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Supreme Court Delivers Landmark Ruling on Mining Royalties

On July 25, 2024, the Supreme Court of India delivered a landmark judgement in the case of Mineral Area Development Authority (MADA) v. Steel Authority of India (SAIL), which has significant implications for the mining sector and state governance. This landmark ruling, decided by a nine-judge bench with a majority of **8:1**, overturned a 35-year precedent established in India Cement v. State of Tamil Nadu, declaring that royalties on mining are not classified as taxes. This decision reshapes the legal landscape surrounding mineral rights and taxation in India.

The Supreme Court's ruling categorically stated that "*royalties*" are contractual payments made by mining lessees to lessors for the right to extract minerals. This distinction is crucial as it fundamentally alters how royalty payments are understood and administered. The Court clarified that state taxes on mining are based on the "*yield*" from mineral-bearing land, which can be determined by either the royalty payable or the quantity of minerals extracted. Consequently, this decision liberates state governments from previous constraints imposed by the Centre regarding taxation on mining lands, thereby enhancing the authority of state legislatures to impose taxes on mineral rights.

Key Points from the Majority Opinion

Discretionary Power: States are granted discretion to levy or renew tax demands in accordance with the MADA judgment

- but are limited to transactions occurring after April 1, 2005. This temporal restriction aims to balance legal interpretation with principles of legal certainty and non-retroactivity.
- Waiver of Penalties: The Court adopted a lenient stance towards past compliance by waiving interest and penalties on demands made before July 25, 2024. This approach seeks to alleviate financial burdens on affected parties.
- Staggered Payment Period: A twelve-year period beginning **April 1, 2026**, has been allowed for staggered payment of tax demands. This provision aims to balance state revenue interests with taxpayers' ability to fulfil these obligations.

Economic Ramifications

The economic ramifications of this judgment are complex and vary across different states. For instance, states like Chhattisgarh, Rajasthan, and Madhya Pradesh had already enacted laws enabling them to collect taxes on royalties following the *Kesoram Industries* case in 2004. Conversely, other states such as Bihar and Odisha had similar laws invalidated by High Courts. As a result, mining companies operating in states without existing tax legislation may suddenly face substantial financial liabilities. The ruling has prompted swift legislative responses; for example, Jharkhand passed a Mineral Bearing Land Cess Bill shortly after the decision.

Ongoing Concerns

One contentious aspect of this ruling is its retrospective application. During proceedings, Solicitor General Tushar Mehta expressed concerns that retrospective application could lead to excessive litigation over contractual disputes, with companies potentially invoking "change in law" clauses to withdraw from agreements. Senior Advocate Harish Salve warned that retrospective tax demands could exceed some companies' net worth. Critics argue that the Court did not adequately consider the economic implications of its decision, as highlighted in earlier judgments like *Shivashakti Sugars v Renuka Sugars* (2017), which emphasised assessing economic consequences when two legal interpretations exist.

The retrospective nature of this ruling raises fairness questions given the historical context. A 2011 Ministry of Mines report indicated that royalty rates had been significantly increased since 1992 to compensate states for revenue losses following the *India Cement* judgment. Furthermore, some states have expressed reluctance to collect dues accrued before the MADA decision, underscoring potential disparities in economic impacts across regions.

Beyond the mining sector, there are broader concerns regarding competition among states for additional revenue and among mining companies seeking leases in jurisdictions with lower

levies. Additionally, power tariffs may be affected as power generation companies might invoke "change in law" provisions to pass increased costs onto consumers.

Dissenting Opinion

In her dissenting opinion on this case, Justice B.V. Nagarathna raised critical concerns regarding the implications of classifying royalties as non-tax payments. She argued that such a classification undermines the state's ability to generate revenue from natural resources effectively and could lead to an erosion of fiscal autonomy at both state and local levels. Justice Nagarathna highlighted that while royalties should be viewed as a means for states to secure fair compensation for resource extraction, treating them distinctly from taxes could create loopholes that might be exploited by mining companies.

