

Undermining Autonomy: The Constitutional Challenge Of The Waqf (Amendment) Act, 2025

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Abstract

The Waqf (Amendment) Act, 2025 represents a paradigm change in the management of Muslim religious endowment in India, and contains some provisions that will improve the transparency, accountability, and supervision by the government. But its enforcement has occasioned constitutional debate ending with an impending case to the Supreme Court of India. The key elements of the controversy include the clauses that require the appointment of non-Muslim representatives to Waqf Boards, limitation of civil courts authority and expansion of the state dominance on the waqf property all of which put forth burning issues of religious independence, federalism and minority rights. The paper reviews the constitutional concerns of the Act in terms of inclusion of non-Muslim members, limitations on civil court jurisdiction, and increased state control over waqf lands etc. This study critically evaluates the Act's important elements which demonstrates how the Act may jeopardize minority rights and the secular structure of the Indian Constitution. Against the backdrop of the upcoming Supreme Court case, possible constitutional conclusions are critically assessed, and specific reform recommendations are offered in the paper. The following recommendations will help to balance the legitimate objectives of transparency and efficiency with the constitutional right to freedom of religion and protection of the minorities, so that the reforms in the governance are not used at the cost of the secular and federal character of the Indian Constitution.

Keywords: *Waqf Amendment Act 2025, Muslim Endowments, Religious Autonomy, Article 26, Minority Rights, Article 29 and 30,*

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Federalism, Basic Structure Doctrine, Judicial Review, Constitutional Law, India.

Introduction

The institution of waqf (Awqaf in plural) plays an immensely important historical, religious and socioeconomic role in Islamic law. Another type of waqf that is based on Shariah and which is more specific to the Hanafi school of jurisprudence is waqf, a perpetual charity, where a Muslim transfers immovable property or other assets to the use of humanity, religion, or piety. When a waqf was created, the ownership is considered to be transferred to God, and the usufruct or advantages of the property to that of the community, to support mosques, schools, cemeteries, orphanages, and other charitable purposes.

The idea of waqf was codified in India in Mughal times and was incorporated in the legal systems of British colonial India and incorporated into the legal system of property and trusts. Following the Independence, the Waqf Act, 1954¹ was enacted to control and monitor the waqf properties, and it was succeeded by the Waqf Act, 1995² aiming to offer a better form of governance. According to this framework, State Waqf Boards were formed with the responsibility of registering, protecting and managing waqf assets.

With this legal structure, the waqf wealth has had persistent problems of encroachments, misappropriation and mysterious administrative systems; which have resulted in massive loss of good land and resources. According to these systemic issues, the Waqf (Amendment) Act, 2025 was enacted, and proposed far reaching reforms to clear up the system, streamline the governance and increase the state control over the waqf institutions.

These changes have, however, have attracted a great constitutional debate on religious autonomy, minority rights and federalism with a number of these changes coming under the scrutiny of the Supreme Court

1 *The Waqf Act, 1954* (Act No. 29 of 1954).

2 *The Waqf Act, 1995* (Act No. 43 of 1995).

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of India. This paper explores the developments in terms of constitutional and doctrinal considerations, and on how these developments may affect the secular and federalism of the Indian Constitution.

• Legislative Evolution and Objectives of the Waqf (Amendment) Act, 2025

Indian legislation that regulates waqf has a protracted history that dates back to colonial and post-colonial rule. The earliest statute to govern the waqf properties was the Mussalman Waqf Validating Act, 1913³, which provided under the law that waqf was valid for the purposes of religion and charity. It was then succeeded by Mussalman Waqf Act of 1923⁴ that established procedures of supervision and reporting. The waqf administration of the state was uniformed and the Waqf Act of 1954⁵ was passed after Independence to establish a system of management of endowments, and the State Waqf Boards were established by the act. This was subsequently overtaken by the Waqf Act of 1995⁶ that provided more powerful institutional frameworks, registration compulsory, and focused on protection of waqf properties against encroachment. With time, however, as many challenges like mismanagement, lack of transparency, encroachment, and overlapping of jurisdictions were experienced, structural gaps in the structure were exposed. It is in this context of the legislative and administrative backdrop that Government came up with the Waqf (Amendment) Act, 2025⁷ with the following purpose in mind: enhancing legislative oversight, advancing transparency, and ensuring the effective use of waqf assets.

The Government of India came out with the Waqf (Amendment) Act, 2025 bearing the above-mentioned goals of improving transparency, curbing encroachment and misuse, and streamlining the administration of the waqf properties nationwide. This amendment aims to amend the current Waqf Act, 1995 that has long been in place to give the legal basis

3 *The Mussalman Wakf Act, 1913* (Act No. 6 of 1913).

4 *The Mussalman Wakf Act, 1923* (Act No. 42 of 1923).

5 *The Waqf Act, 1954* (Act No. 29 of 1954).

6 *The Waqf Act, 1995* (Act No. 43 of 1995).

7 *The Waqf (Amendment) Act, 2025* (Act No. __ of 2025)

by which the administration of Muslim religious endowments in India took place⁸.

The current regime, according to the Ministry of Minority Affairs, had their structural and administrative deficiencies, such that rampant encroachment, fraudulent transfers, and misappropriation of waqf assets are the order of the day. Critical problems of poor record-keeping, non-digitization and lack of transparency in decision making have been reported by several bodies such as the Sachar Committee, the Central Waqf Council that has compromised the trust of communities and diminished the developmental potential of the waqf lands⁹.

