

15 -ാം കേരള നിയമസഭ

12 -ാം സമ്മേളനം

നക്ഷത്ര ചിഹ്നം ഇല്ലാത്ത ചോദ്യം നം. 1935

11-10-2024 - ൽ മറുപടിയ്ക്ക്

വഖദ് ഭേദഗതി ബിൽ

ചോദ്യം	ഉത്തരം
<p align="center">ശ്രീ. ടി. വി. ഇബ്രാഹിം</p>	<p align="center">ശ്രീ. വി. അബ്ദുറഹിമാൻ (നൂനപക്ഷക്ഷേമം, കായികം, വഖദ്, ഹജ് തീർത്ഥാടന വകുപ്പ് മന്ത്രി)</p>
<p>(എ) കേന്ദ്രസർക്കാർ കൊണ്ട് വന്ന വഖദ് ഭേദഗതി ബിൽ പാർലമെന്റിൽ അവതരിപ്പിച്ചതും അതിന് വേണ്ടി സംയുക്ത പാർലമെന്ററി സമിതി രൂപീകരിച്ച് പ്രവർത്തിച്ച് വരുന്നതും ശ്രദ്ധയിൽ വന്നിട്ടുണ്ടോ; ഈ ബില്ലിലെ വ്യവസ്ഥകൾ സംബന്ധിച്ച സർക്കാരിന്റെ നിലപാട് വ്യക്തമാക്കുമോ;</p>	<p>(എ) കേന്ദ്രസർക്കാർ കൊണ്ട് വന്ന വഖദ് ഭേദഗതി ബിൽ പാർലമെന്റിൽ അവതരിപ്പിച്ചതും അതിന് വേണ്ടി സംയുക്ത പാർലമെന്ററി സമിതി രൂപീകരിച്ച് പ്രവർത്തിച്ച് വരുന്നതും ശ്രദ്ധയിൽ വന്നിട്ടുണ്ട്. 1995ലെ വഖദ് ആക്ടിന്റെയും പ്രസ്തുത ആക്ടിന് നാളിതുവരെ വന്നിട്ടുള്ള ഭേദഗതികളുടെയും അടിസ്ഥാനത്തിൽ വഖദ് വസ്തുക്കളുടെ കാവലാൾ എന്ന നിലയിലാണ് സംസ്ഥാന വഖദ് ബോർഡുകൾ പ്രവർത്തിച്ചുവരുന്നത്. ഇൻഡ്യൻ ഭരണഘടനയുടെ ഏഴാം പട്ടികയിലെ ലിസ്റ്റ് III സമവർത്തി ലിസ്റ്റിൽ ഉൾപ്പെട്ട എൻടി 28 - 'Charities and Charitable Institutions, Charitable and religious endowments and religious institutions' എന്ന നിയമനിർമ്മാണ അധികാരം ഉപയോഗിച്ചുകൊണ്ടാണ് ഈ നിയമം പാസ്സാക്കിയിട്ടുള്ളത്. കേന്ദ്രത്തിനും സംസ്ഥാന സർക്കാരിനും ഒരു പോലെ നിയമ നിർമ്മാണാധികാരമുള്ള ഒരു നിയമനിർമ്മാണ വിഷയം എന്ന നിലയ്ക്ക്, സംസ്ഥാന സർക്കാരുകൾ/ സംസ്ഥാന വഖദ് ബോർഡുകൾ/മറ്റു തല്പരകക്ഷികൾ (Stakeholders) എന്നിവരുടെ അഭിപ്രായം തേടാതെയും കൂടിയായോ ചന്ദ്രനാഥനായോ ഏകപക്ഷീയ നടപടിയിലൂടെ സംസ്ഥാന വഖദ് ബോർഡുകളുടെ അധികാരങ്ങൾ കവർന്നെടുക്കുന്നത് ഉൾപ്പെടെയുള്ള നടപടികൾ കൈക്കൊള്ളുന്നത് നമ്മുടെ ഭരണഘടന അനുശാസിക്കുന്ന ജനാധിപത്യ/ ഫെഡറൽ തത്ത്വങ്ങൾക്കും വ്യവസ്ഥിതികൾക്കും എതിരാണ്. കൂടാതെ മതസ്ഥാപനങ്ങളുടെ നടത്തിപ്പും അവയുടെ ഭരണനിയന്ത്രണവും മതപരമായ മാലിക് അവകാശങ്ങളിൽപ്പെടുന്നതുമാണ്. ഈ സാഹചര്യത്തിൽ വഖദ് ഭേദഗതി ബില്ലുമായി ബന്ധപ്പെട്ട കേരളത്തിന്റെ ആശങ്കകളും</p>

		<p>അഭിപ്രായങ്ങളും വിശദമാക്കിക്കൊണ്ട് ബഹു.വഖഫ് വകുപ്പ് മന്ത്രി ബഹു.കേന്ദ്ര ന്യൂനപക്ഷകാര്യ വകുപ്പ് മന്ത്രിക്ക് കത്ത് അയച്ചിട്ടുള്ളതും ഇക്കാര്യങ്ങൾ നേരിൽ കണ്ട് ധരിപ്പിച്ചിട്ടുള്ളതുമാണ്. ഇതിനു പുറമെ ബില്ലിലെ പുതിയ ഭേദഗതി നിർദ്ദേശങ്ങൾ സംബന്ധിച്ച് സംസ്ഥാനത്തുള്ള വിവിധ വിഭാഗം മതപണ്ഡിതന്മാർ, ജനപ്രതിനിധികൾ, നിയമ വിദഗ്ദ്ധർ എന്നിവരെ ഉൾക്കൊള്ളിച്ചുകൊണ്ട് കേരള സംസ്ഥാന വഖഫ് ബോർഡിന്റെ പിന്തുണയോടെ സംസ്ഥാന സർക്കാർ 10.09.2024 തീയതിയിൽ കൊച്ചിയിൽ ശില്പശാല സംഘടിപ്പിക്കുകയും അതിൽ ഉരുത്തിരിഞ്ഞ ആശയങ്ങളും അഭിപ്രായങ്ങളും നിർദ്ദേശങ്ങളും കൂടി ഉൾപ്പെടുത്തിക്കൊണ്ട് സംസ്ഥാന സർക്കാരിന്റെ നിലപാടുകളടങ്ങുന്ന റിപ്പോർട്ട് ബഹു.വഖഫ് വകുപ്പ് മന്ത്രിയും കേരള സംസ്ഥാന വഖഫ് ബോർഡ് അംഗങ്ങളും സംയുക്ത പാർലമെന്ററി സമിതി ചെയർമാനെ നേരിൽ കണ്ട് സമർപ്പിച്ചിട്ടുണ്ട്.</p>
(ബി)	<p>ബില്ലിലെ പുതിയ ഭേദഗതി നിർദ്ദേശങ്ങൾ സംബന്ധിച്ച് സർക്കാരിന്റെ നിലപാടുകൾ പാർലമെന്ററി സമിതി മുമ്പാകെ സമർപ്പിച്ചിട്ടുണ്ടോ; എങ്കിൽ വിശദാംശങ്ങൾ പകർപ്പ് സഹിതം ലഭ്യമാക്കുമോ?</p>	<p>(ബി) ഉണ്ട്. ബില്ലിലെ പുതിയ ഭേദഗതി നിർദ്ദേശങ്ങൾ സംബന്ധിച്ച് സർക്കാരിന്റെ നിലപാടുകളടങ്ങുന്ന വിശദാംശങ്ങൾ അനുബന്ധമായി ചേർക്കുന്നു.</p>

