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It is to be noted that oral creation of waqfs and appointment of Mutawalli as a corollary are fundamental principles of waqf jurisprudence and any dispute as to appointment of Mutawalli is decided on the basis of evidence. The omission, therefore, is unnecessary and stands opposed to the waqf jurisprudence as understood by Courts till date. It is therefore suggested that the Committee recommends deletion of Clause 3 (v) of the Bill.

16. **Clause 3(vii)**- This amendment proposes to remove the definition of Survey Commissioner who is an institution in itself and an expert in the subject. There is no plausible justification provided for the removal of the survey commissioner and the proposed amendment weakens the system of Auqaf in the country.

17. **Clause 3(ix)**-This amendment proposes that a waqif needs to be showcasing/demonstrating Islam for a minimum of 5 years to dedicate a wakf. How will someone showcase or demonstrate that he/she is a practicing Muslim? This amendment limits a person to make a wakf and is against the principle of Islamic Jurisprudence which allows anyone to make a waqf and therefore is brought in to limit the creation of newer waqf.

18. **Clause 4- Section 3A** in clause 4 proposes that without lawful ownership one cannot transfer or gift property. Islamic principles already require waqfs to be established by rightful owners and only rightful owners to dedicate their land, pure from all encumbrances. Thus, the aforesaid amendment is like stating the obvious and a mere repetition of what already exists from day one. The unusual stipulation under the proposed Section 3A(2) also betrays the known concept of waqfs as a *waqf alal aulad* would be a sui generis dedication of one's property following the *waqif's* desire. This provision will only become susceptible to misuse by any persons or descendants of the *waqif* if they are excluded from the *waqf alal aulad* created by such *waqif*. This is a complete abandonment of the intention of the *waqif*. Further, any concerns of inheritance ought not to have come in as under the Islamic law inheritance devolves at the moment of death of the person concerned and there cannot be stipulations placed on a person prohibiting them from creating *waqf alal aulad* for an event in future, or for a right which has not yet accrued upon the heirs. Further, there is no explanation for the denial of equality to married daughters as an effect of the proposed Section 3A(2). If the proposed Section 3A(2) & Section 3(r)(iv) are to be connected, rights of a married

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daughter of the Waqif are ignored under the proposed amendments as Section 3 (r) (iv) limits itself to Widows, Divorced Women and Orphans.

19. **Clause 4-Section 3B-** It proposes that details of the date of creation of waqf and the name of the waqif should be furnished. There are many older waqf whose creator or the date of creation is not known or are so old that it is not possible to ascertain the name of waqif or the date of waqf, due to this amendment those older waqfs will face acute difficulty in registering themselves.

20. **Clause 4-Section 3C-** This is again a damaging amendment to the Act. As proposed it will now be in the power of the State Government to appoint a 'designated officer' in place of Collector to conduct inquiries, which again has not been disclosed as to what all qualification such appointee shall be having and whether such officers will have any expertise regarding the revenue laws etc. more particularly expertise over waqf. This is an exercise whereby a title to a property is sought to be determined which should be given in the hands of a quasi judicial form like the Board instead of an individual.

21. **Clause 5-** This amendment proposes to remove the Survey Commissioner who is a person of knowledge and has an expertise in this subject. On the contrary the District Collector has been authorised to conduct a survey who is an officer of the Government himself. This all seems like an attempt to exclude the concept of surveys all together. Therefore, there is no need to remove the Survey Commissioner and substitute him with Collector and the proposed amendment is unnecessary.

22. **Clause 6-**The amendments proposed in this clause are consequential to the amendments proposed in Clause 5. The amendment also proposes imposing a discriminatory 90-day public notice requirement solely for waqf properties before its mutation in contravention of principle of equality as no other law proposes such an onerous condition.

23. **Clause 9-**The proposed amendments to Section 9 drastically reduce Muslim representation in the CWC, cutting the number of Muslim members from 20 to just 10. It is further submitted that making non-muslims a part of CWC is again an attempt to dilute the representation of Muslims.

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24. **Clause 10**-Although Aghakhanis and Bohras are sub-sects within Shia there is no justification for giving them special treatment that could compromise the interests of Shia waqfs. Even otherwise, the committee has not put forth any structure about the formation or constitution of such boards. The proposed amendment in clause 2 of the principal act is *void ab intio* as the said amendment gives sweeping and wide powers which are arbitrary in nature.

25. **Clause 11**- The proposed amendments to Section 14 drastically reduce Muslim representation in the CWC. Under the present Act, Muslim representation in the Board of 8 members is 7 and in a board of 12 members is 11 but the proposed Bill reduces this to only 4 members. Further, making non-muslims a part of CWC is again an attempt to dilute the representation of Muslims.

26. **Clause 12**-The amendment proposed seems to wash away the qualification which was earlier for appointment of a professional who is a muslim having expertise in town planning and agricultural activities etc.

27. **Clause 13**- There is no reason provided as to why the meeting of the CWC is being amended to once per month.

28. **Clause 14**- The amendment proposes to absolutely get away from the democratic process to that of a nomination which not only frustrates the whole idea of democracy but also creates serious doubts as to the proposal of nomination at the behest of the State Government.

29. **Clause 15**- This clause indirectly allows a non-muslim to be a CEO of the Board and provides no reason as to why instead of a muslim a non-muslim should be the head of the Waqf Board who might not be well versed with the concept of waqf and its requirements and historical background of the same. Therefore, this clause is arbitrary and unjustified.

30. **Clause 16**-There is no reason for omitting explanation and proviso to Section 32(2)(e) therefore, the same is arbitrary and unnecessary.

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31. **Clause 17**-This proposal is unnecessary as the existing provision is just and fair and ensures that any misappropriated funds are secured pending the appeal's resolution, preventing any undue advantage from a stay order.

32. **Clause 18**-As earlier stated, Islamic jurisprudence specifically permits oral dedication therefore this proposal is unjust and arbitrary.

33. **Clause 19**-It is submitted that in a regular mutation no such requirement exists then why is this exclusive criteria being added for mutation of waqf properties. The same is discriminatory and unjust. Moreover such stringent conditions are not there in any other similar statute.

34. **Clause 20**-This amendment shall take away all the powers of the Waqf Boards and therefore the same is unjust and discriminatory. The omission remains unjustified and remains as vague as it was before. No justification is provided for its omission.

35. **Clause 21**- Seeking information on all sources of money received and expended by Muttalwali would lead to its abuse therefore, the same is unjust and arbitrary. The proposed amendment extending the deadline for submitting financial reports to October, despite the financial year ending on 31st March, unnecessarily delays the administrative process. Such delays subvert accountability and disrupt the efficient functioning of Waqf Boards. Hence, this provision should be reconsidered to ensure timely action and transparency in financial management.

36. **Clause 22**- The proposed amendment under clause 22(a)(iii) inserts a proviso that authorizes the Central Government to direct the audit of any Waqf by an auditor appointed by the Comptroller and Auditor General of India (CAG) or any officer designated by the Central Government, is deeply concerning. Waqf properties, being private religious properties, should fall under the jurisdiction of the respective State Governments. The involvement of the CAG in auditing private religious properties is not only unnecessary but also an overreach, as it dilutes the autonomy of Waqf Boards and State Governments in managing Waqf properties. Therefore, the proposed amendments are unnecessary and are inserted with an intent to create more and more interference in the functioning of waqf.

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37. **Clause 23** - This requirement is discriminatory and unjust. Tribunals are constituted as specialized forums with expertise to address specific issues, and snatching away the final authority from the Tribunals, dilutes their purpose and credibility.

38. **Clause 24**- This amendment is entirely unnecessary as under the existing Act, conditions of removal of Mutawalli are already provided.

39. **Clause 25**- Decisions by the Waqf Tribunal can be, and are frequently, challenged before the High Court under Article 227 of the Constitution. Therefore, the proposed amendment is misleading.

40. **Clause 27**- Decisions by the Waqf Tribunal can be, and are frequently, challenged before the High Court under Article 227 of the Constitution. Therefore, the proposed amendment is misleading.

41. **Clause 28**- It is submitted that the failure to upload the details of Waqf under Section 3B an offence punishable with 6 months imprisonment is completely unjust. Moreover, there is no justification given as to why there should be stringent conditions with Mutawallis. Merely a delay in uploading the details or failing to carry out the directions should not be made a cause to put a person behind bars.

42. **Clause 29** This amendment would do nothing but only create ambiguity. All civil acts are given the color of criminal acts and make it punitive in nature.

43. **Clause 31**- This amendment would do nothing but only create ambiguity and enhance the litigation.

44. **Clause 32**- No reason has been provided as to why the proviso to Section 69(3) is being omitted. This would simply foster complications and create opportunities for baseless disputes.

45. **Clause 33**- Decisions by the Waqf Tribunal can be, and are frequently, challenged before the High Court under Article 227 of the Constitution. Therefore, the proposed amendment is misleading. Further, the proposed amendment requires Mutawallis of

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waqfs with a net annual income of not less than ₹5,000 or more to pay an annual contribution to the Waqf Board, not exceeding 5% of the net income subject to a maximum amount as prescribed by the Central Government. This last statement of subject to the maximum amount as prescribed by the Central Government creates uncertainty. This provision allows for arbitrary ceilings to be imposed by the Central Government, which could potentially spoil the financial autonomy of the Waqfs

46. **Clause 34**- Decisions by the Waqf Tribunal can be, and are frequently, challenged before the High Court under Article 227 of the Constitution. Therefore, the proposed amendment is misleading.

47. **Clause 35**- This is again an arbitrary amendment. In this way any Tribunal can be turned into a Waqf Tribunal. This is entirely counterproductive and overlooks the fact that Waqf Tribunals are intended to serve as specialized bodies for waqf adjudication.

48. **Clause 38**- This clause is unnecessary.

49. **Clause 39**- This clause is unnecessary.

50. **Clause 40**- Section 104 is being unjustifiably omitted, despite the Islamic concept of waqf not requiring the donor to be Muslim, provided the dedication aligns with purposes deemed religious, pious, and charitable under Muslim law. While in 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", has been added, under this clause no such amendment is introduced.

51. **Clause 41**-The removal of Section 107 will solely benefit encroachers, making the recovery of waqf properties nearly impossible. Removing Section 108A will not reduce overlapping in any manner and the same is unnecessary and arbitrary.

52. **Clause 43**- This clause is unnecessary.

53. **Clause 44**- This clause is unnecessary.

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Conclusion & Reasons for Dissent

1. Waqf is a religious act under Islam since its inception.

2. After independence this religious act of Islam has been protected by our Constitution particularly by Article 25 & 26 of the Constitution.

3. Due to the protection accorded by our Constitution to this religious act of Islam, no change or alteration can be introduced into the peculiar character of this religious act or any of its features and therefore not at all to any of its steps. Even a minor alteration to its definition, purpose or maker of the waqf is constitutionally impermissible. As the same is beyond the legislative competence of the house.

4. The present Bill is a sha attempt full of divisiveness to bulldoze this constitutional protection accorded to this religious act of Islam therefore I strongly oppose this Bill and its each and every clause which manifests such an attempt.

5. The Draft Report of the Joint Parliamentary Committee on the Waqf (Amendment) Bill, 2024 fails to reflect this constitutional position. It equally fails to record the unanimity in all real stakeholders in rejecting this Bill. Therefore, I hereby recorded my dissent to be placed and read along with this Report.

MEMBER OF PARLIAMENT (LOK SABHA)
MOHIBBULLAH NADWI

MEMBER OF PARLIAMENT
(RAJYA SABHA)

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To,

Hon'ble Chairperson
Shri Jagdambika Pal
Joint Parliamentary Committee on the Waqf (Amendment) Bill, 2024
New Delhi

Subject: Dissent Note to the Draft Report of the Joint Parliamentary Committee on the Waqf (Amendment) Bill, 2024.

Respected Chairman Sir,

We have actively and consistently participated in the deliberations of the Joint Parliamentary Committee on Waqf, raising significant concerns regarding various clauses of the Bill to ensure a more inclusive, equitable, and effective legislation on "Waqf".

As a matter of standard practice, the following crucial documents should have been provided to all JPC members:

3. All representations made by stakeholders, regardless of whether they were examined;
4. Replies to the questions posed by JPC members to stakeholders/witnesses;
5. A revised report from the Ministry of Minority Affairs incorporating recommendations after the completion of stakeholder depositions.

MEMBER OF PARLIAMENT
(RAJYA SABHA)

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After careful consideration, we respectfully dissent from many provisions of the Waqf Amendment Bill, 2024, as well as certain proposed amendments adopted in the consideration of amendment clause-by-clause discussion held on 27th January 2025.

Enclosed herewith is our clause-by-clause analysis and proposed amendments, which we submit as our official "dissent note". This note highlights our reservations and disagreements with the Honorable Committee, providing our dissent on specific provisions of the Bill in a clause-by-clause manner.

We kindly request that our dissent note be included in its entirety in the report of the Joint Parliamentary Committee on Waqf, which is to be submitted to both Houses of Parliament upon formal adoption.

Regards

Dr. SYED NASEER HUSSAIN

DR. MOHAMMAD JAWED

IMRAN MASOOD

INTRODUCTORY NOTE

1. The Waqf (Amendment) Bill, 2024, appears driven by a political agenda rather than genuine concerns for the management of Auqaf.

2.

3.

4. The Bill undermines democratic governance by replacing elected members of Waqf Boards and the Central Waqf Council with government nominees, reducing Muslim representation and violating constitutional rights under Articles 25 and 26.

5. The shift from judicial to administrative authority, particularly empowering the Collector over Waqf Boards and Tribunals, compromises the principle of

separation of powers and introduces potential bias, as the Collector often represents the State in disputes over Waqf properties.

6. By imposing arbitrary conditions on the creation of Waqf, such as requiring the donor to have practiced Islam for five years, the Bill contradicts Islamic jurisprudence. Such conditions are discriminatory, particularly when similar religious endowment laws for other communities impose no such restrictions.

7. Omitting Sections 108 and 108A, which safeguard pre-1950 Waqf properties, could lead to disputes over long-established endowments. Removing the Single Transferable Vote system for Waqf Board elections further erodes democratic governance within Waqf institutions.

DISSENT AND COMMENTS ON THE WAQF AMENDMENT BILL, 2024

S No.	Clause No.	Proposed Amendment in 2024 Bill & Further modification in JPC	Dissent Note
1	**Clause 2**	**Sec- 1: Title** *Unified Waqf Management, Empowerment, Efficiency and Development Act*	The proposed change to the name of the Waqf is misleading, unnecessary, and serves no practical purpose. Altering the name introduces ambiguity and adds no substantive value to the administration or identity of the Waqf. The existing name "Waqf Act" already reflects the purpose and intent of the institution, and high-sounding terms only create confusion without contributing to the effective functioning or clarity of the Waqf framework. This change is unwarranted and should be reconsidered.
2.	**Clause 3(i) & Clause 3(ii)**	**Sec 3 (aa) & (ca):** "Aghakhani waqf" & "Bohra Waqf"	Since both Bohras and Aga Khanis are sub-sects within the Shia sect of Muslim community, and the Waqf Act, 1995 already explicitly recognizes Shia Waqfs, there is no justification for creating separate provisions for Agakhani and Bohra Waqfs. The recognition of specific sub-sects within the broader Shia sect sets a precedent for further fragmentation as there are several sub-sects within Shia & Sunni sects. This uneven approach that selectively identifies sub-sects creates a discriminatory framework. Hence, this particular provision is both unwarranted and redundant.

3.	**Clause 3(ix)(a)**	**Sec- 3(r):** New condition imposed for waqf: "*any person showing or demonstrating that he/she practicing Islam for at least five years, of any movable or immovable property, having ownership of such property having ownership of such property and that there is no contrivance involved in the dedication of such property"*	The five-year restriction on Muslims is contrary to Islamic tenets, which do not impose temporal qualifications for such dedications as long as they serve purposes recognized by Islam. This condition also contradicts the inclusivity affirmed in the Waqf 2013 Amendment and is inconsistent with various Other Religious Endowment Acts, which impose no such restrictions. The **Waqf Enquiry Committee Report, 1976**, explicitly clarified that the "Waqif" need not even be a Muslim, provided the purpose of the Waqf is pious and charitable in accordance with Islamic principles. Waqf is rooted in benevolence and is private in nature, allowing individuals to donate freely for religious, pious, or charitable purposes. Restrictive conditions such as these interfere with the fundamental freedom of choice and religious practice. The only essential requirement for Waqf creation is that the donor must be the rightful owner of the property. Thus, Clause 3(ix)(a) is redundant and infringes upon the fundamental principles of religious and individual freedom.
4.	**Clause 3(ix)(e)**	**Waqf By User** *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*	The principle of "Waqf by User" is a long-recognized doctrine under Islamic jurisprudence and judicial precedent. The Supreme Court in *M. Siddiq v. Mahant Suresh Das* [(2020) 1 SCC 1 : 2019 SCC OnLine SC 1440 at page 695 1126] upheld that Muslim law permits oral dedication and that Waqf can be inferred from circumstances or religious use over time, without requiring a formal Waqf Deed. This doctrine, rooted in Islamic law, serves as a rule of evidence to determine the dedication of a property in the absence of an express instrument. Mulla, in his authoritative text *Mahomedan Law,* affirms this principle, stating that if land has been used from time immemorial for religious purposes, such as a mosque or burial ground, it becomes Waqf by user, even without express evidence of dedication (*Mulla's Mahomedan Law,*

			14th Edn., p. 173). The jurisprudence acknowledges this principle, emphasizing that properties used for public religious worship by individuals of the Islamic faith can be recognized as Waqf, even when a formal deed is absent. For instance, in *Faqir Mohamad Shah v. Qazi Fasihuddin Ansari* (*AIR 1956 SC 713*), the Supreme Court recognized Waqf properties by analyzing evidence of religious use, thereby upholding the principle of Waqf by user. Hence, retaining this doctrine is essential to uphold constitutional values and preserve the religious heritage. It is welcome to note that after serious objection by the stakeholders on this proposed amendment, the MPs from the Treasury benches have partially agreed to include Waqf By User, while unnecessarily adding "except that the property, wholly or in part, is in dispute or is a government property," is redundant and unnecessary. It merely states the obvious, as properties under dispute or claimed as government property would naturally be subject to legal adjudication. Including such language adds no substantive value and unnecessarily complicates the legislative text, hence this dissent.
5.	**Clause 4**	**Sec- 3A: Certain conditions of Waqf** *(2) The creation of a waqf-alal-aulad shall not result in denial of inheritance rights of heirs, including women heirs, of the waqif or any other rights of persons with lawful claims*	In the proposed amendment in Section 3A(2), the line *"or any other rights of persons with lawful claims"* is redundant as it merely states the obvious by referring to "rights of persons with lawful claims." Such an inclusion is unnecessary and fails to add any substantive value to the provision. To maintain clarity and precision in the legislation, this clause should be omitted.
6.	**Clause 4**	**Sec-3B: Filing of details of Waqf on Portal and Database** E*very waqf registered under this Act, prior to the commencement of the Waqf (Amendment) Act, 2024, shall*	The proposed amendment to create a new portal and database is unnecessary and redundant. The data is already available on the WAMSI Portal. All such properties have already been registered through the respective State Waqf Boards, and this exercise has been effectively completed.

		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…..	Creating an additional framework will not yield any meaningful results and will only add to administrative redundancy. Therefore, the proposed amendment should be deleted in its entirety.
7.	**Clause 4**	**Sec. 3C: Wrongful declaration of Waqf** *(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, 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, 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*	It is welcome to note that, after serious objections by stakeholders, the MPs from the Treasury benches have partially agreed to transfer the power from the Collector to the Designated Officer. However, the proposed amendment fails to address crucial aspects such as the qualifications or relevant experience required for the Designated Officer, especially in relation to the administration of Waqf properties. Merely introducing the term "Designated Officer" without specifying requisite qualifications or expertise makes the provision inadequate and ineffective. Hence, this amendment is ill-conceived and should be omitted.

		Board to make appropriate corrections in the records."....	
8.	**Clause 5**	**Sec-4:** "(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.";....*	The proposed amendment, which authorizes the Collector and removes the powers of the Survey Commissioner, is arbitrary and inappropriate. Under the current law, Survey Commissioners are high-ranking officers from the Land and Revenue Department, specifically entrusted with surveying Waqf properties. This specialized role ensures dedicated attention to the notification and protection of Waqf properties. Furthermore, Collectors more than often represent the State in disputes over Waqf properties, making them an interested party. Allowing them to decide such matters contradicts the fundamental principle of natural justice that "no one can be a judge in their own cause." Removing the powers from specialized Survey Commissioners and assigning them to overburdened District Collectors will only delay the process further. Hence should be restored to its original position as stated under the Waqf Act, 1995.
9.	**Clause 6**	**Sec. 5: Publication of List of Auqaf** *(2A) The State Government shall upload 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)....* *(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,*	The proposed creation of a new portal for the publication of the list of Auqaf raises concerns about unnecessary duplication of resources and additional expenditure, particularly when the WAMSI Portal is already operational and serving the purpose of digitizing Waqf properties. Allocating funds for an entirely new system is unwarranted and inefficient. Instead, these resources could be better utilized to enhance and upgrade the existing WAMSI Portal. Therefore, the proposed amendment to upload the notified list of auqaf in the new portal & database is redundant and should be deleted in its entirety.

		their present mutawallis and management in such manner as may be prescribed by the Central Government	
10	**Clause 7**	**Sec-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 or Bohra Waqf or Agakhani 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*** is OMITTED *Provided that no such suit shall be entertained by the Tribunal after the expiry of two years from the date of the publication of the list of auqaf;* *"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.*	The proposed amendment under Clause 7 (a)(ii) states that if any question arises regarding whether a particular property is a Waqf property, the decision of the Tribunal shall not be final. Additionally, under Clause 7(a)(iv), the amendment introduces a second proviso, which provides that an application may be entertained by the Tribunal after the specified two-year period in the first proviso, if the applicant satisfies the Tribunal that there was sufficient cause for not making the application within such period. The proposed amendment undermines the finality of decisions by the Tribunal, which is a significant departure from the standard practice in other legislation governing religious endowments. For instance, **Section 85(3) of the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987, and Section 79A(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, provide that decisions of their respective Tribunals are final and cannot be questioned in any court.** This principle of finality is integral to approximately 15 Tribunals in India, subject only to review by High Courts. It is unclear why such finality is not extended to Waqf Tribunals. Moreover, the second proviso to the amendment introduces an open-ended clause, allowing applications to be entertained beyond the two-year limitation period if the applicant provides a sufficient cause. This effectively removes the time cap, making it possible for disputes to be filed indefinitely, which is impractical and counterproductive. By removing the finality of Tribunal decisions and extending the time limit indefinitely, the proposed amendment creates unnecessary litigation, allowing cases to be filed for a lifetime, which is counterproductive for the

			purpose of effective administration of Waqf properties.
11.	**Clause 8**	**Sec-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 or Bohra or Agakhani Waqf, the Board or the mutawalli of the waqf, or any person aggrieved by the publication of the list of auqaf under section therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question;* *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 two year from the date of publication of the list of auqaf;and* *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.*	The proposed amendment under Clause 8(i) includes provisions for recognizing Agakhani Waqfs and Bohra Waqfs. Additionally, Clause 8(ii) states that if a question arises regarding whether a particular property is specified as Waqf property in the list of auqaf, the decision of the Tribunal shall no longer be final. The proviso under the Waqf Act, 1995, originally specified that such applications could not be entertained after a period of one year from the date of publication of the list of auqaf. However, under the proposed amendment in Clause 8(iii), this period has been extended to "two years." Clause 8(iv) further allows this time period to be extended indefinitely if the applicant satisfies the Tribunal that there was sufficient cause for not making the application within the stipulated period. This amendment is unwarranted and will lead to a plethora of cases, as already outlined in the discussion under Clause 7. For the sake of brevity and to avoid repetition, the detailed arguments made in opposition to Clause 7 are not repeated here but are equally applicable to this provision
12	**Clause 9 & Clause 11**	***Sec9-Establishment and constitution of Central Waqf***	The proposed amendment in Sections 9 & Section 14 of the Waqf Act seeks to ensure that members

		Council *(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:*	of the Muslim community, within the composition of the Council & the Board become a minority. Furthermore, the second proviso to Section 9(2) of the Waqf Act, 1995, as amended under Clause 9 and Clause 11, mandates that "two members appointed under this sub-section shall be non-Muslim excluding ex officio members." This effort effectively enhances the capacity for non-Muslim participation in matters of Waqf. This provision contradicts the constitutional guarantee under Article 26(d), which secures the right of religious denominations to manage their own properties. The proposed changes undermine the autonomy of Waqf Boards, violating precedents set by the Supreme Court in **Ratilal Panachand Gandhi v. The State of Bombay** [AIR 1954 SC 388] and **The Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Shrirur Mutt [7-judge Constitution Bench]** [AIR 1954 SC 282]. Both judgments emphasize that laws transferring administrative control from a religious denomination to a secular authority would amount to violation of the right guaranteed under Article 26(d) of the Constitution. If the principle of including non-Muslims in Waqf administration is to be adopted, it raises the question of whether similar religious endowment laws such as the **Bihar Hindu Religious Trusts Act, 1950**, **Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959**, **Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987**, **Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987**, and **Sikh Gurudwaras Act, 1925** should also include non-Hindus or non-Sikhs. Such a precedent would

		Provided further that two members appointed under this sub-section excluding ex Officio members, shall be non-Muslim ***Sec- 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) namely:— the following members belonging to Muslim community,* *(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 of the State Government dealing with waqf*	open a Pandora's box, requiring similar changes across all religious laws, which is not practical or desirable. Additionally, the proposed amendment does not introduce any new aspect with respect to the inclusion of women members, as the 2013 Waqf Amendment Act already mandated the inclusion of women in the Central Waqf Council and State Waqf Boards under Sections 9 and 14 of the Waqf Act, 2013. The proposed amendment bill simply restates this requirement in a different form, without adding any substantive change. The Constitution of India, under Articles 25 and 26, protects the rights of minority communities to manage their religious affairs. By codifying a provision that indirectly dilutes the control of the Muslim community over Waqf properties, this amendment violates both the spirit and letter of the Constitution. Hence, these proposed amendments through Clause 9 & 11 under Section 9 & Section 14 of the Waqf Act, 1995 are unwarranted, redundant, and must be removed.

		matters-member, ex officio; *(f) territory: one Member of the Bar Council of the concerned State or Union* *Provided that two members of the Board appointed under clause (c) shall be women:* *Provided further that two members of the Board appointed under this sub-section excluding ex officio members, shall be non-Muslims:* *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.*	

13	**Clause 10**	***Sec13: Incorporation*** *(2A) The State Government may, establish a separate Board of Auqaf for Bohras and Aghakhanis.*	The proposed insertion of Section 2A under Clause 10, which calls for the establishment of separate Bohra and Agakhani Waqf Boards, has already been addressed in detail during the discussion on **Clause 3(i)** and **Clause 3(ii)**. For the sake of brevity and to avoid redundancy, the arguments presented there are not repeated here. However, it is reiterated that such provisions are unwarranted and redundant, and therefore, this amendment is not supported.
14	**Clause 12**	**Sec. 16: Disqualification for being appointed, or for continuing as a member of Board** *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 less than twenty-one years of age;"* *(aa) in case a member under clause (c) of sub-section (1) of section 14, is not a Muslim;* *(b) he is found to be a person of unsound mind;* *(c) ; he is an undischarged insolvent;* *(d) he has been convicted of any offence and sentenced to imprisonment for not less than two years;* *(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*	The substitution of clause (a) with "he is less than twenty-one years of age" and the insertion of clause (aa), stating "in case a member under clause (c) of sub-section (1) of section 14, is not a Muslim," introduces unnecessary provisions that serve no practical purpose. Such amendments are redundant and do not contribute meaningfully to the administration or objectives of the Waqf Act. The proposed amendment to Section 16 of the Principal Act, as introduced under Clause 12, is unwarranted. Therefore, this amendment should be deleted.