Justice Nagarathna's dissent also pointed out that this ruling could exacerbate inequalities among states rich in mineral resources versus those that are not, potentially leading to a "race to the bottom" scenario where states compete aggressively for investment at the expense of equitable resource distribution and environmental standards. She emphasised that sustainable governance requires a balanced approach where both state interests and corporate responsibilities are duly considered.

Conclusion

As stakeholders navigate this new legal landscape following MADA v. SAIL, it is evident that this ruling will have far-reaching consequences for India's mining operations and state revenues. The coming years will be critical in determining whether this landmark decision fosters more equitable resource distribution or leads to adverse outcomes within an already sensitive national market. The balance between state revenue generation and corporate accountability remains delicate and will require ongoing scrutiny as states adapt their policies in response to this significant judicial shift.

The Banking Laws (Amendment) Bill, 2024

On 9th August 2024, The Banking Laws (Amendment) Bill, 2024 ("Bill") was introduced in the Lok Sabha. The Bill aims at amending the Reserve Bank of India Act, 1934, the Banking Regulation Act, 1949, the State Bank of India Act, 1955, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

The following Acts have been amended following the introduction of the Bill:

1. *The Banking Regulation Act, 1949*: The Banking Regulation Act, 1949 regulates the banking activities in India. It is from this act that the RBI derives its power to supervise and control banks' functioning. It also governs the rules for licensing of new banks and the management of the existing ones.
2. The Reserve Bank of India Act, 1934: The Reserve Bank of India Act, 1934 is the backbone of the legal framework for the functioning of the Reserve Bank of India which was established in 1935. The Act authorized RBI to regulate the monetary policies of the country, issue currency, and supervise banks.
3. The State Bank of India Act, 1955: The State Bank of India Act, 1955 establishes the legal framework for the functioning of the SBI and its subsidiaries.
4. The Banking Companies Act, 1970 and 1980: *The Banking Companies Act, 1970* act was established in 1969, and provided for the acquisition, transfer and management of all the fourteen

commercial banks in India. Ten years later, The Banking Companies Act 1980 was passed, which provided for the transfer and management of six more commercial banks.

Amendment Proposed

The Reserve Bank of India Act, 1934 mandates that scheduled banks maintain a specific average daily balance as cash reserves with the RBI. This balance is calculated on the basis of the average daily closing balances of the banks over a two-week period, traditionally defined as a fortnight. Previously, the fortnight was considered to be from one Saturday to the second following Friday (including both days). However, under the proposed amendment, the proposed period of a fortnight starts from (i) the first day to the fifteenth day of each month, or (ii) the sixteenth day to the last day of each month. This revision also extends to the Banking Regulation Act, which governs the requirement for the maintenance of cash reserves of non-scheduled banks.

The second major change that has been proposed is the change in tenure of the directors of the co-operative banks. Under the Banking Regulation Act, the director of the bank is not allowed to hold office for more than eight years consecutively. This Bill seeks to increase the period from eight to ten years. Directors of central co-operative banks are now exempted from the prohibition on serving on multiple bank boards, specifically

when elected to state cooperative bank boards where they are members. This allows for more interconnected governance within the cooperative banking system. Another change proposed by the Bill is the increase in the threshold for substantial interest in a company from 5 lakhs to 2 Crore rupees. This adjustment reflects economic changes and gives the government flexibility to modify this amount through notifications as needed.

Through this Bill, account holders can now appoint up to four nominees for deposits, lockers, and items in bank custody. This provides more flexibility in estate planning and asset management. The Bill specifies rules for simultaneous and successive nominations. The Bill broadens the types of unclaimed funds that can be transferred to the Investor Education and Protection Fund after 7 years. This now includes unclaimed shares and bond amounts, in addition to dividends. Importantly, claimants retain the right to request refunds from the IEPF.

Conclusion

The Bill aims to change certain provisions of the acts pertaining to Banking in India, to boost governance, flexibility and regulations in Indian Banking. It has refined how the period for the maintenance of bank cash reserves, extends the tenure for cooperative bank directors, raises the bar for substantial interest

and also improved how account holders nominate beneficiaries. These changes tackle both efficiency issues and today's economic needs. Yet, the amendment might worry some people about cooperative bank directors getting too much power, which could affect independent decision-making. The ability to change financial limits shows adaptability, but this policy could backfire without regular checks. On the whole, these changes seem to find a middle ground between updating rules and giving banks more freedom to operate. These changes can be better implemented with constant regularization and clarity throughout the entire process.

