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# THE CONSTITUTIONAL STORM AROUND THE WAQF (AMENDMENT) ACT, 2025

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## ABSTRACT

‘Waqf’ is a religious and philanthropic institution in Islam, created for public welfare and community development, forming a significant part of religious endowments and is governed by statutory laws. However, over time the waqf administration has faced serious challenges, such as mismanagement, lack of transparency, unchecked powers of the Waqf Boards, and disputed claims over public and private land, which has raised serious concerns about governance, accountability, and the impact of waqf laws on property rights.

Against this backdrop, the Waqf (Amendment) Act, 2025 was promulgated with the stated purpose of reforming waqf governance and improving regulatory oversight. This paper undertakes a doctrinal, historical and analytical legal study to examine whether the recent legal reforms represent a constitutionally permissible regulation of the secular aspects of religion or whether they amount to an unconstitutional overreach infringing the fundamental rights. The paper also includes a comparative study of laws governing similar religious institutions. The study analyses the idea of waqf, the evolution of waqf legislation in India, the need for regulation, the key characteristics of the amended Act, constitutional analysis and the aftermath of the Act.

## 1. INTRODUCTION

The regulation of religious endowments in India requires a constitutional balance between protection of religious autonomy and the State's obligation to ensure transparency and public welfare. Among such endowments, *waqf* occupies a distinctive legal position. The Waqf (Amendment) Act, 2025 reflects State's continuing attempt to recalibrate this balance in response to allegations of mismanagement.

The significance of this study is heightened by the fact that writ petitions impugning the constitutionality of the Act have been filed before the Hon'ble Supreme Court. Additionally, the Act has generated widespread political and public controversy, with critics branding it as a "black law".<sup>1</sup> Considering ongoing judicial scrutiny and societal debate, this paper seeks to contribute to constitutional discourse by offering reasoned analysis of the balance between religious autonomy and state regulation.

## 2. CONCEPT OF *WAQF* AND ITS HISTORICAL DEVELOPMENT

'*Waqf*' has been defined as "the permanent dedication by any person of any movable or immovable property for any purpose recognized by Muslim Law as pious, religious, or charitable."<sup>2</sup> The individual who donates his/her property is referred to as '*waqif*' and the individual who oversees the waqf property is called '*mutawalli*'. Another important characteristic of '*Waqf*' is that it is untransferable. Thus, it cannot be gifted, sold, encumbered, or devolved upon. A property once divested from the *waqif* vests in God.

The Supreme Court, in the case of *Hamdard Dawakhana (Wakf) Lal Kuan, Delhi v. Union of India*,<sup>3</sup> held that it is necessary to consider the history of legislation while considering the constitutionality of an enactment. The same was held in the cases of *The Bengal Immunity Company Limited v. State of Bihar*,<sup>4</sup> *R.M.D. Chamarbaughwala v. Union of India*<sup>5</sup> and *Mahant Moti Das v. S.P. Sahil*.<sup>6</sup>

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<sup>1</sup>Muslim Mirror, available at: <https://muslimmirror.com/owaisi-links-delhi-waqf-demolition-to-black-amendment-act-vows-sc-challenge/> (last visited on January 9, 2026).

<sup>2</sup> The Waqf Act, 1995 (Act No. 43 of 1995), s. 3(r).

<sup>3</sup> 1959 SCC OnLine SC 38.

<sup>4</sup> 1955 SCC OnLine SC 2.

<sup>5</sup> 1957 SCC OnLine SC 11.

<sup>6</sup> 1959 SCC OnLine SC 66.

