
REFORM AND REGULATION: SHOULD INDIA AMEND THE WAQF ACT FOR GREATER ACCOUNTABILITY?

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ABSTRACT

The Waqf (Amendment) Bill ,2025 has finally been passed by both the Houses of Parliament. Though, the bill has gone through many ups and downs leading to widespread debates in the Lok Sabha followed by a 12 hours session in Rajya Sabha resulting in the approval of the contentious bill. It also achieved Presidential Assent within a week of its approval. The Waqf (Amendment) bill, 2025 aims to bring down the Waqf Board's control over the assets. "The bill has created a nationwide stir with many Muslim leaders calling it an attack on religious freedom"¹. This paper aims to address the issues analogous to Waqf board and explore the legal implications surrounding the Waqf (Amendment) bill, 2025. It is essential to address these issues as this would have a serious impact on the followers of Islam in India.

Keywords: The Waqf (Amendment) Bill,2025, Waqf board, Secularism, Non-Muslims

¹ Decoded: How is a Waqf Created and What Are the Powers of Waqf Board?, *Bus. Standard* (Aug. 5, 2024, 06:49 PM), https://www.business-standard.com/india-news/decoded-how-is-a-waqf-created-and-what-are-the-powers-of-waqf-board-124080500469_1.html.

INTRODUCTION

“According to the Waqf Act of 1954, A waqf refers to a property dedicated in the name of the God for religious and charitable purposes”². It can be said as a dedication which is permanent in nature of any Movable or Immovable property which are regarded as charitable or religious by followers of Islam. Waqf are typically entrenched with the help of any instrument or deed or in the case where a property is utilized for charitable or religious purposes over a long time.

On the other hand, a Waqf board acts as a statutory body which has the authority to own, manage and dispose of properties. The board has the advantage of immunity from lawsuits in Civil Courts. Every State in India has its own Waqf board. Which is headed by a chairperson. The board oversees Waqf properties generating an annual income of at least Rs. 1 lakh. The board is governed by Waqf Act, 1995 which has been in controversy nowadays.

Not all Islamic countries have Waqf properties. Countries like Turkey, Libya, Egypt, Sudan Lebanon, Syria, Jordan, Tunisia and Iraq lacks Waqf. Waqf board in India oversee approximately 8.7 lakhs properties covering around 9.4 lakh Acres of land, with an estimated worth of Rs. 1.2 lakh Crore which makes Waqf Board the largest landowner in India after the Armed Forces and the Indian Railways.

The obstacle lies in the idea which states that:

Waqf property shall be governed by Islamic laws and the entry of any non-muslim shall be prohibited in such governance.

Where any property is declared a Waqf property, it will lead to automatic elimination of other property laws applicable on such property as a result Waqf Act will prevail over other property laws.

The above statements show how The Waqf Act has been granted an upper hand over the National laws of our Country. Given such circumstances, the right balance between Personal laws and regulations have become imperative while settling the Accountability of management of such properties. The act has also raised concerns over the position of Muslim Women as

² Decoded: How is a Waqf Created and What Are the Powers of Waqf Board?, *Bus. Standard* (Aug. 5, 2024, 06:49 PM), https://www.business-standard.com/india-news/decoded-how-is-a-waqf-created-and-what-are-the-powers-of-waqf-board-124080500469_1.html.

well as poor Muslims.

These very problems had given rise to the Waqf Amendment Bill, 2025. This paper will explore the significance of the Waqf Amendment Bill, 2025, addressing the legal issues prevalent in the country due to the earlier Waqf Act. Understanding, these issues is crucial, as these answers will impact not only the followers of Islam in India but also the management and governance of religious institutions across India.

HICCUPS OF THE WAQF ACT, 1995

Waqf Act was first passed by Parliament in 1954. Subsequently it was repealed and a new Waqf Act was passed in 1995 which gave more powers to Waqf Boards. In 2013, this Act was further amended to give unlimited powers to Waqf Boards to snatch anyone's property, which even could not be challenged in any court of law.³ The Waqf board has been granted with illimitable powers which can be used to claim properties in the name of Muslim Charity. Previous Congress led government gifted 123 prime properties located in Delhi to the Delhi Waqf board with the help of existing legal provisions. Critiques have argued that the current law has resulted in snatching of significant amount of land from Hindus.

