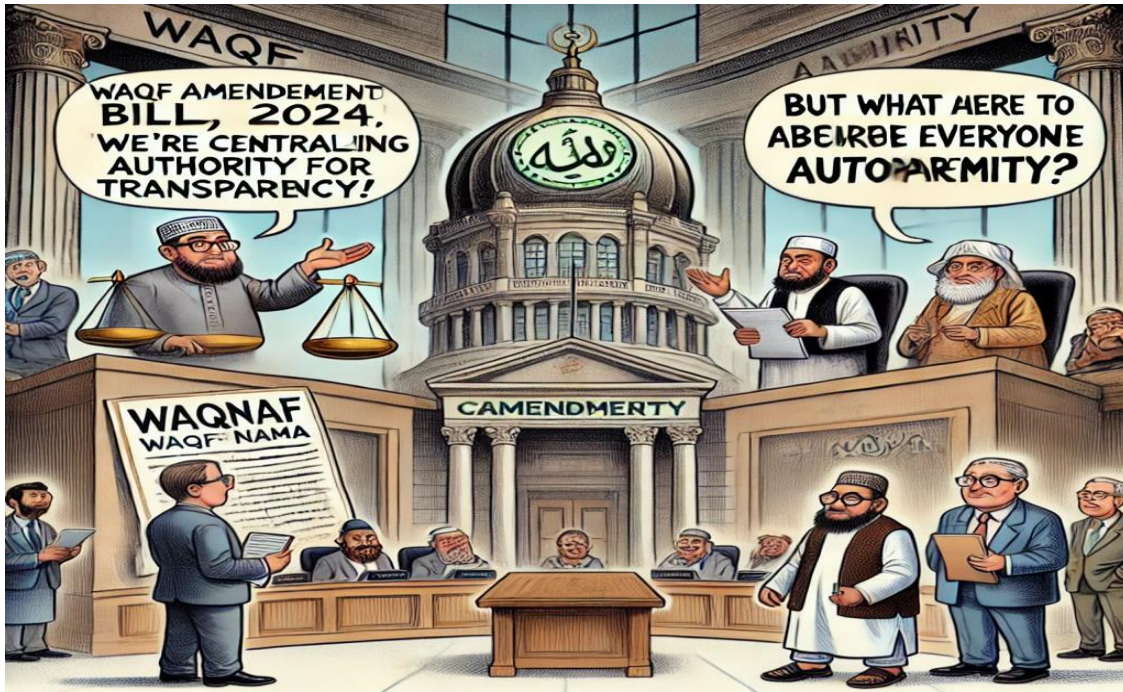


THE WAQF BORAD IN INDIA: RECENT AMENDMENTS, AND SOCIETAL IMPLICATIONS – PAPER II



Definition of Waqf:

Waqf is a fundamental concept in Islamic law that involves the dedication of property for religious, charitable, or community purposes. Derived from the Arabic word "waqf," meaning to stop or to hold, this practice is rooted in the Islamic tradition of perpetual charity (sadaqah jariyah).

When an individual creates a Waqf, they dedicate their property—whether land, buildings, or other assets—for the benefit of specific purposes, intending that the property remains dedicated to these purposes indefinitely.

A Waqf property is distinguished by its irrevocability; once it is declared Waqf, it cannot be reverted to private ownership.

The management of the Waqf is typically overseen by a mutawalli (caretaker) or a board, ensuring that the income generated from the property supports its designated purposes, such as maintaining religious sites, funding educational institutions, or providing for the needy.

History of Waqf Boards in India:

The administration and governance of Waqf properties in India have evolved over time, reflecting changes in political and social landscapes. The earliest legislative efforts to regulate Waqf properties in India began in the early 20th century with the Muslim Waqf Validating Act of 1913. This Act was followed by the Mussalman Wakf Act of 1923, which aimed to provide a more comprehensive framework for managing Waqf properties.

Post-independence, the need for a unified legal framework led to the enactment of the Central Waqf Act of 1954. This Act was instrumental in standardizing the management of Waqf properties across India, establishing Waqf Boards at the state level to oversee and administer these properties. The Act also provided for the creation of Waqf Tribunals to resolve disputes related to Waqf properties.