One important aspect of the Amendment of 2025 is that it has brought a higher control in the regulations of lease, transfer or alienation of waqf properties. The Act requires the records of waqf to be digitized and the creation of a National Waqf Property Management System to bring accountability and reduce fraud in transactions.¹⁰

Importantly, the amendment also strengthens the role of the central government in the areas that were traditionally being handled by State Waqf Boards. This has been a constitutional issue considering that property and religious endowments can be found in the State List in the Seventh Schedule to the Indian Constitution. The opponents believe that this type of centralization can destroy state independence and undermine localized governance, whereas the advocates believe that it enhances the rule of law by preventing corruption and mismanagement.¹¹

Renaming of the Act

The Act suggests rebranding of the Waqf Act, 1995 to the Unified Waqf Management, Empowerment, Efficiency and Development (UMEED) Act, 1995 to attain a wider and more centralized vision of management of waqf assets.

8 *Ibid.*

9 Ministry of Minority Affairs, Government of India, 'The Waqf (Amendment) Act, 2025', available at: https://www.minorityaffairs.gov.in/show_content.php?lang=1&level=2&ls_id=936&lid=1163 (visited on 26 October 2025).

10 *Ibid.*

11 *Ibid.*

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Definition and formation of Waqf (Amended section 3)¹²

- Section 3(b): This states that waqf is a commitment made by any individual who practiced the Islam religion and who had served at least five years and owned the property.
- Section 3(c): guarantees that waqf-al-aulad will not deprive a woman of his inheritance.
- Section 3(d): Eliminates the idea of waqf by user, requiring written formal documentation of valid waqf establishment.

Non-Muslim and Muslim Women Members (Amended Section 9 and 14) Inclusion¹³.

- *Central Waqf Council*: Two non-Muslims are added to the council and at least two women who are Muslims so that the council is inclusive of both sexes and the community.
- *State Waqf Boards*: They must have the representation of Shia, Sunni and Backward Muslim communities, and there must be the representation of the women and the non-Muslim population to provide the kind of social representation.

Empowerment of the District Collectors (Amended Section 40)¹⁴

District Collectors have been given the power to decide the state of contentious properties, as opposed to the Survey Commissioner. They will also preside over surveys and verification especially where the dispute pertains to claims between government and waqf property. This is in an attempt to minimize confusion and unauthorized claims.

Separate Waqf Boards (New Section 13A)¹⁵

Bohra and Aghakhani communities can be separated and are recognised as separate Waqf Boards since their needs are sectarian and need to be managed through separate boards.

Registration and Documentation Reforms.

Oral waqf and waqf by user is not allowed.

12 The Waqf (Amendment) Act, 2025, s 3.

13 The Waqf (Amendment) Act, 2025, s 9 and 14

14 The Waqf (Amendment) Act, 2025, s 40.

15 The Waqf (Amendment) Act, 2025, s 13A.

- Valid creation needs a waqf-nama and documents of ownership and evidence of the status of the waqif.
- The use of a centralized portal in which the waqf deeds must be registered online is mandatory to guarantee the traceability and legal authenticity.

Single Digital portal and Land Mutation Process (Amended Section 37)¹⁶

Waqf properties should be documented at a central online platform.

- Any property to be mutated as waqf must be put on notice for 90 days, and anyone or government agency can object.
- Claims before mutation are verified and certified by the District Collector.
- Dispute Resolution and Appeals (Amended Section 6 and 83)
- District Collectors are able to resolve the conflict on whether land is waqf or government land.
- Waqf Tribunals are to be reorganized to have two members.

A Tribunal orders an appeal to the High Court within 90 days, which strengthens the judicial checks.

Disqualification of Mutawallis (New Section 50A)¹⁷

The disqualification of individuals who could serve as mutawalli (custodian) has various causes as age, mental incapability, insolvency, conviction of a crime, or encroaching on waqf property or being removed because of corruption or mismanagement.

Striking a Balance between Regulation and Autonomy.

The amendment tries to strike equilibrium between the regulation oversight and the minority rights in the Indian Constitution of 26 which ensures liberty of managing religious affairs. The amendment can be seen as a move towards modernization in waqf regulation by its supporters and an incursion on autonomy of the Muslim institutions of religion by its opponents.¹⁸

16 The Waqf (Amendment) Act, 2025, s 37.

17 The Waqf (Amendment) Act, 2025, s 17.

18 Constitution of India, art. 26 ('Freedom to manage religious affairs').

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This is the core of the constitutional test that is imminent in the Supreme Court, and the 2025 Amendment is a hallmark legal event in the shifting interface of state regulation, religious freedom and federalism.

• Some of the Contested Provisions and Implications on the Constitution.

The Waqf (Amendment) Act, 2025 is a proposed major legislative intervention of the administration of waqf assets in India. Although the above intent of the amendment as outlined in its legislation is aimed at introducing enhanced transparency, efficiency in administration and inclusivity, some of its provisions have raised serious constitutional challenges. Some of the most discussed issues include inclusion of non-Muslims in Waqf Boards, elimination of the concept of waqf by user and vested more powers in the hands of the executive to adjudicate over the dispute on the waqf properties. Such provisions do not just represent administrative revisions; they do involve, in addition to other provisions, religious autonomy under the Articles 26, the cultural and educational rights of minorities under the Articles 29 and 30, federalism as a feature of the basic structure of the Constitution, and the doctrine of judicial independence. Each of these constitutional issues is discussed in the sub-sections below.¹⁹

Federalism and Competence in legislation.

