EXECUTIVE OVERREACH AND DELEGATED LEGISLATION: A CONSTITUTIONAL ANALYSIS OF THE WAQF (AMENDMENT) ACT, 2025

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I. INTRODUCTION

The constitutional legislation of delegated legislations is based on a simple distinction. Implementation of a policy can be delegated by a legislature to the executive, but not policy-making. The one is a requirement of the contemporary regulatory state; the other replaces the executive will with the legislative judgment. This boundary is violated by the Waqf Amendment Act, 2025[1] in three ways. As a caveat, Indian courts have a fairly weak non-delegation doctrine, which enforces wide delegations in which an intelligible principle may be identified. Even then, on that deferring standard, the Act fails.

The necessity of reforming Waqf is not a point of contention in this paper. The regime which existed prior had real shortcomings: supposed usurpation of Waqf properties, a broad declaratory authority under Section 40 and managerial wastefulness. Constitutional legitimacy, however, is not a matter of whether the end is worthwhile, but whether the methods used are within constitutional stipulated limits. The Act does not pass this test in the three aspects as discussed below.

Section 3(r) qualifies the right to devote Waqf by the donor having practised Islam of five years without specifying the term or appointing anyone to measure that term. Section 3C places a decision making power on a revenue officer to decide that property is Waqf land and make corresponding amendments to revenue records, skipping the Waqf Tribunal Parliament that was created to do so. The rule-making power of section 109 delegates too little bounded power over core governance issues. Parliament has given the destination but not the route Each of the provisions is in contravention of the rule contained in In re Delhi Laws Act, 1912[2] and explained in Naraindas Indurkhya v. State of Madhya Pradesh[3] whereby Parliament must provide the governing policy before it gives authority to the executive to execute the governing

[1] Waqf (Amendment) Act, 2025 (India) (received presidential assent Apr. 5, 2025; notified Apr. 8, 2025).
[2] In re Delhi Laws Act, 1912, AIR 1951 SC 332 (India) (seven-judge bench).
[3] *Naraindas Indurkhya v. State of Madhya Pradesh*, AIR 1974 SC 1232 (India).).

policy.

II. THE PRINCIPLE OF RULING: THE POLICY SHOULD BE MADE BY THE PARLIAMENT

The Indian constitutional law of delegated legislation is founded on the following proposition: the parent statute should provide the policy; the delegate should provide details of application. This has been held in Banwarilal Agarwalla v. State of Bihar[4] and has been held to rest. Parliament does not have to decide on all operational aspects, but it has to make a decision on the very nature of the policy question the delegated power is supposed to perform. Otherwise, it is not devolution but abdication. Practically, the Supreme Court has condoned very broad delegations in which an intelligible principle, even though vague can be identified. The delegations in the Waqf (Amendment) Act, 2025 are wide but the act is not strong due to this fact, but the fact that there is no intelligible principle whatsoever that applies to three provisions that are discussed below.

In re Delhi Laws Act, 1912[5] the seven-judge court determined that although Parliament could delegate the incidental legislative power, the fundamental policy-making exercise could not be delegated to it. This requirement was provided with practical content in Naraindas Indurkhya.[6]The Court struck down a governmental authority to regulate the price of books since the parent law did not provide any criterion upon which the price was to be evaluated. The weakness in the constitution was that the standard was not vague, it was that there was no standard.

Although the Supreme Court has condoned broad delegations where a discernible principle can be determined,[7] absolute lack of legislative direction is unconstitutional. The principle which is intelligible does not need to be a precise one, it just has to exist. In the case where nothing is given by parliament, the delegation is not one of implementation but rather of the legislative role itself. It is on this constitutional benchmark that the three provisions of the Act evaluated.

III. 3(R): THE QUESTION PARLIAMENT HAS NOT ANSWERED.

The Amended Act[8] under section 3(r) requires the right to dedicate a Waqf to be practising

[4] Banwarilal Agarwalla v. State of Bihar, AIR 1961 SC 849 (India).
[5] In re Delhi Laws Act, 1912, AIR 1951 SC 332 (India) (seven-judge bench).
[6] Naraindas Indurkhya v. State of Madhya Pradesh, AIR 1974 SC 1232 (India).
[7] Gwalior Rayon Silk Mfg. (Wvg.) Co. v. Assistant Commissioner of Sales Tax, AIR 1974 SC 1660, 1667 (India)
[8] In re Waqf (Amendment) Act, 2025, Writ Petition (Civil) No. [pending] (Supreme Ct. India Sept. 15, 2025)

Islam of a minimum of five years. The rationale of the prevention of opportunistic property transfers is understandable. However, a provision is not constitutionally sound because the purpose of the provision is sensible. Section 3(r) does not answer the key question that it poses: what does it mean to practise Islam?

