

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

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# **REVISITING WAQF LEGISLATION IN INDIA: AN ANALYTICAL STUDY OF THE NEW AMENDMENT AND ITS IMPLICATIONS FOR MINORITY RIGHTS AND PROPERTY GOVERNANCE**

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## **ABSTRACT**

The recent amendments to the Waqf Act in India mark a pivotal shift in the administration and regulation of waqf properties, which have historically served religious, educational, and charitable purposes within the Muslim community. This paper explores the key changes introduced by the new Waqf Amendment, examining their legal, social, and administrative implications. The amendment aims to enhance transparency through mandatory digitization of waqf records, streamline dispute resolution mechanisms, and strengthen safeguards against unauthorized occupation and misuse of waqf land. While these changes are intended to modernize the waqf management system and protect community assets, they have also sparked debates about increased central oversight and reduced autonomy of local waqf boards. Critics argue that the amendments may lead to bureaucratic overreach and undermine the community-driven spirit of waqf. By analyzing statutory provisions, judicial interpretations, and stakeholder responses, this research evaluates whether the amendment fosters better governance or introduces new challenges. The paper further reflects on the broader implications for minority rights, property law, and secular governance in India. It concludes by offering policy suggestions aimed at achieving a more accountable, participatory, and equitable waqf administration framework in line with constitutional values and community interests.

**KEYWORDS:** Waqf, Mutawalli, Dedication of property, Declaration by usage, Donor, Waqf Council, Waqf Tribunal, The Waqf (Amendment) Act, 2025.

## 1. INTRODUCTION

Any property whether movable or immovable donated for religious or charitable purposes in the name of god, becomes a waqf. And once a property is donated it cannot be taken back by the transferor because it is said that once a waqf is always a waqf. The property per se which is transferred is considered as 'waqf' and the institution which takes care of it is called 'waqf board'. These waqf boards appoint caretaker/manager generally known as 'mutawalli'<sup>1</sup>, who manages and administer these religious and charitable endowments. The mutawalli appointed for waqfs cannot sell or transfer these properties, their job is only limited to make best use of waqfs so that income can be generated which can be best used for religious or charitable purposes, a share limited to 7% of this income must go to the concerned waqf board where such waqf is registered. In India, there are 32 waqf boards<sup>2</sup> across different states and union territories.

## 2. OBJECTIVES OF THE STUDY

1. To explore the historical evolution and significance of waqf in India, and understand the need for legislative reforms in the context of contemporary legal and administrative challenges.
2. To assess the scope and intent of the recent Waqf Amendment Act, particularly in relation to transparency, accountability, and the protection of waqf properties from encroachment and misuse.

## 3. RESEARCH METHODOLOGY

The research methodology employed in this study is doctrinal, focusing on an in-depth analysis of existing legal frameworks, statutes, case laws, and scholarly literature related to prostitution and women trafficking in India. Doctrinal research primarily involves a comprehensive review of legal texts, judicial pronouncements, and academic writings to understand the current state of law and its implications for the members of the muslim community and other persons affected by the Act.

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<sup>1</sup> The waqf act,1995, [https://www.indiacode.nic.in/bitstream/123456789/15941/1/the\\_waqf\\_act%2C\\_1995.pdf](https://www.indiacode.nic.in/bitstream/123456789/15941/1/the_waqf_act%2C_1995.pdf)

<sup>2</sup> Gurbir singh, Waqf Bill: Principles or property play, *The new Indian Express*, 05 april 2025, available at <https://www.newindianexpress.com/business/2025/Apr/05/waqf-bill-principles-or-property-play>

## 4. DEVELOPMENTS OF WAQF ACT IN INDIA

The government's initiative to transform waqf act is not new. Several instances of modifications by way of an amendment is made by the previous governments also, such as waqf act of 1995 and waqf amendment act of 2013. The waqf amendment act of 2013 is primarily based upon the recommendations of Sachar committee report<sup>3</sup> of 2006 which reveals some shocking data in its report. This report shows that there are 4.9 lakh registered waqf properties presently with the different waqf boards of india, and their total area span is of 6 lakh acre across India while maximum number of properties are present in the state of West Bengal and Uttar Pradesh. Another shocking fact which this report shows that is the market value of these properties which revolves around 1.2 lakh crore rupees while their book value in the books of waqf boards is shown as only 6000 crore whose annual income is shown as only 163 crore rupees which is merely 2.7% of its value.

