
WAQF AND PROPERTY RIGHTS: STRIKING A BALANCE BETWEEN REFORM AND RELIGIOUS TRADITION

T Saroja Devi, Research Scholar, VELS Institute of Science, Technology & Advanced Studies (VISTAS)

Dr. A Suganthini, Research Supervisor, VELS Institute of Science, Technology & Advanced Studies (VISTAS)

ABSTRACT

One of India's largest landlords is the Waqf Boards, dedicated exclusively for religious purposes under the Islamic law. The transfer of the property is irrevocable once the ownership has been transferred to the Waqf. Management is by a Mutawalli, appointed by the competent authority or waqif. The purpose of making the waqf property can be used for the specific reason, the person not only giving the property for the mosque or religious charitable trust but also for the other purposes like supporting the poor and needy, maintaining the other religious institution, providing education or funding other charitable causes.

A big issue in Tamil Nadu recently was the land of the farmer with his family for years amounting to some 400 acres, belonging for Hindu generations. When the farmer was about to sell the land, the local registrar's office told the farmer to get permission from the Waqf Board. Once the property is owned by waqf, the person cannot claim through the civil courts so where is the remedy for this?.

Waqf amendment Bill 2024, the Government aim for this is that the to protect Women's Right, to reduce litigation, to update the modernise management of Waqf properties, to give the judicial oversight in decisions made by tribunal, to ensure fair representation in the Central Waqf Council and Waqf Boards and towards the proper coordination with the revenue department. In this paper, the main view is about the origin of the Waqf Board before the amendment and other amendments, the Tamil Nadu village controversy issue, and the pros and cons of the Waqf Amendment Bill 2024.

Keywords: Waqf, Origin, Property Rights Issues, Amendments, Constitutionally, Waqf Bill 2024

Origin and History:

The term “waqf” means profit towards Religious or Charitable purposes. When the Waqf property is created it will be tied up and non-transferable forever, so therefore the property becomes indefinite for the intact period. The origin is from the tradition of the prophet in the muslim law. A piece of land was dedicated from the prophet that he acquired in the canton of Khaibar for the use of travellers. First incident narrated by the Bukhari provided expressly by the prophet to the waqf, declared as” Tie up the property and devote the usufruct to human beings and it is not to be sold, or made the subject of gift or inheritance”. For making the property the muslim Jurists made the theory of transferring the ownership of property in the name of God, so that no person has authority to transfer this property after giving the ownership to God. Accordingly the waqf continued in existence for many centuries, as the matter of fact became important to the muslim society. All over the world among the muslims there is the strong desire through pious and charitable deeds, there are numerous properties that have been constituted by the waqfs. In the Arab countries the entire economic life is affected by these waqfs, however it is not of the personal law in these countries. But in India, the law relating to waqfs is an integral part of the muslim personal law.¹

In India, the first waqf was found in the early days of the Delhi Sultanate when sultan Muizzuddin Sam Ghaor dedicated the two villages in favour the Jama Masjid of Multan and handed its administration to Shaikhul Islam. During their period, the number of Waqf properties started to increase after the Delhi Sultanate and later Islamic dynasties began to bloom in India. In the late 19th century there was a case made for the abolition of waqfs in India. The four British Judges in the privy Council of London, heard up the case and mentioned the Waqf as a “perpetuity of the worst and the most pernicious kind” and declared waqf to be invalid.

In order to save the Waqf Act, in India during the year 1913 the British enacted the Mussalman Waqf Validating Act of 1913. After the Independence in 1947 in the partition of India and Pakistan , some of the Islamic people wanted to move their place from India towards Pakistan and Hindu people wanted to move their residence from Pakistan to India, an agreement got signed with regard to this called the Nehru-Liaquat Agreement. This agreement is for the people leaving the land from both the countries should give their properties to the

¹ Ameer Ali, I & ed.III *Mohammedan Law*, P.no.125

people of that place who are belonging to their respective Religions. “No one will touch the land of Muslim who left India” words by Jawaharlal Nehru, and the Islamic properties in India was given to the Waqf Board by the enactment of the Waqf Act 1954 and successfully came in process by Pandit Jawaharlal Nehru. But the Hindus properties were encroached by the Pakistan Government.