The main issue about the Waqf (Amendment) Act, 2025 is that the Parliament has the legislative ability to impose clauses that significantly change the nature of the waqf management especially where waqf assets are pieces of land and religious endowments. Legislative powers are shared between the State and Union in the Seventh Schedule of the Indian Constitution. Of specific interest here are two entries. Entry 28 of the State List specifically includes charities and charitable institutions, charitable and religious endowments and religious institutions, whilst Entry 18 is concerned with land rights in or over land, land tenures including the relation of landlord and tenant. As can be seen in these entries, waqf

19 “Cabinet approves Waqf Amendment Act, 2025”, Press Information Bureau Release, 3 April 2025, available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=2118799> (visited on 26 October 2025).

properties, as a religious endowment and an immovable property, are squarely within the realm of the states.²⁰

The amendment brings on board several features which are effective in increasing central control on issues that have been traditionally handled at the state level. These are empowering district collectors to decide who owns and what the status of disputed waqf properties is, centralising the registration and mutation of waqf assets by having a National Waqf Property Management System and ensuring that uniform digitisation of waqf records is done across states. These actions, in as much as they come off as efficiency and transparency strategies, do cast constitutional questions of encroachment on State List subjects. *State of West Bengal v. Union of India (1962)*²¹ strongly believed that Parliament would not have the power to make laws on the matters which are solely the preserve of the states except when the Constitution expressly permitted it. Moreover, the Court acknowledged that federalism is one of the components of the fundamental structure of the Constitution. The amendment by placing the decision-making powers in the hands of the central or centrally controlled executive authorities jeopardizes the federal balance and it reduces the state control of land and religious endowment in the state legislations.

The additional complication of this constitutional conflict is that waqf administration was traditionally organized as a governmental issue with State Waqf Boards gaining control over handling and regulating the properties under its region. Any legislative move to redirect or weaken this control must then be subject to a very stiff constitutional test. In case the Union law has been discovered to interfere with exclusive State List matters, it can be ultra vires.²²

Article 26 and Religious Autonomy.

The second significant constitutional question that the Waqf (Amendment) Act, 2025 provokes is that it may threaten the religious independence of Muslim communities which is secured under Article 26

20 Constitution of India, Seventh Schedule, List II (State List), Entries 18 and 28.

21 *State of West Bengal v. Union of India*, AIR 1963 SC 1241.

22 *Ibid.*

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of the Constitution of India. Article 26 grants to all religious denominations the right to organize and constitute institutions of religious and charitable character, to regulate its internal affairs in all things pertaining to religion, to own and acquire property, to dispose of such property in a legal manner. In contrast to Article 25 that promotes individual religious freedom, Article 26 provides institutional and collective freedom to religious denominations in the administration of their religious matters and endowments.²³

The amendment has especially been contentious regarding the inclusion of non-Muslim members in Waqf Boards. Waqf as such is a religious endowment, which is based on Islamic jurisprudence. Such properties are run not only with the administrative supervision but also a knowledge of religious and traditional practices embedded within the Muslim law. The inclusion of non-Muslim members in these bodies of governance is seen to water down the denominational nature of the management of waqf with the amendment. This brings the question of whether the State can ask the community to have structures that interfere with the right of the community to manage its religious institutions the way it feels like in the way it has its faith and traditions²⁴.

The judicial precedent gives a lot of protection to religious autonomy in this case. The Supreme Court in the case of *Commissioner, Hindu Religious Endowments, Madras v. Shirur Mutt (1954)*²⁵ affirmed the Article 26(b) point stating that administration of religious institutions is safeguarded and the State has the power to interfere with secular matters but not with the gist of religious administration. In *Ratilal Panachand Gandhi v. State of Bombay (1954)*²⁶ The Court made it clear that even though regulation can be exercised it should not constitute a significant intrusion with religious rights. Similarly, in *S.A. Azees Basha v. Union of India (1968)*²⁷ The Court stressed the point that Parliament can exercise

23 *Constitution of India*, art. 26.

24 *S.R. Bommai v. Union of India*, AIR 1994 SC 1918.

25 *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282.

26 *Ratilal Panachand Gandhi v. State of Bombay*, AIR 1954 SC 388.

27 *S.A. Azees Basha v. Union of India*, AIR 1968 SC 662.

control over secular administration, but not the denominational rights. The amendment arguably encroaches on the area of religious autonomy ensured by Article 26 by permitting the involvement of non-Muslims on waqf boards and by taking the role of dispute settlement out of community-based institutions and transfers it to the executive²⁸.

Judicial Accessibility and Independence.

The consideration of the constitutional issues related to the effect of the amendment on the independence of the judiciary and the access to the justice is another crucial constitutional issue. The Act suggests a major reorganization of the dispute resolution system of waqf properties. It increases tribunals with powers over Waqf and curtails the power of civil courts in disputes connected with waqf, and vests ultimate decision-making experimental on quasi-courts under executive jurisdiction. The measures are potentially detrimental to the autonomy of adjudication and restrict the right of the citizens to the recourse to the constitutional courts.²⁹

Judicial independence has always been acknowledged as one of the fundamental conditions of the fundamental structure of the Constitution. In *S.P. Gupta v. In Union of India (1981)*³⁰ The Supreme Court placed enormous emphasis on the central role that judicial independence takes to the constitutional scheme. Truer to the point, in *L. Chandra Kumar v. Union of India (1997)*³¹ The Court opined that the judicial review as envisaged in Articles 226 and 32 is an indispensable characteristic of the Constitution which may not be dispensed by legislative assembly. The effort to render the decision of Waqf Tribunals final and the intentions to limit the jurisdiction of the ordinary courts can thus be subject to critical constitutional considerations. Although it may be acceptable that specialised tribunals have a part to play in expeditious adjudication, it simply cannot substitute constitutional courts and cannot have its

28 *Ibid.*

29 ‘Protecting Minority Rights in India: An Analysis of the Indian Constitution and Judicial Interpretations’ (2024) 15(3) *Constitutional Law Review* 234 (HeinOnline).

