

From Community Trust to State Oversight: The Evolution of Waqf Legislation in India

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Abstract

Waqf refers to the permanent dedication of property for religious, pious or charitable purposes under Islamic law. The waqf history was started in 12th century by dedicating two villages to Jama Masjid of Multan by Sultan Muhammad Ghori. The Central Waqf Council and State Waqf Boards oversee the management of over 8.72 lakh properties in India. Historically, waqf administration evolved through several legislative reforms, culminating in the Waqf Act, 1995. However, persistent issues like mismanagement, lack of transparency, and prolonged litigations prompted further reforms.

The Waqf (Amendment) Act, 2025, renamed as the Unified Waqf Management, Empowerment, Efficiency, and Development Act (UWMEED Act), introduced major changes including mandatory written waqf deeds, inclusion of non-Muslims and Muslim women in Waqf Boards, centralised registration, and enhanced auditing mechanisms. While the Act aims to promote transparency, inclusivity, and legal certainty, it has been criticised for undermining religious autonomy, increasing bureaucratic control, and marginalising traditional Muslim practices.

Critics argue it violates constitutional guarantees under Article 26 regarding religious freedom. Although the Act strengthens accountability, better property management, and faster dispute resolution, it risks alienating the Muslim community and exposing waqf assets to political misuse.

The way forward involves safeguarding religious autonomy, recognising traditional waqf properties, enhancing digital monitoring, extending recovery periods for encroachments, and establishing independent oversight to balance transparency with community trust and constitutional values.

Keywords: Waqf, UWMEED Act, Inclusivity, Religious freedom)

1. INTRODUCTION

India is often regarded as one of the wonders of the world due to its remarkable diversity. At the heart of this pluralistic society lies the constitution of India, which serves as the strongest pillar upholding the unity and integrity of the nation. It guarantees liberty, equality, and justice to all citizens, ensuring that every section of society enjoys the right to live with dignity. Among these rights, religious freedom is fundamental, encompassing the right to practice, profess, and propagate one's faith and to manage religious affairs. However, this freedom is not absolute; the state may impose reasonable restrictions in the interest of public order, morality, and health.

Islam constitutes one of the largest minority communities in India. The word "waqf" itself means "to stop, hold, or not let go," reflecting the permanent nature of the donation. At present there are 30 Waqf Boards in states and union territories (UT). Except for Arunachal Pradesh, Goa, Mizoram, Nagaland, Sikkim

(states), and Ladakh (UT), all the remaining states and UTs have Waqf Boards. These Waqf Boards are the third-largest landowners in India, with 9.4 lakh acres, following the Indian armed forces with 17.99 lakh acres and Indian Railways with 11.79 lakh acres.

The management of waqf properties, religious endowments made under Islamic law, is governed by public law to ensure proper administration and accountability. In a significant move, the Waqf (Amendment) Act, 2025, introduced provisions for greater inclusivity by allowing the appointment of non-Muslim members and mandating the inclusion of women in Waqf Boards. It commenced on 8th April, 2025. This amendment marks a shift towards more transparent and representative governance of Waqf institutions, while also sparking debates on religious autonomy and state intervention. At this juncture I would like to focus on the evolution of the Waqf and the merits and demerits of the Waqf (Amendment) Act, 2025.