In 1995, repealed the Waqf Act 1954 by the former prime Minister P. V. Narasimha Rao and enacted the Waqf Act 1995, the equal powers given to the Waqf Board towards the Government. Sec 3(r) defines what is waqf as Donation of property - movable or immovable, Donation is charitable or religious under Islamic law, Donation has to be recognized by the muslim law. There is no proper procedure to transfer the property in the waqf act, due to this reason the waqf Board is the top three position owning the properties throughout India. Even without any documentation the property can be transferred to the Waqf Board. Syed Mohammad Salim Labbai V Mohd. Hanifa, the Hon’ble Supreme Court has held that even if there is no actual delivery of possession, the waqf is complete and irrevocable. Where a Mosque for a long time is in existence for prayers and has been offered for that. The court will not interfere, it is by leave and license; the dedication of the property is complete and no longer belongs to the owner. Section 40 of the Waqf Act 1995², once the property transferred to the Waqf Board the property becomes irrevocable. The owner of the property cannot claim back when the property is transferred to God. The Board has any reason that any property of any trust is a waqf property, without any inquiry of the consent person as per the section 40 the Board themselves can make a decision and finalize that the property is the waqf Property. Section 85 of the Waqf Act 1995³, when there is dispute the consent parties cannot move to the Civil Court, instead of that the disputed parties move to the waqf Board, because the property belongs to the God Allah. If the decision by the Board is against the parties after that also they cannot go to the Civil Court but can proceed to the Waqf Tribunal. The Tribunal only contains Islamic persons who make decisions, non Islamic members are not permitted as per the Act. After the Judgment of the Waqf Tribunal, the parties have rights to move to the High Court and Supreme Court.

There was an amendment in Waqf Act 1995 during Dr. manmohan singh period in the year 2013, this amendment gives the unlimited powers, when the property is presumed that it

² The Waqf Act, 1995, (Act No.43 of 1995), s. 40

³ The Waqf Act, 1995, (Act No.43 of 1995), s. 85

belongs to the waqf Board they can directly claim the property. The union of India in a reply by the PIL filed by the Advocate and BJP Ashwini Kumar Upadhyay Challenging the provision of the Waqf Act 1995 has said nearly 120 petitions are pending before the various courts across the country challenging the provisions of the Act. The PIL stated that there are no similar laws for followers of other religions and that it is against the principle of secularism, unity and integrity of the nation.

The main object of the waqf Act is for the betterment of the muslim. By taking the advantages of the Act the waqf Board is under many false claims like the Trichy village⁴ issue and other seven villages as well and still some more are there in India.

Waqf and Mutawalli

Modes that Waqf was created by an act inter vivos, by will, during the death or illness (marz-ul-maul), by immemorial user. Essentials of Waqf are it is a long term contract ensures the ownership of the property as long as needed; it is irrevocability as waqf is regarded to be owned by God and unchangeable when generated; it is Inalienability cannot be sold, transferred or encumbered; it is absoluteness - is settled completely and unconditionally and contingent or conditional Waqf is unenforceable; it is Religious or Charitable use of usufruct assets whether it is good and benefits only be utilized for spiritual, pious or charitable objectives⁵.

