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LEGISLATIVE COMMENT ON THE WAKF (AMENDMENT) BILL, 2025: QUOTING THE CONTEMPORARY ANALYSIS OF THE BILL

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Taarini Bhardwaj*

ABSTRACT

The newly amendments are added to outright and replace the laws over time as well as focusing on the correction of errors to ensure the accuracy and clarity of the laws, one such amendment in question is The Wakf (Amendment) Bill, 2025 that came into force on April 3, 2025. This research article leads to an insightful discussion as to what was the need to amend the Waqf Act, 1995, what was the historical aspect of the act, what are the new legislations enacted & repealed from the bill and how it is impacting the society as a whole. This research article ensures to reflect towards a detailed analysis of the amended bill along with the potential arguments propounded for the same. The newly enacted bill has received a negative remark on its enactment and assent given by the President of India, increasing violence making it a religious dispute rather than a property matter and therefore, this paper aims to clear such ambiguities on the disputed bill by discussing the landmark judgements like Syed Mohd. Salie Labbi v. Mohd Hanifa reflecting on the concept of waqf-by user.

Keywords: *The Waqf (Amendment) Bill, 2025, Waqf Act, 1995, Waqf by user, Amendments, Legislations, Enactment.*

* 3rd Year Law Student, B.A. LL.B. (Hons.), Vivekananda School of Law & Legal Studies, Vivekananda Institute of Professional Studies- TC.

1. INTRODUCTION: HISTORICAL BACKGROUND OF THE ACT

The Comprehensive definition of the term wakf has varied throughout the different aspect of laws. According to the Waqf Act,1954[1] it means a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by the Muslim law as being pious, religious and for the charitable purposes which could be made in writing or in oral but the words must show the intention of dedication of such a property. Waqf Act, 1995[2] has a different definition altogether with subject to additions under section 2(r) of the act[3] stating the waqf-by user shall not cease to be a user irrespective of the period of the cesser as well as an establishment granted to the wakf board members responsible for the protection of each property within each state[4] as well as the constitution of the Tribunals established by the State Governments to solve such matters under the act.[5] In Islam, it has been mentioned as an inalienable and charitable endowment typically donating a plot of the land or a building with no intention of reclaiming the assets, also known as "habs" or mortmain property.[6] Even though, not directly propounded under the Quran[7] in a legal sense, it has been strongly generated with the principles of generosity, kindness, charity etc. In South East Asia, the term has sometimes been written as wakaf or wakf, literally meaning 'confinement or prohibition.'

The Mosque of Quba in Madinah al Munawwarah is the first Islamic wakf in 622 A.D[8] which was built after the arrival of the Prophet. Since the beginning, education has been financed through the waqf institutions & later, the advent of *zakat* proclaimed. The claims of the Wakf lands by the Caliphate in Turkey & its extensive use in granting the infrastructure development in the urban sectors, education and health have been prominent. Abu Hanifa, the major disciple, described its creation as a tying up of the property of a substance & extinguishing their right towards "Allah" as their proprietary right. It has also been claimed that even before the advent of Islam, the presence and existence of the Wakf were evident in the times of ancient people in Egypt, Persia, and the Ottoman Empire. It has not been a concept which emerged historically, but a concept which emerged through the realms of the different models as propounded by Prof. Timur Kuran. The research studies also show

1 The Waqf Act, 1954, No. 29, Acts of Parliament, 1954 (India).
2 The Waqf Act, 1995, No. 43, Acts of Parliament, 1995 (India).
3 The Waqf Act, 1995, § 2(r), No. 43, Acts of Parliament, 1995 (India).
4 The Waqf Act, 1995, § 32, No. 43, Acts of Parliament, 1995 (India).
5 The Waqf Act, 1995, § 83, No. 43, Acts of Parliament, 1995 (India).
6 The Sharia Laws.
7 Religious Text of Islam, 610 CE.
8 International Journal of Suluk and Waqf Research, vol. 5, no. 1 (Suluk & Waqf Soc'y 2024).

