REFORMING FAITH OR REGULATING RELIGION? THE CONSTITUTIONAL STORM AROUND THE WAQF (AMENDMENT) ACT, 2025

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INTRODUCTION: THE SACRED-SECULAR DIVIDE: ARTICLE 25-26 JURISPRUDENCE ON RELIGIOUS REGULATION

The principle of secularism forms an integral component of the Constitution's basic structure and embodies respect for all faiths. Religion constitutes a matter of personal belief , which need not be confined to theistic traditions alone[1]. While religious freedom and tolerance are constitutionally protected, the secular functioning of the State operates within a separate and exclusive sphere. The Constitution neither recognises nor permits the amalgamation of religious authority with State power, mandating a clear separation between the two domains. Moreover, since the Constitution mandates secular conduct in both thought and practice from the State, this constitutional obligation extends equally to political parties operating within the constitutional framework[2]. The Indian Constitution guarantees the Right to Freedom of Religion through Articles 25-28, which secure for citizens the liberty to believe in, practice, and propagate any religion of their choice. This right, however, remains subject to reasonable restrictions pertaining to public order, morality, and health. Additionally, the Constitution empowers the State to regulate the non-religious or secular activities of religious institutions through the provisions contained in Article 25(2)(a) and Article 26(d).

Article 25(1) guarantees every person, not merely Indian citizens, the freedom of conscience and the right to freely profess, practice, and propagate religion. The term "profess" signifies the right to openly and freely declare one's religious faith[3]. The right to "practice" encompasses performing acts in pursuance of religious beliefs, which are as fundamental to religion as doctrinal faith itself[4]. This protection extends to rituals, observances, ceremonies, and modes

[1] Sarika v. Shri Mahakaleshwar Mandir Committee, (2018) 17 SCC 112.
[2] Abhiram Singh v. C.D. Commachen, (2017) 2 SCC 629.
[3] Punjabrao v. D.P. Meshram, AIR 1965 SC 1179
[4] Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388

of worship that form the integral and essential components of a religion. The determination of what constitutes an essential and integral part of any religion or religious practice lies within the judicial domain, to be ascertained by courts through examination of that religion's specific doctrines and practices recognized by the religious community as integral to their faith[5].

Although the right to practice religion is constitutionally protected subject to limitations of public order, health, and morality, this protection does not extend to activities that are economic, commercial, or political in nature, even when associated with religious practice[6]. Distinguishing between essential religious practices and secular activities linked to religion may present interpretative challenges. The Court in *Mohd. Hanif Quareshi v. State of Bihar*[7]*;* elucidated this principle under Article 25(2)(a). The Court examined whether prohibiting cow slaughter violated the religious freedom of Mohammedans, petitioner contended that sacrificing cows on Bakrid was mandated by the Quran and constituted an essential religious practice. Upon reviewing the evidence, the Court determined that this practice was not an integral part of the Mohammedans faith and could therefore be regulated under Article 25(2)(a).[8]

Article 26 guarantees every religious denomination or section thereof the right to establish and maintain institutions for religious and charitable purposes and to manage its own religious affairs. Such denominations are further entitled to acquire, own, and administer both movable and immovable properties in accordance with law[9]. Clauses (c) and (d) of Article 26 establish a crucial distinction: while the right to manage religious affairs constitutes a fundamental right subject only to public order, morality, and health which no legislature can abrogate, whereas, the right to administer property is subject to legislative regulation. Consequently, matters concerning property administration of religious institutions are secular in nature and fall outside the protection of Article 26(b)[10]. The *Jagannath Temple Act, 1954* exemplifies this principle, as it addressed secular property administration and was held constitutionally valid[11].

Legislation regulating the property administration of a particular religion or denomination

[5] Tilkayat Sri Govindlalji Maharaj v. State of Rajasthan, AIR 1963 SC 1638
[6] V.N. Shukla, Constitution of India (12th Edition, 2013)
[7] Mohd. Hanif Quareshi v. State of Bihar; AIR 1958 SC 731
[8] IBID
[9] V.N. Shukla, Constitution of India (12th Edition, 2013)
[10] Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt; AIR 1954 SC 282
[11] Bira Kishore Deb v. State of Orissa, AIR 1964 SC 1501

cannot be invalidated merely on grounds that it applies exclusively to one religion and not others. While uniformity in such legislation is desirable, given India's diverse religious landscape with varying regulatory frameworks, such uniformity can only be achieved gradually through consensus-building processes[12].