Three Kinds of Waqf by the Indian law are waqf by user, Waqf Mushrut-ul Khidmat and Waqf al-al-aulad. Any land or building or any portion of the land has been used permanently for any religious or pious purpose, with the knowledge of the owner, then it is called Waqf by the user. When the Wakifs donated the property for the general benefit of the muslim community. It is a public Waqf, meaning a grant stipulated for rendering services known as Waqf Mushut-ul Khidmat. A Waqf created for the Wakifs family and children known as Waqf-al-al-aulad.⁶

A muslim, who transfers his property for a waqf is known as Waqif. And the person who takes care of the property accordingly towards the objects as per the usufruct management is called Mutawalli. The persons who get benefit under a waqf are known as beneficiaries or

⁴ The Organiser, "Tamil Nadu: Waqf Board takes ownership of the entire Hindu village, NOC from the board required to sell land", *Indian Express*, Sep, 14, 2022.

⁵ Khan, *Property Law in Modern India* (Oxford University Press 2017) p.no. 4

⁶ Ahmedullah Khan, *Commentary on the Law of Waqf* (Asian Law House 2017)

Alaihim. Mutawalli is manager of the Waqf Property. There must be some person who should look after the property dedicated on behalf of God. Mutawalli distributes the benefits of the property as per the direction in the Waqf. The Office of the Mutawalli is similar to that of the trustee, but his powers and duties are different. He has no beneficial interest in the property; his only work is to manage the property in the name of God. The appointment of the Mutawalli by the founder of the waqf, by the executor of the founder, by a Mutawalli on his death-bed, by the Court and by the Congregation. Any person who is of sound mind and has attained the age of majority is qualified to be appointed as a Mutawalli.⁷

Present Issues arising - Encroachment of the property by the waqf Board :

In the Tiruchendur village located at Trichy District where 2000 houses and villagers were residing, one farmer named Rajagopal for his daughter's marriage planned to sell his 1.2 acres of the agricultural land. When the farmer went to the registrar's office for the land registration, he was shocked to know that the land did not belong to him, instead belonged to the Tamil Nadu Waqf Board. When he started to ask more about the issue, the farmer Rajagopal got to know the fact that more than 4000 acres of the land in the village belonged to the Waqf Board. Mr. Rajagopal now as per section 85 of the Waqf Act 1995, cannot move to the Civil Court, instead of he moves to the waqf Board to get NOC, if he cannot succeed then he can move to the Waqf Tribunal, then to the High Court and finally to the Supreme Court. The expenses and years of these proceedings will be more. If at all Mr. Rajagopal skip all these procedures and without getting NOC if he sells the property he will be punished for 2 years imprisonment under section 52A of the Waqf Act 2013. Not only this Trichy District issue along with that in Tamil Nadu the Waqf Board claimed six villagers land.⁸

In order to hand over the property Gurudwara land to Waqf Board in Haryana, there has been a long conflict concerning Haryana Jathlana Village. The Waqf Board petitioned the court in this regard and the court assigned this land to the waqf Board. The court also directed the Gurudwara committee to vacate the land and hand it over to the waqf Board. So in Haryana's Yamunanagar district flocked to the streets to protest court rulings granting the waqf and Possession of a Gurudwara Land. The members of the Gurudwara Committee confirmed that since 1947, there has been a mosque on the property where the Gurudwara is located and a

⁷ *Vidya Varuthi v Balusumi Ayyar*, AIR (1922) PC 123

⁸ The Organiser, "Tamil Nadu: Waqf Board takes ownership of the entire Hindu village, NOC from the board required to sell land", *Indian Express*, Sep, 14, 2022.

claim made by the waqf Board to acquire the property.⁹

In UP Sunni Central Waqf Board Claimed the Kasi Vishwanath Mandir as the Waqf Property, the Kashi Vishwanath Temple and the Mosque Gyanvapi are at the center of a legal dispute arguing with the Mosque's management committee that the disputed property is a waqf property so, jurisdiction is not subject to the Civil Court, whereas the Temple Counsel argues it's not a waqf Property.¹⁰

The Sunni Waqf Board claims Shah Jahan gave them the Taj Mahal, SC demands a transfer deed with his signature. The Sunni Waqf Board is pursuing the legal Battle against the ASI (Archeological Survey of India) for the Ownership of the Monument.¹¹