Controversy Surrounding The Assam Compulsory Registration of Muslim Marriage and Divorce Bill, 2024

On **28th August**, the Legislative Assembly of Assam passed a bill repealing the *Assam Muslim Marriage and Divorce Registration Act, 1935*. It replaced it with a new legislation called the *Assam Compulsory Registration of Muslim Marriages and Divorces Bill, 2024* ("*The Bill*").

Earlier this year, in February, the Cabinet had announced its decision to do away with the 1935 Act primarily on the ground that it permitted child marriage amongst the Muslim community. This decision was followed by an Ordinance repealing the 1935 Act in March. Apart from the issue of child marriage, the Assam Government also highlighted the need to ensure the mandatory registration of marriages, and the eventual move towards a Uniform Civil Code (UCC), as other reasons for introducing the legislation.

Muslim personal law in India is largely an uncodified body of law. The Muslim Personal Law (Shariat) Application Act, 1937, states that all matters pertaining to Muslim personal law including marriage, divorce, adoption, succession, etc. are to be governed by the Sharia law. Accordingly, it is not mandatory to register Muslim marriages under any legislation, unlike Hindu marriages, which are registered under the Hindu Marriage Act, of 1955.

However, some states have legislation to provide for the legal registration of Muslim marriages. Assam's 1935 Act was one such statute that provided for a regime whereby 'Qazis' or Muslim Marriage Registrars were entrusted with the duty of registering Muslim marriages. However, the Government observed that this arrangement made it voluntary for Muslims to register their marriages, resulting in irregularities and making it difficult to determine the validity of marriages. The new Bill, therefore, makes it compulsory to register marriages and also replaces the Qazis with Marriage and Divorce Registrars as the registering authority.

However, as stated earlier, it was the provisions of the Act permitting child marriage that admittedly provided the key impetus for the Government to repeal it. Section 8 of the 1935 Act which laid down the procedure for making an application to the registrar, permitted the contracting of marriage between minors as long as an application was made on their behalf by their lawful guardians. Section 10, containing the procedure for making entries in the marriage register, provided for the same.
The Bill, on the other hand, provides for seven conditions for a valid registration which include solemnization, free consent of the parties, competence and soundness of mind, and absence of prohibited degree of relationships.

One of the conditions lays down the requirement that the woman must have completed 18 years of age and the man, 21 years, thereby aligning the Muslim personal law with the secular proscriptions on child marriage.

While there's a need to address the problem of child marriage, given that it continues to be widely prevalent despite a stringent legal framework prohibiting the practice, how the Assam Government has sought to achieve it, raises many questions. The move has attracted scrutiny for covering a lot more ground than what its stated objective warrants. The complete replacement of the 1935 Act for achieving the goal of curbing child marriage has been criticised as unnecessary, with questions being raised over the Assam Government's real intent behind introducing the legislation.

Further, the aspersions on the Bill have been amplified in light of the Government's recent crackdown in the name of child marriage, which has resulted in thousands of arrests, and has been labelled as high-handed by many, coupled with a slew of controversial remarks by the Chief Minister Himanta Biswa Sarma targeting a particular section of minorities. The issue of marriage age in religious personal laws in India remains complex and fraught with uncertainties. As we shall see, the present legislative move by the Assam Government, which disregards the complexity of the Muslim personal law on marriage, reeks of

haste and a lack of sensitivity. In order to better understand this, a brief discussion of the contradictions between secular laws and Muslim personal law pertaining to the age of marriage, and judicial opinion on the same, is necessary.