2. Review Literature

- 2.1** Tabusum Rasool, Dept. of Political Science, Aligarh Muslim University, Aligarh, India, Journal of Islamic Thought and Civilization, 2017. Waqf in India refers to the permanent dedication of property for religious, religious, or charitable purposes. The Sachar Committee Report estimated over 4.9 lac registered waqfs in India, covering an area of about six lac acres. Waqfs include mosques, darghas, khanqahas, maqbaras, ashoorkhanas, qabristans, idghas, and imambaras. However, due to political apathy, encroachment, poor governance, and societal insensitivity, the purpose of waqf has not fully been fulfilled.
- 2.2** Mohammad Abdullah, “Islamic Endowment (Waqf) in India: Towards poverty reduction of Muslims in the country”; Journal of Research in Emerging Markets. This paper explores the role of Waqf (Islamic endowment) in poverty alleviation and socio-economic development in India. It analyses the structure, mechanism, and legal framework of Waqf management and identifies existing insufficiencies. The study finds that Waqf institutions possess significant financial and infrastructural resources, which can help reduce poverty among Muslims. The research is qualitative and socio-legal, and provides policy recommendations for enhancing Waqf's role in poverty reduction.
- 2.3** Mohd Owais, Mohammad Qutaiba, International Islamic University Malasia, Malasia study on “Cash Waqf in Poverty reduction in India: Lessons from Selected Countries”, 2023, Talaa Journal of Islamic Finance; This library-based research examines how faith-based endowments can reduce poverty in India through cash waqf. It analyses existing models and their relationship to India's socio-economic situation. The study implements the waqf shares scheme, which is suitable for India due to its straightforward public fundraising process and potential for creating employment opportunities and financial, social, and educational empowerment for poor Indians.

3. Objectives of the Study

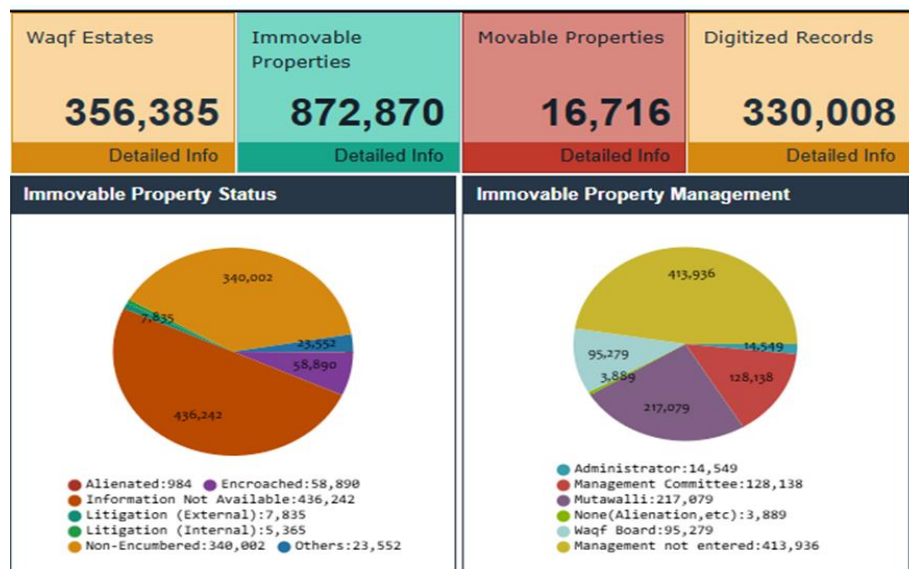
- To Study the evolution of the Waqf
- To Study the implications of the Waqf (Amendment) Act, 2025
- To elicit merits and demerits and way forward.

4. Methodology

The research depends primarily on the secondary data, particularly the evolution of the Waqf drawn from various sources like government websites, journals, reports, books, newspapers and other related websites.

5. Waqf

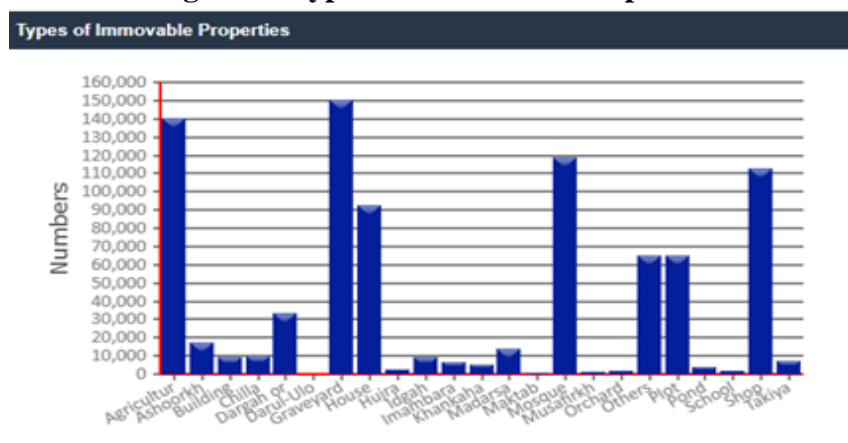
Figure 1: The Movable and Immovable Properties of Waqfs



