laws or public order.

In the case of **Shri Jagannath Temple Puri Management Committee v. Chintamani, AIR 1997 SC 3839**, the Supreme Court has observed that state cannot interfere with person's right to profess, practice and propagate his religion. However, all the activities in or connected with the temple are not a religious activity. The management of temple or maintenance of discipline and order inside the temple can be controlled by the State. If any law is passed for taking over the management of the temple it cannot be struck down of violative of articles 25 and 26 since the management of the temple is a secular act.

In the case of **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, MANU/SC/0136/1954**, the Supreme Court dealt with the power of the State to intervene in the administration of religious institutions. The Supreme Court held that while the State can regulate and supervise the administration of religious institutions, it should not interfere with the essential religious practices of a denomination unless they are deemed to be socially harmful or against public order.

Article 26(c) details the right of religious denomination to own and acquire movable and immovable property. The state can regulate the property of a religious denomination by law. Article 26(d) provides the religious denomination with the right to administer such property in accordance with law. The State can regulate the administration of the property belonging to the religious entity. It is also important to understand that the state cannot altogether take away the right of the administration from the religious institution.

In the case of **Seshammal v. State of Tamil Nadu, MANU/SC/0631/1972**, the hereditary post of Archakas and Mathadhipatis (an archaka is a person who is accomplished and well-versed in the agamas and rituals) of Hindu temples in Tamil Nadu challenged the validity of Tamil Nadu Religious and Charitable Endowments Act, 1970 for the violation of Right to Freedom to manage religious affairs. The Supreme Court

decided that the post of Archaka is secular. The appointment of Archaka is not a religious practice nor is it an integral part of a religion.

In the case of **N. Adithayan v. Travancore Devaswom Board, 2002 AIR SCW 4146**, the question was whether non-Brahmins can be appointed as a priest in a temple. The Supreme Court while deciding the question held that the Brahmins do not have the monopoly over performing rituals in a temple. The court also added that non-Brahmins can be appointed as a priest as long as he is well versed in his job.

In the case of **Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan, 1964 SCR (1) 561**, one of the grounds for challenging the Act was that Section 5 (3) allows the Collector to be part of the board even if he is not a Hindu. It was held by a Five Judge Bench that right to manage the properties of the temple is purely a secular matter and cannot be regarded as the religious practice and hence does not violate Article 25 and 26 (b) of the Constitution. Hence, a member of the Board can be of different religion and the same does not contravene the religious fundamental rights enshrined in the Constitution.

In the case of **Syed Fazal Pookoya Thangal v. Union Of India and Ors. (Kerala High Court), AIR 1993 KER 308**, it was held:

"10. The Wakf Board is not a conglomeration of individuals. It is not even akin to a company where a number of individuals join together to constitute it. It is a statutory body, pure and simple. It is not a representative body of the Muslim community. It has no soul and no faith, except the faith of dutiful performance of its functions and duties under the Act.

11. It is well known that management of Wakf properties has since long been controlled by the State. Various laws have been enacted from time to time in various parts of the country by either the Central Legislature or the State Legislatures for achieving this purpose. Wakf properties have thus been the subject of special protection by the State through the enactment of these laws with a view to see that they are properly preserved and that the income therefrom is not frittered, misutilised or diverted for purposes other than those authorised by the objects of the Wakf. It is the power so exercised by the State that now stands vested in the Wakf Boards in each State, specially established for the purpose. What the Wakf Board does is to carry out functions which

were hitherto being undertaken by the State. It is exercising a part of the State's functions and is an instrumentality of the State. The Wakf Board is a creature of the Wakf Act. It has no existence otherwise. It stands or falls with the Wakf Act. It has to exercise those functions and powers which are vested in it under the provisions of the Wakf Act. It is not a collection of individuals, or a sect or body with a common faith which alone will make it a denomination for the purpose of Article 26. If it is not a denomination, it has no rights under Article 26".

In the case of **Basheer vs. State of West Bengal AIR 1976 CAL. 142**, the Calcutta High Court held:

"12. The question, therefore, for this case that would have to be decided is whether under Article 25 of the Constitution the right to freedom of religion as contemplated by clause (1) of that Article had in any way been interfered with. As I read the provisions of the present Act in question, I do not find in any way any interference with the freedom of conscience or the right to freely profess, practise or propagate the religion. Indeed the matters of control which have been vested in the Commissioner or in the Board of Wakf are matters regulating or restricting the economic and the financial activity associated with the religious practice."

Therefore, Waqf is not a religious denomination in accordance with Article 26 of the Constitution.

So, the matters regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice under Article 25 (2) (a) of the Constitution can be regulated by the State.

Therefore, the proposed amendments to include two Non-Muslim persons in the Central Waqf Council and State Waqf Boards are not in violation of articles 25 and 26 of the Constitution. Also, the Waqf also performs secular functions as per Section 96 of the Waqf Act, 1996. The operation of Waqf Act, 1995 impacts a large number of non-Muslim population and further the purpose of waqf also includes charitable purpose. The proposed amendments of inclusion of non-Muslim is for the better administration and management of varied functions performed by the State Waqf boards and the Central Waqf Council and majority representation has been given to class of representatives who are Muslims. The Hindu temples and other religious institutions are governed under the

State religious institutions and charitable endowments institutions laws, whereas auqaf are governed under a central legislation, i.e. Waqf Act, 1995."

11.6.4 On being asked whether such provisions will also be incorporated in laws regulating other religious endowments and charitable bodies, the Ministry of Minority Affairs submitted the following:

"The Waqf Act 1995 is central legislation meant to regulate waqf whereas other religious laws are generally enacted at the State level for administrating the religious endowments. E.g. of the Statutes- Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959; Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987; Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997; Odisha Hindu Religious Endowment Act 1951.

The State legislations have power to incorporate such provisions, some of the State legislations such as Bodh Gaya Temple Act of 1949 and Shri Amarnath ji Shrine Act 2000.

If the State legislations want to incorporate such provisions, they may do so."

11.6.5 When asked whether other religions in our country have anologous Board/institutions, the Ministry of Law and Justice explained as under:

"It is submitted that the concept relating to waqf is unique in its nature than the other religious endowment and a charitable trust. The Supreme Court in the case of **Nawab Zain Yar Jung and Others v. The Director of Endowments and Others, 1963 (1) SCR 469**, observed as under-:

"*At this stage, it is necessary to distinguish between wakfs recognised by Muslim law and religious endowments recognized by Hindu Law on the one hand and public charitable trusts as contemplated by the English Law on the other. This question has been considered by the Privy Council in Vidya Varuthi Thirtha v. Balusami Ayyar. Mr. Ameer Ali who delivered the judgment of the Board observed that "it is to be remembered that a "trust" in the sense in which the expression is used in English law, is unknown to the Hindu system, pure and simple. Hindu piety found expression in gifts to ideals and images consecrated and installed in temples, to religious institutions of every kind, and*

for all purposes considered meritorious in the Hindu social and religious system ; to Brahmins, Goswamis, Sanyasis, etc. When the gift is directly to an idol or a temple, the seisin to complete the gift is necessarily effected by human agency. Called by whatever name, he is only the manager or custodian of the idol or the institution. In no case is the property conveyed to or vested in' him, nor is he a trustee in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for maladministration." (p. 31 1).

Thus, these observations show that the basis concept of a religious endowment under Hindu Law differs in essential particulars from the concept of trust known to English Law. Similarly, the Muslim law relating to trusts differs fundamentally from the English law. According to Mr. Ammer Ali, "the Mohammadan laws owes its origin to a rule laid down by the (1) (1921) L.R. 48 I.A 302 Prophet of Islam; and means "the tying" up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings." As a result of the creation of a wakf, the right of wakif is extinguished and the ownership is transferred to the Almighty. The manager of the wakf is the mutawalli, the governor, superintendent, or curator. But in that capacity, he has no right in the property belong into the wakf; the property is not vested in him and he is not a trustee in the legal sense." Therefore there is no doubt that the wakf to which the Act applies is, in essential features, different from the trust as is known to English law.

Having noticed this broad distinction between the wakf and the secular trust of a public and religious character, it is necessary to add that under Muslim law, there is no prohibition against the creation of a trust of the latter kind. Usually, followers of Islam would naturally prefer to dedicate their property to the Almighty and create a wakf in the conventional Mahommedan sense. But that is not to say that the followers of Islam is precluded from creating a public, religious or charitable trust which does not conform to the conventional notion of a wakf and which purports to create a public religious charity in a non-religious secular sense. This position is not in dispute."

Besides above, there is one difference that waqf property cannot be alienated through sale, gift, mortgage, etc. whereas as per section 34 of the Tamil Nadu Hindu

Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 to 1959), Hindu religious endowment have the right of alienation subject to approval of the Government."

11.6.6 On being asked if the concerned government officials were happened to be Non-Muslims, would it still be insisted that non-Muslim members should also be included, the Ministry of Minority Affairs submitted the following:

"Under Section 14(1), two of the total members (13) appointed to the board under this subsection shall be non-Muslim. Therefore, any two members can be non-Muslim to fulfil this requirement.

Two of the total members of the board shall be non-Muslims. This includes government officials as well."

11.6.7 Further explaining about the inclusion of non-Muslim Members in the Board and responding to the concerns regarding the possibility wherein the Muslim members may be in minority in the Board, the Ministry of Minority Affairs stated as under:

"…..the changes introduced in the constitution of the Waqf Board are designed to create two categories: one category exclusively for Muslims (4 members)…….and another category (7 members). Out of this (second) category, two members will be Non-Muslim, remaining will be Muslims."

11.6.8 The status of representation of women in State Waqf Boards as furnished by the Ministry of Minority Affairs, is given below:

Sl. No.	Name of the Waqf Board	No. of Women member
1.	Andhra Pradesh State Waqf Board	Two
2.	Assam Board of Waqf	No women
3.	Bihar State Sunni Waqf Board	No women
4.	Bihar State Shia Waqf Board	No women
5.	Dadra & Nagar Haveli Waqf Board	Two
6.	Delhi Waqf Board	Not Available (NA)
7.	Gujarat State Waqf Board	Two
8.	Himachal Pradesh Waqf Board	Not Available (NA)
9.	Jharkhand State Sunni Waqf Board	Not Available (NA)
10.	Kerala State Waqf Board	Two
11.	Lakshadweep State Waqf Board	Three
12.	Madhya Pradesh State Waqf Board	Two
13.	Maharashtra State Board of Waqf	One

14.	Waqf Board Manipur	No women member
15.	Meghalaya State Waqf Board	Three
16.	Punjab Waqf Board	Two
17.	Rajasthan Board of Muslim Waqf	Two
18.	Uttar Pradesh Sunni Central Board of Waqf	Two
19.	Uttarakhand Waqf Board	Two
20.	Puducherry Waqf Board	One
21.	Haryana Waqf Board	Two
22.	Odisha Waqf Board	Not Available (NA)
23.	West Bengal Waqf Board	One
24.	Jammu & Kashmir Waqf Board	One
25.	Chattisgarh Waqf Board	One
26.	Chandigarh Waqf Board	Not Available (NA)
27.	Tamil Nadu Waqf Board	Two
28.	Tripura Waqf Board	One

11.6.9 With respect to appointment of women, on being asked whether the appointment of more than 2 women may be considered, the Ministry of Minority Affairs, in its written reply, stated as under:

> "Sachar Committee Recommendation to provide for at least two women in each State Waqf Board has been retained in the proposed bill. Besides providing gender equity, this will help in improving direct access to welfare measures for women and children.
>
> As per section 14 (2), in other categories (7 members), there is no bar for nomination of women members. Proviso to section 14 (2)(c), ensures that two Muslim women shall be members.
>
> Hence, there can always be more than two women members."

11.6.10 On being asked about the reasons for reducing the representation of MPs and MLAs in the Board, the Ministry of Minority Affairs, in its written reply, stated as under:

> "The proposed Amendment Bill provides in Section 14 (1) (c) that two or more elected members from the Municipalities or Panchayats shall be member of the Board. The people's representatives are adequately represented in the proposed amendment and the composition proposed is more inclusive and diverse and the same will help in improving the administration of waqf at local level.

In the Bill, one member of parliament from the State and one member of the State Legislature can be nominated by the State Government in the Board, whereas earlier as per Waqf Act, 1995; as amended in 2013, Section 14(b) provides one and not more than two Muslim members of Parliament from the State and State Legislature (not more than 4).

The reduction of one MP and MLA member has been made to accommodate two local government representatives. This change aims to enhance local outreach and ensure greater involvement at the grassroots level, strengthening the connection between Waqf management and the local community."

11.6.11 On being asked about the reasons for converting an elected body into a nominated one, the Ministry of Minority Affairs, in its written reply, stated as under:

"Section 14 of the Waqf (Amendment) Bill, 2024; provides for composition of the State Waqf Board consisting of 11 members. By nominating individuals, the State can appoint members with specialized knowledge in governance, law and Waqf-related matters. This will help in a more effective and efficient management of waqf properties."

11.6.12 On being asked about the definition of "backward Muslim", the Ministry of Minority Affairs furnished the following:

"Different States have their own lists of OBCs, which include various Muslim communities identified as backward. These lists are periodically reviewed and updated based on socio-economic surveys."

11.6.13 The Ministry was asked to provide its opinion on the suggestion that 50% participation of Pasmanda (OBC) Muslim community should be ensured in the Waqf Boards. In this respect, the Ministry of Minority Affairs stated as under:

"The composition of State Waqf Boards has been expanded to include one member of Other Backward Classes among Muslim communities. Shia, Sunni, Aghakhani, Bohra and two Non-Muslims are being made mandatory and this has been done for making it inclusive in decision making and effective management of the Board."

11.6.14 On being asked about to clarify the basis for determination of belongingness to a Waqf in view of amendments proposed in sub section 6 of Section 14, the Ministry of Minority Affairs, in its written reply, stated as under:

"As per the deed of Waqf. Under section 36(3), application of registration will inter-alia contain copy of Waqf deed, if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant of the origin, nature and object of the Waqf. A description of Waqf properties is sufficient for the identification thereof and gross annual income from such properties. Presently, a Waqf deed is not mandatory for registration of Auqaf, but in the proposed Bill *vide* Section 36 (1A), it has been made mandatory."

Observations/Recommendations of the Committee:

11.7 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs, find that the composition of State Waqf Boards has been expanded to include two non-Muslim members and ensure broader representation from Shia, Sunni and backward Muslim communities which will promote inclusivity and diversity in waqf property management. The Committee feel that non-Muslims can be beneficiaries, parties to disputes, or otherwise interested in waqf matters, which justifies their inclusion in the administration of waqf. Hence, the Committee accept the amendments proposed under the Clause. However, it has been brought to the knowledge of the Committee that the presence of non-Muslim ex-officio Members may result in fulfilling the requirement of the proposed amendment whereas this may go against the intent of the proposed amendments. Hence, the following amendments are proposed in Clause 11:

(1) the proposed sub-Section (1)(e) of Section 14 be substituted as given:

"Joint Secretary of the State Government dealing with waqf matters-member, *ex officio*;"

(2) the second provisio to sub-section (1) of Section 14 be amended as given:

"Provided further that two members of the Board appointed under this sub-section excluding *ex officio* members, shall be non-Muslims:"

CLAUSE-12

12. The Clause 12 of the Bill proposes to amend the Section 16 of the Principal Act.

Relevant provisions of the Principal Act:

12.1 Existing provisions of Section 16 are as under:

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

(a) he is not a Muslim and is less than twenty-one years of age;
(b) he is found to be a person of unsound mind;
(c) he is an undischarged insolvent;
(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;
(da) he has been held guilty of encroachment on any waqf property;
(e) he has been on a previous occasion—
(i) removed from his office as a member or 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."

Provisions Proposed in the Amendment Bill

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

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

Justification/explanation given by the Ministry of Minority Affairs

12.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Section 16(d) has been revised to disqualify a person from being appointed as a member of the Board if he has been convicted of any offence and sentenced to imprisonment for at least two years. This clause ensures that only individuals with a clean legal record can serve on the board, improving accountability and trust."

Gist of submissions by various Waqf Boards:

12.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Rajasthan Board of Muslim Waqf:- Amendment in section 16(d) is wrong because it is necessary for the member of the board to have a clean image.

(ii) Telangana Waqf Board:- Telangana Waqf Board has stated that it has no objection to this amendment.

(iii) Andhra Pradesh State Waqf Board:- If para (a) of the disqualification remains then appointment of non-muslim members cannot be effected and it is dichotomous.

Earlier conviction for any period only for offence involving moral turpitude was basis for disqualification. Now conviction for any offence for not less than two years has been substituted. May not be objectionable because moral turpitude is always subject to interpretation but conviction with two years imprisonment is ascertainable.

(iv) Karnataka State Board of Auqaf:- The substitution for section 16 clause (d) of the principal Act, does not contain the aspect involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such effects. These ingredients are available in all the laws of the states and central government as well. In order to maintain consistency in the laws, the existing clause shall be retained. Hence the proposed amendment is liable to be rejected.

(v) Delhi Waqf Board:- Section 16(1) of the existing Act needs amendment in view of the provision of inclusion of non-Muslims in the Board to avoid any contradiction. It is better to debar convicted person from being Member of the Board irrespective of the sentence.

(vi) Tripura Board of Waqf:- Tripura Board of Waqf has stated that it has no issues with the proposed amendments under this Clause.

Important suggestions/comments furnished by various stakeholders and experts:

12.5 Important suggestions/comments received from various stakeholders and experts are summarised as under:

i) The intention of the amendment is to completely bar person who was convicted for any Offence. Normally, there may be convictions for political reasons also. The said conviction has nothing to do with Waqf Administration. Therefore, the present provision is sufficient to take care of such situation. Conviction for moral turpitude can be a reason for disqualification.

Examination by the Committee

12.6.1 On being asked to explain the dichotomy because the grounds for disqualification for being appointed or for continuing as a member of the Board as per section 16 (a) of the principal Act is 'he is not a Muslim' whereas in Clause 11 of the amended Bill provision for appointment of two non-Muslim members has been made, the Ministry of Minority Affairs stated as under:

"Consequential change is required."

12.6.2 Explaining about the grounds for disqualification for being appointed or for counting as a member of the Board under Section 16(a), the Ministry of Law and Justice stated as under:

"It is submitted that disqualification is specific in relation to the category of Muslim members and as per the principles of harmonious interpretation, it will apply only to that category of members."

12.6.3 On the issue that the ground of disqualification given at 16(d) of the Act, is available in all the laws of the States and Central Government and in order to maintain consistency in the laws, the existing clause should be retained and on the concern that the intention of the amendment is to completely bar person who was convicted for any Offence and normally, there may be convictions for political reasons also, the Ministry of Minority Affairs commented as under:

"Section 16(d) has been revised to disqualify a person from being appointed as a member of the Board if he has been convicted of any offence and sentenced to imprisonment for at least two years.

The same ensures that only individuals with a clean legal record can serve on the board, improving accountability and trust."

Observations/Recommendations of the Committee:

12.7.1 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs, find that this clause would ensure that individuals with a clean legal record can serve on the board, improving accountability and trust. Hence, the Committee accept the amendments proposed under the Clause.

12.7.2 Further, the Committee are of the opinion that the condition for disqualification given in Section 16(a) i.e. "he is not a Muslim and is less than twenty-one years of age" is incongruous with other clauses provided in the Bill. Therefore, the Committee recommend that:

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

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

(ii) after clause (a), the following clause (aa) shall be inserted:

"(aa) in case a member under clause (c)of sub-section (1) of section 14, is not a Muslim;"

CLAUSE - 13

13. The Clause 13 of the Bill proposes to amend the Section 17 of the Principal Act.

Relevant provisions of the Principal Act:

13.1 Existing provisions of Section 17 are as under:

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

(2) The Chairperson, or in his absence, any member chosen by the members from amongst themselves shall preside at a meeting of the Board.

(3) Subject to the provisions of this Act, all questions which come before any meeting of the Board shall be decided by a majority of votes of the members present, and in the case of equality of votes, the Chairperson or, in his absence, any other person presiding shall have a second or casting vote."

Provisions Proposed in the Amendment Bill

13.2 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.

Justification/explanation given by the Ministry of Minority Affairs

13.3 The justification furnished by the Ministry for the proposed amendment is as under:

> "Section 17 of the Amendment Bill provides that the Board shall meet at least once in every month for the transaction of business at such time and places as may be provided by regulations. Regular monthly meetings of the board are now required to ensure continuous oversight and faster decision-making on waqf property matters."

Gist of submissions by various Waqf Boards:

13.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Telangana Waqf Board:- It has no objection to this amendment.

(ii) Andhra Pradesh State Waqf Board:- Monthly meeting may be impractical.

(iii) Madhya Pradesh State Waqf Board:- It is applicable in Madhya Pradesh State Waqf Board since 2023.

(iv) Karnataka State Board of Auqaf:- In section 17 of the principal Act, proposed insertion in sub-section (1), after the words "shall meet", with the words "at least once in every month" does not require any traverse.

(v) Tripura Board of Waqf:- Tripura Board of Waqf has stated that it has no issues with the proposed amendments under this Clause.

Examination by the Committee

13.5 When asked to give its opinion on the objection raised by some stakeholders that the monthly meeting as proposed in Section 17(1) may be impractical, the Ministry of Minority Affairs replied as under:

> "The Section 17(1) of the Proposed Bill relates to the meeting of Board so as to provide that the meeting of the Board to be held at least once in every month.
>
> Regular monthly meetings of the board are required to ensure continuous oversight and faster decision-making on waqf property matters."

Observations/Recommendations of the Committee:

13.6 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs, find that regular monthly meetings of the board are required to ensure continuous oversight and faster decision-making on waqf property matters. Hence, the Committee accept the amendments proposed under the Clause.

CLAUSE - 14

14. The Clause 14 of the Bill proposes to amend the Section 20A of the Principal Act.

Relevant provisions of the Principal Act:

14.1 Existing provisions of Section 20A are as under:

"Removal of Chairperson by vote of no confidence.—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."

Provisions Proposed in the Amendment Bill

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

Justification/explanation given by the Ministry of Minority Affairs

14.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Since the chairperson will now be appointed on a nomination basis, Section 20A, which allows the removal of the chairperson by a vote of no confidence, has been removed."

Gist of submissions by various Waqf Boards:

14.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Rajasthan Board of Muslim Waqf:- Section 20(A) is necessary. It is unfair to remove it. It is contrary to the spirit of the Constitution.

(ii) Telangana Waqf Board:- Chairman cannot be removed as the procedure of no confidence motion is deleted. This is against the basic democratic principle that people/their representatives should have a right in governance.

(iii) Andhra Pradesh State Waqf Board:- Chairman cannot be removed for no confidence. Once chairman is not elected post, the deletion is natural. So a chairman however corrupt, harmful to wakfs and undesirable, he cannot be removed.

(iv) Kerala State Waqf Board:- The amendment is consequential to the amendment proposed to section 14 of the Act. For the reasons stated therein, this amendment may also be withdrawn.

(v) Maharashtra State Board of Waqf:-Removal of this provision is unconstitutional. Vote of no-confidence against elected representative is a direct check flowing from accountability. Even the Hon'ble Supreme Court in the case of Mohan Lal Tripathi vs. District Magistrate, Rai Bareilly & others (1992 (4) SCC 80) has upheld the vote of no confidence principles and held that this power is virtually a power of recall and the recall of the elected representative, so long it is in accordance with law, cannot be assailed on abstract laws of democracy. In Ram Beti vs. District Panchayat Raj Adhikari & others (1998 (1)SCC 680), again the Hon'ble Apex Court has upheld the provisions of Section 14 of U.P. Panchayat Raj Act, 1947 as amended by U.P. Act No. 9 of 1994 which empowers members of the Gram Panchayat to remove the Pradhan of Gram Sabha by vote of no-confidence. It was held that such a provision is not unconstitutional nor does it infringe the principle of democracy or provisions of Article 14. Hence, the proposed omission of Section 20A should be reconsidered.

(vi) Gujarat State Waqf Board:- In current time, the party of which state government is formed and such member is elected as member of Waqf Board and president is elected from them, out of the vote of the majority, but in case of autocracy of any appointed president, such president can be removed by passing the vote of unfaith. But in new amendment, such rights have been curtailed from members and such amendment is harmful to constitutional rights, hence such amendment is unjust and improper.

(vii) Karnataka State Board of Auqaf:- The proposed omission of Section 20A of the principal Act runs contrary to the settled position of law which stipulates that any person elected, appointed or nominated should be capable of being removed at the hands of the body which elected, nominated or appointed him/her. This being the position of law, removal of Section 20A

which prescribes the procedure for removal of chairperson, is *ultra-vires* to the constitution. Hence, the proposed omission is liable to be rejected.

(viii) Delhi Waqf Board:- The provision to remove the Chairperson through vote of no-confidence should continue to exist as such provision for removal would help in providing avenue for removal of unsuitable person through a majority vote.

(ix) Tripura Board of Waqf:- Tripura Board of Waqf has stated that it has no issues with the proposed amendments under this Clause.

(x) Bihar State Sunni Waqf Board and Bihar State Shia Waqf Board:- Democratic values must be retained.

Important suggestions/comments by various stakeholders and experts:

14.5 Important suggestions/comments received from various stakeholders and experts are summarised as under:

i) Omitting Section 20A as the Bill seeks to incorporate is wholly arbitrary as there is no other methodology provided for a chairperson to be removed.

ii) The deletion of the section 20A from the Wakf Act, 1995 is objectionable that the process of democratic system has been taken away.

iii) Removal of Chairperson by vote of no confidence is proposed to be omitted. Democratic values must be retained. This proposal needs to be rejected.

Examination by the Committee

14.6.1 To the query that some stakeholders have expressed concern before the Committee that removal of Section 20A from the principal Act is *ultra-vires* to the Constitution, the Ministry of Minority Affairs responded as given:

> "In the existing Act, Section 20A (Removal of Chairperson by vote of no confidence) provides that- without prejudice to the provisions of section 20, the Chairperson of a Board may be removed by vote of no confidence. The provision of Section 20A is being omitted since the Chairperson will now be appointed on nomination basis."

Observations/Recommendations of the Committee:

14.7 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs, find that Section 20A which allows the removal of the chairperson by a vote of no confidence, has been removed because the chairperson will now be appointed on a nomination basis and his removal will be governed by Section 20. Hence, the Committee accept the amendments proposed under the Clause.

CLAUSE-15

15. The Clause 15 of the Bill proposes to amend the Section 23 of the Principal Act.

Relevant provisions of the Principal Act:

15.1 Existing provisions of Section 23 are as under:

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

(2) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.

(3) The Chief Executive Officer shall be ex officio Secretary of the Board and shall be under the administrative control of the Board."

Provisions Proposed in the Amendment Bill

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

"(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."

Justification/explanation given by the Ministry of Minority Affairs

15.3 The justification furnished by the Ministry for the proposed amendment is as under:

"To promote diversity and professional management, the position of Chief Executive Officer (CEO) is now open to individuals from all communities, and the requirement for the CEO to be a Muslim has been removed. The CEO must be at least at the rank of Joint Secretary to the State Government. Section 96 of the Waqf Act 1995 clearly mentions power of Central Government to regulate secular activities of auqaf in relation to the functioning of Central Waqf Council and State Waqf Boards. "Secular activities" shall include social, economic, educational and other welfare activities."

Gist of submissions by various Waqf Boards:

15.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) UP Sunni Central Waqf Board and UP Shia Central Waqf Board:- The original provision must be retained. A retired officer may also be appointed as the Chief Executive Officer as is the case of the Chairperson of the Waqf Tribunal who may be a retired District Judge as proposed in the Bill.

(ii) Rajasthan Board of Muslim Waqf:- Amendment of section 23 is unnecessary. The Chief Executive Officer should be a Muslim as he is the Mutwalli of many religious Waqf properties of Muslims and the Mutwallis and management of religious Waqf properties are subordinate to the Chief Executive Officer.

(iii) Telangana Waqf Board and Andhra Pradesh State Waqf Board:- The proposed amendment also removes the provision of appointment of CEO in consultation with Waqf Board and now no consultation with the Board is required for appointment of CEO. His rank is also raised from Deputy Secretary to Joint Secretary. Getting a Muslim Dy. Secretary itself has been difficult, the raising the rank of CEO may become almost impossible and eventually pave the way for appointment of Non-Muslim CEO.

In total contrast Section 3(2) of Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987, provides that:

> *"The Commissioner, the Additional Commissioner and every Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner appointed under sub-section (1) exercising the powers and performing the functions as aforesaid in respect of religious institutions or endowments, shall be a person professing Hindu religion and shall cease to exercise those powers and perform those functions when he ceases to profess that religion"*."

(iv) Chhattisgarh State Waqf Board:- By the proposed amendment, now any officer belonging to any faith can be appointed as Chief Executive Officer. Appointing a non-Muslim officer as Chief Executive Officer would amount to interfering in matters of religious affairs of the Muslim Community which is violating Article 26 of the Constitution.

(v) Madhya Pradesh State Waqf Board:- If the requirement of Muslim officer is removed in the terms of the above section, the implementation of all the work and decisions related to the board will be in the hands of a general category officer, so the possibility of any kind of arbitrariness will be eliminated.

(vi) Tamil Nadu State Waqf Board:- The Chief Executive Officer being the Administrative Head of the State Waqf Boards needs to visit and inspect mosques, Dargahs, and Burial grounds, conduct various festivals complying the Islamic rituals, etc. This function cannot be effectively exercised by a Non-Muslim Chief Executive Officer. It is sufficient that the Chief Executive Officer is appointed in the rank of Deputy Secretary to Government or District Revenue Officer.

(vii) Gujarat State Waqf Board:- It is recommended/proposed that priority shall be given to any Muslim officer serving in the cadre of Deputy Secretary or above in the State Government.

(viii) Karnataka State Board of Auqaf:- The proposed amendment to sub-section (1) of section 23 is arbitrary besides being opposed to the religious autonomy recognized under Article 16(5) of the Constitution of India. The existing section provides for a Muslim to be a Chief Executive Officer of the Board. The day to day working of Waqf Board involves the matters relating to religious knowledge, acumen in Muslim Law, meeting with people knowing the Urdu/ Persian/Arabic Languages. Besides this the Waqf namas (Deeds) and the document related to Auqaf by the earlier rulers are in Urdu/Persian/Arabic Languages. In addition to this the Muzarai Laws and the Hindu endowments and charitable enactments provides for the officer who shall be the person professing Hindu religion and shall cease to hold office as such when he cease to profess that religion. It is therefore, discriminatory to appoint a Non-Muslim as Chief Executive Officers to the Board. In this background, the proposed amendment is liable to be rejected.

(ix) Haryana Waqf Board:- The proposed amendment for substitution of Sub-Section (1) in Section 23 for the appointment of non-Muslims as Chief Executive Officer of the Board is violative of Article 16 (5) of the Constitution of India.

(x) Uttarakhand Waqf Board:- To maintain the spirit of Waqf, it is suggested to maintain the Muslim Character of the State Waqf Boards. CEO should be selected from the persons practising Islam. Waqf is dedication of properties for religious purpose and hence only the persons practicing the religion can understand it better.

(xi) Delhi Waqf Board:- The filling up of the post of CEO should not be done only by a member from the Muslim community as it is discriminatory and isolation promoting arrangement. The Waqf is after all envisaged as public institution. Enabling appointment of non-Muslim as a CEO would help as it would enlarge the pool of officers from which to select a CEO.

(xii) Tripura Board of Waqf:- Tripura Board of Waqf has stated that it has no issues with the proposed amendments under this Clause.

(xiii) Bihar State Sunni Waqf Board and Bihar State Shia Waqf Board:- For the documents written in Urdu, Persian, the Muslim Officer as C.E.O. is required. There are laws in UP, Kerala, Karnataka and Tamil Nadu saying that those managing the affairs of Hindu religious properties must necessarily be professing Hindu religion. Similarly, the waqf properties should be managed by Muslims. The proposal needs to be dropped.

(xiv) Board of Auqaf, West Bengal:- Whoever he might be, but should be a competent and dedicated Muslim Officer. He may also be an IAS Officer.

(xv) Jharkhand State Sunni Waqf Board: The Bill removes the requirement of the CEO to be a Muslim. Under other religious and charitable endowment laws, administrators equivalent to the CEO are required to belong to the respective religion. The Sachar Committee (2006) had noted that there is a need of government officers with knowledge of Islamic law to deal with the waqf matters efficiently.

