



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

WAQF, AMENDMENT AND THE ENCIRCLING DEBATE

AUTHORED BY - ADV. VAISHALI

Abstract:

Recently, the concept of Waqf has been in news in 2025. So, it becomes significant to address the topic as a contemporary legal issue in India. The Indian Constitution guarantees and safeguards equality rights to all for history has witnessed discrimination amongst all the human beings, even in terms of property and rights. Thus, the concept of Waqf arose as a means to provide means to the marginalised and poor section of the society through its charitable and philanthropic works. Waqf means making endowments through the charitable means and works which may relate to property, education, religion, etc. The codification of the concept of Waqf took place for the first time in 1994. But the Central Government made a move to introduce amendment in the legislation which makes it a significant talk of the nation and a contemporary legal issue in India. The Waqf Act of 1995 was amended by the Parliament in 2025 by the passing of The Waqf (Amendment) Act 2025. The amendment gives power to the government for the regulation of the Waqf properties. Thus the author has discussed the concept of waqf in detail in this research paper. Also, the recent amendment and its impact has also been discussed in detail. The author has also included topics such as the essential requirements for creating a Waqf, its Indian legal framework and the concept of Waqf Boards and the issues in relation to the Waqf properties in India.

Introduction to Waqf

What is Waqf

The concept is based on the personal laws and traditions of Islam. In a general sense, 'Waqf' means endowments or inalienable trust. It is created for the general benefit of individuals as well as institutions. The literal meaning of 'Waqf' is derived from the Arabic word 'Qif' which means 'to stop' or 'to hold'. The Shariah recognises the concept of divestment of the ownership of the subject matter from the hands of the Waqif who creates the Waqf when dedicated in the name of Waqf and vests in the name of the Almighty God. Therefore, a Waqf is considered more than just an endowment or a trust. For the creation of a Waqf, the waqif grants the property for its inalienable use in perpetuity to individuals or an institution which may be

specified or unspecified.¹

Thus, a Waqf property is for the benefit of the community as a whole by providing a service to the society. Some examples include a library, a school, a hospital, etc.²

Various kinds of Waqf

Broadly, there are 2 kinds of Waqf :

1. Public Waqf- The main purpose of this Waqf, religious or charitable, is for the public at large. The descendants of the Waqf do not derive any benefit.
2. Private Waqf- This is also known as 'Waqf-alal-aulad'. This is created for the family and descendants of the waqif himself.

Waqf can also be categorised on the basis of their purpose :

1. Waqf khayri- The property is donated as an investment for public welfare such as schools, shelter homes, mosques, colleges, schools, etc.
2. Waqf Ahli- This is created to fulfill the needs of the waqif's children and their descendants. However, there is no right to sell or dispose of the property.
3. Waqf al-sabil- This is similar to Waqf khayri. However, it is for the construction of public utility buildings such as graveyards, water supplies, etc.
4. Waqf al-awaridh- This is created for emergency or unexpected events that affect the livelihood of a community. For instance, a Waqf is created to provide expensive medicines to the sick who cannot afford such medicines.

Waqf can also be categorised on the basis of nature of its output :

1. Waqf- istithmar- This is created for investment purposes as the income generated is applied for the construction and reconstruction of Waqf properties.
2. Waqf- mubashar- The services are for the benefit directly to the recipients of the charity and other beneficiaries.³

Essential requirements for creating a Waqf

1. Waqf must be irrevocable. The property cannot be further put into sale, mortgage, lease, etc. as it vests with Allah.

¹ DELHI WAQF BOARD, <https://waqfboard.delhi.gov.in/delhi-waqf-board/what-waqf> (last visited on Feb 3, 2026).

² INTERNATIONAL WAQF FUND, <https://waqf.org/what-is-waqf> (last visited on Feb 3, 2026).

³ WAQF UNDER MUSLIM LAW, <https://blog.ipleaders.in/concept-waqf-muslim-law> (last visited on Feb 4, 2026).