30 *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

31 *L. Chandra Kumar v. Union of India*, AIR 1997 SC 1125.

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jurisdiction so broadened that it is virtually invulnerable to bring executive decisions to the scrutiny of the courts. This kind of insulation would go against the basic structure doctrine.³²

Also, complete control over adjudicatory powers granted to the District Collectors as executive members constitutes a conflict of interest by itself and fails to promote the separation of powers. Religious property cases, which often have sensitive community issues to consider, need not be adjudged by an executive but rather adjudged over by an independent and impartial person or panel³³.

Rights of the minorities under articles 29 and 30.

Waqf is a system which is closely interconnected with the cultural and educational life of Muslim population in India. Waqf funds used in many of the prevailing properties will support education institutions, madrassas and local welfare. This connection introduces into the play the rights of minorities in Articles 29 and 30 of the Constitution. Article 29(1) ensures that minorities have the right to preserve their language, script and culture whereas Article 30(1) grants minorities the right to create and manage educational institutions of their preference.³⁴

Inclusion of non-Muslims in Waqf Boards as envisaged by the amendment gives the chances of cultural erosion and foreign domination over such institutions that form the cultural and educational fabric of the Muslim population. The Supreme Court in *Re Kerala Education Bill (1957)*³⁵ ruled that the state regulation cannot ruin the fundamental nature of a minority institution. Equally, in *T.M.A. Pai Foundation v. The Court (State of Karnataka 2002)*³⁶ reiterated this argument once again by stating that minority autonomy in running their institutions is a constitutional right. The amendment could be violating these safeguarded rights by

32 Ibid.

33 S. Dibagh Kishwar, 'State Control and Digital Dispossession: A Critique of the UMEED Rules, 2025' (2025) 12(2) *Journal of Constitutional Law and Governance* 89.

34 *Constitution of India*, arts. 29(1) and 30(1).

35 *re The Kerala Education Act*, AIR 1959 SC 995.

36 *T.M.A. Pai Foundation v. State of Karnataka*, AIR 2002 SC 3551.

centralising control and transferring the control to players outside the community in the administration of waqf.

The user abolition of waqf is another important element because it will eliminate legal status of religious endowments which have been established by the use and tradition. These endowments are part and parcel of the culture and religion practiced by many Muslim communities. By invalidating this doctrine, some cultural practices might have been invalidated and the right to conserve culture at Articles 29(1) invalidated, which has more side effects than upholding the right to conserve culture.³⁷

More Far-Reaching Constitutional Consequences.

Looked composite, the stipulations of the Waqf (Amendment) Act, 2025, create constitutional issues that go far too far beyond the management of religious endowments. The elevation of the central government and the erosion of community-based autonomy and limitation of judicial inspection get into the fundamental structural values of the Constitution which include federalism, judicial review, and safeguarding of minority rights.³⁸

Although the government has justified the amendment as a move to guarantee accountability, guard against encroachment of waqf lands and enhance the standard of good governance, these purposes should be fair in resting on the constitutional principles of autonomy and pluralism. Religious endowments like waqf enjoy a special constitutional position where the administration regulation meets basic rights. Any faecal intervention in this field needs then be highly limited to accomplish justifiable regulatory goals without violating the rights of religious groups as well as upsetting the federal system.³⁹

37 The Infinite, 'The Waqf Amendment Act, 2025: A Critical Analysis of Legal Reforms, Property Rights, and Administrative Accountability in India', *The Infinite* (2025) <https://www.theinfinitejournal.com/waqf-amendment-2025> (visited 20 September 2025).

38 Tasleem Rasool, *Waqf—The Muslim Endowments in India: Ideological and Legal Intricacies* (2024) 30(4) *Trusts & Trustees* 289.

39 Vibhuti Kumari, 'WAQF (Amendment) Act, 2025: A Constitutional Analysis of Religious Freedom and Minority Rights' (2025) *International Journal of Innovative Research and Insight Law (IJIRL)*.

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The case, which awaits to be heard by the Supreme Court, is likely to be determined as to whether the given provisions are an acceptable form of regulation or an unconstitutional overreach. Not only will the ultimate ruling of the Court determine the way the waqf property is governed but also can establish crucial precedents regarding the extent to which the state may interfere with the religious endowments, the boundaries of legislative power on the national level, and minority rights in a secular constitutional system.⁴⁰

• Principal Areas Affected

Waqf (Amendment) Act, 2025 is not just an administrative reform it is a structural change in the regulation of Muslim religious endowments in India. Its provisions have an impact on the internal organizational processes of waqf institutions, access to justice within the community, cultural identity within waqf practices, and socio-economic well-being of its beneficiaries. The section looks at the four major areas of influence that occurred because of the amendment.⁴¹

Reduced Freedom of Choice of Religious Organization.

One of the most disputed issues was the possibility of non-Muslim members to be included as part of Central and State Waqf Boards. The administration of waqf institutions in the past has been carried out by people who belong to the Muslim faith and especially ulema and mutawallis (custodians) and the other members of the community who interpret and use the Sharia based principles to control the way waqf properties are run⁴². This is changed in the amendment through the need to have non-Muslim representation on boards of waqf thus bringing in outside voices into the decision-making process.

This addition poses the constitutional inquiry of denominational autonomy in Articles 26(b) which forms the right of all religious denominations to carry out their own affairs in all affairs that pertain to

40 “Experts Raise Alarm over Centralization in Waqf Amendment Act”, *Indian Express*, February 2025.

