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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **"REFORMING WAQF: HISTORICAL CONTEXT AND CONSTITUTIONAL ANALYSIS OF THE 2025 AMENDMENTS"**

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## **INTRODUCTION**

This research paper is concerned with an important element of Islamic philanthropic law by critically analysing the Waqf Amendment Act 2025 in-depth its historic evolution and how it had traversed from middle east to India, as well as its constitutional and legal effects. It seeks to critically analyse the historical development of waqf legislation in India by mapping the development of legislative and policy interventions under various time period and government regimes. Analysing historical amendments and reforms, the paper indicates how waqf legislation has adapted to social, political, and legal challenges across time. The 2025 amendment will be examined in detail to comprehend its salient features, aims, and effect on the administration and governance of waqf properties. Particular focus will be placed on the dynamic character of these changes from the perspective of landmark court judgments, government reports, and personal views. The research aims to present a holistic legal and constitutional analysis, highlighting both the advancements and the ongoing issues within the waqf system in modern India.

The research paper focusses on the regulation of religious matters by different religious communities in India, specifically emphasizing the Muslim minority. It addresses the issue of having constitutional privilege or not to practice freely, profess, and administer religious affairs under Articles 14, 25, 26, and 29 of the Indian Constitution. The research delves into how constitutional provisions protect minority rights, provide equality before the law, ensure protection of religious freedom, and conserve cultural identity, particularly in terms of waqf property and religious institution management.

The research paper further critically analyses recent amendments to the Waqf Act in terms of the fundamentals of constitutionalism. The paper also discusses challenges, loopholes, and

vulnerabilities of the modified provisions, which are evaluated considering their implications upon the autonomy as well as effectiveness of waqf institutions. The research has the objective to identify whether modifications are in consistent or not with the constitutional values such as justice, equality, as well as rights of minorities and how they counter concerns of governance, transparency, and abuse of waqf properties.

## **Foundations of Waqf: Meaning, Sources in Islamic Law and Historical Context**

The notion of waqf is not explicitly stated in the Holy Qur'an, however, it is deeply rooted in Islam teachings. The Qur'an emphasizes charitable acts in Chapter 2 using terms like *Zakat* and *Sadaqah* to approach the importance of charity and aid to those in need. These are the basic principles of waqf - a voluntary, permanent charitable endowment established for the good of society. Charity in Islam originates from the values of *Zakat* and *Sadaqah*, with its prime focus on compassion and social welfare. Although Waqf is not directly mentioned within the Qur'an, it exists very closely in harmony with these principles as a formal, continuous mechanism of charity meant to create good for the community over generations.<sup>1</sup>

The Islamic concept of waqf is based straight away on *Sadaqah Jaariyah*, or continuous or perpetual charity. *Sadaqah Jaariyah* is highlighted in Hadith No. 1631, where it is said that when someone passes away, his actions are cut short except for three: perpetual charity (*Sadaqah Jaariyah*), useful knowledge, and a pious child who prays for him. Waqf is a type of *Sadaqah Jaariyah*, as it is giving property or wealth in the name of Allah with the advantage accruing to others even after the donor's demise. This perpetual flow of advantage means that the donor continues to gain rewards for his act of charity throughout history. Hence, waqf is not just an Islamic social and legal institution but a profoundly spiritual one, based on the concept of reward in eternity and continuous contribution to the benefit of society.<sup>2</sup>

The idea of *Sadaqah Jaariyah*—persistent charity—was popularized in the Middle East in about 634 AD during the reign of the second Caliph, Hazrat Umar ibn al-Khattab (RA). A notable episode, documented in *Kitab al-Shuhud* (Chapter 54, Hadith No. 24) and also *Sahih*

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<sup>1</sup> Mohd Ashrof Zaki Yaakob et al., *An Analysis of Waqf Hadiths in Sahih Al-Bukhari Per Fiqh Al-Bukhari Perspective*, 12 *Int'l J. Res. Bus. & Soc. Sci.* 1407 (2022), <https://doi.org/10.6007/IJARBS/v12-i11/15416>.

<sup>2</sup> *Charity: The Pillar of Islam*, *Kashmir Reader* (Sept. 19, 2022), <https://kashmirreader.com/2022/09/19/charity-the-pillar-of-islam/>.

*al-Bukhari* (Hadith 2737), emphasizes the inception of waqf as a formal institution of Islamic society. Hazrat Umar went to Prophet Muhammad for consultation on how he should utilize the valuable land that he had received in the Khyber. The Prophet instructed him to utilize the land as an endowment (waqf) for Allah, instituting a perpetual form of charity. The land was not supposed to be sold, given as a gift, or inherited according to the instruction of the Prophet. Rather, its fruits or output must be utilized for the welfare of the poor and other good causes. This way, the profit from the land would persist even after Umar's demise, meeting the *Sadaqah Jaariyah* criteria.<sup>3</sup>

### **The Umayyad Era: Pioneering the Statecraft of Waqf**

During Abu Sufyan's rule of Umayyad Dynasty in 661 AD, efforts were made to institutionalize the hitherto disorganized idea of continuous charity (*Sadaqah Jaariyah*) into a structured and formal system. Up till then, although continuous charity had become widespread among Muslims, there still existed uncertainty and no consistency in its practice. In order to counteract this, the term waqf came into use formally, signifying a movement towards a more institutionalized and specific kind of charity. Notably, waqf was instituted not merely as a Muslim-only charity, but as a humanitarian measure for the welfare of all humankind, across religion.<sup>4</sup>