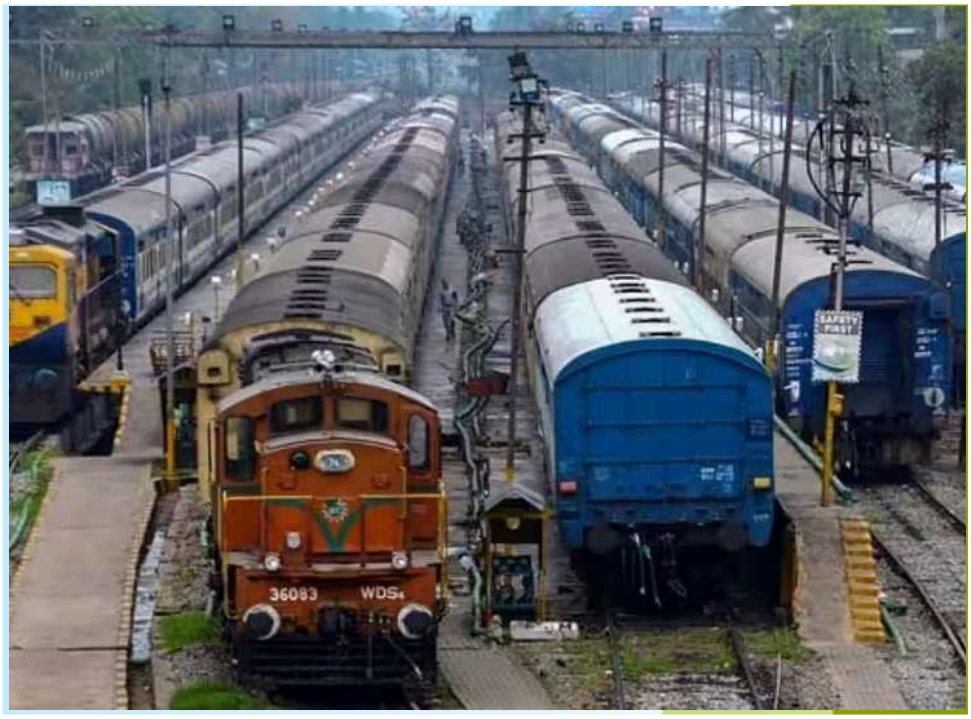
The uncodified Shariat laws allow marriage between minors as long as they have attained puberty. This stipulation is however, in conflict with the Prohibition of Child Marriage Act (PCMA) and the Protection of Children from Sexual Offences Act (POCSO Act). Sections 9, 10 and 11 of the former, penalise the contracting, solemnising and promoting child marriage respectively. Whereas, Sections 3 and 5 of the latter punish a male for having sexual intercourse with a minor female. Whether these secular laws prohibiting child marriage override the Muslim personal law or not, has been an ongoing area of judicial contestation with multiple conflicting decisions.

The Punjab and Haryana High Court in a 2022 decision, held that a Muslim girl above 15 years of age was competent to contract a marriage of her own choice and that such a marriage would not be rendered void by the PCMA. In contrast, the Kerala High Court in the same year had held that Muslim marriages between minors would still come under the purview of the POCSO Act.

Further, the Kerala High Court earlier this year ruled that the PCMA applied equally to all sections irrespective of their religion and superseded Muslim personal law. Meanwhile, the Supreme Court in August agreed to an early hearing of a batch of petitions challenging the 2022 Punjab and Haryana High Court order. It is hoped that the hearing will finally lead to an authoritative pronouncement from the top court on the matter.

Considering that the case is pending with the Supreme Court, the Assam Government should have ideally waited for the judicial settlement of the question before going forward with the Bill. Moreover, only amending Sections 8 and 10 of the 1935 Act could have easily achieved its objective of putting an end to child marriage in the Muslim community, as only these provisions allowed minors to contract marriages. Repealing the legislation in its entirety and bringing in a new law was not necessary for this purpose. Additionally, the second major argument of the Assam ministry, that the 1935 Act allowed voluntary registration of Muslim marriages is flawed t, as a 2010 amendment expressly provided for mandatory registration. The new Bill does not bring forth any changes on this front despite Government assertions to the contrary. As far as inching closer towards a UCC is concerned, it is again not apparent how the Bill achieves this, as it does not replace Muslim personal law, only making minor changes to the preconditions for registration of Muslim marriages.