The historical development of *waqf* is outlined below-

- (a) **The Mussalman Wakf Act, 1923**- It was legislated for better management and disclosure of proper records of *waqf* properties since the endowments made by Muslims were being misappropriated. It obligated *mutawalli* to furnish details relating to *waqf* to the Court within the local limits of whose jurisdiction, the property of *waqf* is situated.<sup>7</sup>
- (b) **The Bengal Wakf Act, 1934** – It led to the creation of the Bengal “Board of Waqf” under section 7 of the Act. The Commissioner of the Board had the duty to investigate the extent of *waqf* properties, causing a survey of *waqf* property, ensuring that *waqf* is applied to the purpose for which it is formed, keeping in custody all particulars relating to *waqf*, and controlling and maintaining *waqf*, among others.<sup>8</sup> It recognized the concept of ‘Waqf by user’.<sup>9</sup>
- (c) **The Muslim Wakfs Act, 1954**- The Delhi Wakf Board, which replaced the Shia Majlis and Sunni Majlis, had the authority to conduct investigations and to call upon the trust or society to either register the property as *waqf* or show cause against it.<sup>10</sup> Such show causes could only be made in cases where it is believed that the property or trust or society, registered in accordance with the Indian Trusts Act, 1882,<sup>11</sup> the Societies Registration Act, 1860,<sup>12</sup> or any other act, is a *wakf* property.<sup>13</sup>
- (d) **Wakf Inquiry Committee (1976)**- It was established with the intention to inquire into the effectiveness of the 1954 Act and regulation of *waqf* properties. The report drafted by the committee revealed significant issues like corruption, encroachment, deliberate concealing of *waqfs* and the necessity for improvement in *waqf* administration.
- (e) **The Wakf (Amendment) Act, 1984**- It was legislated having regard to the findings of the Wakf Inquiry Committee. However, it had limited implementation due to strong opposition. Only 2 sections were accepted: (i) expanding the statutory limitation for filing recovery suits of *waqf* properties in adverse possession from 12 years to 30 years (Section

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<sup>7</sup> The Mussalman Wakf Act, 1923 (Act 42 of 1923), s.3.

<sup>8</sup> The Bengal Wakf Act, 1934 (Bengal Act XIII of 1934), ss. 7, 27.

<sup>9</sup> The Bengal Wakf Act, 1934 (Bengal Act XIII of 1934), s. 6(10).

<sup>10</sup> The Muslim Wakfs Act, 1954 (Act 29 of 1954), s. 27.

<sup>11</sup> The Indian Trusts Act, 1882 (Act 2 of 1882).

<sup>12</sup> The societies Registration Act, 1860 (Act 21 of 1860).

<sup>13</sup> The Muslim Wakfs Act, 1954 (Act 29 of 1954), s. 27.

66 O) and (ii) The evacuee waqf property shall vest and shall be deemed to have vested with the Wakf Board (Section 66 H). Intervention by the State in the daily administration of *waqfs* was the main criticism of this Act.<sup>14</sup>

**(f) The Waqf Act, 1995-** It was legislated for improved management of *waqf*.<sup>15</sup> Section 9 established the Central Waqf Council. It issues directions to the State Waqf Boards, who are the custodians of *waqf* properties and are responsible for their utilisation. The Waqf Board can remove *mutawallis*, if found guilty of mismanagement. Furthermore, Judicial bodies called Waqf Tribunals were established under section 83 to address disputes related to *waqf* properties.<sup>16</sup>

**(g) Third Report of Joint Parliamentary Committee on Wakf on Amendments to the Wakf Act, 1995 (2008)-** The Committee was constituted to determine the status of implementation of the Wakf Act, 1995 by various state governments, to recommend modifications to the 1995 Act for effective attainment of its purposes including recovery of the encroached *waqf* properties, to review the working of the Central Wakf Council and State Wakf Boards.<sup>17</sup>

The legislative history shows that several laws were enacted, to improve the administration of *waqf* properties, to ensure that they are used only for their intended purposes and not misused by *mutawallis*, in the interest of the Muslim community and to reform faith-based administration.

### 3. NEED FOR *WAQF* MANAGEMENT- MISGOVERNANCE AND QUESTIONABLE CLAIMS

The *waqf* system in India is largely considered a sacred matter. However, its main functions revolve around property management and administration. In older days, *waqfs* were administered by individual *Mutawallis*, *Anjumans*, and other loosely organized Mohalla Committees. However, there was no central control, and many properties were either unattended or were being mismanaged. There were instances of *mutawallis* treating *waqf*

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<sup>14</sup> The Wakf (Amendment) Act, 1984 (Act 69 of 1984), ss. 66O, 66H.