Abu Sufyan brought essential administrative reforms into place to promote clarity and efficacy in the management of waqf properties. One of the key milestones was the establishment of official records that captured all properties and assets given as *Sadaqah Jaariyah*. This enhanced transparency and averted misuse or misappropriation. Administrators who were called *mutawallis* were also appointed to manage these charitable donations. These changes provided the roots for the institution of waqf in Islamic governance, ensuring charitable endowments that were saved and utilized efficiently throughout time, serving communities continuously, and in alignment with Islamic teachings of social justice and communal benefit.<sup>5</sup>

The first and cardinal principle laid down was that all property once established as waqf becomes forever the property of Allah. Therefore, under any circumstances, ownership of such

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<sup>3</sup> **Sahih al-Bukhari, Hadith No. 2737**, available at <https://sunnah.com/bukhari:2737>

<sup>4</sup> Joshua J. Mark, *Umayyad Dynasty*, World History Encyclopedia (Jan. 12, 2018), [https://www.worldhistory.org/Umayyad\\_Dynasty/](https://www.worldhistory.org/Umayyad_Dynasty/).

<sup>5</sup> Md. Imran Wahab, *Mutawalli Under Muslim Law*, Legal Service India (2023), <https://www.legalserviceindia.com/legal/article-14230-mutawalli-under-muslim-law.html>.

a property cannot be changed, gifted, or revoked. It is no longer private property or inheritable. The person who gives away the property is called waqf. After the property is dedicated as waqf, the waqif surrenders all personal rights over it and cannot demand it back, even if he has a change of heart later. It is this irrevocability that lies at the heart of the waqf concept, as it guarantees that the donated charity remains intact and continues to benefit those for whom it was intended for generations to come, in accordance with the fundamental Islamic principles of selflessness and continuous charity.<sup>6</sup>

The second of the basic rules of waqf specifies the general categories under which a property may be devoted, so that the endowment is used for meaningful and socially useful purposes. A waqf may be created for religious objectives, i.e., for constructing and repairing mosques, madrasas, graveyards, and for supporting Hajj and Umrah pilgrims. It may also be for charitable causes, i.e., medical care, widows' and orphans' welfare, and disaster relief. Educational ventures such as libraries, schools, and colleges are also rightful categories of waqf, used to propagate knowledge and learning. Waqf can further extend to public utility welfare schemes of the community like the poor relief homes, assistance in marriages of the poor, and job guarantee schemes. Besides, assets may be endowed as income-producing a waqf in the form of rent, lease, or land usage for farming, and the income again will be re-directed towards welfare endeavours. This holistic approach guarantees waqf continues to be a lasting and effective pillar of Islamic social and economic growth.

The third rule promulgated in the formalization of waqf stipulated a number of significant legal and ethical requirements for property donation. Perhaps one of the most significant features of the rule was the inclusiveness that provided for even non-Muslims to be able to donate property in the form of waqf. But a limitation was imposed on the use of such land: no buildings for religious or devout ends of other faiths—like churches or temples—could be constructed on waqf land, since the system was to be kept in accordance with Islamic principles. Moreover, rigorous laws were put in place to guarantee that waqf property would not be utilized for activities deemed haram (prohibited) in Islam, like the operation of casinos or the sale of liquor, even if the latter could produce income. Yet another essential requirement was that the waqif (donor) should be the rightful and undisputed owner of the property at the moment of donation. In addition to this, the property should also be free of debts or court cases. The donation would

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<sup>6</sup> <https://docs.google.com/document/d/1y7E4WrT8w4euPqkFeTtt-lsEQfZYP3DrBy8xG5KbyqI/edit>

be considered a valid waqf only under these circumstances.

In spite of these formalities, one of the biggest challenges during the Umayyad Dynasty was the acceptance of verbal waqf declarations. Even in the absence of written documents, such oral donations were generally accepted as valid, resulting in legal uncertainties and management problems.

### **Charity Before Waqf: Endowment Practices in Ancient Bharat**

In 1192 AD, with the Second Battle of Tarain, Muhammad Gori was successful in extending his rule over a major portion of northern India. With this conquest, the principle of waqf started being established in the Indian subcontinent. According to traditional Islamic practice, only individual property could be given as waqf. Nonetheless, scholars under the reign of Muhammad Gori came up with a vast interpretation: if a ruler gained possession of land through conquest, then it would be his rightful property and subject to waqf<sup>7</sup>. This kind of land was known as *Kharajiyah* land, a category noted under Sharia law, notably Fiqh-us-Sunnah, Volume 3, from interpretations of the Qur'an.

According to this judgment, Muhammad Gori began the donation of large areas of agricultural land all over India, especially around madrasas and mosques. The lands were designated as waqf and assigned to religious and educational institutions. This was the start of an autonomous model of waqf in India. The agricultural land generated revenue that was systematically invested in the upkeep and day-to-day operations of mosques and madrasas. It also provided regular salaries for Imams, teachers, and other staff serving within the Islamic institutions.