Section 3 of the Waqf Act, 1995 states that “waqf means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable”⁴. For example: If a Muslim dedicates his land to a mosque, then the property becomes Waqf and as a result it is governed by the Waqf Board i.e eliminating other property laws. It should be noted here that words ‘permanent dedication’ seems strange and are subject to controversy as they are intending dedication till perpetuity which is antagonist towards the idea of free transfer of immovable property given under the Transfer of Property Act, 1882. Section 3 seems to be in direct conflict with Articles 14 (Right to Equality), Article 15 (Prohibition of Discrimination), Article 25 and 26 as well as Article 300A (right to property).

Section 40 of the Waqf Act states that when the Waqf Board lays a claim on the land of a

³ MyView, *Waqf Act, 1995: A Tool Given to Waqf Boards to Snatch the Property of Hindus*, Times of India Blogs (May 30, 2023, 10:53 AM), <https://timesofindia.indiatimes.com/blogs/myview/waqf-act1995-a-tool-given-to-waqf-boards-to-snatch-the-property-of-hindus/>.

⁴ The Waqf Act, 1995, No. 43 of 1995, India Code (1995), available at https://www.indiacode.nic.in/bitstream/123456789/18918/1/the_waqf_act_1995.pdf.

person, it is not the responsibility of the Waqf Board to prove the claim on the land, but the real owner of the land has to prove the ownership of his land.⁵ A 1500 years old Hindu Temple was declared Waqf in Tamil Nadu in 2023, leading to legal challenges on the discriminatory application. There had also been instances where Waqf boards lease evicted properties to private businesses, which raises a question on whether the law is being used for religious purposes or for the purpose of revenue generation. The section seems to violate Constitutional principles of fairness, property rights and secularism.

Section 85 of the Waqf Act states that if you cannot satisfy the Waqf Board Tribunal that it is your own land, then you will be ordered to vacate the land. The decision of the Tribunal will be final. No court, not even the Supreme Court, can change the decision of the Waqf Tribunal.⁶ It seems to grant excessive powers Waqf tribunals thus barring Civil courts even the Highest Court in the country i.e Supreme Court of India from entertaining such cases. The section is violative of Article 14, Article 226 and Article 32 of The Indian Constitution.

It is enshrined in our Constitution that India is a secular Nation. This alludes that no religion shall be given an upper hand or any superfluous favours. Why does not such an act exists for Hindus, Sikhs and Christians? Why is it exclusively for Muslims? “See the irony that in the year 1991 the Places of Worship Act was made which says that the religious places which existed at the time of independence of the country will be retained as it is. At the same time, in 1995, the Waqf Act comes into force, which gives the right to the Waqf Board across the country to claim its rights on any property and the aggrieved party cannot even appeal in any court of the country against this.”⁷

ROAD AHEAD

These issues have raised a lot of eyebrows on the idea of Secularism and questioned the Supreme law of the land numberless times. Parliament of India got down to the nitty gritty and

⁵ The Waqf Act, 1995, No. 43 of 1995, India Code (1995), available at https://www.indiacode.nic.in/bitstream/123456789/18918/1/the_waqf_act_1995.pdf.

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⁷ Waqf Act, 1995: A Tool Given to Waqf Boards to Snatch the Property of Hindus, *Times of India* (May 30, 2023, 10:53 AM), <https://timesofindia.indiatimes.com/blogs/myview/waqf-act1995-a-tool-given-to-waqf-boards-to-s snatch-the-property-of-hindus/>.

proposed the Waqf (Amendment) bill, 2025 to streamline the activities of Waqf board as well as to reduce the unconstitutional powers of Waqf board.

Bill is named as UMEED suggesting Unified Management Empowerment Efficiency and Development. The Amendment bill looks to tackle several key concerns, including:

1. Lack of Transparency in managing Waqf boards.
2. Imperfect land surveys and inconsistency in Waqf land records.
3. Inadequate safeguards to inheritance rights of Muslim women.
4. Rising backlog of legal disputes (currently 21,618 encroachment cases remains pending)
5. Conflicts over Government land being classified as Waqf property.
6. Lack of proper Accounting as well as auditing of Waqf properties.
7. Inadequate representation of the Stakeholders in the Central Waqf Council and State Waqf boards.