The Waqf Act of 1995 further refined the governance framework, consolidating previous legislations and introducing measures to prevent misuse and encroachment of Waqf properties. Notably, the 2013 amendment to the Waqf Act introduced penalties for encroachments and prohibited unauthorized transactions involving Waqf properties.

New Amendments to the Waqf Act under the Waqf (Amendment) Bill, 2024:

The Waqf (Amendment) Bill, 2024, represents a significant shift in the legislative landscape governing Waqf properties in India. The Bill proposes several amendments to the Waqf Act of 1995, which aim to overhaul the existing regulatory framework. The key features of the proposed amendments include:

- **Renaming the Act:** The Bill seeks to rename the Waqf Act, 1995, as the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995. This new title reflects a focus on improving the efficiency and effectiveness of Waqf management.
- **Introduction of New Provisions:**

Section 3A: This provision stipulates that only lawful owners of property can create a Waqf. It addresses concerns about the validity of properties dedicated as Waqf if the owner does not have clear title.

Section 3C(1) and 3C(2): These sections specify that government properties identified or declared as Waqf are not to be considered Waqf properties. It empowers government authorities to determine the status of disputed properties, shifting this power from Waqf Tribunals to government officials, such as the Collector.

Central Audit Authority: The Bill proposes giving the central government the power to direct audits of Waqf properties by auditors appointed by the Comptroller and Auditor-General of India, enhancing transparency and accountability.

Changes in Waqf Board Composition: The amendment proposes including non-Muslim members in Waqf Boards and allows non-Muslim Chief Executive Officers (CEOs) in state Waqf Boards. This change aims to broaden the representation and oversight of Waqf Boards.

4. Nature of the Amendments:

The amendments proposed in the Waqf (Amendment) Bill, 2024, signify a substantial shift in how Waqf properties are governed and regulated. The nature of these changes can be categorized as follows:

Centralization of Authority: The Bill centralizes certain powers, particularly regarding the determination of property status and audit processes. By empowering government officials to decide on property disputes and conduct audits, the amendments seek to address issues related to mismanagement and corruption.

Redefinition of Waqf Property: The removal of the "Waqf by use" provision and the emphasis on valid Waqfnama (deed) redefine how properties are classified as Waqf. This change aims to ensure that only properties with formal declarations are recognized as Waqf, potentially impacting properties currently considered Waqf based on historical use.

Diversification of Board Composition: The inclusion of non-Muslim members and CEOs in Waqf Boards reflects an attempt to diversify the governance structure. This change is intended to enhance oversight and representation but has faced criticism for potentially undermining the autonomy of Muslim communities in managing their endowments.

Implications for Society:

The proposed amendments to the Waqf Act carry several implications for various stakeholders, including the Muslim community, government authorities, and the broader society:

For the Muslim Community: The changes to Waqf governance, particularly the centralization of authority and alterations in board composition, may lead to concerns about diminished community control over Waqf properties. The requirement for formal documentation and government intervention in property disputes could affect longstanding Waqf properties and practices.

For Government Authorities: The amendments enhance the role of government officials in the administration and oversight of Waqf properties. This shift aims to improve transparency and prevent misuse but may also place additional responsibilities on government agencies to manage and resolve property disputes.

For Society at Large: The broader implications of these amendments include potential impacts on the effectiveness of charitable activities supported by Waqf properties. The centralization and audit measures are designed to ensure better management and prevent corruption, which could lead to more efficient use of resources for community welfare.

In conclusion, the Waqf (Amendment) Bill, 2024, represents a significant evolution in India's legal and administrative framework governing Waqf properties. While the amendments aim to address issues of efficiency and accountability, they also raise questions about community autonomy and the future of Waqf management. As these changes unfold, their impact on both the Muslim community and the broader society will become clearer, shaping the future of Waqf institutions in India.

MAIN PRACTICE QUESTIONS

Discuss the concept of Waqf in Islamic law, highlighting its historical significance and its role in promoting charitable activities. How has the governance of Waqf properties evolved in India over the years? Illustrate the key legislative changes that have shaped the management of Waqf properties in India.

Analyze the key provisions of the Waqf (Amendment) Bill, 2024, and their implications for the management of Waqf properties in India. Evaluate how the proposed amendments aim to address issues related to transparency and efficiency in Waqf administration. What are the potential impacts of these amendments on the Muslim community and broader societal interests?