സെക്ഷൻ ഓഫീസർ

MEMORANDA CONTAINING VIEWS
AND SUGGESTIONS OF
THE GOVERNMENT OF KERALA
ON THE WAQF (AMENDMENT) BILL, 2024
(BILL NO.109)

Remarks on the *Waqf* (Amendment) Bill, 2024 (Bill No.109)

Sl. No.	Clause of the Bill	Relevant section in the Act	Proposed Amendment	Objections with reasons
1	2	1(1)	It proposes to amend the Short Title of the Act, to substitute as “Unified Management, Empowerment, Efficiency and Development”	<p>The Short Title proposed to the Act is a misnomer for the following reasons:-</p> <p>1. ‘<i>Waqf</i>’ is a personal law subject recognized by Muslim Personal Law (Shariat). By the Muslim Personal Law (Shariat) Application Act, 1937 (Act No.26 of 1937). The Parliament has recognized certain personal law subjects including <i>Waqf</i> as per section 2 of the Act. Throughout the history of the legislation, the title of the Act remained the same and known by the name “<i>Waqf</i> Act”.</p> <p>2. As per Article 26 of the Constitution, every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire to movable and immovable property and to administer such property in accordance with law. Therefore, the scope of a law mad by the Parliament under Article 26(d), shall be confined or limited for the purpose of administering such property. or otherwise, such a law will be declared as violative of fundamental rights under Article 26 of the constitution.</p> <p>3. The Preamble of the <i>Waqf</i> Act, 1955 contains a recital that it is ‘to provide for better administration of <i>auqafs</i> and for matters connected therewith’. A perusal of the Statement of Objects and Reasons attached to the various Bills, so far brought also shows the very same object. In fact, Parliament is now trying to create an</p>

			<p>impression that it is for the first time that the Bill brings such reform measures for better and efficient management of <i>waqf</i> property. Therefore, the title suggested is a misnomer and hence it may be recalled.</p>
2	3	3	<p>It seeks to amend certain definitions in section 3 of the Act, namely:-</p> <p>(i) Clause (i) Right to appoint "Mutawalli" is omitted.</p> <p>As per the amendment proposed, the right to appoint a <i>Mutawalli</i> orally/by word of mouth/verbally is omitted. As per the law on <i>Waqf</i>, a <i>waqif</i> (dedicator) can appoint a <i>Mutawalli</i> either verbally or under any deed or instrument by which a <i>waqf</i> is created.</p> <p>Appointment of oral <i>Mutawalli</i> is part and parcel of the custom or usage recognized by Muslim Personal Law on <i>Waqf</i> and therefore, it is having the force of law, as defined under Article 13(3)(b) of the Constitution of India. Therefore, such a law cannot be infringe a right under constitution as it will be against Article 13(2).</p> <p>Even in the case of Islamic will/Osyat creation of oral will/osiyat by mouth has been legally recognized by Act of the Parliament.</p> <p>Therefore, the amendment may be withdrawn.</p>
		(ii) Clause (vi)	<p>Amendment proposed to the term "<i>Waqf</i>"</p> <p>Section 3(r) defines the term "<i>Waqf</i>". The existing definition has two parts, the first part contains the law on <i>Waqf</i>. The second part is an inclusive definition which includes (1) <i>Waqf</i> by user, (2) grants made by any person and (3) <i>Waqf-alalaulad</i>.</p> <p>(i) omission of the term "any person"</p> <p>At present, a person who is not professing Islam or not a Muslim can donate or give his property in support of an existing <i>waqfas</i> provided in section 3(r) and section 104. The</p>

omission of the term "any person" from section 3(r) and the omission of section 104 will have far-reaching consequences. It is violative of the civil right as well as the constitutional right guaranteed to a person who had attained the age of majority to hold and dispose a property as per his will. At the same time, it is discriminatory towards a particular community as the amendment restrains a persons from donating properties for the support of a *waqf*. *Waqf* institutions are created not only for religious purposes, but also have other purposes recognized by Muslim Law namely, pious or charitable, educational or for the promotion of knowledge and learning etc. Many of the institutions under a *waqf* have public objects, such as educational institutions, shopping centres, housing or residential flats and the like, whereby the public at large will be benefited. Therefore, the proposed amendment will be discriminatory towards a particular community and its institutions.

(ii) Fixing a condition of "5 years practice as a Muslim". The Indian Constitution under Article 25 guarantees to any person the freedom of conscience and the right to freely profess, practice and propagate any religion. Therefore, fixing a term of at least five years practicing Islam, as a pre-condition for creating a *waqf* is an unreasonable which amounts to violation of the fundamental right to a person guaranteed under Article 25 of the Constitution.

Article 26(b) of the Constitution guarantees every religious denomination or any section thereof, the right to manage its own affairs in matters of religion. Therefore, a law prescribing or putting unreasonable restrictions on this right will be violative of the right under Article 26.

As per the proposed amendment, only a person practicing Islam for **at least five years** and having ownership over such property alone can dedicate a property to *waqf*. As per the law on *Waqf*, a person having ownership and otherwise competent to transfer a property can dedicate it to a *waqf*. Therefore, the prescription of **five-year** time is without any reason/logic and will be against the fundamental tenets of the law on *Waqf*. Even the general law of the land such as Contract Act and Transfer of property Act permits any person who attained the age of majority to dispose or otherwise dealt with a property as per his sweet will.

(iii) Omission of "*Waqf* by user" The concept of '*Waqf* by User' is embedded in the law on *Waqf* and hence the amendment will be one cutting the root of the customs or usages having the force of law, and therefore, the Parliament cannot make a law which takes away or abridges the right conferred by Article 25 and 26 of the Constitution as it is prohibited by Article 13(2) of the Constitution of India.

There are so many properties, which by uninterrupted use from time immemorial, have been elevated to the status of user *waqf* and were entered as such in the *Waqf* Register and in revenue records. By the omission of the term "*Waqf* by user" it will have adverse effect on such *waqf* institutions involved in such *waqfs* and will create legal hurdles in future.

(iv) Usage of income In the case of "*Waqf alalaulad*", only when of "*alalaulad waqf*" for the line of succession of the *waqif* family other activities in a fails, the Board can interfere in the matter as manner prescribed by how to spend the income of *waqf* for such

the Government.

