

Tradition to Transformation: Review on Evolution, Impact and the Road of Accountability in the WAQF Institution under Indian Legal Framework

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The institution of Waqf in India represents a centuries-old socio-religious system grounded in Islamic jurisprudence, intended for charitable and religious purposes. Over time, its legal governance has undergone a significant transformation from colonial impositions and administrative neglect to modern legislative attempts at reform. The latest legislative milestone, the Waqf (Amendment) Act 2025, proposes a comprehensive overhaul of the existing Waqf governance framework to address chronic inefficiencies and promote transparency. Currently, Waqf properties in India suffer from mismanagement, encroachments, opaque decision-making, and lack of standard regulatory mechanisms. Though multiple amendments have attempted to streamline administration, the system remains vulnerable to misuse and political interference. The paper identifies persistent gaps in Waqf management such as limited legal recourse, political manipulation, inadequate property documentation, and exclusion of key stakeholders. The 2025 Amendment attempts to bridge these gaps by redefining waqf creation, delegating verification duties to District Collectors, integrating digital platforms for registration, and widening board representation to include Muslim women and non-Muslims. However, the reform also introduces potential constitutional tensions, especially concerning religious autonomy and administrative overreach. While the Amendment represents a significant legislative advance, its effectiveness hinges on rigorous enforcement, legal clarity, and alignment with constitutional safeguards. It underscores the delicate balance between enhancing public accountability and preserving the religious essence of Waqf.

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Introduction

The Waqf (Amendment) Act 2025³ has recently been passed by the parliament of India which addresses the long-standing deficiencies in the governance, organisation, and utilisation of Waqf properties in India. The act aims to improve legal clarity, ensure broader participation in decision-making, and enhance the transparency and efficiency of Waqf asset management in India.⁴ The Parliament of India on 5th April 2025, witnessed the promulgation of two significant legislations: The *Waqf (Amendment) Act 2025*⁵, and the *Mussalman Wakf (Repeal) Act 2025*.⁶ Together, these Acts intend to modernise the functioning of Waqf Boards and to explain the statutory regime governing Waqf properties.⁷

A statute implemented in the colonial era the *Mussalman Wakf Act, 1923*⁸, is now repealed by The *Mussalman Wakf (Repeal) Act, 2025*, as the old act was considered incompatible with the contemporary constitutional and statutory Structure.⁹ The MWRA, 2025 is expected to eliminate overlapping provisions and legal ambiguities by consolidating governance under the *Waqf Act, 1995*¹⁰, thus promoting a more consistent, accountable, and transparent system of Waqf administration.¹¹

The *Waqf (Amendment) Act, 2025*, suggests several functional reforms to the *Waqf Act, 1995*, which includes the renaming of the Act, the amendment of the statutory definitions of "Waqf", simplifying the process of registration and added improvement in the process, and incorporation of digital technologies for managing Waqf records and documentation.¹² These are some major changes which are aimed to rectify the systemic inefficiencies and administrative blockages that have historically tormented the Waqf governance structure.

³ *Waqf (Amendment) Act, 2025*, No. 14 of 2025 (India) [hereinafter WAA, 2025].

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Mussalman Wakf (Repeal) Act, 2025*, No. 15 of 2025 (India) [hereinafter MWRA, 2025].

⁷ Lok Sabha Secretariat, *Lok Sabha Debates*, 18th ser., vol. 1, no. 14 (New Delhi: Lok Sabha Secretariat, August 8, 2024)

⁸ *The Mussalman Wakf Act, 1923*, No. 42 of 1923 (India) [hereinafter MWA, 1923].

⁹ *MWRA, 2025*

¹⁰ *Waqf Act, 1995*, No. 43 of 1995, § 3 (India) [hereinafter WA, 1995]

¹¹ *Ibid.* § 3.

¹² *Ibid.* §§ 6A–6F

It is essential to highlight that the Waqf institutional framework covers exclusive privileges to the Muslim community. The *Sikh Gurdwaras Act, 1925* is limited in scope to the administration of gurdwaras and does not cover broader religious grants.¹³ Whereas, comprehensive statutory regulations under laws are provided in regards to the Hindu temples, such as, the *Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959*, the *Indian Trusts Act, 1882*, and the *Religious Endowments Act, 1863*, placing Hindu temples directly under the state supervision.¹⁴ This legal lop-sidedness has initiated the debates surrounding equality before law, secularism, and interference's of state in religious affairs.