The constitutional framework establishes a delicate equilibrium: while Article 25 protects religious freedom and Article 26 safeguards denominational autonomy in religious matters, the State retains regulatory authority over secular and administrative aspects of religious institutions. This distinction between the sacred and the secular becomes critical when examining legislative interventions in religious endowments. The fundamental question is whether such regulation constitutes legitimate administrative reform within constitutional bounds or an impermissible intrusion into the protected domain of religious denomination. This led to the central issue of this topic "**Does the Waqf (Amendment) Act, 2025[13] represent legitimate administrative reform, or impermissible denominational displacement?**"

This essay examines whether the Act survives constitutional scrutiny under Articles 15, 19, 21, 25, 26, 29, 30 and 300A of the Constitution., the basic structure doctrine. In *Re: Waqf Amendment Act, 2025(1)*[14]; the Supreme Court identified the primary constitutional challenge to amendments introduced in Sections 3(r), 3C, 3D, 3E, 9, 14, 23, 36, 104, 107, 108, and 108A of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 (Hereinafter referred to as the "Amended Waqf Act"). The most contentious provisions are Sections 4(ix)(a), 4(ix)(b), 5, 10, 12, 16, 21, 43, 44, and 45, which substantially amended the Waqf Act, 1995 (Hereinafter referred to as the "Original Waqf Act").

STANDARD OF JUDICIAL REVIEW: PRESUMPTION OF CONSTITUTIONALITY AND THE WAQF AMENDMENT CHALLENGE

Before determining whether the Waqf (Amendment) Act, 2025 constitutes legitimate secular regulation or impermissible denominational displacement, the applicable standard of judicial review must be established. The Supreme Court in *In Re: Waqf Amendment Act, 2025*[15]

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[12] Pannalal Bansilal Pitti v. State of A.P. ; (1996) 2 SCC 498
[13] The Waqf (Amendment) Act, 2025, (Parliament of India), enacted (5 April 2025), commenced (8 April 2025), amending The Waqf Act, 1995
[14] Re: Waqf Amendment Act, 2025(1); WRIT PETITION (CIVIL) NO. 276 OF 2025
[15] Ibid

anchored its analysis on two foundational principles:

a) The narrow scope for granting interim relief against legislation.

b) The strong presumption favouring the constitutionality of enactments[16]

The Court emphasized that staying statutory provisions is an exceptional measure. Such relief may be granted only in rare cases where petitioners demonstrate, at the threshold:

a) Legislative incompetence to enact the law, or

b) Provisions that are *ex facie* violative of Part III or constitutional principles, or

c) Manifest arbitrariness in the legislative scheme

This caution becomes particularly significant when Parliament legislates in constitutionally sensitive areas involving religious endowments, minority rights, and property. The Court thus frames judicial review not as a routine veto power, but as a carefully constrained constitutional function demanding initial deference to democratic deliberation. The Court restates the presumption of constitutionality through the classic decisions in *Charanjit Lal Chowdhury v. Union of India*[17]*, State of Bombay v. F.N. Balsara*[18] *and Shri Ram Krishna Dalmia v. Tendolkar*[19]*;* articulated the following doctrinal framework:

a) **Burden of Proof:** Every law is presumed constitutional; challengers bear the burden of demonstrating "clear transgression" of constitutional limitations[20]

b) **Legislative Wisdom:** The legislature is presumed to understand and appreciate the needs of its people, with legislation directed toward problems manifested by experience[21]

c) **Classification Doctrine:** Apparent differentiations are presumed based on adequate grounds. Article 14 does not mandate universal application; the State may classify

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16 Ibid

17 Charanjit Lal Chowdhury v. Union of India; (1950) SCC 833

18 State of Bombay v. F.N. Balsara; [1951] SCR 682

19 Shri Ram Krishna Dalmia v. Tendolkar; 1958 SCC OnLine SC 6

20 Supra note 16, 17, 18 at 4

21 Ibid

persons, properties, or institutions if:

- There exists an intelligible differentia, and
- A rational nexus connects the classification to the law's objective[22]

a) **Tolerable Inequality:** Some degree of inequality is inevitable and constitutionally permissible provided it is not invidious[23]

b) **Special Classification:** Even legislation applying to a single individual or class may be constitutional if special circumstances justify treating that entity as a distinct category[24]

Having established this categorical framework, the critical question becomes **whether that the Waqf (Amendment) Act, 2025 suffers from any of the three fatal defects that would overcome the presumption of constitutionality: namely, that Parliament lacked legislative competence to enact these amendments, or that the provisions manifestly violate Part III fundamental rights or constitutional principles, or that they are patently arbitrary.** This threshold inquiry determines whether the Act survives preliminary scrutiny before engaging in detailed constitutional analysis of its specific provisions.