Central other purposes recognized by law on *Waqf*. Now it is proposed that the income of "*alalauladwaqf*" can also be "used for the maintenance of widow, divorced women and orphan in such a manner, as may be prescribed by the Central Government". The amendment proposal has no nexus with the object sought to be achieved, viz, the 'management of *waqf* property'.

It is not legally possible for the Central Government to give directions to a *waqf* as how to use the income of such an institution . The income of a *Waqf* forms part of the corpus of that *waqf*. The *Waqf* Board, being the statutory authority having supervisory power over *waqfs*. It is entrusted with a Fund called *Waqf*Fund as per section 77 of the Act which comprises all moneys received or realised by the Board under this Act and other moneys received as donations, benefactions, grants including the annual contribution payable to the Board by the *Muthawalli* of every *waqf* as provided under section 72 of the Act. As per section 77(4) of the Act, the *Waqf* Fund shall be applied to certain statutory requirements provided therein including for the payment of maintenance to muslim women as ordered by a court of competent jurisdiction under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986. Such a statutory requirement is already there in the *Waqf* Act, under section 77(4)(g), relating to payment of maintenance of muslim women, and hence the proposed amendment to section 3(r) is unwarranted.

3	4	3A to 3C	Clause 4 seeks to insert a new section 3A, 3B and 3C relating to imposing of certain conditions of
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		<p>waqf, filing of details of waqf on portal and database and prevention of wrongful declaration of waqf.</p> <p>By the proposed section 3A, certain conditions are newly imposed for creating a waqf.</p> <p>Restriction on creating <i>alalauladwaqf</i> denying inheritance right of heirs including women heirs of waqif.</p>	<p>(1) The proposed sub-section (1) is a replica of the law on <i>Waqf</i>. Even otherwise they are covered by the Law of Contract/Transfer of Property. Therefore, there is no legal necessity for such an amendment.</p> <p>(2) The fundamental concept of law on <i>Waqf</i> is that 'once a <i>Waqf</i> always a <i>Waqf</i>'. Hence nobody including the legal heirs cannot challenge the validity/existence of a <i>waqf</i>, after the death of <i>waqif</i>. Pending cases before the Board/Tribunal will be adversely affected by this amendment. The law on <i>Waqf</i> and law on inheritance are different personal law subjects governed by Muslim Personal Law Shariat and therefore, they shall be dealt with separately according to Shariat law. Parliament cannot, under the guise of <i>waqf</i> management, impose a new condition which was not stipulated in the personal law on <i>Waqf</i>.</p>
	<p>3B(1)</p>	<p>By the proposed amendment, certain conditions on the filing of details of waqf on a portal and database insisted.</p>	<p>As per the provisions of the <i>Waqf</i> Act, 1955, two lists of <i>Auqafs</i>, namely:-</p> <p>(1) a list published under sub-section (2) of section 5,</p> <p>(2) A Register of <i>Auqafs</i> maintained by <i>Waqf</i> Board under section 37. The former list is maintained by the State Government after the conducting of survey of <i>waqf</i> land and such a list is published in the State Gazette, after complying detailed survey procedure envisaged in Chapter II. Since, it is a Gazette publication the</p>

		<p>conclusiveness/validity of such a publication will apply as provided in the Bharatiya Sakshya Adhiniyam, 2023. The latter list, the Register of <i>Auqafs</i>, is maintained by <i>Waqf</i> Board under section 37 of the Act. Thus, there exist a database of <i>waqf</i> property maintained by each State Government/State <i>Waqf</i> Boards and therefore, there is no legal necessity for the amendment which insist a new portal and data base of <i>waqf</i> properties.</p>
	<p>3B(ii)</p>	<p>By the proposed amendment, the details of information to be included in a portal is enlisted. In addition to this, the provision enables the Central Government to add any other particulars to the List, by the Rules to be issued by the Central Government.</p> <p>The details of particulars that are to be enlisted by the State Government after survey of <i>waqf</i> is specified in section 4(3), whereby the State Government can add such other particulars as it may deem fit, by State Rules. The Kerala State <i>Waqf</i> Board Rules contains a detailed list of such particulars. Similarly, the details to be furnished along with an Application for Registration and the details to be included in the Register of <i>Auqaf</i> are there in section 36 and 37 respectively.</p> <p>Hence there is no legal necessity for such an amendment on a matter on which the State Rules had already occupied the field.</p>
	<p>3C(i)</p>	<p>By the amendment, a legislative fiction has been created that any Government property identified or declared as <i>waqf</i> property before or after the commencement of this Act shall not be deemed to be a <i>waqf</i> property.</p> <p>As per clause 1(2) of the Bill, the provisions of the Act shall come into force only on such date as the Central Government may, by notification in the official gazette, appoint. However, by this amendment, a retroactive effect is given to this provision and which may open chance for unsettling the settled cases which will in-turn create mischiefs in society. By this provision, a legislative fiction has been created that any Government property identified or declared as <i>waqf</i> property before or after the commencement of this Act shall not be deemed to be a <i>waqf</i> property. It is not legally in order to unsettle the status of a <i>waqf</i> property already identified or declared as such by the</p>

Board/Tribunal after due compliance of the procedure established by law. The amendment if implemented, if devest the rights already vested with a particular religious institution and therefore, such a provision will not withstand judicial scrutiny. Similarly, imposing such a condition is discriminatory towards a particular community and hence it can be viewed as a deliberate move to create rift between State Government and a section of general public.

The State Government is the competent authority to take decision on how to dispose the lands and buildings vested in or in the possession of the State Government for public purpose, as the subject matter Government land falls within entry 35 of List II – State List of Seventh Schedule. There are so may instances where Government land had been assigned for religious, charitable or educational purposes and mutation effected in their favour. The subject matter Government land and its assignment are exclusive State subjects on which State is fully competent to make law and they are being governed by the State Act/Rules. So is the case of conservation of Government land. Collector/Revenue authorities are already equipped under those Acts to take action against unauthorised encroachment by anybody over a Government land or in the matter of assignment of Government land. Through this amendment, Parliament is trying to encroach upon the subject matter over which State have exclusive power to make law and in that respect, the attempt is against federal principles of the Constitution. The amendment is highly discriminatory towards a particular religious group and does not have any nexus with the object or scheme of the Act. And therefore, it has to be

recalled.

