

Legal Frame Work and Constitutionalism of Wakf (Amendment) Act, 2025

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Abstract

Governance and protection of waqf properties of religious, social, and economic significance have been the importance for India. The Waqf Act of 1954, the initial major legislation, sets the stage for the management of such holdings. The laws have been amended over time to improve administration and protect against abuse. The Waqf Amendment Bill 2025 aims to protect waqf properties, streamline management, and enhance transparency. These reforms conform to global best practices. The legal and constitutional dimensions of the Waqf Amendment Bill 2025 are explored in this research study. For waqf properties to be able to effectively execute their intended religious and benevolent roles and assist the socioeconomic development of the Muslim community in India, this research paper emphasizes the need for enforcing strict laws, digitization of records, and citizen participation. Waqf is a traditional socio-religious institution of India that evolved over centuries of Muslim suzerainty, colonial occupation, and post-independence legislative development. The turning point in the formalization and regulation of Waqf properties by statute came with the enactment of Waqf Boards. Historical origins and evolution of Waqf in India, establishment of Waqf Boards, and legal and political considerations affecting their functioning are all dealt with in this review.

Keywords: Wakf, Freedom of Religion, Wakf Properties, Wakf (Amendment) Act, 2025

I. INTRODUCTION

In India, Socio-political transformations from the pre-Mughal period to the contemporary constitutional system influenced the history of waqf. The complicated interaction among religious law, colonial rule, and post-independence statecraft is revealed in the historical evolution of waqf and waqf boards in India. The Arabic term "waqfa" (to withhold, hold, or bind) is the source of the word "waqf". The permanent appropriation of any movable or immovable property by a person who professed Islam to any pious, religious, or charitable cause known to Muslim law is called "waqf." Waqf is the lasting gifting of any movable or immovable property by a person who professed Islam to any cause accepted by Muslim law as benevolent, religious, or pious.

By tradition, Caliph Umar had purchased a tract of land at Khaiber and sought advice from Prophet Mohammed on what to do with it. The Prophet replied "Tie up the property and utilize it in human welfare and make not sellable and the subject of gift and inheritance, dedicate its fruits to your relatives, children and poor and in the way of Allah.". There were serious legal problems with waqf properties in the British colonial period.

Privy Council decisions, such as *Abdul Ghafoor v Nizamuddin*¹, questioned the validity of family waqfs, leading to the passing of the Muslim Waqf Validation Acts (1913, 1930). Waqf refers to the act of a Muslim donating property, be it tangible or intangible, movable or immovable, to God with the hope that the transfer will benefit others. In an endowment deed (waqfnama), the waqf (settlor) appoints himself or a third trustee as mutawalli (manager) to administer the waqf (charitable trust) as a legal transaction. Hence, as per Muslim law, waqf means the permanent dedication of movable or immovable property to pious, religious, or charitable causes. A legal regime for the administration of waqf properties by central and state waqf boards was provided under the Waqf Act of 1995. But poor administration, encroachment, and lack of transparency rendered changes in legislations inevitable.

The Sachar Committee Report (2006) puts the estimated total value of waqf land in India at over 1.2 lakh crore, but most of it is not properly managed and contributes very little to the development of the community. The research tells us that waqf properties can do a lot to help Indian Muslims' economic and educational development if they are managed properly.²

A significant change in the legislation of waqf properties in India has been caused by the Waqf (Amendment) Act, 2025, also referred to as the Unified Waqf Management, Empowerment, Efficiency and Development (UWMEED) Act, 1995. The amendment, as framed under the Waqf Act of 1995, is aimed at enhancing administrative efficiency, inclusivity, and transparency in the administration of waqf properties. The key provisions of the amendment are the requirement that at least two Muslim women be members of the federal and state waqf boards, representation of multiple Muslim communities such as Shia, Sunni, Bohra, and Afghakhani communities, and the establishment of separate boards for each sect. The Act also provides for non-Muslim members in waqf boards, a provision that has been a subject of a lot of controversy. The amendment also mandates detailed procedures for mutation of property, speeds up the registration of waqf properties through a centralized platform, and allows for appeals against the decisions of waqf tribunals in the high court within ninety days. Significantly, the Act extends the Limitation Act, 1963, to waqf properties, which provides a 12-year statute of limitation for recovering encroached properties, and does away with the formal documentation clause of waqf claims, also referred to as "waqf by user."

