BLOGS

Waqf (Amendment) Bill 2024 Sent To Joint Parliamentary Committee: Issues, Amendments, and Implementation

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On 8th August, 2024 in the monsoon session of Parliament, Union Minority Affairs Minister Kiren Rijiju introduced the Waqf (Amendment) Bill, 2024, in the Lok Sabha. The bill seeks to implement around 40 changes to the existing Waqf Act of 1995, which was last amended in 2013. Following a vigorous debate, the bill was referred to a Joint Parliamentary Committee for further examination, with the Minister’s consent.

The proposed legislation, set to be renamed the Unified Waqf Management, Empowerment, Efficiency, and Development Act, 2024, is being promoted by the government as a thorough reform designed to improve “the efficiency in the administration and management of waqf properties.”

Read here: The Waqf (Amendment) Bill, 2024

What is Waqf?

A waqf is a charitable endowment under Islamic law, where a property or asset is permanently dedicated for religious or charitable purposes. The ownership of the waqf property is transferred to God, and the property is used to benefit the community, particularly in areas like education, healthcare, and religious activities.

A waqf can be established by a Muslim individual through a formal declaration. The property must be owned by the person creating the waqf. Waqf properties are often created to serve public welfare purposes like building mosques, schools, or hospitals.

Waqf properties are managed by a Mutawalli, who is responsible for the maintenance and administration of the waqf in accordance with its purpose. The Waqf Board, a statutory body, oversees waqf properties in each state, ensuring they are used appropriately and according to Islamic law.

Proposed Amendments in the Waqf Amendment Bill, 2024

- Formation of Waqf: The Act allows waqf to be formed through declaration, recognition based on long-term use (waqf by user), or endowment when the line of succession ends (waqf-alal-aulad).The Bill requires that only a person who has practiced Islam for at least five years can declare a waqf, and they must own the property. The Bill removes the provision for waqf by user and adds that waqf-alal-aulad must not deny inheritance rights to the donor's heirs, including women.
- Government Property as Waqf: The Bill states that any government property identified as waqf will no longer be considered waqf. The area's Collector will determine ownership if unclear and report to the state government. If deemed government property, the revenue records will be updated.
- Power to Determine if a Property is Waqf: The Act empowers the Waqf Board to determine if a property is waqf, but the Bill removes this provision.
- Survey of Waqf: The Act allows for the appointment of a Survey Commissioner to survey waqf properties. The Bill shifts this responsibility to Collectors, with pending surveys to be conducted under state revenue laws.
- Central Waqf Council: The Act establishes the Central Waqf Council to advise governments and Waqf Boards, with the Union Minister in charge as the chairperson. The Act requires all Council members to be Muslims, with at least two women. The Bill changes this, requiring two non-Muslim members and allowing non-Muslims to be MPs, former judges, and eminent persons on the Council. Representatives of Muslim organizations, scholars in Islamic law, and Waqf Board chairpersons must be Muslims, with two of these members being women.
- Waqf Boards: The Act provides for the election of up to two members each from electoral colleges of Muslim MPs, MLAs, MLCs, and Bar Council members to the Waqf Board. The Bill allows the state government to nominate one person from each background, who need not be Muslim. The Board must include two non-Muslim members, at least one member each from

Shia, Sunni, and Backward classes of Muslims, and one member each from the Bohra and Agakhani communities if they have waqf in the state. At least two members must be Muslim women.

- Composition of Tribunals: The Act requires states to set up Tribunals to resolve waqf disputes, with a Chairman who is a Judge of the rank equivalent to a Class-1, District, Sessions, or Civil Judge. Other members include a state officer equivalent to an Additional District Magistrate and a person knowledgeable in Muslim law and jurisprudence. The Bill removes the latter position and instead includes a current or former District Court judge as chairman and a current or former officer of the rank of joint secretary to the state government.
- Appeal on Orders of Tribunals: The Act states that Tribunal decisions are final, with no appeals allowed in Courts. The High Court can review matters on its own, by application from the Board, or an aggrieved party. The Bill removes the finality of Tribunal decisions, allowing appeals in the High Court within 90 days.
- Powers of the Central Government: The Bill grants the central government authority to make rules regarding registration, publication of waqf accounts, and publication of Waqf Board proceedings. Under the Act, the state government may audit waqf accounts at any time. The Bill allows the central government to have these accounts audited by the CAG or a designated officer.
- Waqf Boards for Bohra and Agakhani: The Act permits separate Waqf Boards for Sunni and Shia sects if Shia waqf properties or income constitute more than 15% in the state. The Bill also allows separate waqf boards for Aghakhani and Bohra sects.

Issues with the Waqf Act

Section 40 of the Waqf Act, 1995, grants waqf boards the authority to determine whether a property qualifies as waqf property. However, concerns have been raised that this power has been exploited by vested interests to seize properties, often with the assistance of a corrupt waqf bureaucracy.

Once a property has been declared a waqf property, it remains so in perpetuity and this has further created disputes on such properties. Once a property is declared as Waqf, disputes can only be challenged in a tribunal. However, these tribunals cannot issue stay orders, and there is no set deadline for resolving such cases.

Since 2023, the Ministry of Minority Affairs has been delving into instruments to expedite cases of dispute on Waqf properties. The Ministry looked at two controversial matters in particular:

1. The concept of 'Waqf by User,' where a piece of land or a building, or even part of it, can be declared as Waqf if it has been used for religious purposes, even if the owner did not officially designate it as Waqf property.
2. The creation of Waqf for the donor's family or children, which has sometimes been used as a tool for passing on inheritance.

Issues in the Amendment Bill

The proposed amendments significantly enhance the regulatory authority of the central government over waqf properties, potentially reducing the autonomy of state Waqf Boards. Critics argue that this centralization could lead to increased bureaucratic control, making the management of waqf properties less efficient and more susceptible to political influence.

The bill proposes to strip Waqf Boards of their power to determine whether a property is waqf, transferring this responsibility to district collectors. This shift raises concerns about the expertise of collectors in religious and cultural matters, potentially leading to disputes and mismanagement of waqf properties.

The bill allows for the inclusion of non-Muslim members in Waqf Boards, which has sparked controversy. Some see this as a move towards inclusivity, while others argue it may dilute the religious significance and purpose of waqf properties, as these boards traditionally operate within an Islamic framework.

The bill eliminates the concept of 'Waqf by User,' where properties used for religious purposes over time could be declared as waqf. Critics argue that this could lead to the loss of historically significant religious sites that were never formally registered as waqf but have served religious communities for generations.

The bill addresses waqf-alal-aulad (family waqf) to ensure it does not deny inheritance rights to heirs, including women. While this is a positive step towards gender equality, it has also raised concerns among those who see it as interference in traditional practices of waqf and succession.

The proposed amendments transfer significant decision-making powers from judicial bodies to administrative ones, such as district collectors. This change may lead to a lack of transparency and accountability, with fears of bureaucratic delays.

Conclusion

The Waqf Amendment Bill has sparked debate due to its potential to significantly alter the management and oversight of waqf properties. While it aims to address issues like mismanagement and improve governance, the bill also raises concerns about centralization, loss of religious autonomy, and the adequacy of the proposed legal framework.

Read here: The Waqf (Amendment) Bill, 2024