<sup>15</sup> 'Statement of Objects and Reasons', The Waqf Act, 1995 (Act 43 of 1995).

<sup>16</sup> The Waqf Act 1995 (Act 43 of 1995), ss. 9, 83.

<sup>17</sup> Joint Parliamentary Committee, "Third Report of Joint Parliamentary Committee on Wakf on Amendments to the Wakf Act, 1995" (March 2008).

properties as their personal properties. The records of *waqf* properties were not properly maintained.

*Waqf* properties till date face major issues, among which mismanagement, illegal occupation and lack of transparency are most prevalent.

Instances of doubtful claims by Waqf Board include-

- (a) Sunni Waqf Board claimed Govindpur village in Patna District as *waqf* property in August 2024 despite 95% of the people in the village being Hindus and the land being registered in the name of the petitioner's descendants since 1910. A petition was filed by all landowners in Patna High Court after an order was issued by the board to the residents to vacate the village within 30 days.<sup>18</sup>
- (b) The Kerala State Waqf Board in September 2024 staked its claim over 404 acres of land in Munambam which was transferred as *waqf* to an educational institution in Kozhikode. The descendants of those who purchased the land from the institution now face the looming threat of eviction.<sup>19</sup>
- (c) A declaration was made by the Gujarat State Waqf Board stating that the Muglisara (Mughalsarai) building is a *waqf* property. It was contended that Haqiqat Khan had constructed the building named Humayun Sarai in 1644 AD and donated it to be used as an inn for Haj pilgrims which is now the headquarters of Surat Municipal Corporation (SMC). The SMC contended that the building had been handed over to the British Government in 1867 and the revenue records were altered in 1961.<sup>20</sup>
- (d) A notice was issued to a sub-registrar in Tiruchi by the Tamil Nadu Waqf Board contending that land estimated at approximately 480 acres in Thiruchendurai village belonged to it and a No objection certificate from the Waqf Board is mandated for individuals intending to register a deed for such land. The Chandrasekha Swamy Temple in Thiruchendurai also

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<sup>18</sup> Sanatan Prabhat, available at: <https://sanatanprabhat.org/english/110908.html> (last visited on January 6, 2026).

<sup>19</sup>The Hindu, available at: <https://www.thehindu.com/news/national/kerala/munambam-land-dispute-in-kerala-a-comprehensive-coverage/article69411442.ece> (last visited on January 6, 2026).

<sup>20</sup>Times of India, available at: <https://timesofindia.indiatimes.com/city/ahmedabad/smc-headquarters-muglisara-declared-waqf-property/articleshow/87954611.cms> (last visited on January 6, 2026).

came under ownership of the Waqf Board as per the contentions made by the board.<sup>21</sup>

- (e) In *State of Andhra Pradesh (now Telangana) v. Andhra Pradesh State Waqf Board*,<sup>22</sup> a governmental land ranging 1,654 acres and 32 guntas was infringed upon and the Andhra Pradesh Waqf Board registered it as “Waqf by user”. The Supreme Court upheld the State Government’s competence to invoke writ jurisdiction.
- (f) The Archaeological Survey of India reported to a Joint Parliamentary Committee that 132 protected monuments were improperly registered as *waqf* properties without proper documentation.<sup>23</sup>

These instances highlight that the Waqf Board has multiple times wrongly claimed public property as *waqf*. The government has a duty to safeguard public property and therefore, regulation of *waqf* administration is necessary and constitutionally justified.

#### 4. THE WAQF (AMENDMENT) ACT, 2025: KEY FEATURES

The Waqf (Amendment) Act, 2025 deals with long standing problems like lack of transparency, incomplete surveys of records of *waqf* land, unreasonable authority of the Waqf Boards to declare any property as *waqf* land solely on the basis of their own investigations, poor accounting and auditing of *waqf* properties, shortcomings in *waqf* administration, insufficient representation of stakeholders in the Central Waqf Council and State Waqf boards, numerous disputes over government land declared as *waqf*, many ongoing legal cases and issues of encroachment.