## 5. WAQF AMENDMENT ACT 2025

The waqf amendment bill of 2024 is introduced in Lok Sabha in the year 2024 but it was sent to Joint Parliamentary Committee (JPC). The joint parliamentary committee gave 25 recommendations after receiving responses from various stake holders, public and legal experts. This bill also encompasses the recommendations given by Sachar committee report<sup>4</sup> which were neglected in earlier amendment of 2013 such as women representation, mandatory digitization of records, non muslim professionals in the board and council for better management and stricter implications of rules for accountability. The waqf act of 1995 is now renamed as 'The Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995' by the waqf amendment act of 2025.

### 5.1 Controversial aspects of waqf act 1995

**Donor** – In the act of 1995, any person whether muslim or non- muslim can give his or her property as waqf to the board but this is no longer the case in the new act<sup>5</sup> which now restricts the transfer of a property can be made only by a muslim who has been following islam from past 5 years. No person of any other religion can declare his property as waqf.

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<sup>3</sup> Sachar committee report, "Social, economic and educational status of the muslim community of India" (prime minister's high level committee, 2006)

<sup>4</sup> Sachar committee report, "Social, economic and educational status of the muslim community of India" (prime minister's high level committee, 2006)

<sup>5</sup> The Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 <https://www.indiacode.nic.in/bitstream/123456789/1984/1/1995-43.pdf>

**Dedication of property-** The most controversial aspect of waqf is the declaration of any property as waqf which many times leads to conflict between personal rights and religious rights because to ascertain any property as waqf it does not requires any formal proof of declaration as waqf even though it does not require any written document to prove such property as waqf. If a property is used for prayer, mosque or any other religious purpose for a long time, it will become ‘waqf’ -waqf by usage. But this controversy has been addressed by the new amendment act which removes any dedication of property as waqf by mere declaration on the basis of its usage.

**Government properties-** Recent reports shows that in India there are about 5973 government properties<sup>6</sup> which are claimed as ‘waqf’ and registered as such in 25 out of 32 waqf boards in India. This type of implied declaration of public properties hamper development and public infrastructure. The amendment act of 2025 mandates the official declaration of any government property as ‘waqf’ property. This declaration can only be made once the district collector ascertains it by checking the ownership details of such property and if no legitimate proof is found as showing such property as ‘waqf’, then the revenue records will be updated and such property be released from waqf boards.

**Declaration of waqf property-** A survey commissioner is appointed who surveys the prescribed area and submits his report showing various properties which should be considered as waqf property to the state government and state waqf boards. The state government on the basis of the report of survey commissioner notifies in its official gazette such properties ‘to be declared as waqf’. After the lapse of one year from the declaration in official gazettee these properties are considered as waqf if they are not disputed during this time, irrespective of the fact that whether its true owner has the notice of such declaration or not. The amendment act<sup>7</sup> of 2025 replaces the ‘survey commissioner’ by ‘district collector’ as he was not a state authority and with a view that district collector will make better management of land records.

**Limitation period-** Almost all the laws in India are governed by limitation act of 1963 but

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<sup>6</sup> Santosh Kumar/ Ritu Kataria/ Kritika Rane, The Waqf (Amendment) Bill, 2025 Explained, *press information bureau*, 03 april 2025, available at <https://www.pib.gov.in/FaqDetails.aspx?NoteId=154100&ModuleId=4#:~:text=As%20of%20September%2024%2C%20data,the%20Education%20Department%20in%20Patiala.>

<sup>7</sup> THE WAQF (AMENDMENT) BILL, 2025  
<https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/1743763149.pdf>

waqf act by pervue of section 107 precludes itself from the application of limitation act. The limitation act, 1963 provides a time period of 12 years and 30 years for private property and government property respectively during which a suit can be filed against the trespasser upon such property. According to waqf act 1995, there is no limitation of years during which a waqf board can file a claim against any person for declaring such property as a waqf, even if such person is in possession from last 100 years but on the other hand a person has only time duration of 1 year from the date of declaring such property as waqf in the official gazette to dispute its title. The amendment act<sup>8</sup> of 2025 dissolves the power given by section 107 and applies the limitation act on all the institutions designated in the waqf act which ultimately binds the waqf board and removes the one year deadline available to the aggrieved person.

**Waqf Alal Aulad-** The property of a muslim dying without a legal heir becomes ‘waqf’ which will be used for religious and charitable purposes. The waqf act of 1995 only considers male child as an legal heir of a muslim and only he can prevent the property of a intestate muslim from going into waqf. But the amendment act of 2025 after considering the recommendations of Sachar committee report acknowledged the rights of muslim women and added various provisions which prescribes that no property of a muslim will go to ‘waqf’ even if he/she has only married woman or girl child as his/her heir. These provisions are inserted to provide equal rights and equal shares to the women of muslim religion.