This strategic and religiously guided allocation of land laid the foundation for a flourishing waqf system in India, intertwining land ownership, religious duty, and community welfare. Muhammad Gori's approach not only strengthened the institutional presence of Islam in India but also ensured long-term financial sustainability for its key religious and educational establishments. The earliest documented waqf in Bharat was created in Multan, wherein Muhammad Gori gifted an already built Jama Masjid and the villages around it as waqf property. He made Sheikh-al-Islam the Mutawalli (administrator) to take charge of managing

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<sup>7</sup> **Sushim Mukul**, Waqf Land in India Grew from Two Villages Gifted by Invader Ghori to 9.4 Lakh Acre, *India Today* (Nov. 29, 2024), <https://www.indiatoday.in/history-of-it/story/waqf-board-amendment-bill-system-india-history-muhammad-ghori-gift-2-villages-flourish-sultanate-mughal-2642178-2024-11-29>.

and utilizing these endowments properly. This ancient deed is the earliest known waqf on the Indian subcontinent and has been recorded in Tarikh-e-Firoz, the history book of Sultan Firoz Shah Tughlaq. This was the onset of a well-organized waqf system in India, where properties were legally registered and preserved through official records in the form of Farmaans, with full details of the donation and the purpose.

### **Imperial Patronage: The Rise and Expansion of Waqf in the Mughal Era**

As the idea of waqf took hold, it spread across religious divides and became an icon of harmonious coexistence. Even Hindu monarchs made contributions to waqf causes. King Maloji, for example, is reported to have contributed a reservoir to Pir Shah Sharif when his desire was granted, demonstrating deference and respect towards spiritual leaders. In the same vein, the illustrious Maratha ruler, Chhatrapati Shivaji Maharaj, gifted 653 acres of land for Yakub Babar Peer Shoravardi dargah at Kelshi near Ratnagiri. Such acts of munificence and religious tolerance assisted in making waqf a significant institution for social welfare, education, and religious tolerance in India.<sup>8</sup>

After the institution of waqf in Bharat, rulers further institutionalized the system through the release of official Farmaans, which announced buildings as waqf and legally protected them so that they could never be diverted to personal ends. These buildings, once consecrated, were committed irrevocably to religious, educational, or charitable objectives. Many rulers and kings of Bharat donated land and property as waqf, thus enforcing the institution and its application in the area of public welfare. To deal with this expanding body of waqf holdings, an orderly administration framework was built. At state level, officers known as Sudur were charged with administering grants and guaranteeing conformity with laws. At district level, there were Sadr-e-Sarkar officials controlling the administration of waqf holdings, with at village level having Qazis to deal with local affairs of waqf. Mutawallis were held accountable for the everyday affairs, maintenance of the properties, and making sure the charitable activities were being conducted. During the Mughal Dynasty, Deewans were especially assigned to manage the revenues and finance of these properties.

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<sup>8</sup> "Shivaji Had Gifted 654 Acres to Muslim Cleric, Minister Wants It Under Wakf Board." *The Indian Express*, 17 Apr. 2025, [www.indianexpress.com/article/cities/mumbai/shivaji-had-gifted-654-acres-to-muslim-cleric-minister-wants-it-under-wakf-board/#:~:text=654%20acres%20of%20land%20gifted%20by%20Chhatrapati%20Shivaji%20to%20Muslim%20Cleric%20Yakub%20Babar%20Peer%20Shoravardi%20four%20centuries%20ago%20at%20Uambar%20near%20Kelshi%20village%20of%20Dapoli%20tehsil%20in%20Ratnagiri](http://www.indianexpress.com/article/cities/mumbai/shivaji-had-gifted-654-acres-to-muslim-cleric-minister-wants-it-under-wakf-board/#:~:text=654%20acres%20of%20land%20gifted%20by%20Chhatrapati%20Shivaji%20to%20Muslim%20Cleric%20Yakub%20Babar%20Peer%20Shoravardi%20four%20centuries%20ago%20at%20Uambar%20near%20Kelshi%20village%20of%20Dapoli%20tehsil%20in%20Ratnagiri).

This multi-layered system guaranteed accountability and transparency in waqf endowment management. One good example of this system in action was in 1656 when all of the land around the magnificent Jama Masjid in Delhi was formally declared waqf, further highlighting the extensive integration of waqf into Indian socio-religious and administrative life during the Mughal period.<sup>9</sup>

### **Waqf in Chains: Colonial Interference and Legal Transformation**

Under the British period, as the East India Company grew in power, waqf administration became more organized into a formal legal system. A royal Farmaan, the Regulation of 1772, was enacted, which was respectful of Hindu and Muslim personal laws so that the waqf system remained intact. Yet by 1810, general corruption among Mutawallis and Deewans came to light, and several complaints were lodged with British officials. To address the increasing concerns and to control the abuse of waqf land, the British enacted the Land Resumption Act of 1828<sup>10</sup> with a view to stemming irregularities and introducing accountability into the administration of waqf.

The Land Resumption Act of 1828 taxed waqf properties such as lands and madrasas, which hitherto enjoyed exemption from tax. This act undermined the old waqf system and incited discontent in the Muslim population. But in the wake of the Revolt of 1857—fomented chiefly by fears over religious interference damaging both Hindus and Muslims—the British reconsidered. In an effort to allay tensions and restore public confidence, they repealed their policy concerning waqf properties. Therefore, waqf lands received tax exemptions again, restoring them to their previously protected status and enabling religious and charitable institutions to operate without costs.