Waqf Board has written an application to the Gujarat High Court stating a claim on the ownership of two islands in Bet Dwarka in Devbhoomi Dwarka. The Hearing was made by the Court of Justice Sangeeta Vishen, the waqf Committee claiming that the ownership of two islands belongs to the Waqf Board. The Gujarat High Court expressed the view as disapproval by saying that “Are you aware of what you are saying? How can the waqf board claim ownership of land in Krishnanagari? And refused to hear the application.”¹²

So far Amendments in the Waqf Act:

The Waqf Act 1954 - The act has provided a pathway toward the centralisation of waqfs. In 1964 the Government of India under the Waqf Act of 1954 established a statutory body called the Central Waqf Council of India. This central body oversees the work under State Waqf Boards which was established under provisions of section 9(1) of the Waqf Act, 1954.

The Waqf Act, 1995 - made it even more favourable to Muslims in 1995, which made it an overriding law. In India the waqf Act 1995 was enacted to govern the administration of waqf properties. The powers and functions of the Waqf Council, the State Waqf Boards, the

⁹ Up roar over orders to hand over Gurudwara land to Waqf Board in Haryana”, *OpIndia*, (21 October 2022), available at: <https://www.opindia.com/2022/10/21-instances-when-waqf-boards-india-illegally-encroaching-various-properties/> (last visited Nov. 8, 2025).

¹⁰ UP Sunni Waqf Board's claim that the Kashi Vishwanath Mandir is Waqf property — *The Hindu*, 3 November 2024, available at: <https://www.thehindu.com/news/national/up-sunni-waqf-board-claims-kashi-vishwanath-mandir-as-waqf-property/article68675239.ece> (last visited Nov. 8, 2025).

¹¹ Supreme Court demands transfer deed proof from Sunni Waqf Board claiming Shah Jahan gave Taj Mahal, *The Hindu* (5 July 2022) available at: <https://www.thehindu.com/news/national/sc-demands-transfer-deed-proof-from-sunni-waqf-board-claiming-shah-jahan-gave-taj-mahal/article65699275.ece> (last visited Nov. 8, 2025).

¹² “Waqf Board stakes claim on two islands in Bet Dwarka”, *Hindu Jagruti* (27 Dec 2021).

Chief Executive Officer, and also the Duties of the Mutawalli. The Act describes the power and restrictions of a Waqf Tribunal that acts in lieu of a Civil Court under its jurisdiction. The Waqf Tribunals are deemed to be a Civil Court under the Code of Civil Procedure, 1908 all the powers and functions are exercised by the Tribunal. The decision of the Tribunal shall be final and binding on the parties. Under the Civil Court no suit or legal proceedings shall lie and the act leads towards making the Waqf Tribunal decisions above any Civil Court.

In 2013, Some of the provisions of the Act were amended to make Waqf management more efficient and transparent. However, during the course of the act implementation, felt that the act did not prove effective in improving administration of Waqf. On December 8, 2023, the aforesaid Waqf Act, 1955 as amended was tabled in Rajya Sabha as the Waqf Repeal Bill, 2022 for the purpose of aiming a more equitable arrangement and treatment of Bodies and other recognized religious entities.¹³

Necessity of waqf Act 2024 Bill:

On August 8, 2024, two bills, the Waqf (Amendment) Bill, 2024, and the Mussalman Wakf (Repeal) Bill, 2024, were introduced in the Lok Sabha. The objective of the Waqf (Amendment) Bill, 2024 is to amend the Waqf Act, 1995, to set right the challenges and issues in managing and regulating waqf properties; in order to improve the management and administration of waqf properties in India; to increase the role of technology in managing the waqf records; updating the definitions of waqf; improving the registration process; the main aim is to amend the previous act and to enhance the efficiency of waqf Board by renaming the act and to introduce new changes in the Act for the reduction of the huge number of cases over all India.