The Waqf (Amendment) Act, 1964, Waqf (Amendment) Act, 1969 and Waqf (Amendment) Act, 1984 were three amendments made to original *Waqf Act, 1954*, before being substantially refitted by the *Waqf Act, 1995*.¹⁵ It was perceived by some analyst that the 1995, legislation was an attempt by secular political entities to demonstrate symbolic support for the Muslim community.¹⁶ Amid its notable innovations was the conception of Waqf Tribunals, also having wide jurisdiction to adjudicate disputes over both uncontested and disputed Waqf properties, including issues related to tenancies, leases, and professional claims.¹⁷ Each Tribunal comprises three members: an expert in Muslim law, a member of the State Civil Service, and a member of the Judicial Service.¹⁸ The precise jurisdiction of the Tribunal is determined by the respective State Governments.

The *Waqf Act, 1995* bars civil courts from entertaining suits or proceedings concerning matters assigned to the Tribunal, and it also prohibits appeals from the Tribunal's orders or interim decisions.¹⁹ Although the Tribunal does not constitute a Shariat court in formal terms, its institutional structure and procedural orientation are heavily tilted in favour of Waqf interests. Unlike civil courts, which are bound to principles of impartial adjudication, the Tribunal prioritises the protection and efficient administration of Waqf, thereby limiting the capacity of third parties to assert legitimate claims.²⁰

¹³ *Sikh Gurdwaras Act, 1925*, No. 8 of 1925 (India)

¹⁴ *Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959*, No. 22 of 1959 (India); *Religious Endowments Act, 1863*, No. 20 of 1863 (India); *Indian Trusts Act, 1882*, No. 2 of 1882 (India).

¹⁵ *Muslim Wakfs Act, 1954*, No. 29 of 1954 (India), as amended in 1964, 1969, and 1984.

¹⁶ Faizan Mustafa, "Politics of Waqf Law Reform in India," *Indian Journal of Islamic Studies* (2014): 67.

¹⁷ *Waqf Act, 1995*, No. 43 of 1995, § 83 (India) [hereinafter WA, 1995].

¹⁸ *Ibid.* § 83(4).

¹⁹ *Ibid.* § 85.

²⁰ *Ibid.* §§ 83–85.

Past events have also contributed to the controversial nature of Waqf property claims.²¹ Subsequent Partition, many Sikh and Hindu refugees occupied lands that were subsequently transferred to Waqf Boards under the *Waqf Act, 1995*, depriving the refugees of any legal title or protection.²² In contrast to that no such preferential treatment stands for Hindu religious endowments in Pakistan and Bangladesh as which were not afforded similar protections.²³ Notwithstanding, successive legislative reforms, demands for further concessions have continued, especially following the publication of the *Sachar Committee Report* in 2006.²⁴ The report estimated that the total area of Waqf properties in India spans approximately 6 lakh acres, with a recorded value of around ₹6,000 crore.²⁵

A particularly consequential change introduced by the *Waqf (Amendment) Act, 2013* was the imposition of significant restrictions on the acquisition of Waqf lands for public purposes²⁶. The Act stipulates that such acquisitions are permissible only under highly restrictive and exceptional circumstances.²⁷ This legislative restriction poses a serious impediment to urban development, especially considering that large portions of Waqf land are located in major urban centres. As a result, India's urban expansion and infrastructure development initiatives face structural limitations imposed by the statutory protection of Waqf lands²⁸.

From Tradition to Transformation: Journey of Evolution of Waqf Related Laws

Within the Indian legal and cultural fabric to understand the transformation of Waqf, it is important to revisit its traditional foundations in Islamic jurisprudence. For religious, charitable, or socially beneficial purposes waqf establishes a permanent endowment of property or assets, intended primarily²⁹. The property dedicated to waqf under Islamic law is considered irrevocable

²¹ Krishnadas Rajagopal, "Misuse of Waqf Law Led to Amendments, Centre Informs Supreme Court," *The Hindu*, April 26, 2025, <https://www.thehindu.com/news/national/waqf-row-cant-stay-law-made-by-parliament-when-validity-presumed-centre-tells-sc/article69490335.ece>.

²² Neyaz Farooquee, "The Endless Legal Battles over Muslim-Donated Lands in India," *BBC News*, Delhi, April 17, 2025, <https://www.bbc.com/news/articles/cly84vvgk4ro>

²³ Shraddha Pandey, "From Enemy Property Act to Vested Property Act," *OpIndia*, September 23, 2024, <https://www.opindia.com/2024/09/from-enemy-property-act-to-vested-property-act-how-bangladesh-govts-legally-confiscated-lands-of-hindus-since-its-liberation-from-pakistan/>.