I. LEGISLATIVE HISTORY OF WAQF ENACTMENTS

The regulation of waqf properties in India has evolved through a series of legislative measures aimed at addressing persistent problems of mismanagement, concealment, and misuse of religious endowments.

The Mussalman Wakf Act, 1923 was the first statutory attempt to regulate waqfs. Its Statement of Objects and Reasons clearly recorded widespread misuse and misappropriation of waqf properties by unfit and unscrupulous mutawallis. Waqfs were often treated as private property or used as devices to defeat creditors under the guise of religious dedication. To curb this, the Act introduced compulsory registration, disclosure of particulars, audits, verification, and penalties, along with oversight by responsible officers[25].

[22] Ibid
[23] Ibid
[24] Ibid
[25] Mussalman Wakf Act, 1923*,* Act No. 42 of 1923 (5th August 1923)

The Bengal Wakf Act, 1934 marked a significant development by expressly recognising the concept of "Waqf by User", acknowledging long-standing religious use of property as sufficient to constitute a waqf even without a formal deed.[26]

After independence, Parliament enacted **The Wakf Act, 1954**, which expanded State supervision over waqf administration. It provided for surveys of waqf properties, publication of waqf lists, mandatory registration, maintenance of registers, adjudication of disputes by civil courts, and penalties for non-compliance. The Act empowered Wakf Commissioners and Boards to inquire into properties suspected to be waqf and to ensure proper registration and administration[27].

Despite these measures, widespread non-registration and concealment of waqfs continued. This led to the appointment of **The Wakf Enquiry Committee (1976),** which identified deliberate evasion of registration as a deep-rooted problem. The Committee recommended stringent measures, including imprisonment and barring unregistered waqfs from accessing courts. These recommendations were incorporated into the **Wakf (Amendment) Act, 1984**[28], though the amendment was never brought into force due to strong opposition.

After extensive consultations with Muslim community leaders, Parliament enacted **The Wakf Act, 1995**, consolidating accepted provisions of earlier laws. The Act continued to recognise **Waqf by User**, strengthened registration requirements, empowered Wakf Boards to survey, inquire, maintain records, resolve disputes, and imposed penalties for concealment and mismanagement[29]. It also barred legal proceedings on behalf of unregistered waqfs, though this bar was later removed by **The Wakf (Amendment) Act, 2013**[30].

II. REDEFINING "WAQF": THE REQUIREMENT OF PRACTICING ISLAM AND OWNERSHIP (SECTION 3(R))

Petitioners contested the amendment to Section 3(r), which redefined "waqf" by imposing two conditions: the dedicator must have practiced Islam for at least five years and must possess

[26] Bengal Wakf Act, 1934, Bengal Act XIII of 1934 (enacted 1934)
[27] Wakf Act, 1954, Act No. 29 of 1954 (enacted by Parliament of India)
[28] Wakf (Amendment) Act, 1984, Act No. 3 of 1984 (enacted to amend the Wakf Act, 1954)
[29] Waqf Act, 1995, Act No. 43 of 1995 (enacted 22nd November 1995; extended w.e.f 1st January 1996)
[30] The Wakf (Amendment) Act, 2013, Act No. 27 of 2013 (20th September 2013)

legal ownership of the property being dedicated.

The Court preliminarily rejected the arbitrariness challenge. Examining legislative history dating back to 1923, the Bench observed that waqf declarations were frequently exploited as strategic mechanisms by individuals adopting Islam primarily to evade debts or legal liabilities. Consequently, requiring genuine religious affiliation demonstrates a rational nexus with the Act's objectives. Regarding the ownership requirement, the Court noted that Islamic jurisprudence (referencing Mulla's Principles and Quranic injunctions) mandates that charitable endowments must emanate from one's lawful property; dedicating government or third-party land contradicts fundamental Islamic principles of charity.

Notwithstanding the principle's constitutional validity, the Court stayed the "five-year practice" requirement. The rationale was procedural rather than substantive: presently, no regulatory mechanism exists to verify or determine whether an individual has practiced Islam for the stipulated period. Until the Central Government formulates specific rules pursuant to Section 109, this provision remains unenforceable[31].