		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."*	
15	**Clause 13**	**Sec 17: Meetings of the Board** *The Board shall meet atleast once in every month at such time and places as may be provided by the regulation.*	The proposed provision mandating that the Board meet at least once every month for the transaction of business is impractical and poses operational challenges. Given the diverse composition of the Board and the professional commitments of its members, it is unlikely that all members will be available to meet every month. This rigid requirement could lead to delays in decision-making and ultimately hamper the effective administration of Waqf properties. Such a provision is both bogus and unreasonable.
16	**Clause 14**	**Sec 20A: Removal of Chairperson by vote of no confidence** *OMITTED*	The removal of the Chairperson of the Waqf Board under Section 20A of the Waqf Act, 1995, through a vote of no confidence, ensured a democratic process for accountability. The proposed removal of this democratic element undermines representative governance, transparency, and trust in the administration of Waqf properties. Such a change subverts the principles of accountability, which are critical to the effective functioning of Waqf Boards. This amendment is regressive and should be reconsidered.
17	**Clause 15**	**Sec-23: 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 to be appointed by the State Government and who shall be not below the rank of Joint Secretary to the State Government.*	In several religious endowment laws, such as the **Uttar Pradesh Kashi Vishwanath Temple Act, 1983 (Section 3)**, **Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Section 10)**, **Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Section 3(2))**, and **Orissa Hindu Religious Endowments Act, 1951 (Section 6)**, it is mandated that key positions like **Chief Executive Officer or equivalent roles** must be held by individuals **professing the Hindu**

			religion. Denying a similar provision for Waqf Boards is discriminatory and undermines the religious character and autonomy of Waqf institutions. In the draft report of the JPC (Para 15.3, Page 185), the justification given by the Ministry of Minority Affairs refers to Section 96 of the Waqf Act, 1995, which mentions the Central Government's power to regulate secular activities of Auqaf in relation to the functioning of the Central Waqf Council and State Waqf Boards, as justification for the appointment of a non-Muslim CEO. However, this justification is flawed. The Central Government's power to regulate secular activities by laying down general principles and policies does not extend to overriding the fundamental religious character of Waqf institutions. The powers granted to the CEO of Waqf Boards are not confined to merely secular activities. Instead, they include broad authority to control, maintain, and superintend Auqaf, which goes beyond what is deemed "secular". Allowing the appointment of non-Muslims to such a role is inconsistent with the religious essence of Waqf and infringes upon the autonomy guaranteed to religious institutions. This amendment should be reconsidered to preserve the integrity and intent of the Waqf framework.
18	**Clause 16**	**Sec 32: Powers and Functions of the Board** *(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)*	The proposed amendment in this section has omitted the finality of the orders of the Tribunal. Such lack of finality in the judgments of the Waqf Tribunal, particularly in matters related to the utilization of the surplus income of Waqf properties, negatively affects the Tribunal's efficiency and purpose as a specialized body for resolving Waqf-related disputes. The absence of finality creates additional layers of litigation,

		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…* . *(6) 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;*	delays resolution, and diminishes the Tribunal's authority. This provision not only hampers the effective management of Waqf but also erodes the trust placed in the Tribunal as an expert body for adjudicating Waqf matters. The principle of finality, subject to High Court review, must be retained to ensure swift and conclusive dispute resolution. Hence, the proposed amendment in its current form is bogus and needs to be reviewed again.
19	**Clause 17**	**Sec- 33: Powers of inspection by CEO or persons authorised by him** (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 proposed amendment under Clause 17(b) omits the finality of the Tribunal's order relating to instances where the Chief Executive Officer (CEO) finds a mutawalli or any officer guilty of misappropriating Waqf money or Waqf property. The removal of finality from Tribunal orders undermines its authority and creates unnecessary delays in resolving disputes. Hence, the proposed

		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;	amendment should be deleted in it's entirety
20	**Clause 18**	**Sec 36: Registration** **(1A):** *On and from the commencement of the Waqf (Amendment) Act, 2024, no waqf shall be created without execution of a waqf deed…* *(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."* *"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.*	The introduction of Section 36(1A) in the Waqf Amendment Bill, 2024, mandating that no Waqf shall be created without the execution of a Waqf Deed, fundamentally violates the principles of Muslim Law. Islamic jurisprudence explicitly recognizes the validity of oral gifts (hiba) and oral wills (wasiyath), provided they are executed in the presence of competent witnesses. Insistence on documentary proof as a mandatory precondition disregards these well-established tenets of Islamic law and unjustifiably restricts the creation of waqf, undermining the religious freedoms and practices guaranteed under the Constitution. This provision should be reconsidered and omitted to preserve the integrity of Muslim Law and the rights of the community. Additionally, The insertion of the proviso after Section 36(10) of the Waqf Act, 1995, which states "*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*" is fundamentally flawed. This provision imposes conditions that, if not complied with, extinguish legal rights, rendering it a mere face-saving provision. Such an impractical and unreasonable amendment will only create procedural hurdles and should be dropped entirely.
21	**Clause 19**	**Sec- 37: Register of Auqaf** (3) On receipt of the details, the land record office shall, "before	The proposed amendment to Section 37(3) of the Waqf Act, 1995, introduces an additional condition requiring public notice of ninety days to

		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	be issued in two daily newspapers, one of which must be in the regional language, before recording entries in the Register of Auqaf. This imposes unnecessary delays and administrative hurdles, creating a cumbersome process that will obstruct the efficient administration of Waqf properties. Moreover, no other religious endowments legislation imposes such onerous conditions for recording entries in land records. This provision is discriminatory, and excessive, and should be deleted in its entirety to ensure parity and administrative efficiency.
22	**Clause 20**	**Sec-40: Decision if a property is a Waqf property** *OMITTED*	The omission of Section 40 of the Waqf Act, 1995, contradicts the very objective of the Act, which is aimed at ensuring the "better administration of Auqaf and for matters connected therewith or incidental thereto." Section 40 empowers the Waqf Board to declare any property as Waqf property based on information gathered, thereby enabling effective management and oversight of Waqf properties. Eliminating this provision undermines the authority and functionality of the Waqf Boards, leaving them disempowered and unable to fulfill their statutory role of safeguarding Waqf properties.
23	**Clause 21**	**Sec 46: Submission of accounts of Auqaf** *Before the 1st day of October next, following the date on which the application referred to in section 36 has been made and thereafter before the 1st day of October in every year, every mutawalli of a waqf shall prepare and furnish to the Board a full and true statement of*	The proposed amendment extending the deadline for submitting financial reports to October, despite the financial year ending on 31st March, unnecessarily delays the administrative process. Such delays subvert accountability and disrupt the efficient functioning of Waqf Boards. Hence, this provision should be reconsidered to ensure timely action and transparency in financial management. Hence, I put my dissent for this proposed amendment.

		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	
24	**Clause 22**	**Sec 47: Audit of accounts of Waqf** *(1) The accounts of auqaf submitted to the Board under section 46 shall be audited and examined in the following manner, namely:—....* *(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.* *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*	The proposed amendment under clause 22(a)(iii) inserts a proviso that authorizes the Central Government to direct the audit of any Waqf by an auditor appointed by the Comptroller and Auditor General of India (CAG) or any officer designated by the Central Government, is deeply concerning. Waqf properties, being private religious properties, should fall under the jurisdiction of the respective State Governments. The involvement of the CAG in auditing private religious properties is not only unnecessary but also an overreach, as it dilutes the autonomy of Waqf Boards and State Governments in managing Waqf properties. I strongly disagree with this provision and respectfully register my dissent.
25	**Clause 23**	**Sec- 48: Board to pass orders on auditor's report** (*3) The Order made by the Tribunal shall be final;*	Under Section 48 of the Waqf Act, 1995, the Board examines the Auditor's Report and passes orders as it deems fit. Any person aggrieved by such an order has the right to approach the

		OMITTED	Tribunal. The proposed omission of the clause stating that the "Order of the Tribunal be final" subverts the Tribunal's authority and effectiveness as a specialized body for resolving Waqf-related disputes. The finality of the Tribunal's decisions is critical for swift and conclusive resolution of matters, and removing this provision creates unnecessary layers of litigation, delays justice, and complicates the Waqf administrative framework. Tribunals are constituted as specialized forums with expertise to address specific issues, and snatching away the final authority from the Tribunals, dilutes their purpose and credibility. Therefore, this proposed amendment be omitted.
26	**Clause 24**	**Insertion of Sec- 50A:** *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.".*	The proposed insertion of Section 50A, which introduces provisions for the disqualification of a Mutawalli, is entirely redundant. Section 64 of the Waqf Act, 1995 already contains comprehensive provisions for the removal of a Mutawalli. Introducing a separate section for disqualification not only duplicates the existing legal framework but also creates unnecessary confusion and complicates the administration of Waqf properties.
27	**Clause 25**	**52. Recovery of waqf property**	The proposed amendment to Section 52 omits the

		transferred in contravention of section 51 *(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 situated;*	provision stating that the "decision of the Tribunal on such appeal shall be final." For the sake of brevity, I am not repeating the arguments I have already made regarding the importance of maintaining the finality of the Tribunal's decisions. However, the same principle applies here. Removing the finality of the Tribunal's orders undermines its authority as a specialized body and introduces unnecessary layers of litigation, which will delay justice and compromise the efficient resolution of disputes. I respectfully register my dissent on this proposed amendment.
28	**Clause 26**	**52A. 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 imprisonment for a term which may extend to two years*	Section 52A of the Waqf Amendment Bill, 2024 dilutes the provisions of the Waqf Act, 2013. The 2013 Act imposed "rigorous imprisonment" for alienation, purchase, or possession of Waqf property without the prior sanction of the Waqf Board. The proposed amendment replaces "rigorous imprisonment" with "imprisonment," thereby reducing the severity of the punishment. This jeopardizes the protection of Waqf properties. Hence, the proposed amendment is bogus and needs to be reconsidered.
29	**Clause 27**	**55A. Disposal of property left on waqf property by unauthorised occupants** *(2) Proviso: 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.*	The proposed amendment to Section 55A removes the proviso that the "decision of the Tribunal shall be final." For the sake of brevity, I reiterate my earlier arguments on the importance of upholding the finality of the Tribunal's decisions to ensure efficiency and certainty in Waqf-related disputes. I respectfully dissent against this amendment.

30	**Clause 28**	**Sec- 61: Penalties** (*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."*	The newly inserted clause imposes imprisonment of up to six months and a fine ranging from ₹20,000 to ₹1 lakh for failures such as uploading details under Section 3B, providing statements of accounts under Section 46, or complying with directions of the Collector or the Board. Merely a delay in uploading details or failing to carry out such directions may unjustifiably lead to imprisonment, which is unreasonably harsh and draconian.
31	**Clause 29**	**Sec-64: 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—* *(l) is a member of any association which has been declared unlawful under the Unlawful Activities (Prevention) Act, 1967.*	The newly inserted clause (l) states that a Mutawalli can be removed if they are a member of an association declared unlawful under UAPA. With the frequent use of UAPA, this provision can be easily misused, as it allows a person to be removed as a Mutawalli and jailed even before they have a chance to seek legal remedies. I respectfully register my dissent for this provision.
32	**Clause 30**	**Sec- 65. Assumption of direct management of certain auqaf by the Board** *(3) Within six months 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*	The proposed amendment replaces the phrase "as soon as possible" with a rigid six-month deadline for submitting reports to the State Government. The original wording under the Waqf Act, 1995, allowed for immediate submission based on the urgency of the situation, ensuring responsiveness. A fixed six-month deadline may encourage delays, deferring action until the deadline and potentially hampering the efficiency of Waqf

		therein…	management and reporting. Thus, the proposed amendment be omitted.
33	**Clause 31**	**67. Supervision and supersession of committee of Management** *(6) Second Proviso: 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.*	The proposed amendment omits Section 67(6), second proviso under the Waqf Act, 1995 stating that "the order made by the Tribunal in such appeal shall be final." For the sake of brevity and to avoid duplication, I am not reiterating my earlier arguments on the importance of maintaining the finality of Tribunal orders. The same rationale applies here.
34	**Clause 32**	**Sec 69: Power of Board to frame scheme for administration of Waqf** *(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* *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;*	The proposed amendment requiring a written notice inviting objections from the general public, in a manner prescribed by the Central Government, is unnecessary and creates undue interference in Waqf administration. Waqf properties are religious endowments governed by specific religious and legal principles, and their management should remain within the jurisdiction of the Waqf Board and concerned stakeholders. Involving the general public in decisions regarding Waqf administration opens the door for frivolous objections. Such an amendment disregards the community-driven nature of Waqf and imposes excessive bureaucratic oversight. Therefore, I dissent from this provision.
35	**Clause 33**	**Sec 72: Annual contribution payable to Board**	The proposed amendment requires Mutawallis of waqfs with a net annual income of not less than

		(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 five percent, subject to a maximum amount as prescribed by the Central Government of such annual income, as may be prescribed, to the Board for the services rendered by such Board to the waqf.	₹5,000 or more to pay an annual contribution to the Waqf Board, not exceeding 5% of the net income subject to a maximum amount as prescribed by the Central Government. This last statement of subject to the maximum amount as prescribed by the Central Government creates uncertainty. This provision allows for arbitrary ceilings to be imposed by the Central Government, which could potentially spoil the financial autonomy of the Waqfs.
36	**Clause 34**	**Sec. 73: Power of CEO to direct banks or other persons to make payments** *(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;*	Clause 34 of the amendment omits the phrase "and the decision of the Board thereon shall be final". Without finality in the decisions of the Tribunal or the Board, a mutawalli aggrieved by the CEO's assessment may face prolonged litigation. This opens unnecessary avenues for disputes, delays in resolution, and disrupts the administrative efficiency of waqf management. I respectfully dissent against this amendment, as it will create avoidable procedural hurdles.
37	**Clause 35**	Sec 83: **Constitution of Tribunals, etc.** *(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*	While it is commendable that the JPC has reinstated the provision for at least one member of the Tribunal to possess knowledge of Muslim law and jurisprudence under Clause 35(c), the effectiveness of this inclusion is negated by Clause 35(e), which states that the Tribunal's orders shall not be final. On one hand, the Tribunal is being strengthened by ensuring relevant expertise for adjudicating Waqf-related disputes, but on the other hand, its authority is undermined by removing the finality of its decisions. This contradiction renders the Tribunal ineffective as a specialized body for resolving Waqf disputes and disrupts the efficiency of the

		of Muslim law and jurisprudence, Member;... (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.*	adjudication process. The provision for the omission of the finality of the decision of the Tribunal is baseless and should be reinstated to its original position.
38	**Clause 37**	**Sec 91: Proceedings under Act 1 of 1894** ***(****4) 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 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 kept in abeyance relating to portion of the property claimed by the Board, within one month of its coming to know of the order, applies in this behalf to the authority which made the order.*	Under Clause 37(c)(ii), any order under Sections 31 or 32 of the LARA Act, 2013, passed without giving the opportunity to the Board to be heard, shall be kept in abeyance for the portion of the property claimed by the Board. This dilutes the protection by merely placing the order in abeyance, leaving Waqf properties vulnerable to prolonged disputes and uncertainty, which could severely impact their administration and sanctity. Hence, I propose my dissent.
39	**Clause 38**	**Sec-100: Protection of action taken in good faith** *No suit or other legal proceeding shall lie against the board or Chief Executive Officer or* ***Collector*** *or any other person duly appointed under this Act*	The proposed amendment under Section 100 of the Waqf Act, 1995 grants legal immunity to the Collector, for actions taken under the Waqf Act. This raises serious concerns as the Collector, being a representative of the Government, often has a conflict of interest, given that many Waqf property disputes are mostly with the State itself. Unlike the Survey Commissioner, who is a specialized authority with expertise in Waqf laws and land administration, the Collector's decisions may be influenced by these conflicts. Providing such immunity could shield biased or questionable actions under the guise of "good faith", thereby adversely impacting the

			accountability, impartiality, and fair administration of Waqf properties. Hence, I respectfully propose my dissent.
40	**Clause 39**	**Sec- 101: Collector, Members and Officers of Board:** *(1) The Survey Commissioner, members of the Board, every officer, every auditor of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code*	Survey Commissioners are trained in Waqf laws and land administration, ensuring dedicated oversight and impartiality. In contrast, the Collector, as a representative of the State, may face conflicts of interest since many disputes regarding Waqf properties involve the State itself. This amendment risks bias in favor of the State and compromises the fair and effective management of Waqf properties. Hence, I respectfully dissent.
41	**Clause 40**	**Sec- 104: Application of Act to properties given or donated by persons not professing Islam for support of certain waqf** *OMITTED*	The Waqf Enquiry Committee Report, 1976, explicitly clarified that the "Waqif" (donor) need not be a Muslim, provided the purpose of the Waqf is pious and charitable in accordance with Islamic principles. The proposed amendment not only negates the Waqf Enquiry Committee Report, 1976 but also contradicts India's spirit of inclusivity and pluralism. Such provisions go against the values of harmony and cooperation that are the foundation of our secular democracy. Hence, I respectfully submit my dissent for this provision.
42	**Clause 40A**	**Insertion of Clause 40 A:** *"On and from the commencement of the Waqf (Amendment) Act, 2025 The Limitation Act, 1963 (36 of 1963) shall apply to any proceedings in relation to any claim or interest touching upon immovable property comprised in a waqf."*	Under Clause 40A of the proposed amendment, the Limitation Act, 1963 is made applicable to the proceedings related to waqf properties on and from the commencement of the Waqf (Amendment) Act, 2025. The purpose of excluding the application of the Limitation Act, 1963, from the Waqf Act, was to protect Waqf properties from the concept of adverse possession. The introduction of Clause 40A, would enable

			occupiers who have remained in possession of Waqf properties without timely action from the Waqf Board or Mutawalli to claim ownership. This would result in Waqf properties becoming adverse to the Waqf and ultimately being lost. For the reasons mentioned herein, I believe the said proposed amendment may work against the interests of the very community it claims to serve. Hence, I dissent from this provision.
43	**Clause 41**	**Sec-108: Special provision as to evacuee property** **Sec-108A: Act to have overriding effect** *OMITTED*	The proposal to omit Section 108, which mentions special provisions as to evacuee waqf properties. Removing these provisions would unsettle titles established before 1950, leading to disputes over long-recognized Waqf properties and causing irreparable harm to Waqf interests. Similarly, the proposed removal of Section 108A, which ensures the overriding effect of Waqf laws over other inconsistent laws, is arbitrary and unfounded. The elimination of this protective provision exposes Waqf properties to the risk of being adversely impacted by conflicting regulatory requirements in other laws, such as registration and stamp acts. This would create avenues for encroachment and dispossession of Waqf properties, counteracting the intended protection under Waqf legislation. For these reasons, I strongly oppose the proposed omissions of Sections 108 and 108A and respectfully register my dissent to these amendments.
44	**Clause 42**	**Newly inserted clause** **Sec- 108B: Power of the Central Government to make rules**	The proposed amendment, which imposes a centralized framework for the administration of Auqaf, disregards the unique local specificities and diverse needs of different states. Such a one-size-fits-all approach risks disrupting the effective administration of Auqaf instead of improving it.

			The administration of Waqf properties requires sensitivity to regional practices, cultural nuances, and state-specific challenges. By enforcing a uniform framework, the amendment snatches away the autonomy and efficiency of state-level Waqf Boards, potentially derailing the very objective of ensuring better Waqf governance. For these reasons, I believe the newly inserted Section 108B is bogus in nature. Hence, should be deleted.
45	**Clause 43**	**Sec 109: Power to make rules** **(iv)** *The manner of election of members of the Board by means of a single transferable vote* is OMITTED	The omission of the provision under Section 109(iv), which mandates the election of members of the Board by means of a single transferable vote, removes a crucial democratic element from the functioning of the Waqf Boards. This amendment is contradictory to the principles of accountability and representative governance, which are essential for maintaining transparency and trust in the administration of Waqf properties. The election process ensures that diverse voices and perspectives are represented on the Board, which further perpetuates inclusivity and fairness in decision-making. By removing this provision, the proposed amendment risks centralizing power and eroding the trust of stakeholders in the governance of Auqaf. For these reasons, I believe the provision should again be reconsidered.
46	**Clause 44**	**Sec-110: Power to make regulations by the Board** ***(2)*** *In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the matters:* ***(****(f) the forms of application for registration of auqaf of further*	The proposed omission of Section 110(f) and (g), which grants the Waqf Board the power to regulate the forms of application for the registration of auqaf and determine the particulars to be included in the register of auqaf, is concerning. Stripping the Waqf Board of these essential regulatory powers disempowers the Waqf Board and its ability to ensure proper oversight, administration, and protection of Waqf properties. These functions are fundamental to the Board's role in maintaining transparency and

		particular to be contained in… *(g) further particulars to be contained in the register of Auqaf* be OMITTED	accountability in the management of Waqf assets. Without these powers, the Board's capacity to fulfill its statutory duties effectively is severely compromised. For these reasons, such an amendment is unwarranted, redundant, and must be removed.

CONCLUSION

1.Waqf is a religious act under Islam since inception.

2. After independence this religious act of Islam has been protected by our Constitution, particularly by Article 25 & 26 of the Constitution.

3.Due to the protection accorded by our Constitution to this religious act of Islam, no change or alteration can be introduced into the peculiar character of this religious act. Even a minor alteration to its definition is constitutionally impermissible. As the same is beyond the legislative competence of the house.

4. The amendments proposed in the Waqf (Amendment) Bill, 2024 are deeply flawed, unnecessary, and detrimental to the governance and protection of Waqf properties. Instead of improving transparency and efficiency, the Bill seeks to disempower Waqf Boards, dilute judicial safeguards, and introduce bureaucratic hurdles that serve no real purpose.

5.

The proposed amendments, if enacted, will lead to litigation, encroachment, and loss of autonomy over Waqf institutions, ultimately violating the constitutional rights of the Muslim community.

In light of these substantive objections, I strongly dissent from the Bill in its present form and urge that it be reconsidered in its entirety.

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Congress Parliamentary Party in the Lok Sabha

সত্যমেব জয়তে

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Date:29.01.2025

To
Shri Jagdambika Pal
Chairperson,
Joint Committee of Parliament on Waqf Amendment Bill, 2024
Parliament House,
New Delhi

Re: Note of Dissent on the Draft Report and Bill Circulated

I have received copies of the draft Report of the Joint Committee of Parliament (**"Committee"**) on the Waqf (Amendment) Bill, 2024 (hereinafter referred to as "2024 Waqf Bill") which were deliberated upon by the Committee.

After a compressive reading and analysis of the draft Report and the version of the Bill circulated for adoption by the Committee, it is my considered opinion that the draft Report and the Bill fail to address or remedy any substantive concerns raised before the JPC.

(A) The Bill does not elaborate or reason the necessity of introducing amendments which clearly diminish, erode and destroy certain essential and fundamental characteristics of Waqfs in India;

***For example,* the Bill has amended the definition of Waqfs and de-recognized/omitted the 'Waqf by Users'.**

Despite the Government's own records reflecting that 4.02 lakhs of the total 8.72 lakhs recorded Waqf Properties fall under the definition of 'Waqf by User,' the Bill has sought to remove the concept of Waqf by User in its entirety and leaves no scope for any such Waqfs to exist in India.

The Bill does claims to offer protection to 'Waqf by User' by introducing a proviso to the effect that the omission of the term 'Waqf by User' of the Waqf may apply prospectively and the cases of existing Waqf properties already registered as Waqf by user will not be reopened and will remain as Waqf properties. However, this protection is subject to the fact that the 'Waqf by User' property wholly or in part must not be involved in a dispute or be a Government property.

Any bad-faith actor can institute a litigation over any part of the properties belonging to the Waqf by User and consequently prevent it from seeking any protection under the Amended Act.

In fact, most Waqf by User comprise Mosques, Graveyards and Orphanages, and as a consequence of the said amendment, these sites can now be owned and controlled by the Government, who have no religious, cultural or statutory obligation to either maintain or retain the structures existing on the Waqf Property.

(B) The Bill allows excessive Government interference in the functioning, control and management of Waqf and Waqf Properties in India; this has a detrimental impact on the community as well as the institution of the autonomy, which are necessary to administer the institution;

***For Example,* the Bill Introduces the Collector to replace the State Government appointed Survey Commissioner. Consequently, the Collector has been granted unbridled powers over the Waqf and its properties. Furthermore, the Bill delegates the Central Government with rule making powers on virtually all matters related to the Waqfs.**

Contd../-

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Further, the Bill allows extensive State interference in the functioning of Waqf Boards as well as Councils. Consequently, it has reversed the burden of proof on Waqfs to claim and prove a property to be validly and legally belonging to the Waqf. In the interim, the Bill claims to declare all disputed or litigated property as being 'Government Property'.

(C) The unconstitutionality and legal infirmities of certain provisions of the Bill are writ large, yet not properly addressed despite the formation of the Committee;

For Example, the Bill infringes upon the personal laws of Muslims governing inheritance and Waqfs. The Bill has sought to amend the concept of 'Waqf al Aulad,' and force the inheritance laws into Waqfs.

Further, the Bill has diluted the finality and decision making powers of the Waqf Tribunals and consequently allowed for elongating Waqf related litigation.

(D) The absence of consultation under the Pre-Legislative Consultation Policy of 2014 is writ large in the Bill. This itself raises a grave concern over the actual intent of the Government to seek these drastic amendments in the Waqf Act, 1995;

For Example, for the pre-legislative consultation stage, the Committee as well as the Ministry of Minority Affairs has failed to produce any record of proper consultation with civil society and key Muslim organizations while drafting the bill.

In fact, the majority of Muslim organisations holding expertise in Islamic law were clearly opposed to the Bill during their presentation before the Joint Committee. However, the draft report and recommendations failed to take their views into proper consideration.

Having been a member of the Committee, I can say with confidence that the committee has rushed through its mandate in a manner which is both polemic and perfunctory. Insufficient time and opportunity have been granted for legitimate stakeholder consultation. In fact, to the contrary, bad faith actors who are self-professedly inimical to institutions such as the Waqf have been called to give their opinion.

While I have had my reservations over the functioning of the present Committee, however being a responsible member, I am hereby placing on record my dissent note.

I express my dissent under Direction 85 of the Rules of Procedure and Conduct of Business in Lok Sabha. I strongly oppose the Bill on the grounds that it is contrary to its stated objective, actively works against the interest of Indian Muslims and based on a complete lack of understanding of the institution of Waqf.

(Gaurav Gogoi)

DISSENT NOTE

I.