²⁴ Government of India, Ministry of Minority Affairs, *Social, Economic and Educational Status of the Muslim Community of India (Sachar Committee Report)* (New Delhi: Government of India, 2006), accessed May 27, 2025, <https://minorityaffairs.gov.in>.

²⁵ *Ibid.*, 170–175.

²⁶ *Land Acquisition Act, 1894*, No. 1 of 1894, § 3(f) (India).

²⁷ *Waqf (Amendment) Act, 2013*, No. 27 of 2013, § 104A (India).

²⁸ Shaikh Mujibur Rehman, "Propriety, Not Just Property: The Waqf Debate," *Frontline*, November 13, 2024, <https://frontline.thehindu.com/the-nation/policy-waqf-amendment-bill-2024-muslim-property-rights-modi-government-reforms-minority-institutions-controversy/article68814788.ece>.

²⁹ *Waqf Act, 1995*, No. 43 of 1995, § 3(r) (India).

and perpetual, which means once the property is endowed it can neither be sold or transferred, nor inherited. The sacredness of Waqf lies in its immutability and its binding orientation towards social welfare and communal benefit³⁰.

Historically speaking according to Islamic scholars, they have emphasized on four essential elements for a valid Waqf. *First*, the concept must exemplify perpetuity where all the resources dedicated to waqf must be permanent in nature. *Second*, once established, it cannot be undone by the donor, the Waqf becomes irrevocable. *Third*, serve public welfare, the foundational motive of creating a Waqf must public welfare and communal interest. *Lastly*, Mutawalli is the one who handles all the administration entrusted as a trustee, who holds administrator's responsibility for overseeing the Waqf assets and ensuring their continued use aligns with the intended purpose. By the means of these principles, Waqf as an institution evolved not just as a religious organisation but as a socio-economic mechanism for ensuring community welfare and institutional resilience. around the 6th year of Hijri, one of the earliest Waqf deeds was executed by Omar ibn al Khattab (the second Caliph of Islam), indicating the tradition's deep-rooted association with community service.³¹ Upon the dawn of Islamic rule in India, particularly during the Delhi Sultanate in the 13th century, the Waqf system was institutionalized to support the increasing network of mosques, educational institutions, and public utilities. Rulers and wealthy individuals made generous endowments, which supported autonomous social services and educational infrastructure, minimizing dependence on state subsidies and reinforcing societal self-sufficiency.

However, during the British colonial era (1858-1947), the path of Waqf in India underwent significant alteration and change³². After the arrival of the East India Company, they introduced a paradigm shift in legal governance of waqf management, with colonial administrators which mostly lacking sensitivity or understanding of the intrinsic religious and legal dimensions of Waqf.³³ To take formal control over religious trusts, the British marked an attempt and enacted the Religious Endowments Act of 1863 with the intent of altering the autonomy of traditional

³⁰ Monzer Kahf, "Towards the Revival of Awqaf: A Few Fiqhi Issues to Reconsider," *Harvard Journal of Islamic Finance* 1 (1999): 1

³¹ Miriam Hoexter, *Endowments, Rulers, and Community: Waqf al-Haramayn in Ottoman Algiers* (Leiden: Brill, 1998).

³² Ishtiyah Ahmad Zilli, "Waqf 'Ala al-Awlad': A Case of Colonial Intervention in India," *Intellectual Discourse* 26 (2018): 989.

³³ Ibid.

Waqf management³⁴. It has been witnessed that, waqf properties became subject to bureaucratic mistake, which were propelled more by Western legal reasoning than Islamic jurisprudential norms. The colonial state's thought regarding to religious endowments and its broader agenda of secularization led to an erosion of legal principles of Islam. Also, the introduction of the Permanent Settlement and the Zamindari Act in 1793, resulted in the legal ownership of land being transferred to cultivators, thereby undermining the traditional custodianship of Waqf properties and contributing to their gradual erosion.

In response to colonial challenges the Mussalman Wakf Validating Act in 1913, represented a pivotal legal reform. From legitimizing the family waqfs also known as Waqf-al-Aulad³⁵ to reversing previous British rulings that had rendered such endowments invalid on grounds of violating the rule against perpetuity, this act legitimized all these changes.³⁶ It was significant that the said Act was substantial in safeguarding Waqf intentions within familial structures, moreover, the Mussalman Wakf Validating Act (1913) also opened the door to administrative misuse in the absence of a centralized oversight mechanism, thus exposing the system to intrusions and malpractices.³⁷

Lot of efforts were made during post-independence period towards legalised Waqf administration in a new constitutional and legal order through statutory enactments. The Waqf Act of 1954,³⁸ marked the Indian state's first comprehensive attempt to establish a uniform legal framework. The Act provided the formation of State Waqf Boards and to administer registration, management, and supervision of Waqf assets.³⁹ The regulation also institutionalized the selection of Mutawallis and mandated periodic audits and inspections.⁴⁰ Moreover, a Central Waqf Council was constituted to provide supervision, policy advice and coordinate activities across states. Despite all of these reforms, there were many shortcomings in the Waqf Act of 1954, A for achieving substantive improvements. Major Issues such as insufficient documentation, lack of

³⁴ Syed Khalid Rashid, "Administration of Waqf's Properties in India," in *Proceedings of the International Conference on Masjid, Zakat and Waqf (IMAF 2014)*, 7 (2014).