III. ABOLITION OF "WAQF BY USER" (SECTION 3(R)(I))

The Act eliminated recognition of "Waqf by User"; a doctrine whereby property acquired waqf status through prolonged religious usage absent formal documentation or deed of dedication.

The Court declined to grant interim relief against this deletion. It reasoned that Mutawallis (waqf administrators) had over a century from 1923 onwards under successive legislative frameworks to formalize registration of their properties. Their failure to register cannot now constitute grounds for claiming prejudice. The Bench further highlighted systematic misuse of the "Waqf by User" doctrine to unlawfully encroach upon extensive government lands, as evidenced in the Andhra Pradesh Waqf Board litigation.

The Court denied interim relief, clarifying that the amendment operates prospectively. While existing vested rights remain protected from retrospective extinguishment, future claims premised solely on usage without supporting documentation are barred to prevent encroachment and fraudulent appropriation of public property[32].

[31] Re: Waqf Amendment Act, 2025(1); WRIT PETITION (CIVIL) NO. 276 OF 2025
[32] Ibid

IV. ADJUDICATION OF GOVERNMENT PROPERTY DISPUTES (SECTION 3C)

Section 3C empowered a Collector-level revenue officer to determine whether property identified as waqf constitutes government land and to unilaterally effectuate corrections in revenue records.

The Court undertook a nuanced severability analysis. It acknowledged the Government's legitimate interest, as trustee of public property, in identifying state-owned lands (Section 3C(1) & (2)). However, the Court identified a constitutional infirmity: determination of property title constitutes an inherently judicial function protected by the separation of powers doctrine. Vesting a Revenue Officer with authority to conclusively adjudicate title and modify records circumvents the statutory Waqf Tribunal, violating judicial supremacy in adjudicatory matters.

Interim Disposition: Partial relief granted with calibrated directions:

- The preliminary inquiry by the Collector under Section 3C(1) & (2) is permitted to proceed
- Section 3C(3) and (4), which authorize the Collector to finalize title determination and implement revenue record corrections, were stayed as constitutionally impermissible
- The proviso to Section 3C(2), which suspended waqf status pending the Collector's report, was stayed as manifestly arbitrary
- Final title adjudication must remain with the Waqf Tribunal, a judicial body exercising quasi-judicial functions, not executive authorities[33]

V. INCLUSION OF NON-MUSLIMS IN THE COUNCIL AND BOARD (SECTIONS 9 & 14)

Petitioners contended that permitting non-Muslim representation in the Central Waqf Council and State Waqf Boards constitutes impermissible interference with religious autonomy and denominational self-governance.

[33] Ibid

The Court observed that the Council and Boards discharge predominantly secular, administrative, and supervisory functions rather than purely religious or theological responsibilities. The Solicitor General provided categorical assurance that non-Muslim membership would be structurally limited: maximum four members in the Central Council and three members in State Boards, ensuring they remain a numerical minority incapable of dominating decision-making.

Interim relief denied. The Court declined to stay these provisions subject to the express direction that non-Muslim representation must strictly conform to the numerical caps articulated by the Solicitor General (maximum 4 out of 22 in the Council; maximum 3 out of 11 in State Boards).[34]

VI. PROTECTION OF ANCIENT MONUMENTS AND TRIBAL LANDS (SECTIONS 3D & 3E)

The Act statutorily declares that properties notified as protected monuments and lands situated within Scheduled Tribes areas (Fifth and Sixth Schedule regions) cannot be designated as waqf.

The Court noted that the Ancient Monuments and Archaeological Sites and Remains Act already accommodate continuation of customary religious practices. The statutory bar prevents jurisdictional conflict and dual administrative control between the Archaeological Survey of India and Waqf Boards.

The Court emphasized that Scheduled Tribes constitute constitutionally recognized vulnerable communities warranting special protection. The provision safeguards tribal populations from potential exploitation, cultural displacement, and alienation of ancestral lands objectives aligned with constitutional priorities under Articles 15(4), 46, and the Fifth/Sixth Schedule protections.

Interim relief denied for both provisions, recognizing their constitutional legitimacy in protecting cultural heritage and vulnerable communities.[35]

[34] Ibid
[35] Ibid

VII. MANDATORY REGISTRATION AND APPLICATION OF LIMITATION ACT (SECTIONS 36 & 107)

The Act mandates compulsory registration of all waqf properties within six months and extends the Limitation Act, 1963 to waqf property disputes.