REMOVAL OF 'WAQF BY USER' FROM THE WAQF ACT, 1995

1. The concept of 'Waqf by user' recognises properties that have, from '*time immemorial*', been used for religious or charitable purposes, as Waqfs, even if there has been no express dedication to that extent[1]. In fact, **the principle of recognising a religious endowment by way of use is certainly allowed in other statutes governing religious and charitable endowments.**

2. In ***Court of Wards for the Property of Makhdum Hassan Bakhsh v. Ilahi Bakhsh and Ors***, **[1912 SCC OnLine PC 45]**, the Hon'ble Bombay High Court was tasked with determining whether or not a particular graveyard in the city of Multan constituted a Waqf, without there being any express dedication to that effect. In this background, the Hon'ble High Court held as follows:

> *"11. Their Lordships agree with the Chief Court in thinking that* ***the land in suit forms part of a graveyard set apart for the Mussulman community, and that by user, if not be dedication, the land is Waqf."***

3. The Hon'ble Courts have repeatedly upheld the validity of the concept of a 'Waqf by User'. In fact, a 5-Judge Bench of the Hon'ble Supreme Court in the case of ***M. Siddiqi v. Mahant Suresh Das (Ram Janmabhoomi case),* (2020) 1 SCC 1** explicitly held that as per Muslim law, the dedication of a Waqf need not necessarily be an express declaration in every case; and the same can be reasonably inferred from the facts and circumstances. The relevant extract is reproduced herein below;

> ***"1125. 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 declaration, the existence of a Waqf can be legally recognized in situations where property has been the subject of public religious use since time immemorial."***
>
> ***"1134. Our jurisprudence recognizes 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."

4. As per Government data, there are 8.72 lakh properties that are Waqf properties out of which 4.02 lakhs (as listed on page 25 of the document) are recognized by way of Waqf by user. The Government has admitted that approximately 50% of the waqf properties are recognized by way of 'Waqf by User', thereby highlighting its immutable historical status.

5. However, without appreciating or even considering the consistent and positive stand taken in judicial pronouncements, the Bill, has failed to acknowledge this century long practice and has omitted the entire concept of 'Waqf by User'. In fact, the Bill is silent on any proper explanation justifying the said definition of 'Waqf by User'.

6. Now as per the Committee, in order to evade the apprehensions associated with this amendment, it has proposed that the omission of the term 'Waqf by User' of the Waqf may apply prospectively and the cases of existing Waqf properties already registered as Waqf by user will not be reopened and will remain as Waqf properties. However, I have a specific objection to this i.e.,

    a. *Firstly*, there still remains no reasonable explanation for omitting a judicially recognized and historically significant definition of Waqf;

    b. *Secondly*, even the purported protection is nullified by the 'condition' that the 'Waqf by User' property wholly or in part must not be involved in a dispute or be a Government property.

Any bad-faith actor can institute a litigation over any part of the properties belonging to the Waqf by User and consequently prevent it from seeking any protection under the Amended Act.

7. Interestingly, the Bill claims to contain another purported protection/exemption for the Waqf by User, i.e., under Section 3B(1) and (2), the Waqf by User (and his properties) can seek registration within a period of 6 months of the new Act. However, the registration as provided in the portal, firstly, seeks details of the creator of a Waqf – which may not be readily available in cases of Waqf by User; and *secondly* it does not provide any express/explicit exemption for registering Waqf by Users.

From the above, it is clear that the Union intends to omit the concept of Waqf by User in its entirety and leaves no scope for any such Waqfs to exist in India. With over 4 lakh properties falling under the category of Waqf by User, it would be highly probable that majority of the properties shall now be deemed to Government land. In fact, most Waqf by User comprise Mosques, Graveyards

and Orphanages, and as a consequence of the said amendment, these sites will now be owned and controlled by the Government, who have no religious, cultural or statutory obligation to either maintain or retain the structures existing on the Waqf Property.

II.

INSERTION OF INHERITANCE RIGHTS IN 'WAQF-ALAL-AULAD' - CONTRARY TO FUNDAMENTAL AND ESSENTIAL CHARACTERISTIC OF A WAQF.

8. In its essence, the beneficiaries of *Waqf-alal-aulad*, include the descendants of the Waqif (till such time the line of succession fails). Once the line of succession of the Waqif fails, the income of the Waqf properties is utilized for public welfare, education, development and other pious purposes under the tenets of Islam.

9. The cardinal principle of Waqfs is that once a Waqf is created by a Waqif, the property vests with God and cannot be divested from his ownership. Hence, there cannot be any inheritance rights attached to such a subject. The said principle has been affirmed in a series of judicial pronouncements. In the ***Assam Board of Wakf v. Khaliquor Rahman and Ors*, [1994(1) G.L.R. 28]**, the Hon'ble Gauhati High Court categorically held that once a property is dedicated as Waqf, it is immediately transferred to 'God' and that once a property became a Waqf, it could not be revoked from 'God', nor can 'God' be divested of this property.

10. The Hon'ble High Court also held that once a property becomes a Waqf, it remains so in perpetuity, even if the terms of the Waqf are breached or the Mutawalli misuses their office. As per the Hon'ble High Court, whether the provisions of the Waqf Act are fulfilled or not only raises issues of breach of trust, not the validity of the Waqf itself. The relevant paragraph is reproduced herein below:

> *"The property whether movable or immovable must belong to the waqf. A waqf is void for uncertainty. The waqf can be created by a deed or by a will and if it is created by a deed and the property is immovable, and worth more than Rs. 100/-, it has to be registered. A waqf can be revoked only if it is made by a will and such revocation must be any time before death of a waqif.* ***As soon as the waqf is created, the property at once passes to the God and neither it can be revoked nor the God can be divested from the property and the waqf, even if there are any subsequent breaches of the terms of the waqf or abuse by the mutawalli of his office. It is also immaterial whether provisions of the waqf are carried out or not for that it is a matter of breach of trust only. It is also immaterial whether in case of immovable property whether the property was***

mutated in the name of waqf or personal name of the mutawalli in the revenue record"

11. The High Court of Punjab and Haryana at Chandigarh in ***Gram Panchayat of Village Budho Pundher v. Punjab Wakf Board and Others*** [Cr-1812-2014 (O&M)] adjudicated a dispute over parcel of land and its classification as property of a waqf or property of the gram panchayat. It relied upon the judgment passed by the Hon'ble Supreme Court in ***Syed Mohd. Salie Labbai (dead) by LRs and others v. Mohd. Hanifa (dead) by LRs and others*** [1976 4 SCC 780] to hold that once a waqf is declared as such, it vests in the public and constitutes a waqf and it cannot be divested by non-user but will always continue to be so whether it is used or not.

12. The permanence of the Waqf and its characteristics have been affirmed in a plethora of judgments by the Hon'ble Courts. In ***Sayyed Ali and Others v. Andhra Pradesh Wakf Board Hyderabad and Ors,*** **[(1998) 2 SCC 642]**, the Hon'ble Supreme Court held that *"wakf is a permanent dedication of property for purposes recognised by Muslim law as pious, religious or charitable and the property having been found as Wakf would always retain its character as a Wakf. In other words, once a Wakf always a Wakf".*

13. Now the amendment attempts to apply the laws of inheritance and rights of the heirs of the Waqif to a *Waqf-alal-aulad*. This is contrary to the cardinal principles of Waqf. To introduce the concept of inheritance and succession rights for the beneficiaries of the *Waqf-alal-aulad* sought by the proposed amendments would lead to an inherently flawed situation where the ownership of the *auqaf* (Waqf property) would no longer vest in God but in the heirs of the waqif. This also violates Section 104A of the Waqf Act, 1995, which expressly *prohibits the sale, gift, exchange, mortgage or transfer of any moveable or immovable property which is a waqf.*

14. In view of the above, I submit that the proposed amendment suffers from a fundamental misconception about the characteristics of the Waqf. A Waqif, from the moment of the Waqf, is divested from any ownership to the said property whose ownership rests with Allah in perpetuity.

III.

UNBRIDLED POWER GRANTED TO THE COLLECTOR TO DECIDE ON TITLE OF WAQF, CONTRARY TO ESTABLISHED PRINCIPLES OF LAW ON POSSESSION OF PROPERTY, PRESUMPTION OF OWNERSHIP AND BURDEN OF PROOF

15. In place of the Survey Commissioner, who was earlier appointed by the State Government for this specific purpose, the Bill now grants the power of conducting surveys of Waqf properties to the Collector of the concerned

district or any such person authorised by him, not below the rank of a Deputy Collector.

16. Consequently, with Section 3C (2), the Bill omits powers of the Waqf Board (under Section 40 of the Waqf Act, 1995) to decide if any property is Waqf property and vests the Collector with the same. The proposed amendment grants the Collector unbridled powers and authority to decide on whether a property is Waqf or Government property.

17. **However, the Bill has not taken the fact into consideration that the Collector, being a part of the Revenue Court and in charge of maintaining revenue records, can in no way grant title to the property under Section 4, read with Section 3C of the Bill.**

18. The Hon'ble Supreme Court has time and time again reiterated that the *"revenue records are not documents of title"*, and that they do not vest the rights of ownership of the property to the individuals named in the land records. In the case of ***State of Himachal Pradesh* v. *Keshav Ram and Ors*** **[(1996) 11 SCC 257]** the Hon'ble Supreme Court held that:

> *"5. the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff."*

19. With this Amendment, if a question arises as to whether a property is a Waqf or Government property, such property shall not be treated as Waqf till the Collector submits a Report to the State Government. There is no timeline prescribed for the Collector, within which they must submit the Report to the State Government.

20. Under Section 113 of the recently enacted, The Bharatiya Sakshya Adhiniyam, 2023, *"When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."* However, this burden of proof has now shifted on the Waqf Board/ Mutawallis to prove to the Collector that the property that they have been in possession of and utilizing as a Waqf is indeed a Waqf. This is in clear contravention of the settled law and presumptions applicable to the position of parties in suits where the title of a said property is under challenge.

21. The Hon'ble Supreme Court in **Churamal v. CIT [(1988) 3 SCC 588]**, had to decide on the whether the Petitioner would be deemed to be the owner of watches that were found in his possession under Section 110 of the Evidence Act, 1872, and thus liable to taxation. The Hon'ble Supreme Court considering the facts and circumstances held that:

"6. ...Section 110 of the Evidence Act is material in this respect and the High Court relied on the same which stipulates that when the question is whether any person is owner of anything of which he is shown to be in possession, the onus of proving that he is not the owner, is on the person who affirms that he is not the owner. In other words, it follows from well settled principle of law that normally, unless contrary is established, title always follows possession."

IV.
STRIPS THE WAQF CHARACTERISTIC OF ANY DISPUTED PROPERTY BELONGING TO A WAQF – DISPUTE THEN IT BECOMES GOVERNMENT PROPERTY.

22. The Collector has been mandated under Section 36(7) of the Bill to enquire into the genuineness and validity of the application of Waqfs and correctness of any particulars therein and submit a report to the Board. Under Section 36(7A), the Collector has the authority to recommend that a property not be registered as a Waqf, if they are of the opinion that the property is, wholly or in part, in dispute or a government property.

23. **The direct consequence of the proposed amendments would be that (i) anyone can allege a Waqf to be a government property, and such property would immediately cease to be part of the Waqf; (ii) a Collector on his own whims can initiate an inquiry into the validity of a Waqf; and in the meantime as the Waqf ceases to be a Waqf, the said Collector becomes the de facto owner of the property to use it in any manner it deems fit, while granting him immunity from any legal proceedings being initiated against the Collector.** Such unrestricted interference by the State machinery in Waqf is not only illegal but also opens the floodgates of unchecked corruption, with the potential for causing significant loss to the Waqfs.

24. This will allow bad faith actors to misuse the said provision in their attempt to divest waqf of their lawful properties by declaring them under dispute or in turn, government properties.

V.
THE BILL HAS DELIBERATELY SUBVERTED MUSLIMS FROM THE ADMINISTRATION OF WAQF AND WAQF BOARDS; AND DIVESTED CONTROL OF THE WAQF BOARD OF ITS ROLES AND POWERS

25. While the entire aim and object of a Waqf is the upliftment of the Muslim society, the Bill has deliberately attempted to dilute the control of Muslims over the management of Waqfs. The Bill has;

a. Omitted the democratic system of election to State Waqf Boards and replaced it **with appointment through nomination.**

i. Section 14 of the Waqf Act, 1995 provided for electoral colleges/categories, and the members of the Waqf Board were elected from the electoral college constituted for each category. However, the Bill introduces an amendment to Section 14 whereby the members of the Board will now be nominated by the State Government.

ii. The appointment through nomination is diametrically opposite to the democratic process followed previously for the appointment of members to the State Waqf Boards. It erodes the basic fabric of a Waqf by granting unfettered powers to the Central Government to appoint any person (subject to fulfilling the basic composition of the Board/Council) as office bearers to the Board/Council as it deems fit.

b. **Removed a crucial safeguard in the management of the Waqf Boards** i.e., that only Muslims could have been appointed as Chief Executive Officer of State Waqf Boards.

i. **The Bill further removes the two-fold criteria for the appointment of the Chief Executive Officer (CEO) of the Board, i.e., (i) the CEO shall be a Muslim (ii) CEO shall be appointed from a panel of two names suggested by the Board.** These internal safeguards were inserted to ensure sufficient Muslim representation and participation in the Waqf council.

ii. With the amendments in place, the Central Government is free to choose the Chief Executive Officer of a State Board as it deems fit without any consultation or democratic exercise within the concerned State. The lack of any Muslim CEO/head in the State Board raises a direct threat to the welfare of the Waqfs.

c. **Taken away the power to remove a Chairperson of the Board/Central Council** while making his appointment subject to nomination by the Central Government.

i. In the context of a Board/Central Council, the Central Government is again empowered with unfettered powers to choose its Chairperson, and the same need not necessarily be a Muslim. **More pertinently, in respect of the Chairperson, the amendment has mischievously prohibited his removal by popular vote amongst the concerned stakeholders.** This is extremely concerning and raises a direct threat to the welfare of the Waqfs.

d. **Mandated the requirement of certain representation of non-Muslims in the State Waqf Boards and Central Council**, in addition to ex-officio members who may also be a non-Muslim.

i. In the case of the Waqf Council, Section 9 (2) of the Waqf Act, 1995, provides for the establishment and constitution of Central Waqf Council. Under the said provision, the said Council consists of 19 members amongst whom 18 members had to be from the Muslim community only. However, the Bill amends the said provision with the introduction of a Council comprising a total 22 Members of the Council including the Chairman, with only 10 members who can be Muslims; and at least 2 non-Muslim members.

ii. The remaining 10 members can be from any religion and the Government shall be legally entitled to appoint any non-Muslim. **In such a manner, it is obvious that the Bill creates a situation where 12 out of 22 members of the Council can be non-Muslims thereby jeopardising proper representation of Muslims in a Council which directly decides all the issues related to Waqf.**

iii. In respect of the State Waqf Board, Section 14 of the Waqf Act, 1995, provides for the composition of the State Waqf Board including the Board for the NCT Delhi. The said amendment postulates only 3 out of 11 members to be mandatorily from the Muslim community. Consequently, at a time, there may be seven non-Muslim members of the Board, making the Muslims a minority in the said Boards.

e. **Divested the powers of the State government to prescribe rules under the Waqf Act, 1995.**

i. The Central Government by way of the Amendment to Sections 3(l), 108A and the introduction of 108B, has divested the powers of the State government to prescribe rules under the Waqf Act, 1995. As per the Seventh Schedule to the Constitution of India, the State government has a right to legislate on matters pertaining to religious and other societies and associations, under Entry 32 List II. **This is a clear attempt by the Central government to overreach into the powers of the state to legislate and formulate rules.**

f. **The Bill introduces the concept of Government property and Government Organizations by way of Sections 3(fa) and 3 (fb), into the concept of Waqfs.**

i. There has been little to no evidence to suggest that the property of the Government has been encroached upon by the Waqf Boards. However, on the contrary, the Sachar Committee report has clearly recognised that a majority of encroachment upon Waqf lands is by the Government bodies.

ii. By way of recognising government properties in the Bill and granting the power to the Collector, the amendments seek to displace the Waqf Boards from legal title of the properties that they have enjoyed since time immemorial.

The dilution of the Muslim representation in the management of their religious denominations also constitutes a violation of Article 26 of the Constitution of India.

26. In the landmark case of ***The Commissioner, Hindu Religious Endowments Madras v. Sri Lakshmindra Thirtha Swamiar*** **[AIR 1954 SC 282]**, the Hon'ble Supreme Court addressed the issue of the State's interference in religious affairs and the extent to which the State can regulate religious institutions. It also elaborated on the scope of the Article 26 (this Article guarantees to a religious denomination, the right to acquire and own property and to administer such property in accordance with law.)

27. The Hon'ble Supreme Court in ***Tilkayat Shri Govindlalji Maharaj v. The State Of Rajasthan*** **[1963 AIR 1638]** clarified that *"the law, in accordance with which the denomination has a right to administer its property, is not the law prescribed by the religious tenets of the denomination, but a legislative enactment passed by a competent legislature. In other words, Article 26(d) brings out the competence of the legislature to make a law in regard to the administration of the property belonging to a religious denomination.* ***The denomination's right must, however, not be extinguished or altogether destroyed under the guise of regulating the administration of the property by the denomination."***

28. The Supreme Court in ***Ratilal Panchand Gandhi v. State of Bombay*** **[1954 AIR 388]** clearly stated **that,** *"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."***

29. In another decision, the Supreme Court in ***Pannalal Bansilal Pitti & Ors. Etc v. State of Andhra Pradesh & Anr*** **[1996 AIR 1023]** made a distinction between the religious tenets protected under Article 26 and the need for secular interventions by the State. It pointed out that the right to

establish a religious institution or endowment is a part of religious belief or faiths, but its administration is a secular part which would be regulated by law appropriately made by the legislature.

VI.
PRESCRIBING PRECONDITIONS FOR WAQIF; *'MUST BE PRACTICING ISLAM FOR 5 YEARS'*.

30. The Bill has gone a step further and introduced an extremely impractical and unascertainable condition for 'Waqifs'. Now only a person who can prove that he is a practitioner of Islam for at least five years can lawfully create Waqfs and donate as a Waqif.

31. **It is submitted that; (i) this pre-condition is an absurdity and a person's practice of a religion is immeasurable and unascertainable; and (ii) both literature and legal precedents clarify that practising Islam is not a necessary condition for constitution of a Waqf.** It may be made by a Muslim or a non-Muslim. The only necessary condition for creation of a Waqf is the object to be pious, religious or within the accepted tenets of Islam.

32. The government has tabled this Bill without taking into consideration any rational and determining principles of Islamic jurisprudence and the Constitution of India. This not only shows that much of this Bill has been conceived purely based on the suspicions and irrational notions of the ruling government about the Muslim minority community, but rather highlights the manifestly arbitrary manner in which the government has attempted to amend the Waqf Act,1995.

VII.
DILUTES THE FUNCTIONALITY OF TRIBUNALS AND REMOVES THE FINALITY ASCRIBED TO THEIR JUDGMENT. THIS ULTIMATELY WILL EXTEND AND ELONGATE LITIGATION OVER WAQF AND ITS PROPERTIES.

By way of this Amendment, the Government has removed the finality of the decisions of the tribunal, rendering them liable to be challenged in Civil Courts having competent jurisdiction.

The Amendment Bill flies against the entire purpose of setting up tribunals, which is to reduce litigation in our already overburdened judicial system, as noted above by the Hon'ble High Court of Delhi.

In the case of ***S. V. Cheriyakoya thangal v. S.V P Pookoya & Ors [SLP [c] No. 3182/2019]*** , the Hon'ble Supreme Court upheld the finality of the decisions of the Waqf tribunals, noting that *"Under sub-section (7) of Section 83 of the Waqf Act, the decision of the Tribunal shall be final and binding upon the parties and it shall have force of a decree made by a civil court."* The

Amendment Bill is going contrary to the objectives of the tribunal and is inviting more litigation.

VIII.

THE REMOVAL OF APPLICABILITY OF THE LIMITATION ACT 1963 ON WAQFS WILL OPEN FLOODGATES OF LITIGATION AND SUITS BEING FILED UNDER THE EXEMPTION CLAUSE PROVIDED UNDER THE LIMITATION ACT.

IX.

THE AMENDMENT BILL UNFORTUNATELY SUFFERS FROM THE VICE OF EXCESSIVE DELEGATION AS THE UNION GOVERNMENT HAS BEEN DELEGATED POWERS TO MAKE RULES ON VIRTUALLY ALL MATTERS RELATED TO WAQFS.

Conclusion

Lastly, it is pertinent to note that the Government has clearly shied away from soliciting opinions from genuine stakeholders and parties who are bound to be affected by the amendments.

Therefore, in the premises as aforesaid, keeping in mind the duty of this Committee and its Members toward both Parliament and the citizens of India, I am unable in all clear conscience, to sign and therefore accept the findings of the draft Report as presented by the Chairperson of the Committee in its current form. The Chairperson of the Committee has now prepared and submitted a draft Report to the Committee (the "Report"). However, the contents thereof constrain me to regretfully present this Note of Dissent to the Report, more fully detailed in this Note.

While this Dissent Note is no attempt to question the functioning of a prestigious Committee, there are certain procedural objections that I would like to officially place on record

I am unable to accept and agree with the substance of the Report as well as the conclusions reached therein.

The Report has, in examining the issues at hand and arriving at its conclusions selectively quoted from evidence presented before it, found it convenient to ignore crucial documents and verbal evidence and has failed to appreciate crucial evidence in the proper context.

NOTE OF DISSENT

TO THE DRAFT REPORT BY THE

JOINT PARLIAMENTARY COMMITTEE

ON

THE WAQF (AMENDMENT) BILL, 2024

BY

ASADUDDIN OWAISI,

MEMBER OF PARLIAMENT,

EIGHTEENTH LOK SABHA

INDEX

1. PREFACE

1.1 What is in a name? Ordinarily, not much, or so Shakespeare would have us believe. But with the present Government that has consistently maintained a policy of changing names only to create a smokescreen for its divisive agenda, changes in name must be viewed with suspicion and call for greater scrutiny.

1.2 The suggested change of the name of the Waqf Act, 1995 to 'Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995' by the proposed amendment Bill, while innocent at first brush, on greater examination reveals itself to be just such a smokescreen, a blatant lie beneath which hides an agenda of systematically weakening the legislative architecture regulating waqfs in India. The proposed Waqf (Amendment) Bill, 2024 is, in fact, designed to disempower waqfs, take away their management from the hands of Muslims, create hurdles in their efficient administration and hamper the progress of their development.

1.3 While thematic and clause-by-clause analyses of the amendments proposed by the Bill are undertaken in a subsequent part of this report, what emerges from these analyses is that waqfs and their regulatory architecture are sought to be weakened in relation to every other stakeholder and interest group, which have been sought to be strengthened in comparison. A short summary of the Bill and the mischievous agenda it seeks to fulfil is captured below:

1.3.1 While waqf properties are properties set aside by waqifs for religious and charitable purposes recognised in Islam for the benefit of the entire community, the control of Muslims over these properties has been sought to be diluted and that control has been ceded to non-Muslims. This has been done by diluting the requirement of members of the Central Waqf Council and the State Waqf Boards being necessarily Muslim. This is a gross violation of Articles 14, 25, 26 and singles out Muslim charities for the creation of interference by non-believers, whereas all other statutes that create endowment boards comprising solely of members of the religious community in question continue unaltered.

1.3.2 At a time when divisive elements have raised mischievous claims questioning the status of ancient mosques and dargahs as places of Muslim religious worship, the Bill seeks to weaken the defence of the Muslim side in these disputes by removing the statutory recognition given to 'waqfs-by-user', a rule of evidence that hitherto allowed long use of a property as a waqf to be sufficient basis for the property to be statutorily recognised as a waqf. Further, waqfs created by oral dedication have been de-recognised contrary to established principles of Muslim personal law recognised in this country for over a century. Thus, the only defence available to a waqf in a legal proceeding questioning its status will be to produce a written deed of dedication, a requirement that waqfs established centuries ago will not be able to meet.

1.3.3 A requirement is sought to be introduced that only a person professing Islam for not less than five years can dedicate property to a waqf. There is no other instance in law where restrictions are placed on the right of an adult to deal with their property in whatever manner they deem fit. For instance, there is no restriction on a new convert to Islam dedicating property to a temple or mutt. Nor is there any restriction on the convert to any other religion in the manner they want to deal with their properties, including dedication for religious purposes. Singling out Muslim converts for such treatment reeks of communal discrimination and would be unconstitutional as being violative of Article 14, 15 and 300A of the Constitution.

1.3.4 The Committee has taken cognisance of the 'threat' to Scheduled Tribes and tribal lands and has recommended that the Ministry should take appropriate legislative measures to forestall the declaration of tribal lands as waqf land in order to ensure the protection of Scheduled Tribes and tribal areas. The Committee has failed to take into account the fact that members of Scheduled Tribes may also be Muslim and unlike the status of Scheduled Caste, the status of an individual as a member of the Scheduled Tribe is not obliterated by such individual professing Islam. Therefore, the freedom of a Muslim who is a member of a Scheduled Tribe to constitute a waqf would simultaneously needs to be protected.

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1.3.6 The proposed Bill will also have a direct impact on the status of 123 religious properties in Delhi in use of the Muslim community which had historically been waqfs from pre-British times and have recently fallen into dispute with the Delhi Development Authority (DDA) and the Land and Development Office (LDO) laying claim over them. Since both these organisations satisfy the proposed definitions of 'government organisation' in the Bill, the Collector will acquire powers under the proposed amendments to decide these disputes and the status of these properties as waqf will be suspended till the outcomes of the decision. This kind of over-simplistic treatment of a vexed issued will have a direct adverse impact on religious sites that have been in use as places of worship in the heart of the capital for centuries. One of the 123 sites is in fact the Parliament Street Masjid located opposite the Parliament building. The egregious nature of the proposed amendments is most starkly illustrated by the example of these 123 properties inasmuch as the status quo of the properties used for centuries as places of worship will be altered in a day pending inquiry and the District Collectors will become judges in their own cause in deciding these disputes while being officials of the Delhi Government themselves. The proviso sought to be inserted by Clause 3(9)(e) at the last minute in the Draft Report does not address the problem faced by such properties at all since the proviso states that waqf by user will not apply where the property wholly or in part is in dispute or is government property.

1.3.7 In the garb of digitisation of waqf records, another opportunity has been given to mischievous elements to raise objections as to the status of waqfs long registered and recognised as such.

1.3.8 The powers of the Survey Commissioners appointed under the Waqf Act to survey the auqaf in the State a create a list of waqf properties registered with the Waqf Board have been given to the District Collector, who is an official of the State Government forming part of its revenue administration. The District Collector has also been given the power to decide claims of the State government over waqf properties, as well as the power to suspend the status of such properties as a waqf pending such decision. This puts him in a position of direct conflict of interest, as the largest number of disputes concerning waqf properties are between waqfs on the one hand and State governments on the other. As such, the claims of State governments on waqf properties have been given precedence by making an official of their administrative machinery a judge in their own cause.

1.3.9 The concept of 'waqf-alal-aulad' has been effectively rendered meaningless and ineffective. 'Waqf-alal-aulad' is a mechanism by which a Muslim who owns property ties up the property for the benefit of his/her children and after them or if the line of succession fails, for a pious or charitable purpose. As such, creation of a waqf-alal- aulad is an expression of intent by the waqif that instead of devolving on his/her legal heirs, the property should be used in the manner designed by him/her. The present amendment seeks to give precedence to the rights of legal heirs over the intent of the waqif, rendering the very concept of waqf-alal-aulad nugatory and impotent.