³⁵ Asaf A. A. Fyze, *Outlines of Mohammedan Law*, 5th ed. (Oxford: Oxford University Press, 2008), 302–303.

³⁶ Waqf in India: Evolution, Laws, Challenges & Waqf (Amendment) Bill, 2024," *Mondaq*, May 2024, https://www.mondaq.com/india/real-estate/1539008/waqf-in-india-evolution-laws-challenges-waqf-amendment-bill-2024?utm_source=chatgpt.com.

³⁷ *Ibid.*

³⁸ *The Waqf Act, 1954*, No. 29 of 1954 (India).

³⁹ *Ibid.* §9-22.

⁴⁰ *Ibid.* §31-45.

accountability, widespread mismanagement, and persistent encroachments continued to plague the Waqf landscape, raising concerns about transparency and enforcement.⁴¹

After seeing the shortcoming of the 1954 Legislation, the Parliament of India adopted the Waqf Act of 1995⁴² to reinforce structural discipline and administrative accountability. The major changes which the Waqf Act of 1995 emphasized includes mandatory registration of all Waqf properties with State Boards⁴³, intending to create a reliable database for improved governance. It expanded the functional scope of Waqf Boards, authorising them not only to resolve disputes but also to manage and protect Waqf assets proactively.⁴⁴ It also set guidelines for the appointment and conduct of Mutawallis, aiming to bolster fiduciary responsibility. The establishment of Waqf Tribunals⁴⁵ provided a specialized forum for adjudicating disputes related to encroachment, administrative lapses, or misappropriation. However, despite its comprehensive planning, the implementation of the 1995 Act, continued to be disturbed by political interference, bureaucratic inaction and lack of public awareness.⁴⁶

After analysing the persistent inefficiencies in the above Waqf Act of 1995, the Waqf (Amendment) Act of 2013, was introduced, with a strict focus on accountability and institutional transparency.⁴⁷ The intervention of this legislation mandated prompt reporting of encroachments by Waqf Boards and further required state governments to act quickly on such matters. It also improved the authority of Waqf Boards, allowing them to conduct independent audits and take disciplinary action against felonious Mutawallis.⁴⁸ The 2013 Amendment reflected a legislative recognition of the systemic challenges facing the Waqf system and an attempt to reinvigorate its administrative machinery.⁴⁹

With regards to Waqf in India, the most recent development in the legal trajectory is the Waqf (Amendment) Act, 2025. This Amendment seeks to transform Waqf governance by embracing

⁴¹ Waqf in India: Evolution, Laws, Challenges & Waqf (Amendment) Bill, 2024," *Mondaq*, May 2024, https://www.mondaq.com/india/real-estate/1539008/waqf-in-india-evolution-laws-challenges-waqf-amendment-bill-2024?utm_source=chatgpt.com.

⁴² *Waqf Act, 1995*, No. 43 of 1995 (India).

⁴³ *Ibid.* §36

⁴⁴ *Ibid.* §32

⁴⁵ *Ibid.* §7, 83

⁴⁶ Vinayak Agarwal and Abhishek Mishra, "Critical Analysis of the Waqf Act, 1995: Challenges, Amendments, and Reforms for Effective Management of Waqf Properties in India," *International Journal of Legal Research & Analysis* 2 (2025).

⁴⁷ *Waqf (Amendment) Act, 2013*, No. 27 of 2013 (India).