<u>Important suggestions/comments by various stakeholders and experts:</u>

15.5 Important suggestions/comments received from various stakeholders and experts are summarised as under:

i) Section 23 of the Principal Act should not be amended because the CEO of the Waqf Boards should be a Muslim. The Waqf Act 1995 was enacted to provide for the administration and preservation of Waqf properties, which are inherently linked to the religious and cultural practices of the Muslim community. Appointing non-Muslim as CEO of a Waqf Board is not in line with the spirit and intent of the Waqf Act, and it also raises serious constitutional concerns.

ii) CEO of the Waqf Boards must be a Muslim Officer who also has some idea of the concept of Waqf. Ultimately, this is a religious issue. In various other religious endowments, temple trusts, etc. requirement of the CEO being a Hindu or belonging to that particular religion is guaranteed. Hence, apart from the amendment for removal of Muslim being in violation of Article 26, it is also discriminatory in nature. This amendment must be rejected. A retired officer may also be appointed as the Chief Executive Officer as is the case of the Chairperson of the Waqf Tribunal who may be a retired District Judge as proposed in the Bill.

iii) Removal of the requirement of panel recommendation by the Waqf Board for CEO induces government intervention to the management of waqf properties.

iv) Chief Executive Officer should be Joint Secretary Level Muslim Officer not Deputy Secretary Level.

v) The amendment removes the requirement for the Chief Executive Officer to be a Muslim. This could lead to concerns about the lack of cultural and religious sensitivity, representation and awareness in the management of waqf properties which are inherently tied to Islamic religious and charitable activities.

vi) According to the proposed Waqf (Amendment) Bill, the CEO is not required to be a Muslim, whereas states like Uttar Pradesh, Kerala, Karnataka, Tamil Nadu, Andhra Pradesh, and others have laws that mandate those managing Hindu religious properties to be followers of the Hindu religion. Similarly, the management of Waqf properties should be handled by Muslims.

vii) It introduces a serious disconnect between the leadership of the Waqf Board and the religious values it is meant to protect.

viii) Allowing the State Government to appoint a CEO without specifying religious qualifications gives the government excessive control over the religious management of

Waqf properties. This risks political appointments that may not prioritize the interests of the Waqf and the Muslim community.

ix) The amendment is justified as the CEO of the Board lacks adequate knowledge of revenue and property laws.

x) Appointing a non-Muslim as CEO raises serious concerns by undermining traditional waqf management and weakens its autonomy.

Examination by the Committee

15.6.1 On being asked whether the post of CEO is now open to all communities including Muslim community, the Ministry of Minority Affairs, in its written reply, stated as under:

> "Yes. As per Section 23(1) of the Bill, there shall be a full time CEO of the Board to be appointed by the State Government, who will not be below the rank of Joint Secretary to the State Government. This means that the post of CEO is now open for all communities."

15.6.2 On being asked whether having non-Muslims as CEO would create problems in understanding and appreciating the nuances of Waqf, the Ministry of Minority Affairs, in its written reply, stated as under:

> "It is submitted that under Section 25 of the Waqf Act, 1995, the power and duties of the CEO are specified which include investigation and calling, from time to time, for accounts, returns and information from mutawallis; inspection of waqf properties and accounts, records, deeds or documents relating thereto; doing generally of such Acts as may be necessary for the control, maintenance and superintendence of Auqaf etc. which may not be treated as religious Activities.
>
> Section 96 of the Waqf Act 1995 clearly mentions power of Central Government to regulate secular activities of auqaf in relation to the functioning of Central Waqf Council and State Waqf Boards. "Secular activities" shall include social, economic, educational and other welfare activities. Therefore, including Non-Muslim is not violation of the Act."

15.6.3 On being asked whether the Government is conceding that there are not good enough Muslim officers, the Ministry of Minority Affairs, in its written reply, stated as under:

> "It is submitted that the Government is not intending anything as such. Further, the duties, functions, and powers of the Central Waqf Council are to oversee the

functioning of the State Waqf Boards and for calling information from or direct State Boards to correct any irregularities in functioning. It also plays an advisory role. It does not exercise direct control over waqf property itself. Furthermore, State Waqf Board shall exercise its powers under this Act to ensure that the Auqaf under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes of which such Auqaf were created or intended.

Section 96 of the Waqf Act 1995 clearly mentions power of Central Government to regulate secular activities of auqaf in relation to the functioning of Central Waqf Council and State Waqf Boards. "Secular activities" shall include social, economic, educational and other welfare activities.

The above functions of the Central Waqf Council and State Waqf Boards clearly shows that it is not entirely religious practise but also administration of the Waqf properties. Sachar Committee has also mentioned that the Waqf Management is a socio-religious institution. Therefore, limited involvement of non-Muslims has been provisioned in the waqf management. It will make the Board and Council inclusive and diverse."

15.6.4 To the suggestion received from the stakeholders that retired officer may be appointed as the Chief Executive Officer as is the case of the Chairperson of the Waqf Tribunal who may be a retired District Judge as proposed in the Bill; on the issue that the Chief Executive Officer of the State Waqf Boards should be a Muslim because the CEO needs to visit and inspect mosques, Dargahs, and Burial grounds, conduct various festivals complying with the Islamic rituals, etc; deal with the matters relating to religious knowledge, meet with people knowing the Urdu/Persian/ Arabic Languages and the Waqf namas (Deeds) as well as the document related to Auqaf are in Urdu/Persian/Arabic Languages, and to the concern that this amendment introduces a serious disconnect between the leadership of the Waqf Board and the religious values it is meant to protect and risks political appointments that may not prioritize the interests of the Waqf and the Muslim community, the Ministry of Minority Affairs commented as given:

"The position of Chief Executive Officer (CEO) is now open to individuals from all communities, and the requirement for the CEO to be a Muslim has been removed. The CEO must be at least at the rank of Joint Secretary to the State Government.

Sec 96 of the Waqf Act 1995 clearly mentions power of Central Government to regulate secular activities of auqf in relation to the functioning of Central Waqf Council and State Waqf Boards. "Secular activities" shall include social, economic, educational and other welfare activities.

It is submitted that under Section 25 of the Waqf Act, 1995, the power and duties of the CEO are specified which include investigation and calling, from time to time, for accounts, returns and information from mutawallis; inspection of waqf properties and accounts, records, deeds or documents relating thereto; doing generally of such Acts as may be necessary for the control, maintenance and superintendence of Augaf etc which may not be treated as religious Activities.

Now in the proposed amendment of Waqf (Amendment) Bill, 2024, Section 83 of the Waqf Act, 1995 is being amended and provides that the composition of the Tribunal shall consists:

(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.

The tribunal is now being restructured to include two members, with both serving and retired officers eligible. This expansion will broaden the selection pool and simplify the constitution of tribunals. In case of absence of a member, Chairman of the bench may exercise the jurisdiction, powers and authority of the Tribunal.

Now as per new provision of the Bill, appeal against the order of the Tribunal can be made in the High Court within a specified period of 90 days. [Section 83(9)].

This will revise the Judicial oversight for the better effectiveness by modifying the composition of the Tribunal and allowing the High Court to hear the cases directly if the Tribunal is non-functional.

The tenure of the Tribunal members is set at 5 years or until they reach the age of 65 years which will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes."

Observations/Recommendations of the Committee:

15.7 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs, find that the position of Chief Executive Officer (CEO) is now open to individuals from all the communities which would promote diversity and professional management. Further, the CEO must be at least at the rank of Joint Secretary to the State Government which would help ensure better coordination among various concerned departments of the Government. Hence, the Committee accept the amendments proposed under the Clause.

CLAUSE - 16

16. The Clause 16 of the Bill proposes to amend the Section 32 of the Principal Act.

Relevant provisions of the Principal Act:

16.1 Existing provisions of Section 32 are as under:

"Powers and functions of the Board.— (1) Subject to any rules that may be made under this Act, the general superintendence of all auqaf in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the auqaf under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such auqaf were created or intended:

Provided that in exercising its powers under this Act in respect of any waqf, the Board shall act in conformity with the directions of the waqif, the purposes of the waqf and any usage or custom of the waqf sanctioned by the school of Muslim law to which the waqf belongs.

Explanation.—For the removal of doubts, it is hereby declared that in this sub-section, "waqf" includes a waqf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

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

(a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every waqf;

(b) to ensure that the income and other property of auqaf are applied to the objects and for the purposes for which such auqaf were intended or created;

(c) to give directions for the administration of auqaf;

(d) to settle schemes of management for a waqf:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(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;

(f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for auditing of account of auqaf;

(g) to appoint and remove mutawallis in accordance with the provisions of this Act;

(h) to take measures for the recovery of lost properties of any waqf;

(i) to institute and defend suits and proceedings relating to auqaf;

(j) to sanction lease of any immovable property of a waqf in accordance with the provisions of this Act and the rules made thereunder:

Provided that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction:

Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.

(k) to administer the Waqf Fund;

(l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the waqf property as the Board may, from time to time, require;

(m) to inspect, or cause inspection of, waqf properties, accounts, records or deeds and documents relating thereto;

(n) to investigate and determine the nature and extent of waqf and waqf property, and to cause, whenever necessary, a survey of such waqf property;

(na) to determine or cause to be determined, in such manner as may be specified by the Board, market rent of the waqf land or building;

(o) generally do all such acts as may be necessary for the control, maintenance and administration of auqaf.

(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.

(4) Where the Board is satisfied that any waqf land, which is a waqf property, has the potential for development as an educational institution, shopping centre, market, housing or residential flats and the like, market, housing flats and the like, it may serve upon the mutawalli of the concerned waqf a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.

(5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from waqf funds or from the finances which may be raised on the security of the properties of the waqf concerned, and control and manage the properties till such time as all expenses incurred by the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate charges incurred on the property are recovered from the income derived fromthe property:

Provided that the Board shall compensate annually the mutawalli of the concerned waqf to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.

(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned waqf."

Provisions Proposed in the Amendment Bill

16.2 In section 32 of the principal Act,—

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

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

Justification/explanation given by the Ministry of Minority Affairs

16.3 The justification furnished by the Ministry for the proposed amendment is as under:

"In the Amendment Bill, the Board is being made inclusive by inducting members from Agakhani, Bohra and other backward classes among Muslim communities under third and fourth proviso to Section 14(1). Consequently, explanation and proviso to Section 32(2)(e) concerning Board powers being exercised by Sunni or Shia members only, as well as the proviso for co-opting such members, are being omitted.

In summary, this amendment aligns with the removal of Section 13(2A), which provides that "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", which is now being omitted.

The finality of Tribunal decisions on the matters related to settlement of schemes managing Waqf properties under Section 32(2)(d) and utilization of surplus income under Section 32(2)(e) has been omitted, allowing appeals to the High Court within 90 days from the Tribunal's order, which will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes."

Gist of submissions by various Waqf Boards:

16.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Rajasthan Board of Muslim Waqf:- Amendment of Clause (e) of Sub-section (2) of Section 32 is unnecessary. It will create confusion. The order of the Wakf Tribunal, not being an appellate authority, is final and can be challenged in the High Court under Section 83 (9) of the Wakf Act.

(ii) Telangana Waqf Board:- The removing of the provision and explanation, gives unfettered power to the board to utilize the funds of the waqf as it deems fit. Finality of the Orders of the Tribunal have been removed from this section also.

(iii) Andhra Pradesh State Waqf Board:- Earlier where mansha-e-wakf was not clear, the board could give direction for utilization of income, in case of sunni wakf by only sunni members of board and in case of shia wakf by only shia members of the board. Now it is abolished. We may not have much objection. Not understandable why finality of decision of Tribunal is being abrogated.

(iv) Kerala State Waqf Board:- As per sub-section (3) of section 32, Board can frame a scheme for management for any *waqf*. Against such a decision of the Board, a suit will lie to the Tribunal

and the decision of the Tribunal thereon shall be final. Now it is proposed to take away the finality clause which is against the best interest of the *waqf* institutions.

(v) Maharashtra State Board of Waqf:- W.r.t amendment in the sub-section (3), i.e., *"and the decision of the Tribunal thereon shall be final"*, it is suggested that the proposed omission, i.e., "and the decision of the Tribunal on such appeal shall be final" as mentioned in various places in the entire Bill should not be made for the reason that the Tribunal's orders are amenable to Civil Revision before the High Court even as on date. This is also in line of our suggestion that statutory Appeal before High Court should not be provided as in Industrial Disputes Act, 1947 where despite any statutory Appeal provision being present in the said special act, an aggrieved person approaches the High Court by way of a Writ or a Revision Petition and such remedy is effective and has yielded timely results for the parties. Such omission creates confusion and gives the impression that earlier (before the commencement of the new Act) no remedy was available to the person aggrieved of the order passed by the Tribunal.

(vi) Madhya Pradesh State Waqf Board:- The powers of the CEO have been abolished, which will increase the possibility of large Waqfs earning more than Rs 5 lakh and their managers becoming autocratic.

(vii) Tamil Nadu State Waqf Board:- In sub section 3 of Section 32, the proposed omission of the words "and the decision of the Tribunal thereon shall be final" shall only result in unended litigations. The constitution of Tribunal and its purpose will be defeated if the decision of the Tribunal does not attain finality.

(viii) Karnataka State Board of Auqaf:- In clause (e) of sub-section (2) of section 32, the omission of the Explanation and the proviso goes against the tenets of Muslim Law and also against the intention of the waqif and democratic process of utilizing the funds of a particular institution. It will infringe the religious as well as fundamental rights of the waqif. Hence the proposed amendment is liable to be rejected.

In sub-section (3) of section 32, the omission of the words "and the decision of the Tribunal thereon shall be final" will affect the dependability of the entire judicial process. The

principle of finality is necessary to curb the recurrence of litigations and the proposed amendment would result in keeping the disputes alive forever. There is no appellate forum prescribed in the amendment and taking away the finality of the decision of the Tribunal would open the flood gates of litigations deliberately. Hence the existing provision may be retained.

(ix) Haryana Waqf Board:- The proposed amendment for deletion of the Explanation and the proviso appended to clause (e) of sub-section (2) of Section 32 is not beneficial. By clause (e), the Board has power to take decision in respect of any waqf which has ceased to exist or has become incapable of achievement, the income of such waqf as was previously applied to that object shall be applied to any other object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community.After deleting these provisions, the Board will not be in position to take any decision in respect of such Waqfs which have ceased to exist or have become incapable of achievement.

(x) Punjab Waqf Board:- The proposed amendment omits the words "*and the decision of the Tribunal in respect of such matter shall be final*". This is contrary to the stated objectives of the proposed amendment itself. While the amendment purportedly aims at efficient management of waqf properties, this provision is basically to enable that all properties remain perpetually encroached. While it is correct that any person must have appropriate legal remedy, a tribunal headed by an ADJ is an appropriate forum. Any error by tribunal is always corrected by High Court through Civil revision and therefore omitting these words doesn't make any sense except that it will result in further encroachment of waqf properties. It is needless to point here that the orders of almost all tribunals are always final. Making an exception for waqf tribunal is discriminatory and contrary to logic. Even in cases such as those under section 52, provision of 2nd appeal has been made. The proposed amendment in relation to taking away finality of orders of tribunal should be dropped.

(xi) Delhi Waqf Board:- The Tribunal can also go wrong and, therefore, removal of "finality of its decision" is a step in right direction.

(xii) Tripura Board of Waqf:- Tripura Board of Waqf has stated that it has no issues with the proposed amendments under this Clause.

(xiii) Meghalaya State Waqf Board:- This Amendment will make the decision making process longer.

(xiv) Bihar State Sunni Waqf Board and Bihar State Shia Waqf Board:- This is an attack on the basic concept of Waqf. The power given under clause (e) to direct is regulatory in nature to discharge the function of the Board. Effectiveness of the Waqf Tribunal must be maintained.

(xv) Board of Auqaf, West Bengal:- Decision of the Tribunal should be final in the absence of any appeal to the High Court.

Important suggestions/comments by various stakeholders and experts:

16.5 Important suggestions/comments received from various stakeholders and experts are summarised as under:

i) With the deletion of explanation and proviso to Section 32(2)(e), Mutawalli would not be bound by the directions of waqf boards. Weakening Board cannot improve efficiency of Waqf as claimed in SoRs. Mutawallis have been corrupt and inefficient and have been the main reason of reforming Waqf laws. Since most may not have Waqf deeds; it is absolute freedom to them to do whatever they want.

ii) The removal of the proviso and the explanation to Section 32 of the 1995 Act, which the Bill seeks to amend is without any objectivity. There are several decisions which have indicated continuity of a scheme framed by any High Court and which override the functioning of any Waqf Estate. Further the usage or custom as contained in the proviso is in furtherance to what is guaranteed under Article 26 of the Constitution of India and the amendment so sought to be incorporated militates against the said Article.

iii) The omission of the explanation and proviso in Section 32(2)(e) removes critical clarifications regarding the powers and responsibilities of Waqf Boards in managing

Waqf properties. This omission can lead to ambiguity, leaving room for misinterpretation of the scope of the Waqf Board's authority. The explanation clause and the subsequent Proviso are essential requirement as far as exercising the powers with regard to the waqf of each group as each group has its own belief, system and procedure with regard to dedication and subsequent management of the Waqf. Therefore, it is essential to continue the existing provision.

iv) The Waqf (Amendment) Bill, 2024 proposes to completely ignore the directions of the Waqif, the purpose of the Waqf and any usage and custom of the Waqf sanctioned by the school of Muslim Law to which the Waqf belongs. This is a blow to the basic concept of Waqf. The proposal deserves to be rejected.

Examination by the Committee

16.6.1 On being asked to provide information regarding 'appeal mechanism' available to various other religious endowments Acts having Tribunals, the Ministry of Minority Affairs submitted as given:

Sl No.	Act	Tribunal	Appeal Mechanism available
1.	The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987	Endowment Tribunal	Appeal to the High Court within ninety days from the date of receipt of the decision.
2.	The Bihar Hindu Religious Trusts Act, 1951	Tribunal	Any party aggrieved by an order of the Tribunal made under this Act may, within ninety days from the date of the order, file an appeal before the High Court whose decision shall be final.
3.	The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959	Tribunal	Any party aggrieved by an award of the Tribunal may, within ninety days from the date of the receipt of the award by him, institute a suit in the Civil Court having jurisdiction over the area in which the religious institution is situated.
4.	The Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987	Endowment Tribunal	Any person aggrieved by an order of the Tribunal may appeal to the High Court, within ninety days from the date of receipt of the decision.
5.	The Sikh Gurdwaras Act,	Tribunal	Any party aggrieved by a final order passed

	1925		by tribunal determining of a tribunal. any matter decided by it under the provisions of this Act may, within ninety days of the date of such order, appeal to the High Court.

16.6.2 The issue of finality of the Tribunal's decision has been discussed in detail in examination done under Clause 35.

16.6.3 It was submitted before this Committee that due to amendments proposed in Section 32, the entire concept of the waqf to help the needy and downtrodden amongst the Muslims as per the choice of the waqif, is being tinkered with as it gives unfettered power to the board to utilize the funds of the waqf as it deems fit. On being asked to furnish its opinion on this matter, the Ministry of Minority Affairs submitted as under:

> "The Bill seeks to amend section 32 relating to powers and function of the Board to omit Explanation and proviso to clause (e) i.e. powers of the Board shall be exercised by Sunni members of the Board in case of Sunni waqf and by Shia members in case of Shia Waqf, and Board may co-opt such other Muslims being Sunnis or Shias, as temporary members, having regard to the number of Sunni or Shia members of the Board ―and the decision of the Tribunal thereon shall be final‖ being omitted.
>
> Consequently, Section 32(2) concerning Board powers being exercised by Sunni or Shia members only, is removed, as well as the proviso for co-opting other members. In summary, this amendment aligns with the removal of Section 13(2A) which provides that ―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‖, which is now being omitted to ensure that the Waqf Board's powers are not restricted to any sect.
>
> This change is necessary due to substitution of Section 13(2A), which previously required that Waqf Board members to be Shia for Shia waqfs and Sunni for Sunni waqfs.
>
> The proposed Amendment further expands the representation of other communities (Aghakhani and Bohra communities). As per the Section 13(2A) the establishment of separate Waqf Boards (wherever needed) for Aghakhani and Bohra, will help in giving fair representation to these communities in managing their waqf properties and will enhance inclusiveness and diversity in the waqf management.
>
> The finality of Tribunal decisions on the matters related to settlement of schemes managing Waqf properties Sec 32(2)(d) and utilization of surplus income Sec 32(2)(e) has been omitted, allowing appeals to the High Court within 90 days, from the Tribunal's order, which will expand the scope of judicial remedies and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes."

Observations/Recommendations of the Committee:

16.7 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs, find that explanation and proviso to Section 32(2)(e) concerning Board powers being exercised by Sunni or Shia Members only, are being omitted to align it with the proposed third and fourth proviso to Section 14(1) and removal of Section 13(2A). Further, finality of decisions of the Tribunal on the matters related to settlement of schemes of management for a waqf under Section 32(2)(d) and utilization of surplus income under Section 32(2)(e) has been omitted in order to allow appeals to the High Court within 90 days from the Tribunal's order, which will expand the scope of judicial remedies, ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes. Hence, the Committee accept the amendments proposed under the Clause.

CLAUSE-17

17. The Clause 17 of the Bill proposes to amend the Section 33 of the Principal Act.

Relevant provisions of the Principal Act:

17.1 Existing provisions of Section 33 are as under:

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

(1)With a view to examining whether, by reason of any failure or negligence on the part of a mutawalli in the performance of his executive or administrative duties, any loss or damage has been caused to any waqf or waqf property, the Chief Executive Officer or any other person authorised by him in writing with the prior approval of the Board, may inspect all movable and immovable properties, which are waqf properties, and all records, correspondences, plans, accounts and other documents relating thereto.

(2) Whenever any such inspection as referred to in sub-section (1) is made, the concerned mutawalli and all officers and other employees working under him and every person connected with the administration of the waqf, shall extend to the person making such inspection, all such assistance and facilities as may be necessary and reasonably required by him to carry out such inspection, and shall also produce for inspection any movable property or documents relating to the waqf as may be called for by the person making the inspection and furnish to him such information relating to the waqf as may be required by him.

(3) Where, after any such inspection, it appears that the concerned mutawalli or any officer or other employee who is or was working under him had mis-appropriated, misapplied or fraudulently retained, any money or other waqf property, or had incurred irregular, unauthorised or improper expenditure from the funds of the waqf, the Chief Executive Officer may, after giving the mutawalli or the person concerned a reasonable opportunity of showing cause why an order for the recovery of the amount or property, should not be passed against him and after considering such explanation, if any, as such person may furnish, determine the amount or the property which has been mis-appropriated, misapplied or fraudulently retained, or the amount of the irregular, unauthorised or improper expenditure incurred by such person, and make an order directing such person to make payment of the amount so determined and to restore the said property to the waqf, within such time as may be specified in the order.

(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).

(5) The Tribunal may, after taking such evidence as it may think fit, confirm, reverse or modify the order made by the Chief Executive Officer under sub-section (3) or may remit, either in whole or in part, the amount specified in such order and may make such orders as to costs as it may think appropriate in the circumstances of the case.

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

Provisions Proposed in the Amendment Bill

17.2 In section 33 of the principal Act,—

(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.

Justification/explanation given by the Ministry of Minority Affairs

17.3 The justification furnished by the Ministry for the proposed amendment is as under:

"The existing Section 33 outlines the inspection powers of the Chief Executive Officer (CEO) regarding waqf properties.

Inspection Powers [Sec 33(1)]: The CEO or an authorized person can inspect waqf properties and review related documents to assess any loss or damage caused by a mutawalli's failure or negligence.

Consequences of Mismanagement [Sec 33(3)]: If misappropriation or unauthorized expenses are identified post-inspection, the CEO can order the recovery of misused property or funds after allowing the responsible party to explain their actions.

Section 33 (4) of the existing Act allows a mutawalli or aggrieved person to appeal to the Tribunal within thirty days of receiving a CEO's order, provided they first deposit the determined amount with the CEO. The Tribunal cannot stay the CEO's order during the appeal.

The proposed Amendment Bill maintains these provisions but removes the restriction on the Tribunal's power to stay the CEO's order, allowing for judicial scrutiny to prevent miscarriages of justice.

Section 33 (6) is omitted, meaning Tribunal decisions are no longer final and parties can appeal to the High Court."

Gist of submissions by various Waqf Boards:

17.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Rajasthan Board of Muslim Waqf:- The amendment in Section 33 is against the Waqf property.

(ii) Telangana Waqf Board:- By the proposed amendment, the Tribunal has been giving the discretion to pass orders of stay against recovery. This can lead to unruly mutawallis approaching the Tribunal and obtaining stay orders against the interest of the Waqf. The proposed amendment needs to have more safeguards to protect the interest of the Waqf.

(iii) Andhra Pradesh State Waqf Board:- Mutawalli will not be able to get stay or reversal on the orders of CEO of recovery of money passed by him after inspection. Divesting Tribunal of power of stay curtails its effectiveness.

(iv) Kerala State Waqf Board:- Now it is proposed to omit the finality clause.

(v) Maharashtra State Board of Waqf:- If provisions of stay are omitted than appeal filed if any, may become infructuous and the purpose of filing the Appeal itself will be frustrated, there will be a violation of the Principles of Natural Justice.

(vi) Madhya Pradesh Waqf Board:- Appeal will become eligible.

(vii) Karnataka State Board of Auqaf:- In sub-section (4) of section 33, the omission 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)" is arbitrary. The amendment providing for removal of no stay until money misappropriated is deposited will encourage dishonest muthawallies accused of misappropriation and found to continue as muthawalli which will seriously and adversely affect the interest of the waqf. Hence, the proposed amendment is liable to be rejected.

The omission of sub-section (6) of section 33 is unwarranted as it will affect the entire integrity of the judicial process. The principles of finality are affected, aimed to keep the dispute

alive. There is no appellant forum proposed to put an end to litigation thereby opening flood gates of litigation deliberately. Hence, the proposed amendment is liable to be rejected.

(viii) Punjab Waqf Board:- The proposed amendment omits the words "*and the decision of the Tribunal in respect of such matter shall be final*". This is contrary to the stated objectives of the proposed amendment itself. While the amendment purportedly aims at efficient management of waqf properties, this provision is basically to enable that all properties remain perpetually encroached. While it is correct that any person must have appropriate legal remedy, a tribunal headed by an ADJ is an appropriate forum. Any error by tribunal is always corrected by High Court through Civil revision and therefore omitting these words doesn't make any sense except that it will result in further encroachment of waqf properties. It is needless to point here that the orders of almost all tribunals are always final. Making an exception for waqf tribunal is discriminatory and contrary to logic. Even in cases such as those under section 52, provision of 2nd appeal has been made. The proposed amendment in relation to taking away finality of orders of tribunal should be dropped.

(ix) Tripura Board of Waqf:- Aggrieved person may get remedy from the Tribunal**.**

(x) Meghalaya State Waqf Board:- This Amendment will make the decision making process longer.

(xi) Bihar State Sunni Waqf Board and Bihar State Shia Waqf Board:- Tribunal is a judicial body and have a statutory power to grant stay as decided by apex court in several cases.

Important suggestions/comments by various stakeholders and experts:

17.5 Important suggestions/comments received from various stakeholders and experts are summarised as under:

i) The Bill proposes to revoke the finality of the Tribunal's Order. This is a retrograde step and waters down the significance of Waqf Properties.

ii) Removal of sub section 6 from Section 33 of the Principal Act as against the order and decision of the Chief Executive Officer, which provided that the order made by the Tribunal U/sub-section 5 of Section 33 would be final shall, also contribute significantly to delays in disposal of dispute arising out of Waqf.

Examination by the Committee

17.6.1 The issue of finality of the Tribunal's decision has been discussed in detail in examination done under Clause 35.

17.6.2 On the concerns that by the proposed amendment in Section 33, the Tribunal has been given the discretion to pass orders of stay against recovery which could lead to unruly mutawallis approaching the Tribunal and obtaining stay orders against the interest of the Waqf, the Ministry of Minority Affairs responded as given:

> "The Bill seeks to amend section 33 relating to powers of inspection by Chief Executive Officer or person authorized 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).
>
> The proposed Amendment Bill removes the restriction on the Tribunal's power to stay the CEO's order, allowing for judicial scrutiny to prevent miscarriages of justice.
>
> Moreover, Sec 33(6) is being omitted as the Tribunal order shall no longer be final and the aggrieved party can appeal before the High Court."

Observations/Recommendations of the Committee:

17.7 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs, find that the proposed amendments remove restriction on the power of the Tribunal to stay the CEO's order, allowing for judicial scrutiny to prevent miscarriages of justice. Further, Section 33 (6) is omitted which means decisions of the Tribunal are no longer final and parties can appeal to the High Court which will expand the scope of judicial remedies, ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes. Hence, the Committee accept the amendments proposed under the Clause.

CLAUSE 18

18. The Clause 18 of the Bill proposes to amend the Section 36 of the Principal Act.

Relevant provisionsof the Principal Act:

18.1 Existing provisions of Section 36 are as under:

"Registration.—(1) Every waqf, whether created before or after the commencement of this Act, shall be registered at the office of the Board.

(2) Application for registration shall be made by the mutawalli:

Provided that such applications may be made by the waqf or his descendants or a beneficiary of the waqf or any Muslim belonging to the sect to which the waqf belongs.

(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:—

(a) a description of the waqf properties sufficient for the identification thereof;

(b) the gross annual income from such properties;

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

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

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

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

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(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 cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the waqf.

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(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."

Provisions Proposed in the Amendment Bill

18.2 In Section 36 of the Principal Act,—

"(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, 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 executedor a copy thereof cannot be obtained, shall contain full particulars, as far asthey 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 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 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 inpart, is in dispute or is a Government property,the waqf in relation to such part of property shall not be registered,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 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 expiry of a period of six months from the commencement of the Waqf (Amendment) Act, 2024.".

Justification/explanation given by the Ministry of Minority Affairs

18.3 The sub-clause wise justifications furnished by the Ministry for the proposed amendment is as under:

18.3.1 For Clause 18(a):-

"This clause ensures that all waqf are legally documented through a waqf deed, providing clarity on ownership and avoiding unnecessary litigation. Cases have been reported of waqf being declared on oral agreement/deed. The proposed provision will remove this anomaly and will bring about transparency."

18.3.2 For Clause18(b)(i):-

"As per section 36(3), an application for registration of waqf shall be made to the board through the portal and database. This will help in bringing transparency and speedy registration of waqf properties"

18.3.3 For Clause 18(b)(ii):-

"This will enable Central Government to notify any essential requirement which is needed to improve the registration process."

18.3.4 For Clause 18(c):-

"This subsection is being partially omitted because waqf deed is being made mandatory for the registration of new waqf.

Section 36 (4)

As per data available on WAMSI portal 30 States/UTs and 32 Boards reported that there are 8.72 lakhs properties out of which 4.02 lakhs are waqf by user. For remaining waqf

the Ownership Rights Establishing Documents (deeds) have been uploaded on Portal for 9279 cases and only 1083 Waqf deeds have been uploaded. As presently uploading of deeds is voluntary, hence in many cases Waqf boards are not uploading deeds."

18.3.5 For Clause 18(d):-

"The Waqf Amendment Bill 2024 specifies that the Collector must inquire into the genuineness and validity of the waqf application before registration. This amendment aims to ensure that only legitimate waqf properties are registered, enhancing transparency and accountability in the management of waqf assets. Collector has to function as per the provisions of the Act. Furthermore, Section 83(2) provides the right to any person aggrieved from the report of the Collector may approachTribunal.

Moreover, Collector being a public servant is duty bound to function with objectivity."

Further, Ministry has justified the amendment before the Committee in the Sitting on 15.10.2024 as under:-

"Section 36(7) of the Waqf Amendment Bill 2024 specifies that the Collector must inquire into the genuineness and validity of the waqf application before registration. This amendment aims to ensure that only legitimate waqf properties are registered, enhancing transparency and accountability in the management of waqf assets.

Section 36(7A)- The proposed provision will be effective as the Court will now decide the dispute."

"Government properties will be addressed in two ways:

The government properties that are currently sub-judice wholly or in part, their registration will depend on the court's ruling. Government properties identified and declared as waqf will be validated according to Section 3C (1-4)."

18.3.6 For Clause 18(e)-

"It is implied that with the omission of this section, registration will occur after the board's constitution. Currently, 32 boards exist across 30 States/UTs, with both Shia and Sunni boards in Uttar Pradesh and Bihar. However, the following States/UTs do not have a board in place. Namely Arunachal Pradesh, Goa, Mizoram, Nagaland, Sikkim and Ladakh."

18.3.7 For Clause 18(f)-

"Earlier in Waqf Act, 1995 there is no provision in the Act regarding issuance of registration certificate to the Waqf.

In Sec 36, new subsection (9) is being inserted which provides for the certificate of registration of the waqf by the Board through the portal and database. This will help in bringing transparency."

"The proposed Amendment Act ensures that after expiry of a period of six months from the commencement of Waqf (Amendment) Act, 2024, if any Waqf has not been registered in accordance with provisions of this Act, no suit appeal or other legal proceeding for the enforcement of any right on behalf of such waqf shall be instituted or commenced or heard, tried or decided by any court.

Also, if prescribed details in respect of the Waqf are not uploaded on the portal within six months, no suit appeal or other legal proceeding for the enforcement of any right on behalf of such waqf shall be instituted or commenced or heard, tried or decided by any court. This will help in ensuring timely registration of Waqf and uploading of necessary details on the portal."

Gist of submissions by various Waqf Boards:

18.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Uttar Pradesh(Sunni) Waqf Board:-With respect to amendment in Section 36(7A), anybody can raise a frivolous dispute just to hamper the registration of the Waqf. Both amendment i.e. Section 36(7A) and 36(10) must be omitted.

(ii) Uttar Pradesh (Shia) Waqf Board :- With respect to Clause 18(f), the board has stated that it is a very stringent provision which is wholly unwarranted and must have a saving clause.

(iii) Rajasthan Waqf Board:- There is no need to amend or add any other provision in Section 36. The provisions suggested in Section 36(A1) restrict the powers of Waqf and Waqf Boards and enhance individual rights which are not in the interest of Waqf and Waqf property in any manner. Amendment of Section 36(f) is against the law because every law provides for the making of regulations by the concerned board to implement the Act. It is improper to give this power to the Central Government.