1.3.10 The powers of the Waqf Boards are sought to be diluted, particularly the power of the Boards to initiate an inquiry into the status of any property that in its opinion constitutes a waqf has been taken away.

1.3.11 Unlawful alienation of waqf property, which is a cognizable and non-bailable offence, is sought to be made cognizable and bailable, weakening the

enforcement mechanism for protection of auqaf against unscrupulous interlopers.

1.3.12 The finality of decisions of the Waqf Tribunal has been taken away. The Waqf Act presently gives finality to the decisions of the Waqf Tribunal, but balances that with a built-in safeguard of giving powers of revision to the High Court to ensure that any errors, illegalities and improprieties committed by the Tribunal be corrected, while maintaining the finality of the decisions of the Tribunal since it was a specialised body applying a nuanced and unique branch of law. The proposed Amendment seeks to expand this power of revision to a full-fledged appeal. As an appellate court, the High Court can now reopen all questions of law and fact and substitute its opinion for the opinion of the Tribunal. As such, the specialised judicial forum created under the Waqf Act is sought to be weakened vis-à-vis the ordinary courts.

1.3.13 Further, the presence of a member having specialised knowledge of Muslim law and jurisprudence on the Waqf Tribunal has been dispensed with, and it has been made possible for any other Tribunal to be empowered to also double-up as a Waqf Tribunal. The status of the Waqf Tribunal as a specialised body has thus been sought to be done away with, further weakening the regulatory architecture of waqfs.

1.3.14 The right of a person not professing Islam to dedicate properties to a waqf that had been statutorily recognised for over 60 years has been taken away in gross violation of Article 300A of the Constitution.

1.3.15 Even the interests of encroachers have been given precedence over the interest of a waqf by seeking to delete Section 107 that made the Limitation Act, 1963 inapplicable to waqfs. As a consequence of this deletion, encroachers who have been in unlawful possession of waqf property for more than 12 years will be able to claim title by adverse possession over waqf property.

1.3.16 Under the unamended Waqf Act, waqfs declared as such by persons who subsequently migrated to Pakistan were regulated under the Waqf Act. The

proposed Bill alters this position and gives the right of administration of such properties to the Custodian of Evacuee Property. As such, the powers of the Custodian have been enhanced at the expense of the Waqf Boards, which have been correspondingly weakened.

1.3.17 Section 108A of the Waqf Act, 1995 which grants the Act overriding effect over other legislations is sought to be deleted. As a result, conflicting laws such as the Transfer of Property Act, 1882, the Registration Act, 1908, the Indian Stamp Act, 1899, the Companies Act, 2013, the Income Tax Act, 1961, the Indian Contract Act, 1872, various Land Reforms Acts, Urban Land Ceiling Acts, and State-specific tenancy and land revenue laws will now apply to waqfs, making it more difficult to dedicate property to a waqf and further weakening the specialised regulatory architecture of auqaf.

1.4 Thus, it can be seen that no matter what the competing interest is, whether it is that of encroachers, interlopers and unscrupulous elements, non-Muslims, State governments, the ordinary courts, the Custodian, the heirs of a waqif or divisive elements seeking to make mischievous claims over ancient waqfs, every other interest group is sought to be strengthened at the expense of waqfs and the specialised regulatory framework governing them. A century of legislative interventions to strengthen waqfs are now sought to be undone to undermine the regulatory architecture governing waqfs.

1.5 It is therefore clear that the proposed Bill is not an exercise undertaken for the benefit of auqaf, but is an act in furtherance of a consistent political agenda of the present government to systematically undermine the rights of minorities, particularly Muslims, in this country. The proposed amendments violate the rights of Muslims under Articles 14, 15, 25, 26 and 300A of the Constitution.

1.6

1.7 Various organisations and interest groups representing Muslim interest across the country have, in good faith, engaged with the consultative process and have put forward erudite and reasoned responses to demonstrate how the Bill undermines the interests of waqfs and of the Muslim community at large. The faith reposed by them in this consultative process has been betrayed and the unconstitutional provisions of the Bill are now sought to be tabled without alteration. The Joint Committee received representations opposing the proposed amendments from an overwhelming number of Muslim organizations. In particular, it may be noted that the All-India Muslim Personal Law Board, Jamiat-e-Ulema-e-Hind, Jamaat-e-Islami Hind and the Muttaheda Majilis-e-Ulama (Jammu & Kashmir) have all vehemently opposed the proposed amendments. These organisations between themselves represent a very large portion of Muslims in India. The fact that the erudite arguments and detailed reasons put forward by each of these stakeholders were not accepted by the Joint Committee

the Joint Committee in its draft report has been blind, if not actively inimical to Muslim interests and has reached what were in any event forgone conclusions.

1.8 It is for these reasons that I have chosen to express my dissent against the report of the Joint Committee on the Waqf (Amendment) Bill, 2024. With this report, I oppose the proposed amendment Bill and wish to state on record for posterity – not in my name.

2. BACKGROUND AND INTRODUCTION

2.1 The Waqf Amendment Bill, 2024 was referred to the Joint Parliamentary Committee (JPC) on August 8, 2024. At the outset, it must be noted that the Bill was drafted without any substantive inputs from stakeholders. The government did not conduct any prior consultations, and it did not demonstrate any need for why the proposed changes were to be made.

2.2 Prior to the introduction of the Bill in Parliament, the public was not even aware that such a Bill was proposed. Neither the fact that such a Bill was being drafted, nor the proposed changes were ever brought in the public domain. Such abject non-transparency over such an important piece of legislation does not behove a democratic government, and diminishes public trust in parliamentary democracy. Thus, the claims of consultations made by the Ministry in paragraph 1.13 of the Draft Report must be taken with a pinch of salt.

2.3 The Bill's proposed changes fundamentally alter the existing legal framework on Waqf. Yet, the government has made no effort to justify why such changes are being made, or on whose behest such changes are sought to be made. Even the Bill's Statement of Objects and Reasons is inconsistent with the changes being carried out. It is a brazen obfuscation where the government has refused to explain how Waqf law is being 'reformed' to improve *"empowerment, efficiency, and development"* when well-settled principles of law are being completely done away with. This is especially the case with legal principles pertaining to 'waqf by user', finality of decisions of the Waqf Tribunals and principles of natural justice. In the case of the latter, a completely new system of administration has been proposed wherein the Collector, an officer of the State government, has been empowered to adjudicate matters in which the government itself is a party.

2.4 The Minister for Minority Affairs, when introducing the Bill in Lok Sabha, repeatedly claimed that the Bill was drafted following extensive consultations that lasted a decade. However, this is not borne out by public record. No formal consultations were made by the central government, no invitation for suggestions was published, and the public was never informed that the government was even considering amending the 1995 Act. In fact, in response to a parliamentary question on whether the government was considering such amendments, the government had chosen a non-answer.[1] Similarly, only last

[1] LOK SABHA UNSTARRED QUESTION NO. 873 ANSWERED ON 21.11.2019 "Encroachment of Wakf Properties"

year, the government was asked the steps it had taken to strengthen waqf boards.[2] No mention was made of "extensive consultations" or any intention of the government to draft such a Bill.

2.5 Most media coverage of these consultations appears after the Minister's speech in parliament introducing the Bill. There was only one article from August 2023, from the Indian Express, which states that the Ministry held a meeting with the CEOs of 20 State Waqf Boards to assess the functioning of these Boards and the Waqf Act, 1995. The article citing unnamed sources in the Ministry saying that the Ministry was looking at two contentious issues that were 'waqf-by-user' and 'waqf-alal-aulad.[3] Another article from September 2023, states that "In July Ministry of Minority Affairs has announced in its intent to relook the Waqf Act, 1995" after the meeting with 20 State waqf CEOs in July.[4] Finally, a media report from August 2024 confirmed that *"In July 2023, then-Union Minority Affairs Minister Smriti Zubin Irani met with the CEO and Chairperson of the State Waqf Boards, during which numerous top officials voiced several concerns."*[5]

2.6 But none of these media reports provide any information about any of the particular consultations that took place according to the *Historical Background* document circulated to members of the JPC.

2.7 And these articles are heavily reliant on statements from unnamed sources within the Ministry. Neither official notice nor information were issued by the Ministry before these consultations. Nor were its minutes disclosed publicly. In any case, consultations always require reasonable notice to the public, and a clear expression of the government's agenda, neither of which was done.

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[2] LOK SABHA UNSTARRED QUESTION NO - 1977 ANSWERED ON 14/12/2023 "Waqf Board"

[3] https://indianexpress.com/article/india/ministry-of-minority-affairs-waqf-properties-waqf-disputed-properties-887015

[4] https://indianexpress.com/article/political-pulse/aimplb-working-committee-women-share-in-husbands-property-women-property-share-sharia-law-8945885/

[5] https://economictimes.indiatimes.com/news/politics-and-nation/all-waqf-boards-in-states-centre-to-have-two-women/articleshow/112269855.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

2.8 However, there were no official notices posted on the Ministry website about these so-called consultations. The 'Events' section on the Ministry website was empty with the photo gallery of past events, not including any images from the said consultation meets.[6] Even the Central Waqf Council did not have any notifications for the said consultations on its website and its 'Past Events' section has not been updated since 2022. Finally, the Year End Review of the Ministry of Minority Affairs published on December 22, 2023, did not include any mention of the consultation process being undertaken.[7] From this, it is apparent that these consultations were anything but 'extensive'. Moreover, given the lack of public information in the run up to these meetings, it is unclear how the Ministry undertook individual level consultation. This could mean that these consultations were held behind closed doors, lacked transparency and included cherry-picked individuals, thus leading to a biased consultation process where the outcome was pre-determined.

2.9 This Dissent Report is premised on the fact that the Government will not merely refer to the Report of the JPC, but will also take this Dissent Report into consideration before tabling the Bill in Parliament. Considering the time constraints and overall facts and circumstances, the present Dissent Report is addressing the concerns as emerging from the proposed Waqf Amendment Bill, 2024 and proceedings of the Committee.

[6] https://www.minorityaffairs.gov.in/show_content.php?lang=1&lid=10&ls_id=10&level=0 Photo Gallery: https://www.minorityaffairs.gov.in/show_content.php?lang=1&level=1&ls_id=868&lid=18&vmod=2

[7] https://pib.gov.in/Pressreleaseshare.aspx?PRID=1989589

3.3

The Ministries of Urban Development, Road Transport and Highways, and Railways submitted near-identical, formulaic reports that merely served to endorse the Bill without offering any substantive analysis. These reports lacked empirical data or reasoned arguments explaining how the existing legal framework hindered their work, thereby failing to engage meaningfully with the issues at hand.

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3.15 This is particularly egregious given that prominent representative Muslim organisations – including the All India Sunni Jamiyatul Ulama, All India Muslim Personal Law Board, Darul Uloom Deoband, Jamaat-e-Islami-e-Hind, Muttaheda Majlis-e-Ulema, and Jamiat Ulama-i-Hind – submitted detailed and reasoned objections to the Bill. Evidence and submissions from genuinely representative bodies and experts were unanimous in their opposition to the Bill, highlighting several highly objectionable provisions, such as the restriction of the definition of 'waqif' to Muslims who have practised Islam for at least five years, the abolition of waqf-alal-aulaad and waqf by user, the replacement of the Survey Commissioner with the Collector, and the granting of unchecked authority to the Collector to declare any property as government property. Additionally, concerns were raised over the repeal of the bar on limitation, which would expose waqf properties to adverse possession claims, the removal of the overriding effect of waqf law, the elimination of the finality of tribunal decisions, and the revocation of protections for waqf properties erroneously classified as evacuee properties. Despite the depth and cogency of their submissions, not a single one of their major recommendations was even cursorily considered in the Draft Report.

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4. PART I: THEMATIC ANALYSIS

4.1 The Absence of Justifications

4.1.1 Besides the political ideology of the ruling party, there are no public policy justifications for the changes proposed in the Bill. For any legislative measure, the government is required to demonstrate that it is in public interest. In the case of Waqf, any changes made to it would be geared towards ensuring corrective measures against what ails the management of waqf properties. Waqf properties across the country have been encroached upon, often by government agencies themselves. A consistent recommendation that can be culled out from various committee and commission reports, including parliamentary committees, is to empower the Board with summary eviction powers.

4.1.2 There have been no recommendations to dilute the finality of the Waqf Tribunal, to abolish waqf by user, or to legalize the encroachment of waqf properties by doing away with the bar on limitation. This is because these provisions would effectively be the death-knell for waqf properties. These provisions have been discussed in further detail subsequently. However, it must be emphasised that the government has not provided a single justification based on public policy. Rather, it is clear that these provisions are meant to simplify the wholesale process of liquidating waqf properties.

4.1.3 Similarly, the Minister has also claimed that the Bill is only meant to implement the recommendations of the various committees/commissions on waqf reform. This too, is not borne out by the facts.

(a) Firstly, a significant number of the proposed amendments do not correspond to any recommendations by any committee or commission. For example, no committee or commission has ever recommended replacing the Survey Commissioner with the Collector. Similarly, no recommendation or demand has been made that the finality of Waqf Tribunals should be done away with. Similarly, there was never a recommendation to replace the present democratic character of Waqf Boards – where members are elected based on electoral colleges – with governmental nominations.

(b) Secondly, the Bill blatantly does not incorporate those recommendations that have significant consensus. The most longstanding and consistent recommendation made by various committees/commissions is that Waqf properties be considered as public premises under the Union and State eviction laws.[8] This would enable summary eviction powers to be given to the Waqf Board to remove encroachments. This has been ignored. In fact, the government itself had promised in Parliament that summary eviction powers would be conferred on the Waqf Boards. [9] Yet, it is astonishing that such provision has not found its way into the Bill. Similarly, the Sachar Committee recommended the creation of a separate cadre for Waqf enforcement. This would have strengthened and professionalised the implementation of the 1995 Act. However, this suggestion has not been accepted and quite to the contrary, the specialised office of Survey Commissioner has been done away with and powers under the Waqf

[8] *See,* Interim Report of the Waqf Inquiry Committee, 1973; Sachar Committee Report; Report of The Select Committee On The Wakf (Amendment) Bill, 2010 Presented To The Rajya Sabha On The 16th December, 2011

[9] STARRED QUESTION NO:408 ANSWERED ON:22.04.2015 "Waqf Land Property"

Act have been saddled onto the already overburdened office of Collector.

(c) Thirdly, the Bill cherry-picks recommendations. For example, the Sachar Committee Report had recommended "broad basing" the membership of the Waqf Boards. This recommendation has been used in the Bill to mandate non-Muslim members in the State Waqf Boards; and to remove the mandatory requirement of Muslim membership generally. In contrast, the commission's recommendations clearly indicate that the 'broad-basing' was supposed to be *within* the community.

4.1.4 In the Justice Sachar Committee Report, a separate heading was dedicated to encroachment of waqf properties by the Governments and its agencies. The relevant portion of the report is "*It would be seen that the attitude of the state governments and their agencies has resulted in large scale abrogation of the cherished and charitable objectives of the Wakfs for which such endowments were created. In fact, encroachment by the State on the Wakf lands, besides causing embarrassment to the authorities and emboldening private encroachers, has stood in the way of reform and reconstruction.*" Furthermore, a reference was made to the letter of the Prime Minister Mrs. Indira Gandhi dated 26.03.1976, whereunder it was recommended that the waqf properties encroached upon by government agencies be restored back to the waqf, or long leases be entered by paying the rents at the market value. In complete derogation of this recommendation, the proposed amendment Bill now gives power to the very encroacher to decide whether the property is waqf or not. This is against the basic principle of natural justice that no man can be a judge in his own cause.

4.1.5 In the Justice Sachar Committee Report, it was placed on record that there were substantial dues payable by many States to the Waqf Boards. It was recommended that a directive be incorporated in the Waqf Act in respect of the payment of dues by the States within a reasonable time. No such directive has been proposed in the present amendments. On the contrary, the power of the

States in management of the Waqfs and interference of the Centre in the administration of the waqf is proposed to be increased.

4.1.6 At Page No. 225 of the Justice Sachar Committee Report, it was stated that the minorities department of the UP Government was unauthorizedly passing Orders overruling the quasi-judicial orders given by the Waqf Board. It was recommended that the Waqf Act be amended to prevent such interference. In derogation of this recommendation in the proposed amendment Bill, the powers of the Waqf Board are severely curtailed and further the finality attached to the Orders passed by the Waqf Tribunal is being completely obliterated.

4.1.7 At Page No. 227 of the Justice Sachar Committee Report, the specific case of the National Capital Territory of Delhi was discussed elaborately, whereunder it was concluded that the Delhi Waqf Board has effectively been deprived of the use of its valuable properties. No steps have been taken to remedy the same. On the contrary, the State has been given the power to continue its illegality.

4.1.8 At Page No. 228 of the Justice Sachar Committee Report, it was observed that the State and the Centre, because of their preoccupation, have been unable to realize the high potential of the waqfs for generating wealth and meeting the welfare requirements of the poor and needy. It was further recommended that persons who have good knowledge of waqf matters, Islamic scriptures, proficiency in Urdu be accommodated in the State Waqf Board and the Central Waqf Council.

4.1.9 Further, it was recommended that a new cadre of Group A Officers was required to be recruited who had knowledge in Islamic Law and Urdu since most of the documents relating to the waqfs are in Urdu. Instead of following this recommendation, the proposed amendments have taken away the autonomy of the Waqf, wherein the recommendations postulated under the Justice Sachar Committee Report are given a go by and a recommendation is made to appoint non-Muslims to various posts.

4.1.10 In the Justice Sachar Committee Report, it was observed that there is non-availability of the records in respect of the waqf properties and further the inaction of the State Governments in bringing the list of *auqaf* in tune with the revenue records was highlighted. In the proposed Bill, instead of addressing this concern, a *de novo* enquiry is proposed to be undertaken by the Collector who has been given unbridled power to declare any property as government property. Furthermore, the revenue department cannot even make changes in records without a ninety-day interval for public objections.

4.1.11 At Page No. 221 of the Justice Sachar Committee Report, the main reason which was cited for non-fulfilment of the objectives of the waqf was 'inadequate empowerment of the State Waqf Board and the Central Waqf Council'. Under the proposed amendment, the power of the State Waqf Boards is being greatly denuded. The Boards are essentially being made subordinate to the will of Collectors. Further, the powers of the CEO are also being watered down. This is a clear contradiction to the Justice Sachar Committee Report.

4.1.12 The Justice Sachar Committee Report has recommended that the extension of limitation be extended till 2035 keeping in mind that the encroachers of Waqf Property should not benefit from misusing the waqf lands. Giving a complete go by to this recommendation, Section 107 which deals with exemption of limitation is proposed to be amended to make limitation applicable to waqf properties. This proposed amendment by itself shows that the entire bill is a death knell to the Waqf Properties and the proposed amendments are in no way beneficial to the waqf.

4.2 Misleading Characterisation of Waqf

4.2.1 There has been a glaring mischaracterisation of the existing law and the system of waqfs. The Minister betrayed his prejudice in various parts of his speech. For example, he argued that the finality of the decisions of Waqf Tribunals under the 1995 Act meant that decisions of the tribunals could not be challenged before courts of law. It is long settled position of law that finality of a tribunal's decision does not preclude the jurisdiction of the High Court and the Supreme

Court under Articles 226 and 136.[10] Further, the proviso to Section 83(9) of the Waqf Act as it stands before this amendment itself vests revisional jurisdiction in the High Courts to correct illegalities and improprieties. The very purpose of tribunals is to reduce litigation that clogs up the courts system. Tribunals were intended to resolve disputes that required technical expertise. The Law Commission itself had recommended that the statutory system of tribunals could be improved by ensuring that finality is given to decisions of tribunals, while leaving scope for review by the higher judiciary in egregious cases. In fact, this very government abolished tribunals on the grounds that these tribunals lacked finality. Therefore, removing the finality of Waqf Ttribunals is to set them up for failure. With the High Courts having been given appellate powers over orders passed by Waqf Tribunals, more parties will go in appeals going from against orders of the Waqf Ttribunals to the Hhigh Ccourts, and the government will have a justification for their eventual abolition arguing that the Waqf Ttribunals have been ineffective.

4.2.2 Similarly, the Minister cited two specific instances of the "misuse" of existing law. He cited the example of Tamil Nadu, where a "whole village" was allegedly declared as Waqf. It must be noted that in that case, a specific parcel of land in the village was recorded as Waqf land in the Gazette since 1954. Furthermore, there was adequate evidence in the form of copper plates to show that the land was endowed under Waqf law. Nonetheless, the State government had permitted conveyancing of lands in the village and the State Waqf Board did not contest this order. Similarly, the reported claim over Surat Municipal Corporation by the Waqf Board was also reportedly struck down by a Waqf Tribunal. This actually demonstrates the independence of the Waqf Tribunal

[10] Union of India v. Delhi Bar Association: 'It has to be borne in mind that the decision of the Appellate Tribunal is not final, in the sense that the same can be subjected to judicial review by the High Court under Articles 226 and 227 of the Constitution.' Dhakeswari Cotton Mills v. Commissioner of Income-tax, West Bengal: It is, however, plain that when the Court reaches the conclusion that a person has been dealt with arbitrarily or that a court or tribunal within the territory of India has not given a fair deal to a litigant, then no technical hurdles of any kind like the finality of finding of facts or otherwise can stand in the way of the exercise of this power because the whole intent and purpose of this Article isthat it isthe duty of the Court to see that injustice is not perpetuated or perpetrated by decisions of courts and tribunals because certain laws have made the decisions of these courts or tribunals final and conclusive.'

and its effectiveness. To attempt the wholesale dilution of waqf law based on a few misreported incidents is a dishonest method of drafting statutes.

4.2.3 The Minister also made the case for empowering the District Collector since the Ccollector is in-charge of revenue. However, a Ccollector is the most overburdened government functionary: how can such an officer find time to conduct a survey of properties and discharge other responsibilities simultaneously? Meanwhile, if the waqf is not registered within 6 months of the coming into force of the Amendment Act, the rights in relation to the waqf will no longer be enforceable. This lends credence to the suspicion that the government wants to create an unworkable enforcement machinery and thus effectively liquidate auqaf.

4.2.4

4.3 Proceedings of the Joint Committee

4.3.1 The JPC carried out evidence hearings, and also received significant representations from the public.

4.3.2 It is especially regrettable that organisations were invited. This is despite the fact that the two organisations reject the Constitution of India and seek the establishment of a Hindu Rashtra. Furthermore, the organisations have been closely tied to terrorist activities and assassination campaigns. This diminished the majesty of Parliament immensely. A more detailed objection, which was also submitted to the Committee's Chair is appended to this report.

4.3.3

4.3.4

4.3.5 The presentations and submissions of the Union government's Ministries were similarly inadequate to say the least. The Ministries of Urban Development, Road Transport & Highways and Railways made almost identical submissions ("stereotype reports") that were merely meant to endorse the Bill. There was no substantive engagement with the issue, neither was any empirical data

provided on how the present law prevents the Ministries from carrying out their work.

4.3.6 The Ministry of Minority Affairs, which was supposed to be the primary contact of the Committee on the Bill demonstrated its own callousness. The foremost, and most obvious concern for any Parliamentary Committee is to understand *why* a Bill was proposed in the first place. The first time the Ministry submitted a clause-by-clause justification to the Committee was on October 10, 2024. This document was riddled with errors and patently inadequate explanations. It reflects the Ministry's callousness. It left an impression that the Ministry was merely carrying out a formality and not taking its work seriously.

4.3.7

4.3.8 However, it must also be noted that the evidence and presentations from genuinely representative bodies and experts were consistent in their objections to the Bill. There is near unanimous consensus that the following are undesirable aspects of the Bill:

(a) Limiting the definition of "waqif" to Muslims who have practiced Islam for five years

(b) Removal of waqf-al-aulaad

(c) Removal of waqf by user

(d) Replacing the Survey Commissioner with Collector

(e) Empowering the Collector to declare any property as government property

(f) Repealing the bar on limitation

(g) Doing away the overriding effect of the law

(h) Doing away with the finality of tribunals

(i) Doing away with the protection for waqf properties that were incorrectly declared evacuee properties

These findings must be recorded in the final report of the Committee.

4.3.9 What can be deduced from the absence of justifications is a brazen effort of the government to usurp Waqf property.

The properties demolished or marked for demolition primarily consist of dargahs and other religious structures, located within Qabrastans or elsewhere. Many of these properties/lands qualify as "waqf by user," particularly when their existence and usage as Waqf properties have been documented in revenue and government records for extended periods, in some cases even predating independence. Although such lands are recorded as government property, settled law, as upheld by the Supreme Court and followed by various High Courts, recognizes such lands as Waqf lands under the principle of "waqf by user." Consequently, labelling these lands as government property and categorizing existing religious structures as encroachments is both illegal and indicative of malicious intent.

4.3.10 By claiming these lands as government property without following due legal procedure, the religious structures are being targeted for demolition, removal, or obliteration under the pretext of encroachment. Such actions are unconstitutional and can currently be challenged under the Waqf Act. However, if the proposed amendments to the Waqf Act are implemented, such challenges would no longer be viable, making it easier to appropriate Waqf lands and properties.

4.3.11 The proposed amendments undermine the principle of "waqf by user" and prevent such lands/properties from being defined, identified, registered, and protected as Waqf lands/properties. Furthermore, any claims concerning such properties would be adjudicated by the Collector, a government officer, under

Section 3C, rather than by the Waqf Board or Tribunal. Until the Collector makes a decision, these properties would remain unprotected, in fact, they would not be treated as waqf properties pending the decision.

4.3.12 Additionally, the proposed amendments remove the overriding effect of the Waqf Act, exposing Waqf lands/properties to the applicability of other central and state legislations. This would strip them of the special protections currently afforded to Waqf properties, leaving them vulnerable to further encroachments and misuse.

4.4 Draft Report of the Joint Committee

4.4.1

4.4.2

4.4.3 Unfortunately, the draft report shows a complete non-application of mind to the legal effects of the Bill. For example, on page 5, the draft report outlines certain issues with the implementation of the 1995 Act. It then lists out the proposed changes that will be brought in by the Bill. There is no connection between the changes proposed and the problems plaguing *auqaaf* in India. In fact, the Bill seeks to actually solidify encroachments of *auqaaf*. Yet the draft report does not even attempt to explain how the proposed amendments "reform" the 1995 Act.

4.4.4 On various occasions, the Government's explanations were also reproduced mechanically. For example, the Ministry of Law and Justice justified the existence of "long user" for Hindu Endowments by arguing that Hindu Endowments are different from *auqaaf*. The key difference is that the *auqaaf* cannot be alienated, but Hindu Endowments may be. This does not explain why "user" cannot be used as a rule of evidence for auqaaf. Similarly, the Ministry of Minority Affairs misled the Committee by arguing that, apart from the two mandatory non-Muslims, the amendments do not allow for a non-Muslim majority CWC/SWB by stating that "rest all will be Muslim" (paras 9.6.6 and 9.6.12). This is patently untrue since both amendments reduce the number of Muslim-only members significantly, and the Government is free to nominate non-Muslims for a majority of the positions. The Draft Report argues that this is a "limited involvement," and does not interfere with religious practices. However, it is not exactly "limited involvement."