4	5	4	<p>The proposed clause intends to amend section 4 relating to survey of <i>Auqafs</i>.</p>	<p>The amendment proposed for omitting the marginal heading, "Preliminary Survey is the one made without proper study on the scheme of the Act". The procedure regarding survey of <i>Auqaf</i> is already governed by Chapter II of the Act. As per the scheme of the present Act, preliminary survey of <i>Auqaf</i> to be completed within a period of one year from the date of commencement of the <i>Waqf</i> (Amendment) Act, 2013, in case such survey was not done before the commencement of the <i>Waqf</i> (Amendment) Act, 2013. As per the proviso to sub-section (6), second or subsequent survey shall be conducted every ten years after the date on which a survey report in relation to immediately previous survey was submitted under sub-section (3). That is a reason why the marginal heading of sub-section (1) is so worded as "Preliminary Survey of <i>Auqafs</i>". The amendment proposal is against the scheme of the Act and hence the existing provision to be retained as such.</p> <p>As per the scheme of the present Act, <i>waqf</i> survey shall cause to be conducted by the State Government through Survey Commissioners, who shall be officers of Survey Department of the State Government. The total cost of making a survey including the cost of publication of the list of <i>Auqafs</i> under this Chapter shall be born by the State Government. Similarly, it is for the State Government to appoint a Survey Commissioner for the entire State and also to appoint as many Additional or Assistant Survey Commissioners for the purpose of making a survey of <i>Auqafs</i> in the State. Now it is entrusted with Collectors or officers of</p>
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				<p>equivalent rank. Collectors are officers already overburdened with so many functions under various laws and survey being an activity which requires special expertise, it may not be feasible for Collectors to perform this additional function effectively on a time bound manner. Thus, the reform will, no doubt, weaken the object sought to be achieved. The subject matter maintenance of land records, survey for revenue purposes and record of rights etc. falls within the exclusive legislative domain of State Government under entry 45 of List II – State List in Seventh Schedule. The detailed procedure regarding conduct of survey and other allied matters are governed by the general law made by the State Government called the Survey and Boundaries Act/Rules. Like any other property in Kerala, the survey of <i>Auqaf</i> is also governed by the procedure envisaged under that Act/Rules. That apart, survey is an activity involving special expertise and therefore, it need be conducted by officers of the Survey Department itself. In view of the above, there is no legal necessity for substituting sub-section (1) of section 4. For the same reasons, proposal for omission of sub-sections (1A), (2), (3) and (6) are unwarranted.</p>
5	6	5	Section 5 relates to publication of list of auqafs.	<p>By the new sub-section (2A) and (2B) proposed to be inserted in section 5, the State Government shall, in addition to the gazette publication, notify the list of <i>auqafs</i> on the portal and database. Similarly, each <i>waqf</i> in the survey list shall contain such details in a manner prescribed by the Central Government.</p> <p>The mutation of all properties situated in the State including <i>waqf</i> properties and the recording of details of such properties in the</p>

			<p>land records are governed by the general law relating to Transfer of Registry, applicable in each State and therefore, there is no legal necessity for substituting sub-section (3) of section 5. An unequal treatment is not advisable in the matter of mutation of <i>waqf</i> property so long as the general law is applicable irrespective of the nature of property, be it Government land/Devaswom/<i>Waqf</i> etc.</p>
6	7	6	<p>The proposed amendment intends to amend section 6 to delete finality clause, giving finality to a decision of the Tribunal on matters that may arise in connection with survey and the listing of a property as <i>waqf</i> property.</p> <p>It is proposed to omit the finality clause, giving finality to the decision of the Tribunal, in respect of any question whether particular property specified as <i>waqf</i> property in the survey list of <i>auqaf</i> is a <i>waqf</i> property or not. Survey is an activity to be completed on a time bound manner. By the amendment proposed, such dispute will remain without settlement for long period which will be against the best interest of <i>waqf</i> institutions. Therefore, it can be viewed only as a mischievous move and hence it may be reconsidered.</p>
7	8	7	<p>Section 7 relates to power of Tribunal to determine dispute regarding <i>Auqaf</i>, which is included in the survey list.</p> <p>As per the second proviso to sub-section (1) of section 7, there is a time limit of one year within which an Application under section 7(1) shall be entertained by the Tribunal. It is proposed to enhance the time limit "two years". Survey is an activity to be completed within a prescribed time period and hence the amendment proposed cannot be considered as a "reform" measure.</p>
8	9	9	<p>Clause 9 of the Bill seeks to amend section 9, relating to establishment and constitution of the Central <i>Waqf</i> Council.</p> <p>At present, all the Council members shall be from among the community. Now, the amendment is proposed in such a way that all members other than the members referred in clause (c) of sub-section (2) of section 9 can be non-muslims. That apart, there is a mandatory provision under the second proviso to clause (g) of</p>

			<p>sub-section (2) which provides that at least two members appointed under this sub-section shall be non-muslims. Parliament cannot make a law giving representation to other communities in the Board maintained for supervising Waqf Institutions. On a perusal of the powers and functions of the Board under the Act it can be seen that the general superintendence of auqafs involves affairs in matters of religion. Therefore, it is violative of Article 25 and Art. 26. Similarly, it is violative of Article 14 as it will amount to discriminatory treatment towards a particular community.</p>
9	10	13(2A)	No remarks
10	11	14	<p>The section relates to the Composition of the State <i>Waqf</i> Boards. By the proposed amendment, the structure of the State Boards is proposed to be altered thoroughly.</p> <p>As per the present scheme of the Act, members of the Board have to be 'elected' democratically from among the different electoral colleges as provided under clause (b) of sub-section (1) of section 14 the Act. It is proposed now that all the members are to be 'nominated' by the State Government. Thus there will be an indirect governmental control over the Board which will be against the democratic functioning of the State Boards. Board is a body having so many quasi-judicial functions and therefore, it is advisable to retain the present set up of electing members from various electoral colleges.</p> <p>At present all the members of the Board are elected from among the muslim community itself. The Board is entrusted with powers not only for administration of <i>waqf</i> property but it has to involve in affairs in matters of religion. Therefore, the present structure of electing members from among the community should be reserved. As per the proposed amendment, the members specified in clause (c) of sub-section (1)</p>

			alone can be from the community. That apart, the second proviso to clause (f) of sub-section (1) provides that two of the total members of the Board shall be non-muslims. In view of the stated above, the amendment is beyond beyond the law making power of the Parliament and hence it is against Article 25, 26 and 14 of the Constitution.
11	12		No remarks
12	13		No remarks
13	14	20A	Clause 14 seeks to omit section 20A relating of removal of Chairperson of the Board by vote of no-confidence. The amendment is consequential to the amendment proposed to section 14 of the Act. For the reasons stated therein, this amendment may be recalled.
14	15	23	Appointment of CEO As per the existing provision the chief executive officer of the Board shall be a Muslim. As per the amendment proposed the term 'a Muslim' is omitted, which is detrimental to Waqf institution.
15	16	32	Section 32 provides the powers and functions of the Board. As per sub-section (3) of section 32, Board can frame a scheme for management for any <i>waqf</i> . Against such a decision of the Board, a suit will lie before the Tribunal and the decision of the Tribunal thereon shall be final. Now it is proposed to take away the finality clause which is against the best interest of the <i>waqf</i> institutions.
16	17	33	As per section 33, Chief Executive Officer has the power to recover the loss or damage caused by a <i>Mutawalli</i> to a <i>waqf</i> property and the decision of the Chief Executive Officer. Now it is proposed to omit the finality clause.

