

Legislative Brief

The Wakf (Amendment) Bill, 2010

The Bill was passed by the Lok Sabha on May 7th, 2010 and is currently pending in the Rajya Sabha.

Highlights of the Bill

- ◆ The Bill amends the Wakf Act, 1995. It gives the Waqf Council, currently an advisory body at the central level, powers to issue directions to waqf boards, who administer waqfs in each state.
- ◆ The Bill makes changes to the composition of waqf boards. It also establishes a procedure for removal of a chairperson of a waqf board.
- ◆ Those states which have not yet established a waqf board must do so within one year. Further, state-funded surveys of waqf properties must be carried out.
- ◆ The Bill restricts the kinds of powers that can be delegated by a waqf board to the chairperson or any other individual, including the Chief Executive Officer of the Board.
- ◆ Under the Bill, the sale, gift, or total transfer of a waqf property will be treated as invalid. The Bill extends the maximum period of lease or mortgage of such properties, while establishing a more restrictive procedure by which leases or mortgages are approved by waqf boards.
- ◆ The Bill provides for imprisonment for those who occupy waqf property without authorisation.
- ◆ The Bill restricts the circumstances under which state governments can issue directions to waqf boards. Boards cannot be superseded unless there is prima facie evidence of financial irregularity.

[The Prevention of Torture Bill](#)

July 29, 2010

[The Securities and Insurance Laws \(Amendment and Validation\) Bill, 2010](#)

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Key Issues and Analysis

- ◆ The Sachar Committee and the Joint Parliamentary Committee on Waqf had recommended that greater powers be given to waqf boards to evict encroachers. The Bill does not incorporate these recommendations.
- ◆ In order to evict encroachers, the waqf board is required to approach a local magistrate. In certain states, other authorities who administer hindu religious endowments are given summary powers to evict encroachers themselves.
- ◆ The Bill requires states to conduct a survey of waqf properties, at a cost to be borne by them. It is unclear how such a mandatory provision, in a central act, can be made operational, since such expenditures must be approved by the respective state assembly.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The term Waqf denotes an endowment, which is to be used solely for purposes recognised under Islamic law as pious, religious or charitable. Such an endowment, which is usually property, is managed by an administrator (called a ‘mutawalli’). According to the Report of the Prime Minister’s High Level Committee on the Social, Economic, and Educational Status of the Muslim Community (Chairperson: Shri Rajinder Sachar), there are more than 4.9 lakh waqfs in the country, with a market value of Rs 1.2 lakh crore.

The Wakf Act, 1995 governs the non-religious aspects of waqfs. At the central level the Act establishes a waqf council which advises the government on policy relating to waqfs. The Act provides for the establishment of a Board in each state to supervise the functioning of waqfs. Such boards shall survey waqf properties in the state and ensure that the incomes from them are used for permitted purposes. Boards can appoint and remove mutawallis, take measures to remove encroachments on waqf properties, develop such properties, and oversee the budgets of waqfs. The Act also provides for tribunals to adjudicate disputes related to waqf.

The Sachar Committee had pointed to the low incomes actually earned from waqfs, compared with their high earning potential. It pointed to a number of issues with waqf properties (a) non-availability of waqf records (b) poor maintenance of waqf properties (c) encroachments on waqf properties. It called for (a) strengthening of waqf boards and waqf council to incorporate experts from various fields (b) proper maintenance of accounts (c) a dedicated cadre of officers to manage waqf affairs (d) legislative amendments to the Wakf Act, 1995.

The Joint Parliamentary Committee on Waqf, in its 3rd and 9th reports (2008), also made a number of recommendations on amendments to the Wakf Act. The Bill incorporates some recommendations from the Sachar and JPC reports.

Key Features

The Bill makes the following changes (a) it gives the waqf councils powers to monitor waqf boards and issue directives to them (b) it prescribes jail terms for unauthorised possession of waqf property (c) it restricts certain types of transactions in waqf properties (d) it restricts the powers of the state governments vis-à-vis waqf boards (e) it makes changes to the composition of the central waqf council and the state waqf boards (f) it prescribes a procedure for the removal of a chairperson of a waqf board (g) it requires states to conduct surveys of waqf properties within a set period of time.

Composition and Powers of Central Waqf Council

- The Act provides for a central waqf council, consisting of 21 members, and chaired by a Union minister. The Bill requires that atleast two women members be appointed.
- Under the Act, the council could only advise the central government on matters concerning waqf. The Bill gives the waqf council greater powers of supervision over state waqf boards. State governments or waqf boards must now furnish financial and other records to the central waqf council, in a manner to be specified.
- The council can issue directives to the waqf board if it is satisfied that there is evidence of financial irregularity, or if provisions of the Act have been violated. Disputes will be referred to a Board of Adjudication, to be constituted by the central government and headed by a retired Supreme Court judge.