2. There should be a permanent dedication of the property. The Waqf is not considered valid if made for a limited period. Therefore, the property must be given in perpetuity.
3. The Waqf must be unconditional, immediate and complete.
4. The Wakif must be a competent person, i.e., he must be a Muslim, of a sound mind and be a major.
5. The wakif must possess the complete ownership of the property. The property must not be leased or mortgaged.⁴

Constitutional framework relating to Waqf in India

The Indian Constitution safeguards religious freedom and minority rights as fundamental components of its secular and democratic framework.⁵ Articles 25, 26, 29 and 30 of the Indian Constitution guarantee that persons can freely exercise and express their faith and beliefs without any interference from the State.⁶ Article 25 ensures freedom of conscience and to publicly express and exercise their beliefs. It recognises that the State should respect people's autonomy and that their beliefs are profoundly personal.⁷ Article 26 of the Indian Constitution grants right to manage organisations for religious and charitable purposes to the religious groups, to hold and acquire real estate and to administer such property. Article 29(1) grants the right to preserve and conserve their language, culture or script to the religious minorities. Article 29(2) prohibits discrimination and provides for equality in education by guaranteeing a right to all the minorities to organise and manage educational institutions irrespective of religion or language. Restrictions upon the Waqf organisations do not run parallel to Articles 26, 29 and 30.⁸ Thus, Articles 25, 26, 29 and 30 of the Indian Constitution are significant with respect to Waqf properties as they cater to religious and charitable purposes.⁹

Legislative history of Waqf in India

The institution of Waqf derives its roots in the Indian subcontinent during the medieval period when there was reign of the Delhi Sultanate and the Mughal Empire. The rule of Mughal Empire led to expansion of Islam in India which led to the establishment of Waqfs to promote

⁴ Id.

⁵ M.P. JAIN, INDIAN CONSTITUTIONAL LAW, 626-627(2014).

⁶ INDIA CONST. art. 25,26,29&30

⁷ H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA, VOL 1,758(1996).

⁸ TAHIR MAHMOOD, MUSLIM LAW IN INDIA AND ABROAD, 370(2016).

⁹ Vandana Kumari, *Waqf(Amendment) Act,2025: A Constitutional Analysis of Religious freedom and Minority Rights*, Volume V, INDIAN JOURNAL OF INTEGRATED RESEARCH IN LAW, 2,2-4(2025).

religious and charitable activities through the increase in infrastructure of dargahs, orphanages, mosques, etc. It was the Mughals who systematised the concept of Waqf in India. Consequently, India witnessed the decline of Mughal Empire due to the coming of Britishers into India which further led to the mismanagement of Waqf properties in India. There was no proper administration or a legal framework for the Waqfs to function properly.¹⁰

The Mussalman Waqf Validating Act of 1913: The Mussalman Waqf Validating Act was enacted by the Britishers in 1913. It acted as a bridge to the gap between the Muslim and the British legal principles. The main aim of the Act was to confer validity upon the concept of 'waqf alal aulad' or family waqf or private waqf if it fulfills the religious and charitable purposes. No doubt, the Act was a revival of the concept of Waqf administration in India but it still had loopholes. There was no provision for the constitution of an authority to manage the Waqf properties which, as a result, led to maladministration of Waqf properties.

The Waqf Act of 1954: As the Mussalman Waqf Validating Act of 1913 had a disadvantage of lack of proper accountability and management, there was an urgent need for a codified and comprehensive statutory law to govern and administer Waqf properties in India. Also, when India became independent in 1947, the socio-political landscape of India changed and the Mussalman Waqf Validating Act of 1913 lacked the feature to adapt to such scenario. Therefore, the Waqf Act enacted by the Indian legislature in 1954 was the first big step towards the codification of Waqf laws under the Indian governance.¹¹

One of the key features of the Act was that there shall be compulsory registration of all Waqfs. This was a distinguishing feature between Shia and Sunni Waqfs. There shall be created State Waqf Boards in every State for the management, administration and overall supervision of the Waqf properties in the jurisdiction of that State. The main powers of such Boards were the appointment of Mutawallis, maintenance of records, to manage finances, to conduct inspections, etc. Moreover, the Mutawallis were required to send regular reports. The Act also led to the establishment of the Central Waqf Council which monitored the implementation of the Act and worked for the coordination among State Boards. It was also empowered to provide advice to the Union Government.