			<p>Executive Officer in this behalf is final. However, a <i>Mutawalli</i> or other person aggrieved may file an appeal to the Tribunal, the Tribunal shall have no power to make any order staying the order of Chief Executive Officer during the pendency of the appeal.</p>
17	18	36	<p>Section 36 relates to registration of <i>Auqafs</i> before <i>Waqf</i> Boards. As per the amendment, it is proposed that no <i>waqf</i> shall be created hereinafter without execution of a <i>Waqf</i> Deed.</p> <p>As per the amendment proposed, the execution of the <i>Waqf</i> Deed is made mandatory through the insertion of sub-section (1A), which provides that on and from the commencement of the <i>Waqf</i> Act, 2024 no <i>waqf</i> can be created without execution of <i>Waqf</i> Deed. Since it is against the law on creation of <i>waqf</i>, the proposal may be reconsidered as otherwise it will also adversely affect the pending litigations before the Boards/Tribunal.</p> <p>The form and manner of filing Application for Registration and the other particulars to be included in an Application for Registration are now governed by Regulations made by the Board. As per the amendment, it is proposed to prescribe it through the Rules to be made by the Central Government. Such a proposal need be revisited.</p> <p>Empowering District Collector as an arbiter in deciding <i>waqf</i> registration application. (Amendment proposed to sub-section (7) and insertion of new sub-</p> <p>The registration of <i>waqfs</i> are exclusively governed by well established and time-tested procedures provided in the <i>Waqf</i> Act and Rules. For that purpose, the Board can conduct an inquiry in such manner as it thinks fit, for examining the genuineness and validity of the Application and the</p>

section (7A) to section 36.)

correctness of the particulars therein. As per section 41 of the Act, Board can exercise *suomoto* power for the registration of a *waqf*. As per the amendment proposed to sub-section (7), all Application for Registration shall be forwarded to the **Collector** having jurisdiction to inquire the genuineness and validity of such an Application. Similarly, a new sub-section (7A) is proposed to be inserted such a way that "where the Collector in his report mentions that the property wholly or in part is in **dispute or is a Government property the waqf in relation to such part of the property shall not be registered unless the dispute is decided by a competent court**". It is silent as to what is meant by the term 'competent court'. As far as the Government property is concerned there exists state legislation exclusively to deal with matters relating to encroachment of Government land, where detailed procedure is provided for the eviction of unauthorised occupants. Therefore, there is no legal necessity for incorporating such a clause in the *Waqf* Act. Similarly, any decision relating to registration of a *waqf* property, entered in the Register of *Auqaf* is subjected to a decision by the *Waqf* Tribunal, which is the competent court under this Act, to decide on any matter relating to a *Waqf*. Thus, any party having interest in a *waqf* or *waqf* property can approach the *Waqf* Tribunal for determination of such a dispute, question or other matter relating to a *waqf*, as per section 83 of the Act. Therefore, keeping in abeyance the Registration Application "until a final decision from a competent court" is highly detrimental to the interest of *waqf* properties and it will unduly delay the registration

Issuance
Registration

of process.

Certificate through By the proposed sub-section (9) of section
online only. 36, it is provided that on registering a *waqf*,
the registration certificate shall be issued
through the portal and database. Since the
setting up of portal and database for the
purpose in an effective manner will require
much time, the provision may be amended in
such a way giving option to the Board to
issue certificates either manual or through
online system, otherwise **manual
Enforcement of any registration will not be legally possible
right of an hereinafter.**
unregistered *waqf* is;
not legally possible; By the proposed sub-section (10) to section
hereinafter. 36, no suit, appeal or other legal proceedings
shall lie before the Board after the expiry of
the period of six months from the
commencement of the *waqf* (Amendment)
Act, 2024, unless such *waqf* has not been
registered in accordance of the provisions of
this Act. The amendment will have far
reaching consequences as it will adversely
affect the pending cases before the
Board/Tribunal. It will also affect the actions
already completed under the Act, in the
absence of a saving provision to that effect.
Similarly, it will adversely affect the *suomoto*
registration power conferred to the Board
under section 41 of the Act. As per section
61 of the Act, it is the personal responsibility
of the *Mutawalli* of a *waqf* to apply for the
registration of *Auqaf*, failing which he can be
prosecuted by the Board and shall be made
punishable with a fine which may extend to
ten thousand rupees. These aspects have not
been taken into consideration while drafting
this provision and therefore, it may be
recalled.

18	19	37	Section 37 relating to maintenance of Register of <i>Auqaf</i> by the Board in the	As per section 37, apart from the particulars provided in the Act, the other particulars to be contained in the Register of <i>Auqafs</i> can be provided by Regulation to be made by the
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manner prescribed by the State Rules.

Board. It is proposed to take away the power of Board to make Regulation in this behalf and vest that power in the Central Government.

As per sub-section (3), the details of *waqf* property once registered with the Board shall be forwarded to the Revenue authorities for effecting mutation and such authorities may either make necessary entries in land records or in the case of rejection, communicate its objections to the Board within a period of six months from the date of registration. Now it is proposed to give a public notice of ninety days in two daily newspapers having circulation in the localities and also to give the affected persons an opportunity of being heard. Then only the Revenue authorities can enter the particulars in the Revenue records. Since the procedure now proposed will cause further delay the proposal for insisting publication of notice may be dispensed with.

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It relates the power of the Board to take a decision if the property is a *waqf* property. Now it is proposed to omit this section.

By the section, there is a prescribed procedure for arriving at a decision whether or not a property is a *waqf* property, after making a detailed inquiry by the Board. Such a decision of the Board is not final and can be reviewed by the Tribunal. Such a decision is taken after due inquiry contemplated in that section.

As per sub-section (3), if any *waqf* property is involved in any property of a Trust or Society, registered under any law for the time being in force, the Board is competent to conduct an inquiry for the purpose of registering it as a *waqf* property. Now it is proposed to omit section 40 which is detrimental to the interest of *waqf* property and therefore it is totally uncalled for. Similarly, it will lead to a series of litigations in future and may even affect the pending litigations.