Composition and Powers of State Waqf Boards

- If a waqf board has not been established in a state, the Bill requires such a board to be constituted within a year.
- The Act provides for up to 13 members (not including a chairperson) to be appointed to the waqf board, through six separate electoral colleges (see table). The Bill (a) reduces the maximum number of members to 11 (b) specifies that no government ministers can be appointed as board members (c) provides for the appointment of at least two women members.

Table 1: Composition of Waqf Boards in the Act and the Bill

	Wakf Act, 1995	The Bill
	Maximum of 13 members.	Maximum of 11 members.
	1-2 members each from electoral colleges consisting of muslim MPs, muslim MLAs, muslim members of bar councils, mutawallis	As in the Act; Members to be elected from electoral college of each category, MPs and MLAs to hold office on ex-officio basis
	1-2 nominees from eminent muslim organisations	1 muslim nominee with experience in town planning, business, social work, agriculture etc
	1-2 nominees who are Islamic scholars	1 muslim nominee who is an Islamic scholar.
	1 state govt officer of deputy secy level or above	1 muslim state govt officer of deputy secretary level or above

Source: The Wakf Act, 1995, The Bill, PRS

- The Bill establishes a procedure to remove the chairperson of a board through a vote of no-confidence. No such vote can be held for at least a year after a chairperson has been elected. Such a vote shall be held following a notice given by at least three board members to the state government. A simple majority of half the board members must support the motion for it to be successful. A successor shall be elected for the remainder of the term.
- Under the Act, the state government must appoint a chief executive officer, who shall be a muslim, in consultation with the board. Under the Bill such an officer must be of the rank of at least Deputy Secretary, and must be chosen from a panel of two names suggested by the Board. In case a muslim officer is not available, an officer of at least Under Secretary rank may be appointed.
- The Bill restricts the powers that can be delegated by the Board to the Chief Executive Officer (CEO), as compared to the Act. Powers to settle schemes of management or direct the administration of a waqf, to appoint and remove mutawallis, and to sanction the sale, lease or mortgage of waqf properties cannot be delegated.
- Boards can take over administration of a waqf if there is evidence that the management has contravened provisions of the Act. Boards can also frame schemes for the proper administration of a waqf, through a process to be prescribed.

Transactions in Waqf Property

- All state governments must maintain a list of waqf properties. A survey of such properties in the state must be completed within a year, if such a survey was not carried out earlier. The report of the survey, to be forwarded to the government by the waqf board within six months, shall be used by revenue authorities when updating land records. The costs of the survey shall be borne by the state government.
- The Bill imposes restrictions on the types of transactions in waqf property and tightens the procedure by which such transactions are approved and carried out (see table 2).

Table 2: Transactions in Waqf Property: Provisions in the Bill as compared to the Act

Type of transaction	The Wakf Act, 1995	The Bill
Sale, gift or total transfer	Void without prior approval of board	To be treated as invalid; Acquisitions under the land acquisition Act, 1894 shall be undisputedly for a public purpose, certain other restrictions apply.
Exchange, mortgage or Lease	Prior sanction of board needed. Leases of property beyond 3 years are void.	Must be sanctioned by board and shall be valid only if 50% of board members are present and at least two-thirds of members vote in favour of the transaction. Void otherwise. Period of lease of property for commercial activities allowed for up to 10 years; lease for purposes of education and health allowed for up to 30 years. Leases beyond 30 years are void. State government to be informed of leases.

Source: The Wakf Act, 1995; The Bill; PRS

Encroachments or Unauthorised Possession of Waqf Property

- The Bill defines an ‘encroacher’ as any person occupying waqf property, without authority of law and includes a person whose tenancy, lease or licence has expired or been terminated by the Board.
- The Bill provides for rigorous imprisonment for up to two years against those who take possession of waqf property without prior sanction of the board. The offence shall be cognisable and non-bailable.

Disputes and Adjudication

- The Bill makes changes to the composition of waqf tribunals to be set up in each state. In addition to a member with the rank of District, Sessions or Civil Judge (as is provided in the Act), each tribunal shall also consist of a person of the rank of an additional district magistrate and one person with knowledge of muslim law or jurisprudence.
- Persons ‘aggrieved’ over the issue of whether a particular property is waqf property or not, may institute a suit with the tribunal. Under the Bill, the tribunal shall have powers to assess damages from unauthorised occupation of waqf property, and to recover such damages as arrears of land revenue through the collector. Public servants who fail to prevent or remove encroachments are punishable with a fine of up to Rs 15,000.