⁴⁸ *Ibid.* §11

⁴⁹ S. Rai, "Reforming the Waqf Act: A Critical Analysis of the 2013 Amendment," *Indian Journal of Legal Studies* 7 (2015): 112–29.

transparency, efficiency, and inclusiveness.⁵⁰ The Act mandates that District Collector will register all Waqf properties and his decision regarding the registration, also holds the final legal authority which can be recorded in revenue records. It further specifies that waqfs should not be created through mere oral declarations, but it must be created through formal written deeds, thereby addressing ambiguities and potential for fraud. A remarkable innovation is the inclusion of Muslim women and non-Muslims in both the Central and State Waqf Boards, enhancing representational diversity.⁵¹ Lastly, it opens the path for legal recourse through High Courts, offering broader avenues for dispute resolution and judicial oversight.⁵²

Under a secular governance framework, this journey of the Waqf institution from a traditional Islamic endowment system to a structured legal entity encapsulates a broader narrative of transformation. The legislative efforts towards Waqf reflect an evolving commitment towards institutional accountability, public welfare, and inclusive governance.⁵³ However, the enduring challenges of encroachment, political interference, and administrative opacity continue to impede the realization of Waqf's full potential.⁵⁴ The road to transformation is not just about statutory reform, but also about the restoration of ethical management, community participation, and sustained policy support. Thus, the Waqf institution, stands at the intersection of faith and functionality, representing a tradition that must adapt meaningfully to contemporary accountability frameworks.

Accountability of the Waqf Board and the Way Forward

The Waqf Act, 1995, constituted the principal statutory framework for the governance, regulation, and protection of waqf properties across India. It recognized the creation of waqf through multiple modalities: by express declaration, long-standing usage (waqf by user), and family endowments (waqf-alal-aulad). In departure from this legal flexibility, the Waqf (Amendment) Act, 2025, officially titled the Unified Waqf Management, Empowerment, Efficiency, and Development Act, 2025, abolishes the category of waqf by user, permitting waqf creation exclusively via formal declaration or deed of endowment.⁵⁵ Moreover, the amendment

⁵⁰ Prachi Prashar, "Waqf (Amendment) Act, 2025: An Analysis," *International Journal of Law, Management & Humanities* 8 (2025): 1229–32.

⁵¹ *Waqf (Amendment) Act, 2025*, No. 14 of 2025, § 12 (India).

⁵² *Ibid.* §39

⁵³ Shalini Shukla & Chandra Prakash Singh, *Waqf Governance Post-Umeed Act, 2025: Challenges and Opportunities in Contemporary India*, 3 *QURU': JOURNAL OF FAMILY LAW AND CULTURE* 359–378 (2025)

⁵⁴ *Ibid.*

⁵⁵ *Waqf (Amendment) Act, 2025*, No. 14 of 2025, § 12 (India).

imposes specific eligibility criteria for waqf founders: they must be practicing Muslims for no less than five years and must possess legal title to the endowed property.⁵⁶ Crucially, the amendment also introduces a proviso that waqf-alal-aulad arrangements cannot infringe upon the inheritance rights of female heirs, thereby aligning the legal structure with constitutional principles of gender equity.⁵⁷

While the 1995, enactment was silent on the classification of government-owned land as waqf, the 2025, amendment explicitly negates any such classification. In instances where ownership is disputed, the District Collector is statutorily empowered to initiate inquiries and submit a report to the state government. The amendment concurrently eliminates the quasi-judicial authority of Waqf Boards to identify and classify waqf properties a power vested under the 1995, Act. Under the revised framework, waqf property surveys are now entrusted to District Collectors acting under applicable state revenue laws, displacing the role previously held by survey commissioners. All pending surveys are to be completed under these updated protocols.

Significant restructuring is also evident in the composition of the Central Waqf Council. Under the 1995 regime, all members including a minimum of two women were required to be Muslims. The 2025 legislation, however, introduces a pluralistic model, permitting the inclusion of two non-Muslim members, alongside Members of Parliament, retired judges, and distinguished individuals irrespective of religious identity. Nevertheless, key positions—such as representatives from Muslim organizations, Islamic jurists, and Waqf Board chairpersons⁵⁸ must remain Muslim, with a continuing obligation to include at least two Muslim women.

Parallel changes have been proposed concerning State Waqf Boards. The earlier framework permitted elected members drawn from electoral colleges of Muslim MPs, MLAs, and Bar Council members, provided at least two women were included. In contrast, the 2025 legislation replaces this democratic model with state-nominated appointments, mandating the inclusion of two non-Muslim members.⁵⁹ Representation is further diversified through the compulsory inclusion of members from Shia, Sunni, and socio-economically backward Muslim communities, and, where relevant, from the Bohra and Aghakhani sects. The presence of two Muslim women remains obligatory.⁶⁰

⁵⁶ Ibid. § 4a.

⁵⁷ Ibid. § 3a.

⁵⁸ Ibid. §§ 3, 3C–3E, 4, 36–37.