20	21	46	Section 46 relates to submission of accounts of <i>Auqafs</i> .	As per the existing provision, the submission of accounts, the Form and the particulars to be contained therein are governed by Regulations made by the Board. It is now proposed that those matters are to be governed by the Rules to be made by the Central Government. Similarly, a clause is added to the effect that in the statement of accounts, "all moneys received from all sources" is to be included.
21	22	47	Section 47 relates to audit of accounts of <i>Auqafs</i> .	<p>At present, a <i>waqf</i> having no income or a net annual income not exceeding fifty thousand rupees is not subjected to audit by a panel of auditors appointed by the State Government, but the accounts of 2% of such <i>Auqafs</i> is being subjected to audit by an auditor appointed by the Board (internal audit). As per the proposed amendment, the income limit is enhanced from 'fifty thousand rupees' to 'one lakh' rupees and in the case of such <i>waqfs</i>, it is proposed that audit has to be conducted by auditors appointed from the panel of auditors prepared by the State Government. Thus by the amendment, the audit set up has been changed thoroughly.</p> <p>As per the existing clause (b) of sub-section (1) of section 47, the accounts of <i>waqfs</i> having net annual income exceeding fifty thousand rupees (now enhanced as one lakh) shall be audited annually by an auditor appointed by the Board from out of the panel of auditors prepared by the State Government. Apart from this, in the case of such <i>waqfs</i>, there is provision for conducting special audit by the State Examiner of Local Funds, if the State Government so decides. Now it is proposed to provide for the conduct audit by C&AG or by an officer designated by the Central Government, if the Central Government so orders. As per Article 149 of the Constitution, C&AG is</p>

expected to conduct audit on the accounts of the Union and the State and also of any other authority or body as may be prescribed by or under any other law made by the Parliament. As far as *waqf* institutions are concerned, they are not receiving any money by way of grants etc. from the Central Government and therefore, the legal necessity for C&AG Audit may be revisited.

As per the proposed sub-section (2A), it is provided that the Board shall publish audit report in a manner prescribed by Rules of the Central Government. The preparation of audit and submission of audit reports etc. are matters already covered by State Rules and therefore, there is no legal necessity for a Central Rule in this behalf.

It is also proposed to omit both the provisos of sub-section (3). As per the second proviso to sub-section (3), it is provided that where the audit of accounts of any *waqf* is made by the State Examiner of Local Funds or any other officer designated by the State Government in this behalf it shall be on payment basis i.e., the State Government can recover the cost of such audit, which shall not exceed one and half per cent of the net annual income of such *waqf* and such cost shall be met from the funds of the *Auqafs* concerned. By the omission of such a provision enabling Government to recover cost it will be detrimental to the interest of State Exchequer.

22	23	48	Section 48 deals with the orders to be passed by the Board on Auditors' report.	Now it is proposed that the proceedings and orders of the Board under sub-section (1) (on auditors' report) shall be published in such manner as may be prescribed by Rules of the Central Government. Since the matter is already covered by State Rules, there is no legal necessity for such an amendment.
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				The finality given to the decision of Tribunal under sub-section (4) has been taken away, which is detrimental to the interest of the <i>Waqf</i> Board.
23	24	50A (newly inserted)	No remarks	
24	25	52	This section provides for recovery of <i>waqf</i> property transferred in contravention of section 51.	As per section 51 of the Act, alienation of <i>waqf</i> property is <i>void ab initio</i> . As per section 52, Board is empowered to recover such property and for that the Board can send a requisition to the Collector to obtain and deliver possession of such property. On receipt of such requisition, the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board. However, a person aggrieved by such an order of the Collector may prefer an appeal to the Tribunal and the decision of the Tribunal thereon shall be final. Now that finality clause has been taken away by the proposed amendment, which may be detrimental to the interest of <i>waqf</i> .
25	26	52A	The section provides for penalty for alienation of <i>waqf</i> property without sanction of the Board.	Alienation of <i>waqf</i> property is an offence punishable with 'rigorous imprisonment' which may extend to two years. Now it is proposed to omit the term 'rigorous imprisonment' and to substitute it with 'simple imprisonment'. It is also proposed to omit sub-sections (2) and (4) of section 52A. Considering the law on <i>waqf</i> that 'once a <i>waqf</i> is always a <i>waqf</i> ' and the statutory declaration under section 51 that any transfer/ alienation of <i>waqf</i> property shall be <i>void ab initio</i> , the nature of offence may be retained as cognizable and bailable. As per section 52 of the Act, when an alienated <i>waqf</i> property is recovered, the delivery of possession of such property is to

			<p>be handed over to the Board, which is the supervisory authority of such <i>waqf</i> institutions. That is the reason why it is provided to 'vest' such a property in the Board. It doesn't mean that the Board will get ownership /custodianship over such a property since it belongs to that individual <i>waqf</i>. Therefore, instead of the proposed amendment, it is advisable to substitute the term "delivered" in place of "vested" and the proposal may be redrafted accordingly.</p>
26	27	55A	<p>Section 55A provides for disposal of property left on a <i>waqf</i> by unauthorised occupants.</p> <p>As per sub-section (2), a decision of the Tribunal over a dispute referred to it by the Chief Executive Officer shall be final. Now it is proposed to omit that finality clause. It is against in the best interest of <i>waqf</i> institutions.</p>
27	28	61	<p>Section 61 related to penalties to be imposed to a <i>Mutawalli</i> for his failure.</p> <p>Now it is proposed to omit clauses (e) and (f) from sub-section (1) and to include them under sub-section (1A), which is proposed as a new sub-section.</p> <p>As per the existing provision, there exists a grading of punishment based on the gravity of offence as follows,-</p> <p>(i) non-compliance of clauses (a) to (d), is punishable only with fine which may extend to ten thousand rupees; and</p> <p>(ii) non-compliances clauses (e) to (h), the punishment is graver which is imprisonment for a term upto six months and with fine upto ten thousand rupees.</p> <p>Now it is been substituted as a punishment with a fine only but the fine limit is enhanced which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees.</p> <p>By the proposed sub-section (1A), the omitted clauses (e) and (f) of sub-section (1), were retained in sub-section (1A) which is</p>

punishable with imprisonment for a term which may extend to six months and also with a fine which shall not be less than twenty thousand rupees but which may extend to one lakh rupees. The offence provided in item (iii), i.e., 'do any other act which he is lawfully required to do by or under this Act' is already covered by clause (h) of sub-section (1) of section 61, and therefore, the proposed item (iii) need not be retained. It can be omitted from sub-section (1A).

As per section 61, the maximum fine to be imposed under sub-section (1A) may extend to one lakh rupees. As per section 23 of the BhayatiyaNagarikaSurakshaSanhita, 2023, the maximum fine to be imposed by a First Class Magistrate Court is fifty thousand rupees. Therefore, in order to enable the Judicial First Class Magistrate to try such an offence and to award the maximum punishment, a non-obstante clause giving overriding effect to this provisions over the BharatiyaNagarikSurakshaSanhita, 2023 may be added to sub-section (4) of section 61.