that the Ottoman Empire had its own wakf lands established & it became a pillar for the religious, social & cultural aspects. The pillars of wakf are stated in Islam as to the Founder or *al-waqif*, the beneficiary, the wakf property, as well as the declaration of such property. Certain characteristics and classifications have been defined as irrevocability for the waqif, the founder, with respect to maintaining the perpetuity of the Muslim Jurists, Inalienability, and to promote the social welfare of the people. The objective of wakf was to dedicate a permanent, cumulative, and ever-increasing capital base and benevolent activities. When Omer sought the advice of the Prophet for the pious use of a piece of land called Sammagh in Khalibar, the Prophet said: "Tie up the property and devote the usufruct to human beings and it is not to be sold or made the subject of gift or inheritance, devote its produce to your children, your kindred and the poor in the way of God."[9]

It has been linked with the Pre-British India closely to a religious book 'In His Preaching of Islam: A History of the Propagation of the Muslim Faith', wherein Sufis are designated as the preachers and missionaries among the non-muslims. A case wherein the enactment of the Mussalman wakf Validating Act of 1913, was witnessed according to the scope of such an act & and its existence since the colonial era[10] but the post-independent era witnessed a different aspect of the legislation in Waqf Act, 1954[11] centralizing the administration of such properties & their scope, then in the year 1984, the Waqf Inquiry Committee report was set up while submitting the report leading to the Waqf (Amendment) Act, 1995[12] which was finally enacted and consolidated with respect to the amended laws of the previous act and over the years the definition of wakf has been defined vaguely, but finally this act caused a "major shift." The 2013 amendment enacted the non-muslims to dedicate the wakf property with a potential proof, The waqf-by user was discussed with a detailed analysis with the advent of such an amendment but still certain changes did not prove to be enough to govern the country's administration as well as the welfare of the citizens so much so that several major changes have been in discussion since 2024 for a necessary amendment to change the scope and definition of the bill. Thus, this historical aspect shows how wakf has evolved, since time immemorial but, the amendment has perplexed the system throughout significant years.

9 The OpIndia Explains, OpIndia (Aug. 8, 2024, 3:23 PM IST), https://www.opindia.com/2024/08/all-you-need-to-know-about-waqf-and-its-history-in-india.

10 Abdul Fata Mahmomed Ishak v. Russomoy Dhur, AIR 1894, ILR 18 CAL399.

11 The Waqf Act, 1954, No. 29, Acts of Parliament, 1954 (India).

12 The Waqf Act, 1995, No. 43, Acts of Parliament, 1995 (India).

2. KEY PROVISIONS OF THE WAQF ACT, 1995

The Waqf Act, 1995 has been a piece of legislation regulating with respect to the properties for charitable, religious endowments & community service for the welfare of the people, there are many key provisions, amended & uprooted from the 1954 Act[13] allowing the proper administration of the properties by the tribunals & the board members respectively. To understand the contemporary changes of the amendment act,[14] it is essential to understand the features of the Waqf Act, 1995 as follows:-

2.1 *Sections 3 of the Act.*

This section deals with the significant definitions involved with respect to the Act. In its clause (c) it has been stated that the "Board" shall be established under sub-section 13 as the case maybe with respect to the members, including the Wakf board as under section 106 of the Act. *The Times of India* stated that the Section 3 of the Waqf Act, 1995[15] with the land belonging to Muslims as their property of the Wakf and that it should be noted here that just thinking of the waqf is enough and it does not need any proof and if only the board members approve this, then the property does not belong to that person anymore, then the tribunal's role comes in place.[16] Under Section 3(i) of the Act[17] which defines the term "mutawalli" as the person appointed either verbally, under any deed or instrument by which a wakf has been created or by a competent authority, to be a mutawalli of a wakf including a person who is a mutawalli of wakf by the virtue or who is naib-mutawalli managing the property or the waqf.

2.2 *Section 9 of the Act.*

This section[18] establishes the constitution of the Central Wakf Council. The council can consist the Union-Minister incharge of the wakf, the members appointed by the Central Government, amongst Muslims, mainly the persons who represent the Muslim organization, four persons of national eminence, three members of Parliament belonging to one from the House of the People and another from the Council of the States. Chairpersons of three boards through rotation, one advocate of national eminence and one *mutawalli* along with

13 The Waqf Act, 1954, No. 29, Acts of Parliament, 1954 (India).

14 The Waqf(Amendment) Act, No. 14 of 2025.

15 The Waqf Act, 1995, § 3, No. 43, Acts of the Parliament, 1995 (India).

16 Rajeev Gupta, The Times of India,(Sept 26,2022, 1:30 PM IST) https://timesofindia.indiatimes.com/blogs/myview/waqf-act1995-a-tool-given-to-waqf-boards-to-snatch-the-property-of-hindus/.