Giving the powers vested in the Board under Section 36(7A) for Waqf properties to the Collector is not justified in any way but is illegal and against Articles 25 to 26 of the Constitution.

The deletion of Section 36(8) is improper when it is the legal duty of the Mutawalli or manager or managing committee of every Waqf property to get the Waqf property registered in the register of Waqfs by giving notice and sending information and details under the Wakf Act.

The new addition of Sub-Section 10 in Section 36 is suggested to be against the interests of Waqf property and Waqfs because it is not necessary for every Waqf property to be registered and if the Waqf property becomes Waqf by nature and use, then the provisions of the Waqf Act become applicable on it.

(iv) Telangana State Wakf Board:-The process of creation of the waqf only by a waqf deed would result in diluting the provisions of the Waqf Act. The concept of waqf by user is totally taken away along with the concept of oral creation of Waqf and is unwarranted.

Once the execution of a Waqf deed is mandated, the procedure under the Stamp Act and Registration Act would be made applicable making it difficult for persons to make dedications. Mandating the execution of Waqf Deed and registration of waqf before filing any suit would make nearly impossible to protect waqf properties.

Further, Collector has been given unbrideled power to stop registration of any waqf on a mere report that there is a Government interest.

As sub-section 8 has been omitted and without registration no suit can be filed, old properties which have no waqf deeds and as a necessary corollary cannot approach the court for their redressal. Any person who wants to make unlawful gain wants at the expense of the Waqf will not get it registered and will sell it/lease it. If an interested person wants to question this action he cannot approach the Court since the Waqf is not registered. Thus this omission shall encourage encroacher/land mafia.

(v) Gujarat Waqf Board:- After the latest amendment, application shall be put forward before Regional Collector for assessing legality of an application which will take time and registration process is likely to get delayed affecting the Muslim Community and their rights.

(vi) Madhya Pradesh Waqf Board:- Before the process of Waqf Board, NOC of District Collector should be obtained which will make all the doubts/problems arising from this section to be eliminated.

(vii) Maharashtra Waqf Board:- Execution of a Waqf deed not possible for all practical purposes like, creation of Waqf deed by person on his deathbed may not be possible, leading to infringement of fundamental rights under Article 25 & 26 of Constitution.

In Islamic law also dedication of property of Waqf done largely in oral form. Section 36(8) may be retained. With respect to Section 36(10) period of six months not enough and hence in practical especially in cases where Collector will take more than six months to verify hence, this Section may be drawn.

(viii) Tamil Nadu Waqf Board:- Lacks reasoning as the Collector has no role to play to verify the genuineness and validity of the application and further the Collector lacks jurisdiction to give a report on title of the Suit property. Therefore, it is suggested that the Board shall forward the documents received for registration as Waqf property and receive a NOC for transfer or execution of Waqf deed from the jurisdictional registrar.

(ix) Andhra Pradesh Waqf Board:-We may not have much of objection in applying through portal. However, it might create unnecessary hurdle as many people may not be conversant with on-line application. There is systematic effort to reduce the effectiveness of Waqf Board and relegate the powers of Waqf board and state government to central government.

Old Waqfs created in antiquity and which do not have Waqf deed and by any chance have been missed out from registration, will not be registered. It is not known what will be the fate of such properties. Registration of Waqf shall be only after the approval of the collector. It is not advisable for involvement of Collector in the matter of registration.

(x) Karnataka Waqf Board:- The proposed amendment is violative of the principles of Muslim Law which recognizes creation of oral gift (hiba), oral will (Wasiyath), etc subject to execution thereof before competent witnesses and hence insistence of documentary proof as a pre-condition for registration of waqf would be contrary to Muslim Law. There are many

Supreme Court Judgements upholding the right of Muslim to create Oral gift/will. This Amendment will create obstacles in smooth registrations and administration of waqf properties.

(xi) Kerala Waqf Board:- The amendment seeking Waqf deed may be withdrawn as it will affect the pending litigation before the board tribunal. The proposal regarding the form and manner of filing application for registration of Waqf shall be prescribed through the rules to be made by the Central Government needs to be revised.

With the respect to Section 36(7A) amendment is silent on the meaning of competent court. With the respect to Section 36(9) since the setting of portal and data base shall take time, option should be given for issuance of certificate through manual system also.

(xii) Uttarakhand Waqf Board:- The amendment suggested in the section 36(7) is already in practice in the State of Uttarakhand. All the applications received are sent to District Magistrate to provide information on few points which include information regarding to ownership of land, dispute, encroachment, etc. Though, usually the report is received after considerable time. It is suggested that some time limit may be set for submission of such report by District Magistrates.

(xiii) Delhi Waqf Board:- Making written deeds mandatory in Waqf would henceforth make the decision making more precise and determinate.

(xiv) West Bengal Waqf Board:- The amendment is illegal because oral gift are valid in Mohammedan Law. This concept has been recognized under Shariat Application Act, 1937, and sanctioned by Judicial Pronouncement cannot be overturned or set aside by legislation.

(xv) Bihar Shia Waqf Board and Bihar Sunni Waqf Board:- The amendment is violative of fundamental principle of Muslim Law where oral declaration such as Hiba is recognized. Therefore, if a person professing Muslim faith verbally donate his land for religious, charitable, pious purposes and theron any structure of Mosque, Imambara, Khanqah etc. is established then it would be deemed to be under the category of Waqf by User and donated in the name of Almighty.

The waqf created since time immemorial and have identity of religious charitable and pious purposes must be recognised as waqf even after absence of Waqf deed.

With respect to Section 36(7), the State Waqf Board is proposed to be made subservient to the Collector. This violates Articles 25,26,29 of the Constitution.

With respect to Section 36(8), the omission is illegal as it is trying to take away the Waqf property. Creation of Waqf is a continuous process.

With respect to Section 36(10), the proposal is against waqf. It is also against the natural justice and against the constituted Tribunal.

(xvi) Tripura Waqf Board:- This will be helpful in maintenance of accurate database and will ensure registration on the basis of proper documents. Due to these substitutions, there would be no false registration and subsequent litigation.

Important suggestions/comments by various stakeholders and experts:

18.5 Important suggestions/comments received by various stakeholders and experts is summarised as under:

i. Many waqfs are very old, often older than a century. It is an unwise and anti-Waqf step to insist on an avoidable straight jacket of producing Waqf Deed and ignoring the realities of yesteryears.

ii. Violation of Articles 25, 26, 29 of the Constitution.

iii. State Waqf Board is proposed to be made compulsorily subservient to the Collector and its powers are proposed to be transferred to the Collector.

iv. The new portal to be created will controlled by the central government.

v. Must be confined to prospective application and not retrospective in nature.

vi. Requirement of production of waqfdeed executed by the waqif, can definitely be made a condition for registration of property of waqf after the proposed amendment 2024 to the Principal Act is tabled before the Parliament after the report of the Joint Parliamentary Committee.

vii. Such properties which have already been gazetted as waqf properties and already uploaded through the WAMSI portal and database as referred to in the IIT Final Report 2021 as well as the earlier Sachhar Committee Report of 2006 cannot be tinkered with and the status which such properties enjoy as "waqf properties" cannot be undone to cause reversal of status of such properties from waqf properties to non-waqf properties

viii. Islamic law recognizes both oral and written declarations for creating Waqf and appointing Mutawallis (custodians). The Bill's requirement for written documentation disregards these practices, violating religious autonomy.

ix. The proposed amendments introduce procedural barriers, such as mandatory detailed documentation and centralized registration of Waqf properties, complicating the establishment of Waqf. These requirements conflict with the simplicity envisioned by Islamic law for creating charitable endowments.

x. The waqfs not registered as per the scheme of the Government will not get any protection from the courts.

xi. No waqf without the execution of waqf deed but provision is not clear on Registered Deed-Notorised or Registered under Registration Act, 1908.

xii. No suit, appeal for the enforcement of any right on behalf of waqf if not registered within 6 months shall be a total denial of judicial remedy on such a short space of time which is not good.

xiii. Contrary to various judgements by Supreme Court.

xiv. In section 36, it is proposed to insert sub-section 1(A) to show that the waqf can be created with the execution of waqf deed but it is suggested that the waqf should be created with the execution of **REGISTERED DEED**. Unless a document is registered under the provisions of Indian Registration Act,1908, the waqf deed would be treated as unregistered and oral, which is not allowed in the proposed Bill. The validity of the waqf deed can be only found after being registered under the above Act and in the lien of the Transfer of Property Act. This is suggested to avoid the manipulation of the private waqf deeds.

Furthermore registered deed of immovable property will help in maintaining the records maintained by the revenue authorities under the provisions of the Survey and Settlement Act throughout and those will also be admissible in evidence as public records by different forums and the same will also help in fulfilling the objectives of waqf in the proper management of the property.

xv. The requirement that no Waqf shall be created without the execution of a Waqf deed ignores the long-standing practice of "Waqf by User," where properties used for religious or charitable purposes are recognized as Waqf even in the absence of formal documentation. In Islamic tradition, a verbal declaration has historically been sufficient to establish a Waqf. The insertion of this clause could lead to disputes over the legitimacy of Waqf properties that were created without a formal deed before the amendment. Although the clause specifies that the requirement applies from the commencement of the 2024 Act, there is a risk that existing Waqf properties without deeds might be scrutinized or contested, leading to their reclassification or loss of Waqf status.

xvi. No elaborate provision has been made in Sections 4, 5, 36, 40 of the Waqf Act to identify and determine the status of property as waqf property and the provision made for inclusion of a property as waqf property is not in conformity with the principles of natural justice guaranteed under Article 14 of the Constitution.

xvii. It is suggested that the amended 36(7A) may be modified as "Where the Collector in his report mentions that the property, wholly or in part, is in dispute or is a government property a Non- Governmental Public Property held by a non-Muslim society/ trust / organization / institution / body /association /non-Muslim place of worship or a property of archaeological importance not yet been notified by the Archaeological Survey of India, involved in community or public welfare and related property the waqf in relation to such part of property shall not be registered, unless the dispute is decided by a competent court & the custodian of the property under such dispute shall be as per the directions of the court."

xviii Extend Compliance Deadline: Increase the deadline for filing waqf property details to a minimum of 5 years, allowing waqfs sufficient time to comply without unnecessary pressure.Address Historical Waqfs by introducing special provisions for older waqfs, recognizing the complexities they face in modern documentation, and provide solutions to help preserve their historical significance.

Examination by the Committee

18.6 On being asked regarding the particular recommendation of Joint Parliamentary Committee of 2008 which contextualised the amendment in this section, the Ministry provided the following extract of JPC:-

> **"2. Survey of Properties** "Though the surveys were conducted after the implementation of the Wakf Act, 1954, steps were not taken to get the mutations / making entry in the revenue records of all the properties done."

18.6.1 When the Ministry was enquired about whether this Bill grants excessive powers to District Collectors potentially violating Article 14, Ministry replied as under:-

> "**Article 14** mandates that the State shall not deny, to any person, equality before the law or the equal protection of the laws within the territory of India.
>
> Collector being the head of the land record administration in the district, and having the required resources and expertise, will help in ensuring the authenticity of the land transaction including Government land. He will conduct an enquiry determining the status of property being Government or not and submit the report to the State Government and no further power of adjudication has been given to Collector from the powers of Waqf Board.
>
> **Collector has been given the following function as per this amendment:**
>
> **Function relating to registration:**
>
> - **Section 36(7)** of the Waqf Amendment Bill 2024 specifies that the Collector must inquire into the genuineness and validity of the waqf application before registration. This amendment aims to ensure that only legitimate waqf properties are registered, enhancing transparency and accountability in the management of waqf assets.

Section 36(7)- (1) On receipt of the application for registration by the Board, the same shall be forwarded to the collector. (2) The Collector shall enquire the genuineness and validity of the application and submit the report to the Board.

The additional power as given relating to Survey of the Waqf properties and inquiry during registration of Waqf and determining genuineness of the Government property by virtue of him being head of Land records and Land settlement department in districts. Moreover, Collector being a public servant is duty bound to function with objectivity."

18.6.2 The Ministry was enquired about the following Supreme Court judgements dealing primarily with Article 26 which would have bearing on the present Bill :-

a) Shirur Math judgment of 1954;

b) Shri Chidambaram Nataraja temple judgement of 2014;

c) Shri Padmanabhan Swami judgement of 2020:

d) A Adityanath versus Travancore Devswami Board of 2002;

e) Shri Jagannath Puri judgment of 2019;

f) Rajasthan Dharmik Nyas Board judgement of 2015:

g) Sabarimala case of 2018; and

h) Sikh Gurudwara Prabandhak Committee judgement of 2012.

To the above query, the Ministry replied as under:-

"Given below is an overview of the SC Judgments for the following case laws dealing primarily with Article 26 of the Indian Constitution and the analysis of the same on the current Waqf Amendment Bill, 2024.

a. **Shirur Math Judgment (1954)**:

This case is pivotal in determining the extent of State intervention in religious matters under Article 26. The court held that religious denominations have the right to manage their own affairs in matters of religion, and the State cannot interfere unless it involves secular matters such as administration and property management are involved.

Bearing on the Waqf Amendment Bill: Waqf Administration is not purely religious but a socio religious institution. The Waqf Act 1995 is central legislation meant to regulate matters related to administration of waqf properties.

b. Shri Chidambaram Nataraja Temple Judgment (2014):

In this case, the Court reaffirmed that religious denominations should have autonomy over religious practices and customs. It stressed minimal interference by the government in religious practices unless administrative mismanagement threatens the public order.

Bearing on the Waqf Amendment Bill: Waqf Administration is not purely religious but a socio religious institution. The Waqf Act 1995 is central legislation meant to regulate waqf properties and it is not interference but supervision on waqf management by the State waqf board and mutawallis.

c. Shri Padmanabhan Swami Judgement (2020):

This case reaffirmed the rights of royal family members to manage temple affairs while also allowing limited State oversight. The court struck a balance between preserving religious traditions and ensuring transparency.

Bearing on the Waqf Amendment Bill: The judgement could provide a framework for ensuring transparency in Waqf management without infringing on the religious or customary autonomy of Waqf Boards. The Waqf Act 1995 is central legislation meant to regulate waqf whereas other religious laws are generally enacted at the State level for administrating the religious endowments.

d. Adityanath vs Travancore Devaswom Board (2002):

This case dealt with the autonomy of religious bodies in managing temple affairs. The court protected the rights of the religious denomination, emphasizing the need to respect religious practices in administrative matters.

Bearing on the Waqf Amendment Bill: The administration of waqf is not meant to interfere with the essential religious practices but administration of the waqf property

e. Shri Jagannath Puri Judgment (2019):

This case dealt with State intervention in religious matters. The Supreme Court upheld that the government could take measures to ensure better management but must not interfere with religious customs or rituals.

Bearing on the Waqf Amendment Bill: Waqf Administration is not purely religious but socio religious. The Waqf Act 1995 is central legislation meant to regulate waqf whereas other religious laws are generally enacted at the State level for administrating the religious endowments.

f. Rajasthan Dharmik Nyas Board Judgment (2015):

The court emphasized the need for internal autonomy of religious trusts and boards, and that State intervention should be minimal, focusing only on mismanagement or corruption.

Bearing on the Waqf Amendment Bill: Waqf Administration is not purely religious but a socio religious institution. The Waqf Act 1995 is central legislation meant to regulate waqf properties and it is not interference but supervision on waqf management by the State waqf board and mutawallis.

g. Sabarimala Case (2018):

This case dealt with the tension between religious practices and constitutional rights (in this case, gender equality). The court ruled in favour of allowing women to enter the Sabarimala Temple, limiting the extent to which religious customs can override constitutional principles.

Bearing on the Waqf Amendment Bill: Waqf Administration is not purely religious but socio religious. The Waqf Act 1995 is central legislation meant to regulate waqf whereas other religious laws are generally enacted at the State level for administrating the religious endowments. The Review Petition on the Sabarimala judgment is pending before the Hon'ble Supreme Court Constitution Bench.

h. Sikh Gurudwara Prabandhak Committee Judgment (2012):

This judgment dealt with the Sikh community's right to manage its religious institutions. The Court reaffirmed that religious institutions have autonomy over their management unless it interferes with public order or morality.

Bearing on the Waqf Amendment Bill: The Waqf Administration is not purely religious but socio religious. The Waqf Act 1995 is central legislation meant to regulate waqf whereas other religious laws are generally enacted at the State level for administrating the religious endowments."

18.6.3 On being asked as to what assurance can the Government give to the Muslim community that as a consequence to any decision or intervention of District Collector issue similar to those arising out of Collector's decision in 1949, will not arise again, the Ministry replied as under:-

> "Collector being the head of the land record administration in the district, and having the required resources and expertise, will help in verifying the authenticity of the land transaction.
>
> This change aims to streamline the process and integrate it with the existing revenue administrative framework, as Collectors are already involved in various land and property-related matters.

The function of the collector for survey and registration will integrate professional expertise available with his office and increase authenticity of the land transaction.

Collector, being a public servant is duty bound to function with objectivity. Collector shall Act as per the provisions of the Act. ”

18.6.4 On being asked whether Amendment to Section 36(7) is taking away the power of Judiciary and handing over to Executive while vesting power in Collector to decide whether the property belong to the Government or not under Section 36 sub-section 7, the Ministry replied as under:-

“Section 36(7) provided that the collector will enquire the genuineness and validity of the application and correctness of any particular of the application received from Board for registration being the authority of revenue administration. Moreover, as per section 3C (2) to 3C (4), if collector reports property as a Govt. property, then such property shall not be registered as Waqf property. The aggrieved party may challenge the decision of the Collector in the Tribunal.”

18.6.5 Having Waqf deed has been made a mandatory pre-requisite for registering a Waqf *vide* insertion of a new section 36 (1A). In this context, the Committee sought the explanation of Ministry regarding:(i) Whether the said Section would be applied retrospectively, in the context of waqf properties pertaining to pre-1923 Act era and; (ii) whether such a deed would be required for such properties. In response, the Ministry stated as under:-

“The said section would not apply retrospectively. As per Waqf Amendment Bill 2024, Sec 3B (1) & (2) for auqaf registered before the Waqf (Amendment) Act, 2024, they must submit details about the waqf and its dedicated property on the designated portal and database within six months of the Act’s commencement. These details should include the following particulars: 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; c) The deed of waqf, if available;

Further, as per Section 43 of the Waqf Act, 1995, any Waqf which has been registered before the commencement of the Waqf Act 1995, it shall not be necessary to register the Waqf under the provisions of this Act and any such registration made before such commencement shall be deemed to be registration made under this Act. From the above, it is submitted that for the existing registered waqf properties, deed is not mandatory. The specimen Form to be uploaded containing details of Waqf properties are given along with Waqf Act 1995 and specimen copy of Waqf Deed which is being mandatory under this bill for the new registration of Waqf, are reproduced at **Annexure E**”

18.6.6 The Ministry were asked to comment on the concerns raised with respect to amendment in Section 36(7A) that anybody can raise a frivolous dispute just to hamper the registration of the Waqf. The Ministry commented as under:-

> "Government properties will be addressed in two ways:
> The government properties that are currently sub judice wholly or in part, their registration will depend on the court's ruling.
> Government properties identified and declared as waqf will be validated according to Section 3C (1-4). ……"

18.6.7 On the question that the execution of a Waqf deed not possible for all practical purposes like, creation of Waqf deed by person on his deathbed may not be possible, leading to infringement of fundamental rights under Article 25 & 26 of Constitution. Besides, Muslim Law which recognizes creation of oral gift (hiba), oral will (Wasiyath), etc. The Ministry in their written submission stated:-

> "Section 36 (1A) (new insertion), this clause ensures that after amendment of this Act comes into force, all auqaf are documented through a waqf deed, providing clarity on ownership and avoiding unnecessary litigation. "

18.6.8 With the respect to Section 36(7A) amendment, the meaning of competent court as provided by the Ministry is given below:-

> "Competent Court means adjudicating authority as per the Waqf Act. "

18.6.9 On the question that under proposed Section 36(7A) of the Amendment Bill, provision is not clear on Registered Deed- Notorised or Registered under Registration Act, 1908. The explanation received from the Ministry is stated below:-

> "As per Section 36(7A), the Collector after examining the genuineness and validity of the application submits in his report that the property wholly or partly is in dispute or is a Government Property, then such part of the property shall not be registered as waqf property. The competent Court's decision in regard to the dispute shall be final. "

18.6.10 On the suggestion received that some time limit may be set for submission of such report by District Magistrates as provided in the amendment to Section 36(7), the ministry replied as under:-

> "The Waqf Amendment Bill 2024 specifies that the Collector must inquire into the genuineness and validity of the waqf application before registration. This amendment aims to ensure that only legitimate waqf properties are registered, enhancing transparency and accountability in the management of waqf assets.
>
> Collector has to function as per the provisions of the Act. Furthermore, Section 83(2) provides the right to any person aggrieved from the report of the Collector may approach Tribunal.
> Moreover, Collector being a public servant is duty bound to function with objectivity. "

18.6.11 Clause 18 proposes to amend Section 36 of the principal Act by inserting a new sub-section (1A) which reads as: "On and from the commencement of the Waqf (Amendment) Act, 2024, no waqf shall be created without execution of a waqf deed". Whereas the sub-Section 1 of Section 37 which deals with the registration of auqaf provides that: "(1) The Board shall maintain a register of auqaf which shall contain in respect of each waqf copies of the waqf deeds, when available….". Thus, on the one hand, the proposed amendment is making the execution of waqf deed mandatory for the creation of any new waqf from the commencement of the Waqf (Amendment) Act, 2024 and on the other hand, in the register of auqaf to be maintained by the Waqf Board under Section 37, the copies of the waqf deed shall be placed "when available".
On being asked whether the phrase "when available" shall be omitted from sub-Section (1) of Section 37 to ameliorate the contradictory position, the Ministry replied as under:-

> "Section 36 (1A) (new insertion), this clause ensures that after amendment of this Act comes into force , all auqaf are documented through a waqf deed, providing clarity on ownership and avoiding unnecessary litigation.
> Sec 37- The Board shall maintain register of auqaf in such manner as prescribed by the Central Government. Since the details of auqaf will now be uploaded on the portal and database as per Sec 3B(1) and (2) and the rules thereof will be made by Central Government under Section 108B. "

18.6.12 Waqf deed has been made a mandatory pre- requisite for registering a Waqf *vide* insertion of a new section 36 (1A). In this context, the Ministry of Law & Justice was asked to explain whether the said Section would be applied retrospectively, in the context of Waqf properties pertaining to pre-1923 Act era. The Ministry replied as under:-

> "It is submitted that section 36 (1) of the Waqf Act, 1995, provides that:

"36. Registration; (1) Every waqf , whether created before or after the commencement of this Act, shall be registered at the office of the Board.

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

The phrase *"on and from the commencement of the Waqf (Amendment) Act, 2024*" implies that the amendments will be applicable prospectively.

It is submitted that in the proposed amendment of Section 36 of Waqf Act, 1995, shall be applied from the prospective date, and any new waqf shall not be created without execution of the waqf deed."

Observations/Recommendations of the Committee

18.7 The Committee, after thorough deliberation with various stakeholders and considering the replies submitted by the Ministry of Minority Affairs, are of the view that execution of waqf deed for the new auqaf would strengthen the legal status of such auqaf and reduce the number of litigations owing to the absence of written documents related to a waqf property in future. The measures introduced to inquire into the genuineness and validity of a waqf would further reduce disputes and claims on grounds of wrongful declaration of waqf. Hence, the amendment, is accepted as it is.

However, the Committee while examining the proposed sub-section 10 of Section 36, which states that no suit, appeal or other legal proceedings 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 by any court after the expiry of a period of six months from the commencement of the Waqf (amendment) Act, 2024 feel that the time period may be increased to give adequate time to all stakeholders to represent. Therefore, the Committee, after deliberation, recommend that instituting of suit shall be allowed beyond the period of six months and accordingly, the following proviso to sub-section 10 of Section 36 be inserted:

"Provided that an application may be entertained by the Court in respect of such suit, appeal or other legal proceedings after the period of six months specified under this sub-section, if the applicant satisfies the Court that he has sufficient cause for not making the application within such period."

CLAUSE- 19

19. The Clause 19 of the Bill proposes to amend the Section 37 of the Principal Act.

Relevant provisionsof the Principal Act:

19.1 Existing provisions of Section 37 are as under:

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

(a) the class of the waqf;

(b) the name of the mutawallis;

(c) the rule of succession to the office of mutawalli under the waqf deed or by custom or by usage;

(d) particulars of all waqf properties and all title deeds and documents relating thereto;

(e) particulars of the scheme of administration and the scheme of expenditure at the time of registration;

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

(2) The Board shall forward the details of the properties entered in the register of auqaf to the concerned land record office having jurisdiction of the waqf property.

(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."

Provisions Proposed in the Amendment Bill

19.2 In section 37 of the principal Act,—

(a) in sub-section (*1*),—

(i) in the opening portion, after the word "particulars", the words "insuch 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 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."

Justification/explanation given by the Ministry of Minority Affairs

19.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Clause 19 of the Bill mandates the Board to maintain a register of auqaf with detailed information about each waqf, including waqf deeds, mutawallis, succession rules, property details, and administration schemes. These details are sent to the relevant land record office, which updates the records or raises objections within six months.

The proposed amendment for Central Government's prescribed particulars for register of auqaf ensure consistent record-keeping across States, and public notice provisions for land record mutations ensure the right to be heard.

Before deciding mutation a public notice in the local newspaper, as per revenues laws to be given.

Further, issuing a public notice before the mutation of properties as Waqf ensures transparency, accountability, and protection of individual rights. This step allows rightful property owners and stakeholders to raise objections or provide evidence, upholding the principles of natural justice and preventing wrongful classification.

It also aims to provide opportunity to affected parties to be informed and heard before any changes are made to land records involving waqf properties"

Gist of submissions by various Waqf Boards:

19.4 A gist of submissions/objections received from various Waqf Boards of States/UTs is given as under:

(i) Maharashtra Waqf Board- With respect to proposed addition of a public notice of 90 days, it will not add any efficiency and will only prolong the process of registration. Further it will be a duplicity of the exercise as proposed in the amendment of Section 36 and the scrutiny of records already carried out by the Collector.

(ii) Andhra Pradesh Waqf Board:- More powers conferred to the Central Government. Opinion similar to Maharashtra Waqf Board stating that there is no need for second enquiry for mutation when the collector is recommending registration after detailed enquiry.

(iii) Karnataka Waqf Board:- The proposed amendment intends to snatch the powers of the board and vest it with the Central Government.

The amendment regarding the publication of notice of ninety days in two daily newspapers would open the floodgates of litigation and would defeat the spirit of the Act.

(iv) Kerala Waqf Board:- As per section 37, apart from the particulars provided in the Act, the other particulars to be contained in the Register of Auqafs can be provided by Regulation to be made by the Board. It is proposed to take away the power of Board to make Regulation in this behalf and vest that power in the Central Government.

As per sub-section (3), the details of waqf property once registered with the Board shall be forwarded to the Revenue authorities for effecting mutation and such authorities may either make necessary entries in land records or in the case of rejection, communicate its objections to the Board within a period of six months from the date of registration. Now it is proposed to give a public notice of ninety days in two daily newspapers circulating in the localities and give the affected persons an opportunity of being heard and then only the Revenue authorities can enter the particulars in the Revenue records.

Since the procedure now proposed will cause further delay the proposal for publication of notice may be dispensed with.

(v) The Telangana State Wakf Board:- This amendment also creates big hurdles on the maintaining the waqf properties. Most revenue records would not reflect the nature of the Waqf in its records. By again asking the Waqfs to establish their nature before mutation would lead to chaos. An opportunity is given to persons who have got their names entered in the revenue records by hook or crook to question the validity of the waqf.

(vi) Rajasthan Waqf Board:- In Clauses 01 and 02 of Sub-section 1 of Section 37, the CentralGovernment has been given the right to regulate the Waqf Board. This amendment is

against Articles 25 to 31 of the Constitution because this right is given to the Board by the Constitution.

Amendment in sub-section 3 of section 37 is unnecessary and will create unnecessary disputes regarding Waqf properties. Because Waqf Board takes action under the provisions of Waqf Act, conducts necessary investigation, records the details of the properties and informs the Land Record Office.

(vii) Punjab Waqf Board:- The proposed amendment appears to be a result of lack of understanding of the revenue laws. Mutations are never automatic and mechanical in nature. All revenue laws have specific provisions for summoning and hearing the concerned parties and procedure for summoning is already laid down in the acts itself. This includes personal summons, summons through registered post and alternate methods of summoning including publication if required. Most of the times summoning is completed in a month. Contested mutations, as in Punjab, are heard by SDM and at times may take more than a year to decide. Prescribing a separate public notice with there being appropriate safeguards in revenue law itself is uncalled for and will result in higher pendency in revenue courts also without any benefits. Even otherwise for all purposes, a months' notice is legally deemed appropriate. This will probably be the first law prescribing such a long period for public notice. While waqf falls under concurrent list, Land is a state subject under the seventh schedule of constitution and central Government can't make any provision that over rules any of the provisions in the state act. It would be unconstitutional to that extent.

(viii) West Bengal Waqf Board:- Only comment is that Sate Government must be authorized to frame rules based on the ground reality and the provisions of the Principal Act, Section 109. The Central Government can frame a model Rule which will provide a guideline for the States. Otherwise the federal concept of constitution will be affected.

(ix) Bihar Shia Waqf Board and Bihar Sunni Waqf Board:- In view of power to frame regulation by the Board any interference of the Central Government in preparation of Register of Auqaf is illegal.

(x) Tripura Waqf Board:- It would be helpful in regard to registration of waqf land.

Important suggestions/comments by various stakeholders and experts:

19.5 Important suggestions/comments received from various stakeholders and experts is summarised as under:

i. Infringement of the guarantee to freedom to manage its own religious affairs in respect of waqf properties, in as much as maintenance of a single register of waqf and waqf properties under Section 37 as proposed shall most certainly lead to unwarranted multiple legal proceeding arising out of multiple waqf properties in multiple States without an appropriate legal infrastructure to dispose of such proceedings since the proposed amendment is suggesting maintenance of the waqf register in terms of the details sought to be provided in the amendment to Section 36.

ii. Maintenance of the waqf register should be necessarily in two parts; viz., (i) in respect of those properties which are already enjoying the status of waqf as per the WAMSI portal and database referred to in the IIT Final Report 2021 and also the Sachhar Committee Report of 2006. (ii) the second part of the register should be confined only to those properties which are sought to be registered as waqf under the proposed amendment to Section 36; after the commencement of the Act. In other words, maintenance of the waqf register under Section 37 of the proposed amendment should also not be in respect of waqf properties retrospectively and database as referred to in the IIT Final Report 2021.

iii. Clause 19 ordains that the Register of Auqaf will be maintained as per the dictates of the Central Government. This is yet another attempt to finish the autonomy of the Waqf Boards. Regulations of the Board in the matter will be replaced by the Rules made by the Central

iv. Record of Rights (RoRs) like Khatauni in U.P. to establish actual owner of land would be extremely difficult. RoRs after mutation should reflect owner as Muslim Waqf or Waqf but this is not so.

v. This is completely contrary to the provisions of the Land Revenue Code. The phrase “in such manner as prescribed by the Central Government” risks excessive control, limiting

local authorities' autonomy over waqf properties. Similarly, replacing "provided by regulations" with "prescribed by the Central Government" further concentrates power. The 90-day public notice requirement, while ensuring transparency, could delay necessary actions and strain local resources. Additionally, the demand for notices in two newspapers may be impractical in areas with limited access to print media.

vi. In section 37 of the principal act, -

(a) in sub-section (1), —the following point (iii) may be added "(iii) in the opening portion for the words ", when available" the words "or no objection certificate obtained from the District Judge in relation to the Waqf property" 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 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 same notices shall be served to the Waqif and to the person(s) whose name(s) are mentioned in the land records or their legal heirsand give the affected persons an opportunity of being heard, then" shall be substituted.

Examination by the Committee

19.6.1 On being asked regarding the particular recommendation of Sachar Committee which contextualised the amendment in this section, the Ministry provided the following extract of the report of the Committee:-

> **"**Wakf Rules: Even after a lapse of eleven years since the Wakf Act 1995 was enacted, many 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. "

19.6.2 Further, regarding the present status of framing of waqf rules, the Ministry has stated that many State Governments have not framed the Waqf rules *viz*., Dadra & Nagar Haveli, Delhi, Jammu & Kashmir, Jharkhand, Lakshadweep, Madhya Pradesh and Uttar Pradesh.

19.6.3 On being asked regarding the particular recommendation of Joint Parliamentary Committee of 2008 which contextualised the amendment in this section, the Ministry provided the following extract of JPC:-

> **"Survey of Properties** "Though the surveys were conducted after the implementation of the Wakf Act, 1954, steps were not taken to get the mutations / making entry in the revenue records of all the properties done."