(Source: <https://wamsi.nic.in/wamsi/dashBoardAction.do?method=totalRegisteredProp>)

There are different types of waqfs. The highest occupies graveyards followed by agriculture properties.

Figure 2: Types of Immovable Properties



(Source: <https://wamsi.nic.in/wamsi/dashBoardAction.do?method=totalRegisteredProp>)

6. Evolution

Evolution of Waqf Administration through Legislative Framework: Waqf administration began during the British rule in India.

6.1 Privy Council Ruling (1894)

The Privy Council ruled that Waqf-alal-Aulad was invalid because Waqf should serve public religious or charitable purposes, not just family benefits. This decision caused dissatisfaction among Indian Muslims.

6.2 The Mussalman Wakf Validating Act, 1913

This Act clarified and affirmed the right of Muslims to create Waqfs for the benefit of their families and descendants, with eventual charitable purposes.

6.3 The Mussalman Wakf Act, 1923

This was introduced to improve the management of waqf properties by ensuring proper accounting and transparency in their administration.

6.4 The Mussalman Wakf Validating Act, 1930

Provided retrospective effect to the 1913 Act, reinforcing the legal validity of family waqfs.

6.5 The Waqf Act, 1954

Established State Waqf Boards (SWBs) for the first time, providing for the systemic administration, supervision, and protection of waqf properties.

6.6 Amendments to the Wakf At, 1954 (1959, 1964, 1969, and 1984)

These amendments aimed to further improve the administration of waqf properties.

6.7 The Waqf Act, 1995

- The 1954 statute and its revisions were repealed by this comprehensive statute. Important clauses included:
- Waqf Tribunals are established to settle disputes pertaining to waqf properties.
- Enhancing the Central Waqf Council (CWC) by giving it the authority to instruct State Waqf Boards in the event of anomalies or Act violations. Notwithstanding these changes, waqf administration still had problems with inefficiencies and poor administration.

6.8 The Waqf (Amendment) Act, 2013

The Waqf Act, 1995, was further amended in 2013 through the Waqf (Amendment) Act, 2013. Through this act introduced significant changes, these changes lead more controversies rather than resolving the grievances including

6.8.1 Change in the definition of waqf - The amendment provided for any person to create waqf in place of 'a person professing Islam'.

6.8.2 Sect specific membership in waqf boards - In case of Shia waqf the member shall belong to Shia Muslim and in case of Sunni waqf the member shall belong to Sunni Muslim.

6.8.3 Overriding effect of waqf over other laws - The amendment provided for overriding effect of waqf on any other law.

6.8.4 Amendment provides that the District Magistrate shall be responsible for implementation of the decision of the Board.

6.8.5 Despite these amendments, challenges persisted in effectively addressing waqf related issues. Some of the key challenges are as following:-

- Lack of transparency in waqf property management.
- Incomplete surveys and mutation of waqf land records.
- Insufficient provisions for women's inheritance rights.
- Large number of prolonged litigations including encroachment. In 2013, there were 10,381 pending cases which have now increased to 21,618 cases.
- Irrational power of the Waqf Boards in declaring any property as waqf land based on their own inquiry.
- Large number of disputes related to government land declared as waqf.
- Lack of proper accounting and auditing of waqf properties.
- Administrative inefficiencies in waqf management.
- Improper treatment to Trust properties.
- Inadequate representation of stakeholders in Central Waqf Council and State Waqf Boards.