The primary objective of the Mussalman Waqf (repeal) Bill, 2024 is to repeal the Mussalman Waqf Act, 1923, among the modern India it has to be removed from the outdated and inadequate for managing waqf properties. Thought it is necessary to be amended because the act was enacted during the A colonial-era legislation in 1923. The repeal aims at management and administration of waqf properties under the Waqf Act 1995 by removing the ambiguities and inconsistencies caused by the continued existence of this law. And also aims for uniformity, transparency and accountability.

¹³ Mulla, *Principles of Mohammedan Law*, 18th edn., p. 40.

As per the Bill 2024 Sec 40 is eliminated that is before there was the authority to say that the property belongs to the waqf board but in the Bill it says that the authority is of now towards the district collector after the consultation of them then he will proceed to the state government. In 2024 Bill, the property belonging to the waqf board the court can interpret regarding the issue, and it is not the absolute decision of the waqf board as of the current Act. The women should be given a chance as one of the members in the Waqf Board and other religious members can also be the members. Only the tribunal can take decisions related to the property disputed case but in the Amendment Bill the decision can be taken by the state government. In the bill the waqf Property should be registered before the district collector, this is because to know the transparency of the property details owned by the waqf Board. Revenue law included this because the affected parties can easily approach the court. Land grabbing can be reduced if the 2024 bill is executed as the Amendment to the waqf Act.¹⁴

Constitutional of Waqf Act:

A significant amendment to the Waqf Act of 1995 acts as the Indian legal framework for managing waqf assets. Articles 14, 25 and 26 of the Indian Constitution have faced constitutional challenges, yet the courts have largely upheld the Act as legal. The main objective of the Act to enhance waqf land management and establish standardized practices throughout India has been recognized as a legitimate state aim. Courts have typically determined that it does not violate religious liberties or the rights of faith-based groups to oversee their own matters. The structure of waqf Boards, intended to guarantee diverse representation, is viewed as a democratic method for managing waqf.

Section 40(3) of the Waqf Act 1995, which includes only muslim members has the effect of allowing the Board to make decisions that any property belonging to Hindu or any other non-muslim religious group as waqf Property. This clause is discriminatory under the Articles of 14 and 15 of the Indian Constitution and also infringes Article 25 and 26 of the Indian Constitution on Hindu freedom of religion.

Section 4 and 5 of the Waqf Act, any property can be included by the survey commissioner as Waqf Property under the Act. Invoking these sections 4 and 5 of the Act, no provision is made for providing members of the general public with an opportunity to hear

¹⁴ Waqf (Amendment) Bill, 2024, Bill No. 109 of 2024 (India) (as introduced in Lok Sabha 8 August 2024).

about the inclusion or removal of any property from the list of waqf.

Articles 14 and 15 of the Indian Constitution, for Trust-Trustees, Charities-Charitable Institutions and Religious Endowments-Institutions the state should adopt only uniform legislation as mentioned in Item 10 and 28 of list III, Seventh Schedule but no separate legislation for Waqf and Waqf Properties.

A PIL was filed challenging the Constitutional Validity of several sections of the Waqf Act 1995, in the Delhi High Court. Stating that the provisions grant special status to waqf properties while not giving equal status to Trusts, Akharas, Mutts and societies. To give Waqf Boards the limitless authority to seize anyone's property the waqf Act latest revised was done in the year 2013, earlier it was established in 1954 and a new Waqf Act was approved in 1995 giving additional authority.¹⁵

Nonetheless, certain provisions have been disputed. Specific criteria for choosing representatives of the waqf Board have been deemed discriminatory and invalidated. The debate over excluding civil court jurisdiction in favor of waqf tribunals has largely been supported. The retrospective application of the act, especially concerning limitation periods for property claims, has posed a complex challenge. Judicial decisions have stated that it cannot reactivate claims that have already been prohibited by earlier legislation. In summary, the Waqf Act, 1995 is essential for managing waqf properties, harmonizing modernization initiatives with constitutional values and religious liberties.

