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thewire.in/law/waqf-enemy-property-act



The current frenzy over the seizing of Saif Ali Khan's Bhopal properties worth Rs 15,000 crore is due to these properties being deemed 'enemy properties'. The ruler of the princely state of Bhopal, Nawab Hamidullah Khan, had three daughters; the eldest, Abida Sultan, migrated to Pakistan in 1950. His second daughter, Sajida Sultan, married in India, and Saif Ali Khan is her grandson and legal heir to a share of properties in Bhopal worth Rs 15,000 crore. The properties in question are Flag Staff House, Noor-Us-Sabah Palace, Dar-Us-Salam, Bungalow of Habibi, Ahmedabad Palace and Kohefiza property.

Similarly, in 2018, the properties belonging to Mohammed Amir Mohammed Khan (the erstwhile Raja of Uttar Pradesh's Mehmoodabad) in Lucknow and Sitapur were also considered enemy properties worth Rs 3,000 crore. Recently, properties of Pakistan's first Prime Minister Liaqat Ali Khan have been identified as enemy properties, part of which is a mosque belonging to Waqf. Ironically, the Waqf Bill is currently under debate, and its Joint Parliamentary Committee is generating controversy.

## The enemy unveiled: A tale of two dimensions

The first dimension is the evolution of the definition of 'enemy' and 'enemy property' since 1962, reflecting an intriguing shift in their conceptualisation. India's two wars with China and Pakistan in 1962 and 1965, respectively, prompted the formulation of the Defence of India Act and Defence Rules of 1962. Accordingly, the 'enemy' was defined to be a person or country committing an act of aggression against India or any person belonging to the country committing such aggression or any person belonging to such country as

recognised by the central government and, consequently, the properties of these enemies were deemed as '*enemy property*'. The Enemy Property Act 1968 was enacted based on the Defence of India Act and Defence Rules. It is significant to note that the Act specified that citizens of India would not be considered enemies, and only Pakistani and Chinese nationals were considered enemies and, subsequently, their properties as enemy properties. In 1980, there were 389 enemy properties, which increased to 2,111 in 2011, 12,090 in 2014 and 15,143 in 2016. These included both movable and immovable properties.

The expansion of the definition of '*enemy*' happened with the Enemy Property (Amendment And Validation) Act of 2017, to be implemented retrospectively. According to the amendment, the definition of the '*enemy*' now includes legal heirs, even if they are the citizens of India and are not committing an act of aggression against India, and the property will be considered enemy property even after their death or their change of nationality (becoming citizens of India). Unlike the earlier Act, a Custodian is no longer required to maintain the property and can evict '*unauthorised occupants*' and sell the properties. The rationale for this broadening of the definition of the enemy and consequently the enemy property was given by the then finance minister on March 10, 2017 in parliament, stating that for the security and integrity of a nation, and reciprocity towards nations which have declared properties held by Indian nationals as enemy properties (case in point, Pakistan), it is imperative to redefine 'enemies' who despite being citizens of India, could have Pakistani or Chinese origin or family members who have migrated there. The proceeds from the sale of enemy property are a part of disinvestment receipts maintained by the Ministry of Finance, and the sale of immovable enemy properties will go to the Consolidated Fund of India.

The second dimension is the proposed Waqf (Amendment) Bill, 2024. The Bill seeks to substitute the 'Waqf Act' with the 'Unified Wakf Management, Empowerment, Efficiency, and Development Act'. According to Section 3(r) of the Waqf Act, 1995 '*waqf*' is defined as "*the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable.*" Historically, Waqf is a movable or immovable asset devoted to Allah that is utilised by the community to provide education, health, juridical and religious support to Muslims, especially socially disadvantaged Muslims. The proposed Bill now specifically mentions the abolition of the powers of the Waqf Board to decide a property as Waqf property (p.16, 3k), and it aims at having an overriding effect on sections 108 and 108A, which pertain to evacuee Waqf properties. It can be thus implied and understood that the Bill points towards the de-recognition of waqf properties donated to Allah if they fall under the Enemy Property Amendment and Validation Act, 2017.