Parliament has not said not roughly, not according to any quantifiable criterion. To practise Islam might have the connotation of frequent adherence to the five pillars; attendance at congregational prayers; giving of zakat; performing the Hajj; or any combination at the discretion of some unidentified authority. The different interpretations produce materially different rules of law and subject the provision to executive abuse without restraint by law.

Using Naraindas Indurkhya, the provision is not an implementation delegation, but a determination delegation. This provision has been stayed by the Supreme Court which has noted that, as yet, there is no mechanism or procedure to determine whether an individual has been practising Islam at least five years or not, it cannot be put into effect at the moment. The Court, though, did not decide on whether the provision contravenes Articles 25 or 26; that gage of the Constitution is to be decided.

It is another dimension that is not considered by non-delegation analysis. What it is that a person has practised a religion is an issue that civil courts and executive officers cannot opine on, without taking a step that is covered by Articles 25 and 26. . The difference here is essential: the courts regularly decide religious identity so that it can be used in a secular context (e.g. who is a Hindu? on succession laws), whereas the Waqf provision demands that the executive officer should evaluate the sufficiency of religious observance over a period of five years as a precondition to remaining entitled to property rights. That borders on the competence of the State to make civil decisions as to religious institutions, and incompetence to make decisions as to the genuine religious practice In Ratilal Panachand Gandhi v. State of Bombay[9] the Supreme Court made a thin line between the power of the State to regulate secular matters of religious institutions and the inability to determine what should be regarded as religious practice. An investigation by a revenue officer of five years of Islamic practice is exactly such unacceptable intrusion.

Section 3(r) is invalid on two grounds which are independent, namely, as a delegation not containing law under Naraindas Indurkhya, and as unconstitutional encroachment into the right

(interim order).

[9] Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388, 395 (India)

to religion under Article 25 read with Ratilal. The ultimate solution is that which is legislative in nature: Parliament has to provide a definition of what constitutes practised Islam, the body that makes that judgment, and the rights of notice, hearing, and appeal.

IV. 3C: AN ADMINISTRATIVE DRESS ADJUDICATIVE POWER.

Section 3C empowers an officer of high rank above the rank of Collector to enquire whether some property that is alleged to be Waqf is governmental land. That is remedied by the sub-sections (3) and (4), which permit correction of revenue records and consequential state action on that basis, prior to the decision of any court or tribunal on title. The proviso to Section 3C (2) and Sub-sections (3) and (4) was stayed by the Supreme Court; the power of the relevant officer to investigate was not. This implies that even the investigation process does not require the interim judicial checks, the lack of due process is even more severe. This is not the competence of legislation but the constitutional adequacy of the mechanism applied. The power to decide the status of property as Waqf[10], to misleadingly adjust records of revenue, and to freeze the legal status of it is adjudicative in nature notwithstanding the description the Act gives it. Religiously significant generationally held property is inadmissible to be suspended awaiting an investigation that lacks a time limit, requirement of a standard of proof, and without giving notice to the affected Waqf and without a right of appeal.

Under article 300A of the Constitution, it is stated that no individual can be deprived of property, except through law. In Jilubhai Nanbhai Khachar v. State of Gujarat (1995) and Bishambhar Dayal Chandra Mohan v. State of U.P. (1982) the Supreme Court read this guarantee to imply the need not only that there is a law authorising deprivation, but that there is a process that is commensurate to the nature and gravity of that deprivation Reclassifying permanently on the ground of an open-ended executive inquiry, without prior notice, without either notice or a standard of proof or a right to appeal, is a long way below this standard.

The framework that is there already provides the solution. Section 83 of the Waqf Act, 1995[11] vests civil court power on Waqf Tribunals, which are specifically given powers to decide whether property is Waqf property. It is constitutionally unsound to channel this enquiry by a generalist revenue officer who has no specialised expertise in Waqf law, civil court authority or governing procedural norms.

[10] In re Waqf (Amendment) Act, 2025, Writ Petition (Civil) No. [pending] (S.C. India Sept. 15, 2025) (interim order) (staying proviso to § 3C(2) and §§ 3C(3), 3C(4)).
[11] Waqf Act, 1995, § 83 (India).