##### Key Changes recommended by the Joint Committee on the Waqf (Amendment) Bill-

- (a) Creation of a trust by a Muslim under any law will not be considered a *waqf* to allow him to manage his own trusts free from any interference from the Waqf Boards.
- (b) Dedication of a property to *waqf* can only be made by a person who is a practicing Muslim

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<sup>21</sup>The Hindu available at: <https://www.thehindu.com/news/cities/Tiruchirapalli/wakf-board-claim-thiruchendurai-villagers-get-temporary-exemption-for-registering-title-deeds/article65890737.ece> (last visited on January 6, 2026).

<sup>22</sup> 2022 SCC OnLine SC 159.

<sup>23</sup> Ministry of Minority Affairs, available at: <https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/1743661361.pdf> (last visited on January 8, 2026).

and who has been practicing Islam for at least 5 years.

- (c) Unless disputed or identified as government land, properties already registered with Waqf Boards will not cease to be *waqf*. As per WAMSI, there are 4.02 lakh “waqf by user properties” out of a total of 8.72 lakh *waqf* properties as on date.<sup>24</sup>
- (d) The right of women to receive their inheritance before any *waqf* dedication has been incorporated to protect widows, divorced women and orphans.
- (e) The details of each registered *waqf* must be filed on the central portal within six months by the *mutawallis*.
- (f) An investigation would be carried out by an officer above the rank of Collector in case a government property has been declared as *waqf* and a report regarding same is to be submitted to the government. Until then, such properties will not be treated as *waqf*.
- (g) To better represent the rights of stakeholders such as beneficiaries, donors, lessees, tenants and litigants, and to improve the administration and functioning of the board, non-Muslim members are included in the Waqf Board and Council.
- (h) The establishment of separate Waqf Boards for *Bohras* and *Aghakhani*s communities may be done by the State government to acknowledge their distinct religious needs.
- (i) Unregistered *waqfs* under the 2025 amendment are barred from enforcing their rights through the initiation of legal proceedings after expiry of 6 months of introduction of the amendment.
- (j) To allow *mutawallis* to utilize more funds for religious or pious activities, an annual reduction of contribution from 7% to 5% has been made.
- (k) A fixed tenure along with stringent selection process of the tribunal members has been introduced to ensure stable functioning.
- (l) Application of the Limitation Act, 1963 onto *waqf* properties has been enabled to reduce

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<sup>24</sup> WAMSI, available at: <https://wamsi.nic.in/>, (last visited on January 9, 2026).

prolonged litigation.

(m) With the intention of stopping Waqf Boards from arbitrarily claiming properties as *waqf*, section 40 has been removed. This aims to prevent instances such as the declaration of entire villages as *waqf*.<sup>25</sup>

However, the Supreme Court of India temporarily stayed the implementation of specific provisions of the Act. The Bench, comprising Chief Justice B.R. Gavai and Justice A.G. Masih in the case of *re: Waqf (Amendment) Act, 2025*,<sup>26</sup> reiterated that the striking down of a statute is reserved for the rarest of rare cases and that the presumption is always in support of the constitutionality of a statute. The provisions that were stayed are-

- (a) Section 4(ix)(a) which requires *waqif* to prove that they have been practising Islam for at least five years<sup>27</sup> is stayed as it could lead to arbitrary exercise of authority without a system to determine who qualifies as a practising Muslim.
- (b) The Court stayed provision dealing with government property, that prevented a property from being recognised as *waqf* until the officer submitted a report on its status, as it violates separation of power. The Court observed that the title of property will not be impacted and *waqfs* will not be ousted until the matter has been adjudged and *waqf* cannot grant rights to any third party over the property while the dispute is still being decided.
- (c) The Court ordered that the Central Waqf Council and State Waqf Boards should have a maximum of four and three non-Muslim members, respectively. It also emphasized that the Waqf Board must endeavour to appoint the ex-officio chairperson from the Muslim community.