17 The Waqf Act, 1995, § 3(i), No. 43, Acts of Parliament, 1995 (India).

18 Ibid

three eminent scholars of Islam, provided that women will be appointed as a member as well.

2.3 *Section 36 &37 of the Act.*

The sections 36& 37 compliment with each other, with respect to the registration of the *auqaf* through an application form made by the *mutawalli* which shall contain the copies & deeds when available with the particulars like class of the wakf, name of the mutawallis, rule of succession, particulars of the schemes of administration and the scheme of expenditure at the time of the registration. The Board shall follow the details of the properties entered and registered with the auqaf to the concerned land and on receipt, the land records of the office shall, according to the established procedure under section 36 of the act[19] shall be dedicated within the period of six months.

2.4 *Sections 51 and 52 A of the Act.*

If someone alienates the wakf property without the sanction of the wakf board, that will be considered "void", whether any sale, deed or a gift has been made earlier shall be considered as *void ab initio*[20] and penalty for the same shall be filed if someone purchases, possesses, in any manner whether permanently, temporarily, any movable or immovable property being a wakf property without any prior sanction of the Board, being punishable with rigorous imprisonment for a term of two years which may extend[21] provided, that the property alienated shall without prejudice to the provisions of any law for the time being in force be vested with the Board without any compensation thereof.

2.5 *Sections 83 of the Act.*

Further sections 83 to 84 deals with the constitution of the Wakf Tribunals and that, no other person can approach any other body or court until it is very essential, to the High Court as the case maybe and the decision of the tribunal rendered is binding on the appellants in dispute, which is rendered as "final" decision as in the contemporary court proceedings. The State Government could only constitute the Tribunals by the said notification Gazette for the determination of any dispute commenced otherwise.

19 Ibid

20 A Legal Maxim stating "Void from the Beginning."

21 The Waqf Act, 1995, § 52 A,No. 43, Acts of Parliament, 1995 (India).

3. CONTEMPORARY REQUISITES OF THE WAQF (AMENDMENT) BILL, 2025: CONSTITUTING THE MAJOR CHANGES

The Waqf Amendment Bill[22] duly enacted after receiving the assent of the President, Sh. Droupadi Murmu on April 5, 2025 created a menace throughout the world from the Parliamentary debates to the egregious violence which broke out in the Murshidabad district of Bengal affecting the religious efficacy of our nation. The amendment was passed giving the assent to the Mussalman Waqf (Repeal) Bill, 2025, to which many leaders like Amanatullah moved to the apex court against the said amendment stating that the Bill violates the Fundamental Rights enshrined under Article 14, 15, 21, 25, 26, 29, 30 and 300-A of the Constitution[23] curtailing the arbitrary executive interference undermining the minority rights to manage their religious institutions[24] and not only him, even in the Muslim dominated areas of Muzaffarnagar mass protests against the said bill by wearing black badges & even Actor Vijay moved to the Supreme Court against the bill alleging that the act in itself was discriminatory towards the Muslim Community violating their Fundamental Rights.[25]

The extent of the dedication of Wakf Properties contain lands spread across 9.4 lakh acres which covers the area of over 38 lakh acres. Now these properties are managed by the Waqf Assets Management System of India making India a "third-largest owner" of the land including the dedication of Movable and Immovable properties over 8 lakhs. But the proposed bill strictly states that Muslims practising Islam for five years are only allowed to dedicate towards the Wakf Properties[26], with women having the inheritance rights. The Amendment has improved the governance of the Wakf Properties in India unleashing an improved transparent structure and accountability system.

The bill has excluded the advent of "waqf by-user" from the Act, which states that if the property is used for any religious purposes for a long time it will become a wakf property. This was removed by reflecting the encroachment of the rights of the users, as it claimed for the lands without any proper notice or any evidence, further aiming to enhance the transparency & accountability of the act. A significant landmark case associated with this

22 The Waqf(Amendment) Bill 2025, No. 109-C of 2024 (India).

23 India Const. arts. 14,15, 21, 25, 26, 29, 30 & 300-A.

24 The Hindu newspaper, Sunday, (April 6, 2025,1:57 PM IST) Page 3.

25 The Hindu newspaper, Sunday, (April 14, 2025 2:00 AM IST).

26 The Times of India, Wednesday, (April 2, 2025 8:03 PM IST).

is the Syed Mohd. Salie Labbai v. Mohd. Hanifa Case[27] wherein the court stated that the mosque & the burial ground were indeed public waqfs & upheld the High Court's decision to frame a scheme for its administration under Section 92 of CPC[28] dismissing the claim of the appellants to classify such properties as their private ones.