The Waqf (Amendment) bill, 2025 aims to tackle these issues by updating the provisions of Waqf Act,1995 including:

1. Inclusion of Non-Muslims

Waqf properties are managed by the Waqf board present at the Central level known as the Central Board and at the State level known as the State boards. The bill allows a Non-Muslims to become Chief Executive Officer of the board. Not only this, bill also advocates for inclusion of two non-Muslims members to be appointed by State Government to their State's Waqf Boards. Congress and other Opposition parties has outright opposed the amendment arguing that Non-Muslims should not be a part of Waqf boards, given that it is a religious matter. However, Union Home Minister Amit Shah reiterated that the bill aims

to ensure transparency and prevent mismanagement of Waqf properties.⁸

2. Power to Government

Whenever there lies a dispute regarding a Waqf property, it is determined by the Waqf tribunal. The bill gives the State Government officer the power to determine whether a disputed property belongs to the Government or it is a Waqf property. Critics has argued that since the officer is appointed by the State Government, he is likely to rule in favour of the Government in such disputes.

3. Removal of “Waqf by user”

It is one of the most important Amendment of the Waqf Act, 1995. Supposedly, there is an undocumented vacant land, if the Waqf board develops it for a public religious or educational purpose- such as a mosque or an educational institution and utilizes it continuously for an extended period, the land may eventually be classified as Waqf property. Once declared Waqf, the ownership rights are transferred to the Waqf board, extinguishing any prior claims by other parties. This concept can be named as Waqf by user. The waqf (amendment) bill, 2025 omits the provisions related to waqf by user.

4. Waqf data base

The 2025 bill states that it is mandatory to register the complete Waqf property with the Central data base within 6 months of its implementation. Not only this, even after registration of the property, disputes can arise over such registration on which such property would be flagged to the district collector, who would then make an inquiry into the matter. In case of failure to register the property into the database, it would result in government taking direct control of the property and any right to move to the court in case of an encroachment or dispute involving Waqf land would be forfeited.

5. Tribunal’s decision not final

According to the bill, Waqf tribunal’s decision shall not be the final decision and the same can

⁸ India Today, *Amit Shah to Non-Muslims: Waqf Board Should Not Interfere in Religious Matters*, <https://www.indiatoday.in/india/story/amit-shah-non-muslims-waqf-board-interfere-religious-matters-parliament-bill-lok-sabha-2703009-2025-04-02> (last visited Apr. 5, 2025).

be challenged in the High Court. It aims to ameliorate section 85 of the Waqf Act 1995 that is violative of the constitution.

6. Rights of women and legal heirs

The Bill also seeks to improve the **economic and social status of Muslim women**, particularly **widows and divorced women**, by promoting **self-help groups (SHGs) and financial independence programs**.⁹

The bill aims to achieve such goal by **ensuring** their representation in Waqf governance. Section 14 retains two Muslim women members in State waqf board while section 9 retains two Muslim women members in Central board.

Section 3A(2) mandates securing women's inheritance rights before dedicating property as Waqf, overcoming the difficulties of inheritance rights.

Thus, Parliament has made a valiant effort by approving the Waqf (Amendment) bill, 2025 addressing the highlighted issues around secularism and inequality. This will help strike a balance between the religious rowdiness and respect for the Supreme law of the land.

LITERATURE REVIEW

There are number of articles, papers and videos on the topic as it is a highly contentious topic these days. Whether the Waqf (amendment) bill, 2025 will be implemented strictly or not is still a question unanswered. There are many other articles on the topic addressing the dark side of the Waqf as well as the need of the Waqf. This paper has tried to provide with an understanding of the topic without taking any sides.

METHODOLOGY

This research paper employs a qualitative and analytical approach to examine the implications of Waqf (Amendment) Bill, 2025, its legal challenges and its impact on the idea of secularism and property laws in India. The primary sources for data collection includes legal statutes like The Waqf Act, 1954, Waqf Act, 1995 and its amendments, The Waqf (amendment) bill, 2025

⁹ Press Information Bureau, *Waqf (Amendment) Bill 2025: Modernizing Waqf Management and Governance*, Press Release (Apr. 5, 2025), <https://pib.gov.in/PressReleasePage.aspx?PRID=2118261>.

and secondary sources including the parliamentary debates and committee reports. It addresses the possible impact of The Waqf Amendment bill, 2025 as well.

CONCLUSION

The discussions around Waqf board and the Waqf Act is spread like Wildfire and section 40 which is most disputed is on the verge of becoming history once President assent to the Waqf (amendment) bill, 2025. The bill aims to achieve transparency, judicial oversight and inclusive governance to achieve a rightful balance between reform and religious sensitivity. The bill can be a grand success provided that it is implemented effectively and efficiently without misuse of the new powers thus upholding India's secular principles while preserving religious sanctity of waqf institutions.

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