Thus, the Supreme Court, by way of an interim order, stayed certain provisions to safeguard the interest of the parties while refusing to strike down the Act as a whole.

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<sup>25</sup>Ministry of Minority Affairs, *available at*:

<https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/1743661361.pdf> (last visited on January 8, 2026).

<sup>26</sup> 2025 SCC OnLine SC 1978.

<sup>27</sup> The Waqf (Amendment) Act, 2025, s. 4(ix)(a).

## 5. WHETHER THE 2025 AMENDMENT IS CONSTITUTIONALLY COMPATIBLE?

The Waqf Amendment Act of 2025 is brought with the intention of addressing the flaws and loopholes that existed in the regulatory system of the waqf establishment.<sup>28</sup>

**In re: The Waqf Amendment Act, 2025,<sup>29</sup> several provisions of the 2025 Act were challenged as being unconstitutional, as listed below-**

- a) Section 3D of the Act,<sup>30</sup> providing that declarations under the Waqf Act on notification of any monument as a “protected monument” shall be void, was challenged as being in violation of Articles 14, 15, 25 and 26 of the Constitution. The Supreme Court observed that due to declaration of monuments as *waqfs*, *Mutawallis* were not allowing the ASI officials to undertake measures for the conservation and preservation of such monuments. The Court held that section 5(6) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 permits individuals to continue their customary religious practices even within protected monument areas.<sup>31</sup> Accordingly, the provision does not infringe the articles of the Constitution.
- b) The requirement in section 4(ix)(a) of proving five years of practising Islam to declare property as *waqf*<sup>32</sup> was contended to be discriminatory and violative of Articles 14, 25 and 26 of the Constitution. The Court held that the possibility of non- Muslim converting to the Islamic religion solely to take advantage of the protection available under the Waqf Act with the intention of defeating creditors and evading the law cannot be ruled out. The court held that provision isn't arbitrary but cannot be given effect immediately since no mechanism has been provided for determining whether a person has been practicing Islam for at least 5 years or not.
- c) Section 3E, providing that land in possession of members of Scheduled Tribes under the Fifth and Sixth Schedules of the Constitution cannot be declared as *waqf* property,<sup>33</sup> was challenged as violating the religious freedom of Scheduled Tribes who practice Islam and desire to donate their property as *waqf*. The Court observed that there were

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<sup>28</sup>Statement of Objects and Reasons', The Waqf (Amendment) Act, 2025.

<sup>29</sup> 2025 SCC OnLine SC 1978.

<sup>30</sup> The Waqf (Amendment) Act, 2025, s. 3D.

<sup>31</sup> The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (Act 24 of 1958), s. 5(6).

<sup>32</sup> The Waqf (Amendment) Act, 2025, s. 4(ix)(a).

<sup>33</sup> The Waqf (Amendment) Act, 2025, s. 3E.

several instances where such declarations of *waqf* over tribal land posed a serious threat to the continued existence of these cultural minorities whose religious practices differ and who do not necessarily follow practices prescribed under the Islamic law.

- d) Inclusion of non-Muslim members was argued as infringing the rights of Muslims to independently manage the affairs of their religious practice. The court held that the functions performed by the Council and the Board are largely secular in nature. Their role does not extend to day-to-day functioning of the waqfs but is limited to formulating general policies concerning non-religious matters. It, thus, does not constitute interference with religious practices.

### **A. Equality under Article 14**

Article 14 of the Constitution of India secures the principle of equality before law and ensures equal protection to all. The State can, however, to ensure equality among individuals and communities that are situated at different social statuses, employ the notion of intelligible differentia and reasonable nexus.<sup>34</sup>

The five-year practice rule<sup>35</sup> is unable to meet the two-pronged test of intelligible differentia and reasonable nexus. It generates a distinction based only on religious adherence and duration. Although *waqf* is an Islamic institution, this rule excludes non-Muslims and even Muslims who do not meet the five-year criteria. There is no clear evidence to show that completing five years of religious practice helps prevent misuse, because of which the rule has no real connection with the purpose of the Act.<sup>36</sup> The court, in the case of *Navtej Singh Johar v. Union of India*,<sup>37</sup> stated that legislation that discriminates based on an Individual's intrinsic values cannot constitute a reasonable classification founded on intelligible differentia.