41 Sravasti Dasgupta, “Bill to Amend Waqf Act Proposes Stripping Power from Boards to Decide if Properties are Waqf”, *The Wire*, Aug. 08, 2024

42 Ismat Ara, “Why the Proposed Amendments to the Law Governing Waqf Properties Have Triggered a Fierce Debate”, *The Hindu*, Aug. 18, 2024

religion. The administration is a secular institution, but it is largely connected with religious ideas and traditions⁴³. The involvement of non-Muslims can also cause a conflict in the interpretation of Shariah principles, which will destabilize the potential of the community to regulate its endowments using its faith.⁴⁴

Examples: According to the current system, the religious and communal organizations represent in the decision-making process the creation, management, or transfer of waqf property. Since non-Muslim members are now included in these boards, may arise among what is considered as legitimate religious use may lead to decisions which are not no longer in accordance with the religious intentions of the donor (*niyyah*). This is a physical encroachment of the internal religious leadership of the community and that has great constitutional problems as to whether denominational rights should be safeguarded.

Demise of Judicial Check and Balance and openness to Justice.

The second influential effect deals with the compromising of judicial control by expanding the powers of the Waqf Tribunal and limiting the area of the civil courts. The amendment places the adjudicatory power of cases involving waqf exclusively to tribunals and executive authorities thereby restricting the grandeur of judicial review by the ordinary civil courts⁴⁵.

The separation of power of the judiciary is the fundamental aspect of the constitutional plan and has been held as being in the fundamental fabric of the Constitution in *S.P. Gupta v. Union of India (1981)*⁴⁶. Moreover, *L. Chandra Kumar v. Union of India (1997)*⁴⁷, the Supreme Court ruled that the judicial review in Articles 226 and 32 cannot be dismissed or limited. Limiting access to civil courts in waqf cases-

43 *S.R. Bommai v. Union of India*, AIR 1994 SC 1918.

44 Vijaita Singh and Ishita Mishra, “Waqf Amendment Bill Introduces District Collector as an Arbiter to Decide Whether a property is a Waqf or Government Land”, *The Hindu*, Aug. 08, 2024.

45 *Mahesh Kumar vs. Haryana Waqf Board*, 2013 (4) ALJ 398: 2013 (97) ALR 855.

46 AIR 1982 SC 149

47 AIR 1997 SC 1125.

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particularly those concerned with encroachment or unlawful alienation of property - can cause procedural and substantive obstacles to those who may so be affected.

For example, once a waqf property is improperly sold or encroached, an offended mutawalli or beneficiary would lose the opportunity to raise a civil suit in a local court. Instead, they would be pushed to go to a Waqf Tribunal that might not have the independence and procedural protection of ordinary courts. This particularly becomes difficult in rural or economically disadvantaged places where there is a low level of legal awareness and where civil courts have always been the main arenas of establishing property rights claims. Such limitation of the judicial forums therefore causes both the basic structure doctrine and the right of the community to effective judicial redress.

The Waqf by the User Doctrine and Cultural Displacement

Another far-fetched issue of the amendment is the abolishment of the waqf by use doctrine. This doctrine considers the properties that were continuously and exclusively used for religious purposes that include mosques, graveyards (*qabristans*), or dargahs as waqf, even though they might never have been formally registered. The abolishment of this doctrine erodes are centuries old natural principle in the law which is deeply entrenched in the Islamic jurisprudence⁴⁸.

By abolishing this safeguard, the undocumented yet historically important waqf properties will be left exposed to legal irrelevance. Unregistered such properties can be disputed⁴⁹, purchased, or taken over by the private or state actors, especially those located in commercial or urban-welcoming lands.

Exemplary Case: In most villages and towns of the countryside, there has always been a mosque or a cemetery, but this is not documented. These properties could be deprived of the security of waqf under the new structure and thus legally reclaimed or reused. This is not only disruptive

48 Dushyant Kishan Kaul, “The ‘Essential Practices’ Doctrine: Examining the Constitutional Impact of Inordinate Judicial Intervention on Religious Freedoms” 29 *International Journal on Minority and Group* 350 (2022).

49 *Ibid.*

to religious practice but also eliminates history and culture continuity, which violates the right of the community before and above all to preserve its culture in Article 29(1) of the Constitution. The described change is a cultural displacement, and not only a legal one since it has long-lasting repercussions on the local Muslim groups.

Lesser Community participation and Socio-Economic implications.

The fourth area of impact is that the participation of the community in the management of the waqf assets has been reduced and has resulted in the socio-economic impacts on beneficiaries. Historically, the administration of waqf has been a community-based practice, where the local mutawallis and the local organisations administer the assets according to the purpose donated by the donor (niyyah)⁵⁰.

The amendment however, places administrative powers under the state and central government thus giving less power to the community in decision making.

There are two significant implications in this centralization. First, it dilutes the pandemic accountability and leads to a possibility to make decisions that are not in harmony with religious and community requirements. Second, it also influences the allocation of waqf income, which since ancient times has been channelled into education, healthcare, housing and welfare programmes of the lost quarters of Muslim population⁵¹.

Exemplary Case: An endowment of waqf has been established locally to finance madrassa education, but now it can be channelled to meet state-directed developmental efforts, without proper consultation with the community. This contributes to the purpose of donation and interferes with the conventional dynamic between waqf institution and beneficiaries. That being the case, since, as pointed out in Sachar Committee Report (2006) Muslim community is already one of the most

50 Quraishi Ahmad Muhammad, *Waqfs in India: A Study of Administrative and Legislative Control* (Gian Public House, Delhi, 1990).