Some of the rationales for the Bill are mismanagement and improper maintenance of records by Mutawallis, the irrevocability of Waqf properties, encroachment and ownership disputes, and recommendation by Sachar Committee Report of 2006, which points to the

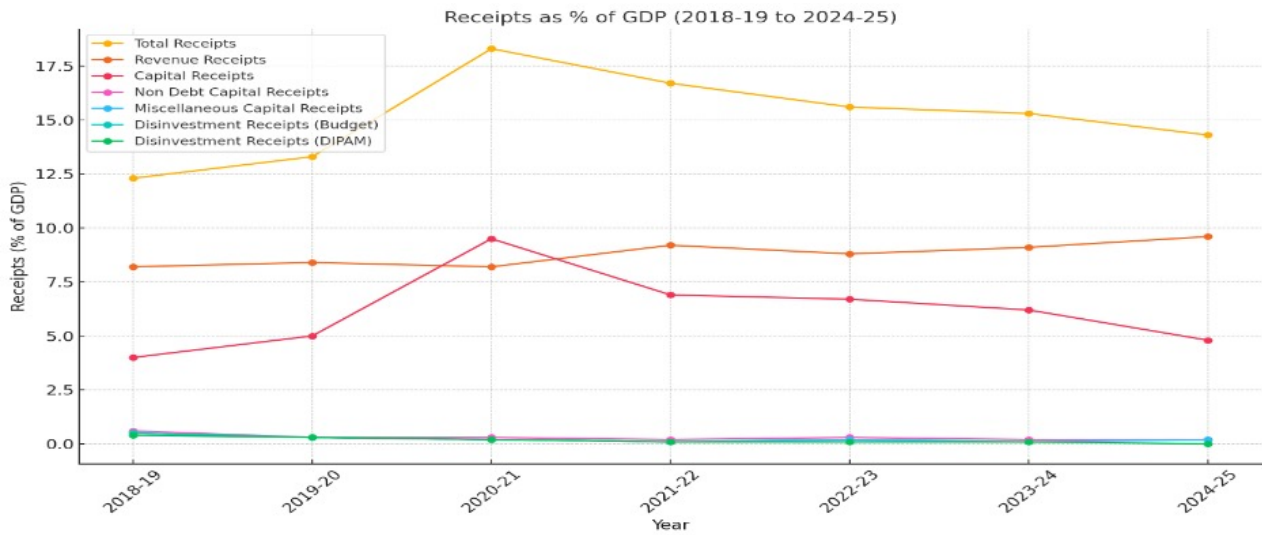
generation of revenue of Rs 12,000 crore per annum if these properties are used efficiently. A total of 8,72,328 immovable and 16,713 movable properties are registered as Waqf properties.

Both angles of approaching Muslim properties indicate the rationale to be an economic one whereby the economy could gain more receipts and function efficiently to finance the fiscal expenditure. However, this necessitates asking whether enemy property sales till now have generated significant revenue under capital receipts and whether macroeconomic motivations for efficient management of waqf properties are well founded.

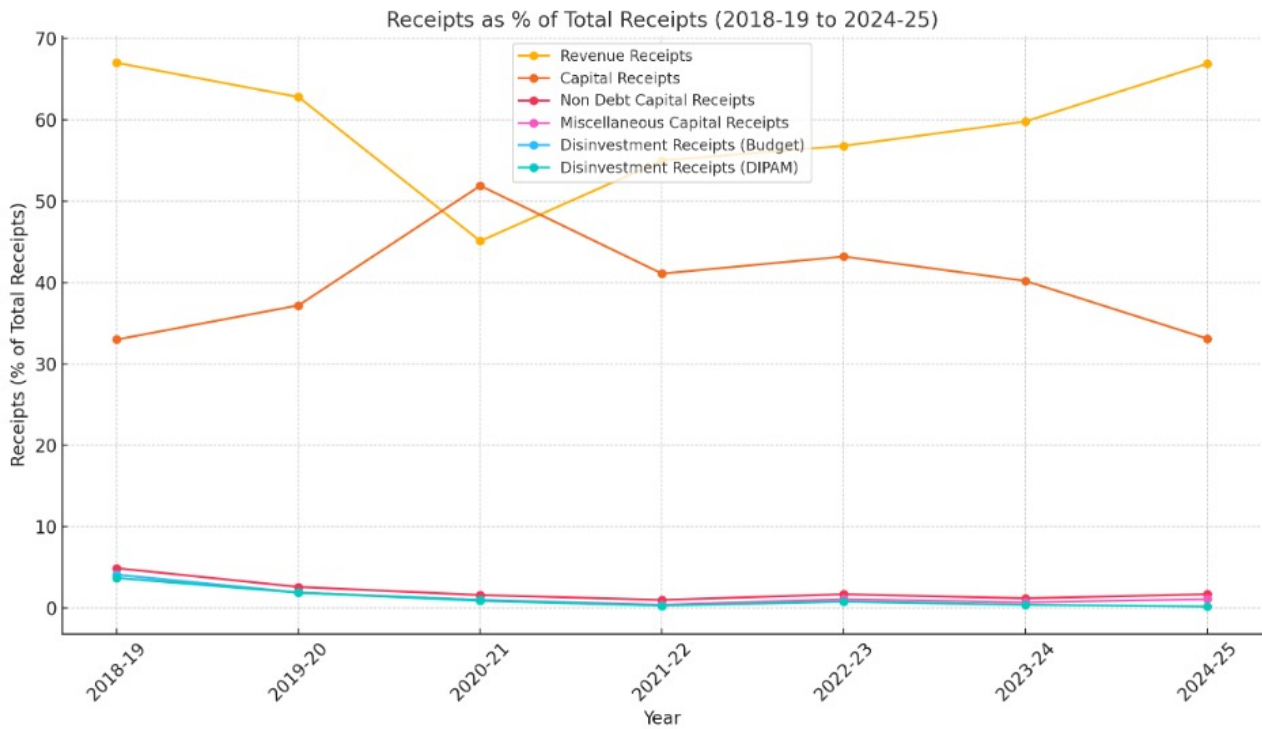
### **Crafting of enemies: Is it good economics?**