### **B. Article 25: Freedom of conscience and free profession, practice and propagation of religion**

Article 25 of the Constitution ensures freedom of religion to the citizens. It, however, expressly allows the State to frame regulations to manage and deal with secular activities connected with

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<sup>34</sup> The Constitution of India, art. 14.

<sup>35</sup> The Waqf (Amendment) Act, 2025, s. 4(ix)(a).

<sup>36</sup> Anusha Mishra, "Faith, Five Years, and Fairness: A Constitutional Challenge to Waqf Restrictions", Philippine Law reviewers, 4 July 2025, <https://share.google/drJoZ9X27nNh5G6Nh> (last visited on January 9, 2025).

<sup>37</sup> 2018 1 SCC 791.

religious practice under Article 25(2).<sup>38</sup>

Indian courts have held that Waqf Boards are not religious organizations but a statutory body for managing property. Therefore, management of *waqf* property is a non-religious function.

In *Syed Fazal Pookoya Thangal v. Union of India & Ors.*,<sup>39</sup> the High Court of Kerala held that the Wakf Board is a statutory body and not a religious body. It cannot be regarded as a body representing the Muslim community. It doesn't represent the faith of the Muslim community. It has been established to supervise and control the *wakfs* in the State.

In *Hafiz Mohammad Zafar Ahmad v. U.P. Sunni Central Board of Waqf, Lucknow*,<sup>40</sup> the Court held that a mutawalli is the manager of *waqf*. However, in that capacity, he has no entitlement over *waqf* property. He is not a trustee in the legal sense.

However, the requirement of proving five years of practicing Islam to declare property as *waqf*<sup>41</sup> falls outside the scope of secular activity as it is unrelated to administration of *waqf* property. Instead, it imposes a condition based on duration of religious belief, thereby regulating matters of faith rather than temporal governance, which the Constitution does not authorise.

Therefore, even though the State carries a right to enact legislation to regulate the administrative aspects of the *waqf*, it cannot subject religious practices to limitations.

### **C. Article 26: Freedom to manage religious affairs**

Article 26 of the Constitution aims to protect the rights of religious denominations to own and acquire religious institutions along with the right to manage, administer and establish the same.<sup>42</sup>

The five-year requirement<sup>43</sup> interferes with the right of a religious denomination to oversee its own affairs, as it restricts who may create *waqf* based on religious practice and belief, thereby

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<sup>38</sup> The Constitution of India, art. 25.

<sup>39</sup> 1993 SCC OnLine Ker 87.

<sup>40</sup> 1964 SCC OnLine All 319.

<sup>41</sup> The Waqf (Amendment) Act, 2025, s. 4(ix)(a).

<sup>42</sup> The Constitution of India, art. 26.

<sup>43</sup> The Waqf (Amendment) Act, 2025, s. 4(ix)(a).

undermining denominational autonomy guaranteed under Article 26.

However, the contention of inclusion of non-Muslim members being arbitrary to religious freedom holds no ground, as the State has the right to subject religious establishments to administrative regulations. The non-Muslim members are introduced to improve efficiency, and they in no way can encroach upon the religious practices of the community.

The Supreme Court has time and again on various occasions held that the right under Article 26 of the Constitution, dealing with the right to regulate religious property, is subject to reasonable regulations.<sup>44</sup>

**i. *The Commissioner, Hindu Religious Endowments, Madras v. Sri. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt***<sup>45</sup>

The Supreme Court established a precedent for the interpretation of Article 26 of the Constitution and held that a religious denomination has the constitutional right to administer its affairs in matters of religion, like managing its religious properties. It observed that the State could not control the affairs that pertain to religious doctrine, practice or internal administration. It could, however, control the temporal affairs of religious bodies relating to public order, morality, or health.