Therefore, the Bill falls short on all three planks raised by the Government while entrusting authorities who may not necessarily have a grounding in Muslim law, with the responsibility of registering Muslim marriages. Seen in the light of the above discussion, the legislation seems more of a political tool to mould public opinion rather than being a bonafide vehicle for personal law reform. The effectiveness of the law in achieving its stated objectives would depend on the Government's neutrality in implementing its provisions, as well as on the Supreme Court's upcoming decision on the relationship between secular laws prohibiting child marriage and Muslim personal law.



Centre introduces The Railways (Amendment) Bill, 2024

The Railways(Amendment) Bill, 2024 was introduced by Railways Minister Shri Ashwini Vaishnaw, on 9th August 2024 in the Monsoon session of the parliament. The bill seeks to repeal the Railway Board Act, 1905 and to incorporate the provisions of the repealed act into the Railways Act, 1989.

Before independence, the railway network was a part of the Public Works Department, and when the network expanded, the Indian Railways Act, 1890 was enacted. In 1905, the railway organisation was separated from the Public Works Department and the Railway Board Act was enacted that year. In 1989, the 1890 act was repealed and the contemporary Railways Act was brought in. However, the Railway Board continued to function through an executive decision without any statutory sanction. Therefore, this bill mainly aims to reduce the need to refer to two acts, thereby simplifying the legal framework.

Secondly, there are changes proposed in the structure of the Railway Board such as the Central Government will have the authority to decide on a number of members, qualifications, and terms of service for the Railway Board's chairman and members, including provisions for a Secretary and other staff members, and will be mentioned in the new act. In the repealed act, there was no clear mention of the number of members or qualifications for the Board members including the Chairman and the central government could assign powers with no clear

specifications. There was no post of a Secretary.

Thirdly, the bill introduces a formal process for communication of decisions from the board such as notifications, etc., and this process must be carried out in writing and signed by the Secretary or any person authorised by the board. This enhances the independence and the operational efficiency of the board as well. The repealed act had a less formal process of carrying out the above processes.

To summarise, the Board will have a certain number of members as specified by the central government, a chairman, and a secretary as well, the qualifications and appointments of which will again be specified by the central govt. Further, for clarification, the existing appointments made through the repealed act will be deemed to have been appointed through this act and their terms and conditions will not be changed as per the new act.

Understandably so, as the Railway Board Act, 1905 is a very short statute and referring to such a short statute of almost 2 pages seems cumbersome, and instead combining with the Indian Railways Act, 1989 is a great move. To bring about these amendments to the 1989 Act there are no new financial burdens and the allocated budget for the railways for the financial year 2024-25 of Rs. 440.01 crores will be used.

Even the Railways Act, 1989 is a bit redundant considering how so many changes have taken place after that from economic development to infrastructural development, which after a brief look into the act, has not accommodated new provisions regarding new criteria/exams for recruitment of personnel change in infrastructure taking into consideration the number of trains that have been in accidents of derailment/crashing of trains etc. A thorough analysis of the bill and we come to realise that most are procedural and legal changes which are, of course, required but they seem to not address the inefficiencies and the poor state of rail infrastructure, among other pressing issues which will be further discussed in the coming paragraphs.

There are operational as well as organisational issues. Some of the pressing operational issues are that one, the operating ratio of railways is always high(96.9%), which means that the revenues generated by the railways are used to cover only the operating expenditures-there is no scope for the revenue that can be invested into capital expenditure.

Therefore, the Indian Railways have to rely on borrowings and budget for capital expenditure. Two, Indian Railways has kept passenger fares very low and so to compensate for that, it made freight expensive which as a result has led to the increase of logistics costs of manufacturing in India. This in turn has led the freight market to shift to roadways considering how there's

expansion of Road infrastructure in the last two decades.