In 1864, the British enacted the Kazees Act<sup>11</sup>, which practically eliminated the traditional institution of Qadhi in judicial affairs. This was a significant change, as waqf disputes, hitherto regulated by Qadhis under Shariah law, were now to be dealt with by English judges using British legal principles in civil courts. This action pushed Islamic jurisprudence aside in waqf cases, removing Qadhis from their judicial powers. Accordingly, the application and

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<sup>9</sup> **Many-splendoured citadel**, FRONTLINE (Aug. 2, 2017), <https://frontline.thehindu.com/arts-and-culture/heritage/manysplendoured-citadel/article9790500.ece>.

<sup>10</sup> Land Resumption Act, 1828

<sup>11</sup> Kazees Act, 1864

interpretation of waqf were no longer based on Islamic law, with a resultant difference in the administration of these properties during British occupation.

About a decade later, British passed the Transfer of Property Act in 1882<sup>12</sup>, which indirectly affected waqf properties and instigated a legal clash with Islamic law. In particular, Section 40 of the Act provided that any waqf property to be sold, bought, or transferred would have to proceed with the legal procedures under the British, irrespective of the Muslims' personal laws. This provision conflicted with the very principles of waqf. In the case *Abdul Fata Mahomed Ishak v. Russomoy Dhur Choudhary*<sup>13</sup>, the Privy Council held that if the main purpose of a waqf is to aggrandise the donor's family and the charitable aspect is symbolic, doubtful, or remote, then such a waqf is invalid. This ruling effectively held family waqf—referred to as waqf-al-auqaf—legally null and void, pointing out that the very nature of a valid waqf must be real, direct, and foremost for the public or charitable good. In 1894, the British enacted the Land Acquisition Act<sup>14</sup> to modify the legal structure for the acquisition of land for public purposes and private companies—for works like roads, dams, hospitals, and railways. The Act permitted the government to take over any land, including waqf properties, by providing monetary compensation. In 1911, more than 100 villages in Delhi, including a number of waqf lands, were taken over to construct a new city. A compensation of ₹40,000 was offered to the waqf lands that were confiscated. But according to the basic principles of waqf, once a property is devoted to Allah, it cannot be sold or swapped for cash. In spite of this, the waqf properties were acquired by the British, defying Islamic endowment concepts and raising questions about religious land rights.

In the colonial period, a series of British regulations and laws relating to waqf properties resulted in increasing discontent and protests from the Muslim community in India. These measures, viewed as interference in religious endowments, prompted the Muslim League to call for a separate legal regime for waqf. Yielding to pressure, the British government passed the Mussulman Wakf Act of 1923<sup>15</sup>, giving legal recognition to waqf in India. This was the

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<sup>12</sup> Transfer of Property Act, 1882

<sup>13</sup> *Abdul Fata Mahomed Ishak v. Russomoy Dhur Choudhary*

[https://islamiclaw.blog/2016/12/09/case-abul-fata-mahomed-ishak-v-russomoy-dhur-chowdury-1894/#:~:text=CASE%3A%20Abul%20Fata%20Mahomed%20Ishak%20v%20Russomoy%20Dhur%20Chowdury%20\(1894\),-Posted%20on%20December&text=This%20case%20exemplifies%20the%20complex,in%20India%20during%20colonial%20rule.](https://islamiclaw.blog/2016/12/09/case-abul-fata-mahomed-ishak-v-russomoy-dhur-chowdury-1894/#:~:text=CASE%3A%20Abul%20Fata%20Mahomed%20Ishak%20v%20Russomoy%20Dhur%20Chowdury%20(1894),-Posted%20on%20December&text=This%20case%20exemplifies%20the%20complex,in%20India%20during%20colonial%20rule.)

<sup>14</sup> Land Acquisition Act, 1894

<sup>15</sup> Mussulman Wakf Act, 1923

initial codification by statute of waqf under Indian law.

Section 2 of the Act formally defined waqf as a charitable gift to be given only by followers of the Islamic faith, hence limiting what previously was considered an international form of charity to Muslims. The Act also required that all waqf properties be registered and proper official records of receipts and expenses be maintained. Section 3 mandated that any mutawalli administering a waqf property that earned an annual income in excess of ₹2000 should get the accounts audited and present them to the court. Section 10 also prescribed penal provisions for mismanagement or breach in regard to waqf administration.

The Act also created State-level statutory authorities, the Waqf Boards, for the administration of waqf properties. These boards would be operated by Muslims, with a Muslim Commissioner as their president, vested with civil court powers like summoning. Further, the Act provided for compulsory board sanction for any transaction involving waqf property. The boards were also vested with the power to lease waqf land for a specific period, institutionalizing management and maintaining the purity of Islamic charitable trusts. To make the Waqf Boards function properly, proper officials were appointed at the district level and a special fund was created to control board activities. Three main sources of funding were brought in: private donations by individuals, income through waqf properties, and grants from the British government. These provisions of money were critical towards ensuring smooth running, upkeep, and development of waqf properties, with the boards having the capacity to effectively execute their roles in various regions.