**ii. *Durgah Committee v. Syed Hussain Ali***<sup>46</sup>

The Supreme Court validated the State's interference in the management of religious institutions if it is secular in nature and is in favour of the public at large. However, no interference with essential religious practices will be allowed.

**iii. *SP Mittal v. Union of India***<sup>47</sup>

The Supreme Court affirmed that the State cannot assume control over a religious body unless such intervention is confined to regulating its secular administration in the interest of public welfare. Even then, such regulation should not enter basic religious practices or the internal

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<sup>44</sup> *A.S. Narayana Deekshitulu v. State of Andhra Pradesh*, (1996) 9 SCC 548.

<sup>45</sup> AIR 1954 SC 282.

<sup>46</sup> 1961 SCC OnLine SC 121.

<sup>47</sup> (1983) 1 SCC 51.

decision-making process.

#### **D. Article 29: Cultural Rights and *Waqf* Institutions**

The Constitution of India, through Article 29(1), guarantees the right of any section of citizens to protect its distinct language, script, or culture.<sup>48</sup>

The Waqf (Amendment) Act of 2025 aims to:

- Conserve and safeguard *waqf* property from being misappropriated and encroached upon.<sup>49</sup>
- Create a proper systematic way of documentation and digitalization of *waqf* assets.<sup>50</sup>
- Put an end to the long-established misuse of *waqf* properties by intermediaries, specifically *mutawallis*.

The amendment is brought with an intention to secure the very foundations upon which minority rights are sustained. Mismanagement and corruption act as rust, gradually eroding the foundation of the *waqf* establishments. If left unchecked, maladministration poses a much greater threat to Article 29 than regulatory oversight.

#### **E. Article 30: Minority Administration and *Waqf* Governance**

Article 30 of the Indian Constitution gives the right to establish and manage educational institutions to minorities.<sup>51</sup> It is a much-needed provision with respect to the rights of the minorities. It is, however, necessary to note that Article 30 does not provide immunity to establishments established by minorities from regulatory oversight.<sup>52</sup> The primary aim of the 2025 amendment is to increase and promote efficiency, transparency, and accountability. Regulatory measures with respect to administration and governance are allowed under Article 30 if they are not arbitrary to minority rights.

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<sup>48</sup> The Constitution of India, art. 29(1).

<sup>49</sup> 'Statement of Objects and Reasons', The Waqf (Amendment) Act, 2025.

<sup>50</sup> Ministry of Minority Affairs, *available at*:

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2134499&reg=46&lang=1> (last visited on January 29, 2026).

<sup>51</sup> The Constitution of India, art. 30.

<sup>52</sup> *St. Xavier's College v. State of Gujarat*, (1974) 1 SCC 717.

The Amendment largely deals with the secular aspects of *waqf* Administration and is, therefore, open to state regulation without violating the Constitution. However, the five-year requirement goes beyond the secular domain. By linking legal rights to the duration of religious belief, it infringes Articles 14, 25 and 26 of the Constitution.

## 6. AFTERMATH OF WAQF AMENDMENT ACT, 2025

After the introduction of the Waqf Amendment Act 2025, several instances of voluntary demolition of illegally constructed properties on public land, which were earlier classified as *waqf* properties, came to light which highlight the importance of the Act.