6.9 The Waqf (Amendment) Act, 2025

The Waqf (Amendment) Act, 2025, recently enacted by the Indian Parliament, introduces significant reforms to the management of waqf properties—charitable endowments under Islamic law. These changes have sparked widespread debate and concern among various stakeholders.

9 Key changes in the Act

• Renaming of the Act

The Waqf Act, 1995 was renamed the Unified Waqf Management, Empowerment, Efficiency and Development Act, 2025 (UWMEED Act, 2025).

• Composition of Waqf Boards

Non-Muslim members are now permitted on both Central and State Waqf Boards. It is mandatory to include at least two Muslim women on the Central Waqf Council and State Waqf Boards. The act ensures that representation from various sects, including Shia, Sunni, Bohra, and Agakhani communities.

• Declaration and Recognition of Waqf properties

The individual must practice Islam for at least five years, can declare a waqf, and they must own the property being declared. The provision allowing properties to be considered waqf based on long-term use has been omitted. The act brought a new clause that the oral declarations are no longer sufficient, a valid waqf nama (written deed) is required for creation of a waqf.

• Administrative Changes

Before the act, the responsibility for surveying waqf properties lies with the District Collector or an officer nominated by them, replacing the previous role of the Survey commissioner. The District Collector is empowered to determine whether a property is waqf or government land, with their decision being final. Waqf properties must be registered through a central portal, and the central government can order audits conducted by auditors appointed by the Comptroller and Auditor General of India (CAG) or other designated officer.

• Legal Provisions

Now Decisions by Waqf Boards can be appealed in High Courts within 90 days. The act omitting Sect 107, the Limitation Act, 1963, now applies to waqf properties, potentially affecting the ability to reclaim encroached properties.

• Statistical overview

The Sachar Committee (2006) reported that Waqf assets were undervalued and mismanaged, estimating 4,90,000 properties worth of Rs.6000 crore, but generating income only Rs.163 crore. As per data available on Waqf Assets Management System of India (WAMSI) portal, for 23 States and 7 Union Territories, there are 32 Boards, presently as per portal 8.72 lakh properties covering an area of 37.39 acres.

S.No	Contents	Counts
01	No. of State/UT Waqf Boards	32
02	No.of States' Waqf Boards	25
03	No. of Union Territories	07
04	No. of Waqf properties	8.73 Lakh
05	Area of total Waqf property (in Acres)	37.39 Lakh
06	No. of Waqf properties in Rural Area	5,51,552
07	Total area of waqf properties in Rural Area (in Acres)	20,17,536
08	No. of Waqf properties in Urban Area	3,21,251
09	Total area of waqf properties in Urban Area (in Acres)	19,03,827
10	Total No. of Waqf Deeds	1088
11	Total Waqf by User Property	4,02,089
12	Area of Waqf by User property (in Acres)	22.14 lakh
13	Remaining Waqf property	4,44,037
14	Area of remaining Waqf properties (in Acres)	14.29 lakh
15	Total property (Waqf-Alal-Aulad)	26,676
16	Area of Waqf-alal-Aulad property (in Acres)	0.88 lakhs
17	Total No. of encroachment	58,890
18	Total no. of litigations (Cases)	31,999
19	Total no. of encroachment related litigations	16140
20	Total no. of encroachment cases where petitioner is Muslim	3165

21	Total no. of Government land declared as Waqf	5973
22	Total no. of properties declared as Waqf under Section 40	515
23	Total no. of mutated properties	40,592

(Source: <https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/1743661361.pdf>)

9.1 The Waqf (Amendment) Act, 2025 - Criticism and Concerns

• Religious Autonomy

Critics argue that including non-Muslims in Waqf Boards undermines the religious autonomy of these institutions.

According to Article 26 of the Indian constitution there is the right guaranteed to every religious group or denomination- to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire movable and immovable property; and to administer such property in accordance with law. It is to be noted that this guarantee is available not only to the citizens of India but to all persons, including aliens.