⁵⁹ Ibid. § 12

⁶⁰ Ibid. § 12

In judicial matters, the 1995 Act prescribed that Waqf Tribunals be chaired by a judge of Class I rank, accompanied by an expert in Muslim law and a government officer of Additional District Magistrate level. The amendment of 2025, removes the requirement for an Islamic law expert, and reconstituting the Tribunal having two members first, a sitting or retired District Court judge as Chair and second, a serving or former Joint Secretary to the state government as the second member.⁶¹

Moreover, the finality clause under the 1995 Act, preventing appeals beyond the Tribunal except in exceptional cases before the High Court has been repealed. The amendment provides right of appeal for a statutory to the High Court within ninety days, marking a substantive procedural reform.

The 1995 Act, with respect to financial oversight, delegated audit powers solely to state governments. The 2025, amendment substantially enlarges this framework, enabling the central government to frame regulations on waqf registration, financial disclosures, and publication of Waqf Board proceedings. It also designates the Controller and Auditor General of India or an appointed officer as the auditing authority.

Further the amendment liberalizes the formation of distinct waqf boards. While the 1995, Act permitted separate boards for Sunni and Shia sects when the Shia waqf constituted at least 15% of the state's total waqf assets or income, the 2025, amendment extends this eligibility to Bohra and Aghakhani communities as well.⁶²

Section 3(r) of the 1995 Act broadly defined waqf as the permanent dedication, by any person, of movable or immovable property for a purpose recognized by Muslim law as pious, religious, or charitable. This encompassed both self-declared waqfs and waqf by user—where continuous, long-standing religious or charitable use sufficed, regardless of written documentation. The 2025 Act, however, narrows this scope by requiring formal written documentation and mandating a five-year continuous practice of Islam by the donor.⁶³ The concept of waqf by user is entirely eliminated.⁶⁴ The amendment authorizes government officers, including District Collectors, to initiate proceedings to reclaim such properties as government land.⁶⁵ These modifications signal a paradigmatic shift from community-based religious autonomy to a bureaucratized and

⁶¹ Ibid. § 39

⁶² Ibid. §§ 13(2A).

⁶³ Ibid. § 5(ix)

⁶⁴ Ibid. § 5(ix)

⁶⁵ Ibid. § 21

formalistic model of governance, raising potential constitutional concerns under Article 26 pertaining to religious freedom. Legal scholars and religious authorities have voiced apprehensions over the erosion of traditional waqf practices and the displacement of community control.⁶⁶

The Sachar Committee Report brought attention to the structural deficiencies in waqf administration.⁶⁷ It identified approximately 490,000 registered waqf properties nationwide, predominantly in West Bengal (148,200) and Uttar Pradesh (122,839).⁶⁸ These cover over 600,000 acres, with an outdated book value of INR 60 billion, calculated based on decades-old assessments. The reported annual income of INR 1.63 billion reflects a dismal 2.7% return. Six percent of this is allocated to Waqf Board administrative expenses, and one percent to the Central Waqf Council. The Committee posited that with proper market-oriented utilization, these assets could yield a minimum return of INR 120 billion per annum. The report condemned political inaction and highlighted systemic encroachments, both by private actors and government bodies. For instance, the Delhi Government was found to have illegally occupied over 300 waqf properties. Encroachments typically occurred through outright seizure or the imposition of obsolete rents. The Committee emphasized that these patterns of neglect and abuse had severely undermined the socio-religious potential of the waqf institution.

In return, in the year 2006, the Joint Parliamentary Committee (JPC) was constituted to examine proposed reforms. The Joint parliamentary committee submitted its report in 2008, endorsing several of the Sachar Committee's recommendations. Subsequently to this, in the Lok Sabha the Waqf Amendment Bill, 2010 was introduced by Minister Salman Khurshid and got passed by the house. Conversely, the Bill faced significant backlash from major Muslim organizations. Particularly Clause 87 was opposed by critics a lot, which reduced unregistered waqf properties legally untenable in the event of disputes. Given the absence of registration for thousands of waqf lands, this was perceived as marginalising. Another disputed provision permitted diversion of waqf income to undefined "community welfare" in the absence of a trustee, raising fears of fund misallocation. Moreover, the act criminalized encroachments, however it failed to reframe "encroachment" according to the suggestions of Sachar Committee or to propose any actual

⁶⁶ Shalini Shukla and Chandra Prakash Singh, "Waqf Governance Post-Umeed Act, 2025: Challenges and Opportunities in Contemporary India," *Quru: Journal of Family Law and Culture* 3 (2025): 359–78.

⁶⁷ Government of India, *Social, Economic and Educational Status of the Muslim Community of India: A Report* (Prime Minister's High-Level Committee, Cabinet Secretariat, November 2006), http://minorityaffairs.gov.in/sites/default/files/sachar_comm.pdf.