19.6.4 The Committee observed that though the surveys were conducted after the implementation of the Waqf Act 1954, steps were not taken to get the mutations making entry in the revenue records of all the properties done. However, in Section 37 sub-clause 3, the amendment seeks to give public notice of ninety days, in two daily newspapers and opportunity of being heard before deciding mutation in the land records, in accordance with revenue laws in force.The Committee seeks to know whether the same will actually further delay the mutation to which the Ministry replied as under:-

> "Issuing a public notice before the mutation of properties as Waqf ensures transparency, accountability, and protection of individual rights. This step allows rightful property owners and stakeholders to raise objections or provide evidence, upholding the principles of natural justice and preventing wrongful classification.
>
> It also aims to provide opportunity to affected parties to be informed and heard before any changes are made to land records involving waqf properties. "

19.6.5 Before deciding mutation in the land records, in accordance with revenue laws in force, the land record office shall give public notice of ninety days, in two daily newspapers and opportunity of being heard. The Committee sought to know the type of newspapers- local newspaper or newspapers available in villages or newspapers available in States or newspapers available in Hindi language, Urdu language, or English language:-

> "Sec 37(3) of the Waqf Amendment Bill, 2024 "before deciding mutation in the land records, in accordance with revenue laws in force, shall give 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".**"

19.6.6 Clause 19 of the Bill seeks to modify Section 37 of the Act to the extent that the Board shall maintain a register of auqaf in such as prescribed by the Central Government. On seeking to know whether it violates the Article 26 of the Constitution, the Ministry replied as under:-

> "The Board shall maintain register of auqaf in such manner as prescribed by the Central Government. Since the details of auqaf will now be uploaded on the portal and database as per Sec 3B(1) and (2) and the rules thereof will be made by Central Government under Section 108B. Issuing a public notice before the mutation of properties as Waqf ensures transparency, accountability, and protection of individual rights. This step allows rightful property owners and stakeholders to raise objections or provide evidence, upholding the principles of natural justice and preventing wrongful classification. It also aims to provide opportunity to affected parties to be informed and heard before any changes are made to land records involving waqf properties. Article 26 provides that every religious denomination or section has the right to establish and maintain institutions for religious and charitable purposes, manage its own religious affairs, own and acquire property, and administer that property in accordance with the law, all subject to public order, morality and health. Henceforth, the provision under section 37 focuses on registration of waqf as well as on the governance and accountability and not on the religious affairs thereby respecting Article 26 of the Constitution of India."

19.6.7 As per the data given on state-wise total number of waqf properties vis-a-vis total number of mutated waqf properties, apart from Puducherry, no state has completed the mutation of land records of waqf properties. In fact, most of the states have less than 50% of the properties mutated. As per the amendment of Section 37(3), "before deciding mutation in the land records, in accordance with revenue laws in force, shall give a public notice of 90 days…." The Committee sought to know as to whether this amendment will be applicable to all the above properties which have been declared waqf before the enactment of proposed Bill but have not been mutated in land records. The Ministry replied as under:-

> "Issuing a public notice before the mutation of properties as Waqf ensures transparency, accountability, and protection of individual rights. This step allows rightful property owners and stakeholders to raise objections or provide evidence, upholding the principles of natural justice and preventing wrongful classification. It also aims to provide opportunity to affected parties to be informed and heard before any changes are made to land records involving waqf properties."

Observations/Recommendations of the Committee

19.7 The Committee, after careful consideration of submissions of various stakeholders and the replies submitted by the Ministry of Minority Affairs, are of the opinion thatthe proposed amendment for Central Government's prescribed particulars for register of auqaf shall ensure consistent record-keeping across States. Further, public notice in the local newspaper provisions for land record mutations as per revenues laws ensures the right to be heard, transparency, accountability, and protection of individual rights. This step will also allow rightful property owners and stakeholders to raise objections or provide evidence, upholding the principles of natural justice and preventing wrongful classification. It also aims to provide opportunity to affected parties to be informed and heard before any changes are made to land records involving waqf properties. Hence, the amendment, is accepted as it is.

CLAUSE-20

20. The Clause 20 of the Bill proposes to amend the Section 40 of the Principal Act.

Relevant provisions of the Principal Act:

20.1 Existing provisions of Section 40 are as under:

"Decision if a property is waqf property.—(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.

(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 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 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:

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."

Provisions Proposed in Amendment Bill

20.2 Clause 20 of the Amending Bill provides:

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

Justification/explanation given by the Ministry of Minority Affairs

20.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Clause 20 of the Bill seeks to omit Section 40 of the Principal Act to rationalize the powers of the Board to ensure that Wakf are declared after following due process as per the provisions of the Act."

Gist of submissions by various Waqf Boards:

20.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Gujarat Waqf Board:- This amendment shall hamper the rights and power of Board.

(ii) Madhya Pradesh Waqf Board:- By adding the phrase 'if the Board has complete legal documents of ownership of that property', all the problems arising due to this section will be eliminated.

(iii) Maharashtra Waqf Board:- A mechanism of ascertaining whether a property is a Waqf property or not by the Board brings in place a two-tier process in the Act, which ensures better administration of the Waqf properties. Section 40 of the Wakf Act is a provision which corresponds to Section 27 of the earlier Act of 1954, makes proceedings of a Board, a quasi-judicial proceeding as in the said proceedings an inquiry is to be conducted by the Board to find out whether the property of the Trust is to be treated as the property of the Wakfs. The powers under Section 40 of the Act must be read as conferring authority with the Wakf Board which must certainly prevail in regard to the matters which are provided for therein.

Even Hon'ble Supreme Court in the case of Maharashtra State Board of Wakfs v. Shaikh Yusuf Bhai Chawla has noted as under "Section 40 provides for another important function of the Board".

This proposed omission gravely affects functioning of the Tribunals and increases their workload, which Tribunals are already overburdened with.

(iv) Tamil Nadu Waqf Board:- It is submitted that the proposed omission of Section 40 lacks reasoning and rationale as the Board being the authority vested with powers under Section 32 has every right and authority to render its decision with respect to the nature of the property.

(v) Andhra Pradesh Waqf Board:- Then if some Waqf has been concealed by vested interests, it is questionable who shall collect this information. In any case the decision of Waqf Board was not final. It was subject to scrutiny by Tribunal and even State government who are required to

notify these Waqfs in official gazette and the aggrieved party has another opportunity to challenge the same within the prescribed period.

(vi) Karnataka Waqf Board:- The proposed amendment intends to deprive the respective Boards of Auqaf of the right to enquire into any waqf run under the pretext of trust or society or being carried on in a clandestine manner.

This amendment is an affront to the religious autonomy guaranteed under Article 25 &26 of the Constitution of India.

(vii) Kerala Waqf Board:- There is a prescribed procedure for arriving at a decision whether or not a property is a waqf property,after making a detailed inquiry by the Board. Such a decision of the Board is not final and can be reviewed by the Tribunal. Since the decision of the Board on this behalf is taken through the collective wisdom after effective inquiry contemplated in that section. Similarly, as per sub-section (3), if any waqf property is involved in any property of a Trust or Society, registered under any law for the time being in force, the Board is competent to conduct an inquiry for the purpose of registering it as a waqf property. Now it is proposed to omit section 40 which is detrimental to the interest of waqf property and therefore it is totally uncalled for. Similarly, it will lead to a series of litigations in future and may even affect the pending litigations.

(viii) Rajasthan Waqf Board:- Removing section 40 is a violation of Article 25 and 26 of the Constitution because Article 25 and 26 give every religious community the right to investigate and decide about their properties. Section 40 gives a complete procedure for the Board to decide on the disposal of any property. The procedure of section 40 does not give arbitrary power to the Waqf Board, rather the order is issued by the Board by issuing information, publishing information and providing an opportunity of hearing under the legal process. And a provision has also been made for the aggrieved person to take action against the order of the Board in the court of Waqf Tribunal.

(ix) Uttar Pradesh(Sunni) Waqf Board:- The provision must be retained with a modification to the effect that instead of deciding the question if a particular property is a waqf property or

whether a waqf is a Sunni waqf or a Shia waqf the Board may refer the same to the Tribunal or to the Civil Court having jurisdiction over the property in question.

(x) Telangana State Wakf Board:- It is a fact that any owner having rightful title and ownership of any property can create Waqf and the registration and maintenance of such waqf property shall remain under the supervision of the Waqf Board. It is settled law that the quasi-judicial authorities like Collector cannot decide the title of immovable property. The Waqf Act provides wide scope for remedies to be challenged before the Waqf Tribunal in case of wrongful declaration of property as Waqf. When the mechanism for deciding the title is very much available in the present Act, omitting Sec. 40 from the principal Act is irrelevant.

Similar powers of declaring any property of Hindu Endowment is provided under Section 43 of the Charitable and Hindu Religious institutions and endowments Act, 1987, the Assistant Commissioner of Endowment is empowered to declare any undisputed properties as endowed property and notify accordingly. Therefore, it appears from the Amendment Bill, the Central Government is taking divisive steps in respect of two different endowment properties for Muslim and Hindu endowment.

(xiii) Haryana Waqf Board:- The proposed amendment for deletion of Section 40 will not be beneficial. It is not correct that the Waqf Board may declare any property as Waqf property. As per Section 40, the Board has power to collect information/revenue/MC records, etc. regarding any property which it has reason to believe that the same is Waqf property and after making enquiry as per procedure provided by the Waqf Rules made by the State Government, if the Board is satisfied that the said property is Waqf property, the Board may register the same in Waqf Properties Register. However, the aggrieved person may challenge the order of the Board before the Waqf Tribunal which is constituted by the State Government and having power of Civil Court. It is not correct to say that the order of the Waqf Tribunal is final and is not challengeable. The aggrieved person may file Revision Petition before the Hon'ble High Court against the order of the Waqf Tribunal and thereafter the order of the High Court may be challenged before the Hon'ble Supreme Court of India by filing SLP or CWP.

(xiv) Meghalaya Waqf Board:- The power as given under Section 40 should remain with the Board as far as enquiry and determination is concerned for the Board to be effective in management of the Waqf Property.

(xv) West Bengal Waqf Board:- Proposed amendment will encourage people to suppress the character of waqf. Even if Waqf is created by a registered deed and after execution of deed, the Waqif dies, in-coming Mutawalli may not disclose the provisions of the Deed and suppressing everything get his name recorded in Revenue Record. Checkes and Balances should have been provided instead of deleting Section 40 altogether. If a waqf is created by registered deed, the registration office should inform the revenue authority and on such information, revenue records be corrected incorporating name of waqf estate and the mutawalli or the Board of waqf.

(xvi) Bihar Shia Waqf Board and Bihar Sunni Waqf Board:- The omission is against the protection of Waqf as it limits the power of the Waqf Board regarding any property which it has reason to believe to be a Waqf property or not. Hon'ble Supreme Court in Civil Appeal No. 10770 of 2016 analogous with other Civil Appeals justified that legal imposrt of Section 40 and upheld its sanctity as Waqf Board can determine the nature of property as Waqf only after conducting enquiry as prescribed.

The Hon'ble High Court, Patna in CWJC No. 4708 of 2015 passed an order dated 09.09.2015 given opinion that Waqf Board considering an enquiry regarding the inclusion of the Yateem Khana as a Waqf Property and take decision.

(xvii) Tripura Waqf Board:- The Board has no issues.

<u>Important suggestions/comments by various stakeholders and experts:</u>

20.5 Important suggestions/comments received from various stakeholders and experts is summarised as under:

i. Procedure to declare a waqf property is prescribed under Section 40 of the Act and the Hon'ble Supreme Court in various judgements have defined the procedure to declare any property as a waqf property and board has to verify documents such as Sanad, Muntakhab, Khasra Patr, Pahni Patrak, Inam Patrak and after perusing all the documents and after due enquiry the Board declares any property as waqf.

ii. There is a perceived lack of clarity in how Waqf properties are identified and managed, with concerns that Section 40 does not provide enough power for adequate protection of these properties. Waqf properties are often left in dispute, with orders for possession by Collectors not being executed. There is a concern that properties not clearly defined as Waqf in records are being rejected by tribunals or courts.

iii. Seeks to do away role of the Waqf Board in deciding whether a property is waqf or not.

iv. JPC on Waqf 2007 and Justice Sachar Committee had reported that large number of Waqf properties are under encroachment. But, in the Bill of 2024 it is proposed to deny to the state waqf board the right to identify a waqf property which are under encroachment and to take action for its retrieval. The proposal is pernicious and needs to be rejected.

v. The notion that Waqf Board has misused this provision or shall misuse this provision is subject to judicial scrutiny by the Tribunal and thereafter the higher Courts. There are many such instances where statutorily constituted Boards take such decisions. The Waqf Board is being selectively targeted in this regard just to arbitrarily authorize the Collector to use his powers to make any property; a non-waqf property. The Collectors powers shall also be amenable to selective silence or inaction in case the Waqf Property requires to be identified and notified.. The said omission of Section 40 of the Waqf Act, 1995 is concerned, the said omission is proposed without appreciating that it is impossible for the Survey Commissioner or the State Waqf Boards to know about all the Waqfs, especially for the Waqf Alal Aulad, which are kept hidden by the beneficiaries and are used as personal property.

vi. The properties settled by the creator of the Waqf Alal Aulad are not the properties with visible signs of religious properties. Largely, the Waqf Alal Aulad properties are shops, godown and houses, earning rent at the time of their settling by the waqif as a Waqf Alal Aulad. There are instances where the beneficiaries or the manager of the Waqf Al Aulad transfer the properties belonging to such waqf. The State Waqf Board comes to know about such waqfs when any disputes arises between the tenants-landlord or vendor-vendee or when a good Samaritan reports about such a waqf the State Waqf Board. Thereafter, the State Waqf Board, on the strength of its powers under Section 40 of the Waqf Act,1995, takes step to enter such waqf into the register of Waqfs, as the State Waqf

Boards are the custodians of all the Waqf and Waqf Properties, and takes steps to protect such property. However, if the provision contained under Section 40 of the Waqf Act, 1995 is omitted, that will be against the very object of the Waqf Act, 1995, which is better administration of Auqaf and for matters connected therewith or incidental thereto. Omission will be a windfall for those dishonest persons who have concealed the waqf from the State Waqf Boards.

vii. No reason for omitting Section 40 since the Board acts under the Ministry of Minority Affairs and any such decision can easily b tested by any Court of Law,i.e., The Tribunal, High Court or Supreme Court.

viii. Section 40 is arbitrary and unconstitutional as it gives sweeping powers to Waqf Board to declare any property as waqf notwithstanding anything contained under any other Act including the Trust Act, 1882 and the Societies Registration Act, 1860. Such unbridled power conferred upon Waqf Board is unprecedented and unconstitutional because it gives an overriding power to a religious entity over Secular institutions like Trusts and Societies without any rationale. Waqf Board is a body of Muslims alone and it has been given power to decide as to whether any property is a genuine and legitimate Waqf property or not and even it can suo-motu decide whether any property belongs to trust or society is a Waqf property. No safeguard has been given to persons whose property would be subjected to inquiry by the Waqf board. They have no occasion or opportunity to know about the decision, if any, passed by the Waqf Board under Section-40, which violates the natural justice principle of *Audi alteram partem*. Whether the property owned by trust, society, mutt and non-Muslims is a Waqf property, must be decided by the Civil Court only. The power given to the Waqf Board under Section-40 is arbitrary and against the principle of natural justice and fair play i.e. ***Nemo Judex In Causa Sua.*** A person interested in a matter cannot be invested with the power to decide any question involving the interest of an adversary party. Thus, manifestly arbitrary, irrational and unconstitutional.

ix. Section 40 of the original Waqf Act provided a mechanism for determining whether a property is Waqf based on historical use, community recognition, and religious significance. Deleting this section removes the formal procedure for identifying properties

as Waqf, which could lead to disputes over the status of properties. Deleting this section diminishes the authority of the Waqf Boards, potentially leading to external interference and a reduction in the autonomy of Waqf governance.

x. The proposed omission of Sections 40 raises significant concerns. The powers granted to the Waqf Board to inquire about Waqf properties are similar to those conferred upon authorities managing other endowments, such as the Karnataka and Tamil Nadu Hindu Endowment Acts. The Supreme Court of India has affirmed the validity of the Waqf Board's powers under Section 40 in the case of Maharashtra State Board of Waqfs versus Shaikh Yusuf Bhai Chawla, confirming that the Board's authority is well-founded.

xi. Due to this provision, persons who purchase the property through registered sale deeds had to again face the rigmarole of proving the ownership in waqf proceedings. Many a times without any documentary evidence of dedication and ownership, claims are made over huge tracts of land. As such deletion of Section 40 is long overdue.

Examination by the Committee

20.6.1 The representatives of Ministry of Housing & Urban Affairs while appearing before the Committee on 05.09.2024 have stated that the proposed amendments like Section 5(2), Section 5(3), Sections 3(C) in Waqf (Amendment) Bill, 2024 and omission of Section 40 of The Wakf Act 1995 would have a salutary effect in managing public properties. The title dispute arising out of overlapping jurisdiction has adversely impacted the ability of public authorities to manage public properties which is not in public interest. Clearing the encroachments from land vested with the Government results in avoidable public expenditure. Thus, the proposed amendments to Section 5 and introduction of Sections 3(C) in and omission of Section 40 of the Waqf Act 1995 in the proposed the Waqf (Amendment) Bill, 2024 will help in proper management and protection of land vested with the Government. Therefore, this Ministry supports the proposed amendments. Further, the title of properties, both public and waqf would therefore become more stable, and will be strengthened.

20.6.2 The Committee while observing that the Supreme Court has upheld the legality of Section 40 in Sheikh Yusuf Bhai matter sought to know the reasons of the omission of this

Section in the Amendment Bill, Further, the Committee also sought the data on cases of mis-utilization or abuse of Section 40 by a CEO in last five years and cases of declaration of waqf property under Section 40 before the Tribunal in the High Court/Supreme Court. The Ministry replied as under:-

> "As per information out of 30 States/UTs, data was given only by 8 States where 515 properties have been declared as waqf under Section 40. The Ministry is still in process for obtaining details of cases challenged in the Court. 7 States have reported 8 court cases (in High Court/Supreme Court) concerning the declaration of waqf properties under Section 40 of the Waqf Act (1995, amended in 2013). In all these cases, the courts have emphasized that the Waqf Board must conduct a thorough inquiry and provide affected parties a fair opportunity to be heard before declaring any property as waqf.

The Himachal Pradesh High Court has ruled that declaring a property as waqf without proper inquiry and a fair hearing violates due process and is unsustainable. Therefore, the notification of waqf properties without proper procedure under Section 40 is considered bad and unsustainable in law.

Uttarakhand had reported 1 case, and Maharashtra has reported 03 and 01 case pending in Tribunal and High Court respectively for Sec 40.

Section 40 allowed the Waqf Board to declare properties as waqf based on collected information by itself, regarding any property which it has reason to believe to be waqf property. The omission of this section rationalizes the Board's powers. Now, the Board can still claim properties as waqf but follow due process as outlined in the Act.

Under Section 3(r) of the Waqf Act (amended in 2013), waqf is defined as "a permanent dedication by any person, of any movable or immovable property for purposes recognized by Muslim law as pious, religious, or charitable and includes…." Section 39(3) further allows the Board to approach a Tribunal to recover properties being used for religious or charitable purposes. Therefore, the omission of Section 40 does not impact the Waqf Board's ability to claim waqf properties through proper legal channels."

Observations/Recommendations of the Committee

20.7 The Committee, after thorough deliberation with various stakeholders and considering the replies submitted by the Ministry of Minority Affairs, are of the view that omission of Section 40 of the Principal Act will be essential to rationalize the powers of the Board to ensure that waqf are declared after following due process as per the provisions of the Act. Hence, the amendment, is accepted as it is.

CLAUSE-21

21. The Clause 21 of the Bill proposes to amend the Section 46 of the Principal Act.

Relevant provisions of the Principal Act:

21.1 Existing provisions of Section 46 are as under:

"Submission of accounts of auqaf-(1) Every mutawalli shall keep regular accounts.

(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."

Provisions Proposed in the Amendment Bill

21.2 In Section 46 of the principal Act, in sub-section (2),-

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

(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.

Justification/explanation given by the Ministry of Minority Affairs

21.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Clause 21 of the Bill seeks to change the deadline for submitting Waqf accounts from July to October, allowing more time for accurate reporting. Mutawalli will prepare true statement of accounts of auqaf, in such form and manner and containing such particulars as may be prescribed by the Central Government, of all moneys received from any source.

This will help in ensuring transparency in the financial management of Waqf."

Gist of submissions by various Waqf Boards:

21.4 A gist of submissions/objections made by various Waqf Boards of States/UTs is given as under:

(i)Andhra Pradesh Waqf Board:- Amendment regarding "prescribed by central government" found objectionable especially when there is already a provision in the act for central/state government to issue direction to board with regard to policy matter. This amendment shows the intention of the government to control day to day functioning of the Board.

(ii) Karnataka Waqf Board:- The proposed amendment is an attempt to snatch the power of the Boards as well as the respective State Governments and only empowers the Central Government. Hence, needs to be rejected.

(iii) Rajasthan Waqf Board:- In sub-section 2 of Section 46, giving compensation to the Central Government instead of the Board for regulation is against Articles 25 and 26 of the Constitution.

(iv) Telangana State Wakf Board:- Interference by the Central Government affects the autonomy of Waqf and the concept of federalism.

(v) West Bengal Waqf Board:- Attempt in the bill to take away powers from the states, is opposed to our federal structure. It is directly contrary to seventh schedule of the constitution. An attempt to encroach upon an area which is the absolute domain of the State Government.

(vi) Bihar Shia Waqf Board and Bihar Sunni Waqf Board:- The proposal should be dropped and the Board shall follow its rules/regulation as framed by the State under the mandate of the Act, 1995 itself.

(vii) Tripura Waqf Board:- The Board has no issues.

Important suggestions/comments by various stakeholders and experts:

21.5 Important suggestions/comments received from various stakeholders and experts is summarised as under:

i. Clause 21 seeks to replace the Regulations of the Board by the Rules of the Central Government in the matter of submission of accounts. This will considerably erode the authority of the Board.

ii. The amendment to Section 46 is again interference in management of religious affairs.

Observations/Recommendations of the Committee

21.6 The Committee, after thorough discussions with various stakeholders and careful considerations of the replies submitted by the Ministry of Minority Affairs, are of the opinion that the change of deadline for submitting Waqf accounts from July to October, shall allow more time for accurate reporting. Further, Mutawalli will prepare true statement of accounts of auqaf, in such form and manner and containing such particulars as may be prescribed by the Central Government, of all moneys received from any source which will help in ensuring transparency in the financial management of Waqf. Hence, the amendment, is accepted as it is.

CLAUSE-22

22. The Clause 22 of the Bill proposes to amend the Section 47 of the Principal Act.

Relevant provisions of the Principal Act:

22.1 Existing provisions of Section 47 are as under:

"Audit of accounts of auqaf—(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.

(2) The auditor shall submit his report to the Board and the report of the auditor shall among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(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."

Provisions Proposed in the Amendment Bill

22.2 In section 47 of the principal Act,—

(a) in sub-section (*1*),—

(i) in clause (*a*),—

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

(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:

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:—

"(*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:—

"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.";

(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.

Justification/explanation given by the Ministry of Minority Affairs

22.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Clause 22 of the Bill seeks to ensures that Waqf properties with significant incomes are audited for accountability, and to make Mutawallis more accountable, audit of the Waqf can be done through CAG panelled auditor or by any officer designated by the Central Government.

Further, earlier there was no such provision for publishing audit report. With this amendment, better transparency will be there in monitoring audit report."

Gist of submissions by various Waqf Boards:

22.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Andhra Pradesh Waqf Board:- Raising income limit for submission of account may not be objectionable. Audit by an auditor from the panel maintained by State Government may not be objectionable. Audit by independent auditors from the panel prepared by State Government is desirable.However, criterion for selection of such Waqf whose annual income exceeding one lakh rupees should be specified otherwise it will amount to witch-hunting and can be used for settling scores.Publication of such report as mentioned under sub-clause "(iii)b" may be desirable.Omission of the provision in sub section(3) will put unnecessary financial burden on the particular Waqf as the expenditure can be unlimited.

(ii) Karnataka Waqf Board:- The proposed amendment is unnecessary and creates roadblocks in the audit of waqf institution whereby the respective Boards of Auqaf will lose its control over the waqf institutions. Hence, the proposed amendment is rejected.

(iii) Kerala Waqf Board:- As per the proposed amendment, the income limit is enhanced from fifty thousand rupees to one lakh rupees and in the case of such *auqaf*, it is proposed that audit has to be conducted by auditors appointed from the panel of auditors prepared by the State Government. Thus by the amendment, the audit set up has been changed thoroughly.

It is proposed to provide for the conduct audit by C&AG or by an officer designated by the Central Government, if the Central Government so orders.As per Article 149 of the Constitution, C&AG is expected to conduct audit on the accounts of the Union and the State and also of any other authority or body as may be prescribed by or under any other law made by the Parliament. As far as *waqf* institutions are concerned, they are not receiving any money by way of grants, etc. from the Central Government and therefore, the legal necessity for C&AG Audit may be revisited.

Further, as per the proposed sub-section (2A), it is provided that the Board shall publish audit report in a manner prescribed by Rules of the Central Government. The preparation of audit

and submission of audit reports, etc. are matters already covered by State Rules and therefore, there is no legal necessity for a Central Rule in this behalf.

It is also proposed to omit both the provisos of sub-section (3). By the omission of such a provision, it will be detrimental to the interest of State Exchequer.

(iv) Rajasthan Waqf Board:- The amendment of section 47 is against the powers given to the Board by the Waqf Act 1995. The Waqf Board itself is an autonomous body and the Board has the legal right to get its Waqf properties audited and the expenses of the audit are borne by the Board. Removing sub-section 3 of section 47 is not justified in any way. This provision is necessary in the Act to keep the Waqf Act and its audit effective.

(v) Telangana State Wakf Board:- Interference by the Central Government affects the autonomy of Waqf and the concept of federalism.

(xiv) Bihar Shia Waqf Board and Bihar Sunni Waqf Board:- The amendment proposes to make the Waqf Board subservient to the Government which violates Articles 25,26,29 of the Constitution.

(xv) Tripura Waqf Board:- The Board has no issues.

Important suggestions/comments by various stakeholders and experts:

22.5 Important suggestions/comments received from various stakeholders and experts is summarised as under:

vii. The proposed amendment grants power to Central Government to audit any waqf institution to be audited by CAG which will damage the autonomy and financial freedom of the waqf institutions.

viii. It will be impossible for the waqf institution to run their programs without fear as they will always be under the threat of any uncertain action by the Government such as raids, FIR and so on.

ix. The proposed Bill gives the government sweeping control over the financial management of Waqf properties. This threatens to divert funds from their intended charitable purposes.Clause 22 seeks to give right to Central Government to direct audit of a waqf. This is also interference in the working of the Board.

x. This proposal is unreasonably repressive and injurious to the interests of the Waqfs and needs to be dropped.

xi. Audit of Waqf Board property should be done by the officials of CAG Department only.

xii. A yearly or regular audit should be conducted by the Comptroller and Auditor General (CAG) which will help tackle widespread mismanagement and corruption that have plagued waqf institutions across various states so that the funds generated are utilized for the intended charitable purposes, benefiting the community at large.

xiii. This is encroachment on the autonomy of Waqf boards, which raises concerns about the politicization of religious institutions. The power to audit could be misused for political purposes, allowing the government to interfere in the management of Waqf properties.

Examination by the Committee

22.6.1 On being asked regarding the particular recommendation of Sachar Committee which contextualised the amendment in this section, the Ministry provided the following extract of Sachar Committee recommendations:-

> "4. Maintenance of Accounts: It is recommended that all the Wakfs are compulsorily brought under the scheme of 'financial audit'."
>
> "Presently, the audit of the accounts of Auqaf as per Section 47 (1) (a) of the Waqf Act 1995 was audited by panel of auditors prepared by the State Government."
>
> "In the proposed amendment, proviso to Section 47 (1) (c) of the Waqf Act 1995 has been proposed to be inserted empowering the Central Government also to 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.

Moreover, it has been provided u/s 47(1)(b) the accounts of the waqf having net annual income exceeding Rs 50,000 (which has now been raised to Rs1,00,000 in the bill) shall be audited annually, by an auditor appointed by the Board from out of the panel of auditors as specified in clause (a) of Sec 47."

22.6.2 The amendment proposes 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. In this regard, the Committee sought to know the reasons as to why the power from the State Government has been taken away and whether this interference by the Centre hits the federal structure:-

"Amendment in Sec 47(1) is introduced to ensure financial probity in the management of waqf.

It has been provided u/s 47(1)(a) the accounts of the waqf **having no income or a net annual income** not exceeding Rs 50,000 (which has now been raised to Rs 1,00,000 in the bill) shall be audited annually, **by an auditor appointed by the Board.** (Out of the panel of auditors prepared by the State Government.)

The accounts of 2% of such auqaf shall be audited annually.

U/S 47(1)(b) the accounts of the waqf **having net annual income exceeding Rs 50,000 (which has now been raised to Rs 1,00,000 in the bill)** shall be audited annually, by an auditor appointed by the Board from out of the panel of auditors prepared by the State Government.

Proviso u/s 47 (1) (c) of the Waqf Act 1995 has been proposed to be inserted empowering the Central Government also to 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.

The Waqf (Amendment) Bill 2024 does not disturb the federal structure as the bill is being framed under the Entry 28 of the Concurrent List which empowers the Central Government to make legislation on "Charities and charitable institutions, charitable and religious endowments and religious institutions.

Sec 96 of the Waqf Act 1995 clearly mentions power of Central Government to regulate secular activities of auqaf in relation to the functioning of Central Waqf Council and State Waqf Boards. "Secular activities" shall include social, economic, educational and other welfare activities.

The Waqf Boards have been given sufficient power to manage the waqf properties such as :

a) registration of waqf property
b) to maintain a record containing information relating to the origin, income, object and beneficiaries of every (waqf).
c) to ensure that the income and other property of auqaf are applied to the objects and for the purposes for which such auqaf were intended or created
d) to give directions for the administration of auqaf
e) to settle schemes of management for a waqf
f) to recover lost properties
g) to institute and defend suits and proceedings relating to auqaf
h) it has also provided powers to regulate the functioning of Mutawalli also increase the financial viability of waqf property.

Further, the State Government has been given various functions to help and facilitate better management of waqf property by the Waqf Boards such as:

- State governments can empower the waqf boards through timely completion of the survey under sec 4 of the Act and publication of the list of auqaf and helping in the process of deciding mutation in the land records.
- Constitution and reconstitution of the waqf boards in time as envisaged in the Act.
- Appointment of Chief Executive Officer and other employees of the board for carrying out the functions of the waqf boards.
- State Governments to facilitate audit of all the accounts of the auqaf as per mandate.
- Constitution of the tribunal and filling up of the vacant posts in the tribunal.

Timely drafting of rules as prescribed under the Act by the Central Government and the State Government will ensure proper administration of auqaf.

The Central Government and State Government only regulate under the provisions of the Act, when there are reports of mismanagement of waqf administration.

The Waqf (Amendment) Bill 2024, provided detailed provisions for the functions to be carried out by the Central, State government and Waqf Boards. ”

22.6.3 The Committee sought to know the reasons why CAG has been given the power to audit Waqf properties. The Ministry replied as under:-

“Audit by CAG is not mandatory and neither annually, it is an enabling provision for making the mutawallis more accountable. Further, in order to protect public interest enabling provision of audit by CAG has been made in the amendment. ”

22.6.4 Audit Report is must for Waqf Boards with an income of one lakh rupees rather than fifty thousand rupees. In the rules of Company Law Boards, Trusts, Societies, whether there is profit or loss, audit report is still submitted. The Committee sought to know the reasons for putting

income cap on the audit and the reasons as to why the Waqf Boards are not asked to do the audit and submit the report:-

> "It has been provided u/s 47(1)(a) the accounts of the waqf **having no income or a net annual income not** exceeding Rs 50,000 (which has now been raised to Rs 1,00,000 in the bill) shall be audited annually, **by an auditor appointed by the Board.**(Out of the panel of auditors prepared by the State Government.)
>
> The accounts of 2% of such auqaf shall be audited annually.
>
> As there are 8.72 lakhs waqf properties spread all across India.
>
> For effective monitoring and auditing this ceiling has been retained with slight changes. (Rs. 50,000 to Rs. 1,00,000)"

Observations/Recommendations of the Committee

22.7 The Committee, after thorough deliberations with various stakeholders and carefully considering the replies submitted by the Ministry of Minority Affairs, are of the view that this amendment seeks to ensure that waqf properties with significant incomes are audited to improve accountability. Moreover, it will also make mutawallis more accountable. Further, the Committee noted that earlier there was no such provision for publishing audit report. With this amendment, better transparency will be there in monitoring audit report. Hence, the amendment, is accepted as it is.

CLAUSE-23

23. The Clause 23 of the Bill proposes to amend the Section 48 of the Principal Act.

Relevant provisions of the Principal Act:

23.1 Existing provisions of Section 48 are as under:

"Board to pass orders on auditor's report.—(1) The Board shall examine the auditor's report, and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders as it thinks fit including orders for the recovery of the amount certified by the auditor under sub-section (2) of section 47.

(2) The mutawalli or any other person aggrieved by any order made by the Board may, within thirty days of the receipt by him of the order, apply to the Tribunal to modify or set aside the order and the Tribunal may, after taking such evidence as it may think necessary, confirm or modify the order or remit the amount so certified, either in whole or in part, and may also make such order as to costs as it may think appropriate in the circumstances of the case.

(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.

(5) Every amount for the recovery of which any order has been made under sub-section (1) or sub-section (2) shall, where such amount remains unpaid, be recoverable in the manner specified in section 34 or section 35 as if the said order were an order for the recovery of any amount determined under sub-section (3) of section 35.

Provisions Proposed in Amendment Bill

23.2 In section 48 of the principal Act,—

(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.