4.4.5 Furthermore, in paragraph 3.7.3, the Draft Report explains why a new proviso was inserted to safeguard *auqaaf* already registered as 'waqf by user'. However, this proviso would not help any auqaaf that are claimed as 'government property.' Once any auqaaf are claimed as 'government property' – for example, the 123 auqaaf in New Delhi – their status as waqf is deemed to not exist anymore. Hence, the amendment does not address the concerns raised against the omission of 'waqf by user.'

4.4.6 Lastly, a separate Chapter has been dedicated to additional recommendations. This includes replicating the demand to take legislative measures to 'forestall' declaration of Tribal lands under Fifth and Sixth Schedules as 'waqf.' The Draft Report does not provide any evidence to show that such a thing is happening or how such registration of *auqaaf* is constitutionally untenable. Adivasis and Tribals – both as individuals or as communities – can also be Muslim. There is no connection between the faith and the tribal status of any Indian. Why should they be prevented from establishing mosques, qabrasthans, schools, etc? No in-principle conflict exists between the 1995 Act and the Fifth or Sixth Schedules.

4.4.7 Similarly, the concerns raised by Waqf Tenants' Associations are also best addressed within the extant framework. It is not appropriate for the Draft Report to wade into something that is satisfactorily governed by existing law.

4.5 The Constitution and Waqf

4.5.1 The law on waqf is not only constitutional, but it furthers the purposes of the Constitution. The preamble to the constitution guarantees liberty of "belief, faith and worship." This is reflected in Articles 25-28 of the Constitution. Furthermore, Article 21 of the constitution protects the individual right to life and personal liberty.

4.5.2 Generally speaking, the right to dispose one's property in pursuit of a religious belief is protected by the abovementioned constitutional scheme. More specifically, in Islam, charity and endowing property in God's name is an essential religious practice, and is specifically protected by the constitutional framework. The word *infaq* (spending or disbursement, charity) occurs in the Qur'an 73 times. The revered Shi'a scholars Ayatollah Khomeini and al-Khoei have explained Waqf in terms consistent with the 1995 Act.[11]

[11] Tahrir al-Wasilah Volume: 2 Chapter: Kitab al-Waqf (Book of Endowment) Pages: 85-110 (approx.) Minhaj al-Salihin Volume: 2 Pages: 12-16 (approx.)

4.5.3 Even more specifically, Article 26 guarantees "every religious denomination or any section thereof", the right to "establish and maintain institutions for religious and charitable purposes." Waqf is a religious and charitable institution. The right to establish, maintain and administer the waqf is derived from this provision. The state, by law, can only curtail this right on the grounds of "public order, morality and health." This is in contrast to Article 25, which provides the state with other grounds on which the state can curtail the fundamental right to profess, practise and propagate religion. Waqf falls squarely within Article 26, and therefore, it is not subject to the grounds mentioned under Article 25(2). The law can regulate Waqf only to the extent that it *protects and facilitates* the right of Muslims to establish, maintain and administer Waqf.

4.5.4 Although the 1995 Act may have some implementation issues, it is consistent with Article 26 since it provides a procedure by which Article 26(a) is operationalised. It is a legal mechanism by which the guarantee of Article 26 can be realised by religious denominations. Moreover, the regulatory aspect of the 1995 Act – such as the constitution of tribunals, the appointment of Muttawallis and the establishment of Waqf Boards – is meant to regulate the secular aspects associated with the religion, but not to curtail it. This is consistent with the scheme of the Act, which focuses on maintaining proper records, providing a dispute resolution system and provides procedures for matters connected to the management of auqaaf.

4.5.5 In contrast, the present Bill departs from this scheme completely. Firstly, by abolishing the concept of "waqf by user" it deprives Muslims of their right to enjoy those auqaaf that have been used by them since immemorial. It is the fundamental right of Muslims to establish, maintain, administer and benefit from auqaaf. By withdrawing legal recognition to the said right, the Bill derogates the fundamental right to establish religious/charitable institutions. Similarly, by curtailing "waqf al aulaad", the Bill attempts to limit the absolute right of observant Muslims to dispose their property in a manner consistent with their religion.

4.5.6 Most importantly, the amendments propose to alter the constitution of the Central Waqf Council and the State Waqf Board. Not only does the Bill make it mandatory for two members to be non-Muslim, but it is completely possible that the Council and the Board could have a majority of non-Muslims. For example, under section 9 of the principal Act, the majority of members have to be Muslims. However, the amending Act removes this prerequisite. Out of the 22 members, only ten members are required to be Muslim. In other words, the majority of the members could be non-Muslims, if so nominated. This is mirrored in the provision pertaining state waqf boards (clause 11 of the Bill). The effect of this is that Waqf – a religious or charitable institution of Muslims – could practically be managed by non-Muslims.

4.5.7 The jurisprudence pertaining to Articles 26(a) and 26(d) is clear. Firstly, Article 26 works on the assumption that the denomination has a right to establish and maintain religious/charitable institutions, and administer its property on its own. This obviously implies that such establishment, management and administration is to the exclusion of all others who do not belong to the denomination. It is an exclusive right of the community to oversee management of the institutions and administration of property. The state may make laws only in the following instances:

(a) to secure or further protect the right of the denomination

(b) to secure or protect the rights of others, **solely on the grounds of morality, health or public order**

(c) to regulate secular activity associated with religion (for example, if a religious/charitable institution is running a shop, the Shops & Establishments Act may apply; if it is constructing a building, the local building code may apply, etc)

4.5.8 The 1995 Act **facilitates** the rights under Article 26. This is why it provides for the constitution of Central Waqf Council and State Waqf Boards in a manner where Muslims are a majority, and that the members have a certain degree of

representative character. It is to ensure that Muslims oversee Waqf properties. This is a fundamental feature of the 1995 Act. By creating the possibility of a non-Muslim-majority Central Waqf Council or State Waqf Boards, the Bill violates Article 26 *in toto*.

4.5.9 When Article 26 and the 1995 Waqf Act are read together, the meaning is clear. The latter gives effect to the former. It is settled law that the state can regulate, but cannot order the diversion of funds of a trust/institution if it was not envisaged by the settlor. Similarly, the state can regulate only to give effect to the "purposes and objects indicated by the founder of the trust or established by usage."[12] If a person who seeks to dedicate his property in consonance with Islamic Law, the 1995 Act provides the means by which such a dedication can be carried out. In this case, an individual has the right dedicate property in accordance with Islamic Law. The person making this dedication has a right to be assured that such disposed property will be administered by members of his denomination (Islam), who have the requisite knowledge of Islamic Law. However, if the very management and administration of auqaaf can fall with non-Muslims, this right is completely done away with. In *Ratilal Panachand Gandhi v. State of Bombay*, (1954) 1 SCC 487 the Court rightly held that it is a violation of Article 26 if a "secular authority" is permitted to "divert the trust money for purposes other than those for which the trust was created."[13]

4.5.10 In ***Commr., Hindu Religious Endowments* v. *Lakshmindra Thirtha Swamiar of Sri Shirur Mutt***[14] the court laid down a simple test. The religious denomination's institutions and property can be regulated, but the right itself cannot be taken away by legislation. By permitting the government to nominate a majority of non-Muslims, the effect is basically taking away the right of the community to administer its own institutions.

4.5.11 The 1995 Act does not run afoul Article 26 primarily because it is firstly administered by Muslim-run CWC/SWB and secondly because it is in

[12] Ratilal Panachand Gandhi v. State of Bombay, (1954) 1 SCC 487
[13] Ibid.
[14] (1954) 1 SCC 412

consonance with Islamic Law. In *Mahant Moti Das v. S.P. Sahi*[15] regulatory provisions of the Bihar Hindu Religious Trusts Act, 1950 were challenged before the Supreme Court on the grounds that it violated Article 26. The Court upheld the constitutionality of the said provisions on the grounds that the law was meant to prevent mismanagement of the property, and to **"fulfil rather than defeat the trust."** The Court found that the Act did not seek to divert the "trust property or funds for purposes other than those indicated by the founder of the trust **or those established by usage obtaining in a particular institution**."[16]

4.5.12 In other words, it would have been unconstitutional if the Act specifically curtailed the fundamental right to administer property or establish/manage a denominational institution. It is constitutional because it seeks to prevent mismanagement, while not intervening in religious practices or amending the original purpose of a religious trust. This sound legal reasoning applies to the 1995 Act as well. To mandate that waqf-al-aulaad may be dedicated only in a particular manner; or to allow for the governance of waqf properties by non-Muslims would be defeating, rather than fulfiling the purpose of waqf. The very purpose of the 1995 Act is to ensure that the properties are managed in consonance with Islamic Law. If the relevant provisions are tinkered with, the effect is its complete defeat. Consequently, this is a violation of the Articles 26(a) and 26(d). Only such regulatory provisions are permissible that **preserve** the purpose of Waqf. For example, seeking disclosures/accounts from Mutawallis or preventing mismanagement or embezzlement.

4.5.13 In the document titled "Clause-wise justification for the proposed Amendments," the government has defended the inclusion of non-Muslims on the ground that non-Muslims can be "beneficiaries, parties to disputes, or otherwise interested in waqf matters, justifying their inclusion in the administration of waqf." This is an absurd ground. The Act does not bar non-Muslims from being parties or beneficiaries. In fact, this Bill bars them from

[15] 1959 Supp (2) SCR 563
[16] Ibid

being dedicators while allowing them to be a majority of CWC/SWB. If this logic is taken to fruition, non-Hindus can also be "beneficiaries, parties to disputes or otherwise interested" in relation to Hindu Endowment properties. Why has the Union government not recommended states to amend their laws to *mandate* non-Hindus be members of the HRCE Boards? Waqfs and endowments are matters of religion, and internal to the religious denomination/community. Therefore, such a demand is absurd. However, Muslims *are* citizens and stakeholders in public institutions such as legislative bodies and educational institutions. The government's logic should definitely apply to public institutions, and it must be mandated that appropriate number of seats are reserved for Muslims. Laws mandating religious autonomy for management and administration of religious endowments are a common feature. Provisions in the Madras Hindu Religious and Charitable Endowments Act, 1951; Shri Jagannath Temple Act, 1955; the Uttar Pradesh Sri Kashi Vishwanath Temple Act, 1983; The Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997; the Andhra Pradesh Charitable and Hindu Religious and Endowments Act, 1987; the Sikh Gurdwaras Act, 1925 all require the composition of Boards, etc to be of members belonging to the faith.

4.5.14 Some objections have been made to the 1995 Act on the grounds that the law violates Article 27 of the Constitution. However, as held by the Supreme Court in various decisions including *Islamic Relief Committee*,[17] Article 27 is violated only if a substantial portion of revenue collected (say 25%) is spent for a religious purpose. In the case of Waqf, the expenditure of public money is not for a religious observance. Rather, it is to scrutinise waqf properties. Waqf properties are subject to three stages of scrutiny while Hindu religious endowments are not. The expenditure under the 1995 Act is towards surveys, etc which are secular activities and not religious. In Bashir Ahmed vs The State Of West Bengal[18] the Calcutta High Court had upheld the creation of a fund

[17] (2018) 3 SCC (Cri) 844: (2018) 4 SCC (Civ) 210
[18] AIR 1976 CAL 142

from the proceeds of income of auqaaf for education of Muslim children, and rejected the contention that it violated Article 27.

4.5.15 It is also a misconception that the bar on jurisdiction of civil courts, and the establishment of Waqf Tribunal is absolute. Salem Mohammedpura Parimala Sunnath Jammth Masjid Committee[19] and A.M.Ali Akbar v. Keelakarai South Street Jamath Masjid Paripalana Committee[20] it was held that the bar on jurisdiction is limited to the provisions of the Act.

4.5.16 The finality of a decision of a tribunal has been upheld as constitutional by various Supreme Court judgements. The remedy of judicial review by the higher judiciary is not exhausted by such provisions. By virtue of Article 227 Tribunals are not autonomous bodies, but very much under the authority of the High Courts. The government has justified the abolition of the finality of the tribunal on the grounds that it expands "scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes." It must be reiterated that the very purpose of tribunals is to firstly reduce litigation and to secondly ensure that cases are adjudicated by specialists. The government's brazen inconsistency is evident, and this can be seen in its different justifications for different amendments. In the name of "expanding judicial remedies," litigation is being allowed to increase. However, the government uses the excuse of "avoiding unnecessary litigation" to amend section 36, to omit sections 3(r)(i) (waqf by user) and 107 (barring of law of limitation). Is the government's goal reducing

[19] *"Reading of the Act in entirety makes it clear that the intention of the Act is to provide a machinery to supervise and maintain the wakf and its properties, and it is not intended to take away the powers of the Civil Court, where no remedy is provided under the Wakf Act."* 2008 (2) CTC 492

[20] *"The powers of the Tribunal are restricted only to the dispute specifically referred in Section 83 (1) of the Act to be adjudicated. Under Section 83 (1) of the Act, the Tribunal is empowered to determine the dispute, question or other matters relating to Wakf of Wakf property and not in respect of an application for permanent injunction. In this context, the words or other matter which is required by or under the Act to be determined by the Tribunal shall be referable only to Ss.6,7, 67 (4), 70(1) and (2) and S.94. None of the provisions of the Act either expressly or impliedly empowers the Tribunal to entertain, adjudicate upon and decide a petition for permanent injunction. Section 85 of the Act also does not specifically bar the jurisdiction of Civil Court to entertain a suit for Injunction. Therefore, it cannot be said that the word used any dispute shall also mean a dispute relating to the Managing Committee of the Jamath and the word any used in S.83 (1) of the Act shall mean every and whatever the dispute relating to a Wakf and the said word Wakfdoes relate to the Managing Committee."* AIR 2001 Madras 431

litigation or increasing judicial remedies? The question of law of limitation is discussed separately in detail in this report.

4.5.17 Furthermore, the legislative history pertaining to Waqf has been cited as a justification for a progressively increasing heavy-handed involvement of the state. Yet, the legislative history of Waqf actually demonstrates the opposite. The primary purpose behind each of the legislation pertaining to *auqaaf* – either before or after independence – was to safeguard the rights of *waqifs*, ensure accountability of Mutawallis and protect auqaaf from usurpation and mismanagement. It must be noted from the above discussion that the 1995 Act's constitutionality is based on giving effect to the objects and purposes of the dedicator. However, the Courts clearly recognise that, in the absence of a clear dedicator, the objects and purpose of an endowment/institution can be gathered from usage. In the next section, the scope and concept of Waqf by User is discussed.

4.6 Waqf by User

4.6.1 The government has justified the omission of 'waqf by user' in order to *"reduce liigations"*(sic). Furthermore, the Ministry of Minority Affairs has made a half-hearted attempt to justify the omission of statutory recognition given to waqf by user by the 1995 Act.

(a) Firstly, it referred to Salem Muslim Burial Ground Protection Committee v. State of Tamil Nadu (2023). However, it is unclear how this judgement can be used to do away with the concept of the waqf by user. The court made no observations as to the validity of waqf by user. In fact, it dispels the notion that waqf by user gives wide-ranging powers to the Waqf Board to declare any property as waqf by user on a whim. The Court held that adequate evidence must be provided before a property is registered as waqf by user. The property cannot be registered as waqf unless two surveys are completed, time is given for objections, disputes are settled, and a report is submitted to the state government and waqf board. In other words, it is highly limited

in scope and cannot be used arbitrarily. The fact that the court rejected the argument of waqf by user in this case also demonstrates that there are adequate remedies available in cases of mis-registration of waqf properties.

(b) Next, the Ministry argued that "many properties belong to private individuals/entities but claimed as Waqf under waqf-by user." The Ministry referred to the case of *Viceroy Hotels vs Telangana State Wakf Board*. The Ministry has mischaracterised the issue completely. Firstly, the matter did not pertain to wakf by user at all. The judgement does not even mention the word "user." The Ministry has attempted to mislead the JPC by referring to an irrelevant judgement. Moreover, the question before the High Court was not over the declaration of title but only for recovery of possession. Its dismissal would not bar the right of the board to contest or seek a declaration of title. There is adequate documentary evidence that the property was recorded as Waqf, as early as 1940.

(c) Similarly, the Ministry has referred to the case of Surat Municipal Corporation headquarters being declared as waqf. This is yet another case of misleading JPC. The Waqf Tribunal had already stayed the declaration of the SMC Headquarters as waqf. If anything, this reflects clearly that the Tribunal is serving its statutory purpose. However, it is even more important to note that the Gujarat Waqf Board was defunct and only constituted in 2024 following orders from Gujarat High Court. Under Section 25 of the 1995 Act, the Chief Executive Officer is under a duty to investigate and call for information. The CEO is a government appointee, and it is for the state government to explain why such a notification was issued.

(d) The Ministry has also referred to certain claims made by the MoHUA and ASI. These issues have been addressed separately and the notes

responding to the MOHUA and ASI have been appended to this report.

(e) The Ministry has argued that a large number of pending cases (6560) before Waqf Tribunals and other courts could be due to the "ambiguous ownership or title of Waqf properties, often declared based on long-term usage without deeds or proper documents." Firstly, this 'estimation' – if it can be called that – is not based on any systematic study. It is for the Ministry to demonstrate that, in all 6560 cases, the subject property in dispute is a property declared under waqf by user. Even if it is assumed for argument's sake that all 6560 cases involve properties pertaining to waqf by user, it is a miniscule proportion of the total 4.02 lakh waqf by user properties. This amounts to no more than 1.6% of the total properties declared under waqf by user. What has ended up happening is that the Ministry has ably demonstrated that waqf by user does not cause any major disruption or "liigations" (sic) as it has itself argued.

4.6.2 The Ministry has subsequently argued that the removal of 'waqf by user' does not affect those properties registered under waqf by user prior to the commencement of the 2024 Bill, if enacted. It has referred to Section 3B(1) and 3B(2) of the Bill, besides Section 39(3). The former refers only to the procedure of uploading details of registered auqaf on the portal; it does not result in legal recognition of any property. The latter only pertains to such properties that were in use for a religious purpose but have since ceased to be used for the same. However, even registered auqaf can be subject to encroachment or other litigation. In such a case, the absence of "waqf by user" as a rule of evidence would disadvantage auqaf. It would also make it difficult to register auqaaf that have been used as such for time immemorial. An additional proviso 'protecting' already-registered waqf by user properties is inadequate since it is conditional on such properties that are *"in dispute or is a government property."* The latter part of the proviso defeats the 'safeguard' since all one needs to do

to remove the waqf status of a property is to raise a dispute or to declare it a government property.

4.6.3 The Ayodhya judgment (***M Siddiq* v. *Mahant Suresh Das*, (2020) 1 SCC 1**) went into significant detail over the meaning and scope of waqf by user (paragraphs 1121 to 1140). The Supreme Court went through the extant case law on the matter and concluded the following:

(a) The principle of waqf by user is accepted as a principle of law by Indian courts

(b) The dedication resulting in a waqf may be reasonably inferred from the facts and circumstances of a case or from the conduct of the wakif

(c) 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

(d) Waqf by user has received **statutory recognition** by virtue of 3(r)(i).

(e) In the case of old wakf, it is not possible to secure direct evidence of dedication and also it has been ruled that even in the absence of such direct evidence, a court can hold a wakf to be established on evidence of long user

(f) Where the long use of the property as a site for public religious purpose is established by oral or documentary evidence, a court can recognise the existence of a waqf by user. The evidence of long use is treated as sufficient though there is no evidence of an express deed of dedication

(g) The question whether the use of property for public religious worship has satisfied the legal requirements to be recognised as public waqf is a matter of evidence.

(h) It is a "matter of inference" for the court, having examined the evidence on record, to determine whether the use of the property has been for sufficiently long and consistent with the purported use to justify the recognition of a public waqf absent an express dedication

(i) Given the irrevocable, permanent and inalienable nature of a waqf, the evidentiary threshold for establishing a waqf is high, as it results in radical change in the characteristics of ownership over the property.

(j) 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.

4.6.4 Therefore, what must be understood is that waqf by user – and endowment by user generally – is a settled principle of law. The 1995 Act did not create waqf by user, but merely gave it statutory recognition. By doing away with this provision, the government seeks to "legislatively overrule" principles of law that were settled by the Supreme Court of India.[21] This is unconstitutional. Custom and usage are also recognised by Articles 13(3) and 16(5) of the Constitution.

4.6.5 The deletion of waqf by user from the Waqf Act will mean that the title of these properties numbering over one lakh in Uttar Pradesh alone, will be destabilised and made vulnerable to encroachment. When read with other amendments – such as the deletion of Section 107 and amendment of section 36 – the sum total effect would be that the status of these properties as waqf would be in question.

4.6.6 It bears reiteration that "waqf by user" does not mean mere adverse possession. It is a rule of evidence. In order to demonstrate waqf by user, evidence is still

[21] NHPC Ltd. v. State of Himachal Pradesh Secretary & Ors., 2023 INSC 810

required that the property was dedicated or understood to have been dedicated, and that it was used for a pious or religious purpose. It must also be noted that waqf by user is not unique to the Wakf Act, 1995. It is settled law of Hindu Endowments as well that properties that were used as endowments from time immemorial must also be considered as religious endowments. In *Commr. for Hindu Religious & Charitable Endowments v. Ratnavarma Heggade, (1977) 1 SCC 525*, the Supreme Court had clearly held that:

> ***"The origin ,and process of dedication is not always found embodied in document.*** *Where the dedication itself is evidenced by a document, its objects, such as they may be, can be determined by interpreting the document. There are, however, many cases in which dedication or endowment of property for a particular purposes* ***has to be inferred from immemorial or long user of a property in a particular manner or from the conduct of a party.*** *Neither a document nor express words are essential for a dedication for a religious or public purpose in our country."*[22]

4.6.7 Neither a document nor express words are essential for a dedication for a religious or public purpose in our country. **Such dedications may be implied from user permitted for public and religious purposes for sufficient length of time**. The conduct of those whose property is presumed to be dedicated for a religious or public purpose and other circumstances are taken into account in arriving at the inference of such a dedication.[23]

4.6.8 This position was recently upheld in *R.Meenakshisundaram vs Sri Kayarohanasamy* in 2022. The fact is that the law of religious endowments *requires* a rule of evidence that recognises user from time immemorial. Many such properties – of both Muslims and Hindus – have existed in their present nature by convention, without adequate documentation. However, the totality of evidence surrounding a property may strongly reflect that it was in fact

[22] Paragraph 49 Commr. for Hindu Religious & Charitable Endowments v. Ratnavarma Heggade, (1977) 1 SCC 525
[23] Paragraph 55 Commr. for Hindu Religious & Charitable Endowments v. Ratnavarma Heggade, (1977) 1 SCC 525

dedicated and used as an endowment. If this amendment were to come into effect, the result would be that Hindu endowments would continue to be protected while Muslim waqfs would not. This would be a blatant violation of Articles 14 and 15.

4.6.9 Secondly, it would render many historic waqfs vulnerable to mischief. Their illegal occupations or encroachments could first be regularised since the law of limitation would become applicable. Various historic waqfs – including masjids and dargahs – are protected from bad faith claims due to the legal protection afforded by the Waqf Act. Litigation aimed at converting the character of these religious places or completely demolishing them is primarily based on dishonest claims that there is no "documentary" proof that a particular place of worship was dedicated as waqf. By legally recognising the evidentiary rule of "waqf by user," historic sites that have been used continuously as waqf would be protected.

4.6.10 Thirdly, in the absence of such protection, such religious places would be susceptible to *mala fide* litigation. In effect, the removal of such protections will be an extremely strong derogation of the state's duty to protect the right to freedom of religion enshrined in Article 25. All persons are "equally entitled" to profess, practise and propagate religion. By continuing to protect Hindu Endowments by user, while denying the same to Muslims, Article 25's "equal entitlement" clause is violated.

4.6.11 Furthermore, under Article 25, the state has an implicit duty to protect the places of worship from being converted, demolished or desecrated. Along with the Places of Worship Act, 1992, safeguards such as "waqf by user" or implied dedication of Hindu endowment, extend the principle of "non-retrogression." In the Ayodhya judgement, the Supreme Court held that the principle of non-retrogression is a core component of the principle of secularism, which is part of the basic feature of the constitution.

4.7 Law of Limitation

4.7.1 The government has proposed the omission of Section 107 of the 1995 Act. As a justification, it argues that this will reduce litigation as suits will be barred by limitation. Furthermore, the government has argued that this is in consonance with the Sachar report, since the report recommended an exemption from limitation so that properties that were otherwise under adverse possession could be recovered. The Committee recommended that this exemption must apply till 2035. Even at the time Section 107 enabled the Board to recover waqf property. The Committee's recommendation pertained to the retrospective effects of exemption from limitation. The Ministry misled the Parliamentary Committee by arguing that the omission of Section 107 would still allow the recovery of property till 2035, in accordance with the Limitation Act, 1963.

4.7.2 The Committee's recommendation is premised on two grounds: firstly, that many Waqf Boards were not functioning or properly constituted for much of the period during which the Public Wakf (Extension) of Limitation Act, 1959 was in operation and secondly, that there was no retrospective effect of Section 107.[24] Omitting Section 107 is not in consonance with the recommendations of the Committee, rather, it completely defeats the purpose of the Committee's recommendations. The Committee made its recommendations with the goal of *enabling* the Board to recover adversely possessed properties. If section 107 is omitted, the Board would not be able to recover properties from long-time encroachers, including government agencies. This would defeat the purpose of the recommendation, rather than enable it.

4.7.3 If the government's argument is the reduction of litigation, it must provide data to demonstrate that a substantial portion of the existing litigation concerning Waqf properties pertains to limitation. No such data has been provided, therefore, the government must explain on what grounds this section is being omitted. Moreover, this policy approach is itself unsustainable. If the sole

[24] P.232 of the Sachar Committee Report
https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/7830578798.pdf

justification is the reduction of litigation, then every legislation ought to be amended to reduce the right to seek redress before courts.

4.7.4 Most importantly, section 107 has been curtailed due to judicial interpretation. Due to the judgement *T. Kaliamurthi v. Five Gori Thaikal Wakf*[25], the Supreme Court had held that Section 107 would neither apply to pending proceedings nor retrospectively. In other words, "for the application of Section 107…the property must be comprised in the wakf or the wakf must have some interest in such properties. If, however, the right to property stands extinguished, then Section 107 cannot apply."[26] This right to property is extinguished if adverse possessors "perfect their title." This interpretation of the Supreme Court has significantly limited the scope of Section 107. It was for the government to demonstrate that, despite this interpretation, Waqf boards were abusing section 107, or that it enabled large-scale litigation. The government failed in discharging its burden of proof.

4.7.5 The law of limitation may be appropriate for civil suits concerning private property, but the specific context of auqaaf and endowments is different. The ouster of the law of limitation from the scope of the Waqf Act of 1995 was due to the specific circumstances relating to the law of endowment generally and Waqf specifically. As the government itself has recognised, previous laws pertaining to Waqf administration were inadequate; and the Waqf Boards were either not constituted properly or were crippled in their ability to administer, protect and recover *auqaaf*. Therefore, the limitation was removed in order to ensure that *auqaaf* were not lost merely because of administrative oversight and governmental inefficiency. It is the solemn duty of the state and Union governments to protect the purpose for which an endowment is made; it was the failure of the governments to protect *auqaaf* that resulted in the need for Section 107. The Bill could be consistent with the Sachar Committee

[25] *T Kaliamurthi* v. *Five Gori Thaikkal Wakf*, (2008) 9 SCC 306
[26] *Ibid*.

recommendation only if the Bill is amended to make Section 107 applicable retrospectively and if adversely occupied *auqaaf* are exempted.