Post the 2017 Amendment of the Enemy Property Act, the number of immovable properties was estimated at 9,406, substantially increasing to 13,225 as of August 10, 2023. The increasing number of properties now recognized as enemy properties and monetizing them through auction appears as a desperate attempt by the government to boost receipts at a time when the country is facing fiscal stress, despite it being a minuscule addition to disinvestment receipts. Post-COVID, the total nominal receipts as a per cent of GDP has fallen. The decline is starkly visible in capital receipts, non-debt capital receipts, and disinvestment receipts. Thus, movable and immovable properties are being sold to boost the disinvestment receipts, which is also one of the rationales for broadening the definition of the enemy. The sale of movable enemy shares picked up in 2018 after the amendment. As of January 19, 2023, 99.6% of shares have been sold, and the gross amount collected from this disinvestment was Rs 2,709.11 crore. On the other hand, the auction of immovable enemy properties started in 2023, and between September 2023 and December 2024, 25 e-auctions of approximately 1,000 properties happened. Though the bid started with less than one crore, the actual amount received from these auctions is still unknown.

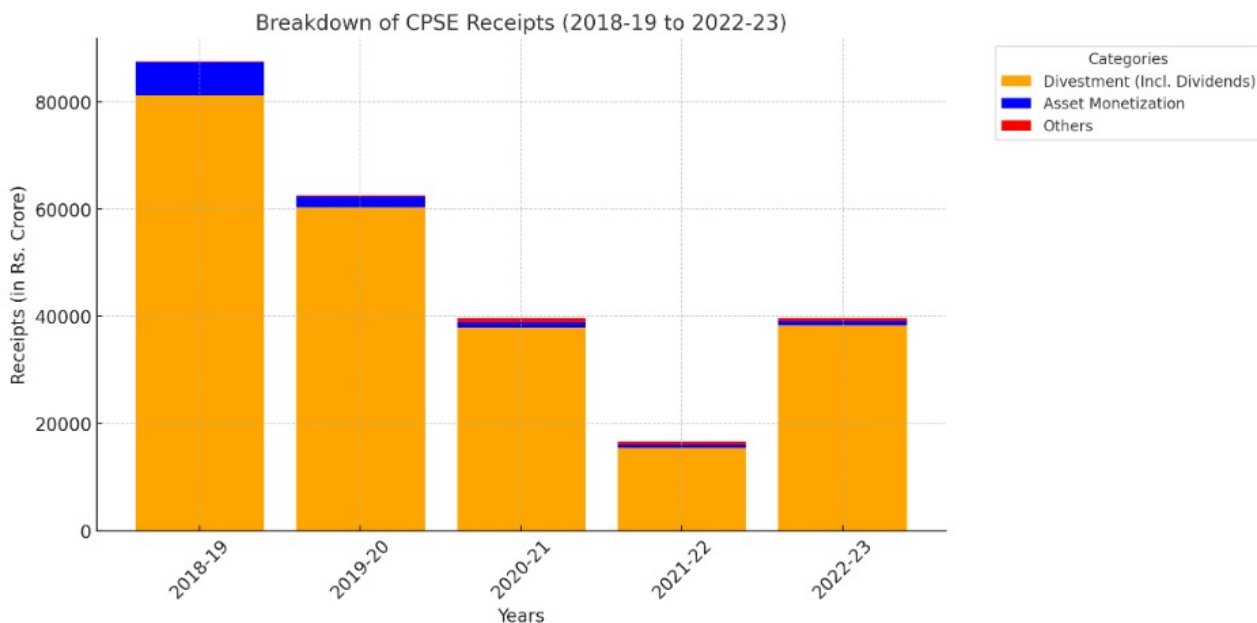
The first graph shows the total receipts as a percent of nominal GDP at the all-India level since 2018-19. The second graph represents a proportion of capital receipts, disinvestment receipts, revenue receipts, etc., as a percent of total receipts since 2018-19. The third graph estimates the proportion of divestments, asset monetisation and dividend payouts as a percent of disinvestment receipts. Divestment refers to the sale of government equity (ownership stake) in Central Public Sector Enterprises (CPSEs) and asset monetisation implies selling or leasing public assets, like enemy shares.