28	29	64	No remarks
29	30	65	No remarks
30	31	67	Section 67 relating to supervision and supersession of a Committee of management by the Board. As per sub-section (4), the order made by the <i>Waqf</i> Board to supersede such a Committee will be final but any person aggrieved by that order may prefer an appeal to the Tribunal. Now it is proposed to substitute sub-section (4) in such a way that all the orders of the Board under this section shall be appealable before the <i>Waqf</i> Tribunal.
31	32	69	As per section 69, the Board is empowered to frame a Scheme for As per sub-section (4), the Board may at any time by an order cancel or modify such a scheme framed by them. Now as per the

			<p>the administration of a <i>Waqf</i>, when its administration comes to a stand still.</p>	<p>amendment proposed to sub-section (4), it is provided that in the event of canceling or modifying an existing scheme by the Board, a written notice, inviting objections "from the person likely to be affected and general public", has to be served. Since the Scheme relates to a property, which has already been declared as a <i>waqf</i> property, the conditions stipulated in sub-section (3) will be enough and "notice to general public" need not be insisted upon. Therefore, the proposed amendment to be redrafted accordingly.</p>
32	33	72	<p>Section 72 relating to annual contribution payable by <i>waqf</i> institutions to the Board.</p>	<p>As per section 72 of the Act, every <i>Mutawalli</i> of a <i>waqf</i> having a net annual income of 5,000 rupees and above shall pay annually out of the net annual income a contribution not exceeding 7 per cent to the <i>Waqf</i> Board for the services rendered by such Board to the <i>Waqf</i>.</p> <p>As per sub-section (6) of that section, if the <i>Mutawalli</i> fails to submit a return, the Chief Executive Officer of the Board can assess the income on the basis of his Best Judgment (BJ Assessment) and can realise the amount from the <i>Mutawalli</i>.</p> <p>It is proposed to reduce the rate of annual contribution from 7% to 5%. The amount is realised by way of a service charge to be remitted by individual <i>waqfs</i> to the Board for the services rendered by the Board to them. That apart, out of the total contributions realised from the <i>waqf</i> 1% is to be remitted to the Central <i>Waqf</i> Council as per section 10 of the Act. The annual contribution of individual <i>waqfs</i> forms part of <i>Waqf</i> Fund, which is the only major source of income to the Board for the discharge of its functions. It may also be noted that it is from that Fund the Board has to meet all other statutory requirements provided in section 77 of the</p>

Act. Similarly, Board shall have power to reduce or remit the contribution to be remitted by *waqfs*, if the Board is satisfied that an individual *waqf* or class of *waqfs* are in need of such a treatment. Therefore, the proposal to reduce the annual contribution need be revisited.

As per sub-section (7) of section 72, order of the Chief Executive Officer assessing annual contribution is appealable before the Board and the Board may after giving the appellant a reasonable opportunity being heard either confirm or reverse or modify the decision of the Chief Executive Officer and the decision of the Board in appeal shall be final. Now, it is proposed to take away the finality clause given to the decision of the Board which is against the interest of *Waqf* Board. Therefore, the proposal may be withdrawn.

33	34	73	<p>Section 73 relates to power of Chief Executive Officer to direct any bank in which any money person to make payments to the Board.</p> <p>As per section 73, the Chief Executive Officer of the Board, as part of realising the annual contribution from individual <i>waqfs</i> direct any bank in which any money belonging a <i>waqf</i> is deposited to pay the amount standing in the credit of <i>waqf</i> in such bank to the <i>waqf</i> Board. Against such order of the <i>Waqf</i> Board the bank or any other person can prefer an appeal to the Tribunal and the decision of the Tribunal on such appeal shall be final.</p> <p>Now it is proposed to omit the finality clause, which may be detrimental to the interest of <i>Waqf</i> Board.</p>
34	35	83	<p>Section 83 relates to the constitution of Tribunal etc.</p> <p>As per the present Act, it is mandatory for the State Government to constitute <i>Waqf</i> Tribunals exclusively for dealing with any dispute, question, other matters relating to a <i>waqf</i> or <i>waqf</i> property. As per the proposed amendment to sub-section (1), the State Government can declare any other Tribunal as the <i>Waqf</i> Tribunal. Taking into</p>

consideration the number of litigations coming before *Waqf* Tribunal and the special nature of cases to be dealt with by them it should be retained as a special entity exclusively dealing with *waqf* matters, or otherwise it will be detrimental to the interest of *waqf* institutions.

By the amendment proposed to sub-section (2), Parliament is trying to create an impression that constitution of tribunal is not mandatory but directory only. Therefore, the proposed amendment need be recalled.

As per the present structure of the Act, *Waqf* Tribunal consists of a Chairman who shall be a District Judge and two other members of whom one shall be a person having knowledge of Muslim Law and Jurisprudence. Being a court dealing with special subject, the representation of a person having knowledge in the field is inevitable for the effective discharge of its functions. Therefore, the present structure need be retained and the proposed sub-section (4) may be withdrawn.

As per sub-section (7) of section 83, the decision of the Tribunal shall be final and binding on the parties and it shall have the force of a decree made by a civil court. Now it is proposed to omit the finality clause given to the decision of the Tribunal. It is against the very concept of providing speedy justice.

As per the existing sub-section (9), even though there is no appeal provision, against any decision or order made by a Tribunal, a revision shall lie before the High Court and the High Court may verify and satisfy the correctness, legality or propriety of such

				determination by the Tribunal and may either confirm or reverse or modify an order made by the Tribunal. Now it is proposed to make all the orders of Tribunal appealable before the High Court. Apart from the Revisional power High Court, the aggrieved party can also invoke extraordinary jurisdiction of constitutional courts under Article 226, 227 and Article 136 and therefore, the proposal for bringing appeal provision requires a revision/revisit.
35	36		No remarks	
36	37	91	Section 91 relating to proceedings under Land Acquisition Act when a <i>Waqf</i> property is acquired for public purpose.	<p>This section provides for special procedure while acquiring <i>waqf</i> property for public purpose. Being a special property, <i>waqf</i> properties are given special status even in matters connected with acquisition under Land Acquisition Act. Such a protection is a necessary concomitant to the protection provided under Article 30(1A) of the Constitution. It is because of the special protection, a special provision providing for three months notice to the <i>waqf</i> Board is provided in sub-section (1) of this Act giving a reasonable opportunity to the Board to represent their claim, in case the property under acquisition is a <i>waqf</i> property. Now it is proposed to reduce the notice period to two months. Therefore, the proposal may be revisited.</p> <p>As per sub-section (4) of section 91 of the Act, any proceedings taken by the acquisition authorities without due notice to the <i>Waqf</i> Board will be void. As per the proposed amendment, such a protection is going to be taken away by substituting it as "keeping in abeyance relating to the portion of property claimed by the Board". There is no logic in substituting the provision, in such a way, as the claim of the Board cannot be placed without giving due notice to them.</p>