### **From Freedom to Framework: The Journey of Waqf Post-Independence**

Following the Independence and Partition of India in 1947, huge numbers migrated back and forth between Pakistan. Estates abandoned by people who left to go to Pakistan were known as Evacuee Estates. In India, most such lands—specifically in northern parts—were utilized to establish refugee camps for the arriving Hindu and Sikh refugees. Since these properties were mostly unclaimed and unadministered, disputes started to emerge regarding their ownership and utilization<sup>16</sup>. To overcome this, the Government of India passed the Administration of

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<sup>16</sup> Balbir Punj, *Waqf Act 1995: A Tool Given to Waqf Boards to Snatch the Property of Hindus*, **Times of India (Blog)** (Sept. 29, 2023, 7:36 PM), <https://timesofindia.indiatimes.com/blogs/myview/waqf-act1995-a-tool-given-to-waqf-boards-to-snatch-the-property-of-hindus>.

Evacuee Property Act, 1950<sup>17</sup>. According to Section 10-A of the Act, all such properties were declared to be government property.

This action caused serious turmoil among the Muslim community, particularly the Waqf Boards, since several of these evacuee properties were initially waqf properties. The Waqf Board went to court against this action, claiming that the properties were to be used for religious and charitable purposes in accordance with Islamic law. The government was compelled by increasing pressure to return a number of these properties to the Waqf Boards. However, several lacked valid legal records, making their recognition and administration more difficult. In response to this event, the Muslim community emphatically insisted on waqf properties' formal protection and recognition in free India, seeking their integration in the larger scheme of constitutional rights and legal protection.<sup>18</sup>

In 1952, Congress Minister S.M. Ahmad Kazmi was tasked with carrying out a countrywide survey to locate and record all waqf properties in free India. Following intensive research and fieldwork, he presented his report on 13 March 1953. On the basis of this report's findings, the Government of India passed the Waqf Act of 1954<sup>19</sup>, which came into force throughout the country. This Act was an important milestone in regulating and administering waqf properties through a single code of law. The Waqf Act, 1954 was greatly influenced by the British administrative model and incorporated structural features like the Waqf Committee, Waqf Boards, and the Waqf Fund. These institutions were tasked with the administration, financial management, and overall safeguarding of waqf properties. One of the key features introduced by the Indian government was the provision to enable each state to form one or more Waqf Boards to manage the waqf assets in their respective jurisdictions.

Significantly, the Act also acknowledged the sectarian divide in the Muslim community by allowing the establishment of distinct Waqf Boards for Shia and Sunni communities, thus ensuring that religious and administrative needs of both communities were fulfilled. This legislation established the basis for a more disciplined and responsible waqf system in post-

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<sup>17</sup> Evacuee Property Act, 1950

<sup>18</sup> Chaitanya, *The Government Holds Control Over the Properties of People Who Migrated to Pakistan, Not the Waqf Board*, FACTLY (Apr. 1, 2022), <https://factly.in/the-government-holds-control-over-the-properties-of-people-who-migrated-to-pakistan-not-the-waqf-board/>.

<sup>19</sup> Waqf Act, 1954

independence India.<sup>20</sup>

According to the Waqf Act of 1954, the membership of the Waqf Boards was predominantly composed of Muslim members, so that the religious and legal niceties of Islamic charity could be properly handled. Two-thirds of the members of the board had to sanction any proposal relating to the sale or transfer of waqf properties, thus serving as a check against arbitrary disposal of these holy assets. A forward step under Section 66C of the Act granted the right to non-Muslims to donate property as waqf, on the condition that the donation was compatible with Islamic ideals of charity. This addition opened up a wider vista for communal unity and contribution.

Yet the most contentious clause was Section 3L(i), or "*Waqf by User*." This provision held that any private property devoted continuously to Islamic religious or charitable uses—with or without formal registration—could automatically become waqf property. Even if the owner of the property had given permission informally for religious use, such as prayer or community events, the property would gain the status of waqf. This rendered such property inalienable, that is, never sellable, transferable, or reclaimable—whether it was in private hands or in government hands, and whether it had been utilized for commercial purposes as well as religious ones. The maxim "once a waqf, always a waqf" underscored the irreversibility of this situation, which generated debates both in law and society.

Section 4 of the Waqf Act established the basis for a formal process of identification of waqf properties by appointing a Survey Commissioner. The officer was invested with powers equivalent to a civil court, including the power to call people and require original records pertaining to property ownership. The Survey Commissioner was to make a detailed report, recording the location, area, and nature of the waqf properties. After compilation, the report of the survey was to be submitted to the Central Government, who in turn would forward it to the concerned State Government where the property was located. On the basis of this report, the State Waqf Board would examine and, upon verification, declare the property waqf formally by publishing the same in the State Gazette. If any private person discovered that his property had been improperly recorded as waqf, he had a one-year time limit in which to assail the ruling

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<sup>20</sup> Minhaz Merchant, *Waqf Act: A Legacy of Appeasement and Aggrandisement*, OPEN MAG., Apr. 12, 2024, <https://openthemagazine.com/cover-stories/waqf-act-a-legacy-of-appeasement-and-aggrandisement/>.

in court. If within that timeframe no legal action was pursued, then the property became permanently established as waqf.