9.2 The Removal of ‘Waqf by User’

The removal of ‘Waqf by User’ and Oral declarations may lead to disputes over properties traditionally considered ‘Waqf’.

Bureaucratic over interference

The government empowering district collectors to determine waqf status is seen as increasing government control over religious properties.

Legal Challenges

Several political parties and leaders have challenged the constitutional validity of the act in the Supreme Court. In this regard multiple petitions have been filed in the Supreme Court challenging the constitutional validity of the Waqf (Amendment Act, 2025 citing concerns over minority rights and religious freedoms.

9.3 Merits of the Act

The Waqf (Amendment) Act, 2025 strengthens transparency, inclusivity, legal clarity, and public welfare. It aligns religious property management with constitutional values like equality, good governance, and secularism though it also raises concerns about state overreach.

• Enhancing Inclusion

It is mandatory to appoint two Muslim women is a welcome step towards inclusion, women empowerment, and gender equality. The act represents different sects of Muslims like Agakhani, Bohra, Shia and Sunny. So, the act broadens the representational base and brings diverse perspectives to waqf management.

• Strengthen Accountability and Transparency

The act introduces mandatory registration of waqf properties through a centralised digital portal and permits to audit by the Comptroller and Auditor General (CAG) appointed auditors. So it definitely enhances accountability and transparency in the management of waqf properties.

• Clearer Legal Procedures and Property Management

The oral waqf declarations and ‘waqf by long use’ have been abolished. The only written waqf namas are valid. It removes ambiguity and prevents false claims over properties based on vague or unverifiable oral

traditions. It provides greater legal certainty for both waqf institutions and third parties aligning waqf governance and management with modern land laws and property documentation standards.

- **Efficient Dispute Resolution Mechanism**

The District Collector is now empowered to make preliminary decisions on whether a property is waqf land or government land. This change reduces prolonged litigations and brings quicker resolution at the administrative level, easing the burden on waqf tribunals and civil courts. It ensures timely protection or release of properties depending on rightful ownership.

- **Application of the Limitation Act, 1963**

By omitting Section 107 of the original Waqf Act, the general limitation period for property recovery now applies to waqf properties. Earlier, Waqf Boards could recover properties without any time limit, creating legal uncertainty for bonafide purchasers. Applying the Limitation Act, 1963 strikes a balance between the rights of waqf institutions and the need for stability in property transactions, respecting the principle of legal certainty.

- **Promotion of Public Interest and Community Welfare**

Waqf properties are charitable in nature and are meant to serve the community. Better management and accountability of waqf assets through the Waqf (Amendment) Act, 2025 ensure that these properties are actually used for public welfare, such as education, health care, and relief for the poor rather than being lost to mismanagement or private entitlement. This fulfils the original spirit of waqf under the Islamic Law: Perpetual Charity (Sadaqah Jariyah).

9.4 Demerits of the Act

- **Erosion of Religious Autonomy**

The inclusion of non-Muslim members in Waqf Council and Waqf Boards dilutes the exclusive religious character of waqf administration. Waqf properties are deeply tied to Islamic religious practices and charitable obligations under Sharia (Islamic religious regulations). Allowing non-Muslims to oversee waqf management could lead to decisions that do not align with the religious and doctrinal principles of Islam. This move raises constitutional concerns under Article 26, which guarantees religious denominations the right to administer their own institutions without external interference.

- **Excessive State Control and Over Bureaucratisation**

The Waqf (Amendment) Act, 2025 empowers District Collectors, Government officials to decide the nature of waqf property, replacing independent Waqf Tribunals in crucial first-stage decisions.

This shift represents a move from community led religious management to direct administrative control by the secular state. It risks politicisation, arbitrary decision making, and conflicts of interest, particularly where land values are high. It violates the spirit of secularism in the Indian Constitution, where the state is supposed to maintain neutrality rather than interfere in religious affairs.