Justification/explanation given by the Ministry of Minority Affairs

23.3 The justification furnished by the Ministry for the proposed amendment is as under:

"By inclusion of this subsection 48(2A) through *Clause* 23 of the Bill, the method of publishing the proceeding and orders of the board passed on auditor's report will be prescribed by the Central Government. This ensures transparency and public access to important information.

Further, Tribunals are now permitted to stay the Board's orders on the matters related to Auditor's report, when necessary, for appropriate judicial scrutiny and mitigating miscarriage of justice.

The finality of the Tribunal's decision on the order passed by the board on audit reports of the auqaf, has been removed, allowing appeals to the High Court within a specified period of 90 days which will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes.

Moreover, Sec 48(4) is being omitted as the Tribunal order shall no longer be final and the aggrieved party can appeal before the High Court."

Gist of submissions by various Waqf Boards:

23.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Andhra Pradesh Waqf Board:- May not be any objection except that why manner of publication is not left to State Government. Further, orders of recovery of any amount from Mutawalli cannot be stayed by Tribunal. This is against the principles of jurisprudence. Power of stay should be a natural corollary of power to hear appeal.

(ii) Karnataka Waqf Board:- The proposed amendment is in order to snatch powers of the respective Boards of Auqaf and vest the same with the Central Government which is contrary to the religious autonomy recognized under Article 25 and 26 of the Constitution of India. Hence, the proposed amendment is rejected.

(iii) Maharashtra Waqf Board:- No comments with respect to proposed insertion of Section 2A in Section 48 of the Principal Act. However, w.r.t proposed amendment in Section 48(3) of the principal Act, it may be noted that this insertion will gravelly affect the powers of the Tribunal. Further, Section 48(4) of the Principal Act may be retained and not deleted for the suggestions mentioned herein above.

(iv) Kerala Waqf Board:- It is now proposed that the proceedings and orders of the Board under sub-section (1) (on auditors' report) shall be published in such manner as may be prescribed by Rules of the Central Government. Since the matter is already covered by State Rules, there is no legal necessity for such an amendment.The finality given to the decision of Tribunal under sub-section (4) has been taken away, which is detrimental to the interest of the *Waqf* Board.

(v) Rajasthan Waqf Board:- Section 48 makes the decision of the Wakf Tribunal final like other tribunals in the country. Section 83 (9) of the Wakf Act provides for challenging the order of the tribunal in the Hon'ble High Court.

(vi) Telangana State Wakf Board:- Interference by the Central Government affects the autonomy of Waqf and the concept of federalism.

(vii) West Bengal Waqf Board:- Rule making power or to make regulation must vest in State Government.

(viii) Bihar Shia Waqf Board and Bihar Sunni Waqf Board:- With respect to Section 48(3), the amendment should be dropped and the effectiveness of the Waqf Tribunal should be maintained.

(ix) Tripura Waqf Board:- The Board has no issues.

<u>Important suggestions/comments by various stakeholders and experts:</u>

23.5 Important suggestions/comments received from various stakeholders and experts is summarised as under:

i. The insertion of sub-section (2A) allows the Central Government to prescribe how the proceedings and orders of the Waqf Board should be published. This introduces a significant level of central control over the dissemination of information related to Waqf properties and decisions. Such centralized control risks political influence and governmental interference in the transparency of Waqf board operations.

ii. The omission of sub-section (4), which may have outlined specific accountability or record-keeping procedures for the Waqf Board, weakens the internal mechanisms for ensuring transparency and responsibility.

Observations/Recommendations of the Committee

23.6 The Committee, after thorough deliberation with various stakeholders and considering the replies submitted by the Ministry of Minority Affairs noted that through the inclusion of subsection 48(2A) *vide*Clause 23 of the Bill, the method of publishing the proceeding and orders of the board passed on auditor's report will now be prescribed by the Central Government. The Committee are of the opinion that this will ensure transparency and public access to important information.

The Committee, further, noted that the tribunals shall now be permitted to stay the Board's orders on the matters related to Auditor's report , when necessary, for appropriate judicial scrutiny and mitigating miscarriage of justice. The finality of the Tribunal's decision on the order passed by the board on audit reports of the auqaf, has been removed, allowing appeals to the High Court within a specified period of 90 days which will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes. Hence, the amendment, is accepted as it is.

CLAUSE-24

24. The Clause 24 of the Bill proposes to amend the Section 50A of the Principal Act.

Provisions of the Principal Act:

24.1 Section 50A as proposed in the Amendment Bill was not there in the Principal Act.

Provisions Proposed in Amendment Bill

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

"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 imprisonmentfor 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.".

Justification/explanation given by the Ministry of Minority Affairs

24.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Clause 24 of the Bill seeks to ensure that only individuals of good character can function mutawallis (managers) and holds them accountable for their actions."

Gist of submissions by various Waqf Boards:

24.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Andhra Pradesh Waqf Board:- Mutawalli is a private position and wakif who may not be conversant with rules cannot be prohibited from appointing a person of his choice except in case

of being minor and of unsound mind. There is no clarity in respect of rules to deal with a situation, if a convict wants to make Waqf of his property and appoints himself as first Mutawalli.

(ii) Karnataka Waqf Board:- The proposed insertion of 50A is unnecessary,unwarranted and unfounded in the eye of law as it takes away the rights of the waqif to dedicate the property as a waqf and to administer it by nominating a person of his choice. This violates religious autonomy granted under Article 25 &26 of the Constitution of India.

(iii) Uttar Pradesh(Sunni) Waqf Board:- There must not be an absolute bar to the appointment of somebody who has once been removed from the office of Mutawalli. The existing provision of Section 64(8) creating a bar of 5 years from the date of removal is reasonable and must be retained.

(iv) Telengana Waqf Board:- The board accepts this amendment.

(v) Tripura Waqf Board:- The Board has no issues.

Important suggestions/comments by various stakeholders and experts:

24.5 Important suggestions/comments received from various stakeholders and experts is summarised as under:

i. The newly inserted Section 50A enumerates various grounds for ineligibility of a Mutawalli but the same has already been mostly covered under Section 60.

ii. There must not be an absolute bar to the appointment of somebody who has once been removed from the office of Mutawalli. The existing provision of Section 64 (8) creating a bar of 5 years from the date of removal is reasonable and must be retained.

iii. The qualifications and a well-defined procedure for appointment of Mutawalli must be made in the Act.

iv. Section 50A has been proposed to insert provisions prescribing the qualification of the Mutawalli. In the said proposed section, a Mutawalli has been proposed to be not less than 21 years of age but the maximum age has not been prescribed. If a person is more old and appointed as Mutawalli, his legal heirs can mismanage the property by taking advantage of his old age. Therefore, the maximum age is suggested to be prescribed by the Committee.

v. The proposed amendment does not specify that a mutawalli must be a Muslim. This could allow individuals without a proper understanding of Islamic principles to manage Waqf properties. Allowing non-Muslims to serve as muttawallis could lead to decisions that do not align with Islamic values, resulting in the potential mismanagement of Waqf properties. The criteria for disqualification (e.g., being an undischarged insolvent or convicted of certain offenses) are important but do not sufficiently ensure that those managing Waqf properties have the necessary religious and legal knowledge. Amend Section 50A to explicitly require that all mutawallis must be practicing Muslims. This will ensure that individuals managing Waqf properties are equipped with the necessary understanding of Islamic law and principles. In addition to the current disqualification criteria, the amendment should outline specific qualifications for mutawallis, such as knowledge of Islamic jurisprudence (Sharia) and experience in managing religious properties.

Examination by the Committee

24.6.1 The Committee noted that while inserting Section 50A in the amendment Bill, nowhere the manner of appointment of Mutawalli has been enumerated and sought Ministry's comments in this regard. The Ministry replied as under:-

"Section 50A does not explicitly detail the manner of appointment of a Mutawalli. It primarily concerns the eligibility and disqualification aspects of a Mutawalli, ensuring that those who do not meet these conditions are not appointed.

Initially, Mutawalli is appointed by the Waqif. As per Section 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."

24.6.2 The newly inserted Section 50A in the Amendment Bill enumerates the grounds on which a person shall not be qualified for being appointed or for continuing as a mutawalli. Similarly, the already existing Section 64 in the Waqf Act 1995 while elaborating on the procedure for removal of Mutawalli also enumerates the grounds of disqualification of a Mutawalli. Further, one of the grounds on which a person shall not be qualified for being appointed or for continuing as a mutawalli as enumerated under Section 50A is when he/she has been on a previous occasion been removed as a mutawalli. However, in Section 64(8), it has been mentioned that a mutawalli of a waqf removed from his office under this Section shall not be eligible for re-appointment as a mutawalli of that waqf for a period of five years from the date of such removal. The Committee sought to know the reasons for the repetition of the Sections dealing with the same issue and the reasons for the non-inclusion of the restricting period of 5 years in Section 50A for the re-appointment as a mutawalli, to which the Ministry replied as under:-

"Earlier in the Waqf Act, 1995, as amended in 2013 there is no provision for disqualification of Mutawalli.

Though Section 50A does not explicitly detail the manner of appointment of a Mutawalli. **It primarily concerns the eligibility and disqualification aspects of**

a Mutawalli, ensuring that those who do not meet these conditions are not appointed.

This clause ensures that only individuals of good character can become mutawallis (managers) and holds them accountable for their actions.

Earlier, the Mutawalli can be removed if he has been convicted for the offences mentioned under section 61, or any offence of criminal breach of trust, or is of unsound mind or is suffering from other mental or physical deficit or infirmity, is undischarged insolvent, proved to be addicted to drinking liquor, or failed to maintain the accounts or neglects his duties or commits any misfeasance or willfully disobeys lawful orders made by Central Government State Government, Board under any provision of this Act.

Further, additionally two more grounds have been inserted :

(1) If the Mutawalli fails without reasonable cause to maintain regular accounts for one year or as failed to submit the yearly statements of accounts.

(2) If the Mutawalli is a member of any association which has been declared unlawful under the Unlawful Activities(Prevention) Act, 1967.

This provision makes mutawallis responsible for maintaining proper accounts and ensures they are not involved in unlawful Activities under the Unlawful Activities (Prevention) Act (UAPA).

The finality of Tribunal decisions has also been removed, allowing appeals to the High Court within 90 days, from the Tribunal's orders with respect to aggrieved mutawalli from the penalties imposed on them. This will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes. (Section 83 (9)) as per the Amendment Bill. "

Observations/Recommendations of the Committee

24.7 The Committee, after thorough deliberation with various stakeholders and considering the replies submitted by the Ministry of Minority Affairs, are of the view that only individuals of good character can become mutawallis (managers) and holds them accountable for their actions. Hence, the amendment, is accepted as it is.

CLAUSE-25

25. The Clause 25 of the Bill proposes to amend the Section 52 of the Principal Act.

Relevant provisions of the Principal Act:

25.1 Existing provisions of Section 52 are as under:

"Recovery of waqf property transferred in contravention of section 51—(1) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a waqf entered as such in the register of waqf maintained under section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of section 51 or section 56, it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

(2) On receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.

(3) Every order passed under sub-section (2) shall be served—

(a) by giving or tendering the order, or by sending it by post to the person for whom it is intended; or

(b) if such person cannot be found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:

Provided that where the person on whom the order is to be served, is a minor, service upon his guardian or upon any adult male member or servant of his family shall be deemed to be the service upon the minor.

(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.

(5) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.

(6) In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations."

Provisions Proposed in Amendment Bill

25.2 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.

Justification/explanation given by the Ministry of Minority Affairs

25.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Clause 25 of the Bill removes the finality of the Tribunal's decision, allowing appeals to the High Court within a specified period of 90 days. This will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes."

Gist of submissions by various Waqf Boards:

25.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Maharashtra Waqf Board:- The proposed amendment as mentioned in various places in the entire Bill should not be made for the reason that the Tribunal's orders are amenable to Civil Revision before the High Court even as on date. This is also in line of our suggestion that statutory appeal before the High Court should not be provided as in Industrial Dipsutes Act, 1947 where despite any statutory Appeal provision being present in the said special Act, an aggrieved person approaches the High Court by way of a Writ or a Revision Petition and such remedy is effective and has yielded timely results for the parties.

Such omission creates confusion and gives the impression that earlier, i.e., before the commencement of the New Act, no remedy was available to the person aggrieved of the order passed by the Tribunal.

(ii) Andhra Pradesh Waqf Board:- It is absurd as finality to Tribunals order is being denied.

(iii) Karnataka Waqf Board:- The proposed amendment to Section 52 is liable to be rejected. The Hon'ble Supreme Court held that Waqf Act is a self-contained Code and that the Tribunal is an adjudicatory body whose decision is declared final and binding.

(iv) Kerala Waqf Board:- The amendment is detrimental to the interests of the Waqf.

(v) Rajasthan Waqf Board:- Section 52 makes the decision of the Wakf Tribunal final like that of other tribunals in the country. Section 83(9) of the Wakf Act already provides for challenging the order of the tribunal in the Hon'ble High Court. Hence, no need for this Omission.

(vi) Delhi Waqf Board:- The Tribunal can also go wrong and, therefore, removal "finality of its decision" is astep in right direction.

(vii) Bihar Shia Waqf Board and Bihar Sunni Waqf Board:- With respect to Section 52(4), the amendment should be dropped and the effectiveness of the Waqf Tribunal should be maintained.

(viii) Tripura Waqf Board:- The Board has no issues.

Important suggestions by various Stakeholders/Experts

25.5 A gist of the memoranda received from the stakeholders on clause 18 is as under:

i. Clause 25says that in the matter of recovery of waqf property, decision of the Tribunal will not be final. Unlike other specialized tribunals, such as the NGT and DRT, the Waqf Tribunal's decisions would lose finality under the proposed Bill, thereby creating an unjust disparity. This inconsistency undermines the Tribunal's effectiveness and subjects Waqf properties to unnecessary legal challenges.

ii. The effectiveness of the Waqf Tribunal must be maintained and this proposal needs to be rejected.

iii. Section 52 grants the Wakf Board eminent domain powers to compel the surrender of property within 30 days.

iv. Clause 25 of the bill seeks to amend section 52(4) by deleting the words "and the decision of the tribunal on such appeal shall be final" When the Board is given such draconian powers as are conferred by section 52 of the Act, providing for an appeal to the Tribunal without an enquiry by the collector who acts under sec 52(2) will serve no purpose, as the person aggrieved by the Collector's order does not have an opportunity to raise any contention before the Collector. The Collector acts mechanically and without

application of mind and is not called upon to decide whether the property is waqf property or not. Under the prevailing act, he is also not bound to consider whether the person against whom the order is passed has title to the property. In such circumstances, merely providing for an appeal to the Tribunal will not serve any purpose. Section 52 should be deleted in toto leaving it to the Waqf Board or any two persons interested in waqf to seek appropriate relief for recovery of property in the Civil Court.

v. The amendment in Section 52(4) may be kept as *"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* ***Competent Court****within whose jurisdiction the property is situated."*

Observations/Recommendations of the Committee

25.6 The Committee, after careful considerations of submissions of various stakeholders and the replies submitted by the Ministry of Minority Affairs, are of the opinion that removal of the finality of the Tribunal's decision, shall allow appeals to the High Court within a specified period of 90 days. This will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes. Hence, the amendment, is accepted as it is.

CLAUSE-26

26. The Clause 26 of the Bill proposes to amend the Section 52A of the Principal Act.

Relevant provisions of the Principal Act:

26.1 Existing provisions of Section 52A are as under:

"Penalty for alienation of waqf property without sanction of Board.—(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 therefore.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any offence punishable under this section shall be cognizable and non-bailable.

(3) No court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.

(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."

Provisions Proposed in Amendment Bill

26.2 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 provisio for the words "be vested in the Board", thewords "be reverted back to the waqf" shall be substituted;

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

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

Justification/explanation given by the Ministry of Minority Affairs

26.3 The justification furnished by the Ministry for the proposed amendment is as under:

"The amendments in *Clause* 26 of the Bill seek to make the provisions in consonance with section 52-A (3). The Waqf Amendment Bill 2024 focuses on enhancing Waqf property management by promoting compliance, transparency, and accountability. Key features include

digitization for better record-keeping, reducing mismanagement, and streamlining the roles of State Waqf Boards and the Central Waqf Council (CWC). It also validates government properties to minimize ownership disputes and ensures mutawallis' accountability. Overall, the Bill modernizes Waqf management to safeguard assets and improve governance.

Further, Section 52A (2) and (4) are being omitted, to make alienation of waqf property. (Section 51) liable to a judicial trial before any judicial magistrate dealing with the cases having provision of imprisonment for a term which may extend to two years."

Gist of submissions by various Waqf Boards:

26.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Maharashtra Waqf Board:- The amendment weakens the consequences of the alienation of the waqf property without the sanction of the Board and hence dilutes the essence of the Section and may now not be a deterrent to the miscreants.

(ii) Andhra Pradesh Waqf Board:- Changing the punishment from rigorous imprisonment to simple imprisonment may not act as sufficient deterrent for sellers of Waqf property.

The amendment in the proviso of sub section (1) is desirable as the rescued property must revert to the Waqf and not board.

Making the offence non-cognizable and bailable will encourage the alienators. Making it non-cognizable means that he can be punished with less than two years of imprisonment. Thus all such convicts of alienating Waqf properties will be eligible to become members of Waqf board.

(iii) Karnataka Waqf Board:- The scheme of punishment and the mode of execution has been taken away in the proposed amendment and as such it would not act as a deterrent to a person who has the tendency to encroach or alienate Waqf property. Hence, the proposed amendment needs to be rejected.

(iv) Kerala Waqf Board:- Considering the law on *waqf* that once a *waqf* is always a *waqf* and the statutory declaration under section 51 that any transfer/ alienation of *waqf* property shall be *void ab initio*, the nature of offence may be retained as cognizable and bailable as before.

As per section 52 of the Act, when an alienated *waqf* property is recovered, the delivery of possession of such property is to be handed over to the Board, which is the supervisory authority of such *waqf* institution. That is the reason why it is provided to "vest" such a property in the Board. It doesn't mean that the Board will be the owner/custodian of such a property as it belongs to that individual *waqf*. Therefore, instead of the proposed amendment, it is advisable to substitute the term "as delivered" in the place of "vested" and the amendment proposal to section 52A may be redrafted accordingly.

(v) Rajasthan Waqf Board:- In place of rigorous imprisonment under Clause 1 of Section 52A (1), simple imprisonment is not justified in any way because transfer of Wakf property is a serious offence.

The amendments in the provisions of Section 52A are not just going to limit the powers of the Wakf Board but are going to abolish them which is unfair.

According to sub-section 2 of section 52A, it is essential that a person transferring the waqf property should be charged with a criminal offence. Sub-sections 2 and 4 of Section 52A are essential and their removal would nullify the effects of the Wakf Act.

(vii) Uttar Pradesh(Sunni) Waqf Board:- Sub Section (4) of Section 52A must be retained or some alternative court should be vested with the jurisdiction to try any offence punishable under this section.

(viii) Telangana State Wakf Board:- The Amendment Bill 2024 proposed for omission of rigorous imprisonment for the alienation of Waqf properties under Sec. 52-A which is against the spirit of the Waqf Act and may encourage for the rampant encroachments, and defeat the very objective of the Central Government to streamline and strengthen the Waqf Act.

(ix) Delhi Waqf Board:- It is in order to keep the offences as non-bailable and cognizable so that there is a deterrence against committing a wrong.

(x) Bihar Shia Waqf Board and Bihar Sunni Waqf Board:- With respect to Section 52A (1) (ii) , the purpose of the proposed amendment is not clear. In fact if adopted this will cause confusion.

With respect to Section 52A (2) and 52A (4) , the proposed amendment is quite illegal and lowers down the Waqf Law.

(xi) Tripura Waqf Board:- The Board has no issues.

Important suggestions/comments by various stakeholders and experts:

26.5 Important suggestions/comments received from various stakeholders and experts is summarised as under:

xiv. Clause 26seeks to lay down that in the matter of alienation of waqf property without sanction of the Board, the offence will no longer be cognizable and non-bailable. It will thus become difficult to punish the offenders. These matters can now go to smaller courts also.

xv. The proposed omission of Section 52(2) &52(4) waters down the strength of the Waqflaw. This proposal needs to be dropped.

xvi. The existing provision of Section 52A(4) must be retained or some alternative court should be vested with the jurisdiction to try any offence punishable under this section.

xvii. Changing the penalty from rigorous to simple imprisonment could reduce the severity of punishment for encroaching on waqf properties, potentially affecting deterrence.

xviii. This section discusses the penalties for unauthorized alienation of Waqf property,which include a maximum of two years of rigorous imprisonment. Moreover, this offense is

classified as cognizable and non-bailable. It is perplexing that the Waqf Act, a civil law, imposes criminal penalties typically reserved for serious offenses. This classification underscores that the Waqf Act is highly one-sided, infringing upon the fundamental rights of non-Muslimindividuals and contradicting the principle of equality before the law.

vi. Reducing the severity of punishment for encroachers may embolden individuals to unlawfully occupy Waqf properties. Therefore, maintain rigorous imprisonment to deter unlawful occupation and protect Waqf properties.

vii. The introduction of Section 52A in 2013 aimed to establish stringent laws to combat the alienation or unlawful possession of Waqf properties. However, the Waqf Bill, 2024, which is ostensibly intended to strengthen Waqf management, appears to undermine this effort by introducing provisions that favour unlawful alienators and purchasers, thus harming Waqfs.

Examination by the Committee

26.6.1 On being asked as to why has 'imprisonment' been prescribed under Section 52A in case of illegally alienating Waqf Property in place of 'rigorous imprisonment', the Ministry replied as under:-

"The phrase rigorous is proposed to be omitted from Section 52 A(1).

The Waqf Amendment Bill 2024 emphasizes compliance, aiming to improve the administration and management of Waqf properties. A significant feature of the amendment is the promotion of transparency through digitization in management of waqf properties which will improve record-keeping and reduce instances of mismanagement. The Bill also aims to streamline the functioning of State Waqf Boards and the Central Waqf Council (CWC), validation of government properties, which seeks to minimize disputes over ownership between Waqf boards and government bodies, additionally ensuring accountability of mutawallis (managers of Waqf properties).

Overall, the Waqf Amendment Bill 2024 is a forward-looking reform that modernizes the Waqf management system by prioritizing compliance, transparency, and accountability, ultimately safeguarding Waqf assets and improving governance."

26.6.2 When the Ministry was enquired about the reasons for amendments in the proviso to sub-Section (1) of Section 52A wherein the alienated property once recovered 'be reverted back to the Waqf' not to be 'vested in the Board', Ministry replied as under:-

"Since, the property was originally dedicated to Waqf. Hence, after recovery it should revert to the Waqf."

26.6.3. One of the problems identified by the Wakf Inquiry Committee, 1970 is encroachments and illegal occupations on waqf properties.The Committee sought to know as to how the amendment to Section 52A of making the offence of encroachment non-cognizable and bailable and changing from rigorous to simple imprisonment lead to lesser encroachment and illegal occupations. The Ministry gave the following explanation:-

"Sec 52A(2) notwithstanding anything contain in the Code of Criminal Procedure,1973 (2 of 1974) Any offence punishable under this section shall be cognizable and non-bailable – is being omitted. It has been done to bring the provisions in consonance with Sec 52A(3) of the Waqf Act.

The Waqf Amendment Bill 2024 emphasizes compliance, aiming to improve the administration and management of Waqf properties. A significant feature of the amendment is the promotion of transparency through digitization in management of waqf properties which will improve record-keeping and reduce instances of mismanagement.

The Bill also aims to streamline the functioning of State Waqf Boards and the Central Waqf Council (CWC), validation of government properties, which seeks to minimize disputes over ownership between Waqf boards and government bodies, additionally ensuring accountability of mutawallis (managers of Waqf properties).

Overall, the Waqf Amendment Bill 2024 is a forward-looking reform that modernizes the Waqf management system by prioritizing compliance, transparency, and accountability, ultimately safeguarding Waqf assets and improving governance."

26.6.4 On being asked as to why the provision "no court inferior that of a metropolitan magistrate or a judicial magistrate of the first class shall try any offence under cases of illegally alienated waqf property" has been removed, the Ministry replied as under:-

> "As per section 52 A (3) no court shall take cognizance under this section except on a complaint made by the Board or any officer duly authorized by the State government in its behalf.
>
> The essence of this provision make it a provision which can be tried by any judicial magistrate dealing with the cases having provision of imprisonment for a term which may extend to two years."

26.6.5 The Committee sought to know the reason for reducing the penalty for encroachment when almost 70% of the Waqf properties are encroached to which the Ministry replied as under:-

> "Dealing with the issue of encroachment on Waqf properties, the existing provisions under Sections 54, 55, and 55A of the Waqf Act, 1995, already provide mechanisms for handling such cases. Section 54 empowers the Waqf Board to issue notices for the removal of encroachments and take action if the property is unlawfully occupied. Section 55 allows for further steps, including seeking the assistance of the district administration to enforce the removal of encroachers. Section 55A strengthens these provisions by giving the Waqf Board authority to appoint any agency or officer to take immediate possession of the encroached property. No changes has been proposed in these sections in the Waqf (Amendment) Bill 2024 . "

Observations/Recommendations of the Committee

26.7 The Committee, after thorough deliberation with various stakeholders and considering the replies submitted by the Ministry of Minority Affairs, are of the view that the amendments in Clause 26 of the Bill seek to make the provisions in consonance with Section 52-A (3). Further, the Committee are of the opinion that Section 52A (2) and (4) are being omitted, to make alienation of waqf property, as mentioned in Section 51, liable to a judicial trial before any judicial magistrate dealing with the cases having provision of imprisonment for a term which may extend to two years. Hence, the amendment, is accepted as it is.

CLAUSE-27

27. The Clause 27 of the Bill proposes to amend the Section 55A of the Principal Act.

Relevant provisions of the Principal Act:

27.1 Existing provisions of Section 55A are as under:

"55A. Disposal of property left on waqf property by unauthorised occupants. -

(1) Where any person has been evicted from any waqf property under sub-section (4) of section 54, the Chief Executive Officer may, after giving fourteen days' notice to the person from whom possession of the waqf property has been taken and after publishing the notice in at least one newspaper having circulation in the locality and after proclaiming the contents of the notice by placing it on conspicuous part of the waqf property, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

(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."

Provision proposed in Amendment Bill

27.2 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.

Justification/explanation given by the Ministry of Minority Affairs

27.3 The justification furnished by the Ministry for the proposed amendment is as under:

"The finality of the decision of the Tribunals are being done awayThe finality of the Tribunal's decision on disposal of property left on Waqf property by unauthorized occupants, has been removed, allowing appeals to the High Court within a specified period of 90 days. Which will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes. (MoMA clause by clause justification pg.164. 29.10.24 Replies) It is a consequential change in accordance with the

amendment proposed through Clause 35 of the Waqf Amendment Bill, 2024 in Section 83 (9) of the Parent Act, Waqf Act, 1995, wherein appeal to High Courts against the Orders of the Tribunal by any aggrieved person within a period of ninety days from the order of Tribunal is being introduced. Therefore, to bring broader base of Judicial Purview, the proviso to sub section 2 of Section 55A has been proposed for amendment."

Gist of submissions by various Waqf Boards:

27.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Rajasthan Waqf Board:- Section 55A provides that the decision of the Wakf Tribunal is final like that of other tribunals in the country. Section 83(9) of the Wakf Act provides for challenging the order of the Tribunal in the Hon'ble High Court.

(ii) TelanganaWaqf Board:- Finality of the Waqf Tribunals Order/Decision would help in resolving long pending disputes.

(iii) Andhra Pradesh Waqf Board:- It is absurd as finality to Tribunals order is being denied.

(iv) Maharashtra Waqf Board:- The proposed omission, i.e., "and the decision of the Tribunal on such appeal shall be final" as mentioned in various places in the entire Bill should not be made for the reason that Tribunal's orders are amenable to Civil Revision before the High Court even as on date. This is also in line of our suggestion that statutory Appeal before High Court should not be provided as in Industrial Disputes Act, 1947 where despite any statutory Appeal provision being present in the said special act, a aggrieved person approaches the High Court by way of a Writ or a Revision Petition and such remedy is effective and has yielded timely results for the parties. Such omission creates confusion and gives the impression that earlier (before the commencement of the new Act) no remedy was available to the person aggrieved of the order passed by the Tribunal.

(v) Kerala Waqf Board:-As per sub-section (2), a decision of the Tribunal over a dispute referred to it by the Chief Executive Officer shall be final. Now it is proposed to omit that finality clause. It is against the best interest of waqf institutions.

(vi) Karnataka State Board of Auqaf:-It will affect the entire integrity of the judicial process. The principles of finality are affected. Aimed to keep the dispute alive. There is no appellant forum. Endless litigation.Opening floodgate deliberately.

(vii) Punjab Waqf Board- The proposed amendment omits the words "and the decision of the Tribunal in respect of such matter shall be final" in multiple provisions including section 55A. This is contrary to the stated objectives of the proposed amendment itself. While the amendment purportedly aims at efficient management of waqf properties, this provision is basically to enable that all properties remain perpetually encroached. While it is correct that any person must have appropriate legal remedy, a tribunal headed by an ADJ is an appropriate forum. Any error by tribunal is always corrected by High Court through Civil revision and therefore omitting these words doesn't make any sense except that it will result in further encroachment of waqf properties. It is needless to point here that the orders of almost all tribunals are always final. Making an exception for waqf tribunal is discriminatory and contrary to logic. The proposed amendments to these sections in relation to taking away finality of orders of tribunal should be dropped.

Suggestions/comments by various stakeholders and experts

27.5 Suggestions/comments received from various stakeholders and experts is summarised as under:

i. The proposed omission has major impact and may be put to discussion along with other related amendments in respect of Tribunal.

ii. In the matters of disposal of property left on waqf property by unauthorized occupants, CEOapproaches the Tribunal to determine the ownership of left over proceeds, even in such matters, the decision of the Tribunals will not be final, which is an area of concern.

iii. Improper Functioning of Tribunals.

Examination by the Committee

27.6.1 The representatives of the Ministry of Minority Affairs were asked to specify about the omission of the provision made in sub section (2) of the Section 55A of the principal Act during their briefing on the Bill. In this regard, the Ministry of Minority Affairs submitted in a written note as under:-

"If someone is evicted from Waqf property under section 54(4), the Chief Executive Officer (CEO) can, after giving a 14-day notice and publishing it in a local newspaper, remove or auction off any remaining property on the premises. The proceeds from the sale, after deducting expenses and any dues to the government or local authorities, will be paid to the person the CEO deems entitled to it. If the CEO can't decide who should get the remaining amount, the matter will be referred to the Tribunal, whose decision will be final. Appeal is allowed in the High Court against Tribunal order within a specified period of 90-days which will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes."

Observations/Recommendations of the Committee

27.7 The Committee, after thorough deliberation upon the proposal made in the Clause, including the views/suggestions of the experts/stakeholders and the justification given by the Ministry of Minority Affairs, particularly keeping in view the introduction of appeal to High Court against the Order of Tribunal, decided to accept the amendment proposed under the Clause.

CLAUSE-28

28. The Clause 28 of the Bill proposes to amend the Section 61 of the Principal Act.

Relevant provisions of the Principal Act:

28.1 Existing provisions of Section 61 are as under:-

"Penalties.-(1) If a mutawalli fails to—

(a) apply for the registration of a auqaf;

(b) furnish statements of particulars or accounts or returns as required under this Act;

(c) supply information or particulars as required by the Board;

(d) allow inspection of waqf properties, accounts, records or deeds and documents relating thereto;

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

(f) carry out the directions of the Board;

(g) discharge any public dues; or

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

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.

(2) Notwithstanding anything contained in sub-section (1), if—

(a) amutawalli omits or fails, with a view to concealing the existing of a waqf, to apply for its registration under this Act,—

(i) in the case of a waqf created before the commencement of this Act, within the period specified therefor in sub-section (8) of section 36;

(ii) in the case of any waqf created after such commencement, within three months from the date of the creation of the waqf; or

(b) a mutawalli furnishes any statement, return, or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular,

he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees.

(3) No court, shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer duly authorised by the board in this behalf.

(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 Act.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the fine imposed under sub-section (1), when realised, shall be credited to the WaqfFund.

(6) In every case where offender is convicted after the commencement of this Act, of an offence punishable under sub-section (1) and sentenced to a fine, the court shall also impose such term of imprisonment in default of payment of fine as is authorised by law for such default."

Provision proposed in Amendment Bill

28.2 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.";

(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;

(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,

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."

Justification/explanation given by the Ministry of MinorityAffairs

28.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Keeping in view the inflation and to impose a reasonable fine on Mutawalli for not discharging the assigned duties satisfactorily and to further extend the penalty amount.Therefore, to ensure greater accountability of the Mutawallis the Section 61 has been proposed for amendment."

Gist of submissions by variousWaqf Boards:

28.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under

(i) Rajasthan Waqf Board:-Clause 1 of sub-section 61 of the Act is essential for the administrative control of the Wakf Board as every Mutawalli is accountable to the Wakf Board. The Board is legally bound to take over the ownership of the Wakf properties and it is its duty to obey the directions of the Wakf Board. Adding section 61 (1A) is not justified in any way and is against the rights of the Wakf Board. The Wakf Board is an autonomous body and has the legal authority to give every kind of direction to its subordinate mutawalli and to take over the properties from him. A person aggrieved by the order of the Board can appeal or take action in the court of Wakf Tribunal. Making a provision for the Board to take action in the court of Wakf Tribunal to enforce its powers is against the rights of the Board.