A major weakness of this process is that, between the period of one year's difference, the property is still in the hands of the waqf board. Further, under Section 25(6), a re-survey would be possible only after 20 years, thereby preventing an error or misclassification being rectified in time. This provision of the Waqf Act 1954 was highly misused at that time. During this tenure one more contradiction that came in way of Waqf proclamation of properties were Article 142 of the Limitation Act of 1909 which states that if the person is living on a property of other for more than 12 years then the real owner will lose his ownership so in furtherance this limitation was increased for waqf property for 30 years by and further for unlimited time by amending section 66-G of the Waqf Act of 1954. Many laws were in direct contradiction of the waqf act so waqf properties has been exempted by central and various other state government from the application of the Town Planning Law, Land Ceiling Act, Rent Control Act, Land Acquisition Act and Income Tax Act.

### **The Urgency for Change: Unpacking the 1995 Waqf Amendment**

Within a short span, waqf properties saw a rapid rise—Rajasthan's count grew from 73 to 1,944, while Andhra Pradesh witnessed an increase from 15,300 to 35,706, highlighting the expanding scope and influence of waqf across states.<sup>21</sup>

With time, the increasing number of waqf properties and the corruption involved in them brought to the fore the necessity for a central authority to govern and regulate waqf affairs in India. There were various instances of corruption by Mutawallis, abuse of waqf revenues, and political intervention in the form of encroachments, illegal leases, and unauthorized sales of waqf properties, which became rampant. To deal with these concerns, a substantial step was taken by adding a new chapter in Section 8(a) of the Waqf Act, 1954. The amendment resulted in the creation of a statutory organization in the form of the Central Waqf Council (CWC). The Central Waqf Council was set up to act as a supervisory and advisory body at the national level, under the direct control of the Ministry of Minority Affairs. It was tasked with supervising the working of State Waqf Boards, to be transparent and advise on conservation, development, and

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<sup>21</sup> Amir Afaque Ahmad Faizi, *Waqf Record Management in India* (Centre for Rural Studies, Lal Bahadur Shastri National Academy of Administration 2016), [https://www.lbsnaa.gov.in/storage/uploads/pdf\\_data/1740657430\\_3-Waqf\\_Study2016.pdf](https://www.lbsnaa.gov.in/storage/uploads/pdf_data/1740657430_3-Waqf_Study2016.pdf).

improved administration of waqf properties nationwide.

To provide support for waqf as a mechanism of welfare, the government also started granting special grants and amounts. The court also disrupted and flooded with number of cases regarding the dispute between private or waqf property. One of the main problems being encountered by waqf boards was the inadequacy of documentation—i.e., deeds, wills, statements, hiba records, land register documents, or gazette notices—while filing for any property as waqf. Such documents were rarely available in the majority of instances, leading to long-drawn legal proceedings and clogged courts. In order to tackle these increasing issues and simplify waqf administration, the P.V. Narasimha Rao government enacted the Waqf Act of 1995<sup>22</sup>. The new act was intended to consolidate the administration of waqf properties, minimize litigation, and implement a more accountable and organized system for waqf administration in India.<sup>23</sup>

The Waqf Act of 1995 introduced a significant reform by setting up Waqf Tribunals to expedite waqf-related cases and thereby ease the burden from the High Courts and Supreme Court. Each tribunal is made up of three members: one from the Civil Services, one from the Judicial Services, and one Muslim specialist in waqf affairs. The orders of the tribunal are final and binding, and no appeal exists against them except where a legal mistake is apparent in the decision of the tribunal. One of the most controversial provisions of this act is Section 40, which enables the Waqf Board to proclaim any property to be waqf property. The contentious part is the burden of proof—if the board asserts a property as waqf, then the onus is on the present owner to establish otherwise, not the board. This reverse burden has drawn criticism, as it can result in misuse or fraudulent claims on genuine private properties by waqf boards. In order to prevent unlawful occupation of waqf immovable properties, encroachment was declared to be a cognizable and non-bailable offence under the Waqf Act with severe punishment of up to 2 years' imprisonment and fines, to provide greater legal protection to waqf properties.

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<sup>22</sup> Waqf Act, 1995

<sup>23</sup> **Swaraj Baggonkar**, *Waqf Through the Ages: How Rs 1 Lakh Crore Property Owner Board Acquires Land and What the Govt Aims to Change*, **The Economic Times** <https://economictimes.indiatimes.com/news/india/waqf-through-the-ages-how-rs-1-lakh-crore-property-owner-board-acquires-land-and-what-the-govt-aims-to-change/articleshow/112365585.cms>.

## **The Drive for Social Justice: The Genesis of the Sachar Committee**

Between 1995 and 2005, there was growing concern about the worsening financial health of the Muslim community in India. While poverty was widespread, the property in the hands of Waqf Boards continued to grow. Realizing this imbalance, the Government of India established the Sachar Committee in 2005 to study the socio-economic condition of Muslims and the administration of Waqf properties. The committee asked for detailed information from state Waqf Boards and the Central Waqf Council regarding the nature, type, and geographic spread of Waqf assets.