4.7.6 The statutory limitation of Section 6 is another example of the government misleading the Committee. Section 6 of the principal Act states that a suit pertaining to disputes regarding *auqaf* cannot be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of auqaf. This Bill proposes to increase this period of limitation by two years. If the logic of applying law of limitation is to reduce litigation, why is the period of limitation in this case being increased? The Sachar Committee recommended that in the proviso to Section 6, after the expression "or any person interested therein" the words may be added "irrespective of his/her /its religion." If the logic is to apply the Sachar Committee's recommendations, then why did the government not propose this amendment?

4.7.7 Let us now look at the question of parity. The ouster of law of limitation from the scope of Hindu endowments is a common feature. For example, under the Tamil Nadu Hindu endowments law, the law of limitation does not apply.[27] A similar provision also exists in the Telangana and Andhra Pradesh statutes.[28] Would such a provision be removed as it is being done with respect to Waqf? In fact, as early as 1962, the Report of the Hindu Religious Endowments Commission recommended the inclusion of such a provision for all religious public trusts.[29] It is obvious why such provisions are required in the case of religious and charitable endowments. Due to government neglect and non-enforcement, many of these properties have been encroached. If the law of limitation were to apply strictly, it would only create an incentive for encroachment to continue.

4.7.8 The historical background note circulated to members of this committee has made some glaring errors as well. In the background note, though reference is

[27] Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959
[28] Section 143 of the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987. Section 143 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
[29] p. 117 of the report https://nvli.in/report-hindu-religious-endowments-commission-1960-1962

made to the Waqf Act, 1954, the Amendment Act of 1984, the aims and objectives of the Act and their intended purpose was neither stated nor dwelled upon. The background is completely silent as to why the legislature had thought it necessary to increase the period of limitation from the date of enactment of the 1954 Act and subsequent amendments in 1959, 1964, 1969 and 1984. A cursory reading of the said amendments would show that the legislature was of the firm opinion that the limitation as prescribed under the Limitation Act would be detrimental in protecting the interest of the waqf, and the same was therefore extended from time to time and completely done away with under the 1995 Act. When the opinion of the legislature for the past 75 years has consistently been that the law of limitation applied *stricto senso* would be detrimental to the waqf, how can the present Government by deleting exception to the Limitation Act under Section 107 claim 'it is doing so to the benefit of the waqf'. By removing the said provision of limitation, the only persons that are benefited are encroachers.

4.8 Omitting Overriding Effect

4.8.1 The government has argued that the omission of Section 108A *"facilitates legal harmonization of waqf Act with other laws. This reduces conflicts and avoids overlapping with the various Acts."* This is an absurd argument to make. The very purpose of Section 108A is to ensure that there is no legal confusion, conflicts or "overlapping" with other statutes. It resolves these conflicts by giving the 1995 Act overriding effect. In fact, omitting this provision will invite undue conflicts and overlaps. This omission is not harmonisation, but setting law of Waqfs up for failure.

4.8.2 Section 108A of the Act is meant to give overriding effect to the law over any other legislation. The provision pertaining to overriding effect is found in almost every special legislation. The purpose of this provision is to ensure that the Act is treated as a comprehensive code, and that its purpose is not defeated by the application of other statutes. By removing section 108A, the consequence will be the complete defeat of the 1995 Act. It will also weaken the basic

protections afforded to waqf properties. Provisions similar to Section 108A are found in various laws pertaining to Hindu community, including their endowments.

4.8.3 Section 4 of the Hindu Succession (Amendment) Act, 2005 gives an overriding effect to the Act. Section 160 of the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987 states that the provisions of this Act will prevail over corresponding provisions and any compromise, agreement, scheme, judgment, decree, order or any custom or usage shall have no effect. Such provisions may also be seen in the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 and the Bihar Hindu Religious Trusts Act 1950[30]. Therefore, the proposal to delete the overriding effect of the 1995 Act defies logic and is incongruent with similar provisions existing in analogous legislation relating to religious and charitable endowments for other religions. Further the overriding effect of the Waqf Act has been judicially upheld by the Madras High Court in Mohmood Hussain vs State of Tamil Nadu.[31]

4.9 Obfuscating the Tribunals System

4.9.1 The purpose of any tribunal is to provide an alternative and efficacious remedy to aggrieved persons. Furthermore, tribunals are usually set up for specialised subject matters that require a degree of expertise in the area. Therefore, tribunals are meant to redirect disputes from regular courts, where such matters may remain pending for longer periods, and where these disputes may be heard by generalists, rather than specialists.

4.9.2 The amending Bill essentially destroys the tribunal system by making amendments that defeat the abovementioned goals of any tribunal. Firstly, the Bill amends section 83 to dilute the jurisdiction of Waqf Tribunals. It allows the government to notify any other tribunal as a waqf tribunal. Furthermore, if no

[30] Section 79, Act 1 of 1951
[31] WP 20533/2023

tribunal is functioning or if it has not been set up, then aggrieved persons may appeal to the high court directly.

4.9.3 The Waqf Tribunal is a specialist tribunal, to permit the government to designate any tribunal as waqf tribunal is to essentially defeat the purpose of why it was set up in the first place. For example, could the Industrial Tribunal under the Industrial Disputes Act be designated as a Waqf Tribunal? It would be absurd to expect a tribunal specialising in non-Waqf matters to hear matters concerning Waqf. Similarly, permitting appeals to lie directly in the High Court would incentivise the state governments to not constitute waqf tribunals in time or to keep them non-functioning on some ground or the other.

4.9.4 The amendment Bill also proposes to do away with the finality of tribunals. It has been misrepresented that the finality of the decisions of Waqf Tribunals under the 1995 Act meant that decisions of the tribunals could not be challenged before courts of law. It is long-settled position of law that finality of a tribunal's decision does not preclude the jurisdiction of the High Court and the Supreme Court under Articles 226 and 136.[32] The very purpose of tribunals is to reduce litigation that clogs up the courts system. Tribunals were intended to resolve disputes requiring technical expertise. The Law Commission itself had recommended that the statutory system of tribunals could be improved by ensuring that finality is given to decisions of tribunals, while leaving scope for review by the higher judiciary in egregious cases.[33] In fact, this very government abolished tribunals on the grounds that these tribunals lacked finality.[34] Therefore, removing the finality of Waqf tribunals is to set them up for failure. With more appeals going from tribunals to the high courts, the

[32] Union of India v. Delhi Bar Association: *"It has to be borne in mind that the decision of the Appellate Tribunal is not final, in the sense that the same can be subjected to judicial review by the High Court under Articles 226 and 227 of the Constitution.' Dhakeswari Cotton Mills v. Commissioner of Income-tax, West Bengal: It is, however, plain that when the Court reaches the conclusion that a person has been dealt with arbitrarily or that a court or tribunal within the territory of India has not given a fair deal to a litigant, then no technical hurdles of any kind like the finality of finding of facts or otherwise can stand in the way of the exercise of this power because the whole intent and purpose of this Article isthat it isthe duty of the Court to see that injustice is not perpetuated or perpetrated by decisions of courts and tribunals because certain laws have made the decisions of these courts or tribunals final and conclusive."*

[33] 272nd Report of the Law Commission 'Assessment of Statutory Frameworks of Tribunals in India'

[34] https://vidhilegalpolicy.in/impact/reforming-tribunals-and-expediting-justice-delivery/

government will have a justification for their eventual abolition arguing that the tribunals have been ineffective.

4.9.5 It is also a misconception that the bar on jurisdiction of civil courts, and the establishment of Waqf Tribunal is absolute. In *Salem Mohammedpura Parimala Sunnath Jammth Masjid Committee*[35] and *A.M.Ali Akbar v. Keelakarai South Street Jamath Masjid Paripalana Committee*[36] it was held that the bar on jurisdiction is limited to the specific provisions of the Act, and is not absolute.

4.9.6 The finality of a decision of a tribunal has been upheld as constitutional by various Supreme Court judgements. The remedy of judicial review by the higher judiciary is not exhausted by such provisions. By virtue of Article 227 Tribunals are not autonomous bodies, but very much under the authority of the High Courts. The government has justified the abolition of the finality of the tribunal on the grounds that it expands "scope of judicial remedies, allowing for further appeals and ensuring that aggrieved parties have access to broader legal avenues for resolving legal disputes." It must be reiterated that the very purpose of tribunals is to firstly reduce litigation and to secondly ensure that cases are adjudicated by specialists. The government's brazen inconsistency is evident, and this can be seen in its different justifications for different amendments. In the name of "expanding judicial remedies," litigation is being allowed to increase. However, the government uses the excuse of "avoiding unnecessary litigation" to amend section 36, to omit sections 3(r)(i) (waqf by

[35] *"Reading of the Act in entirety makes it clear that the intention of the Act is to provide a machinery to supervise and maintain the wakf and its properties, and it is not intended to take away the powers of the Civil Court, where no remedy is provided under the Wakf Act."* 2008 (2) CTC 492

[36] *"The powers of the Tribunal are restricted only to the dispute specifically referred in Section 83 (1) of the Act to be adjudicated. Under Section 83 (1) of the Act, the Tribunal is empowered to determine the dispute, question or other matters relating to Wakf of Wakf property and not in respect of an application for permanent injunction. In this context, the words or other matter which is required by or under the Act to be determined by the Tribunal shall be referable only to Ss.6,7, 67 (4), 70(1) and (2) and S.94. None of the provisions of the Act either expressly or impliedly empowers the Tribunal to entertain, adjudicate upon and decide a petition for permanent injunction. Section 85 of the Act also does not specifically bar the jurisdiction of Civil Court to entertain a suit for Injunction. Therefore, it cannot be said that the word used any dispute shall also mean a dispute relating to the Managing Committee of the Jamath and the word any used in S.83 (1) of the Act shall mean every and whatever the dispute relating to a Wakf and the said word Wakfdoes relate to the Managing Committee."* AIR 2001 Madras 431

user) and 107 (barring of law of limitation). Is the government's goal reducing litigation or increasing judicial remedies?

4.10 Powers of the Collector and Omission of Section 40

4.10.1 The Waqf Act, 1995 is a complete code in itself.[37] This means the statute not only defines what counts as waqf, but also provides various legal mechanisms by which the right to dedicate and protect auqaaf can be enforced. The Act provides legal mechanisms for the survey and registration auqaaf, it provides a grievance redressal mechanism. It empowers officers to carry out the purposes of the Act while also placing duties on various persons entrusted with the implementation of the Act. The Act also creates offences and penalties for violations. This is why it creates a special machinery for its implementation, rather than merely delegating such authority to the state or Union government.

4.10.2 To this extent, the removal of the Survey Commissioner or its replacement by the Collector is intended to defeat the purpose of the Act. The Collector, an already overburdened officer, is in no position to implement the law effectively. Therefore, the removal of the position of Survey Commissioner is meant to make the Act so unworkable that it becomes dead letter. If the government was serious about claims of "professionalising" and "modernising" then it would have ensured that the position of the Survey Commissioner is strengthened. The argument of the government that the Collector is in-charge of the revenue records is no argument at all. The purpose of the Waqf Survey is not to maintain revenue records, but to ensure that the records of waqf properties are maintained properly. This, in no way, affects revenue records or the duties of the collector. In the present administrative set up, it is simply not possible for the Collector to discharge his routine duties while also carrying out a survey of waqf properties properly.

4.10.3 The responsibility of surveys has been transferred to the Collector. However, the Collector is overburdened (as recognised by various Administrative

[37] *Mohmood Hussain* v. *State of Tamil Nadu* (*supra* note 35)

Reforms Commission reports). That the Collector is "head of the land revenue system" is not reason enough. The government is arguing that the collector has the resources to "conduct surveys efficiently and ensure quick updates to land records." But this is not borne out by actual evidence on the ground. The provision of a special survey commissioner was meant to ensure that the survey is conducted in a time-bound manner. The government has not explained what was lacking with existing survey commissioners. After all, survey commissioners are not private persons, but officials of the state. Usually, they are IAS officers.

4.10.4 The justification for introduction of 3C is to *"ensure validation of government properties by the collector."* This does not explain why it was needed. The provision does not pertain to "validation" but of declaring properties as government properties. It does not explain what happens if the Collector does not find that a property is government property. The determination of ownership/title or nature of a property should rest with a judicial forum, and not an administrative officer.[38] This is a brazen violation of separation of powers, which is part of the basic structure of the Constitution. The government must explain why it chose to entrust the Collector rather than provide for a speedy adjudicatory mechanism before a competent court. Empowering the executive with judicial powers is a violation of the doctrine of separation of powers, which is part of the basic structure of the Constitution. The amended clause 3C(2) replaces the Collector with a senior officer "above the rank of Collector." This does not address the unconstitutionality of the provision since it still violates the separation of powers doctrine while also derogating from principles of natural justice.

4.10.5 A Waqf can be made only by the owner of his property who has to submit his title documents to the wakf board, and registration can be done after giving a paper notification calling for objections from the general public. It does not end there. Unlike Hindu endowments, it is only in case of Wakfs that there is second

[38] "The adjudication of the rights of the parties according to law is a judicial function." (1976 AIR 2250).

level of scrutiny by the government who appoints Survey Commissioner who inspects the lands and confirms its Waqf nature after local enquiry and then the same is notified by the Government in State Gazette (under Sections 4 and 5). After this, the revenue authorities are required to make changes to records to reflect the list (mutation). Thereafter, anybody could challenge the notification in Wakf Tribunal within a period of one year and then only the Wakf becomes final. **The amendment Bill makes two changes: firstly, the survey commissioner is replaced with the collector. Secondly, even after the report is submitted, there is a second requirement that the revenue authorities issue a 90-day notice seeking objections**. If the collector was appointed precisely to ensure that there is consistency in revenue records, then why are revenue authorities again required to carry out an additional level of scrutiny?

4.10.6 Similarly, the amendment to Section 36 requires that the application for registration be forwarded to the Collector to look into the genuineness and validity of the application and correctness of any particulars. The rationale of this provision is unclear. No registration mechanism has such an elaborate and self-defeating provision for registration. No legislation pertaining to Hindu Endowments even comes close. The Tamil Nadu HRCE Act does not require registration; all Hindu public religious institutions and endowments come under its ambit by default. The Andhra Pradesh and Telangana laws empower Endowment Officers to deal with registration. In this Bill's case, the purpose seems to be to create a registration mechanism where administrative delays are built into the very system.

4.10.7 The omission of Section 40 also reflects the callousness with which the government has drafted this legislation. The purpose of Section 40 was to ensure that the Board could register *auqaaf* where no person had taken the initiative to undertake the registration formalities. In public, this power has been characterised as an absolute power. However, a strict procedure has to be followed: the Board is firstly required to collect information, and then it must provide material on record to demonstrate that it had reason to believe that it was waqf property. Most importantly, it cannot declare any property as waqf,

there must be evidence to demonstrate that it was dedicated and used as waqf, that the dedicator in fact owned the property, etc. Moreover, the decision of the Board is subject to two levels of review: the Waqf Tribunal may revoke or modify its order, and secondly, the High Court's inherent jurisdiction under Article 226 also permits the Court to look into the decision on the basis of principles of administrative law. In addition to above in *Maharshtra State Board of Wakfs versus Shaikh Yusuf Bhai Chawla*[39], Supreme Court of India has also examined the power of the Waqf Board under section 40 of the Waqf Act and found no defect. It directed the Waqf Board to decide the case pending before it in the exercise of such power in paragraph under para 170 of the judgment.

4.10.8 Suo-motu powers to register, similar to Section 40, are also found in laws pertaining to endowments. For example, Section 79 of the Bombay Public Trusts Act, 1950 empowers the Assistant Charity Commissioner to decide whether or not a trust exists and whether such trust is a public trust or whether a particular property is the property of such trust. Similar powers can also be found in Section 63(a) of the TNHRCE Act, 1959, Section 43 APCHRIE Act, 1987.

4.10.9 The proposed amendment to Section 61 of the Principal Act (clause 28 of the Bill) penalises a Mutawalli if he does not comply with the directions of the Collector or the Board. The Bill is silent on the nature and scope of the "directions" to be given by a Collector to a Mutawalli. The Bill further does not address the implications of a situation where a Collector may give directions to the Mutawalli contradictory to his statutory or religious duties.

5. PART II: CLAUSE-BY-CLAUSE ANALYSIS

5.1 Proposal to Change the Name of the 1995 Act

5.1.1 Clause 2 of the Bill proposes to rename the 1995 Act to 'Unified Waqf Management, Empowerment, Efficiency and Development Act' to *"reflect its updated focus on improving the management of waqf properties, by making Collector*

[39] Civil Appeal No. 7812-7814/2022

responsible for Survey, Registration, Validation of Government Land and Mutation, empowerment of stakeholders relevant to management of waqf properties, improving the efficiency in survey, registration and case disposal process, and development of waqf properties." It has been further stated that while the core purpose remains to manage waqf properties, this name change reflects the aim to *"implement modern and scientific methods for better governance."*

5.1.2 The proposed change in the name of the Act, while innocent at first brush, on greater examination, reveals itself to be just a smokescreen, a blatant lie beneath which hides an agenda of systematically weakening the legislative architecture regulating waqfs in India. The proposed Waqf (Amendment) Bill, 2024 is, in fact, designed to disempower waqfs, take away their management from the hands of Muslims, create hurdles in their efficient administration and hamper the progress of their development. Therefore, the proposed amendments do not genuinely empower the community or improve the waqf administration, contrary to the stated focus of the Bill on efficiency and development. Instead, the proposed changes undermine years of progress achieved through previous amendments and the implementation of the recommendations of various committees, setting back waqf management by several decades.

5.1.3 Analysis of the proposed name reveals that the Bill seeks to do the exact opposite of what the new name claims to achieve:

Management: The architecture of the Waqf Act and all its predecessor legislations was designed to achieve the constitutional goal of Article 26 of the Constitution of India by allowing the Muslim community to establish and maintain institutions for religious and charitable purposes, manage its own affairs in matters of religion, own and acquire moveable and immoveable properties and administer such properties in accordance with law. The right of the community to manage its own affairs in matters of religion and administer its religious and charitable properties in accordance with law was sought to be balanced with the right of the State to ensure that such management did not lead to mismanagement and maladministration of community properties.

Thus, the control of the properties was maintained in Muslim hands, while at the same time ensuring that Muslims of public stature and merit were tasked with overseeing the proper management of religious and charitable properties of the community. This management is now sought to be taken away from Muslims by this Bill and handed over to non-Muslims in gross violation of Article 26.

Empowerment: In the name of empowerment, the Bill is a systematic scheme of disempowerment of *auqaf* and dismantling the regulatory framework governing them. No matter what the competing interest is, whether it is that of encroachers, interlopers and unscrupulous elements, non-Muslims, State governments, the ordinary courts, the Custodian, the heirs of a waqif or divisive elements seeking to make mischievous claims over ancient waqfs, every other interest group is sought to be strengthened at the expense of waqfs and the regulatory framework governing them.

Efficiency: The reason for inefficiencies in the present waqf regulatory framework lay not in legislative shortcomings, but in lack of executive will to implement the law as it stood. In some States, Waqf Boards had not been constituted, whereas in others, even the preliminary survey was not conducted under Section 4 of the Waqf Act. In several States, Waqf Tribunals have not been constituted and there is no forum where disputes relating to *auqaf* can be decided. Instead of prompting State governments to implement the Waqf Act, the Central government has instead chosen to weaken the legislative architecture itself. In the name of administrative efficiency, control of waqf properties is sought to be taken away from Muslims as if the reason for the inefficiencies was lack of administrative capability within the Muslim community and the remedy is giving over control to non-Muslims.

Development: In the name of development of *auqaf*, the definition of 'waqf' is sought to be whittled down by removing the concepts of 'waqf-by-user' and oral waqfs, rendering the concept of 'waqf-alal-aulad' otiose, denying an

overwhelming number of Muslim religious and charitable properties the status of waqf and consequently depriving them of protection under the Waqf Act.

5.1.4 The now proposed Clause 2A has been added by the Government at the last minute after representations by various stakeholders had already come in and deliberations of the Joint Committee were already complete. As such, the impact of the proposed Clause 2A remains to be evaluated.

5.2 Changes to the Definition Clause

5.2.1 The Bill through Clause 3 seeks to:

a. introduce several new definitions, *viz*. 'Aghakhani waqf', 'Bohra waqf', 'Collector', 'government organisation', 'government property', 'portal and database',

b. make certain modifications to existing definitions such as 'mutawalli', 'prescribed', and 'waqf', and

c. delete the definition of 'Survey Commissioner'.

5.2.2 Insofar as the new definitions sought to be introduced are concerned, more than the definitions themselves, it is their use in the amended sections that is problematic, and these have been dealt with in the relevant clauses amending/introducing these sections. Deletion of the definition of 'Survey Commissioner' is dealt with in the analysis of Clause 5 which seeks to amend Section 4 of the Waqf Act and vest the powers of the Survey Commissioner in the Collector. The definitions sought to be modified are discussed below.

5.2.3 The most crucial definitional change proposed is to the definition of 'waqf' in Section 3(r), which seeks to reverse years of progress in the protection, management and administration of waqf properties that has been made through numerous amendments and recommendations from various committees. Each of the proposed changes to the definition of 'waqf' in Section 3(r) of the 1995 Act is discussed in detail below:

a. The proposed amendment in Sub-section 3(r) seeks to substitute the phrase "*any person, of any movable or immovable property*" with "*any person showing or demonstrating that he is practising 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*", and the words *"any person"* with *"any such person"* in the definition of 'waqif'. The Government has, at the last minute, added the requirement for the waqif showing or demonstrating that he is practicing Islam. It appears that the right to freely profess a religious faith under Article 25 of the Constitution has now been made subject to the profession of the faith being demonstrated to the satisfaction of the Government. A mockery is thus sought to be made of the fundamental right to freedom of religion and the right to privacy. Further, another level of completely subjective satisfaction has been added of showing the absence of 'contrivance'. Such an inclusion is void just for its vagueness, if not for its interference with the right to freely practice religion and its arbitrariness. The Ministry of Minority Affairs in their representation before the Committee indicated that the objective behind this change is to purportedly restore the position that existed prior to the 2013 amendments to the 1995 Act by disallowing non-Muslims from dedicating property under the Act. It is crucial to clarify that this justification is flawed, as non-Muslims were already permitted to dedicate property to waqf for certain purposes recognised under Section 104 of the Act, even prior to the 2013 amendments. Islamic law contains no restrictions on a non-Muslim dedicating property to waqfs for recognised purposes, as long as those purposes are also lawful according to the dedicator's own faith. Further, although the definition of 'wakf' in the 1954 Act initially only made specific reference to properties dedicated by Muslims as being waqf, the Judicial Committee of the Privy Council clarified that this definition was limited to the purposes of the

Act and was not exhaustive.[40] Importantly, as early as 1964, Section 66-C was introduced to the 1954 Act, clarifying that dedications by non-Muslims of property for specific purposes, *viz*. mosques, idgahs, imambaras, dargahs, khanqahs or maqbaras, Muslim graveyards, and choultries or musafirkhanas would constitute a valid waqf. This provision was carried forward in the 1995 Act as Section 104. In 2013, the definition of 'waqf' was expanded to grant statutory recognition to dedications by non-Muslims for purposes even beyond those previously enumerated, although these were also covered as the definition had been held by the Privy Council to not be exhaustive. Therefore, through successive amendments, the definition of 'waqf' gradually became more inclusive and aligned with Islamic principles. However, decades of progress are now sought to be undone in a single stroke.

b. To purportedly *"prevent ambiguity in the status of waqif"* and to introduce greater clarity, the Bill proposes to restrict the act of dedicating property for religious, pious or charitable purposes – which is intrinsically tied to religious merit – to individuals who have practised Islam for at least five years. However, this proposed exception is both alien to Islamic law and inconsistent with Articles 14 and 15, and the constitutional rights of the property owners under Article 300A. Such a position is also inconsistent with other laws governing the transfer of property or the creation of rights, titles, or interests therein. There is no legal precedent for imposing such restrictions on the right of any competent and willing adult to manage, dispose of, or dedicate their property in any manner they deem fit, including under analogous laws relating to charitable and religious endowments of other religions. Preventing individuals who have converted to Islam from seeking religious merit, as ordained by the religion they have freely chosen to follow, from the moment of their conversion, violates their fundamental right to freely practice and profess their religion under Article 25 of the Constitution. Being a facet

[40] *Mami* v. *Kallandar Ammal*, (1926-27) 54 IA 23

of the right under Article 25, such a restriction can only be imposed on the grounds of public order, morality, health or other provisions of Part-III. The justification offered by the Hon'ble Ministry of Minority Affairs, suggesting that a 'reasonable period' of five years be prescribed to ensure *"reasonable time for faith in the religion,"* constitutes a restriction not envisioned within the permissible boundaries of Article 25. Moreover, the exclusive targeting of individuals who convert to Islam amounts to differential treatment, discrimination, and Islamophobia, thus failing to withstand the scrutiny of Articles 14, 15, and 300A of the Constitution. Notably, there is no restriction on the dedication of property by a fresh convert to Islam to a temple, church, gurudwara or mutt during this same period.

c. The withdrawal of the statutory recognition of 'waqf by user', as proposed through the deletion of Sub-Clause (i) of Section 3(r), would destabilise the status of lakhs of ancient waqf properties that have to rely on the principle of 'waqf by user' to prove their status as waqf. The deletion of this concept from the definition would undermine the legal protection afforded to these properties, as 'waqf by user' serves as a rule of evidence to establish the existence of a waqf where documentary proof is lost or destroyed, a concept well-entrenched in both Muslim and Hindu endowment law. It is well-settled law that long use for religious purposes as well as oral dedications of property are recognised as a valid ground for a property being considered a religious endowment under Hindu Law. The following extract from the well-known authoritative treatise, **Bijan Kumar Mukherjea, *The Hindu Law of Religious and Charitable Trusts, 1951*, Pg. 336-37** (1st ed. 1952) is informative in this regard:

> *"A Mutt like a debutter owes its origin to dedication of property by a donor. A pious ascetic as has been said already gathers round him a number of disciples whom he initiates into the tenets of his order. Pious persons make grants of property for the use and benefit of the fraternity and a Mutt is constituted. <u>For making this grant, no particular form is necessary, nor is it required that there should be a document in writing.</u>*

> *If the donor chooses to dedicate property by executing a deed of gift or one of trust, the formalities of such transactions as well as the requirements of the registration law would certainly have to be complied with. But as has been said already, no words of gift either expressly or by way of trust are necessary; it would be enough if the founder indicates with precision the religious purpose for which the endowment is made and renounces his interest in the endowed property in favour of the said object. These requirements are usually fulfilled by going through the ceremonies of Sankalpa and Utsarga, the first of which designates the object of dedication and the second effects a formal renunciation of whatever interest the founder had in the dedicated property. I have already described to you in the introductory lecture the ceremonies in connection with renunciation as prescribed in various ritualistic treatises. Ordinarily in case of Mutts there is a specific human donee to receive the gift. If the Mutt is given to a- religious preceptor as representative of a brotherhood of ascetics, the usual formalities of gift including pouring of water on the hands of the donee are gone through. When there is no specific donee and the dedication is in favour of ascetics generally, the libation of water is thrown into a pot. There are treatises again like the Kalikapuran, according to which all Mutts have got to be dedicated to God Sankara. These ceremonies as I have already said in connection with debutter endowment are neither essential nor conclusive. The presence or absence of the ceremonies are only relevant pieces of evidence to be taken into consideration along with other evidence in determining whether the donor genuinely intended to renounce his interest in the property for the accomplishment of the particular purpose."*
>
> (Emphasis supplied)

The amendment, if allowed, would create a discriminatory dichotomy between Muslim waqfs and Hindu endowments, thus violating Articles 14 and 15 of the Constitution, which prohibit discrimination on the grounds of religion. Furthermore, the removal of this provision would expose historic waqfs, including masjids and dargahs, to potential encroachment, illegal occupation, and *mala fide* litigation aimed at altering the religious character of these religious sites. This would also be in contravention of the implicit constitutional duty of the State under Article 25, read with the bar contained in the Places of Worship (Special Provisions) Act, 1991 (**"1991 Act"**), to protect places of worship from conversion, demolition, or desecration. In conjunction with the 1991 Act, the doctrine of 'waqf by user' reinforces the principle of 'non-retrogression'. This principle has been unequivocally affirmed by the Hon'ble Supreme Court in ***M Siddiq* v. *Mahant Suresh Das*, (2020) 1 SCC**

1 as being an essential facet of secularism, which forms a core element of the basic structure of the Constitution of India.

d. The Bill also proposes to modify Sub-Clause (iv) of Section 3(r), which currently stipulates that, to the extent the property is dedicated for purposes recognised by Muslim law as pious, religious, or charitable, when the line of succession fails, the income of the waqf shall be allocated to education, development, welfare, and other purposes recognised under Muslim law. The words *"maintenance of widow, divorced woman and orphan if waqif so intends in such manner, as may be prescribed by the Central Government"* are proposed to be inserted after the word 'welfare'. While the proposed addition of objectives of a waqf are anyway recognised in Muslim law and, as such, were already covered under the phrase "and such other purposes as recognised by Muslim law", the proposed amendment empowers the Central Government to prescribe the manner in which the income of the waqf is to be utilised, which allows for interference by the Central government in the manner of utilisation of income from waqf-al-aulad once the line of succession fails. This is inconsistent with the freedom of religion guaranteed under Article 25 of the Constitution, as well as Article 26, which guarantees every religious community the right to manage its own affairs in matters of religion and administer its properties. This amendment has to be seen together with the proposed Section 3A(2), which makes the wishes of the waqif subservient to the rights of the heirs under the law of intestate succession. The Hon'ble Ministry of Minority Affairs has justified the proposed amendment by asserting that it aims to safeguard the inheritance rights of heirs, including women heirs, in the context of waqf-alal-aulad, which is classified as a private waqf, in order to align the treatment of such waqfs with the principles enshrined in the Muslim Women (Protection of Rights on Marriage) Act, 2019. However, a person professing any other religion has the right to dedicate his/her property to a religious endowment to the exclusion of the rights of their heirs. This

selective whittling down of the rights only of a Muslim testator over their property is a gross violation of Articles 14, 15, 25, 26 and 300A of the Constitution.

e. The last minute inclusion of a proviso to the effect that "*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*" is wholly unhelpful as the principle of waqf-by-user will only be tested in cases where the property is placed 'in dispute', in which case the proviso will not apply.