37	38	100	Section 100 relating to protection for the actions taken in good faith by officers under this Act.	Now it is proposed to omit the reference of the "Survey Commissioners" from there. The amendment is proposed as consequential to the amendment in section 4 and in view of the reasons stated therein it need be withdrawn.
38	39	101	This section gives protection to survey commissioners by giving them the status of public servants within the meaning of section 21 of IPC.	Now it is proposed to omit the reference "Survey Commissioner" from there and to substitute it with "Collector". The amendment is consequential to the amendment proposed to section 4. In view of the reasons stated therein, this proposal also need to be withdrawn.
39	40	104	This section enables a person not professing Islam to give or donate properties belonging to him for the support of a <i>waqf</i> .	Now, it is proposed to omit section 104. The amendment is consequential to the amendment proposed to the definition given to the term " <i>Waqf</i> ". A person can transfer his property according to his will provided all the statutory formalities under Contract Act and Transfer of Property Act are complied with. The proposed amendment will be against the civil right as well as the constitutional right of a person to dispose his property as per his sweet will and therefore, the proposal may be withdrawn.
40	41	107,108, 108A omitted	Section 107 relates to the legislative declaration that the provisions of the Limitation Act will not apply to claims relating to <i>waqf</i> properties.	"Once a <i>Waqf</i> always a <i>Waqf</i> " is a fundamental concept in Islamic Law on <i>Waqf</i> . It is to protect the basic tenets in law that Parliament has given legal effect to that provision by prescribing that the bar of Limitation Act will not apply to a claim for possession of immovable property comprised in any <i>Waqf</i> or for possession of any interest in such property. As per section 51(1A), any type of alienation or transfer of a <i>waqf</i> property shall be <i>void ab initio</i> and in order to support that statutory declaration, the application of Limitation Act was earlier omitted and the present section 107 was incorporated to the Act. The proposed amendment will be against the interest of

			<p><i>waqf</i> properties and therefore, it may be withdrawn.</p> <p>Section 108 – special provision as to evacuee <i>waqf</i> properties.</p> <p>Section 108A – giving overriding effect to <i>Waqf</i> Act over other general laws.</p>	<p>Being a special law and a later law, Parliament has incorporated section 108A to the Act by the Amendment Act, 2013, which gives overriding effect to the special enactment over other general laws more particularly such as CPC, Transfer of Property Act, Registration Act, Administration of Evacue Property Act, Limitation Act, Land Acquisition Act and Land Reforms Act etc. Therefore, the proposal to omit such a provision need be withdrawn as it will have far reaching consequences which will be determined to the interest of <i>Waqf</i> properties.</p>
41	42	108B	<p>Section 108B, newly inserted, relating to the power of the Central Government to make Rules.</p>	<p>By the insertion of new section 108B, the scope of rule making power of Central Government is going to be extensively widened. There is no reason for bringing such an amendment except extraneous considerations such as hijacking the power of State Government to make rules. Registration of <i>Auqaf</i> and other particulars connected therewith are matters to be dealt with by the State. And hence the existing provisions empowering Central Government to make rules in this behalf need be reconsidered.</p>
42	43	109	<p>The section relates to power of the State Government to make rule for carrying out the purposes of the Act.</p>	<p>As per the existing provision of the Act, State Government is the authority to make rules for carrying out the purposes other than those in chapter III. Now certain Clauses relating to prescribing rules, particularly the one relating to the survey report and the manner of election of members of Board by means of a single transferable vote are proposed to be omitted. They are consequential to the amendments proposed to the sections concerned and in view the reasons stated already, this may also be withdrawn.</p>

43	44	110	<p>The section provides the power of the Board to make Regulations, with previous sanction of the State Government, for carrying out its functions under this Act.</p> <p>It will hijack the power of State Government/Board in making Regulations. Certain subject matters such as prescription of Forms of application for registration of <i>Auqafs</i>, particulars to be contained in the application, manner and place of registration, particulars to be contained in the register of <i>Auqaf</i> etc. were matters already covered by State Regulations. The proposal is consequential to the amendments proposed to the relevant sections and in view of the reasons stated earlier, this may be withdrawn.</p>
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PRAYERS

For the reasons stated hereinafter the Bill is totally uncalled for and may be withdrawn.

(1) The term "*Waqf*" is not the creation of a statute. It is an Islamic concept recognized by Muslim Personal Law (Shariat). As per section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 (Act 26 of 37), the Parliament had recognized certain personal law subjects wherein the rule of decision shall be governed by the Muslim Personal Law (Shariat) when parties are muslims. *Waqf* is one of such subjects mentioned therein. Therefore, the Parliament cannot make a law violating the basic tenets of a religion.

(2) Personal Law is as good as a 'law' made by the Parliament/State Legislatures, as provided under the Constitution of India as per the definition given to the term 'law' under Article 13. Therefore, the Parliament cannot make a law violating the personal law or the custom or usage having the force of law, as it will be hit by the prohibition under Article 13.

(3) Article 26 provides for the right to manage religious affairs, which is a part of right to freedom of religion under Article 25. Right to manage religious affairs includes right to establish and administer institutions for religious and charitable purposes, manage its affairs and to administer such property **in accordance with the law**. Thus, the scope of such law is confined or limited to matters related with or providing for the 'proper and effective management/administration' of such property and any interference other than what is provided in clause (d) of Article 26 will be violative of the freedom guaranteed under the Constitution.

(4) The Constitution under Entry 28 of List III – Concurrent List enables both the Parliament and the State Legislatures to make law on charities and charitable institutions, charitable and religious endowments and religious institutions, but, any such law made by the Parliament should be subject to the fundamental rights guaranteed by the Constitution of India. It is by virtue of Article 26(d) and the Entry 28 of List III – Concurrent List, the Parliament has enacted the *Waqf* Act, 1954 which was later repealed and re-enacted as *Waqf* Act, 1995. Several major amendments have been brought so far to the Act including the latest Amendment Act of 2013 with an object of empowering *waqf* institutions through proper and efficient management.

(5) *Waqf* property can never be treated *at par* with a public property.

(6) Being a concurrent subject, the views of State Government could have been elicited before presenting the Bill in Parliament. Similarly, no consultation with major Stakeholders like the State *Waqf* Board had been made on the Bill.

(7) Many of the subject matters on which States have exclusive legislative competency under the Constitution were touched/ encroached upon by Centre through this Bill. It is against the separation of power theory and also against federal principles envisaged under the Constitution.

(8) The amendments will no doubt weaken all major institutions related with *Waqf* viz., Central Council, State Board, *Waqf* Tribunal etc.

(9) Many of the amendments have no nexus with the object sought to be achieved, namely, better management of properties. Therefore, it can be considered only as a mischievous move with extraneous considerations.

(10) The amendment will hijack powers and functions of various authorities under the Act.

(11) The general rule behind an amendment has not been fulfilled/satisfied in the case of this Bill. An amendment proposal should be one intending to cure a mischief or lacuna in the existing provisions. The circumstances necessitated for an amendment shall be evident from the statement of objects and reasons attached to the Bill, the facts/figures/reports etc. No material showing the circumstances for a comprehensive amendment is made available.

In view of the above, the Hon'ble Joint Parliamentary Committee on the *Waqf* (Amendment) Bill, 2024, may recommend to the Parliament to reconsider and withdraw the Bill.

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