In 2006, the Sachar Committee presented a 404-page report with shocking statistics. It recognized approximately 4.9 lakh registered Waqf properties, leaving out a large number of unregistered or claimed assets. The entire land held under Waqf was valued at about 6 lakh acres and was worth ₹1.2 lakh crore in the market. The committee approximated that, if properly utilized, the properties could have fetched an annual return of ₹12,000 crore. The actual revenue generated was just ₹163 crore, which meant that there were deep-seated concerns about mismanagement, corruption, and underutilization of Waqf resources. The report also brought into prominence the overall economic hardship of the Muslim community. The Urban Poverty Report for 2004–2005 reported that nearly 38.4% of the Muslims in India were poverty-stricken. The contrasts between the huge potential of Waqf properties and the miserable living conditions of Muslims brought forward the pressing need for reform in the management of Waqf properties and for a more targeted approach to the socio-economic development of the community.<sup>24</sup>

## **Mapping Inequality: Core Findings of the Sachar Committee**

The Sachar Committee, in its report, highlighted several critical issues relating to the management and administration of Waqf properties in India. It noted that the functioning of the Waqf Boards—both state and central—are still not satisfactory because of their insufficient empowerment. One of the most serious issues mentioned was the regular encroachment on Waqf properties by the state itself, which, as the custodian of Waqf interests, has frequently acted in a way that is contrary to the charitable and religious purposes of these institutions. In addition, delays in the transfer of Waqf properties and general encroachments have led to their

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<sup>24</sup> [https://mohua.gov.in/upload/uploadfiles/files/13AnnualReport\\_2004\\_05.pdf](https://mohua.gov.in/upload/uploadfiles/files/13AnnualReport_2004_05.pdf)  
<http://www.igidr.ac.in/pdf/publication/WP-2021-015.pdf>

mismanagement, causing serious harm to the realization of the original purpose of the Waqf. Considering these concerns, the Committee urged that high legislative, administrative, and judicial priority be given to Waqf affairs in order to promote more effective administration. It also urged inclusive representation by suggesting that at least two women be appointed in the Central Waqf Council as well as in every State Waqf Board. In order to increase efficiency in dealing with Waqf affairs, the Committee advocated the establishment of a specialized class of officers acquainted with Islamic law. Further, it recommended exemption of Waqf properties from some legislations like the Rent Control Act in order to assist them in furthering their altruistic objectives.<sup>25</sup>

### **Enhancing Accountability: Anwar Manippady Committee Report (2012)**

The Anwar Manippady committee was formed to investigate allegations and to check the mismanagements and complaints regarding the corruption related to the Andhra Pradesh state waqf board and the findings of the committee were-

- There were alarming irregularities, revealing an estimated approximately, Rs. 2 lakh Crore in the Karnataka Wakf Board which was much bigger than the 2G scam of Nation
- Report further highlighted that around 29000 Arce of waqf property in India was given to the foreign use on a leased-out phase, raising serious concerns over accountability, transparency and national interest

These findings of the Anwar Paddi committee further sparked widespread demands for reforms, stricter oversight and legal actions. <sup>26</sup>

### **Constitutional Validity of the Waqf Amendments Act, 2025**

The recent Amendments to the Waqf Act, 1995, have serious constitutional and legal issues, especially in light of the fundamental rights enshrined under Part III of the Constitution of India, as well as secularism and federal principles of structure. The amendments are a stark deviation from settled jurisprudence relating to religious autonomy and minority rights, and can potentially erode the foundational ethos of India's pluralistic legal order. The highly controversial stipulation of the amendments is the requirement for the participation of non-Muslim members in the Central Waqf Council and State Waqf Boards. Waqf is a terminology taken from Islamic law (Shariah) and a religious endowment of property for charitable or

<sup>25</sup> [https://www.minorityaffairs.gov.in/show\\_content.php?lang=1&level=0&ls\\_id=14&lid=14](https://www.minorityaffairs.gov.in/show_content.php?lang=1&level=0&ls_id=14&lid=14)

<sup>26</sup> <https://getapi.indiatvnews.com/doc/waqf-amendment-bill-2024.pdf>

benevolent purposes, subject to rigorous legal as well as theological prescriptions that are specific to Islam. By requiring non-Muslim involvement in institutions charged with the running and oversight of waqf properties, the amendment violates the right of the community to administer its own religious affairs—a right specifically enshrined under Article 26(b) of the Constitution. This also violates the rights under Articles 25 and 29, which ensure the liberty of religion and safeguard the cultural and religious identity of minorities. The Supreme Court in *S.P. Mittal v. Union of India (1983)1 SCC 51*<sup>27</sup> and *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt 1954 1SCC 412*<sup>28</sup> has reiterated the fact that religious denominations enjoy absolute autonomy in matters of regulating their religious affairs internally, such as institutions, unless a compelling state interest is involved. Exclusion of Muslim law experts from Waqf Tribunals undermines the very adjudicatory process. Considering that waqf disputes raise issues of Islamic law and call for sophisticated interpretation of fiqh (Islamic jurisprudence), judicial inaccuracy cannot only result from a lack of subject-matter experts but also contravenes the rules of natural justice. Non-adjudicatory competence thwarts the right to fair hearing under Article 14, as well as the due process requirements embodied in Article 21.