5.2.4 The proposed introduction of the definitions of 'Collector' as Section 3(da), 'government organisation' as Section 3(fa), and 'government property' as Section 3(fb), ostensibly to provide better clarity and understanding in relation to the Waqf Act, 1995 appear to actually lay the groundwork for a regime that vests wide and uncanalised powers in the hands of the Collector, who is an officer of the State government tasked revenue administration and with management of government properties. This places him/her in a position of conflict of interest. An example of this is the treatment of any movable or immovable property allegedly belonging to a government organisation, which is, from the outset, explicitly sought to be exempted from the extant framework of waqf administration through a categorical and retrospective carve-out in the proposed Section 3C. This proposed section not only gives precedence to the claims of the Government over those asserted by the State Waqf Boards in disputes between the two, but it also empowers the Collector to unilaterally determine whether property declared or identified as waqf is, in fact, government property. This fundamentally undermines the sanctity of waqf properties by vesting unchecked powers in the hands of the State machinery and making it a judge in its own cause. This has to be seen in juxtaposition with the proposed deletion of the definition of 'Survey Commissioner' in Section 3(p). The Survey Commissioner, albeit appointed by the State government, was a dedicated officer who was given an independent role.

5.2.5 The introduction of the definition of the term 'portal and database' as Section 3(ka), ostensibly sought to be introduced to enhance transparency and grant statutory recognition to a waqf asset management system or any other system set up by the Central Government for the registration, accounts, audit and any other detail of waqfs and the State Waqf Boards, appears to be redundant at this juncture since the Waqf Asset Management System of India (**"WAMSI"**) portal was launched as early as 2010 following the recommendations of the Sachar Committee (2006) and the Joint Parliamentary Committee on Waqf (Ninth Report, 2008) and has already been in place for over a decade. However, the context in which this definition has been introduced, i.e., in the context of Section 3B under which a waqf is compulsorily required to provide relevant details including the document of dedication within the timeframe prescribed, or else it loses its status as a waqf, is deeply problematic. Further, the provisions concerning details that are to be uploaded on the portal and database to be prescribed by the Central Government and objections being invited on the same disproportionately increases the interference of the Central government in waqf management to the detriment of State governments, which is contrary to the spirit of federalism. This also creates one more avenue for frivolous claims in the form of objections to be made by mischievous elements looking to undermine a waqf.

5.2.6 The proposed amendment to the definition of 'mutawalli' by omitting the words "either verbally or" is incongruent with Islamic law, which has long acknowledged and upheld the validity of verbal contracts, oral testaments and gifts, and other oral testimonies, including the creation of waqfs through verbal declarations. This proposed change, combined with the insertion of sub-Section (1A) in Section 36 mandating the execution of a waqf deed for the creation of a waqf, the proposed deletion in sub-Section (4) of Section 36 allowing for a situation where no waqf deed exists, and the exclusion of 'waqf by user' from the definition of 'waqf' in Section 3(r), would effectively take away the legal basis for the recognition of oral waqfs, disregarding a principle of Islamic law of recognition of oral contracts and testimonies.

5.2.7 The proposed amendment to redefine the term 'prescribed' in Section 3(l) of the 1995 Act to rules prescribed under the Act seeks to expand the powers of the Central Government whose rule-making powers have been significantly enlarged, limiting the powers of State Governments to make rules and the delegated powers of the State Waqf Boards to prescribe certain matters by notifications. Previously, the Central Government's power to make rules under the Act was confined to Chapter III, which outlined the powers and functions of the Central Waqf Council. However, the proposed amendment attempts to substantially enlarge the powers of the Central Government, thereby centralising control across the entire Act. The justification offered for this expansion is that several State Governments and Union Territories have failed to frame rules under Section 109 of the 1995 Act. However, this rationale does not warrant such an extensive consolidation of power at the Centre and diminishing the role of the State governments. If enacted, the amendment would result in a disproportionate expansion of the Central Government's role, jeopardising the delicate balance in our unique federal architecture in which the Centre and the State are co-equal federal entities. This has been discussed in greater detail in the analysis of Clause 42 below which seeks to incorporate Section 108B.

5.3 Insertion of New Sections 3A, 3B, and 3C

5.3.1 The Bill through Clause 4 proposes the insertion of new Sections 3A, 3B, and 3C into the 1995 Act. Section 3A stipulates conditions for the creation of waqf, mandating that only a lawful owner of the property, competent to transfer or dedicate such property, may create a waqf. It further provides that the creation of waqf-alal-aulad shall not result in the denial of inheritance rights of heirs, including women heirs of the waqif. Section 3B requires that details of all registered waqfs be uploaded on a central portal within six months from the commencement of the Waqf (Amendment) Act, 2024. Lastly, Section 3C provides that any Government property identified or declared as waqf property before or after the commencement of this Amendment Act shall not be deemed to be waqf property and empowers the Collector to validate claims

regarding government properties, determining whether such properties have been wrongfully declared as waqf.

5.3.2 Sub-Section (1) of the proposed Section 3A stipulates that only a lawful owner of a property who is competent to transfer or dedicate such property, may create a waqf. The Hon'ble Ministry of Minority Affairs has sought to justify this amendment, along with the proposed addition of the phrase *"having ownership of such property"* to the definition of 'waqf' under Section 3(r), as necessary to ensure that only a person with lawful ownership can dedicate property. However, this provision merely reiterates an established legal principle codified in the maxim *nemo dat quod non habet* – no one can transfer what they do not own. Consequently, this amendment offers no substantive enhancement to the existing legal framework. Instead, it appears to be a superficial addition that neither addresses any lacuna in the current law nor serves any practical purpose; as such, it is but a token measure aimed at suggesting that properties not lawfully belonging to waqifs were hitherto being declared as waqf and appears to aimed at spreading a false narrative and appeasing majoritarian sentiments, rather than implementing any meaningful reform in waqf administration.

5.3.3 The proposed Section 3A(2) states that the creation of a waqf-alal-aulad cannot result in the denial of inheritance rights of heirs, including women heirs, of the waqif. While this amendment is ostensibly intended to safeguard the inheritance rights of rightful heirs, it effectively destroys the concept of waqf-alal-aulad, which allows a Muslim property owner to dedicate property for the benefit of their descendants and, subsequently, for charitable purposes. By subordinating the waqif's intentions to inheritance claims under personal law, the provision undermines the essence of waqf-alal-aulad, rendering it ineffective as an alternative to the rules of inheritance. This is contrary to the Hon'ble Supreme Court's recognition of personal law as a facet of religious freedom under Article 25 of the Constitution in ***Shayara Bano* v. *Union of India*, AIR 2017 SC 4609** (*See* the opinions of Justices Jagdish Singh Khehar and Abdul Nazeer, with Justice Kurian Joseph agreeing with their analysis of

Article 25, thereby forming the majority opinion on this point). Additionally, imposing such a restriction uniquely on Muslim property owners violates Articles 14 and 300A of the Constitution, as no similar constraints exist on testamentary rights under the personal laws of other religions making them subordinate to rules of intestate succession. This has further been compounded by a unilateral change made by the Government after deliberations of the Joint Committee to make waqf-alal-aulad further subject to "*any other rights of persons with lawful claims*".

5.3.4 The proposed Section 3B mandates that all waqfs registered prior to the commencement of the Waqf (Amendment) Act, 2024, must file the details of the waqf and the property dedicated to the waqf on the portal and database within six months of the commencement of the Amendment Act. In line with the recommendations of the Sachar Committee (2006) and the Joint Parliamentary Committee on Waqf (Ninth Report, 2008), the Ministry of Minority Affairs had introduced the Scheme for 'Computerization of Records of State Waqf Boards' to *"streamline record keeping, introduce transparency, and to computerize the various functions & processes of the Waqf Boards and to develop a single web-based centralized software application"*.[41] This, *inter alia*, led to the launch of the WAMSI portal and the said portal has been operational for more than a decade now. Significant progress has already been made in maintaining online data on waqf properties; although some information gaps persists only requiring effective implementation of the existing scheme. For instance, according to the latest figures from the WAMSI portal, as of January 28, 2025, the encumbrance or encroachment status of 4,35,895 immovable waqf properties – constituting approximately 49.96 per cent of the total 8,72,484 properties across the country – remains unrecorded even after the expiry of 10 years after the launch of the digitisation scheme. This indicates the expected delays on the part of the executive in implementing a digitisation scheme after its launch. Therefore, expecting the filing by all registered waqfs of all relevant particulars

[41] About Us, Waqf Assets Management System of India Portal < https://wamsi.nic.in/wamsi/BaseAbout Us.jsp>

enumerated in the proposed section to be completed within six months is highly unrealistic and sets the process up for inevitable failure. It is in light that the proposed Section 36(10) must be seen, which states that no legal proceedings may be instituted for enforcement of any rights on behalf on a waqf after the expiry of this period of six months. This unrealistic timeline backed by a provision defeating the right of enforcement of the waqf if the timeline is not kept is a provision designed to ensure that a vast number of waqf properties will lose their status as waqf simply on account of administrative delays in implementation. Moreover, the amendment excessively centralises authority in the Central Government contrary to the spirit of federalism by conferring the power to prescribe the particulars to be furnished exclusively upon the Central Government as stipulated under Clause (j) of Section 3B(2), which includes: *"any other particular as may be prescribed by the Central Government."*

5.3.5 The proposed Section 3C(1) provides that any Government property identified or declared as waqf property before or after the commencement of this Amendment Act shall not be deemed to be waqf property. Sub-Section 3C(2) introduces a mechanism allowing the Collector to adjudicate disputes *"as to whether any such property is a Government property"*. This provision, which explicitly exempts any movable or immovable property from the extant framework of waqf administration through a categorical and retrospective carve-out if any Government Organisation makes a claim on it, effectively prioritises government claims over waqf property without any independent adjudication. By granting the Collector – an officer of the State Government – wide and uncanalised powers to decide the status of such properties, the amendment undermines the principle of natural justice, as it makes the government both a litigant and the judge in its own cause. Additionally, the proviso to sub-Section (2) of Section 3C, which prevents the property from being treated as waqf until the Collector submits a report, alters the status quo pending the adjudication, and can be exploited to dispossess waqf boards and beneficiaries of their rights as an interim measure, with no timeline prescribed

for completion of the process of adjudication. In essence, this framework enables the Government, through its administrative apparatus, to lay claim upon waqf properties, bypassing the procedural safeguards that traditionally protect waqf lands. In this context, it is important to remember what the Sachar Committee noted in its 2006 Report: *"Encroachments on the Wakf properties are made not only by private persons but also by the government and its agencies as was brought to the notice of the Committee across the country."* The Sachar Committee, in its report noted that State governments and its agencies are one of the largest encroachers on waqf land. The Report illustratively mentioned 584 properties that were under encroachment in just six States, namely, Delhi (316), Rajasthan (60), Karnataka (42), Madhya Pradesh (53), Uttar Pradesh (60) and Odisha (53). The Report also clarified that these numbers were not exhaustive of the properties encroached upon by the State government in even these six States. All in all, the proposed Section 3C, which would jeopardise the rights of the State Waqf Boards while disproportionately empowering the State machinery, is violative of the autonomy guaranteed to religious denominations under Article 26 of the Constitution, which includes the right to administer their properties. Sub-Section (3) of Section 3C empowers the Collector to make necessary corrections in revenue records if he determines a property to be Government property. The Collector is an officer of the State Government who is a part of the revenue administration and is in-charge of administration of properties of the State government. This creates a direct conflict of interest as first, the Collector can pass orders on disputes between waqfs and Government Organisations that directly affect title, and then under sub-Section (3) can pass orders altering the mutation of the property in accordance with his own findings in the survey. The Collector ordinarily acts as a quasi-judicial authority with the power to adjudicate disputes concerning the mutation of the property. Given this context, combining such divergent and conflicting powers – both executive and quasi-judicial – into the hands of a single official not only undermines the independence and fairness of the process but also contravenes the principles of natural justice, as it is inherently vitiated by a significant conflict of interest. Thus, in this scheme, multiple checks and balances are taken

away and one officer is given uncanalised powers to act as judge, jury and executioner.

5.4 Transfer of Powers from Survey Commissioner to Collector

5.4.1 The Bill through Clause 5 proposes to transfer the responsibility of conducting survey of waqf properties from the Survey Commissioner to the Collector by amending Section 4 of the 1995 Act. This forms part of a scheme discussed above that overhauls the existing framework and replaces it with a system that grants overbroad, uncanalised powers to the Collector, an agent of the Government. The justification by the Hon'ble Ministry of Minority Affairs for transferring the powers of the Survey Commissioner emphasises the Collector's position as the head of the land revenue system in the district, thereby equipping the Collector with the resources to *"conduct surveys efficiently and ensure quick updates to land records, following State revenue laws."* However, this justification is insufficient as it shuts its eyes to the conflict of interest tht it creates.

5.4.2 Under the current framework, the Survey Commissioner, appointed by the State Government, operates with the powers of a Civil Court to summon and examine witnesses, requisition public records, issue commissions for examination, etc. By conferring these powers on the Collector, an officer of the State Government and a part of the revenue administration, the amendment creates the conflict of powers indicated above here as well. First, the District Collector, as a revenue officer, ordinarily has no adjudicatory powers over title disputes, which are the exclusive domain of the civil Courts, and is solely responsible for maintaining revenue records and overseeing the mutation of property. Post-amendment, however, the Collector will simultaneously serve as a surveyor with the authority to pass orders that directly affect the title of properties. In his/her capacity as a revenue officer, the Collector will also be empowered to alter the mutation of property based on the findings from the survey conducted, removing one level of check and balance. The amendment therefore dilutes the safeguards embedded in the existing process, erodes the

autonomy of State Waqf Boards, and compromises the impartial identification and management of waqf properties.

5.4.3 The unamended 1995 Act *vide* Sub-Sections (1) and (2) of Section 4 allows for the appointment of as many Additional or Assistant Survey Commissioners as deemed necessary, under the general supervision and control of the Survey Commissioner, to carry out surveys of waqf properties within the State. However, the proposed amendment fails to introduce any analogous provisions for the appointment of officials other than the Collector to conduct such surveys, despite the fact that surveying waqf properties is a rigorous and intensive process. This is then compounded by the introduction of Section 36(10) that states that no proceedings shall be instituted for enforcement of any right on behalf of a waqf that is not registered within six months from the commencement of the Amendment Act. While surveys of *auqaf* have not been completed in several States in 30 years since the 1995 Act came into force and 12 years since the 2013 amendment, the present Bill takes away provision for a dedicated Survey Commissioner, removes the provision for appointment of Additional and Assistant Commissioners to assist him/her, burdens an already overburdened lone officer in the form of the Collector with this task, imposes an unrealistic timeline of six months for this exercise and provides that the rights in a waqf cannot be enforced after this period. The entire scheme is deliberately designed to collapse on itself and leave the status of waqf properties in jeopardy.

5.4.4 The proposed deletion of Sub-Section (3) of Section 4, leaves out details such as income of the property comprised in the waqf, the amount of land revenue, cesses, rates and taxes payable in respect of a waqf, the expenses incurred in realisation of the income, remuneration of the mutawalli etc. from particulars to be gathered during a survey.

5.4.5 Section 4(6) of the 1995 Act originally vested State Waqf Boards with the authority to direct a second survey of waqf properties that may have been omitted in the initial survey or subsequently identified as waqf properties. The

proposed amendment seeks to delete this provision, which is one instance of how the powers of the State Waqf Boards have been weakened. By removing the Board's ability to initiate such additional surveys, the amendment leaves potential omissions in the survey unaddressed, meaning that waqfs omitted to be identified and documented within the unreasonable timeline of six months will be lost forever.

5.5 Publication of List of Auqaf

5.5.1 The Bill, through Clause 6, proposes certain amendments related to the publication and maintenance of the list of auqaf in Section 5, including the introduction of a new sub-Section (2A) requiring the State Government to upload the notified list on a portal within 15 days, with the details of each waqf prescribed in sub-Section (2B) in the manner prescribed by the Central Government. What is particularly problematic is the proposed sub-Section (3) which states that revenue authorities have to provide a 90-day public notice giving 'affected persons' an opportunity of being heard before deciding mutation in land records involving waqf properties. In this manner, a judicial power to decide disputes concerning identification of a property as waqf that was hitherto reserved for the Waqf Tribunals is given to revenue authorities, opening *auqaf* to mischievous claims and objections to be decided by an executive authority. In this manner, objections to the status of a property as waqf has been opened up to three levels of objections by all and sundry, the first before the Collector who operates with the powers of a Civil Court, the second before the revenue authorities at the time of mutation and the third before the Waqf Tribunals. The entire scheme is deliberately designed to mire waqf properties in controversies and disputes that can be raised at multiple stages by all and sundry.

5.6 Removal of the Finality of the Waqf Tribunal's Decision

5.6.1 The Bill, through Clause 7, proposes to amend Section 6 of the 1995 Act by, *inter alia*, removing the finality of the Waqf Tribunal's decisions. This has to be read in conjunction with the proposed amendment to Section 83(9) which, in

addition to the multiple levels of objections described above, allows appeals to Hon'ble High Courts to be filed against decisions of the Waqf Tribunals, thereby replacing the current limited supervisory jurisdiction of the High Court under the current proviso to Section 83(9) with a full-fledged appellate mechanism in order, ostensibly, to *"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 present power of revision, akin to revision under Section 115 of the Code of Civil Procedure, 1908, serves as a safeguard to correct errors while preserving the finality of the decisions by the Ld. Waqf Tribunal, as a specialised adjudicatory body equipped to deal with the nuanced and complex field of Muslim personal law. By replacing this limited supervisory power with a full-fledged appellate jurisdiction, the amendment risks undermining the authority and efficiency of the Waqf Tribunal. Under Section 107 of the Code of Civil Procedure, the power of an appellate Court allows the High Court to reopen and rehear all questions of fact and law, effectively substituting its opinion for that of the Tribunal. This not only duplicates judicial effort but also erodes the role of the Waqf Tribunal as a specialised body by subjecting its decisions to a wholesale appellate process, contrary to the intent behind creating the Tribunal. Thus, at every level, the finality of a decision of the status of waqf property is taken away paving the way for endless litigation.

5.6.2 Additionally, the amendment extends the limitation period for filing suits before the Tribunal from one year to two years. This further delays the resolution of disputes over waqf properties and will create administrative and judicial backlogs. To make matters worse, a last minute change has been made after deliberations of the Joint Committee to make this period further extendable by the Waqf Tribunal.

5.7 Changes to the Power of the Tribunal

5.7.1 The Bill, through Clause 8, proposes to amend Section 7 of the 1995 Act, revising the powers of the Waqf Tribunals in a manner analogous to the

amendments proposed in Section 6, by, *inter alia*, eliminating the finality of the Tribunal's decisions. It similarly extends the limitation period for filing applications from one year to two years and incorporates a provision permitting the Waqf Tribunal to entertain applications even beyond this extended period if the applicant demonstrates sufficient cause. These amendments, ostensibly seeking to ensure broader legal avenues for aggrieved parties to resolve disputes, are counterproductive and could disrupt an already balanced legal framework in favour of endless litigation at the instance of mischievous elements for the reasons outlined in the preceding section.

5.8 Inclusion of Non-Muslims in Central Waqf Council

5.8.1 The Bill, through Clause 9, proposes a complete overhaul of Section 9 of the 1995 Act, which relates to the establishment and composition of the Central Waqf Council. The proposed inclusion of non-Muslim members in the Central Waqf Council, ostensibly in a bid to *"promote inclusivity and diversity in waqf property management,"* would dilute the exclusive control of Muslims over the management of waqf properties, which constitutes an integral aspect of the fundamental rights of the community under Articles 25 and 26 of the Constitution.

5.8.2 Under the amended Section 9, the Central Waqf Council would comprise the Union Minister in charge of waqfs as the *ex officio* chairperson, who need not necessarily be Muslim. It also comprises three Members of Parliament – two from the Lok Sabha and one from the Rajya Sabha – with no requirement for them to belong to the Muslim community, two retired judges, an eminent advocate, four persons of national eminence from fields such as administration, financial management, engineering, and medicine, and an Additional Secretary or Joint Secretary from the Government of India, responsible for waqf matters as an *ex officio* member, none of whom are required to be Muslims. Only ten members, to be appointed by the Central Government, must be Muslims, and this list includes three representatives of nationally significant Muslim organisations, chairpersons of three Waqf Boards by rotation, three eminent

scholars of Muslim law, and one mutawalli of a waqf with an annual income above five lakh rupees. Therefore, while the second proviso to Section 9, which has been the focus of much of the objections before the Committee, stipulates that two members of the Central Waqf Council must be non-Muslims, a closer reading of its proposed composition reveals that the actual number of non-Muslim members could be significantly higher, potentially even forming the majority. Only ten out of twenty-two members are required to be Muslims, a significant departure from the existing structure wherein all the Council members, apart from the *ex officio* chairperson, are required to be Muslims. The mischief sought to be perpetrated has been further made clear by a clarification that the mandatory requirement of two non-Muslim members will not include *ex officio* members.

5.8.3 Proponents of this change have vehemently argued that the inclusion of non-Muslim members in the Central Waqf Council reflects the secular aspect of waqf governance, invoking Section 96 of the Waqf Act, 1995, under which the Central Government is imbued with the power to regulate the secular activities of auqaf, including social, economic, and educational welfare initiatives. However, by inducting non-Muslim members into the Central Waqf Council, and in particular, allowing the majority of such members to potentially be non-Muslims, the amendment undermines the autonomy of the Muslim community in managing properties dedicated for their religious and charitable purposes, in blatant contravention of their religious rights under Articles 14, 15, 25 and 26 of the Constitution. Comparisons with analogous statutes governing the management of Hindu, Sikh, and other religious endowments highlight the discriminatory nature of this amendment. For instance, under laws like the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and the Sikh Gurdwaras Act, 1925, only members of the respective religious communities are eligible for the membership of governing bodies. The singling out of Muslim waqfs for such changes, while leaving similar provisions for other religious communities untouched, appears arbitrary, biased, and politically motivated. Further, any assertion that such changes are necessary for

better management undermines the capabilities and integrity of the Muslim community, perpetuating a narrative of mistrust and marginalisation.

5.8.4 To understand why it is important for members of Waqf Council to be Muslim, the meaning, purpose and impact of Article 26 of the Constitution must be understood. Article 26 provides religious groups the right (a) to establish and maintain institutions for religious and charitable purposes, (b) to manage their own affairs in matters of religion, (c) to own and acquire moveable and immoveable property and (d) to administer such property in accordance with law. Article 26(d) balances the right of the religious group/denomination to administer its own properties and the power of the State to make law to regulate the exercise of this right. This flows from the principle that the right to administer does not include the right to maladminister. However, at the same time, the regulation cannot be such as to obliterate the right itself, as held by the Hon'ble Supreme Court in ***Ratilal Panachand Gandhi* v. *State of Bombay*, (1954) 1 SCC 487**. Creation of a statutory board comprising exclusively of Muslims to ensure that charitable properties of the community are not maladministered and dissipated by some unscrupulous individuals is an effective mechanism created by the Waqf Act to balance these interests. Appointing non-Muslims on the Waqf Boards disturbs this delicate constitutional balance and tilts it to the detriment of the right of Muslims as a religious group to remain in control of their waqf properties.

5.9 Separate Board of Auqaf for Bohras and Aghakhanis

5.9.1 Clause 10 of the Bill proposes the introduction of Sub-Section (2A) to Section 13, which empowers the State Government to establish, by notification in the Official Gazette, a separate State Board of Auqaf for Bohras and Aghakhanis. However, now an amendment is also proposed to Section 2 to give these persons the option to establish their religious and charitable institutions as trusts and stay outside the purview of the Waqf Act altogether. In light of this amendment, it is not clear why separate Waqf Boards for Bohras and Aghakhanis are still required.