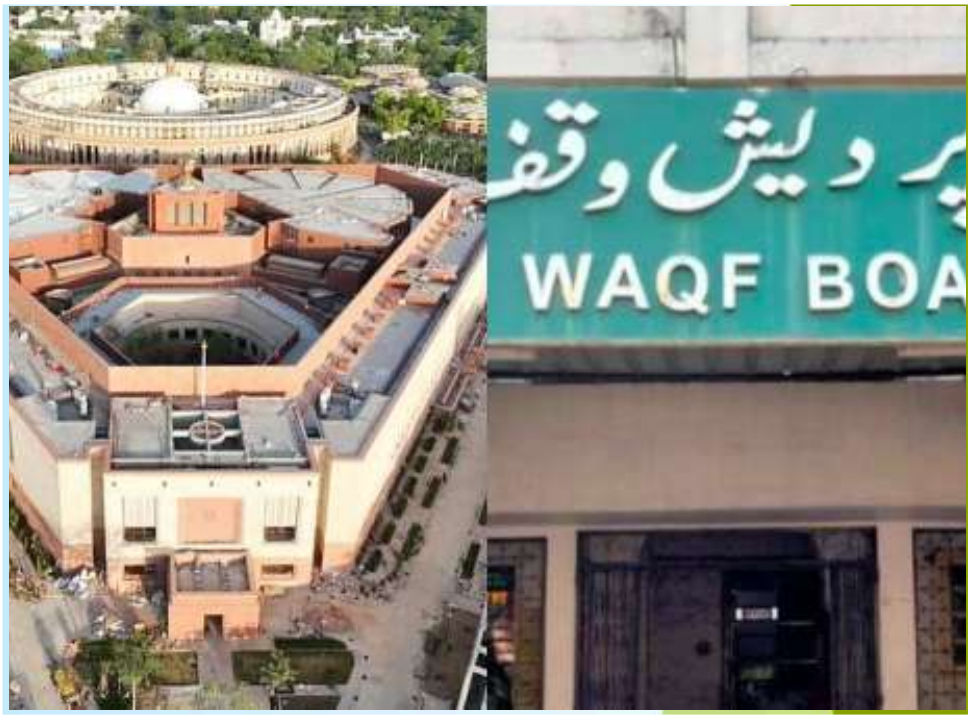
The share of railways in India's freight business has steadily decreased to approx. 27% from around 80% at the time of independence. Three, due to the low scope of capital expenditure and neglect of infrastructure maintenance, there are many safety issues in IR. Some of the organisational issues include the burden of allied activities on IR like maintaining schools, hospitals and its own police force, as unfilled vacancies at the lower level(track men, linemen, technicians), among others.

While steps have been taken by the government to address the above issues among other issues, the new amendment may almost not resolve them. While privatisation is one of the solutions suggested by many critics, it is to be noted that railways are a part of the union list, and to part from it may not be something which this author would suggest.

Railways always and will be the means of travel for the middle and lower class of people, so privatising it would only mean that it may be rendered unaffordable for the general public. Some appreciative things done by the government to resolve the issues are one, the leasing out its iconic hill railways, including Darjeeling, Kalka-Shimla, Matheran and Nilgiri, to private companies for operations, two, launching of 'Mission Raftaar' increase the speed of transportation such as new high-speed t

rains like Antyodaya Express, Deen Dayalu Coaches, Humsafar, Tejas, UDAY (Utkrisht Double-Decker Air-conditioned Yatri) among others.

Practical applications of the Bill will be able to tell whether this is a positive move towards modernization or a negative move which only profits the Railways.



Waqf (Amendment) Bill, 2024 Introduced to Reform Waqf Act, 1995

The Waqf (Amendment) Bill 2024 was recently introduced in the Lok Sabha by Union Minister of Minority Affairs Kirein Rejiju. The bill proposes certain amendments to the Waqf Act 1995 ("Act") which was last amended in 2013. The Bill renames the Act to 'United Waqf Management, Empowerment, Efficiency and Development Act, 1995'. It introduces sweeping changes in the administration and management of the Waqf properties. The new changes seek to bring more transparency in the functioning of the Waqf Board.

The most contentious issue in the proposed bill is the inclusion of non-muslim members in the Waqf Board and the Waqf Council. Critics argue that the inclusion of non-Muslim members in the Waqf Council and the Waqf Board violates the fundamental rights protecting religious communities to manage their internal affairs and the right to administer their institutions under Article 25, 26 and 30 of the Constitution.