Another constitutionally questionable provision is the requirement of a five-year uninterrupted practice of Islam, evidenced by documents, as a precondition for creating a waqf. This condition is clearly arbitrary and does not pass the test of reasonableness under Article 14. It places an unconstitutional burden on individual religious identity and belief, which the Supreme Court has uniformly safeguarded as part of the freedoms under Articles 25 and 26. The imposition of a temporal and evidentiary test to establish religious belief is not rationally related to the object of legislation and restricts the religious freedom of individuals unduly. Further, it hurts the dignity of individual autonomy in religious matters established in *Bijoe Emmanuel v. State of Kerala 1986 3 SCC 615*<sup>29</sup>. The repeal of Section 104 of the Waqf Act, which formerly enabled persons of any religion to donate property for waqf, is discriminatory. It establishes a capricious classification purely on the grounds of religion and shuts out willing contributors on grounds of faith, thus contravening Article 14's requirement of equality before the law. Removal of this inclusive clause is also in defiance of the secular character of the

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<sup>27</sup> *S.P. Mittal v. Union of India (1983)1 SCC 51*

<sup>28</sup> *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt 1954 1SCC 412*

<sup>29</sup> *Bijoe Emmanuel v. State of Kerala 1986 3 SCC 615*

Indian state, which calls for impartiality in religious matters and a ban on discrimination on the grounds of religion. The watering down of penal sanctions in Section 52A, which initially stipulated heavy penalties for unauthorised sale, transfer, or encroachment on waqf property, dilutes the legislative intent to safeguard religious endowments from exploitation. The minimal punishment undermines the deterrence power of the law, thus committing a violation of the proportionality doctrine established in *Modern Dental College v. State of Madhya Pradesh 2016 SCC MP 8010*, and undermines the economic and religious sanctity of waqf properties that have socio-religious purposes in the Muslim community.

The abolition of Section 110, which authorized State Waqf Boards to draft rules with pre-government clearance, and the elimination of the election process for the appointment of members under Section 109(2)(iv), substituted with nominations by government, is a major centralization of authority. This contravenes the federal system contemplated under Articles 246(1) and 246(3), where "charities and charitable institutions" and "religious endowments" come within the State List (Entry 28 of List II). Additionally, the shift in the direction of nomination instead of election goes against democratic ideals, displacing equitable representation and openness within the administration of waqf institutions.

The elimination of recognition of the long-established Islamic principle of "waqf by user" ignores historical jurisprudence and traditional Islamic law. The courts have all along confirmed the validity of waqf established through long-established use or implied dedication, as noted in *Madam Masam Baksa v. Illai Baksa 1912*<sup>30</sup> and *Syed Mohammad Salie Labbai & Hanifa v. Ors 1976*<sup>31</sup>. The repeal of this doctrine dislodges religious custom and established legal norms, encroaching both on the substantive right under Article 26 as well as on protection against religious customs and practices.

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<sup>30</sup> The Calcutta Gazette, 1945

<sup>31</sup> <https://www.casemine.com/commentary/in/establishing-public-wakf-and-mosque-management:-a-comprehensive-analysis-of-syed-mohd.-salie-labbai-v.-mohd-hanifa/view#:~:text=The%20Supreme%20Court%20of%20India's,%2C%20Tiruvarur%20district%2C%20Madras%20State.>

<https://indiankanoon.org/doc/1651599/>

## **CONCLUSION**

It is simply not possible to overlook the major constitutional, legal, and ethical concerns the Waqf Amendment Act, 2025, raises despite its avowed objectives of modernizing the waqf system, simplifying administration, and improving transparency. The Islamic law and Islamic jurisprudence based historical and spiritual roots of waqf have been demonstrated in this paper to require a rights-sensitive and yet religion-friendly legal framework consonant with both religious autonomy and the secular constitutional requirement of India.

Article 26(b) of the Constitution, which provides religious groups with freedom to manage their own affairs in matters of religion, is violated expressly by the amendment's allowance of non-Muslim participation in waqf management bodies. In addition, measures like the five-year mandatory evidence of Islamic practice in order to form a waqf, the repeal of Section 104 (which previously made it possible for members of any religion to contribute towards waqf), and weakening of penal provisions in Section 52A not only offend against the standards of equality under Article 14 but also weaken the inclusive and pluralistic character of the Indian legal tradition. Moreover, the transition from democratic election to government nomination for waqf board membership and the recentralization of powers are against the grain of cooperative federalism embodied in the Constitution under Entries 28 and 36 of List II. This incursion into religious self-management is part of a disturbing trend of growing power of the state over religious institutions and may have a vitiating effect on the internal autonomy of other religious communities as well. By demolishing fundamental jurisprudential concepts like "waqf by user," the amendments sever the waqf system from its continuity of centuries and erode deeply rooted customs accepted by Indian courts. Such reforms, without proper consultation with the community and in disregard of the special nature of waqf as religious and legal institution, stand the risk of politicizing and bureaucratizing religious charity at the expense of its essential. In sum, though reform in the waqf domain is certainly called for—particularly to contain corruption, mismanagement, and misuse of endowments—such reform has to be constitutionally valid, culturally nuanced, and community-based. The Waqf Amendment Act, 2025, as it stands, is a failure in this regard. A reconsideration by way of public discourse, consultation with minorities, expert legal examination, and conformity with constitutional norms is not just desirable but imperative. Only when this can waqf act as an instrument of permanent charity, religious fulfilment, and community empowerment in contemporary India.