II. RESEARCH OBJECTIVES

- To analyze the principal provisions of Waqf (Amendment) Act, 2025 and assess their legal and administrative impact on the management of Waqf properties in India.
- To analyze the effect of the revised Act on the representation and autonomy of the Muslim community, specifically as it pertains to the inclusion of non-Muslim members and enforced diversity in Waqf Boards.
- To analyze possible constitutional and legal issues raised by the 2025 Amendment, specifically minority rights and religious freedom under the Indian Constitution.

¹ (1892) 19 I.A. 170

² Sachar Committee Report. (2006). Social, Economic and Educational Status of the Muslim Community of India. Government of India.

III. RESEARCH QUESTIONS

Based on recent developments around Waqf Boards in India, the Waqf Act, and the Waqf (Amendment) Act, 2025, the following research questions can guide an in-depth academic or policy-oriented study:

- Does the inclusion of non-Muslim members in Waqf Boards as required under the Waqf (Amendment) Act, 2025 consist with the constitutional rights of India's religious minorities?
- What are the socio-political consequences of the Waqf (Amendment) Act, 2025 for the Muslim community, especially in terms of religious autonomy?
- What are the implications for the law under the deletion of the "Waqf by User" provision?

IV. RESEARCH METHODOLOGY

This research paper will adopt a qualitative and theoretical research approach, focusing on secondary data analysis from legal, governmental, academic and policy documents, complemented with empirical components to assess the legal, administrative and socio-political implications of the Wakf (Amendment) Act, 2025.

V. SOURCES OF DATA

a. Primary sources

- Indian Constitution, 1950 and the Waqf Act, 1995 and the Waqf (Amendment) Act, 2025.
- Government notices, parliamentary discussions and state releases.
- Indian court decisions pertaining to waqf properties and their administration.

b. Secondary sources

- Academic articles, law reviews, policy papers and books.
- News articles and editorials to track public discussion and reactions.

VI. OVERVIEW OF WAQF PROPERTIES IN INDIA

According to the information on the WAMSI portal, 30 States/UTs and 32 boards have mentioned that there are 8.72 lakh properties and their area is over 38 lakh acres. 4.02 lakh out of the 8.72 lakh properties are Waqf by the user. Just 1083 Waqf deeds are uploaded on the WAMSI portal, while 9279 cases of uploading documentation (deeds) of proof of ownership rights have been done for the rest of Waqf properties.³

VII. Discussion

Legal Reforms and Safeguards

The Waqf (Amendment) Act, 2025 seeks to simplify management of waqf property by enhancing transparency and inclusiveness. The shift in authority and the addition of non-Muslim members are controversial, though. Questions arise regarding the balance between state control and religious autonomy. Legal suits and street protests highlight the necessity of a balanced approach that promotes religious freedom while providing effective governance. The Waqf (Amendment) Act, 2025 is a landmark legislative measure. The Waqf (Amendment) Act, 2025 makes several significant changes:

- **Renaming of the Act:** The Act has been renamed as "The Integrated Waqf Management, Empowerment, Efficiency and Development (UWMEED) Act, 1995" to reflect a more inclusive and efficient management system.⁴
- **District Collector's Role:** District Collectors have been entrusted with the authority to decide whether a property is Waqf property or government land, usurping the earlier role of the Survey Commissioner.
- **Digitisation and Transparency:** The Act focuses on digitisation of Waqf documents and orders establishment of a central portal for Waqf registration in an effort to reduce corruption and enhance property management.
- **Digitisation of Records:** Waqf properties will now be recorded online to evade illegal claims and enhance traceability.
- **Improving adjudication of disputes:** Waqf courts will be empowered to settle property disputes effectively.
- **Inclusion of Non-Muslim Members in Waqf Boards :** Non-Muslims can now serve on State Waqf Boards⁵ and the Central Waqf Council⁶ due to changes in both organizations. The intention of this change is to promote transparency and inclusiveness in waqf property administration.
- **Removal of 'Waqf by User' Provision :** The Act omits the provision that allowed properties to be designated as waqf based solely on long-term religious use. This change seeks to prevent disputes over property ownership and ensure that waqf declarations are based on clear legal foundations.
- **Protection of Government Properties :** Newly inserted section prohibits the declaration of any Central or State Government property, including those of statutory bodies or public undertakings, as waqf. It also empowers District Collectors to investigate and report on waqf-declared properties suspected to be government-owned.⁷
- **Eligibility Criteria for Declaring Waqf :** According to the amendments, a person can only declare a waqf if they have been an Islamic follower for at least five years. The purpose of this step is to stop new converts or those with hidden agendas from abusing waqf declarations.⁸
- **Application of the Limitation Act, 1963 : Section 107:** The Limitation Act of 1963 comes into effect on waqf properties due to the repeal of this section by the Act. With an attempt to reduce lengthy litigations, this change imposes time limitations on legal proceedings relative to waqf properties.⁹

³<https://wamsi.nic.in/wamsi/dashBoardAction.do?sessionId=40F3DA0F79ED801CE30802EB0F326394?method=totalRegisteredProp>

⁴ Sec 2, The Waqf (Amendment) Act, 2025.

⁵ Sec 12, The Waqf (Amendment) Act, 2025.

⁶ Sec 10, The Waqf (Amendment) Act, 2025.

⁷ Sec 5, The Waqf (Amendment) Act, 2025.

⁸ Sec 3, The Waqf (Amendment) Act, 2025.

⁹ Sec 44, The Waqf (Amendment) Act, 2025.

- **Annual Audit Reforms :** State Government-appointed auditors conduct audits for waqf institutions with annual incomes in excess of ₹1 lakh. The reason behind this clause is to enhance the financial accountability and transparency of waqf management.¹⁰
- **Ban on declaring any land falling within a Scheduled or Tribal area as waqf:** Notwithstanding anything contained in this Act or in any other law presently in force, no land held by members of the Scheduled Tribes under the provisions of the Fifth or Sixth Schedules to the Constitution shall be declared or construed to be waqf property.¹¹

Key Constitutional Concerns

Following the passage of this amendment with certain contentious clauses, numerous constitutional issues have arisen under the Indian Constitution. Articles 25 and 26, which provide protection to religious freedom, raise concerns as government interference to any extent in the administration of religious property or trusts goes against the autonomy of religious groupings. It can be held that the Act contravenes the foundational structure of the Constitution, upholding the role of an independent judiciary, by limiting judicial review or precluding civil courts from considering wakf-related causes without providing effective substitute remedies.

From the point of view of federalism, the constitutional balance between the Union and the States has also been disturbed by the Central Government's erosion of the role of State Wakf Boards. Article 27 and the underlying constitutional principle of secularism are brought into question if public money or state resources are being used in a manner that promotes a particular religion. In a bid to ensure that the Act is consistent with the ideals of equality, justice, secularism, and federalism under the constitution, it should be carefully scrutinized.

The waqf system in India is often viewed as a religious matter, but in reality, it is primarily about property management, administration and governance. The main concern is not religious practice but the proper administration of these properties. Several court decisions have reinforced that waqf property management is a non-religious function:

- Syed Fazal Pookoya Thangal v Union of India¹² - clarified that the Wakf Board is a government regulated body, not a religious representative.
- Hafiz Mohammed Zafar Ahmad v UP Central Sunni Board of Wakf¹³ - ruled that the mutawalli (wakf caretaker) does not own the wakf property but only manages it.
- Tilakayat Shri Govindlalji Maharaj v State of Rajasthan¹⁴ - declared that the management of temple properties is a secular duty, a principle that applies to wakf properties as well.

Major issues with waqf sites in India include poor management, unauthorized occupancy, and a lack of transparency. Cases of dubious claims by Waqf boards include:

- Waqf properties are under illegal occupation.
- Govindpur (village), Bihar (August 2024)
- Christian families claim ancestral land, Kerala (September 2024)
- Declaration of Surat Municipal Corporation headquarters as Waqf property.
- Waqf Board claims entire Thiruchenthurai village (Tamil Nadu).
- Declaration of historical monuments as Waqf properties without proper documentation.