- (a) *Save India Foundation v. LG of Delhi*<sup>53</sup>- A complaint was lodged to government authorities by the Save India Foundation in May 2025 regarding illegal occupation of government land in the form of a large mosque/markaz structure, a banquet hall, a charitable dialysis and diagnostic centre, and multiple commercial pathology laboratories. Roughly 2,512 square feet of encroachment on the road and footpath maintained by the PWD of the Government of Delhi and another 36, 248 sq. ft of encroachment on the Ramlila Ground adjoining the premises of the Mosque were confirmed by the officials of the Land Development office. The committee responsible for the management of the Masjid contended that the Masjid, Dargah, and Muslim graveyard at the site were established as *waqf*. MCD contended that the illegal occupation was a blatant and gross misuse of public land and that the contention of the masjid or dargah or graveyard being used as a marriage venue or clinic was groundless. The High Court upheld the MCD's contention and directed that appropriate action for removal of such encroachment and removal of illegal commercial activity shall be taken by MCD.
- (b) Illegal Madrassa in Panna district of Madhya Pradesh<sup>54</sup>- A madrassa standing on public property and illegally operating for the past thirty years was voluntarily demolished by its operators after receiving notices from officials under the new act.

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<sup>53</sup> 2025 SCC OnLine Del 2485.

<sup>54</sup>The Times of India, available at: <https://timesofindia.indiatimes.com/city/bhopal/first-under-waqf-amendment-act-illegal-madrassas-in-mp-demolished-voluntarily/articleshow/120246204.cms> (last visited on January 9, 2026).

(c) *State of Kerala v. Kerala Waqf Samrakshana Vedhi*<sup>55</sup>- The Kerala High court adjudged that the claim of Waqf Board over 400 acers of land that is home to approximately 600 Christian families is completely groundless and is nothing but a land grabbing tactic.

## 7. COMPARATIVE PERSPECTIVE ON RELIGIOUS ENDOWMENT GOVERNANCE

One of the primary contentions against the amendment is the supposed encroachment of the legislative into the religious practices of the minority community.<sup>56</sup> There are, however, numerous pieces of legislation already in place that govern other religious establishments such as-

ACT	OBJECT
The Charitable Endowments Act, 1890 <sup>57</sup>	To provide for management of property held under a charitable trust.
Bihar Hindu Religious Trusts Act, 1950 <sup>58</sup>	For improved administration of Hindu Religious Trusts in Bihar and to safeguard the property belonging to such trust.
The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 <sup>59</sup>	To amend and integrate laws governing management of Hindu Religious and Charitable Institutions and Endowments in Tamil Nadu.
The Delhi Sikh Gurdwaras Act, 1971 <sup>60</sup>	To properly manage Sikh Gurdwaras and their property in Delhi.

The amendment ensures parity and equality by subjecting *waqfs* to similar, comparable

<sup>55</sup> 2025 SCC OnLine Ker 2172.

<sup>56</sup> The Constitution of India, arts. 25-26.

<sup>57</sup> The Charitable Endowments Act, 1890 (Act 6 of 1890).

<sup>58</sup> Bihar Hindu Religious Trusts Act, 1950 (Act 1 of 1951).

<sup>59</sup> The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959).

<sup>60</sup> The Delhi Sikh Gurdwaras Act, 1971 (Act 82 of 1971).

regulatory and administrative standards. The amendment is not aimed at interfering with the religious practices of the minority community but seeks to enhance the administration of its secular affairs.

## 8. CONCLUSION

The State, by the power vested in it by virtue of the Constitution, is capable to enact and enforce the Waqf (Amendment) Act, 2025.<sup>61</sup> While most of the provisions of the amendment aim to address administrative issues that are secular in nature, contentions can be made against certain provisions. The provision related to proving five years of practicing Islam to declare property as *waqf* can be contended as discretionary and in violation of Articles 14, 25, and 26.

The legislative through the 2025 amendment aims to improve the administrative efficiency of the *waqf* institutions while dealing with previous prevailing issues such as the mismanagement of the *waqf* property by intermediaries along with classifying governmental public property as that of the *waqf*'s.<sup>62</sup> In a constitutional democracy, such reformative regulation is not only permissible but necessary. However, such reformation should not come at the behest of the rights of the citizens. The aim of the legislative should therefore be to positively reform religion while ensuring that the religion is not regulated arbitrarily.

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<sup>61</sup> The Constitution of India, arts. 245, 246, 25(2), 26.

<sup>62</sup> 'Statement of Objects and Reasons', The Waqf (Amendment) Act, 2025.