Graph 1: Based on time series data compiled and analysed by Prasenjit Bose and Soumyadeep Biswas



Graph 2: Based on time series data compiled and analysed by Prasenjit Bose and Soumyadeep Biswas



Graph 3: Analysed from data available at DIPAM (<https://dipam.gov.in/disinvestmentReceiptsDtIs>)

The above graphs show that capital receipts have been falling as a percent of GDP and a percent of total receipts. Disinvestment receipts constitute a small part of these capital receipts and have largely remained constant or fallen. Further, the sale of enemy shares as a part of asset monetisation has contributed a negligible amount to the disinvestment receipts.

As for the Waqf and Sachar Committee recommendations, as pointed out above, the government can earn thousands of crores per annum if Waqf is managed efficiently. However, these earnings may not necessarily go in favour of the marginalised minority community. Historically, it has been witnessed that in 2004 in Andhra Pradesh, 1,630 acres of prime land from Dargah Hussain Shah Wali's endowment, valued at Rs 32,000 crore, was given to corporations and multinationals at a nominal price. Emaar acquired 400 acres, Microsoft 54 acres, Infosys 50 acres, Wipro 30 acres and Polaris 7 acres. Despite a legal battle, the Supreme Court approved this acquisition by corporations. Further, approximately 86 Waqf properties were leased at rent on Rs 1-Rs 11, 110 properties at rent between Rs 11 and Rs 21, and 127 properties with a rent of Rs 22-Rs 31.

Prime Waqf properties are illegally occupied by land mafias in Nanded city of Maharashtra. Similarly, in Uttarakhand Rs 800 billion worth of Waqf properties are targeted by these mafias. The reason for these inefficiencies lies in allowing unauthorised occupants through the construction of government offices on Waqf without the consent of the Board, occupying land at a nominal rate, and allotting land to private parties without the State Waqf Board's agreement.

It can then be safely estimated that with the growing powers of the collector, especially in identifying properties as Waqf, numerous properties will be deemed evacuee/ enemy and acquired to be sold to MNCs and filling the government's coffers. Learning from history, we can reasonably assume that the rationale of revenue generation may not first be

fulfilled despite the GDP growth, if at all. It can rather lead to massive profit-making by corporations, which may not even promote consistent employment (case in point: the creation of hollow real estate projects) and may create financial market bubbles, thereby losing the basic essence of Waqf to promote education and healthcare.

### **Disempowerment: a desired consequence?**

Together, the Enemy Property Amendment and Waqf Amendment will disempower Muslims by seizing the property they rightly own, either by virtue of being citizens of India or it being offered to Allah. The consequences of legal disempowerment have extreme ramifications on the survival and access to basic necessities for the minority Muslim community in India. Though multiple cases of lynching and mosque demolitions have been witnessed, disempowerment through the constitutional route takes away the fundamental Right to Equality before the law (Article 14) for the citizens of India who are now deemed enemies. This mandates the question, are we moving towards fascist Nazi Germany Aryanisation, where the economic persecution of Jews started with declaring them “enemies of the people and the state” in 1933 and confiscating their properties?

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