⁶⁸ *Ibid.*, 218–20.

procedure for reclaiming occupied waqf lands.⁶⁹ Because of the missing actionable safeguards, the authenticity of the act reduces among stakeholders.⁷⁰

The Waqf Act, 2025, specifically under Section 2 and 3 introduces further definitional and procedural aspects. Both the sections explicitly exclude Muslim charitable trusts not designated as waqf from the Act's scope, notwithstanding contrary judicial pronouncements.⁷¹ New definitions such as "Aghakhani waqf," "Bohra waqf," "Collector," and "portal and database" indicate a move towards digital administration and sect-specific governance. Section 3 mandates that only practicing Muslims of at least five years' standing and legal property ownership may create a waqf.⁷² Sections 3A to 3E institute mandatory ownership proof, bar waqf declarations that contravene inheritance rights (particularly of women), and require registration of all pre-2025 waqfs with detailed disclosures via an online portal.⁷³ Claims over government land or heritage sites are expressly barred, and disputes are to be adjudicated by senior administrative officials.

Regarding land surveys and record maintenance, Sections 4, 5, 6, 36, and 37 transfer responsibility from the Survey Commissioner to the District Collector under revenue laws.⁷⁴ A 90-day public notice via newspapers must precede record updates. All waqfs post-2025 must be supported by a written deed. The Collector is tasked with verifying applications and reporting disputed claims.

Administrative changes in Sections 9, 13, and 14 restructure the Central Waqf Council and State Boards to reflect community diversity.⁷⁵ Inclusion of at least two women and two non-Muslim members is mandated. State Boards may have up to 11 members, representing Sunni, Shia, Bohra, Aghakhani, and socio-economically disadvantaged Muslim groups. States may also establish separate Boards for Bohra and Aghakhani communities where justified.⁷⁶

⁶⁹ Adil Hussain Wagay, "The Economic Value of Waqf Assets in India: A Study of the Sachar Committee's Report," *Urban India* 44, no. 2 (2024): 85, 88.

⁷⁰ *Ibid.*

⁷¹ *Waqf (Amendment) Act, 2025*, No. 14 of 2025, §§ 2–3 (India).

⁷² *Ibid.* § 3.

⁷³ *Ibid.* §§ 3A–3E.

⁷⁴ *Ibid.* §§ 3A–3E, 4, 5, 6, 36, 37.

⁷⁵ *Ibid.* §§ 9, 13, 14.

⁷⁶ A. S. Wani, "Upliftment of the Marginalized in India: A Study of the Muslim Empowerment Through Islamic Social Finance," *Journal of Muslim Minority Affairs* (2022), <https://doi.org/10.1080/13602004.2023.2176067>.

Conclusion

The Waqf (Amendment) Act, 2025, seeks to effectuate a critical revision of the Waqf Act, 1995, aimed at remedying longstanding systemic inefficiencies in the administration of waqf properties while augmenting the institutional efficacy of waqf boards across jurisdictions. This legislative proposal endeavours to address legal ambiguities and operational deficits by amending the statutory definition of waqf, refining the procedural framework governing registration, and introducing mandated use of technological infrastructure for the accurate maintenance and digitization of waqf-related records. Parallely, the Mussalman Wakf (Repeal) Act, 2025, envisions the formal repeal of the Mussalman Wakf Act, 1923—now regarded as redundant and inconsistent with contemporary legal standards—with the objective of consolidating waqf governance under the updated framework of the Waqf Act, 1995. The dual legislative initiative seeks to eliminate statutory overlap, reinforce uniformity in legal interpretation, and enhance transparency and accountability in the governance of waqf institutions.

However, despite the progressive intent underpinning these reforms, significant structural and constitutional challenges remain embedded within the existing waqf framework. One of the most persistent issues pertains to the irrevocable nature of waqf dedications, encapsulated in the legal maxim “*once a waqf, always a waqf.*” This principle has become a source of extensive litigation, as illustrated by the ongoing disputes in Bet Dwarka, wherein judicial forums have expressed concern over contested ownership claims involving private and religious property interests. Legal uncertainty is further compounded by recurring instances of mismanagement, widespread illegal encroachments, and inefficiencies in the conduct and completion of waqf property surveys. Several states have yet to fulfil their statutory obligations—Gujarat and Uttarakhand have not commenced surveys, and in states like Uttar Pradesh, survey activities initiated as early as 2014 remain pending—thereby impeding both transparency and enforcement.