¹⁰ Mahek Harichandan, *Sanctity, Sovereignty and Statutes: The Evolution and Erosion of Waqf in India's legal landscape*, Volume VII INDIAN JOURNAL OF LAW AND LEGAL RESEARCH 5690, 5692-5695(2025).

¹¹ *Id.*

Although The Waqf Act of 1954 was a milestone in the legislation governing Waqfs, the Act had some disadvantages too. The political interference upon the State Waqf Boards was a major setback. There was no proper enforcement mechanism. There was a lack of administrative capacity. The Waqf properties were neglected and therefore not administered properly. The funds were not appropriated in a proper way.

The Sachar Committee Report and the 2013 Amendment: The Sachar Committee was constituted in 2005 by the Government of India to examine the educational and socio-economic status of the Muslims in India. The Committee submitted its report in 2006. The Report highlighted that there were over 490,000 properties in the name of Waqf but there was a lack of management and corruption which led to the lesser income generation. Certain reforms recommended by the Committee included digitisation, proper audit, professional management, creation of a National Waqf Development Corporation, etc. Thereafter in 2013, the Government enacted the Waqf (Amendment) Act. The key features of the Act were mandatory registration of properties, provision for encroachment, powers to Waqf Boards, increased use of technology like GIS mapping, etc. But the lack of resources led to problems with the implementation. Despite this, the amendment reflects the importance of Waqf in promoting social justice and welfare of the minorities.¹²

Regulations Governing Waqf in India

The Waqf Act of 1995 which was amended in 2013 provides a legal framework for the management of Waqf properties in India. The Act provides for the registration of Waqf properties, establishment of State Waqf Boards, appointment of Mutawallis, maintenance of records and audits, etc. However, despite such regulations, there are loopholes in the system such as illegal transfers, lack of funding, lack of skilled personnel, political interference, encroachments, etc. The Joint Parliamentary Committee, in 2011, estimated Waqf assets worth Rs. 1.2 lakh crore, but highlighted poor returns due to mismanagement. Moreover, there is inadequate staff and resources which results in ineffective dispute resolution and delays.¹³

The Waqf (Amendment) Act of 2024: Key provisions and controversy

The Waqf (Amendment) Act of 2024 was enacted to monitor the administration of Waqf

¹²*Id.*

¹³ *Id.*

properties in India by ensuring accountability, inclusivity and transparency.

Key provisions:

1. Waqf can be created by a person who of the lawful owner of the property and has been practising Islam for atleast 5 years.
2. The power of the Waqf board to determine the Waqf property has been abolished and the District Collector is given the power to conduct surveys.
3. Any government property previously declared as Waqf will no longer remain Waqf. The District Collector is given the power to determine ownership and update the revenue records.
4. The Act allows for the inclusion of non-Muslim members in the Central Waqf Council. But certain important positions such as Chairperson and representatives of Muslim organisations are reserved for women.
5. The Act provides for compulsory inclusion of women in Central and State Waqf Boards.
6. The Act provides for a tribunal which includes a Chairperson, who could be a current or former District Judge, and senior government officials. Disputes must be resolved within 6 months which may be extended for a period of further 6 months. Tribunal decisions are no longer final now and may be challenged before judiciary.

Controversy and Criticism:

1. Giving almost all the powers to the Central Government and the District Collector may lead to excessive state interference in religious affairs.
2. The inclusion of non-Muslim members undermines the religious nature of Waqf administration.
3. The removal of Waqf status from certain properties has led to disputes and dispossession.
4. The survey powers in the hands of the District Collector has led to centralising authority and reducing institutional expertise.

Justification:

1. The audit provisions and the powers in the hands of the government will reduce corruption and mismanagement of Waqf properties.
2. The representation of women is a progressive step towards equitable governance.

3. The provisions in the Act are so framed as to reduce delays and ensure quicker justice.¹⁴

Conclusion:

The Act is a significant change in the Waqf governance and plays a key role in balancing reform with regulation. However the Act aims to modernise the administration. The concerns regarding autonomy and religious sensitivity continue to fuel debate, making it a subject of legal and political discourse.



¹⁴ Vandana Kumari, *Waqf(Amendment) Act,2025: A Constitutional Analysis of Religious freedom and Minority Rights*, Volume V, INDIAN JOURNAL OF INTEGRATED RESEARCH IN LAW, 2,2-4(2025).