(ii) Kerala Waqf Board:- Now it is proposed to omit clauses (e) and (f) from sub-section (1) and to include them under sub-section (1A), which is proposed as a new sub-section. As per the existing provision, there exists a grading of punishment based on the gravity of offence as follows:- (i) non-compliance of clauses (a) to (d), is punishable only with fine which may extend to ten thousand rupees; and (ii) non-compliances clauses (e) to (h), the punishment is graver which is imprisonment for a term up to six months and with fine up to ten thousand rupees. Now it is been substituted as a punishment with a fine only but the fine limit is enhanced which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees. By the proposed sub-section (1A), the omitted clauses (e) and (f) of sub-section (1), were retained in sub-section (1A) which is 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. The offence provided in item (iii), i.e., do any other act which he is lawfully required to do by or under this Act "is already covered by clause (h) of sub-section (1)

of section 61, therefore, the proposed item (iii) need not be retained. It should be omitted from sub-section (1A).As per Section61, the maximum fine to be imposed under sub-section (1A) may extend to one lakh rupees. As per Section 23 of the BhayatiyaNagarikaSurakshaSanhita, 2023, the maximum fine to be imposed by a First Class Magistrate Court is fifty thousand rupees. Therefore, in order to enable the Judicial First Class Magistrate to try such an offence and to award the maximum punishment, a non-obstante clause giving overriding effect to the provisions over the BharatiyaNagarikSurakshaSanhita, 2023 may be added to sub-section (4) of section 61.

(iii) TelanganaWaqf Board:- This section has been amended to arm the district collectors with execution powers. Once the mutawalli does not comply with the diktat of the Collector (even if it is something as absurd as declaring a mosque to be government property and direction issued to hand it over) it has been made a punishable offence.

(iv) Andhra Pradesh Waqf Board:- In place of deleted clauses, clause 1A has been added Earlier the penalty for Mutawalli for some omissions and commissions was punishable with a fine uptoRs. 10,000. But with the substitution of new provision, the fine has been increased to fifty thousand. This is a new provision providing for punishment to six months imprisonment and also a fine of Rs.20,000/-. But most objectionable is provision in 1A (ii) where same punishment is provided for not carrying the directions of the collector. Collector is not the controlling authority of Mutawalli. And Mutawalli in no way accountable to Collector. It is not understandable what type of direction can be given by the collector to the mutawalli and why he shall abide by that direction. If Collector wants anything to be done by any Mutawalli he has to write to Waqf Board.

Moreover, the amendment also makes a provision that if a Mutawalli fails to comply with any direction of the Collector, he shall be liable for punishment of imprisonment for a period upto six months and fine of not less than twenty thousand rupees but can extend upto one lakh rupees. This will be extreme punishment because, the fact is that the Mutawallis appointed by Waqif to manage come into existence by way of succession to their ancestral property dedicated/endowed by their ancestors.

(v) Maharashtra Waqf Board:- This seems to be a positive change as it segregates certain misdeeds or omissions/inactions of Mutawalli which are of civil nature and decriminalize them.

(vi) UP Sunni Central Waqf Board:-This is the most unreasonable and arm-twisting provision which must be dropped altogether. The Waqf Act is fundamentally a civil law but the same has been given the colour of a Criminal enactment. A Mutawalli is neither as servant of the Government nor of the Board. In ninety nine percent cases he performs his duties without remunerations or financial benefits. He performs his duties as service of the Almighty. Merely a delay in uploading the details as proposed under proposed Sec. 3B or failing to carry out the directions of the Collector or Board which may itself be unlawful or contrary to usage and customs of the waqf may result in his imprisonment is unjustifiable and unreasonably harsh and draconian. There are adequate penal laws for prosecuting the errant Mutawallis for breach of trust, fraud and embezzlement, etc. This provision for punishment of a Mutawalli with imprisonment must be omitted altogether.

(vii) Karnataka State Board of Auqaf:-The proposed amendment of Section 61 is intended to reduce the powers of the Board as well as the Tribunal. Instead empowering the Collector with such powers is not as per the spirit of the Act and the same has been objected to.

Suggestions/comments by various stakeholders and experts:

28.5 Suggestions/comments received from various stakeholders and experts is summarised as under:

i) Amendment to the Section 61 of the Principal Act appears to have diluted the legal and penal consequences that would ensue in the event of failure of a Mutawalli to discharge his duties as provided under the Act, or by various acts of omission and commission by the Mutawalli leading to compromising the right and interest flowing out of the Waqf property. The penal consequences in form of punishment as provided under the amendment ought to have been much more deterrent and stringent in nature in view of the fact of the Sachar Committee Report

in 2006, which had observed that large tracks of land dedicated to Waqf had been encroached by the private encroachers.

ii) The proposed amendment raises concern on the compulsion of the Mutawalli to follow the directions of the Collector, which may, in cases be in contradiction to his Statutory or Religious Duties and the remedial recourse he possesses, if any.

iii) Collectors being given power to issue directions to the Mutawallis, which is an area of concern.

iv) Substitution provides for lesser punishment for the Mutawallis who fail to act as per the regulations which is not welcome. The proposed deletion of the clauses (e) and (f) also clips the powers of Board and Tribunal. This amendment has a serious impact in the matter of protection of waqf properties.

v) A Mutawalli is neither a servant of the Government nor of the Board. In ninety nine percent cases he performs his duties without remunerations or financial benefits. Many a times, Mutawallis are nominated by Waqif. He performs his duties as service of the Almighty. Merely a delay in uploading the details as proposed under proposed Sec. 3B or failing to carry out the directions of the Collector or Board which may itself be unlawful or contrary to usage and customs of the waqf may result in his imprisonment is unjustifiable.

vi) Mutawallis have been corrupt and inefficient has been the main reason of reforming Waqf laws. Since most may not have Waqf Deeds. It is absolute freedom to them to do whatever they want.

vii) "महोदय, मेरा जो नेक्लट ऑब्जेक्शन है, वह सेक्शन 61(ए) है। जो मतुवल्ली हैं, मैंउनके बारेमेंकुछ कहना चाहता ह ं। जो मतुवल्ली होतेहैं, इनको कोई सैलरी नहीं क्रमलती है, इनको कोई पक्सष नहीं क्रमलतेहैं। येजनरली अपनी उम्र के आक्रखरी क्रहलसेमेंएज ए सक्रवषस टूऑलमाइटी वक़्फफ की मक्रलजद, मदरसे, कक्ररलतान या दरगाह के क्रलए काम करतेहैं। जनरली लोग ऐसा करते हैं। हम इनके क्रलए यह कर रहेहैंक्रक अगर पोटषल पर एक भी क्रदन लेट हो गया या क्रकसी कलेक्टर का लीगल या इल्लीगल एक्शन नहीं माना, तो इनको छः महीनेकी जेल हो जाएगी।It is not humane. He is someone who is doing his job as a service to the God, as a service to the community, without any remuneration, without any financial consideration.वह अलग बात हैक्रक उसमेंबेईमान भी होतेहैं, उनको पक्रनश करनेके क्रलए इंक्रडयन पीनल कोड मेंक्रिक्रमनल लॉज़ हैं, बहुत-सी चीजेंहैं, रीच ऑफ ट्रलट ह, ैंइम्प्रीजसमेंट ह, ैंआप उसहेंप्रोक्रसक्यूट कररए। वेजेल जाएगं े। वह अलग इश्यूहै, लेक्रकन यह जो क्रसक्रवल लॉ ह, ैइसमेंउन लोगों को क्रिक्रमनल बना क्रदया गया है, जो क्रसफष भगवान या समदुाय के क्रलए अपनी सक्रवषस देरहेहैं।"

Examination by the Committee

28.6.1 Responding to a query raised during the sitting of the Committee on the role of Mutawallis, the Secretary, Ministry of Minority Affairs deposed as under:-

"वर्ष 1954 में स्वतंत्रता के बाद पहली बार वक्फ एक्ट आया। यह कंरंटलिस्टमेंहैं, जो सीरियल नम्बर 10 एंड 28 सेवेन्थ शेडयुल्ड में सेंट्रल और स्टेट गवर्नमेंट का है, तो administration of trusts, charities, religious endowments, उसका पार्ट मानते हुए इसको management of Waqf immediately in a Mutawalli. यह कह सकते हैं कि मुतवल्ली एक तरह से मैनेजर है, जो सारे वक्फ को मैनेज करते हैं, उसपर जिम्मेदारी दी गई है।"

28.6.2 Further, the representatives of the Ministry of Minority Affairs were asked to justify the amendment proposed in Section 61 *vide* clause 28 of the Amendment Bill, 2024. In this regard, the Ministry of Minority Affairs submitted in a written note as under:-

"To make the Mutawalli more accountable."

28.6.3 The Committee were also curious to know whether any factual analysis of the social strata and the income status of the Mutawallis in question who may be implicated for such failures and shall be subjected to fines of Rs. 20,000 – Rs.1,00,000 alongwith imprisonment of six months had been conducted by the Ministry before proposing the said amendment. In this regard, the Ministry of Minority Affairs have clarified in their written replies as produced below:-

"This provision has been introduced to make Mutawallis more accountable. The current provision was last amended in 2013 after which there has been an effect on value of money due to inflation which has also been considered in revising the penalties. This will serve as a deterrent to ensure that Mutawallis comply with the requirement of the Act which is crucial for effective management and oversight of waqf."

Observations/Recommendations of the Committee

28.7 The Committee, after thorough deliberation upon the proposal made in the Clause, including the views/suggestions of the experts/stakeholders and the justification given by the Ministry of Minority Affairs, find that the role played by the Mutawallis in the administration of Waqf Properties is extremely important and instrumental in achieving

the pious, religious and charitable goal as envisaged under the auspices of Waqf. In this context, the Committee feel that greater accountability and transparency in the functioning of the Mutawallis certainly need to be ensured through stringent and deterrent measures. Hence, decided to accept the amendment proposed under the Clause.

CLAUSE-29

29. The Clause 29 of the Bill proposes to amend the Section 64 of the Principal Act.

Relevant provisions of the Principal Act:

29.1 Existing provisions of Section 64 are as under:-

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

(a) has been convicted more than once of an offence punishable under section 61; or

(b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or

(c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or

(d) is an undischarged insolvent; or

(e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or

(f) is employed as paid legal practitioner on behalf of, or against, the waqf; or

(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

(h) is interested, directly or indirectly, in a subsisting lease in respect of any waqf property, or in any contract made with, or any work being done for, the waqf or is in arrears in respect of any sum due by him to such waqf; or

(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the waqf or in respect of any money or other waqf property; or

(j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;

(k) misappropriates or fraudulently deals with the property of the waqf.

(2) The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the waqf property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

(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.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the waqf, by an order suspend such mutawalli until the conclusion of the inquiry:

Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

(6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the waqf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), appoint a suitable person as receiver to manage the waqf and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the waqf are safeguarded.

(7) Where a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct the mutawalli to deliver possession of the waqf property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the waqf property.

(8) A mutawalli of a waqf removed from his office under this section shall not be eligible for re-appointment as a mutawalli of that waqf for a period of five years from the date of such removal."

Provisions Proposed in the Amendment Bill

29.2 In section 64 of the principal Act,—

(a) in sub-section (1),—

(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";

(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.";

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

Justification/explanation given by the Ministry of Minority Affairs

29.3 The justification furnished by the Ministry for the proposed amendment is as under"

"To make mutawallis more accountable and responsible for the maintenance of proper accounts. The removal ground under Clause (l) is required in the National interest as in various stakeholders meeting at Mumbai, Lucknow and Delhi, it was pointed out that the Mutawallis should be accountable to their actions.

Moreover, since the finality of the decision of the Tribunals are being done away so the words in sub-section (4), "and the decision of the Tribunal on such appeal shall be final" shall be omitted.

It has been further stated that this provision makes mutawallis responsible for maintaining proper accounts and ensures they are not involved in unlawful Activities under the Unlawful Activities (Prevention) Act (UAPA).

The finality of Tribunal decisions has also been removed, allowing appeals to the High Court within 90 days, from the Tribunal's orders with respect to aggrieved mutawalli from the penalties imposed on them. This will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes."

Gist of submissions by variousWaqf Boards:

29.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under

(i) TelanganaWaqf Board:- Direct interference in the religious matters of Muslims. The earlier prohibitions are in accordance with Muslim law why should they be removed? When an offence of drug usage is punishable under The Narcotic Drugs and Psychotropic Substances, Act, 1985, why should it be removed from this Section?The UAPA is one of the most misused acts against Muslims. To add insult to injury it is being made part of the Waqf Act. This is unwarranted and its potential misuse is foreseeable.

(ii) Andhra Pradesh Waqf Board:- This is a new clause and appears to be harsh. Mutawalli is not a full time employee of Waqf and has his own avocation and hence this omission can be bonafide also. This is a new provision for removal of Mutawalli and is prone to be misused for settling scores.

(iii) Maharashtra Waqf Board:-No comments. Since a Mutawalli can also fail to maintain proper accounts, this 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.

(iv) UP Sunni Central Waqf Board:-The failure to submit accounts for just one year may not lead to one's removal and the same is too harsh. The existing provision of failure to maintain regular accounts for two consecutive years must be retained.

(v) Karnataka State Board of Auqaf:-The proposed amendment to Section 64 is not rational and as such the same is strongly opposed.

Suggestions/comments by various stakeholders and experts:

29.5 Suggestions/comments received from various stakeholders and experts is summarised as under:

i) The substitution for Clause (g) provides for stringent criteria for maintenance of accounts by Mutawalli and is a welcoming feature. The insertion of Clause (l) after clause (k) provides for removal of a Mutawalli if he is found to be member of unlawful association and hence, is welcome. Omission of the words in sub-section (4) is again relating to the power of Tribunal in the matter of orders of Board in respect of Mutawalli and omission of the same has major impact.

ii) Proposed amendment to Section 64 relating toremoval of Mutawalli if failed to maintain accounts without reasonable cause for one year and member of any association declared unlawful under UAPA,must be extended to all Religious & Social Bodies of India.

iii) The failure to submit accounts for just one year may not lead to one's removal and the same is too harsh. The existing provision of failure to maintain regular accounts for two consecutive years must be retained.

iv) Regardingamendments to Section 64 (4), the Tribunal is constituted for speedy disposal of the issue connected with the Waqf. Therefore, it is essential that quick decision by the Judicial authority is required for the protection,betterment and the management of the waqf efficiently. The Tribunal's decision are subject to revisionary power of the High Court also but no appeal can be preferred against the decision of the Tribunal. Disposal of an appeal and disposal of a Revision petition is entirely different as far as the time taken for disposal of the same. Appeal takes much time and the Revisions are disposed off immediately.

v) "महोदय, अभी तक असंशोक्रधत एक्ट मेंसेक्शन 64 प्रोक्रवजन था, येग्राउंड्स ऑफ ररमूवल ऑफ मतुवल्ली हैं। अब तक इसमेंएक ग्राउंड यह था क्रक अगर उसनेलगातार दो साल लटेटमेंट ऑफ अकाउंट नहीं फाइल क्रकया है, तो वह ररमूव हो जाएगा। उसको घटाकर एक साल कर क्रदया गया है। मेरेक्रहसाब सेदो साल वाला मनुाक्रसफ था। क्रकसी बीमारी की वजह सेया क्रकसी असय वजह सेएक साल कोई भी क्रडलेकर सकता है। दो साल का जो एक्रनजक्रलटंग प्रोक्रवजन हैक्रक वह लगातार दो साल तक फाइल नहीं करगे ा, तो उसको हटा क्रदया जाएगा।वह ज्यादा लॉक्रजकल था।"

Examination by the Committee

29.6.1 On being asked to clarify the reasons for introducing the changes in the criteria for the removal of Mutawallis, the representatives of the Ministry of Minority Affairs submitted in a written note as under:-

"This provision makes mutawallis responsible for maintaining proper accounts and ensures they are not involved in unlawful Activities under the Unlawful Activities (Prevention) Act (UAPA)."

29.6.2 The Ministry has also submitted in their presentation before the Committee produced as below:-

"Anyone indulging to unlawful activities under UAPA Act, 1967 cannot be allowed *to*continue as caretaker of a Waqf".

29.6.3 To a pointed query raised during the sitting of the Committee, pertaining to the need felt for curbing the powers of Mutawallis, the representative of the Ministry of Minority Affairs submitted as produced below:-

"Sir, detailed provisions were brought with respect to the power of Mutawallis because the entire system of Waqf was run by Mutawallis. They had some unlimited powers due to which some restrictions were brought."

29.6.4 Elaborating further on the aspect of removal of Mutawalli, the Secretary, Ministry of Minority Affairs, during the sitting of the Committee stated as below:-

"Now, there is new Section 64(1) (g). It talks about filling of the details of the Waqf on the portal by Mutawalli within a period of six months; uploading of all statements of accounts and audit reports by Mutawalli on the Central portal; and Central Government can order audit by C&AG. इससे पारदर्शिता और मैनडेटरी क्लॉज़ को एन्फोर्स किया जा सके, जिससे सारी प्रॉपर्टी अपडेट हो सके। अगर वह नहीं करता है, the Mutawalli can be removed also. सर, इसके आगे उसके डिसक्वालिफिकेशन की एक क्राइटेरिया यह है कि अगर वह किसी अनलॉफुल एक्टीविटीज़ में इंवॉल्वड है, he can also be disqualified."

29.6.5 When asked about the details of anomalies reported by various waqf boards wherein regular accounts are not being maintained by the Mutawallis, the Ministry of Minority Affairs have furnished as produced below:-.

"As per WAMSI portal, details of returns filed by Mutawallis are 1,06,994 out of 8.72 lakhs Waqf Properties, this will help in enforcing accountability in financial management and maintenance of regular accounts.**"**

29.6.6 The Committee also wanted to know the reasons for reducing the period for maintenance and submission of regular accounts by the Mutawallis to the Board from 2 successive years to within 1 year, as proposed in the bill, from the Ministry of Minority Affairs. Responding to this query, the Ministry have submitted the following response:-

"If the Mutawalli fails without reasonable cause to maintain regular accounts for one year or as failed to submit the yearly statements of accounts, this provision makes mutawallis responsible for maintaining proper accounts and ensures transparency and in the management of waqf assets."

Observations/Recommendations of the Committee

29.7 The Committee take into account the fact that improper maintenance of accounts of waqf properties is one of the primary reasons for the deep-rooted administrative malaise afflicting the management of waqf properties. In order to streamline the accounting pattern of waqf properties, it is of utmost importance that timelines be adhered to scrupulously and any violation be dealt with strictly. In accordance with such requirement the reduction in deadline for the preparation and updation of all accounts of waqf properties is the need of hour which would delegate greater responsibility on Mutawallis

and usher in much needed professionalism in the management of waqf affairs. Moreover, it is only in the fitness of things if any person having any connection with illegal activities be barred from discharging a pious duty of Mutawalli. Therefore, the Committee accept the amendment proposed under the Clause.

CLAUSE-30

30. The Clause 30 of the Bill proposes to amend the Section 65 of the Principal Act.

Relevant provisions of the Principal Act:

30.1 Existing provisions of Section 65 are as under:-

"Assumption of direct management of certain auqaf by the Board.—(1) Where no suitable person is available for appointment as a mutawalli of a waqf, or where the Board is satisfied, for reasons to be recorded by it in writing, that the filling up of the vacancy in the office of a mutawalli is prejudicial to the interests of the waqf, the Board may, by notification in the Official Gazette, assume direct management of the waqf for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification.

(2) The State Government may, on its own motion or on the application of any person interested in the waqf, call for the records of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the notification issued by the Board under sub-section (1) and pass such orders as it may think fit and the orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (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.

(4) The State Government shall examine the report submitted to it under sub-section (3), and after such examination, issue such directions or instructions to the Board as it may think fit and the Board shall comply with such directions or instructions on receipt thereof.

(5) Notwithstanding anything contained in sub-section (1), the Board shall take over the administration of a waqf, if the waqf Board has evidence before it to prove that management of the waqf has contravened the provisions of this Act."

Provision proposed in the Amendment Bill

30.2 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.

Justification/explanation given by the Ministry of MinorityAffairs

30.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Fixing of time limit will compel Board to ensure compliance within the stipulated period. The clause introduces a specific timeline of six months for the board to submit a report on the direct management of certain auqafs. This will help in making the Board more accountable in compiling the reports for the management of Waqf. Therefore, to ensure greater accountability of the Waqf Boards the Section 65 has been proposed for amendment."

Gist of submissions by variousWaqf Boards:

30.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) TelanganaWaqf Board:- The proposed amendment to Section 65 sub-section (3) substituting the words "As soon as possible" with "Within six months" is acceptable.

(ii) Andhra Pradesh Waqf Board:- Earlier Waqf board was required to send an yearly report to state government as soon as possible after completion of final year, now as soon as possible is changed to within six months. This may not be objectionable as it will bring more accountability and transparency in the functioning of the Waqf Board.

Suggestions/comments by various stakeholders and experts:

30.5 Suggestions/comments received from various stakeholders and experts is summarised as under:

i) In general, there is no specific resentment against the Amendment to the Section 65, sub-section (3) of the Principal Act *vide* Clause 30 of the Waqf Amendment Bill 2024 which

proposes to substitute the words "As soon as possible" with "within six months". The substitution seems to be a welcome approach to streamline and in giving a fixed shape to procedural updation.

Examination by the Committee

30.6.1 The representatives of the Ministry of Minority Affairs were asked to justify the amendment proposed in Section 65 *vide* clause 30 of the Amendment Bill, 2024. In this regard, the Ministry of Minority Affairs submitted in a written note as under:-

"This clause introduces a specific timeline of six months for the board to submit a report on the direct management of certain auqafs.This will help in making the Board more accountable in compiling the reports for the management of Waqf. "

Observations/Recommendations of the Committee

30.7 The Committee, after going through the proposed amendment *vide* Clause 30 in Section 65 sub-section (3) find that giving a fixed time period for filing of reports by the Waqf Boards to the concerned State Government is a move in right direction. Fixing six months after the close of every financial year rather than keeping it open ended through "as soon as possible" gives a definite time-frame for ensuring accountability in the management of the affairs of Waqf Boards. Hence, the Committee decided to accept the amendment proposed under the Clause.

CLAUSE-31

31. The Clause 31 of the Bill proposes to amend the Section 67 of the Principal Act.

Relevant provisions of the Principal Act:

31.1 Existing provisions of Section 67 are as under:-

"Supervision and supersession of committee of Management.—

(1) Whenever the supervision or management of a waqf is vested in any committee appointed by the waqf, then, notwithstanding anything contained in this Act, such committee shall continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the waqf, whichever is earlier:

Provided that such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time:

Provided further that if the Board is satisfied that any scheme for the management of a waqf by a committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions of the waqf, it may, at any time, modify the scheme in such manner as may be necessary to bring it in conformity with the directions of the waqf or of the provisions of this Act and the rules made thereunder.

(2) Notwithstanding anything contained in this Act, and in the deed of the waqf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the waqf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the waqf, in so far as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the Committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the waqf.

(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.

(5) The Board shall, whenever it supersedes any committee under sub-section (2), constitute a new committee of management simultaneously with the order made by it under sub-section (2).

(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."

Provision proposed in the Amendment Bill

31.2. In section 67 of the principal Act,—

(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.";

(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.

Justification/explanation given by the Ministry of Minority Affairs

31.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Finality of the Order made by the Board under Section 67(2) for the supersession of the Committee by the Board is not final any more as per proposed Section 67(4) as, now any person aggrieved by the order made u/s 67(2) may within 60 days from the date of the order, appeal to the Tribunal. Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal. Tribunal order is not final and can be appealed before the High Courtwithin 90 days, from the Tribunal's order relating to supervision and supersession of Waqf Management Committee by the Board, as per 67(6) of the proposed bill.This will expand the

scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes."

Gist of submissions by various Waqf Boards:

31.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Kerala Waqf Board:- As per Sub Section (4), the Order made by the Waqf Board to supersede such a Committee will be final, but any person aggrieved by the Order may prefer an appeal to the Tribunal. Now it is proposed to substitute sub-section (4) in such a way that all the Orders of the Board under this section shall be appealable before the Waqf Tribunal.

(ii) Andhra Pradesh Waqf Board:- Deletion of this provision and addition of provision for appeal may be desirable because Tribunal had no power to suspend the order of the board in case of supersession of a managing committee. Aggrieved person should always have a right of appeal.

(iii) Maharashtra Waqf Board:- Regarding amendment in Section 67(6), the proposed omission i.e., "and the decision of the Tribunal on such appeal shall be final" as mentioned in various places in the entire Bill should not be made for the reason that Tribunal's orders are amenable to Civil Revision before the High Court even as on date. This is also in line of our suggestion that statutory Appeal before High Court should not be provided as in Industrial Disputes Act, 1947 where despite any statutory Appeal provision being present in the said special act, a aggrieved person approaches the High Court by way of a Writ or a Revision Petition and such remedy is effective and has yielded timely results for the parties. Such omission creates confusion and gives the impression that earlier (before the commencement of the new Act) no remedy was available to the person aggrieved of the order passed by the Tribunal.

Suggestions/comments by various stakeholders and experts:

31.5 Suggestions/comments received from various stakeholders and experts issummarised as under:

i. While substituting Sub-section (4), the words – Any Order made by the Board under sub-section (2) shall be final, this amendment may not be in the interest of waqf Board. Omission of the Words in sub-section (6) is again relating to the power of Tribunal and omission of the same has major impact.

ii. It is proposed in sub-section 4 of section 67 of the Principal Act to omit the second proviso, "order made by the Tribunal in such Appeals shall be final". If it is not final, then there should be a provision either for filing of Second Appeal or Revision before the Appellate Tribunal to be created as suggested above. Therefore, it is submitted that after omitting such clause, a clause should be inserted for facilitating the concerned aggrieved party to challenge the said verdict in the second Appeal or revision under the proposed provision.

iii. It is proposed in sub-section 4 of section 67 of the Principal Act to omit the second proviso, "order made by the Tribunal in such Appeals shall be final". If it is not final, then there should be a provision either for filing of Second Appeal or Revision before the Appellate Tribunal to be created as suggested above. Therefore, it is submitted that after omitting such clause, a clause should be inserted for facilitating the concerned aggrieved party to challenge the said verdict in the second Appeal or revision under the proposed provision.

Examination by the Committee

31.6.1 The representatives of the Ministry of Minority Affairs were asked to justify the amendment proposed in section 67 *vide* clause 31 of the Amendment Bill, 2024. In this regard, the Ministry of Minority Affairs submitted in a written note as under:-

"Sec 67(4) proposed bill is that any order made by the Board under Sec 67(2) regarding supersession of the Committee by the Board is no longer final. Any person aggrieved by the order made u/s 67(2) may within 60 days from the date of the order, appeal to the Tribunal. Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal. Tribunal order can be appealed before the High Court.

Sec 67(6)-Despite the previous sub-sections, the Board can remove any committee member if it believes the member has abused their position or acted against the interests of the waqf. The removal order must be sent to the member by registered post.

Before removal, the member must be given a chance to explain their actions. If the member is unhappy with the removal, they can appeal to the Tribunal within 30 days. The Tribunal will hear both sides and can confirm, change, or overturn the Board's decision."

31.6.2. The first proviso of Section 67(4) has now been made the main wordings of Section 67(4) itself. The Committee sought reasons from the Ministry as to how does this section help in redressal of public grievance in general.Responding to the query, the Ministry have clarified as produced below:-

"In Section 67(4), finality of the Board's order on supervision and supersession of Waqf Management Committee is no longer final and the aggrieved member of the committee may approach the Tribunal.

The finality of Tribunal decisions has been removed, allowing appeals to the High Court within 90 days, from the Tribunal's order relating to supervision and supersession of Waqf Management Committee by the Board. This will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes.

Before removal, the member must be given a chance to explain their actions. If the member is unhappy with the removal, they can appeal to the Tribunal within 30 days. The Tribunal will hear both sides and can confirm, change, or overturn the Board's decision."

Observations/Recommendations of the Committee

31.7 The Committee find that section 67 sub-section (4) is being proposed to be substituted with the first proviso of the section 67 of the principal act *vide* Clause 31 of the amendment bill. Thereafter, in the second proviso of section 67 sub-section (6), the omission of the words "and the order made by the Tribunal in such appeal shall be final'' shall be omitted. These amendments are aimed at providing any person aggrieved by the Order made by the Board under section 67(2), chance to appeal and utilize the various avenues of appeal for Justice. Thus, the Committee appreciate the option of providing further scope for availing justice to the aggrieved person and decided to accept the amendment proposed under the Clause. However, the Committee recommend that the period of appeal shall be increased from sixty days to ninety days and accordingly propose the following amendment in clause 31 (a) :

"(4) Any person aggrieved by the order made under sub-section (2) may, within ninety days from the date of the order, appeal to the Tribunal"

CLAUSE-32

32. The Clause 32 of the Bill proposes to amend the Section 69 of the Principal Act.

Relevant provisions of the Principal Act:

32.1 Existing provisions of Section 69 are as under:-

"Power of Board to frame scheme for administration of waqf —

(1) Where the Board is satisfied after an enquiry, whether on its own motion or on the application of not less than five persons interested in any waqf, to frame a scheme for the proper administration of the waqf, it may, by an order, frame such scheme for the administration of the waqf, after giving reasonable opportunity and after consultation with the mutawalli or others in the prescribed manner.

(2) A scheme framed under sub-section (1) may provide for the removal of the mutawalli of the waqf holding office as such immediately before the date on which the scheme comes into force:

Provided that where any such scheme provides for the removal of any hereditary mutawalli, the scheme shall also provide for the appointment of the person next in hereditary succession to the mutawalli so removed, as one of the members of the committee appointed for the proper administration of thewaqf.

(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.

(5) Pending the framing of the scheme for the proper administration of the waqf, the Board may appoint a suitable person to perform all or any of the functions of the mutawalli thereof and to exercise the powers, and perform the duties, of such mutawalli."

Provision proposed in the Amendment Bill

32.2 In section 69 of the principal Act,—

(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."

Justification/explanation given by the Ministry of Minority Affairs

32.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Tribunal is being empowered to take decision as appropriate in the matter and to restrain the State in Waqf managements. This will help in ensuring transparency and efficient management of Waqf properties. "

Gist of submissions by various Waqf Boards

32.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under

(i) Kerala Waqf Board:- As per sub-section (4), the Board may at any time by an order cancel or modify such a scheme framed by them. Now as per the amendment proposed to sub-section (4), it is provided that in the event of cancelling or modifying an existing scheme by the Board, a written notice inviting objection "from the person likely to be affected and general public" has to be served. Since the Scheme relates to a property, which has already been declared as a waqf property, the conditions stipulated in sub-section (3) will be enough and "notice to general public" need not be insisted upon.

(ii) Andhra Pradesh Waqf Board:- Power of stay should go with power of hearing appeal. Deletion of this clause is desirable. Not objectionable to the addition of this provision of notice before an adverse order, because it is in tune with principles of natural justice.

(iii) Karnataka State Board of Auqaf:-The proposed omission to section 69 is arbitrary and hinders with the power of the Board and the Tribunal.

(iv) Rajasthan Waqf Board:- The provision attempted to be inserted in sub-section (4) of Section 69 giving powers to the State Government is wrong and restricts the powers of the Wakf Board and is against Articles 25 and 26 of the Constitution.

Suggestions/comments by various stakeholders and experts:

32.5 Suggestions/comments received from various stakeholders and experts is summarised as under:

i) Omission of the second proviso to sub section (3) of section 69 has no major impact and may be accepted, while Insertion of the proviso to sub section (4) of section 69 calling for written notice and inviting objections from the persons likely to be affected and general public, is apparently in line with principles of natural justice.

ii) Clause 32 seeks to give opportunity inter-alia to general public to file objections where Board seeks to cancel or modify a Scheme. Here opportunity should be confined to affected person only. Otherwise, it will open Pandora's box.

iii) Board's power to frame a scheme for the administration of the waqf is subject to giving notices to the affected cases in all the cases. Here a provision is also added to include the General Public also to be the parties as affected. It is an unwarranted suggestion. The Waqf is related to the matters of a minority community in India and necessarily whatever be the decision taken on the administration of the waqf, the Board is duty bound to hear all the stakeholders. Here General Public has no role to play rather their role can also be restrictive one for hurting sentiments of a community in particular. Therefore, the new insertion can be slightly modified by removing the word 'General Public' from the section.

Examination by the Committee

32.6.1. On being asked to justify the amendments proposed in section 69 *vide* clause 32 of the Amendment Bill, 2024, the Ministry of Minority Affairs submitted in a written note as under:-

"The Board can establish a scheme for managing a waqf after an inquiry, either on its own or at the request of at least five interested persons, and after consulting with the mutawalli and others involved. This scheme may include removing the current mutawalli, but if the mutawalli is hereditary, the next in line must be appointed to the management committee. Sec 69(3) once published, the order of the Board is final and binding on all parties. However, anyone aggrieved by the order can appeal to the Tribunal within 60 days. The Tribunal can confirm, reverse, or modify the order but cannot stay its operation. The Tribunal must resolve the dispute within six months, as per Section 84 of the proposed Amendment Bill. Sec 69 (4) this provision ensures that the public and affected individuals

can raise objections before an order is issued for the delivery or possession of waqf records, accounts, and properties to the successor mutawalli."