- **Marginalisation of Muslim Community Traditional Practices**

The abolition of “‘waqf by long use’ ‘oral waqf declarations’”. disregards historical and traditional modes of creating waqf properties. In many cases, especially in rural and underprivileged areas, waqf properties evolved through community customs rather than formal written deeds. By insisting only on written waqf nama documents, the Act invalidates many properties that have served religious and charitable purposes for centuries. It highly disrupts community rights and heritage, and is seen as insensitive to the lived realities of poor and illiterate Muslims.

Threat to Property Rights

Potential Threat to Property Rights and Legal Uncertainty with the application of the Limitation Act, 1963, restricts the time within waqf properties can be reclaimed. While it protects bona fide third party purchasers, it also severely limits the ability of Waqf Boards to recover properties lost to illegal encroachments decades ago, often during colonial or early post-Independence periods. This could lead to the permanent loss of valuable religious assets meant for community welfare, weakening the financial and social foundation of many Muslim charities.

Undermining Community Trust and Sentiments

Many Muslims perceive the Act as an intrusion into internal community affairs and a sign of increasing mistrust towards Muslim institutions. Given the history of socio-political marginalisation of Muslims in India (highlighted by reports like the Sachar Committee Report 2006), any law altering the management of religious properties must be enacted with utmost sensitivity and consultation. By passing the Act amid political opposition and public protests, the government risks alienating a significant minority, thereby weakening national integration efforts.

Possibility of Political Exploitation

Greater administrative control over waqf properties opens the door to political favouritism, land grabs, and misuse for non-religious or commercial purposes. Earlier, many examples have been shown that valuable waqf lands are vulnerable to corruption and political interference. The Waqf (Amendment) Act, 2025, by increasing the discretionary powers of administrative officers like District Collectors, could worsen this trend, contrary to the goal of transparency.

Hence, the Waqf (Amendment) Act, 2025 aims at transparency and modernisation, it also weakens religious autonomy, marginalises community traditions, and increases risks of bureaucratic overreach, challenging the fine constitutional balance between state neutrality and religious freedom.

9.5 Way Forward

- **Safeguard the religion autonomy**

The composition of the Central Waqf Council and Waqf Boards of the States membership should be restricted only for the Muslims. It enhances the confidence in that particular community while bringing transparency and accountability by the government.

- **Recognise historical waqf properties through special mechanisms**

The government may constitute a Special Verification Committee under each State Waqf Board to document, verify, and register oral waqf by long use on a case-by-case basis instead of cancelling all 'Waqf in Use' without registration.

- **Build Institutional Capacity and Digital Monitoring**

The Waqf Assets Management System of India to be brought fully operationalise. It should be mandatory to publish annual digital reporting of all waqf transactions and audits. There should be conducted training programs for Waqf Board staff on modern management, land laws, and community engagement. Professional management backed by technology reduces corruption, speeds up decision-making, and improves transparency without undermining religious freedom.

- **Extend recovery period for encroached waqf properties**

The government may extend for a long period like 25 years for the recovery of waqf properties from illegal encroachers. This special recovery period for religious endowments respects their perpetual nature and fulfils the constitutional duty to protect minority rights under Article 30 of the Indian constitution.

- **Strengthen protection against political misuse**

The government may set up an Independent waqf oversight authority to investigate complaints of political or bureaucratic misuse of waqf properties. This body works similar to Lokpal model to prevent undue political pressure and ensures that waqf properties serve their original charitable, and religious purposes, protecting the spirit of secularism and public trust.

10 Conclusion

The Waqf (Amendment) Act, 2025, represents a significant shift in the governance of waqf properties in India, aiming to introduce transparency and inclusivity. However, it has also raised substantial concerns regarding religious autonomy, property rights, and potential government overreach. The waqf system needs modernisation, but modernisation must not be at the cost of religious autonomy, historical legacy, or community trust. A balanced model combining transparency, judicial oversight, historical sensitivity, and community participation is the right way forward.

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