51 The Law Commission of India, *Report No. 287: Reforms in the Administration of Waqf Properties* (2024).

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undermined socio-economically disadvantaged with respect to India, the diversion or misuse of the waqf revenue would further enable poverty, school dropout rates, and accessibility of healthcare to decrease⁵².

• Interim Judicial Response and Other Constitutional Unresolved Issues.

Some of the constitutional strains noted in the previous sections, especially that of a lack of religious autonomy, the lack of judicial remediation, the loss of traditional doctrines of waqf, and the exclusion of communal representation has already come to the Hon'ble Supreme Court of India in form of various petitions contesting the Waqf (Amendment) Act, 2025. On 15 September 2025, the Court issued an interim order that focused on several aspects of the Act but specifically left the resolution of the underlying constitutional issues to the ultimate hearing on the merits indicating the scale of the constitutional issues at stake⁵³.

Scope of the Interim Order

The Supreme Court Bench led by Chief Justice B.R. Gavai and Justice A.G. Masih tabled restricted questions that it wanted interim consideration. These were:

- (i) the validity of the five-year practice of Islam condition to the establishment of a waqf
- (ii) the non-Muslim membership of Central and State Waqf Boards
- (iii) the overrule of the doctrine of waqf by user.⁵⁴

The Court left the other important questions, especially the executive control over the determination of waqf property and the federalism question, to a separate hearing.

Criticism of Judicial Reasoning.

The court of First Instance has received a great deal of academic and professional critique on an interim judgment as inclusive of only some of the provisions where the Court does not attempt to answer the

52 The Prime Minister's High-Level Committee, *Social, Economic and Educational Status of the Muslim Community of India* (Cabinet Secretariat, Government of India, November 2006) 45.

53 Nizamuddin Ahmad Siddiqui, 'The Waqf Interim Judgement is a Smokescreen: A (Detailed) Critique', *The Leaflet* (19 September 2025).

54 *Ibid.*

fundamental structural questions. The factual assumptions that were not proven include, it has been argued, untested assumptions that were accepted as a matter of fact by the Court, including how many non-Muslim members the board ought to have, rather than whether the inclusion of such members in the board on a case -by-case basis would be in violation of Article 26(b), so that although the constitutional intervention in denominational affairs was being contemplated, the main constitutional query on the matter remained unanswered.⁵⁵ And the interpretive approach taken by the Court, especially the number of non-Muslim judges on the board, failed

Unanswered Constitutional Problems.

Although there will be a partial interim relief, there are other important questions still awaiting a verdict before the Supreme Court:

Replacement of waqf boards by executive: Non-existence of Section 40 of the Waqf Act, 1995 and authority of District Collectors to decide the property status of waqf creates a problem of separation of power, federalism, and denominational autonomy⁵⁶.

Replacement of Muslim law with statutory law: The fact that Article 3(r) and other clauses have been amended to comply with the religious definition of waqf with statutory words implies that Article 26 on the freedom to practice religion is also in question⁵⁷.

Stronger Union regulation: The Act concentrates the administration of waqf in a region conventionally also in the State List (Entries 18 and 28), interviews the federal structure and the basic structure doctrine⁵⁸.

Abolition of waqf by user: Abrogation of the doctrine undermines such cultural protection of undocumented mosques, dargahs and graveyards thus casting doubt over Article 29(1)⁵⁹.

55 *Ibid.*

56 NDTV, 'Interim Order, Court Observations: What You Should Know About Waqf Order' (15 September 2025).

57 Supreme Court Observer, *Interim Plea Judgement Summary* (September 2025).

58 *Ibid.*

59 YouTube, *Legal commentary & press briefing on interim order* (September 2025).

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Deletion of Section 104: Allowing the non-Muslims to give away property to waqf in the past allowed the involvement of Articles 14 and 15 on equality and non-discrimination.

All these matters pierce the constitutional structure of the relationship between state control and religious liberty.

Future Consequences of the Still Active Litigation.

This is why the case is not dismissed, as the scope of unaddressed matters is rather broad, and the interim order was framed very narrowly. The Court will have to decide the ultimate issue on whether it is the Waqf (Amendment) Act, 2025:

- i. is allowed regulation within Article 26, 29 and 30,
- ii. pulvinate the federal circuit dividend of powers, or
- iii. weakens the foundations of the Constitution, as it incurs into the judicial review and the rights of minorities⁶⁰.

Such balancing out act in the constitution between the regulatory supervision and the protection of denominational autonomy needs close judgment on the part of the doctrine. The temporary injunction is only a deferral of this judgement.

● Policy and Comparative Perspectives.

Constitutional and administrative issues that the Waqf (Amendment) Act, 2025 has brought are not concerned with India solely. States have been forced to juggle the state control with the local control throughout the governance of religious endowments across the globe. Comparative models have a good idea of how transparency, accountability, and religious freedom can be organized according to a legal system. He or she can study the strategies followed in Malaysia, Turkey, and the United Kingdom as informative policy lessons to India⁶¹.

60 *Ibid.*

61 A. Al-Khateeb and Y. J. Amuda, 'Application of Legal Principles of Islamic Objectives on the Regulation and Management of Islamic Endowment (Waqf): Drawing Lessons from Different Contexts' (2024) 18(2) *Journal of Islamic Law and Governance* 145.

Malaysia: Centralized and Government with a Religious Council.