The Supreme Court noted that allowing the Collector to decide on the rights of the citizens is unlawful in that it violates the separation of power and that the decision must be adjudicated by the Tribunal before any consequence of the revenue record is affected.[12] Sub-sections (3) and (4) must be dropped, Section 3C(1) must be amended to provide that there must be a notice, response period, reasoned order

V. THE POWERS TO MAKE RULES: DELEGATION WITHOUT DIRECTION

The authority to issue rules in Section 109 of the Central Government enables it to prescribe the forms, the registration procedures, audit requirements and other details of implementation. This kind of delegated rule-making is technically constitutional. The entire lack of any legislative directions to restrict this power, however, is very problematic in the doctrine of non-delegation expressed in Naraindas Indurkhya.[13] The infirmity of Section 109 is not in se, it is parasitic. Since both the core policy questions remain unanswered in Sections 3(r) and 3C, Section 109 gives the executive the discretion to provide an answer to the said questions. Section 109 would not be objectionable had the Act provided governing policy.

First, there is a lack of a sufficiently limited scope of rule-making. Section 109 allows the Central Government to issue rules to perform the purposes of this Act without giving any intelligible principle. These are decisions made by the executive on what is sufficient registration procedures, what is the standard of audit and what is the required notice, without any legislative involvement in the content of the decisions.

Second, the retroactive effect of rules that enforce new commitments on settled expectations on established Waqfs can be experienced. With the established rule that the generality of a rule-making power is not a retrospective one, such rules have the danger of infringing Article 300A unless the general rule-making power is expressly given the power to operate retrospectively. The same provision that applied in the case of Harla v. State of Rajasthan,[14] is applicable to this case through the requirement of notice before delegated legislation comes into effect.

Third, it is a structural problem. The question of the governing questions of Waqf administration what is a valid registration, what are the audit standards, how can the inquiry of a designated officer be conducted, are not technicalities. These are fundamental policy

[12] In re Waqf (Amendment) Act, 2025, Writ Petition (Civil) No. [pending], ¶ 12 (Supreme Ct. India Sept. 15, 2025) (interim order).
[13] Naraindas Indurkhya v. State of Madhya Pradesh, AIR 1974 SC 1232 (India).
[14] *Harla v. State of Rajasthan, AIR 1951 SC 467, 472 (India).*

questions that Parliament has to answer first and then delegate implementation. In re Delhi Laws Act, 1912, the Act does not pass the test by simply delegating the application of the governing policy rather than leaving it entirely to the executive rule-making.

Section 109 should be modified to add: (a) an intelligible principle to guide rule-making; (b) a clear bar on the rules that reduce existing rights in property without compensation and without express parliamentary legislation that the rule shall have a retroactive effect; (c) a reasonable pre-publication period of the rule will become effective.

VI. CONCLUSION

It is an infirmity of the Constitution of the Waqf (Amendment) Act, 2025, not that the purpose of the Act is illegitimate, but rather the failure of the Parliament to perform the task that the Constitution gives it. The principle, which is expressed in In re Delhi Laws Act, 1912 and expounded in Naraindas Indurkhya, is simple: Parliament has to provide the governing policy, and only after that to give the executive the mandate to execute it.

Section 3(r) does not specify what is meant by practised Islam or by whom it can be determined and obstructively engages the civil authority in determining the observation of the religion-grounds on which the Supreme Court has stayed the provision and the Article 25/26 aspect remains open. Article 3C makes a revenue officer have adjudicative power, without the procedural protections required by Article 300A, which circumvents the Waqf Tribunal Parliament that has been put in place to perform that role. Section 109 grants too broad rule-making power on matters of fundamental governance that lack any legislative content to curtail it.

The doctrine of severability is applicable: these clauses can be detached off the scheme of the Act. The composition provisions of Waqf Board (Sections 9-14), the audit provisions (Section 46) and registration of Waqf (Section 36) of the Act are mechanically severable of Sections 3(r), 3C(3)-3C(4) and the unguided parts of Section 109. The elimination of the contested provisions would result in a full functioning regulatory framework. In R.M.D. Chamarbaugwala v. Union of India,[15] severability depends on whether the surviving provisions will work without judicial rewriting; in this case, they Reims of Waqf Board composition, registration and audit procedures will subsist independently of their deletion.

The constitutional law does not ask whether a legislature was acting on good motives. It poses

[15] R.M.D. Chamarbaugwala v. Union of India, AIR 1957 SC 628, 633 (India).

the question of whether the legislature has done its work. In each of the three provisions, the Parliament has indicated where it will go but not how it will go.