Criticism:

As per the other Religions Acts say the Hindu Religious and Charitable Endowments Act, 1959, when there is the dispute in the property, the trust authority and the private individual the concern affected private individual will approaches the Civil Courts but in the Waqf Act the authority runs a mini Government without moving to the Civil Court the affected private Individual will approach the Waqf Board then the Waqf Tribunal and then finally to the High court and the supreme court.

Why is the Waqf Act the parallel Government or Mini Government? Because Section

¹⁵ "Delhi HC seeks Centre's stand on PIL against validity of Waqf Act," *The Hindu*, 12 May 2022 (14 November 2022) available at: <https://www.thehindu.com/news/national/delhi-hc-seeks-centres-stand-on-pil-against-validity-of-waqf-act/article65407028.ece>. (last visited Nov. 8, 2025)

83 of the Waqf Act 1995, deals with the Constitution of the Tribunal, the key points for resolving the disputes related to Waqf Properties are Exclusion of Civil Courts and the Binding Decisions of the waqf Tribunal are final. And section 85 of the Waqf Act the Tribunal Ruling will be final, that if you cannot prove to the Waqf Board Tribunal that you possess the Property, you will be forced to leave the property to the Waqf authorities. No Court, not even the Supreme Court may overturn the ruling of the waqf Tribunal.

Conclusion:

Total State Waqf Board throughout India is 32 owned 8 lakhs acres of land, the first place is with the Indian Railway, Second place Armed force and the third Waqf Board these are the top three categories owning the majority of property in India. That the waqf got special privileges as no other group such as the Sikhs, the Jains, the Buddhist or the Parsees got any land of worship for their places from the state. still Hindu temples and its land belong to the state.

The current state of waqf endangers public peace, breaches individual property rights, and community harmony. In the secular democracy it does not function as a mere 'identity marker' but only a logical legal system serves the general interest. The actual minorities of the countries are parsis, Jains, Buddhists, Sikhs etc but there are no such laws for these communities. This provision should be for all minority communities, not for only one community to control their religious properties. If we want to give a platform to minorities to uplift themselves then there should be uniformity in the law. Some Muslim nations do not have a Waqf Board or a Waqf Law. It's very surprised to learn that such an act exists in a secular country. The Waqf Act should be repealed since it is manifestly unlawful.

Suggestion:

In a secular nation like India, how is religious legislation, including the Waqf Act, rendered pertinent? Why is there no comparable law for Hindus, Christians and Sikhs? What makes it solely for Muslims? The Irony lies in the fact that the Places of Worship Act was enacted in 1991, which specifies that religious sites that were present at the time of the nation's independence must be maintained in their existing state. At the same time, in 1995, the Waqf Act came into effect, empowering the Waqf Board to claim its right over any property nationwide, and the affected party is prevented from appealing in any court in the nation.

A full repeal could require some time. In the meantime, a range of options needs to be explored promptly. The initial step is to revoke the tribunal's extraordinary powers and return authority to the civil court. Secondly, significant protection of third-party rights should be incorporated into the waqf registration procedure. An Ombudsman can be designated to protect the rights of third parties involved in waqf. Third, the restriction against obtaining waqf land for public purposes could be removed. Ultimately, the Waqf Board should be prohibited from asserting any waqf that was present prior to the 1995 Act and was not documented when it was implemented. This would prevent the Board from imposing excessive requirements on historical sites and government buildings. It can likewise be interpreted through the lens of Article 44, which mandates the government to establish a Uniform Civil Code for all regions. The conversation regarding UCC should extend beyond individual laws and include waqf too. In a perfect scenario, the Waqf Act of 1995 would be repealed and substituted with a centralized system for Trustees of Religious Endowments.