Case Analysis: Constitutional Challenges to the Waqf (Amendment) Act, 2025

In India, property management is the primary concern of the waqf system. The secular character of waqf administration has been reaffirmed by the government and courts at many instances. Outlines of waqf law have been heavily influenced by the judiciary. Landmark cases such as Board of Muslim Wakf, Rajasthan vs Radha Krishna & Ors¹⁵ have clarified issues of ownership and governance. However, critics argue that judicial enforcement of wakf rights remains inconsistent, especially when state interests or development projects are intertwined.

In Asaduddin Owaisi vs Union of India¹⁶, the court will decide whether the Wakf (Amendment) Act, 2025 infringes on the freedom of religious denominations to manage their own affairs. This decision will determine the extent of the Union's control over the management of wakf properties.

Key Issues

- Does the Wakf (Amendment) Act, 2025 go against the Wakf Act, 1995's purpose?
- Does the clause stating that only those who have practiced Islam for at least five years are eligible to hold wakf contradict the right to freedom of religion?
- Is the exclusion of "wakf by user" from the concept of wakf discriminatory and arbitrary?
- Is it against Articles 26(b) and 26(d) for non-Muslims to be on wakf boards?

Case Details

The Waqf (Amendment) Bill, 2025 was passed by Parliament on April 4, 2025. The 2025 amendment expands the Union's jurisdiction over waqf properties. The President signed the bill into law on April 5, 2025. The concept of user waqf disappears for future waqf properties under the 2025 amendment. Additionally, it largely enhances the role of the government in managing waqf properties and resolving related disputes. Moreover, it demands inclusion of non-Muslims on the Waqf Board. The critics argue that the changes undermine religious autonomy of the Muslim community, despite the government asserting that they are intended to enhance accountability and transparency.

Ten petitions challenging the validity of the 2025 Amendment Act were heard by a division bench led by Chief Justice Sanjiv Khanna, Justice PV Sanjay Kumar, and Justice KV Vishwanathan on April 16, 2025. The bench gave the union a week to reply to the challenges on two promises at the second hearing on April 17:

¹⁰ Sec 25, The Waqf (Amendment) Act, 2025.

¹¹ Sec 3E, The Waqf (Amendment) Act, 2025.

¹² AIR 1993KER308

¹³ AIR 1965 ALLAHABAD 333

¹⁴ 1963 AIR 1638

¹⁵ 1979 AIR 289

¹⁶ W.P.(C) No. 269/2025, <https://www.scobserver.in/cases/constitutionality-of-the-waqf-amendment-act-2025-asaduddin-owaisi-v-union-of-india/>.

- no new member would be inducted on the Wakf Board or Wakf Council before the next hearing; and
- no wakf, encompassing wakf by user, would be taken away by the union.

Also, the court informed that it would hear only five of the petitioners' lawyers and fixed the hearing for the week beginning May 5, 2005. The bench announced that it will not hear any further petitions in the case.

VIII. Conclusion

Waqf is also a functional expression of the right to religious freedom in Islam, aside from being a legal instrument. It allows the Islamic community to maintain its institutions, services, and ideals. The key, though, to maintaining this balance in a plural and secular society is to ensure that waqf is not exploited while respecting religious autonomy. These changes in India's waqf legislation between 1913 and 2025 reflect a genuine attempt to oversee and protect waqf properties for the benefit of society and to establish a fit scheme of administration. In order to evaluate ongoing reforms and establish a more equitable and accountable system, it is imperative to understand this historical and legal context.

Every law was drafted with the goal of transcending existing challenges while maintaining the main aim of waqf endowment. A critical step towards enhancing the transparency, accountability, and inclusiveness of waqf administration is the Waqf Amendment Bill 2025. Implementation, judicial oversight, and continued intellectual and civil society debate will all be required for its success. In India, the Waqf (Amendment) Act, 2025 has evoked intense constitutional and legal debate. The Supreme Court ruling will have major consequences for the governance of waqf lands and the broader conversation in the country on minority rights and religious freedom.

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