What is Waqf?

Waqf properties are religious endowments in Islam, which are used for religious, charitable, or private purposes. A Waqf can be established through a deed or instrument. The term "Waqf" means 'detention'. As a waqf is created, the property is detained. Neither the person who created the waqf nor its beneficiaries are entitled to ownership. Owners of such property become the beneficiaries and the ownership remains with God. The proceeds f

rom a Waqf typically fund educational institutions, graveyards, mosques, and shelter homes.

The Central Waqf Council is a statutory body under the administrative control of the Ministry of Minority Affairs. It was set up in 1964 as per the provision given in the Waqf Act, 1954. It was set up as an Advisory Body to the Central Government on matters concerning the working of the Waqf Boards and due to administration of Waqf. The Waqf Act, 1954 was subsequently repealed and The Waqf Act, of 1995 was enacted to regulate 'auqaf' by a wakif. The 1995 Act gave more powers to Waqf Boards. However, the role of the Council was expanded under the provisions of the Waqf (Amendment) Act, 2013.

Major amendments proposed by the Bill:

The inclusion of Sections 3A, 3B, and 3C.

- These provisions introduce stricter conditions for creating a Waqf. The registration of waqf properties on a government portal is made mandatory. Further, it lays down the procedure for resolving disputes around the government properties claimed as Waqf.
- Section 3A states that only a person who is the lawful owner of the property and is competent to transfer or dedicate such property can create Waqf. The creation of which shall not result in denial of inheritance rights of heirs (including women heirs) of the waqif (person making such dedication).
-

- Section 3B provides that every Waqf registered before the 2024 Amendment shall file details of the Waqf and properties dedicated to the Waqf on the Government portal within one month.
- Section 3C states that any government property 'identified' or 'declared' as Waqf, before or after the Amendment, shall not be a Waqf property.

Change in the composition of the Waqf Council

- The Waqf Council will now consist of a Union Minister, three MPs, three representatives of Muslim organizations, and three Muslim law experts.
- It will also include two ex-judges, either the Supreme Court or a High Court, four ‘people of national repute’, and senior officials of the Union Government.
- The amendment mandates the inclusion of at least 2 muslim women in the Central Waqf Council.
- It also seeks to include 2 non-Muslim members in the Waqf Council.

The decisions of Tribunal and Survey of Waqf Property

- Section 6 allows for appeals against Tribunal decisions within two years of the publication of the list of waqf properties, and permits late applications if sufficient cause is shown.
- The decision of the Tribunal is **not final** and the suit can be constituted within a **period of two years** from the publication of the list of auqaf.

- Earlier in the Act the determination of Waqf properties was vested with the survey commissioner or additional
- commissioners. The amendment empowers the district collectors to conduct surveys of waqf properties. They have the power to identify whether the property is waqf property or not.

Waqf by user

- Waqf by user refers to a category of waqf in which a property is acknowledged as "*Waqf*" due to its prolonged utilization for charitable or religious activities.
- Earlier, if a land has been allocated for religious use for an infinite period of time, it is deemed as "waqf by user" despite lack of documentation.
- The amendment proposes to eliminate "*Waqf by User*" in order to streamline the legal framework and to guarantee that all waqf properties are officially registered. This means that a Waqf property is suspect in the absence of a valid "*Waqfnama*".

Conclusion

The changes introduced by the bill are subjected to criticism by the opposition parties who deem it unconstitutional and anti-minority. Even though the amendment proposes a few positive changes like digitalization, transparency, and accountability in the management of waqf property, there is a need to address the concerns of all the stakeholders involved. Discussions and

deliberations are vital for addressing the concerns. The Bill's provisions, particularly those affecting the composition of the Waqf Council and Boards, have been challenged on grounds of constitutional rights and federalism. These concerns highlight the need for careful consideration of how the Bill aligns with constitutional guarantees and state powers. The bill is currently referred to the Joint Committee of Parliament for detailed deliberations.

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