36.6.2 Through the addition of proviso to Section 69(4), scope of inviting written objection from affected persons and general public is being introduced. Is such practice a new addition or during the framing of scheme for administration of waqf, this was already being done, the Ministry on being enquired about this aspect furnished their written reply as below:-

"This is a new insertion.

As per proviso of Sec 69(4) of the bill, the Board can cancel or modify a scheme of Administration of Auqaf but no such order shall be made unless a written notice is given, inviting objection from the person likely to be affected and general public, in such manner as may be prescribed by the State Government.

This will help in ensuring transparency and efficient management of Waqf properties.

It enhances inclusivity by allowing those directly or indirectly affected by waqf administration decisions to have a say in this process."

Observations/Recommendations of the Committee

32.7 The Committee note that Clause 32 of the Bill seeks to amend section 69 (4) by adding a proviso which incorporates that no order shall be made under this sub-section unless a written notice inviting objections from the person likely to be affected and general public is issued. The Committee concur with the intent of the amendment, regarding principles of natural justice and right to be heard, therefore, accept the amendment as it is.

CLAUSE-33

33. The Clause 33 of the Bill proposes to amend the Section 72 of the Principal Act.

Relevant provisions of the Principal Act:

33.1 Existing provisions of Section 72 are as under:-

"Annual contribution payable to Board —

(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 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.

(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.

(2) The Board may in the case of any mosque or orphanage or any particular waqf reduce or remit such contribution for such time as it thinks fit.

(3) The mutawalli of a waqf may realise the contributions payable by him under sub-section (1) from the various persons entitled to received any pecuniary or other material benefit from the waqf, but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable, the same proportion, as the value of the benefits receivable by such person bears to the entire net annual income of the waqf:

Provided that if there is any income of the waqf available in excess of the amount payable as dues under this Act, other than as the contribution under sub-section (1), and in excess of the amount payable under the waqf deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub-section (1) in respect of a waqf shall, subject to the prior payment of any dues to the Government or any local authority or of any other statutory first charge on the waqf property or the income thereof, be a first charge on the income of the waqf and shall be recoverable, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, as an arrear of land revenue.

(5) If a mutawalli realises the income of the waqf and refuses to pay or does not pay such contribution, he shall also be personally liable for such contribution which may be realised from his person or property in the manner aforesaid.

(6) Where, after the commencement of this Act, the mutawalli of a waqf fails to submit a return of the net annual income of the waqf within the time specified therefor or submits a return which, in the opinion of the Chief Executive Officer is incorrect or false in any material particular, or which does not comply with the provisions of this Act or any rule or order made thereunder, the Chief Executive Officer may assess the net annual income of the waqf to the best of his judgment or revise the net annual income as shown in the return submitted by the mutawalli and the net annual income as so assessed or revised shall be deemed to be the net annual income of the waqf for the purposes of this section:

Provided that no assessment of net annual income or revision of return submitted by mutawalli shall be made except after giving a notice to the mutawalli calling upon him to show cause, within the time specified in the notice, as to why such assessment or revision of the return shall not be made and every such assessment or revision shall be made after considering the reply if any, given by the mutawalli.

(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.

(8) If, for any reason, the contribution or any portion thereof leviable under this section has escaped assessment in any year, whether before or after the commencement of this Act, the Chief Executive Officer may, within five years from the last date of the year to which such escaped assessment relates serve upon the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment, and demanding payment thereof within thirty days from the date of service of such notice, and the provisions of this Act and the rules made thereunder, shall, as far as may be, apply as if the assessments were made under this Act, in the first instance.

Provision proposed in the Amendment Bill

33.2. 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.

Justification/explanation given by the Ministry of MinorityAffairs

33.3 The justification furnished by the Ministry for the proposed amendment is as under:

“The contribution payable by Auqaf to the State Waqf Boards is being reduced from 7% to 5% of net annual income to provide for retention of larger funds by the Auqaf. This will help the Auqaf meet their objects which would include charitable, pious and religious purposes more effectively.”

“Section 72 (1) - Less amount to be paid to the Board. Waqfs allowed to keep more of their income.

Section 72 (7) - Decision of the board will not be final and can be challenged.”

“Contribution of 5 percent would be sufficient with increase in net income of Auqaf.”

Gist of submissions by variousWaqf Boards:

33.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under

(i) Andhra Pradesh Waqf Board:-Reduction in Waqf fund contribution from seven percent to five percent may be desirable. However Waqf Boards with weak finances may have a problem. In sub-section (7), the words “and the decision of the Board thereon shall be final” shall be omitted. May not be objectionable because in such a case an appeal shall lie to Tribunal which is in tune with principles of natural justice.

(ii) Kerala Waqf Board:- As per section 72 of the Act, every Mutawalli of a waqf having a net annual income of 5,000 rupees and above shall pay annually out of the net annual income a contribution not exceeding 7 per cent to the Waqf Board for the services rendered by such Board to the Waqf. As per sub-section (6) of that section, if the Mutawalli fails to submit a return, the Chief Executive Officer of the Board can assess the income to the best of his judgment (BJ Assessment) and can realise the amount from him. It is proposed to reduce the rate of annual contribution from 7% to 5%. Since the amount is realised by way of a service charge to be

remitted by individual auqaf to the Board for the services rendered by the Board to them. That apart, out of the total contributions realised from the waqf1% is to be remitted to the Central Waqf Council as per section 10 of the Act. The annual contribution of individual auqaf forms part of Waqf Fund, which is the only major source of income to the Board for the discharge of its functions. It may also be noted that it is from that Fund the Board has to meet all other statutory requirements provided in section 77 of the Act. Similarly, Board shall have power to reduce or remit the contribution to be remitted by auqaf, if the Board is satisfied that an individual waqf or class of auqaf are in need of such a treatment. Therefore, the proposal to reduce the annual contribution need be revisited. As per sub-section (7) of section 72, order of the Chief Executive Officer assessing annual contribution is appealable before the Board and the Board may after giving the appellant a reasonable opportunity being heard either confirm or reverse or modify the decision of the Chief Executive Officer and the decision of the Board in appeal is final. Now, it is proposed to take away the finality clause given to the decision of the Board which is against the interest of Waqf Board. Therefore, the proposal may be withdrawn.

(iii) Karnataka Waqf Board:-The proposed amendment to Section 72 is intended to reduce the income of the respective Boards of Auqaf which are already starving and unable to meet the enormous expenditure involved in the administration of the waqf. This amendment will severely affect the efficiency of the Board.

(iv) Madhya Pradesh Waqf Board:-In Section 72 of theWaqfAmendmentBill, the amount of ChandaNigrani (Annual Contribution of the total net income) has been reduced from 7 percent to 5 percent. It will strengthen the rights of Waqf Management Committees and the Mutawalli who have been in illegal possession for a long time will get the benefit, their unnecessary expenditure will be increased. Therefore, for the development of Waqf and to curb the above, it would be appropriate to increase the amount of ChandaNigrani (Annual Contribution) by 20 to 25 percent.

(v) Rajasthan Waqf Board:-Reducing the contribution received by the Board to 5% under subsection 1 of section 72 is not justified in any way because the Board is not given any grant by the State Government and the Board has no other source of income. Therefore, it is justified that the contribution should be 7%.

(vi) TelanganaWaqf Board:-Reduction is not in line with the interest of the Waqf. As the Waqf boards do not have sufficient funds to function.

(vii) Delhi Waqf Board- The reduction in contribution towards the Waqf from 7% to 5% is a step in right direction as otherwise the manpower in Waqf Board has a tendency to expand while the output in terms of achieving objectives of the Waqf does not improve.

The Tribunal can also go wrong and, therefore, the removal "finality of its decision" is a step in the right direction.

(viii) Jharkhand State Sunni Waqf Board-

Provision for Financial Support: Include provisions in the bill for adequate financial resources to be allocated to state Waqf boards to support their operational needs and community projects. Sufficient funding is essential for the successful implementation of welfare programs and management of Waqf properties.

(viii) West Bengal Waqf Board

This is an attempt to encroach upon state's power to collect tax without realizing ground reality. NB-Art. 265 says Tax can be imposed if authorized by Law. Authority to collect is being curtailed without proving for subsidy. Various hostels and other organizations and social welfare activities like payment of scholarship to needy students, funds are being provided to minorities for development of graveyard, mosques and other religious functions as permitted within the frame-work of constitution (Art 25 to 30) see also Art 246 regarding Powers of State to frame laws both in List II and List III of Seventh Schedule of the Constitution. * See also Entry 10 of List III, of Constitution (Seventh Schedule).

Suggestions/comments by various stakeholders and experts:

33.5 Suggestions/comments received from various stakeholders and experts is summarised as under:

i. The proposed substitution in section 72(1) from 7% to 5% will impact the revenues of state waqf boards. Already the financial position of the boards is precarious and this reduction to 5% will make a dent in the revenues of beleaguered boards. While, the omission of the

words in sub section (7) is again relating to the power of Tribunal in the matters of revenues of the Board and omission of the same has major impact.

ii. Many of these beneficiaries rely on this income for essential services such as education, healthcare, and community development.The reduction could undermine the Waqf's ability to fulfill its charitable objectives, which might include supporting marginalized communities, funding religious institutions, or maintaining historical properties.

iii. With a reduced income, the Waqf might face difficulties in managing its operational costs, maintaining properties, and funding ongoing projects. This could lead to a decline in the overall effectiveness and efficiency of the Waqf administration. Existing projects or commitments made based on the previous 7 percent income distribution might become underfunded, leading to delays or even cancellations, which could harm the reputation and trust in the Waqf.

iv. With rising inflation and the increasing cost of living, the 5 percent income distribution might not be sufficient to meet the growing needs of beneficiaries. This could lead to a reduction in the real value of the support provided by the Waqf.

v. With the reduced contribution from seven per cent to five per cent., there will not be enough money with the Board to manage and enlarge their domain that they will also take care of orphans, they will take care of divorced women and widows. So, this should be increased to 11 per cent to make Waqf Boards' efficient.

Examination by the Committee

33.6.1 Clause 33 of the Bill seeks to amend section 72 relating to annual contribution payable to Board replacing the contribution to five per cent in place of seven per cent. Seeking justification from the Ministry of Minority Affairs regarding this change, the Ministry of Minority Affairs submitted in a written note as under:-

"Auqaf are allowed to keep more of their income for pious, religious and charitable objects."

33.6.2. It was brought to the notice of the Committee that some Waqf Boards were running into deficit. In this light, the Ministry were asked to give the rationale behind proposing the reduction of annual contribution payable to board from 7% to 5% *vide* Clause 33. Responding to the query, the Ministry have furnished the following reply:-

"In the proposed Amendment Bill, Sec 72- the annual contribution of 7 percent is being reduced to 5 percent. Auqaf are allowed to keep more of their income for pious, religious and charitable objects.**"**

33.6.3. Clauses 33 omits the words "and decision of the Board thereon shall be final" and "and the decision of the Tribunal on such appeal shall be final" from Section 72(7). The Ministry were asked to explicitly state the remedial cause of action now available with the aggrieved. The necessity for such omission was also asked to be elaborated in detail. The Ministry of Minority Affairs have replied as under:-

"As appeal is allowed in the High Court against Tribunal order within a specified period of 90 days, relating to the recovery of annual contribution due on Mutawalli from his Bank account to the Board.

This will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes."

Observations/Recommendations of the Committee

33.7 The Committee examined the clause 33 and note that Clause 33 of the Bill seeks to amend section 72 (1) relating to annual contribution payable to Board replacing the contribution to five per cent in place of seven per cent, while in section 72 (7), the words "and the decision of the Board thereon shall be final" shall be omitted. In context of the reduction in annual contribution to the Waqf Board by the Mutawalli of a waqf property, the Committee are of the opinion that with the proposed strict accounting and auditing of auqaf, the funds available with various Waqf Boards, even at 5% contribution would be reasonable and at the same time, the individual waqf will have more funds at their disposal for pious, charitable and religious purposes. However, the Committee do not rule out instances wherein a particular Board may face financial crunch. The Committee, therefore, feel that a flexible upper limit may be envisaged depending upon the financial situation of a Board. Thus, the Committee recommend the following amendment in Clause 33 (a):-

"(a) in sub-section (1), for the words "seven per cent", the words "five per cent", subject to a maximum amount as prescribed by the Central Government" shall be substituted."

Regarding the amendment proposed under section 72 (7) pertaining to the omission of the words giving finality to the decision of the Board, the Committee note that it is a consequential amendment aimed at providing the aggrieved with an opportunity to challenge the decision of the board, thus increasing the ambit for attaining justice. Hence, the Committee decided to accept the amendment proposed under the Clause.

CLAUSE-34

34. The Clause 34 of the Bill proposes to amend the Section 73 of the Principal Act.

Relevant provisions of the Principal Act:

34.1 Existing provisions of Section 73 are as under:-

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

(1) Notwithstanding anything contained in any other law for the time being in force, the Chief Executive Officer, if he is satisfied that it is necessary and expedient so to do, make an order directing any bank in which, or any person with whom any money belonging to a waqf is deposited, to pay the contribution, leviable under section 72, out of such money, as may be standing to the credit of the waqf in such bank or may be deposited with such person, or out of the moneys which may, from time to time, be received by bank or other person for or on behalf of the waqf by way of deposit, and on receipt of such orders, the bank or the other person, as the case may be, shall, when no appeal has been preferred under sub-section (3), comply with such orders, or where an appeal has been preferred under sub-section (3), shall comply, with the orders made by the Tribunal on such appeal.

(2) Every payment made by a bank or other person in pursuance of any order made under sub-section (1), shall operate as a full discharge of the liability of such bank or other person in relation to the sum so paid.

(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.

(4) Every officer of the bank or other person who fails, without any reasonable excuse, to comply with the order made under sub-section (1) or, as the case may be, under sub-section (3), shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both."

Provision proposed in the Amendment Bill

34.2 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.

Justification/explanation given by the Ministry of Minority Affairs

34.3 The justification furnished by the Ministry for the proposed amendment is as under:

"Provision for appeal against decision of the Tribunal is being made."

Gist of submissions by various Waqf Boards:

34.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Andhra Pradesh Waqf Board:-In sub-section (3), the words "and the decision of the Tribunal on such appeal shall be final" shall be omitted. This amounts to curtailing the efficacy of Tribunal.

(ii) Karnataka Waqf Board:-The proposed amendment to Section 73 is arbitrary. It will affect the entire integrity of judicial process. The principles of finality is affected and it is aimed to keep the disputes alive. There is no appellant forum to curb the endless litigations which would pave way for opening floodgates of litigations deliberately. Hence, the proposed amendment is liable to be rejected.

(iii) Kerala Waqf Board:- As per section 73, the Chief Executive Officer of the Board, as part of realising the annual contribution from individual auqaf direct any bank in which any money belonging a waqf is deposited to pay the amount standing in the credit of waqf in such bank to the waqf Board. Against such order of the Waqf Board the bank or any other person can prefer an appeal to the Tribunal and the decision of the Tribunal on such appeal shall be final. Now it is proposed to omit the finality clause, which may be detrimental to the interest of Waqf Board.

(iv) Rajasthan Board of Waqf:- Section 73 makes the decision of the Wakf Tribunal final like other tribunals in the country. Section 83(9) of the Wakf Act provides for challenging the order of the tribunal in the Hon'ble High Court.

Suggestions/comments by various stakeholders and experts:

34.5 Suggestions/comments received from various stakeholders and experts is summarised as under:

Omission of the Words in sub-section (3) is again relating to the power of Tribunal in the matters of recovery by the Board from banks and persons and hence, omission of the same has major impact.

In section 73 also equally, it has been proposed to omit the sentence in sub-section 3 "the decision of the Tribunal in said Appeal shall be final". In this context, equally it is suggested to prescribe one Appellate Tribunal in the manner as stated above against the decision of the Tribunal.

- "ऑनरेबल कमेटी के संज्ञान में है कि वक्फ एक्ट, 1995 है, जिसे अमेंड किया जा रहा है, उसमें काफी कुछ आर्बिट्रेटरी था। उसमें काफी अगेंस्ट नेचुरल जस्टिस था जैसे आर्टिकल 14, जिसमें यह था कि वक्फ के संज्ञान में अगर वक्फ बोर्ड कहता है कि कोई सम्पत्ति सरकारी सम्पत्ति है तो वह जांच करेगा फिर वह वक्फ बोर्ड में निहित हो जाएगी। उसका इस एक्ट में सुधार कर दिया गया है। इसमें यह ड्रॉबैक था कि वक्फ बोर्ड के ऑर्डर के खिलाफ किसी सिविल कोर्ट में अपील नहीं होगी, किसी रेवेन्यू कोर्ट में अपील नहीं होगी तो उस सेक्शन में सुधार कर दिया गया है और साथ ही साथ सेक्शन 52 और 73 भी ट्रिब्यूनल को अधिकार देता था कि कोई भी लिटिगेशन होता है तो ट्रिब्यूनल में जाएंगे, सिविल कोर्ट में नहीं जाएंगे और ट्रिब्यूनल का फैसला अंतिम फैसला होगा। इस सेक्शन को भी रिपील कर दिया गया है। अब ट्रिब्यूनल्स के फैसले पर हाईकोर्ट में अपील की जा सकेगी, यह प्रोविजन किया गया है। ये तीनों अमेंडमेंट स्वागत योग्य हैं। I welcome this. I support it. आर्टिकल 40 और 52 ए और आर्टिकल 73 सबसेक्शन 3 को रिपील कर दिया गया है, क्योंकि यह आर्बिट्रेटरी था और इसकी अपील होनी चाहिए। मैंने कहा है कि डिस्ट्रिक्ट मजिस्ट्रेट के फैसले की भी अपील होनी चाहिए तो बोर्ड के फैसले की और ट्रिब्यूनल के फैसले की भी अपील होनी चाहिए। यह प्रोविजन इस बिल 2024 में किया गया है। यह स्वागत योग्य है।"

Examination by the Committee

34.6.1. The representatives of the Ministry of Minority Affairs were asked to justify the amendment proposed *vide* Clause 34 of the Bill seeking 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. In this regard, the Ministry of Minority Affairs responded in their written replies as under:-

"As appeal is allowed in the High Court against Tribunal order within a specified period of 90-days. This will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes."

Observations/Recommendations of the Committee

34.7 The Committee note that the amendment proposed *vide* Clause 34 in Section 73 sub-section (3) omits the words "and the decision of the Tribunal on such appeal shall be final". The Committee are of the view that such omission is a result of consequential changes to the proposed amendments in the bill regarding the creation of provision for appeal against the decision of the Tribunal. Hence, the Committee decided to accept the amendment proposed under the Clause.

CLAUSE 35

35. The Clause 35 of the Bill proposes to amend the Section 83 of the Principal Act.

Relevant provisions of the Principal Act:

35.1 Existing provisions of Section 83 are as under:

"**Constitution of Tribunals, etc.-** (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 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.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure 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.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(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.

Provisions Proposed in the Amendment Bill

35.2 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, whoshall be the Chairman; and
(b) one person, who is or has been an officer equivalent inthe 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 theTribunal:

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 ofsixty-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."

Justification/explanation given by the Ministry of Minority Affairs

35.3 The sub-clause wise justifications furnished by the Ministry for the proposed amendment is as under:

35.3.1 For Clause 35(a):-

> "Provision is being made to declare any Tribunal competent to adjudicate waqf matters, in case the waqf Tribunal is non-functional."

35.3.2 For Clause 35(b):-

> "To resolve the pending cases, in a timely manner, in case of non-functioning tribunals".

35. 3.3 For Clause 35(c):-

> "Substitution in sub-section (4) To address the issue of appointment of the members of the waqf Tribunal the pool of eligible candidates is being enlarged by including persons who may have retired. Similarly, the second member, of the Tribunal can be a retired officer who has been at the rank of Joint Secretary to the State Government."

35. 3.4 For Clause 35(4A):-

> "It brings more clarity regarding the tenure of chairman and members of the Tribunal.

35. 3.5 For Clause 35(e), no justification given by the Ministry.

35. 3.6 For Clause 35(f):-

> "Provision of appeal is made against order of the Tribunal. In case the Tribunal is non-functional, or non-existent, the aggrieved party may take recourse to the Hon'ble High Court concerned."

35.3.7 The Ministry in a written reply further submitted the justification for the above Clause as under:

> 'To revise the Judicial oversight for the better effectiveness by modifying the composition of the Tribunal and allowing the High Court to hear the cases directly if the Tribunal is non-functional. The tenure of the Tribunal members is set at 5 years or until they reach the age of 65 years which will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes.'

Views of the Ministry of Railways

35.3.8 The Ministry of Railways in regard to finality of Tribunal have submitted before the Committee as under :-

> "At present the only remedy available with Railway against a Waqf Tribunal order is to go for a revisionary application in the Higher Court. However, the same is limited in nature as higher courts can only scrutinize the tribunal's proceedings for legal errors or irregularities, primarily to ensure proper application of law. The Revisionary application does not involve challenging the decision on the merits of the case, seeking a full re-examination of the facts and legal issues involved. At present, the cases where the ownership of Railway land is in dispute with the Waqf Board, Railway will not be able to appeal against any adverse decision of the Waqf Tribunal. It can only make a revisionary application which is limited to scrutinizing legal errors or irregularities only. With the proposed amendments in the Waqf Act, Railway will be able to challenge the adverse decision in the High Court and can request a comprehensive review of the decision based on the merits of the case, the option of which is not available with the Railways at present. Moreover, the time limit proposed in the Amendment Bill will result in for making decision by Waqf Tribunal will enhance the disposal rate of dispute which may benefit Indian Railways in resolving the dispute and expediting the affected projects".

Gist of submissions by various Waqf Boards

35.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

On declaration of any Tribunal as Waqf Tribunal

(i) **UP Sunni Central Waqf Board and UP Shia Central Waqf Board**:- A tribunal being a special Court comprises of persons chosen specially to examine and adjudicate the disputes of a particular kind, therefore, the assignment to adjudicate the disputes pertaining to waqfs cannot be transferred to any other Tribunal.

(ii) **Telangana Waqf Board:-** Any tribunal can be designated a Waqf Tribunal including the endowments Tribunal, thereby completely taking away the autonomy of the Waqf.

(iii) **Kerala State Waqf Board:-** Taking into consideration the number of litigations coming before Waqf Tribunal and the special nature of cases to be dealt with by them, sub-section (1) of

Section 83 should be retained as a special entity exclusively dealing with waqf matters as otherwise it will be detrimental to the interest of waqf institutions.

(iv) **Maharashtra State Waqf Board** Insertion in sub-section (1) is a positive step and impliedly leads to establishment of further Tribunals which may reduce the workload of existing Tribunals.

<u>On the dilution of powers of the Waqf Tribunal</u>

(i) **Telangana Waqf Board:-** Removing the finality of Tribunals order not only dilutes the efficacy of Waqf Tribunal but also helps in perpetuating the Waqf disputes. It is in direct contrast to Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987 where in cases of endowment disputes, decision of Hindu Endowment Tribunal shall be final.

(ii) **Kerala State Waqf Board:-** Omitting the finality clause given to the decision of the Tribunal is against the very concept of providing speedy justice.

(iii) **Madhya Pradesh State Waqf Board:-** By completely abolishing the Waqf Tribunal and introducing this system in all the district courts, it will be easier to get justice quickly and all kinds of problems will be eliminated.

(iv) **Tamil Nadu Waqf Board:-** The constitution of Tribunal and its purpose will be defeated if the decision of the Tribunal does not attain finality.

(v) **Punjab Waqf Board:-** Omitting the words 'and the decision of the Tribunal in respect of such matter shall be final' in sections 6,32,33,52,55A, 67 will result in further encroachment of waqf properties. The orders of almost all tribunals are always final and making an exception for waqf tribunal is discriminatory and contrary to logic.

On the provision of appeal

(i) **Maharashtra State Waqf Board:-** Providing statutory Appeals may prolong the finality of litigation.

Giving the right to approach the High Court in absence of a functional Tribunal is a positive step as now a person aggrieved would not have to wait for a functional Tribunal.

(ii) **Andhra Pradesh State Waqf Board:-** Appeal should have been given to Civil court which is court of original jurisdiction since approaching High Court against every order will be impractical and will overburden the High Courts and delay the resolution of Waqf disputes.

(iii) **Telangana Waqf Board:-** Making an appeal against the Order of the Tribunal as against a revision will lead to delays.

(iv) **Punjab Waqf Board:-** Substitution of Sub-section (9) of section 83 is not required due to the reason that the proviso attached to sub-section (9) of the Principle Act clearly lays down 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, questions 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 conform, reverse or modify such determination or pass such other order as it may think fit.

(v) **Meghalaya Waqf Board:-** This Amendment will make the decision making process longer.

On the composition of the Waqf Tribunal

(i) **Rajasthan Board of Muslim Waqf:-** Since Waqf properties are Muslim religious properties, it is necessary for the tribunal to have a Muslim lawyer well versed with Muslim law as one of its members.

Appointing a retired judge in the Waqf Tribunal would reduce the powers of the Waqf Tribunal.

It is important to have a serving District Judge in the Waqf Tribunal as it is a court of civil jurisdiction equal to other tribunals in which appeals related to waqf property, waqf rights and rights vested in the properties of other persons' waqf are disposed of.

(ii) **UP Sunni Central Waqf Board and UP Shia Central Waqf Board**:- It is a settled legal practice to have an odd number of persons constituting a Tribunal so as to ensure that a decision may be made by a majority in case of conflict of opinion amongst themselves. There may be instances of disagreement or difference of opinion between the two Members of the Tribunal and the matter will not be decided in such an eventuality.

(iii) **Telangana Waqf Board:-** A Joint Secretary has been added as a Member of the Tribunal. Whenever the Orders of the Collector is challenged before the Tribunal, another nominee of the Government, i.e., the Joint Secretary would be a part of its composition.

When the Muslim Law Expert Member was removed from the composition of the Tribunal by the Amendment, the Government nominee ought to have been removed as well. Retired members are appointed who may favour the Government for the purpose of continuity.

(iv) **Chhattisgarh State Waqf Board:-** Cases filed before the Waqf Tribunal involves intricate questions of Muslim Law for which knowledge of Muslim Law is necessary. Omitting a person having Knowledge of Muslim Law from the Waqf Tribunal will have adverse effect on the quality of Judgement to be pronounced by the Tribunal.

(v) **Andhra Pradesh State Waqf Board:-** Making the tenure of Chairman and member for five years means that complaints against them will remain unheard.

(vi) **Kerala State Waqf Board:-** Being a court dealing with special subject, the representation of a person having knowledge in the subject is inevitable for the effective discharge of its functions.

(vii) **Maharashtra State Waqf Board:-** Drawing corollary from the Endowments Tribunals like Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987, Waqf Tribunal should only comprise of Muslim members.

(viii) Uttarakhand Waqf Board:- It is suggested that the Chairperson of the Waqf Tribunal so established or in case any other Tribunal is assigned for the Waqf Act, may be working and not below the rank of District Judge or Additional District Judge.

(ix) **Meghalaya Waqf Board:-** The Amendment to the Act indicates that the Tribunal will not be the ultimate authority to decide on Waqf matters and the High Court and Supreme Court would be the final decision makers on matters of Waqf. Hence, the Tribunal members may remain the same.

(x) **Bihar State Shia Waqf Board & Bihar State Sunni Waqf Board:-** The judicial officer of additional District Judge rank is to be appointed by the Govt. under deputation considered by the Hon'ble respective High Court for the period of three years carrying much more accountability to decide the cases in the Tribunal. The provision of amendment regarding retired judicial officer need not give much clarity and accountability in the disposal of cases. So the appointment of Chairman must be from the judicial service and not of a retired judicial officer. Hence the proposal is not acceptable.

(xi) **The Jharkhand State Sunni Waqf Board**: - The Jharkhand State Sunni Waqf Board is in opinion that expert in Muslim Law not be removed from the Waqf Tribunal. It may be argued that a member with expertise in Muslim law is needed in the Tribunal to help adjudicate waqf-related disputes according to principles of Muslim law. The removal of Muslim experts from tribunals may compromise the expertise and fairness of dispute resolution. (pg 2,3&4 of Jharkhand)

<u>Suggestions/comments by various stakeholders and experts:</u>

35.5 Important suggestions/comments received by various stakeholders and experts is summarised as under:

On the dilution of powers of the Waqf Tribunal

i. Disputes related to Waqf properties are complex and require a nuanced understanding of both religious and legal principles. Weakening Tribunal's powers would mean that the minority community might lose a critical forum specifically designed to address their unique concerns.

ii. Numerous tribunals in India including Income Tax Appellate Tribunal (ITAT), National Company Law Tribunal (NCLT), National Green Tribunal (NGT), Debt Recovery Tribunal (DRT), Competition Appellate Tribunal (COMPAT), Armed Forces Tribunal (AFT), Railway Claims Tribunal (RCT), etc. are constituted by the Government of India with final and conclusive decision-making authority, subject to revision by the High Court. Considering the above mentioned tribunal's mechanism no need is required to change the existing revisionary mechanism.

iii. Supreme Court has consistently upheld the need for specialized tribunals to maintain autonomy and expertise in their respective fields, as seen in Union of India v. R. Gandhi (2010). The proposed changes disregard this precedent, risking inconsistent rulings and eroding confidence in the adjudication process.

iv. Several Endowment Tribunals including Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987, Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 provide that any order of eviction passed by the Endowments Tribunal shall be final and shall not be questioned in any court.

v. If the decision of the Tribunal is not final, it is suggested that there should be Appellate Tribunal, like the Tribunal in other enactments headed by retired High Court Judge or any other authority to hear the appeal other than the High Court of respective States so that the litigant can get another forum in the High Court under Constitution of India to interfere if there is any error made by the Tribunal or Appellate Tribunal as the case may be. Appellate Tribunal may be consisting of other two members out of whom one should be Muslim, who is proficient in Muslim Law.

vi. The word 'Tribunal' be deleted wherever occurring and same be substituted by the word 'Civil Judge, Senior Division'.

vii. All pending legal cases should be settled within a fixed time-frame.

viii. In Section 83 sub-section (1) specify "any other Tribunal" by inserting a second proviso to the said section so that it would be more convenient for the litigant to make reference. When a Tribunal has already been prescribed under sub-section 1 of section 83 of the Waqf Act to deal with the matter under the said Act, addition of the proviso by indicating "any other Tribunal" may frustrate the object of original sub-section 1.

ix. Any tribunal in the state could be designated as a Waqf Tribunal, potentially undermining the specialized focus required for Waqf matters.

x. Waqf Tribunal is not in accordance with Art.323 A and 323B and spirit of the Constitution of India so Section 83 regarding Constitution of Tribunals should be repealed and all the dispute resolution powers of tribunal should be transferred to regular courts as per CPC,1908.

xi. A non-Muslim is unlikely to know the terminology, practices and customs of Muslims. Hence, it is arbitrary and unreasonable to compel a non-Muslim to seek a remedy from a forum which functions on the basis of Islamic religious tenets and principles. Every dispute of Civil nature must be decided by Civil Court by virtue of Section 9 of the Civil Procedure Code. There are cases where Complicated Questions of Facts and Law relating to Property between Communities are involved which needs expertise of the Civil Procedure Code and other Laws. The Waqf Tribunal being a Quasi-judicial authority is not capable of dealing with such questions. Therefore, establishment of a Tribunal to decide all questions relating to Waqf property is irrational, illegal and against the concept of justice as Civil and Property disputes can be effectively decided only by Civil Courts only.

<u>On the provision of appeal</u>

i. According to the proposed amendments, the High Court will at the same time be court of first appeal and court of first instance both. In case the State Government is not notifying a

Tribunal in a State, the parties will be deprived of the right to appeal or right to revision altogether.

ii. High Court jurisdiction was not excluded in the current waqf act and High Courts suo moto can take up the case from the Tribunal. Aggrieved persons and waqf boards can go to High Courts under the current law.

iii. In the absence of Tribunal, the Appeal should be preferred to the State Government in the Department of Law as it happens in other State enactments of the States, for example, in Odisha, Odisha Hindu Religious Endowments Act has been enacted facilitating appeal to the Government of Odisha against the decision of the Endowment Commissioner.

iv. The litigant who is preferring appeal against the decision of the Tribunal, must place the same before the Appellate Tribunal, which should be presided by a retired High Court Judge. Sub-section 10 may be inserted to give power to the High Court of concerned State to revise the interim order or any order passed by the tribunal of the Appellate Tribunal, as the case may be, so that the jurisdictional error can be corrected to award even justice.

v. Change in appeal process could delay resolution and undermine the tribunal's authority in Waqf matters.

vi. The term aggrieved should be replaced by interested party as this provision compels a person not belonging to Muslim religion to go to the Waqf tribunal instead of going to normal courts, which violates their right to get justice from a secular legal system.

On the composition of the Waqf Tribunal

i. Retaining a Muslim member enhances the Tribunal's credibility within the Muslim community, fostering trust in the justice delivery system and the Waqf Tribunal can ensure Informed decision-making, Cultural sensitivity, Community representation, Balanced justice, Effective dispute resolution.

ii. Appointment of retired judges and retired Government officers would create infrastructural difficulties.

iii. Inclusion of Muslim law expert in the composition of the Waqf Tribunal is crucial for the coherence of the tribunal's decisions with the framework of Islamic faith and culture, which

is foundational to the operation and administration of Waqf properties as mandated in Article 26.

iv. Judicial Officers in the Waqf Tribunal are not trained to deal with the nuances of the Waqf and acquire understanding of the Waqf matters through experience and the assistance of the Muslim Law Expert Member and from the experienced lawyers, who appear before the Tribunal regularly.

v. Composition of the Tribunal should be either three members or one member because a retired or sitting District judge has been proposed to be the Chairman.

vi. Reducing the tribunal's role from a specialized body with expertise in Waqf laws and Sharia (Muslim Member) to an ordinary court with an additional non-judicial (administrative) member could diminish the quality of adjudication in Waqf cases.