Miscellaneous Provisions

- Mutawallis who do not follow the provisions of the Act are liable for imprisonment of up to 6 months and a fine.
- State governments cannot issue directions to the waqf board which are contrary to the waqf deed, or any usage, practice or custom of the waqf.
- State governments cannot supersede the Board unless there is prima facie evidence of financial irregularity or violation of provisions of the Act. Boards can be superseded for 6 months, extendable by another six months.

PART B: KEY ISSUES AND ANALYSIS

Power to Remove Encroachment on Waqf Property

Clauses
5, 29

The Bill defines an encroacher. It also prescribes imprisonment for those in unauthorised possession of waqf properties, and makes the offence cognisable and non-bailable. However, as in the Act, while the CEO of a waqf board may issue orders to encroachers to vacate waqf land, he must apply to the local magistrate to have encroachers actually evicted.

Both the Sachar Committee and the JPC had pointed to a need for improvements in the procedure by which waqf boards could deal with encroachment. The JPC had suggested that the CEO be given the powers of a Collector in this regard, and that he have the powers to evict encroachers.² Both committees had recommended that the Public Premises (Eviction of Unauthorised Occupation) Act, 1971 be applied to waqf properties. The Act provides for a procedure to evict unauthorised occupants from central government land. The Bill does not incorporate either of these provisions.

In some states, authorities who administer religious and charitable endowments are given special powers to remove encroachments. Under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Sections 77-84), such authorities can use police help to remove encroachers themselves, and with force if necessary. Courts cannot question orders of eviction passed by such authorities. Encroachers are punished with imprisonment of up to 5 years.³

Land owned by institutions covered by the Himachal Pradesh Hindu Public Religious Institutions and Charitable Endowments Act, 1984, is to be treated as government property in case of unauthorised occupation. The provisions of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 shall apply in such cases.³

Financial Implications for States

Clause 10

The Bill requires all states to conduct a survey of waqf properties within a year, if such a survey had not been carried out earlier. Under the Act, such costs were to be shared among the mutawallis of the waqfs in the state. The Bill requires the costs of the survey to be borne by the state government.

Given that expenditure by a state government must be approved by the respective state assembly, it is unclear how provisions in a central act, which require states to bear the costs of a waqf survey, will be made operational. The financial memorandum to the Bill does not specify any expenditure related to waqf surveys.

Other Recommendations of the Sachar Committee and JPC on Waqf

Table 3: Other Observations / Recommendations of Sachar Committee / JPC and the provisions in the Act/ Bill

	Issue	Sachar Committee / JPC	The Act	The Bill
Clauses 12,13 and 15	Composition of Council /Board	JPC-Constitute board in 3 months. Don't appoint encroachers. Specify procedure to remove chairperson. Sachar-Include two women in Council / Board. Appoint full-time president to Council / full-time CEO to board. Reduce MPs/MLAs on board to 2. Appoint professionals.	No requirement for states to establish a waqf board within a time limit.	States given 1 yr to constitute board. Govt ministers cannot be on board. Two women to be appointed. No. of MPs/MLAs unchanged but hold office ex-officio.
Clauses 17,20	Powers of the Council / Board	JPC - no 'blanket' delegation of powers to chairman or any other person by Board. Property transactions to be approved by vote of board members.	Board can delegate powers; no specific provision for voting.	As recommended by JPC.
Clauses 27, 31	Transactions in Waqf property	Sachar-Allow lease of waqf property for 30 yrss and exempt them from Rent Control Acts : JPC- Make sale, gift, transfer of properties invalid at the outset.	Maximum period of lease currently 3 years.	As recommended by Sachar / JPC.
Clauses 9, 40	Adjudication	Sachar-allow tribunals to give interim relief /award damages : JPC- Expand size of tribunals.	Each tribunal has one member.	Tribunal to have three members. Can assess damages from encroachment.

Source: Sachar Committee Report, 3rd Report of JPC on Waqf (2008), The Wakf Act, 1995 and the Bill; PRS

Notes

1. This Brief has been written on the basis of the Waqf (Amendment) Bill, 2010, which was passed by the Lok Sabha on May 7th, 2010.
2. 3rd Report of Joint Parliamentary Committee on Waqf (2008), p. 15
3. These state Acts are available on www.lawsofindia.org.

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