Malaysia uses a centralised and religiously based system of administering the Islamic endowments (waqf). Through the Federal Constitution, the Islamic matters rest on the state level and every state establishes its state Islamic religious council (SIRC) and they are appointed as the sole trustee of all waqf property.⁶²

The SIRC model incorporates both societal legitimacy and state control, so that the endowments are processed in Sharia's terms, in addition to being brought to bear on them through the law. It is worth noting that Malaysia has achieved a lot in digital mapping, open registries, as well as public reporting of waqf assets⁶³. The religious status of the trustee body however is not lost because the non-Muslims are not allowed to take part in decision making that are related to religious endowments.⁶⁴

The model explains that the transparency mechanisms are applicable without watering down the religious autonomy if the structure of regulation inherits the denominational character and works through the institutions that are trusted by the community⁶⁵.

Turkey: The State Control via the Directorate of Religious Foundations.

Turkey is a very statist country with its Directorate General of Foundations (Vakıflar Genel Müdürlüğü) that controls and regulates all religious endowments⁶⁶. Even though the confrontation of the administrative control is under the administration of Directorate,

62 Contemporary Waqf Reporting Practices and Governance in Malaysia: 'A Systematic Literature Review' (2023) 5(2) *International Journal of Advanced Research in Economics and Finance* 180.

63 Aznan Hasan, *Good Governance of Waqf Institutions: A Case Study of Malaysia* (International Islamic University Malaysia Press 2023).

64 A. S. Rakhmat and I. S. Beik, 'Pengelolaan Zakat dan Wakaf di Malaysia dan Turki: Studi Komparatif' (2022) 6(1) *Al-Iltizam* 45.

65 Malaysian Department of Awqaf, Zakat and Hajj (JAWHAR), *Guidelines on the Governance of Waqf Institutions* (2022).

66 Turkish Directorate General of Foundations, *Annual Report 2022* (Vakıflar Genel Müdürlüğü 2023).

registration of properties, auditing of property management and regulatory control under the state are comprehensive⁶⁷.

Despite producing tremendous administrative efficiency and limited encroachment, this model has also received a share of criticisms on the grounds of limiting the participation of religious communities and even taking away the institutional autonomy⁶⁸. Effectively, the discretion of waqf boards and religious foundations is restricted and discretion by state is dominant over decision making of leasing, development and use of properties.⁶⁹

This instance shows that overextended state dominance can be dangerous especially in the societies having plural religious groups. It demonstrates that transparency led by the state can be implemented, although at more than a community cost, which is also a conflict here in the Indian case⁷⁰.

United Kingdom: Charity and Religious Endowments.

In the United Kingdom there is a secular regulatory regime by which the charitable trust regime regulates the religious endowments. The religious organisations are like other charities that are tried as a benefit of the populace and are governed by the Charity Commission⁷¹. Religious charities have their trustees who deal with compliance with the trust law, fiduciary liability and reporting requirements but this does not mean that the state will meddle with the religious doctrine or the internal administration issues.

This model is based on a rigid legal accountability system i.e. compulsory audit and reporting and registration but does not restrict

67 Murat Çizakça, *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present* (Boğaziçi University Press 2000).

68 Miriam Hoexter, *Endowments, Rulers and Community: Waqf al-Haramayn in Ottoman Algiers* (Brill 1998).

69 Timur Kuran, 'The Provision of Public Goods under Islamic Law: Origins, Impact, and Limitations of the Waqf System' (2001) 35(4) *Law & Society Review* 841.

70 Mohammed Obaidullah and Tariqullah Khan, *Financing SDGs through Islamic Social Finance: The Role of Awqaf* (Islamic Research and Training Institute 2020).

71 Amy Singer, *Charity in Islamic Societies* (Cambridge University Press 2008).

religious groups in any way to make internal decisions on religious and doctrinal issues⁷².

In the case of India, according to this model, statutory transparency can be achieved without jeopardizing the autonomy of the religious, by providing rules of neutrality and integrity, in place of direct executive power⁷³.

Transparency and Autonomy Policy tension.

The three models are indicative of a basic policy conflict between on the one side the need to maintain transparency and to prevent mismanagement and on the other side respecting the autonomy of religious communities.

- i. The model of Malaysia shows a religious-community-based government that is transparent through the statutes.
- ii. Turkey is a symbol of state-controlling power with minimal community involvement.
- iii. UK demonstrates that in a secular regulatory approach, legal responsibility can co-exist with freedom⁷⁴.

The constitutional system of India, especially Articles 26, 29, and 30, is more in the UK and Malaysian tradition, proposing to defend denominational freedom but allowing warranted state intervention in secular affairs. Such an overtly statistical strategy as that used by Turkey would be constitutionally threatened in India with a safety granted to the concerns of the minorities and religious freedom.⁷⁵

Relevance for India

The plural experience implies the following policy lessons to the Indian setting:

72 Gregory C. Kozlowski, *Muslim Endowments and Society in British India* (Cambridge University Press 1985).

73 *Ibid.*

74 Siraj Sait and Hilary Lim, *Land, Law and Islam: Property and Human Rights in the Muslim World* (Zed Books 2006).

75 Monica M. Gaudiosi, 'The Influence of the Islamic Law of Waqf on the Development of the Trust in England: The Case of Merton College' (1988) 136(4) *University of Pennsylvania Law Review* 1231.

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- i. Transparency will not need to be compromised to have community-led governance as robust disclosure, registration and audit obligations can be established.
- ii. Too much executive control may lead to abuse of constitutional provisions of denominational autonomy.
- iii. A superior balance might be found through the neutrality of regulatory institutions or independent statutory commissions which have direct control over waqf property⁷⁶.
- iv. The use of digital tools in management, the case with Malaysia, does not have to render the community irrelevant.