Examination by the Committee

35.6 On the evolution of the Waqf Tribunal, the Ministry of Law and Justice in a written reply stated as under:

> "It is submitted that the concept of tribunals was first time introduced in the Wakf Act, 1954 under section 55, wherein power has been given to the State Government to constitute as many tribunals as it may think fit by notification for determination of any dispute or question. The similar provision has been incorporated under section 83 of the Waqf Act 1995. The Tribunal under section 83 has been given power to address disputes related to waqf properties and eviction. It had three members including:
> (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;
>
> As per the provisions of the Waqf (Amendment) Bill, 2024, section 83 of the Waqf Act, 1995 is being amended and the proposed amendment seeks to provide that the composition of the Tribunal shall consist of:-
> (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"

35.6.1 On the reasons that necessitated a central legislation creating a Tribunal which has such exhaustive powers, the Ministry in a written reply stated as under:

> "The primary purpose of Tribunal is to resolve disputes related to waqf properties and administration. The parties need not be Muslims alone. As per information received from the States/UTs Waqf Boards (as on 9th Sept. 2024), 25 States/UTs have constituted Waqf Tribunals while 3 States/UTs (Andaman & Nicobar Islands, Jammu & Kashmir and Manipur) have not constituted Tribunals. After independence, the comprehensive Act on Waqf meant for better administration and supervision of waqf had not provided for any Tribunal. As there were large number of cases relating to mismanagement of waqf by mutawalli, etc. there was a felt need for addressing those disputes arising out of Waqf properties by providing some legal remedy."

35.6.2 On being asked whether such exhaustive powers as that of the Waqf Tribunal been vested in any other religious bodies endowments, the Ministry in a written reply stated as under:

> "The Waqf Act 1995 is central legislation meant to regulate waqf whereas other religious laws are generally enacted at the State level for administrating the religious endowments. E.g. of the Statutes- Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959; Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987; Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997; Odisha Hindu Religious Endowment Act 1951."

35.6.3 Regarding the reasons why waqf specific tribunals are required, the Ministry of Minority Affairs and the Ministry of Law and Justice in a written reply stated:

> "Waqf Tribunals have exclusive jurisdiction over waqf-related matters, centralizing all disputes within a specialized forum. This avoids jurisdictional confusion and ensures that waqf issues are handled by a dedicated body. For expediting disposal of cases, the Bill proposed a fixed time-line of 6 months for the Tribunals to resolve waqf related disputes expeditiously which will help in restoring the right of property to the lawful owner and resolving other legal remedies."
>
> "It is submitted that the concept of Waqf Tribunals was introduced in the Waqf Act, 1954 vide Waqf (Amendment) Act 1984 which empowers the Tribunal to decide any question whether a property is waqf property or not. It provides a legal framework for speedy disposal of disputes relating to waqf."

35.6.4 Regarding the reasons for huge pendency of cases with Waqf Tribunals, the Ministry in a written reply stated:

> "Regarding pendency, approximately 19,207 cases are pending in Waqf Tribunals/Other courts, with the oldest case dating back to 1995 (Madhya Pradesh). 10 States/UTs have pending cases from 1995-2014, and Uttarakhand has 5 cases pending for over 15 years.

Litigation Records as per WAMSI Portal (as on Sept-2024)	
Total records of Litigation Cases (At Waqf Boards)	12,792

Total records of Litigation cases (Tribunal & Other Courts)	19,207
Total No. of cases of Alienation	1,340
Total No. of encroachment cases	5,220

There are several reasons for pendency of cases before the Waqf Tribunal. The primary reason is open ended time-line for disposal of cases by the Waqf Tribunals. Moreover, several States did not constitute Tribunals timely to dispose of the cases. Lack of proper Ownership Right Establishing (ORE) documents of Waqf properties leading to encroachment and other litigations.

At present, Tribunal has 3 members and State Government could not appoint all these members which often leads to quorum issues and tribunals remain non-functional."

35.6.5 On the reasons that necessitated a central legislation creating a Tribunal which has such exhaustive powers whether such exhaustive powers as that of the Waqf Tribunal been vested in any other religious bodies endowments, the Ministry of Law and Justice in a written reply stated as under:

"It is submitted that the intent behind the establishment/creation of different statutory bodies such as tribunals and endowment tribunal is to de-burden the courts and different regular judicial fora so that the disputes are to be disposed off expeditiously in the favour of aggrieved parties. The enactments of endowments with the tribunals are produced below but not with such exhaustive powers:

Sl No.	Tribunal	Composition	Functions	Appeal
1.	**The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987**			
	Endowment Tribunal	Two Members: One Chairman who is or has been a judicial officer not below the rank of a District Judge; One member who hold or has held a post not below the rank of Additional Commissioner of Endowments.	For the determination of any dispute, question or the matter relating to a Charitable Institution, Dharmadayam, Religious Charity, Religious Endowments, Religious Institution or any Institution as defined in the Act.	Appeal to the High Court within ninety days from the date of receipt of the decision.
2.	**The Bihar Hindu Religious Trusts Act, 1951**			
	Tribunal	One Member: The Tribunal shall consist of a retired High	For deciding property disputes under section 43B and for taking	Any party aggrieved by an order of the Tribunal made under

		Court Judge or a retired District Judge.	decisions under section 43C and removal of encroachment on trust property under section 43D, 43E and 43F and restoration of immovable property alienated in violation of section 44 and to appoint receiver under section 72.	this Act may, within ninety days from the date of the order, file an appeal before the High Court whose decision shall be final.
3.	**The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959**			
	Tribunal	Each Tribunal shall consist of such number of members not exceeding three as may be determined by the Government, and if the number of such members is more than one, one of them shall be appointed as the Chairman by the Government.	Where in pursuance of any order passed under the foregoing provisions of this Chapter, any lessee, licensee or mortgagee with possession loses possession of any land, there shall be paid compensation, the amount of which shall be determined by the Tribunal.	Any party aggrieved by an award of the Tribunal may, within ninety days from the date of the receipt of the award by him, institute a suit in the Civil Court having jurisdiction over the area in which the religious institution is situated.
4.	**The Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987**			
	Endowment Tribunal	Two Members, a Chairman and one other member: The Chairman shall be a person who is or has been a judicial officer not below the rank of a District Judge A Member shall be a person, who holds or has held a post not below the rank of Additional Commissioner of Endowments.	For the determination of any dispute, question or the matter relating to a Charitable Institution, Dharmadayam, Religious Charity, Religious Endowments, Religious Institution or any Institution as defined in the Act.	Any person aggrieved by an order of the Tribunal may appeal to the High Court, within ninety days from the date of receipt of the decision.
5.	**The Sikh Gurdwaras Act, 1925**			
	Tribunal	A Tribunal shall consist of a President and two other Members appointed by	Deciding claims made in accordance with the provisions of this Act. The State Government	Any party aggrieved by a final order passed by tribunal determining of a

		notification by the State Government. The President of a Tribunal shall be a person who is or has been a judge of the High Court and each other Member shall be a District Judge or a Subordinate Judge of the first class; or a barrister of not less than ten years' standing; or a person who has been a pleader of any Court or any Court which is a High Court within the meaning of clause (25) of section 3 of the General Clauses Act, 1897 for an aggregate period of not less than ten years.	shall forward to a Tribunal petition received by it under the provisions of sections 5, 6, 8, 10 or 11, and the Tribunal shall dispose of such petitions by order in accordance with the provisions of this Act.	tribunal. any matter decided by it under the provisions of this Act may, within ninety days of the date of such order, appeal to the High Court.

35.6.6 To the query as to whether there are any other central legislations that regulates religious endowments, the Ministry replied as under:

"The Durgah Khawaja Saheb Act, 1955."

35.6.7 The Ministry in a written reply have stated that 'at present, Tribunal has 3 members and State Government could not appoint all these members which often leads to quorum issues and tribunals remain non-functional.' To substantiate their claim, the Ministry were asked to furnish the given information. While furnishing the following information as on 07.11.2024, the Ministry also submitted before the Committee that data is being requested from other States as well.

Sl. No.	Name of the Waqf Board and State/UT	Total no. of Tribunals constituted.	Total number of functional Tribunals	Present no. of members in each Tribunal (specifying the type of Member, District Judge/ADM/ Muslim law expert)	Reasons for non-appointment of Members or any other remark
1	2	3	4	5	6
1.	Odisha	One	One	1. Senior Civil Judge	Rest two members are not appointed by the Government as yet
2.	Assam	Three	Three	1. District Judge	As per Waqf Act, 1995 (Before Amendment)
3.	Puducherry (Advicate-Karaikal)	Two	Two	Tribunal-1 (Puducherry, Mahe & Yaman district) 1. The Third Additional District and Sessions Judge, Puducherry 2. Tmt. B. Zareena Begum, Officer on Special Duty, Directorate of Health & Family Welfare Services, Puducherry 3. Thiru. T. H. Nizamuddin	NIL

				(AdvocatePuducherry) Tribunal-2: Karaikal District 1. District and Session Judge, Karaikal 2. Thiru. A. S. Shivakumar (Transport Commisioner, Puducherry) 3. Tmt. A. Alfiya (Advocate – Karaikal)	
4.	Punjab	1. Waqf Tribunal Jalandhar 2. Waqf Tribunal Ferozepur 3. Waqf Tribunal Faridkot 4. Waqf Tribunal Patiala 5. Waqf Tribunal Rupnagar	1. Waqf Tribunal Ferozepur 2. Waqf Tribunal Jalandhar	Each Waqf Tribunal consiting 3 members: 1. ADJ (I)-Chairperson 2. ADC Ex-Officio 3. One Scholar At present nomination of Member (Muslim Scholar) is pending with the State Government.	Pending with State Government.
5.	Manipur	NIL	NIL	NIL	NIL
6.	Uttar Pradesh (Sunni)	One	One	Three (One Chairman+ Two Members)	NIL
7.	Delhi	Three	NIL	One (Judicial)	N/A
8.	Lakshadweep	One	One	Two (District and Sessions Judge as the Chairman and Additional District Page	The tenure of the third member expired and the action is on hand to fill the vacancy.

				Magistrate as Member)	
9.	Tripura	NIL	NIL	NIL	Tribunal not yet formed.
10.	Jharkhand	One	One	Two (2) - Chairman (1) and Administrative Member (1)	The tenure of one advocate member has ended on 22nd August 2024. Advocate member will be appointed after Jharkhand Vidhansabha Election.

35.6.8 On being asked the rationale behind deletion of expert in Muslim Law from the composition of the waqf tribunal in Clause 35 of the Bill, the Ministry submitted as given below:

> "The members of the Tribunal may be well acquainted with the provisions of Waqf Act, and there is no bar on Muslim being member of the Tribunal and they may be well acquainted with Muslim laws."

35.6.9 Regarding reducing the composition of Members of the Tribunal from 3 to 2 under Clause 35 of the Bill, several stakeholders have submitted that it is a settled legal practice to have an odd number of Members in a Tribunal to ensure a decision is made by a majority in case of conflict of opinion. The Ministry were asked to put forth their view on the said submission and they replied as given:

> "As per the provision of the Bill, Sec 83(4) provides that – Every Tribunal shall consist of two members (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) In case of absence of a member, Chairman of the bench may exercise the jurisdiction, powers and authority of the tribunal."

35.6.10 One of the stakeholders has suggested that the Waqf Tribunal should be removed and substituted with the word 'Civil Court'. To the query, in such an instance where the Waqf Tribunal is dissolved, what do you think will be the impact on the implementation of the Act, the Ministry submitted as given:

"As per the provision of the Wakf Act 1954, before the Constitution of Tribunal the Litigants (Sec 55 (Board) sec 56 (Parties against the Board) and sec 58 (Board or any other person) Sec 59 (Any party against the Board/any other person)) needed to approach the Principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government. The concept of Tribunals was first time introduced in the Wakf Act,1995 under section 83, wherein power has been given to the State government to constitute as many Tribunals as it may think fit by notification for determination of any dispute or question arises. The Tribunal under Section 83 has given power to address disputes related to wakf properties and eviction. Tribunal consisted of: • One person who shall be not below that of a district, session or Civil Judge Class –I and Tribunal shall be deemed to be a Civil Court. In Waqf Act 1995 as amended in 2013 Tribunal consisted of three members : (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; In the proposed amendment of Waqf (Amendment) Bill, 2024, Section 83 of the Waqf Act, 1995 is being amended and provides that the composition of the Tribunal shall consists: (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. The Tribunal is now being restructured to include two members, with both serving and retired officers eligible. This expansion will broaden the selection pool and simplify the constitution of tribunals. In case of absence of a member, Chairman of the bench may exercise the jurisdiction, powers and authority of the Tribunal. Now as per new provision of the Bill, appeal against the order of the Tribunal can be made in the High Court within a specified period of 90 days. (Section 83(9). This will revise the Judicial oversight for the better effectiveness by modifying the composition of the Tribunal and allowing the High Court to hear the cases directly if the Tribunal is non-functional. The tenure of the Tribunal members is set at 5 years or until they reach the age of 65 years which will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes."

35.6.11 Several stakeholders have submitted that Tribunals like Income Tax Appellate Tribunal (ITAT), National Company Law Tribunal (NCLT), National Green Tribunal (NGT), Railway Claims Tribunal (RCT), etc. are constituted with final decision-making authority. The Bill proposes to remove the finality of the decisions of the Waqf Tribunal. Some Waqf Boards are apprehensive about omitting the finality clause given to the decision of the Tribunal as it is against the very concept of providing speedy justice. On this question, the Ministry responded as under:

> "The finality of Tribunal decisions has been removed, allowing appeals to the High Court within 90 days, this will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes. (Section 83 (9)) as per the Amendment Bill."

35.6.12 It was submitted before the Committee that the Supreme Court has consistently upheld the need for specialized tribunals to maintain autonomy and expertise in their respective fields, as seen in Union of India v. R. Gandhi (2010) and the proposed changes disregard this precedent, risking inconsistent rulings and eroding confidence in the adjudication process. On this point, the Ministry submitted as given:

> "Waqf Tribunals have exclusive jurisdiction over waqf-related matters, centralizing all disputes within a specialized forum. This avoids jurisdictional confusion and ensures that waqf issues are handled by a dedicated body. The concept of Tribunals was first time introduced in the Wakf Act,1995 under section 83, wherein power has been given to the State government to constitute as many Tribunals as it may think fit by notification for determination of any dispute or question arises. The Tribunal under Section 83 has given power to address disputes related to wakf properties and eviction. Tribunal consisted of: One person who shall be not below that of a district, session or Civil Judge Class –I and Tribunal shall be deemed to be a Civil Court. In Waqf Act 1995 as amended in 2013 Tribunal consisted of three members : (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; Now in the proposed amendment of Waqf (Amendment) Bill, 2024, Section 83 of the Waqf Act, 1995 is being amended and provides that the composition of the Tribunal shall consists: (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. For expediting disposal of cases, the Bill proposed a fixed timeline of 6 months for the Tribunals to resolve waqf related disputes expeditiously which will help in restoring the right of property to the lawful owner and resolving other legal remedies."

35.6.13 On the issue that a tribunal being a special Court comprising of persons chosen specially to examine and adjudicate the dispute of a particular kind the assignment to adjudicate the disputes pertaining to waqfs cannot be transferred to any other Tribunal, the Ministry replied as given:

> "For expediting disposal of cases, the Bill proposed to declare any other Tribunal as a Tribunal for the purposes for this Act."

35.6.14 On the remedies available to the Ministry of Road Transport and Highways against any adverse decision by Waqf Tribunal, the Ministry of Road Transport and Highways in a written reply stated as under:

> "Though there is no provision of Waqf Tribunal exercising any jurisdiction under the provisions of National Highways Act, 1956, the Ministry may avail the option of approaching the concerned High Court if it is aggrieved with any decision of Waqf Tribunal."

35.6.15 On whether finality is attached to the orders passed by the National Highways Tribunal under Section 41 of the Control of National Highways (Land and Traffic) Act, 2002 and how the removal of finality attached to the Waqf Board Tribunal orders are justified, the Ministry of Road Transport and Highways stated:

> "The provision of National Highways Tribunal has been omitted by Tribunal Reforms Act, 2021. Action taken or order passed by Highway Administrations under sections 26, 27, 28, 36, 37 and 38 of the Control of National Highways (Land & Traffic), Act, 2002 are now challengeable before Civil Court by means of an appeal under Section 14 of the Act."

35.6.16 Regarding the status of railway land under litigation with waqf boards, the Ministry of Railways in a written reply provided the following information:

The status of six cases is as under:

RAILWAY LAND DECLARED/ UNDER OCCUPATION OF WAQF BOARD						
Rly	**Division**	**State**	**Location**	**Area of Railway Land declared by waqf Board as Waqf land (in sqm)**	**Year of declaration of railway land as waqf land**	**Action Taken by railway and Present Status**
NCR	Agra	Uttar Pradesh	North railway colony	950	1982	Railway defended the case with Waqf Board. Case dismissed on 20.02.2020. Land is in possession

			agra cantt.			of the Waqf Board.
	Agra	Uttar Pradesh	Old loco colony Idgah	27.57	1982	Case being contested with Sunni Waqf Board Lucknow. Next date of hearing is in Waqf Board on 30.10.2024
	Agra	Uttar Pradesh	Km 3/7-9 MTJ - BAD	644.05	1985	Disputed under PPE Act, 1971. Under hearing with the Estate Officer.
NWR	Jaipur	Rajasthan	Near LC No. 224 at Jaipur Railway Station	45.9	2011	Railway filed WP No.11644/2011 in High Court. Pending for argument for next hearing of the case in the High Court, Jaipur i.e. 04.11.2024
	Jodhpur	Rajasthan	Nagaur	131.67	2015	Waqf Board Tribunal ordered to hand over the property to them. Railway filed WP in Rajasthan High Court. Hon'ble High Court stayed the order of Waqf Board. Next date of hearing is 4/11/2024.
WR	RTM	Madhya Pradesh	Ujjain	905	2007	In the application of intjamiya committee, Waqf Board passed an order against Railway on 25.07.2007 for vacating 4.0 hac land. Railway filed an appeal against the Waqf Board, Waqf Board passed the order that except 905 sqm land, Railway is owner of rest land. Three Major area 905 sqm are with Waqf Board and rest land with the

						Railway.
			Total	**2704.19**		

35.6.17 On the remedies available to the Indian Railway against any adverse decision by waqf tribunal, the Ministry of Railways in a written reply stated as under:

> "As regards the remedies available to the Indian Railway against any adverse decision by waqf tribunal, there is generally no direct appeal provision against an order of a Waqf Tribunal, as the decisions made by the Tribunal are considered final and binding. However, Hon'ble High Court can review the decision on its own motion or on an application from an aggrieved party to examine the correctness of the Tribunal's order and potentially modify it. As such, the only remedy available with the Railway against a Waqf Tribunal order is to go for a revisional application in the Higher Court. However, the same is limited in nature as higher courts can only scrutinize the tribunal's proceedings for legal errors or irregularities, primarily to ensure proper application of law. The Revisionary application does not involve challenging the decision on the merits of the case, seeking a full re-examination of the facts and legal issues involved.
> In two cases of dispute with Waqf in Rajasthan at Jaipur & Jodhpur respectively under North Western Railway, the Railway has approached Hon'ble High Court. In one case of Jaipur, the matter is pending for argument (next date of hearing 04.11.24) whereas in the case of Jodhpur, High Court has stayed the order of the Waqf Board (next date of hearing is 04.11.24)."

35.6.18 On the primary, legal and regulatory challenges faced by the Ministry of Railways in dealing with waqf properties and how the Waqf (Amendment) Bill would address these challenges, the Ministry in a written reply stated as under:

> "Since in the existing Act, the decision of the Waqf Tribunal has been made final and no appeal against the same lies in any higher court except for a revisionary petition, the same affects the ability of the Railway to go for an appeal against any adverse decision of the Tribunal. As the land remains disputed, the same may not be used for any infrastructure expansion works such as multitracking, major yard remodeling, maintenance facilities, etc. The disputes may delay the execution and increase the overall cost of the project. The Waqf (Amendment) Bill, 2024 aims to make the orders of the Waqf Tribunal challengeable in Higher Courts thus bringing more transparency and accountability in the settlement of land disputes between Waqf Board and Railways."

35.6.19 On whether the resolution of the Railway Claims Tribunal is final, the Ministry of Railways in a written reply stated as under:

> "In this context, provision for an appeal under Section 23(1) of the Railway Claims Tribunal Act, 1987 against the decision of Railway Claims Tribunal are available. The relevant para is reproduced as under-
> **"23. Appeals. -**(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie from every order, not being an interlocutory order, of the Claims Tribunal, to the High Court having jurisdiction over the place where the Bench is located.
> (2) No appeal shall lie from an order passed by the Claims Tribunal with the consent of the parties.
> (3) Every appeal under this section shall be preferred within a period of ninety days from the date of the order appealed against."

35.6.20 On the reasons why Waqf Board and Tribunal employees are treated as public servants and are paid from the taxpayers' contributions in that capacity, the Ministry of Law and Justice in a written reply stated as under:

> "It is submitted that as per section 101 of the Waqf Act, 1995, the employees of the Waqf Board, and other officers including auditor and mutawalli and other persons duly appointed and discharging functions under this act are deemed to be public servant. The Waqf Fund as created under section 77 and under sub-section (4), is also utilised for the payment of salary and allowances of officers and staff of the board."

35.6.21 Regarding the observation by the Committee that there are no arbitrary powers available to the Waqf Tribunal as the decision of Waqf Tribunal is subject to judicial review of High Court and Supreme Court, the Ministry of Law and Justice in a written reply stated as under:

> "It is submitted that the general power of appeal has been proposed in the amending Bill to strengthen the smooth dispensation of justice."

35.6.22 When asked about the reason why the only relief available against Waqf tribunals is that of a writ, the Ministry of Law and Justice in a written reply stated as under:

> "It is submitted that every decision of the Tribunal can be challenged under the writ jurisdiction as provided in the Constitution. So, any decision of the Tribunal is to be challenged or relief has to be claimed, then recourse to writ jurisdiction is available. Now, the bill proposes to provide an appeal against the order of the Tribunal to the High Court."

Observations/Recommendations of the Committee:

35.7 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs find that the proposed amendments including declaration of any Tribunal as Waqf Tribunal; introduction of the provision of appeal to High Court directly and change in the composition of the Tribunal would expedite disposal of pending cases considering that as many as 19,207 cases are pending in Waqf Tribunals. Thus, the Committee endorse the amendment proposed in the Clause except for the provision relating to the composition of the Tribunal. The Committee are of the opinion that the composition requires revision to incorporate a member having knowledge of Muslim laws and also to make the Tribunal a three-member body rather than a two-member body. The following amendments are recommended in Clause 35:-

(1) In Clause 35(c), in sub-section 4 after point (b), point (c) is inserted:

"(c) one person having knowledge of Muslim law and jurisprudence - member;"

(2) The first proviso in Clause 35(c) under sub-Section (4) is omitted;

(3) In second proviso in Clause 35(c), the word "further" after the word "Provided" is deleted.

CLAUSE- 36

36. The Clause 36 of the Bill proposes to amend the Section 84 of the Principal Act.

Relevant provisions of the Principal Act:

36.1 Existing provisions of Section 84 are as under:

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

Provisions Proposed in the Amendment Bill

36.2 In section 84 of the principal Act,—

(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:—

"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."

Justification/explanation given by the Ministry of Minority Affairs

36.3 The justification furnished by the Ministry for the proposed amendment is as under:

"A timeline of six months is being provisioned for time bound disposal of cases in the Tribunal with the possibility of further extension of six months which will expand the scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes."

Gist of submission by various Waqf Boards

36.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) Andhra Pradesh Waqf Board is of the view that fixing a time frame for Tribunal to decide the disputes is desirable as it will expedite the dispute resolution.

(ii) Tripura Board of Waqf: - Within a specified period concerned party will get decision of the Tribunal. This provisions would be helpful.

Examination by the Committee

36.5 On the issue of time limit of 6 months which is extendable by another 6 months prescribed for the adjudication for the Tribunal, the Ministry in a written reply stated as under:

> "The use of word "shall" make the disposal within six months mandatory. However, the proviso if it is not decided within 6 months, the Tribunal "may" decide the matter within a further period of six months is discretionary. Furthermore, Sec 83(1) proviso has proposed that any Tribunal be declared as the Tribunal for the purposes of this Act, in case of absence of waqf Tribunal, makes the disposal of the case within 6+6 months feasible. (Sec 84)"

36.5.1 On the question as to how a change in time-line for disposal of cases would result in a faster resolution of cases when there are cases that have been pending for over 15 years and whether there is any penalty for cases that are not decided within one year, the Ministry replied as given:

> "The composition of Tribunals has been revised to include two members with a provision to allow appointment of serving or retired District Judge and Joint Secretary from the State Government to enhance the Tribunal functionality and expedite the resolution of waqf-related cases (Sec 83(4)). The use of word "shall" make the disposal within six months mandatory. However, the proviso if it is not decided within 6 months, the Tribunal "may" decide the matter within a further period of six months is discretionary. The Tribunal is now being restructured to include two members, with both serving and retired officers eligible. This expansion will broaden the selection pool and simplify the constitution of tribunals. In case of absence of a member, Chairman of the bench may exercise the jurisdiction, powers and authority of the Tribunal. Furthermore, Sec 83(1) proviso has proposed that any Tribunal be declared as the Tribunal for the purposes of this Act, in case of absence of waqf Tribunal, makes the disposal of the case within 6+6 months feasible. (Sec 84) Also, the proviso to Sec 83(2) of the Bill provides the aggrieved person the right to appeal, if there is no Tribunal or the Tribunal is not functioning. Moreover, the parties are free to take the recourse of all available remedies from the superior judicial forums, if the Tribunal does not dispose the matter within the given timeline."

36.5.2 In the context of time limit of 6 months, which is extendable by another 6 months, being prescribed for the adjudication for the tribunal, the Committee wanted to know the consequences in case the tribunal fails to do so, the Ministry of Law and Justice in a written reply stated as under:

"It is submitted that the time frame has been proposed in the amendment to settle the dispute expeditiously as per section 84 of the amendment act of 2024, 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. Therefore, keeping in view the fact that the extension of time is not a mechanical exercise, the Tribunal being a quasijudicial body would be conscious of adherence to the timeline. Moreover, the parties are free to take recourse of all the available remedies from the superior judicial forums if the Tribunal does not dispose the matter within the given timeline."

Observations/Recommendations of the Committee:

36.6 Considering the high pendency of cases with the Waqf Tribunals, the Committee are of the firm opinion that the said amendment providing a timeline for settlement of disputes would expedite disposal of cases. However, the existing provision of the law states that whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a waqf, 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. The Committee are of the view that in the existing Section, ample emphasis has already been given to earliest disposal of cases by the Tribunal. Therefore, it may not be necessary to fix a time period for the disposal of the cases by Tribunal. Accordingly, amendment to Clause 36(a) is given below:

"Clause 36 is omitted".

CLAUSE- 37

37. The Clause 37 of the Bill proposes to amend the Section 91 of the Principal Act.

Relevant provisions of the Principal Act:

37.1 Existing provisions of Section 91 are as under:

"**Proceedings under Act 1 of 1894.—** (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.

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.

(2) Where the Board has reason to believe that any property under acquisition is waqf property, it may at any time before the award is made appear and plead as a party to the proceeding.

(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.

(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."

Provisions Proposed in the Amendment Bill

37.2 In section 91 of the principal Act,—

"(a) in sub-section (*1*),—

(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;

(ii) for the words "three months", the words "one month" shall be substituted;

(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;

(c) in sub-section (*4*),—

(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" shallbe substituted;

(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."

Justification/explanation given by the Ministry of Minority Affairs

37.3 The justification furnished by the Ministry for the proposed amendment is as under:

"To substitute the correct name of the relevant Act and reduction of period to one month aims to expedite the acquisition process, keeping in view the objective of public interest behind such acquisition."

Gist of submission by various Waqf Boards

37.4 A gist of submissions/objections by various Waqf Boards of States/UTs is given as under:

(i) UP Sunni Central Waqf Board and UP Shia Central Waqf Board:- Substitution in sub-section 4(ii) of clause 37 is detrimental to the interests of the waqf and waqf properties and the original provision must be retained.

(ii) Rajasthan Waqf Board:- The Waqf properties under the earlier Acquisition Act 1894 have been acquired without the knowledge of the Board. After taking action for such Waqf properties, the provisions of Section 91 of the Waqf Act must remain unchanged.

(iii) Andhra Pradesh State Waqf Board:- Reducing time for Waqf board to plead in a Land Acquisition proceedings from three months to one is unreasonable and is detrimental to interest of the Waqf.

(iv) Andhra Pradesh State Waqf Board and **Telangana Waqf Board:-** Substitution in sub-section 4(ii) is not in the interest of the Waqf board and will encourage the LAOs to pass order without giving Waqf Board an opportunity of being heard. They have further submitted that it is easier to activate an order kept in abeyance than pass a fresh order on merit.

(v) Kerala State Waqf Board: On substitution in sub-section 4(ii), there is no logic in substituting the provision, in such a way, as the claim of the Board cannot be placed without giving due notice to the Board.

(vi) West Bengal Waqf Board: Three months' time granted to Board was reasonable, why one month only.

Important suggestions/comments by various stakeholders and experts:

37.5 Important suggestions/comments received by various stakeholders and experts is summarised as under:

i) The time period to protect the Waqf Property has been reduced from three months to one month, without bearing in mind that the Waqf Boards are impersonal institution and their machinery takes time in moving.

ii) The time of 3 months available to Waqf Board in the matter of acquisition of wakf property is sought to be reduced to one month. This seems to be another ploy to deprive Waqf Board from having sufficient time to make its own case.

Examination by the Committee

37.6 To the concerns that substitution in sub-section 4(ii) of Clause 37 will encourage the Land Acquisition Officers (LAO) to pass order without giving Waqf Board an opportunity of being heard, the Ministry replied as given:

"Section 91(1) provides the mechanism under the Land Acquisition Act, 1894 to serve a notice of acquisition by Collector to the Board within the time limit of three months. This notice gives the Board three months to participate in the proceedings and make representations. The proposed amendment substitutes the correct name of the relevant Act and the notice period is being reduced to one month to expedite, the acquisition process, keeping in view the objective of public interest behind such acquisition. Subsection 4 has also been amended to ensure that the acquisition process is not stalled if a portion of the property is claimed by the Board to be Waqf."

37.7 On being asked whether the proposed amendments in Section 91(4) of the principal Act are going to assist the Ministry of Road Transport and Highways in expeditious acquisition of land, the Ministry of Road Transport and Highways in a written reply stated as under:

"Yes. The proposed amendments to Section 91(4) of the Principal Waqf Act, 1995 are expected to assist the Ministry in expediting the acquisition of Land. The land acquisition process generally takes 1 to 2 year for completion and the proposed amendment would obviate the necessity for issue of the orders/notifications afresh as the related portion of the property claimed by the Board to be kept in abeyance only."

37.8 The Committee wanted to know whether it is feasible to vacate the encroached properties in one month, the Ministry of Railways in a written reply stated as under:

"Under Section 91 of the Principal Act, for the acquisition of a Waqf property under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the time period granted to Waqf Board for appearing and pleading as a party has been proposed to be reduced from three months to one month which will expedite the acquisition of Waqf properties for Railway projects. As such, this proposed reduction in period is not for removal of encroachment from Government land. As regards removal of encroachment from Railway land is concerned, the encroachments which are soft in nature are removed promptly as per the provisions contained in the Railway Act, 1989 by launching drives at frequent intervals with the help of RPF. However, for encroachments of hard type (other than those pending in courts), the provisions contained in the PPE Act, 1971 are followed where in timeline for eviction of unauthorized occupants is as follows :

Serving of Notice	Within 07 days from receipt of information
Show Cause Notice	Not later than 07 days from the date of issue of notice
Eviction Order	Within the 15 days from the date specified in the notice.
Eviction Drive	Not later than fifteen days from the date of the order

However, the continuous support from local bodies/ police/ civil administration is required to adhere to the above timeline."

Observations/Recommendations of the Committee:

37.9.1 The Committee examined Clause 37 seeking to amend Section 91 of the principal Act and agree with the replacement of referred repealed Land Acquisition Act, 1894 with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Committee also accept the amendment wherein any order passed under section 77 or section 78 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is not declared void if the Board is not given an opportunity to be heard rather the said order shall be kept in abeyance relating to portion of the property claimed by the Board and assigning Collector to hear the parties and make the order within one month.

37.9.2 However, the Committee after hearing all the stakeholders feel that the proposal to reduce the time period given to the Board to appear before the Collector on receipt of notice of acquisition of a waqf property from three months to one month would not be reasonable time for the Board to plead to the proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Hence, the Committee recommend retaining the "three months period". Accordingly, Clause 37 (a)(ii) is omitted.