5.10 Changes to Composition of State Waqf Boards

5.10.1 Clause 11 of the Bill, akin to the proposed amendment for the composition of the Central Waqf Council, seeks to amend Section 14 of the 1995 Act with the stated objective of promoting 'inclusivity' and 'diversity' in the management of waqf properties by mandating the inclusion of two non-Muslim members.

5.10.2 Under the amended Section 14, the State Waqf Board would comprise not more than eleven members to be nominated by the State Government including a chairperson, one Member of Parliament and one Member of the State Legislature, two members with professional experience in business management, social work, finance or revenue, agriculture and development activities, and one officer of the State Government not below the rank of Joint Secretary, and one member of the State Bar Council, none of whom are required to be Muslims. The amendment only calls for four members from the Muslim community, including a mutawalli of a waqf, an eminent scholar of Islamic theology, and two elected members from municipalities or panchayats. Therefore, while the second proviso to Section 14, which like the second proviso to Section 9, has invite multiple objections before the Committee for stipulating two non-Muslim members of the State Waqf Board, a closer reading of the composition reveals that the actual number of non-Muslim members could be significantly higher. potentially even forming the majority. If the Bill is enacted, only four out of the eleven members of the Board would necessarily have to be Muslim, while two members must be non-Muslim as per the second proviso to Section 14. The mischief sought to be perpetrated has been further made clear by a clarification that the mandatory requirement of two non-Muslim members will not include *ex officio* members.

5.10.3 Furthermore, Clause 11 of the proposed amendments, if enacted, would entirely replace the electoral component of the State Waqf Board's membership with a nomination-based system. Clause (b) of the unamended Section 14(1) mandates the election of one or two members to the Board from various electoral colleges, including Muslim Members of Parliament, State Legislatures,

State Bar Councils, and mutawallis of waqfs with an annual income above one lakh rupees. If no Muslim member exists in any category, ex-members from the respective category are to form the electoral college under the current framework. The extant provisions also stipulate that the number of elected members should always exceed the nominated ones, except in certain circumstances where the State Government could nominate members when constituting an electoral college was not reasonably practicable (Sub-Section (3) read with Sub-Section (4) of Section 14). The amendment now seeks to abolish this electoral component, which raises concerns regarding diminished representation and participation of the community in the decision-making process of the State Waqf Board. The proposed shift to a fully nomination-based process also places greater power in the hands of the State Government to unilaterally appoint members of the State Waqf Boards, making it more susceptible to external influence or executive control.

5.10.4 Another attack on the democratic process entrenched in the functioning of the State Waqf Boards is the proposed omission of Sub-Section (8) of Section 14, which currently requires the election of a chairperson from among the Board members during its constitution or reconstitution. By eliminating this provision, the selection of the chairperson is removed from the collective decision-making process within the Board, leading not only to the aggrandisement of the State Government's power but also to the undermining of the principle of internal governance and Board autonomy. This also increases the Board's susceptibility to external influence or executive control. The absence of a democratic election for such a key role may also diminish the legitimacy of the chairperson's position and the overall integrity of the Board's functioning.

5.11 Removal of Religious Qualification for Membership of State Waqf Board

5.11.1 Clause 12 of the proposed Bill seeks to amend Section 16 by revising the grounds for disqualification from being appointed or continuing as a member of the State Waqf Board. Notably, the amendment seeks to remove the

requirement for a member to be a Muslim, a stipulation which is consistent with the right of the community to manage its own properties under Article 26 of the Constitution, and in alignment with other legislation relating to religious and charitable endowments of other religions, a comprehensive analysis of which makes it clear that membership in the relevant religion has been almost uniformly prescribed across the board as a prerequisite for appointment to such governing bodies. As already discussed above, this shift raises significant concerns relating to the marginalisation of the Muslim community and the dilution of the exclusive control of Muslims over the management of waqf properties.

5.11.2 It is important to note that the Waqf Act, 1995 insofar as it mandates that members of Waqf Boards must profess Islam is not a unique model and similar provisions exist in other statutes. The Bihar Hindu Religious Trusts Act, 1950 stipulates that the President, members of the Bihar Board of Religious Trusts, and Superintendents of Hindu trusts must be Hindus. **(See Sections 8, 9, 24.)** Similarly, the Odisha Hindu Religious Endowments Act, 1951 limits the eligibility for appointments as Commissioner of Endowments, trustees, and officers to persons professing Hinduism. In fact, only Hindu officers have the power to enter the premises of any religious institution or place of worship for the purpose of exercising powers or discharging duties under the Act. **(See Sections 4, 5, 12, 29, 35.)** Under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the Commissioner, Additional Commissioner, Joint, Deputy, and Assistant Commissioners, other officers and servants, members of the Advisory Committee under the Act, as well as the trustees of religious institutions, must be Hindus. **(See Sections 7, 10, 25A, 74.)** Under the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997, the Commissioner, Deputy Commissioner, Assistant Commissioner, other officers, and members of the Dharmika Parishats and the Committees of Management of each religious institution must be Hindus. **(See Sections 7, 21B, 25.)** In a similar vein is the Sikh Gurdwaras Act, 1925 where members of the Shiromani Gurudwara Prabandhak Committees and Judicial Commission are required

under the statute to be persons professing the Sikh religion. **(See Sections 45, 46, 70, and 90.)** As such, it is clear that singling out Muslim waqfs for diluting the exclusive control of a religious group over its properties is arbitrary and reeks of political *mala fides* and bias.

5.12 Monthly Meeting of State Waqf Board

5.12.1 Clause 13 of the Bill proposes to amend Section 17 of the 1995 Act to simply mandate that the State Waqf Board hold meetings at least once every month *"to ensure continuous oversight and faster decision-making on waqf property matters."* As such, this proposal is accepted.

5.13 Removal of Chairperson of State Waqf Board by Vote of No Confidence

5.13.1 Clause 14 of the Bill proposes to omit Section 20A of the 1995 Act introduced in 2013, which presently provides for the removal of the chairperson of a State Waqf Board by a vote of no confidence. This section outlines a detailed, democratic procedure for such removal, requiring notice, quorum, and a majority vote among Board members. The justification for this amendment is that, since the Chairperson will now be appointed on a nomination basis rather than being elected, the provision for a no-confidence vote is rendered unnecessary. However, similar to the removal of the provision for the election of the Chairperson under Section 14(8), this proposed change would take away the autonomy and democratic nature of functioning of the Waqf Boards and vest the power to appoint and remove the chairperson in the hands of the State Government, paving the way for autocratic functioning of the Chairperson and leaving the Waqf Board vulnerable to extraneous influences and executive control. This proposed omission marks yet another instance of dismantling the progressive reforms introduced through the comprehensive 2013 amendment. It signifies a major setback in waqf administration, rolling back advances made toward ensuring transparency, accountability, and democratic governance.

5.14 Non-Muslim Chief Executive Officer

5.14.1 Clause 15 of the Bill proposes to amend Section 23 of the 1995 Act by, *inter alia*, removing the requirement that the Chief Executive Officer of the Waqf Board must be a Muslim. The justification offered is that this amendment aims to *"promote diversity and professional management"* by opening up the position to individuals from all communities, purportedly in alignment with Section 96 of the 1995 Act. However, this amendment, if enacted, would be part of the broader regime overhaul that seeks to take the management of waqf properties out of Muslim hands, violating their constitutional rights under Articles 25 and 26 of the Constitution. Asserting that the removal of the requirement for the Chief Executive Officer to be a Muslim is a necessary condition for better management not only undermines and demeans the Muslim community but also constitutes a direct affront to the principles of secularism and fraternity, which are enshrined in the Constitution and form an integral part of its basic structure.

5.14.2 Under the current framework, the Chief Executive Officer is appointed from a panel of two names suggested by the Board, ensuring the Board's involvement in the selection process. However, the proposed amendment seeks to eliminate this role of the Board, granting the State Government unilateral authority to appoint the CEO. This is yet another instance of eroding the powers of the Board, further undermining its internal governance and autonomy. By consolidating control in the hands of the State Government, the proposed change weakens the democratic and participatory structure of waqf administration, reducing the Board to a mere bystander in decisions crucial to its functioning.

5.15 Changes to the Powers and Functions of State Waqf Board

5.15.1 Section 32 presently allows any person interested in the waqf or affected by a scheme of management or direction issued by the Board under Clauses (d) or (e) of Sub-Section (2) to challenge the same by filing a suit before the Tribunal. Clause 16 of the Bill proposes to amend Section 32 of the 1995 Act by, *inter alia*, removing the words *"the decision of the Tribunal thereon shall be final,"* from sub-

Section (3) of Section 32. This dilution of finality of decisions of the Waqf Tribunal has already been discussed in detail above.

5.15.2 Oddly, for an amending Bill that creates multiple opportunities to third parties at object at every stage to constitution of properties as waqf, the Bill removes the proviso so Section 32(2)(e)(iii) that provided an opportunity of hearing to affected persons if the Waqf Board finds that the object of a waqf has ceased to exist or become incapable of achievement and decides how the income of the property comprised in the waqf is to be utilised. This deletion exposes the agenda behind the entire amendment exercise, which is not so much to implement the rules of natural justice as it is to deplete waqf properties and deprive the Muslim community of the benefit of their community resources.

5.15.3 The Bill also proposed to delete the Explanation to Section 32(2)(e)(iii), which provided that the decision to declare a waqf as incapable of achieving its objects was to be taken only by Board members belonging to the sect of Islam to which the waqf properties belonged. The purpose clearly is to place the decision of liquidating a waqf in the hands of the State government controlled body packed with non-Muslim members which is to now sought to be constituted instead of leaving it to members of the concerned community/religious denomination. As such, the proposed amendments to Section 32 are in gross violation of the right of Muslims and denominations within Islam to manage their affairs and administer their properties, reducing their fundamental rights under Article 26 in this respect to a dead letter.

5.16 Appeal against Recovery Order by Chief Executive Officer

5.16.1 Clause 17 of the Bill proposes to amend Section 33 of the 1995 Act, which empowers the Chief Executive Officer, or a person authorised by him, with the Board's prior approval, to inspect waqf properties and related records to assess whether any loss or damage has occurred due to the failure or negligence of a mutawalli in performing their duties. Upon inspection, if misappropriation, misapplication, or fraudulent retention of waqf funds or property is found, the Chief Executive Officer may order the recovery of the determined amount or

property after giving the mutawalli or concerned person a reasonable opportunity to show cause. Under the current framework, an appellate remedy is provided to the mutawalli or the aggrieved person before the Waqf Tribunal. The present Bill proposes to delete the second part of the proviso to Sub-Section (4) of Section 33 and remove the prohibition on the Tribunal to stay the operation of the Chief Executive Officer's order during the pendency of the appeal, which weakens the regulatory authority of the Chief Executive Officer. Further, Sub-section (6), which makes the Tribunal's order final, is also sought to be deleted, allowing further appeals to Hon'ble High Courts and thereby removing the finality of the Tribunal's decisions. This has already been discussed in detail above.

5.17 Registration of Waqfs

5.17.1 Clause 18 of the Bill proposes several amendments to Section 36 of the 1995 Act, with the stated aim of ensuring that *"all waqf are legally documented through a waqf deed, providing clarity on ownership and avoiding unnecessary litigation."* Key changes include the introduction of a new Sub-section (1A) requiring a waqf deed for the creation of every waqf from the commencement of the Amendment Act. The Bill also seeks to modify the provision relating to applications for registration of waqfs, *inter alia*, shifting the responsibility from the State Waqf Boards to the Central Government for prescribing the form and manner of such applications. Crucially, the Bill proposes to delete a portion of Sub-Section (4) of Section 36 that allows for the registration of waqfs without a deed, and also seeks to transfer the Board's power to inquire about the genuineness of applications to the Collector. Furthermore, the Bill seeks to introduce Section 36(10), which imposes a six-month limit on the enforcement of rights for unregistered waqfs, severely restricting legal recourse for waqfs that are not registered within this timeframe.

5.17.2 The proposed insertion of Sub-section (1A), which mandates that no waqf shall be created without the execution of a waqf deed, takes away the legal basis for the recognition of oral waqfs, contrary to established principles of Islamic law,

which has long acknowledged and upheld the validity of verbal contracts, oral testaments and gifts, and other oral testimonies, including the creation of waqfs through verbal declarations. This proposed change, combined with the proposed amendment to the definition of 'mutawalli' by omitting the words *"either verbally or"*, and the exclusion of 'waqf by user' from the definition of 'waqf' in Section 3(r), would lead to a core tenet of Islamic law being disregarded. As discussed above, 'waqf by user' serves as a rule of evidence to establish the existence of a waqf where documentary proof is absent or destroyed, a concept well-entrenched in both Islamic and Hindu endowment law. This amendment, if allowed, would create a discriminatory dichotomy between Muslim waqfs and Hindu endowments, thus violating Articles 14 and 15 of the Constitution, which mandate equality before the law.

5.17.3 The proposed changes to Section 36(3), particularly the substitution of the Board's authority to prescribe the form and manner of waqf registration applications with the Central Government's, represent a troubling centralisation of power. By vesting this authority with the Central Government, the amendments diminish the role of the State Waqf Boards. These proposed changes have to be analysed in the context of other amendments sought to be made in various other provisions with the overarching goal of disproportionately aggrandising the role of the Central Government in the waqf administration framework.

5.17.4 The proposed deletion of the portion of Section 36(4) that allows for the registration of waqfs without a deed or with missing deeds poses a severe risk to the recognition of older waqfs. Historically, waqfs that were created through oral declaration or those with deeds that have been lost to time have been recognised through the principle of 'waqf by user', which is a rule of evidence. As discussed above, this principle ensures that waqfs that have existed for generations, often without formal documentation, are not rendered vulnerable to frivolous claims and encroachment attempts. The deletion of this provision is problematic as it disregards these long-standing waqfs and introduces a barrier to their registration, creating legal uncertainty and allowing the

possibility for fraudulent and mischievous claims against properties having no surviving records. This amendment will disproportionately and unreasonably affect older and often historically significant waqfs, which have long enjoyed the status of waqf property, excluding them from the legal framework under the 1995 Act, and depriving them of the protections granted thereunder.

5.17.5 The proposed amendments to Section 36(7), which shift the responsibility of verifying the authenticity of waqf registration applications from the State Waqf Board to the Collector, exemplify the vesting of wide and unchecked powers in the office of the Collector – an extension of the State Government. This raises significant concerns about impartiality and conflicts of interest, particularly in cases involving government property that have already been discussed above. Under the proposed framework, the Collector is tasked with probing the genuineness and validity of waqf registration applications and the correctness of the particulars therein before submitting a report to the State Waqf Board. Furthermore, from a reading of Sub-Section (7A), which is sought to be introduced, it can be concluded that the Collector's determination would also include a finding on whether the property in question qualifies as government property within the meaning of the proposed Clause (fb) of Section 3. Critically, the proposed Section 36(7A) bars the registration of waqfs linked to disputed or government properties unless a competent court resolves the dispute. Here also, disputes concerning the status of property as waqf are allowed to hold the management of waqf properties in limbo, paving the way for their dissipation *pendente lite*.

5.17.6 Furthermore, the proposed introduction of Sub-Section (10) to Section 36, categorically states that no suit, appeal, or legal proceeding to enforce rights on behalf of an unregistered waqf shall not only be instituted or commenced, but also not be heard, tried, or decided by any Court after six months from the commencement of the Waqf (Amendment) Act, 2024. This has to be analysed in the context of Sub-Section (1) of Section 36 which mandates the registration of every waqf, whether created before or after the commencement of the Act, and the proposed deletion of the portion of Sub-Section (4) that allows older

waqfs to provide particulars of their origin, nature, and objects if no waqf deed is available for the purposes of registration. Simultaneously, the introduction of Sub-Section (10) creates an untenable situation where older, unregistered waqfs, lacking registration due to the absence of deeds or because they had been orally dedicated, will be unable to register themselves on the portal and, after the six-month period, will also lose the ability to seek judicial protection for their rights, effectively leaving them in a lurch – defenceless and deprived of access to justice. As discussed above, burdening a lone officer in the form of the Collector without any additional specialised staff for this purpose with the task of conducting the survey of *auqaf* under Section 4 within such a short timeframe and defeating the enforcement of rights on behalf of any waqf failing completion of the task is a recipe for disaster. The entire amendment Bill has been designed to dissipate and diminish the pool of waqf properties in the country to the detriment of the Muslim community.

5.18 Register of Auqaf

5.18.1 Clause 19 of the Bill proposes to, *inter alia*, amend Section 37 of the 1995 Act, by mandating that the register of auqaf maintained by State Waqf Boards include particulars in a manner prescribed by the Central Government, including additional details specified by it, ostensibly to *"ensure consistent record-keeping across State."* However, this amendment exemplifies how the rhetoric of uniformity and consistency in waqf administration only serves as a pretext for diminishing the autonomy of State Waqf Boards and centralising authority with the Central Government, reflecting the broader agenda of this Bill to disproportionately expand the Central Government's control over waqf administration.

5.18.2 Further, as already discussed above, opening the waqfs that do manage to get registered to another round of objections at the stage of mutation of land records reflects a consistent pattern across the amendment Bill to entertain claims from every conceivable interest group at every possible stage to mire

waqf properties in litigation and diminish the pool of waqf properties available to the Muslim community.

5.19 Power of State Waqf Boards to Determine Waqf Property Status

5.19.1 Clause 20 of the Bill seeks to remove Section 40 of the 1995 Act, which currently gives State Waqf Boards the authority to conduct an inquiry and decide whether a property qualifies as waqf property when it has reason to believe that such property constitutes a waqf. This includes the power to issue notices to affected parties and hear them before arriving at any determination. The justification provided for the proposed deletion of Section 40 is that it would *"rationalize the powers of the Board"* and *"ensure that waqf are declared after following due process as per the provisions of the Act."* However, removing Section 40 weakens the framework designed to protect waqf properties, as it takes away the Boards' ability to *suo motu* identify and address omissions in the initial property survey or initiate inquiries into suspected waqf properties. Along with the proposed deletion of Section 4(6), which currently allows State Waqf Boards to direct a second survey for waqf properties that may have been left out of the initial survey, this change significantly reduces the State Waqf Boards' ability to protect assets meant for religious or charitable purposes. The existing Section 40 is not arbitrary or unchecked, as suggested by some of the learned Members of this Hon'ble Committee during the deliberations. Section 40 includes robust safeguards like fair hearings, adherence to natural justice, and the right to challenge decisions before the Waqf Tribunal. Other safeguards include a further revisional remedy before the High Court. Therefore, waqf properties left out from the registration process in the six month window provided for this purpose would be lost forever to the community and would fall prey to illegal occupation and misuse.

5.20 Submission of Accounts of Auqaf

5.20.1 Clause 21 of the Bill proposes to amend Section 46(2) of the 1995 Act, by, *inter alia*, replacing the existing provision that allowed the State Waqf Boards to prescribe the form and particulars of the accounts, with an amended provision

mandating that the accounts be submitted *"in such form and manner and containing such particulars as may be prescribed by the Central Government, of all moneys received from any source."* The proposed amendment raises concerns about the centralisation of power and the erosion of the autonomy of the State Waqf Boards in overseeing the financial administration of *auqaf*.

5.21 Audit of Accounts of *Auqaf*

5.21.1 Clause 22 of the Bill proposes significant amendments to Section 47 of the 1995 Act concerning the audit of auqaf accounts, seeking to expand the role of the State and Central Governments in the auditing process. Section 47(1)(a) is proposed to be modified to require the appointment of auditors from a panel prepared by the State Government, thereby reducing the discretion of the State Waqf Boards in selecting auditors. Second, the proposed Section 47(2A) mandates that audit reports submitted to the Waqf Board be published in a manner prescribed by the Central Government, further centralising control over the financial administration of auqaf. Additionally, a new proviso under Section 47(1)(c) empowers the Central Government to direct the audit of any waqf at any time by an auditor appointed by the Comptroller and Auditor-General of India or an officer designated by the Central Government. These proposed changes must be analysed in the broader context of other provisions that are simultaneously being sought to be introduced, amended, or repealed, the cumulative effect of which appears to be the systematic diminishment of the role and powers of the State Waqf Boards, coupled with the consolidation of control in the hands of the executive, leading to years of progress being reverses and significant advancements achieved in the decentralisation and democratisation of waqf administration being rolled back.

5.22 Board's Orders on Auditor's Report

5.22.1 Clause 23 of the Bill seeks to amend Section 48 of the 1995 Act by, *inter alia*, introducing Section 48(2A), which requires the proceedings and orders of the State Waqf Boards for the recovery of the amount certified by the auditor under Sub-Section (1) to be published in a manner prescribed by the Central

Government, purportedly to *"ensure transparency and ensure public access to important information."* Additionally, the amendment also seeks to remove the prohibition on the Waqf Tribunal to stay the operation of the Board's order under sub-Section (1) during the pendency of the appeal, which would lead to the dilution of the enforcement powers and authority of the State Waqf Boards. These proposed changes must be evaluated within the broader context of other amendments, which, if enacted, would lead to the autonomy and powers of the State Waqf Boards being impinged. All of these amendments are connected by a common thread of logic: a clear inclination towards centralisation and the consolidation of control in the hands of the political executive.

5.23 Duties of Mutawalli

5.23.1 Clause 24 of the Bill proposes to insert a new provision, Section 50(A), which lays down disqualifications for being appointed or continuing as a mutawalli. The proposed provision bars individuals under 21 years of age, those of unsound mind, undischarged insolvents, persons convicted of an offence with a sentence of at least two years' imprisonment, individuals found guilty of encroaching on waqf property, and those previously removed from a position of trust for mismanagement or corruption from serving as mutawallis. The stated objective of this is to ensure that *"only individuals of good character can become mutawallis (managers) and holds them accountable for their actions."* As such, the proposed amendment has a laudable purpose and may be accepted.

5.24 Recovery of Illegally Alienated Waqf Property

5.24.1 Clause 25 of the Bill proposes to amend Section 52 of the 1995 Act by removing the provision that made the decision of the Waqf Tribunal final in cases involving the recovery of waqf property transferred in contravention of Section 51. This amendment is part of the broader change sought to be introduced through this Bill that replaces the finality of the Tribunal's decision with a right of appeal to Hon'ble High Courts, which has already been discussed in detail above.

5.25 Criminal Liability and Penalties

5.25.1 Clause 26 of the Bill proposes significant amendments to Section 52A of the Waqf Act, 1995, which deals with penalties for the alienation of Waqf property without the prior sanction of the State Waqf Board. Key changes include the substitution of 'rigorous imprisonment' with 'imprisonment' in Sub-Section (1), effectively reducing the severity of punishment for such offences, as well as the deletion of Sub-Section (2), which made offences punishable under the Section cognizable and non-bailable, notwithstanding anything contained in the Code of Criminal Procedure, 1973. Additionally, the Bill seeks to omit Sub-Section (4) which bars Courts below the rank of a Metropolitan Magistrate or a Judicial Magistrate of First Class from trying such offences.

5.25.2 These provisions, originally introduced through the Waqf (Amendment) Act, 2013, were designed to impose stronger penalties and stricter criminal liabilities to enhance the protection of Waqf properties. However, the amendments now proposed aim to dismantle these safeguards without providing sufficient justification, effectively setting back the waqf administration architecture by more than a decade. By proposing to dilute the punishment from rigorous imprisonment to imprisonment *simpliciter*, make the offences under Section 52A bailable, and remove their cognizable nature, the Bill signals a troubling shift in priorities that diminishes the gravity of such violations. These changes significantly weaken the legal protections for waqf properties – assets already plagued by the persistent and longstanding problem of encroachments and illegal alienations. These amendments are a reflection of the Central Government's priorities through this amendment Bill, where even the interests of persons who are found to have committed criminal acts through misappropriation, unlawful alienation or encroachment of waqf properties are held dearer than the interest of *auqaf*.

5.26 Disposal of Encroacher's Property

5.26.1 Clause 27 of the Bill proposes to amend Section 55A of the 1995 Act by removing the finality accorded to decisions of the Waqf Tribunal regarding

disputes over the disposal of property left on waqf premises by unauthorised occupants. This issue has already been discussed at length above.

5.27 Penalties Prescribed for Errant Mutawallis

5.27.1 Clause 28 of the Bill proposes significant amendments to Section 61 of the 1995 Act to revise the penalties imposed on mutawallis for non-compliance with their statutory duties. Under the existing framework, a mutawalli failing to carry out the directions of the Board is subject to a fine under Clause (f) of Section 61(1). However, the proposed amendment seeks to remove this provision from Section 61(1) and reintroduce it in the new Sub-Section (1A) in a modified form, expanding its scope to include non-compliance with the directions of the Collector, failure to provide a statement of accounts under Section 46 and failure to upload the details of waqf under Section 3B. For violations, it prescribes the enhanced punishment of imprisonment of up to six months along with fines ranging from ₹20,000 to ₹1,00,000. While by and large, there is nothing wrong with making mutawallis more accountable for their duties, to the extent that this amendment effectively strengthens executive control by placing the threat of imprisonment over the mutawalli for alleged non-compliance with any order of the Collector, it is problematic and raises concerns of excessive executive control as the mutawalli has been made directly answerable to the State administration.

5.28 Removal of Mutawallis

5.28.1 Clause 29 of the Bill proposes to amend Section 64 of the 1995 Act by, *inter alia*, introducing a new ground for the removal of a mutawalli under a new Clause (l), namely, the membership of any association declared unlawful under the Unlawful Activities (Prevention) Act, 1967. The amendment also seeks to delete the finality of the Tribunal's decision under sub-section (4) on a challenge by a mutawalli aggrieved by any of the grounds enumerated in Clauses (c) to (i), thereby allowing for appeals to Hon'ble High Courts.

5.28.2 While the Hon'ble Ministry of Minority Affairs has sought to justify the proposed introduction of Clause (l) by saying that it would ensure that mutawallis are *"not involved in unlawful activities under the Unlawful Activities (Prevention) Act,"* it remains unclear whether an individual must be convicted under Section 10(a)(i) of the UAPA, or whether mere suspicion of membership would suffice to trigger removal. This ambiguity risks undermining the rights of mutawallis and opens the door to arbitrary actions without sufficient legal safeguards. Greater clarity is required to strike a balance between ensuring accountability and protecting the rights of individuals managing waqf properties, while insulating them from extraneous influences and considerations. Further, concerns of political misuse of the UAPA to target Muslims and silence voices of dissent find their way into waqf administration through this route.

5.29 Direct Management of Certain Auqaf by State Waqf Board

5.29.1 Clause 30 of the Bill proposes to amend Section 65 of the 1995 Act by introducing in sub-Section (3) a specific timeline of six months from the close of the financial year for the Board to submit a detailed annual report to the State Government regarding waqfs under its direct management. As such, this amendment is non-controversial and may be accepted.

5.30 Supersession of Committee of Management

5.30.1 Clause 31 of the Bill seeks to amend Section 67 of the 1995 Act by, *inter alia*, introducing a power with the Waqf Tribunal to suspend the operation of the Waqf Board's order regarding the supersession of a committee of management during the pendency of the appeal against the order. Additionally, the amendment proposes that the decision of the Tribunal, once made, shall no longer be final, and parties may appeal the Tribunal's decision to the High Court. The removal of the prohibition on the Tribunal's power to stay the Board's order would dilute the enforcement powers of the Board. Furthermore, as discussed above, taking away the finality of the Waqf Tribunal's orders by allowing appeals from the Tribunal's decision to High Courts would