The lack of an appellate remedy further aggravates these inadequacies. At present, all the decisions decided by Waqf Tribunals are protected from judicial review by higher constitutional courts, which create alarming concerns regarding due process, judicial accountability, and the rule of law. Additionally, with the help of Section 40 of the Waqf Act, it has come under intense scrutiny, as it grants waqf boards the independent power to designate private properties as waqf based on presumptive or insufficient evidence. This has created an engendered legal and social unrest. Among all the States and Union Territories, only 8 states have reported data on such

actions, so far 515 properties have been declared as waqf under this process, pointing to a trend that demands more exhaustive legislative and judicial review.

The varying legal framework has raised lot of constitutional questions, and most notably via a Public Interest Litigation filed before the Delhi High Court.⁷⁷ The petition questions the constitutional validity of a waqf Act, particularly for other religious communities where there is an absence of parallel statutory frameworks. It raises foundational questions under Articles 14⁷⁸ and 26⁷⁹ of the Constitution of India, concerning equality before the law and the right of religious value to manage their affairs in matters of religion. In reply to these statements, the Delhi High Court has given the direction to the Central Government to clarify its standing on this matter, pointing a potential for constitutional adjudication that may redefine the limitation of religious and administrative sovereignty.

Mr. Tushar Mehta, the Solicitor General of India, in defence of the Legislation, has sustained that the new Waqf (Amendment) Act, 2025, developed from a procedurally robust and inclusive legislative process.⁸⁰ He cited the ponderings of the Joint Parliamentary Committee, which assembled 38 sittings, reviewed over 29 lakh stakeholder suggestions, and examined approximately 98.2 lakh memoranda. Addressing the argumentative issue of waqf by user, The Solicitor General clarified that properties already registered prior to the enactment will retain their waqf status, and those who's in line of registration will need to establish and follow the entire procedure to make their claims under the amended law. He emphasized that the registration requirement has existed since the Mussalman Wakf Act, 1923, thereby negating the argument that this is a novel imposition.

On the alleged overreach of state authority, Mehta contended that judicial review remains intact, asserting that Waqf Tribunals function as quasi-judicial bodies empowered to evaluate and overturn administrative decisions. He also clarified that the initiation of an inquiry by a Collector

⁷⁷ PIL in Delhi HC Challenges Constitutional Validity of Waqf Act 1995; Seeks Uniform Law for Charitable Religious Institutions," *Legal World*, April 16, 2022,

<https://legal.economictimes.indiatimes.com/news/industry/pil-in-delhi-hc-challenges-constitutional-validity-of-waqf-act-1995-seeks-uniform-law-for-charitable-religious-institutions/90875907>.

⁷⁸ India, *Constitution of India*, art. 14 ("Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India").

⁷⁹ India, *Constitution of India*, art. 26 ("Freedom to manage religious affairs: Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—(a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law").

⁸⁰ Namrata Banerjee, "Waqf Not an Essential Part Of Islam: Centre Defends Waqf Amendment Act, 2025 Before Supreme Court," *Verdictum*, May 21, 2025, https://www.verdictum.in/court-updates/supreme-court/in-re-the-waqf-amendment-act-2025-union-of-india-tushar-mehta-1578237?utm_source=chatgpt.com.

under the new provisions does not ipso facto lead to dispossession or cessation of property use; rather, it merely suspends the distribution of benefits pending resolution. Regarding the restructured composition of waqf boards, Mehta argued that the inclusion of two non-Muslim members (in addition to two ex-officio posts) is a marginal measure designed to foster inclusivity, not state encroachment. He further noted that the amended provisions incorporate representation from diverse Muslim sects, including the Bohras, and mandate the inclusion of two female members—thereby promoting intra-community plurality.

Senior Advocate Kapil Sibal, representing the petitioners, countered by characterizing the legislation as a “parliamentary usurpation” of religious autonomy, contending that it impairs the rights of nearly 200 million Muslims and infringes Article 26. He objected to the redefinition of waqf, the dilution of community control via non-Muslim inclusion, the erasure of waqf by user, and the empowerment of government officers to declare waqf property as public land—all of which he argued represent an erosion of the constitutional guarantee of religious freedom and the secular nature of the Indian state.

In summation, the Waqf (Amendment) Act, 2025 introduces far-reaching reforms aimed at strengthening governance, institutional integrity, and legal clarity in waqf property management. However, its future efficacy will depend not merely on the statutory text, but on the extent to which it harmonizes administrative modernization with constitutional protections. The balance between secular oversight and religious autonomy remains a delicate one, requiring vigilant judicial interpretation and faithful legislative execution to ensure the objectives of transparency, equity, and inclusivity are genuinely realized.