However, The Amendment Act[29] has further created a widespread quandary with respect to the violation of Articles 25 & 26[30] after the involvement of the non-muslims on the board, but with respect to such amendment, the equity principle has been upheld consequently but the supporters state that after the inclusion of such an amendment, the Rights of the Minorities have been duly addressed further enhancing the transparent structure of the act. Thus, the management of the religious endowments, upholding the increased ability of examining the properties, audits, analysing the financial assets, broadenes the scope for the state after the enactment.

A drastic change with respect to the composition of the Wakf Tribunal by the advent of a current or former District Judge as Chairman and a current former Joint Secretary to the State Government has been introduced in the bill. Now the new amendment is constiuted as the "Unified Waqf management Empowerment, Efficiency and Development Act, 2025" & any ownership issue identified as the wakf will now be resolved by the Collector who will submit a report to the State Government empowering the collectors to conduct the surveys throughout per state revenues. The amendment now allows appeals to the High Court within 90 days omitting the finality of the decisions with respect to the Tribunals making a "stricter" provision to not appeal before the Higher courts in the past.

Thus, the utility of the bill in the contemporary scenario ensures the social welfare system, simplifying the procedure of the registration of the properties with the inclusion of the "other members" on the board focusing the enhancement of the Women's rights in the Wakf governance system which has further led to the addition of the technologies in maintaining the records inculcating a strong and efficient governance of the wakf dedicated properties in India.[31]

27 Syed Mohd. Salie Labbai v. Mohd. Hanifa, AIR 1976 SCC 107.

28 The Code of Civil Procedure, 1908, § 92, No. 5, Acts of Parliament, 1908 (India).

29 The Waqf(Amendment) Act, No. 14 of 2025.

30 India Const. arts. 25, 26.

31 The Waqf(Amendment) Bill 2025, No. 109-C of 2024 (India).

4. CONCLUSIVE STATEMENT

Analyzing the bill, the amendment was a *"compulsive necessity"* with respect to the Parliament to enunciate the transparent functioning & the management of the powers but the said bill in question affected the *"religious"* autonomy as per some opponents, that the interference was not needed with respect to the bill, with the Muslim community being at the centre-stage. This bill[32] therefore, has propounded & raised questions on India being a *"secular state"* and that ensuring the welfare of the citizens living in our country. In an article, questions were raised with respect to the constitutionality of the act[33] as to how a religious law like the Waqf Act has been made in a country like India? Why are Hindus, Christians & Sikhs not having such a law & why only Muslims? It is strange that such an act exists in a secular country[34] whereas there are no such laws in Muslim dominated countries like Libya, Turkey, Egypt, Sudan, Lebanon, Jordan and so on. There should be no such law or act for India as well and the Parliament should declare it to be *"unconstitutional"* in nature. Even Dr. Faizan Musafa who is the Vice- Chancellor of NLU Patna criticized the bill discriminatory under article 14 of the Indian Constitution against recent converts with respect to the five years of efficient practice dedicated to the *"Islam"* and destabilizing the usage of the said properties.

However, the amendment[35] as per the proponents in favour of the bill, has achieved a lot, combating significant management with the religious affairs of the country propagating right to equality before the law and non-discriminatory principles of the land incorporating the efficient, transparent and accountable mechanism creating easy dedication of the Wakf assets, further enhancing the audits, records of the properties, thereby repealing the *"old fashioned law"* creating perplexities, which aimed at addressing the judicial override as well the problem of long-standing litigations.[36] The Supreme court however, has reserved the judgement with a stay order, there's still to work upon the constitutionality of the bill.

32 The Waqf(Amendment) Bill 2025, No. 109-C of 2024 (India).
33 The Waqf Act, 1995, No. 43, Acts of Parliament, 1995 (India).
34 The Hindu newspaper, Sunday, (April 6, 2025,1:57 PM IST).
35 The Waqf(Amendment) Bill 2025, No. 109-C of 2024 (India).
36 Ministry of Minority Affairs, Friday, (Apr 04 2025 4:03 PM IST) www.pib.gov.in.