ANSWERS

1. Discuss the concept of Waqf in Islamic law, highlighting its historical significance and its role in promoting charitable activities. How has the governance of Waqf properties evolved in India over the years? Illustrate the key legislative changes that have shaped the management of Waqf properties in India.

Concept and Historical Significance of Waqf:

Waqf is a pivotal institution in Islamic law, representing a charitable endowment wherein a property is dedicated for religious, charitable, or community purposes. The Arabic term "waqf" means to stop or hold, reflecting the permanent dedication of the property. The concept is rooted in the Islamic principle of perpetual charity (sadaqah jariyah), where the benefits continue indefinitely beyond the donor's lifetime.

Historically, Waqf properties have played a significant role in Islamic societies by supporting mosques, schools, hospitals, and other charitable ventures. They have been instrumental in fostering social welfare, providing education, and maintaining religious sites. Waqf endowments often represented a crucial source of funding for community needs and contributed to the development of infrastructure and services.

Governance of Waqf Properties in India:

The governance of Waqf properties in India has evolved through several legislative phases:

Muslim Waqf Validating Act, 1913: The early 20th-century legislation aimed to validate Waqf endowments and provide a framework for their management.

Mussalman Wakf Act, 1923: This Act provided a more comprehensive structure for Waqf administration, but it was eventually replaced.

Central Waqf Act, 1954: Post-independence, this Act introduced a unified framework for managing Waqf properties, establishing state-level Waqf Boards and Waqf Tribunals to oversee and resolve disputes.

Waqf Act, 1995: This Act consolidated previous laws, enhancing the governance structure and introducing measures to prevent misuse and encroachment of Waqf properties.

Key Legislative Changes:

Waqf Act, 2013 Amendment: Introduced penalties for encroachments and prohibited unauthorized transactions involving Waqf properties, strengthening the regulatory framework.

Waqf (Amendment) Bill, 2024: Proposes significant changes, including renaming the Act, centralizing audit powers, redefining Waqf property status, and altering Waqf Board compositions.

These legislative changes reflect ongoing efforts to improve the management and accountability of Waqf properties, ensuring they continue to serve their intended charitable purposes effectively.

2. Analyze the key provisions of the Waqf (Amendment) Bill, 2024, and their implications for the management of Waqf properties in India. Evaluate how the proposed amendments aim to address issues related to transparency and efficiency in Waqf administration. What are the potential impacts of these amendments on the Muslim community and broader societal interests?

Key Provisions of the Waqf (Amendment) Bill, 2024:

Renaming the Act: The Bill proposes renaming the Waqf Act, 1995, to the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995. This new title emphasizes improved efficiency and development in Waqf management.

New Provisions:

Section 3A: States that only lawful owners can create a Waqf, addressing concerns about the validity of properties dedicated without clear title.

Section 3C(1) and 3C(2): Clarify that government properties identified as Waqf are not to be considered Waqf properties. It empowers government officials, such as Collectors, to determine property status, shifting this authority from Waqf Tribunals.

Central Audit Authority: Grants the central government the power to direct audits of Waqf properties, enhancing transparency and accountability.

Changes in Waqf Board Composition: Allows for the inclusion of non-Muslim members and CEOs in Waqf Boards, aiming to diversify oversight and representation.

Implications for Management and Society:

Transparency and Efficiency: The amendments are designed to address issues related to transparency and efficiency by centralizing audit powers and redefining property status. This is expected to reduce corruption, mismanagement, and disputes related to Waqf properties.

Impacts on the Muslim Community: The centralization of authority and diversification of board compositions may lead to concerns about diminished community control and autonomy over Waqf properties. The requirement for formal documentation and government intervention in disputes could affect properties historically recognized based on use.

Broader Societal Interests: For the broader society, the amendments aim to ensure more effective management of Waqf properties, potentially improving the allocation of resources for charitable and community services. However, the shift in governance may also lead to tensions between government oversight and community autonomy.

In summary, the Waqf (Amendment) Bill, 2024, seeks to reform the management of Waqf properties with a focus on enhancing transparency and efficiency. While these changes may address existing issues, they also raise questions about the balance between regulatory oversight and community control, affecting both the Muslim community and societal interests at large.