The Court found no constitutional infirmity in mandatory registration, observing it establishes parity between waqf endowments and other public charitable trusts subject to registration requirements. Similarly, applying the Limitation Act eliminates a special exemption previously enjoyed by waqf properties, ensuring equality in adjudication of property disputes and preventing indefinite claims that could destabilize settled expectations.

Interim relief denied for both provisions, validating legislative efforts to bring waqf administration within mainstream legal frameworks[36]

CONCLUSION

The constitutional debate surrounding the **Waqf (Amendment) Act, 2025** does not end in a rigid choice between “reforming faith” and “regulating religion.” Instead, it reflects a careful effort to regulate the *secular administration* of religious endowments while leaving matters of belief untouched. When viewed through the Supreme Court’s interim order, the Act largely survives constitutional scrutiny and cannot be seen as displacing religious autonomy. Rather, it emerges as a legitimate attempt at administrative reform, though subject to important judicial limitations.

Certain amendments respond to documented ground realities. The ownership requirement before waqf dedication finds support in Islamic jurisprudence itself. Charity must emanate from lawful property. The widespread misuse of "Waqf by User" for unauthorized occupation of public lands, as evidenced in multiple state investigations, validates legislative concern. The abolition operates prospectively while protecting vested rights, offering a reasonable balance.

Mandatory registration and application of the Limitation Act establish parity with other charitable trusts. Religious endowments serving public purposes ought to operate within common accountability frameworks. Protection of ancient monuments prevents jurisdictional

[36] Ibid

confusion, while safeguards for tribal lands operationalize constitutional commitments to vulnerable communities under Articles 15(4), 46, and the Fifth and Sixth Schedules.

The five-year practice requirement presents formidable difficulties. No objective mechanism exists to verify religious practice; a domain of private belief and personal conviction resistant to state surveillance. Any implementing mechanism risks transforming religious identity into an administrative credential subject to governmental verification, fundamentally at odds with Article 25(1)'s guarantee of freedom of conscience.

Section 3C's framework vesting Revenue Officers with authority to determine title and modify records bypasses judicial adjudication. Property disputes require judicial determination, not executive fiat. While the Court permitted preliminary inquiry, practical implementation may prove problematic; administrative inquiries generate momentum that influences subsequent judicial proceedings.

The inclusion of non-Muslim members in Waqf Councils and Boards raises sensitive constitutional questions. Article 26 guarantees denominations the right to manage their own affairs. While these bodies discharge administrative functions, decisions regarding property allocation and institutional priorities inevitably reflect denominational values and religious preferences. The presence of external members even as numerical minorities in bodies created specifically for Muslim endowment administration tests the boundaries of permissible state intervention.

The rationale of administrative expertise and transparency applies equally to Hindu temples, Christian churches, and Sikh gurudwaras. Yet no comparable legislative intervention has mandated external representation in other religious institutions. This differential treatment, absent compelling justification, potentially violates both Article 14's equality guarantee and Article 26's protection of denominational autonomy. Community perception matters arrangements perceived as externally imposed may undermine voluntary compliance and institutional legitimacy.

The Act's validity depends on respecting the distinction between secular property administration and denominational autonomy in religious affairs. Constitutional analysis must engage practical realities—effective administration requires community confidence and voluntary compliance. Reforms perceived as discriminatory or disrespectful risk generating resistance that frustrates the very objectives of transparency and efficiency.

The ultimate test lies in practical efficacy: whether the framework actually enhances accountability, prevents misappropriation, and serves the beneficiaries these endowments were created to support. Legislation may survive judicial scrutiny yet fail to command community acceptance, proving legally valid but practically ineffective.

Resolution requires continued judicial vigilance, measured implementation, good faith engagement by religious communities, and willingness by all stakeholders to distinguish legitimate reform from impermissible intrusion. The Constitution protects both state interest in accountable administration and denominational autonomy in religious self-governance. The Act's constitutional legitimacy depends on maintaining fidelity to both principles rather than privileging one at the expense of the other.

Administrative efficiency cannot justify erosion of the autonomy that enables religious communities to flourish as distinct and self-governing entities within the constitutional order. Whether the Waqf (Amendment) Act, 2025 successfully navigates this challenge remains to be determined through implementation, judicial scrutiny, and ultimate acceptance or resistance by the community it seeks to govern.