The regulatory model should always be accommodative to the rights of the minority as stipulated in the Constitution of India, Articles 26, 29, and 30.

● Recommendations

Though the Waqf (Amendment), 2025, was presented as a step toward transparency and accountability, its current form can potentially result in disastrous consequences on the constitutional and community levels in general. Based on the constitutional provisions observed in the sections 3-6 specifically on religious autonomy, federalism and minority protection it is proposed as follows to ensure any legislative revision could be constitutional, community responsive and efficient in administration⁷⁷.

The Statutory Waqf Development and Oversight Council (WDOC) will be established to implement fortuitous proper development and Oversight of waqf⁷⁸.

There must be a statutory body constituted of a committed community, having legal autonomy and supervisory powers, which:

- have transparent governance,

76 Azman Haji Mohd Noor and Mohamed Saladin Abdul Rasool, 'Digitalisation of Waqf Management: A Systematic Literature Review' (2022) 12(6) *International Journal of Academic Research in Business and Social Sciences* 1444.

77 Tauseef Ahmad, 'Waqf Amendment Act 2025 and its Impact on Muslim Endowments in India' (2025) 8(2) *International Journal of Law, Management & Humanities*.

78 *Ibid.*

- to carry out periodic independent audit,
- observes welfare-oriented use of waqf income and
- protect local values and religious cultures⁷⁹.

This body is to be constitutional responsive to Articles 26, 29, and 30 of the Constitution and designed not to assume the role of replacement of the powers of the State Waqf Boards.

Maintaining the Pre-eminent of the Muslim Representation in the Religious Agencies.

To maintain denominational independence under the Article 26(b), Muslim representation is to be kept central in the governing of the waqf. There should be a ban on the participation in voting in the position of non-Muslim members given they are appointed as advisors or technical. The Muslim members should have the last word on the issue of religious property usage, management, and customary issues to ensure the deterioration of denominational identity.⁸⁰

Recognition of Procedural Safeguarded Waqf by User.

Preservation of the waqf by user doctrine should be done in the statute, with stringent protection. The traditional usage of religious sites by the community should be accepted with reference to affidavits, documentary evidence, oral history, and community testimony. This would be in line with Article 29(1) and would safeguard the informal religious spaces containing crucial cultural and religious locations.⁸¹

Digital transparency mechanisms and public consultation mechanisms: This area highlights the importance of ensuring digital transparency and conducting public consultations, as the government must strive to guarantee that e-government boards address the needs of the community.

79 The Law Commission of India, *Report No. 287: Reforms in the Administration of Waqf Properties* (2024).

80 United Nations Development Programme (UNDP), *Capacity Development for Sustainable Development* (UNDP 2022).

81 Monzer Kahf, 'The Role of Waqf in Improving the Ummah Welfare' (Paper presented at the International Seminar on Waqf as a Private Legal Body, Amman, Jordan, 2003).

Public Consultation and Digital Transparency Mechanisms

The significance of the mechanism of digital transparency and public consultation: This section explains the necessity of ensuring digital transparency and organizing the consultation of the population, as the government must do its best to ensure that boards of e-government can meet the needs of the community.⁸²

To enhance accountability:

- It is required that a transfer, lease or redevelopment of waqf property need to be consulted publicly.
- Records of waqf and financial statements as well as all decisions by the board should be presented on a centralised and publicly reached digital portal⁸³.

Periodic audits done by an independent media must be published to increase the level of trust or confidence on the part of the people or community.

Dedicated Waqf Welfare Fund

The allocation to be done is a fixed percentage of net annual waqf revenue to:

- Education,
- Healthcare,
- Scholarships, and
- Homelessness support to socio-economically disadvantaged parts of the Muslim community.⁸⁴

- This would make waqf institutions regain their original sense of charity and community-development.

Conclusion

The Waqf (Amendment) Act, 2025 is an important turning point in the constitutional history of India as far as the control over the religious

82 Azman Haji Mohd Noor and Mohamed Saladin Abdul Rasool, 'Digitalisation of Waqf Management: A Systematic Literature Review' (2022) 12(6) *International Journal of Academic Research in Business and Social Sciences* 1444.

83 *Ibid.*

84 M. Abdullah, 'Waqf, Sustainable Development Goals (SDGs) and Maqasid al-Shariah' (2020) 47(8) *International Journal of Social Economics* 1013.

endowments is concerned. Although its stated aims of transparency, accountability, and efficiency in its management are valid, the methods used in its present incarnation cast deep constitutional challenges. The changes proposed including that of the composition of the Waqf Boards, restriction of the jurisdiction of the civil court, an end to the old doctrines such as that of waqf by user, among others are not merely administrative measures. They attack the principle of denominational autonomy in Articles 26(b) and minority cultural rights in Articles 29 and 30, federal legislative competence, and judicial review, which is one of the fundamental pillars of the basic structure.

A more balanced way- the one that involves digital transparency, a community-based way of governance, and judicial protection can achieve the intent of the legislature without abusing constitutional principles. The example of transparency and autonomy in Malaysia, Turkey, and UK demonstrated the comparative models in which both features can be implemented in case they are organized well.

The case presented to the Supreme Court is thus not just about statutory interpretation and retaining the constitutional design of secularism, federalism, minority and judicial review. Regardless of the case, this BP will probably become a landmark in determining how much the state authority is allowed to interfere with religious endowments in India.

Finally, the reform of the law in that regard should be constitutionally based, community-oriented, and administrational realistic. It is only under such circumstances that waqf institutions will still be used to their purposes of continuity in their spiritual and their community welfare as well as their social justice in the context of the plural constitutional democracy of India.