

AS INTRODUCED IN THE RAJYA SABHA
ON 8TH DECEMBER, 2023

Bill No. LXXVI of 2022

THE WAQF REPEAL BILL, 2022

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BILL

to repeal the Waqf Act, 1995.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Waqf (Repeal) Act, 2022. Short title and commencement.
- (2) It shall come into force on such date as the Central Government may, by notification
5 in the Official Gazette, appoint.
2. This Waqf Act, 1995 is hereby repealed. Repeal of Act
43 of 1995.

STATEMENT OF OBJECTS AND REASONS

The Waqf Act, 1954 was predicated on the management of waqf; i.e. holding certain property and preserving it for the confined benefit of certain philanthropy and prohibiting any use or disposition of it outside that specific objective and had sought itself to be a measure towards public welfare and as a benevolent institution. Subsequently, some infirmities pertaining to the management of the waqf was felt and the Wakf Act, 1954 was later repealed and the new Waqf Act was passed in 1995 (hereinafter referred to as "the Act") giving more powers to waqf boards. Amendments were later introduced in the year 2013, thereby arming the waqf with limitless and absolute autonomy in the matters relating to it.

Due to these powers, the Waqf Boards is now the third largest owner of land after the Indian Armed Forces and the Railways and their share of land has doubled since 2009. The enabling provisions enshrined in section 40 of the Waqf Act, 1995 gives powers to the Board to acquire, issue notices or hold an enquiry into the ownership of the property that it has reasons to believe belongs to the Waqf. The board is allowed to conduct an independent enquiry into the matter and arrive at a conclusion regarding the ownership of the contended property. The decision of the board is final unless revoked by a specific order of the Tribunal and the only remedy available to the aggrieved is to approach the Tribunal with a suit which is barred by a limitation of only one month. There appears to be no cogent reason as to why the Act itself should make an exception from the established principles of the Limitation Act, 1963. Appeals to the orders of the Tribunal are not maintainable in other Court of Law. Further, the burden of proof regarding the ownership of a land contended to be a property of Waqf falls on the person holding the possession of that land. Should the incumbent fail to prove his title to the satisfaction of the Board, such land or property shall have to be vacated. Such provisions invariably amount to depriving the citizens of their rights to seek constitutional remedies and are gross violation of natural justice. As such, it has been felt that there is a dearth of adequate safeguard to other communities and especially poor people for protection of their properties from its inclusion in Waqf.

Waqf Board has simultaneously been afforded with unbridled power in terms of registering any property, no other trust, *mutths*, *akharas* or a society is conferred with even remotely parallel autonomy in their affairs. Registration of property is an important corner stone of personal rights guaranteed in the Indian Constitution. The Waqf Act is discriminatory both in intent and application while retaining a charitable optics and is in stark violation of article 13(2) of the Indian Constitution that prohibits the State from making laws that abridge the rights conferred to the citizens by Part III of the Indian Constitution.

The Act as amended from time to time is also against the autonomy of the State in matters falling within its domain. Sections 28 and 29 of the Act provides overriding powers to the Waqf Board and its CEO to compel the State machinery to act in a manner consistent with the interest of the Board. Section 14 of the Act provides that the Board shall consist of a Chairperson, a member amongst the Muslims who has professional experience in town planning, finance, agriculture, etc., a recognized scholar in Shia and Sunni Theology nominated by the State Government, one person amongst the Muslims nominated by the State Government who is an officer of the State Government (but not below the rank of Joint Secretary) and not more than two members will be elected by the electoral college constituting; Muslim Members of the Parliament from the particular state, Muslim Members of the State Legislature, Muslim Members of the Bar Council of the concerned state and mutawallis having an annual income of one lakh rupees and above. The provisions of the Act makes it mandatory that the appointment of members of the Board is restricted to Muslim community only even when the members of the Board are entitled to the status of public servants which

arguably is in contravention of the spirit of equality in employment. Such provisions are intended to further the interest of the Muslim community and have successfully served in unconstrained amassment of property in the name of Muslim charity.

Further, many provisions of the Act are repugnant or constitutionally infirm. In so far as the other entities such as *mutths*, *akhara* and other trusts are concerned which may also bear a religious undertone, the Act fails to establish any reasonable classification that may corroborate the conferment of such special status to the waqf. It is an established fact that the Constitution is the supreme law of the land and therefore it cannot be undermined by the Waqf Act, 1995.

In the light of above and for the purpose of achieving a more equitable arrangement and treatment of bodies such as waqf and other recognised religious entities established under similar intent, and to curb arbitrary amassment of properties by the waqf in the name of Muslim charity, the aforesaid Wakf Act, 1995 as amended till date is proposed to be repealed.

Hence this Bill.

HARNATH SINGH YADAV.

RAJYA SABHA

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to repeal the Waqf Act, 1995.

(Shri Harnath Singh Yadav, M.P.)