**Decision of Waqf Tribunal-** Any dispute related to the declaration of property as waqf property are decided by Waqf Tribunal. The decision of Waqf Tribunal is final and no appeal can be made against it except on some limited grounds such as technical error, legal or constitutional matter to the Supreme Court or the High Court. These tribunals have one muslim law expert in their panel who decides matter according to the Islamic law. The amendment act<sup>9</sup> of 2025 provides new scope of judicial support in the matters related to title disputes of the waqf properties, by providing a 90 days time to appeal against any decision of Waqf Tribunal to the High Court. Also the decision of District Collector declaring the waqf property as government property can be challenged in the Waqf Tribunal, against whom an appeal lies to the High Court.

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<sup>8</sup> THE WAQF (AMENDMENT) BILL, 2025  
<https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/1743763149.pdf>  
<sup>9</sup> *Ibid*

## **6. CONSTITUTION OF VARIOUS INSTITUTIONS UNDER WAQF ACT**

**WAQF BOARD-** Earlier waqf board have all muslim members but now after the amendment act of 2025 it is mandatory for waqf board to have 2 non-muslim members out of 11 total members in the waqf board. The work area of these non muslim members is only limited to administration of charity related matters and they are not allowed to interfere in religious matters. Another reservation is made for women community of muslim religion by reserving 2 seats for them out of the total seats of 11 members of waqf board.

**WAQF COUNCIL-** Earlier Waqf council have 22 members all belonging to muslim community but the amendment act of 2025 has made for them mandatory to appoint 2 non muslim members out of the 22 appointed members. These non muslim members are solely related to administer charity related matters and not to deal in any religious matters, same as prescribed for waqf board. Here also 2 seats are reserved for women<sup>10</sup> members of muslim community. The reservation for women under the amendment act of 2025 is made as per the recommendations of the Sachar committee report.

**WAQF TRIBUNAL-** All disputes related to title of waqf properties is primarily decided by Waqf Tribunal whose decision is nevertheless final. The tribunal decisions are based on the interpretation of Islamic law made by the muslim law expert in their panel. The amendment act of 2025 replaces the seat of muslim law expert with a more constitutional law expert person who will give decisions on the interpretation of the principles of the natural justice as enshrined in the constitution and not according to the Islamic law. The new act prescribes that any current or former district judge<sup>11</sup> or any current or former Joint Secretary to State Government is qualified to be appointed as Chairman of the Waqf Tribunal.

## **7. IS WAQF ACT AN RELIGIOUS ISSUE OR PROPERTY ISSUE?**

The Waqf Act deals with the permanent donation of a property by a muslim in the name of god for religious and charitable purposes. The property per se i.e. 'Waqf' is more or less a religious issue. But the various facets related with these 'waqfs' such as registration of waqf properties, disputes regarding title of waqf properties, management of waqf properties, these are some issues which falls under the pretext of property issues. That's why Waqf act is an act which

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<sup>10</sup> The Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995  
<https://www.indiacode.nic.in/bitstream/123456789/1984/1/1995-43.pdf>

<sup>11</sup> *Ibid*

precisely deals with the property issues while on the same time safeguarding the fundamental right of a person to practice and profess his religion.

## **8. IS WAQF AMENDMENT ACT 2025 A FIRST ACT WHICH INTERFERES WITH RELIGIOUS AUTONOMY?**

There has to be some correlation between enjoyment of person's fundamental right and the state's right to curb this freedom. A state should not arbitrarily hampers any person's right to profess and practice his religion but the utmost priority should always be kept in mind i.e. the public interest and if need arises then state must interfere to protect it. This is not the first time the government has interfered in the the religious matters of any community some notable mentions are Srivenkatewara Temple, or Tirupati Temple which are managed by Tirumala Tirupati Devasthanams<sup>12</sup>, an independent government trust managed by government of Andhra Pradesh.

## **9. CONCLUSION**

The Waqf Amendment Act 2025 though it interferes largely to the extent of religious autonomy of muslim community in dealing with their matters related to succession but at the same time it also provides safeguards to the aggrieved persons whose property has earlier been declared by waqf mere as a dedication by usage. Also the new act tries to showcase women empowerment by allowing them to become a member of the Waqf Board and Waqf Council so that they should have an equal say as of men in the matters related to their community. The better management of waqf properties will ultimately leads to higher income which can be used to uplift the backward and needy members of their community.

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<sup>12</sup> Tirumala Tirupati Devasthanams <https://www.tirumala.org/TTD%20Trust%20Board.aspx>