CRITICAL ANALYSIS OF WAQF AMENDMENT ACT, 2025

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ABSTRACT

Waqf is a longstanding institution in Islamic tradition that reflects the deep-rooted culture of generosity within Muslim societies. For generations, it has been a way to allocate wealth for the greater social good. Through Waqf, individuals permanently dedicate property or assets to support religious, educational, social, or charitable causes. However, overseeing these endowed properties involves navigating various challenges—maintaining the original charitable intent while complying with legal frameworks and addressing the expectations of beneficiaries. Managing Waqf properties becomes increasingly complex when viewed in light of the Transfer of Property Act, 1882. [1]As a foundational statute in Indian property law, the Act plays a crucial role in shaping how Waqf assets are administered and transferred. It presents both potential benefits and legal hurdles, demanding a careful and informed approach to ensure compliance while preserving the charitable intent of the Waqf. [2]As we delve into the realm of Waqf property management, it becomes clear that the philosophical foundations of Waqf resonate with the broader goals of benevolence and community welfare. The concept of Waqf, stemming from the Arabic root 'waqafa' meaning to immobilize or make a perpetual dedication, has been a fundamental pillar of Islamic philanthropy since its inception. The primary objective of a Waqf is to benefit the public by providing essential services to the community, spanning

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[1] Isha Bharti , Waqf Property Management: Balancing objective,constraints and Beneficiary concerns, JclJ (2023) 262

[2] Eman Assi, 'Islamic waqf and management of cultural heritage in Palestine, International Journal of heritage studies,14(4), 2008

domains such as education, healthcare, and social welfare. The waqf amendment act 2025 or UMEED ACT 2025 which is being passed is suffering from certain legal lacunae where the clause of introducing a non muslim member in the waqf board is creating a turbulence with respect to Article 26 where religious denominations having the fundamental right to manage their own affairs and removing clause 40 where Waqf board was having autonomy to declare any property as waqf have been reduced as power has been shifted to the Government officials. Concept of waqf by user is also being eliminated and here the provision is being made that any person who is practicing Islam for 5 years can make waqf and that too be deed which raises an important question that the waqf that is being declared orally have no legal sanctity at all or waqf which is being declared before partition can now be declared by government as the government property. Moreover it is also contentious that to survey waqf property District Magistrate is invoilved and also to adjudicate whether any property is waqf property or not is also to be adjudicate by District Magistrate which is the sheer violation of natural justice and concept of rule of law. The article dvelve into this various paradigms of waqf amendment act 2025 as well as tracing the history and evolution of waqf.

KEY CONCEPTS

1. **WAQF-** Waqf refers to the irrevocable allocation of movable or immovable property by an individual for purposes that are considered pious, religious, or charitable under Muslim law.
2. **CHRITABLE INSTITUTION-** Charitable institution are typically non profit entities established with the main objective of serving the public through the activities providing aid,education or services that benefit the society. They depend on contribution grant and various funding sources to carry out their mission which often involve supporting the underprivelage , offering healthcare and enhancing access to education.
3. **WAQF BY USER-** Waqf by user refers to recognition of property as waqf based on its consistent use for religious or charitable functions over time even in the absence of formal written declaration or documentation.

INTRODUCTION

The concept of Wakf is a distinctive element of Islam's socio-economic framework, with no direct parallel in earlier legal systems or religious traditions. Entirely rooted in Islamic principles, Wakf serves as a formalized form of charity aimed at supporting the poor and disadvantaged, while promoting a fair and balanced social order. It reflects the core Islamic values of generosity, devotion, and compassion, and stands as a legally sanctioned method to uphold and practice these virtues**.** Wakf is regarded as a vital branch of Islamic jurisprudence and has been an integral part of the Islamic socio-legal framework since its inception. It holds significant promise for shaping the social and economic conditions of Muslim communities and nations. Creating a wakf is seen not only as a virtuous deed—an offering made in the path of Allah that brings lasting spiritual reward—but also as a structured welfare initiative aimed at promoting social equity and reducing poverty. It encourages the wealthy to recognize their responsibility toward the less fortunate by dedicating a portion of their resources. The primary goal of wakf is to support those in need, including the distressed, orphans, widows without means, and the impoverished. [3]The revenue generated from Wakf properties plays a crucial role in addressing poverty and hunger, providing food for the needy, caring for the ill, supporting orphans and widows, facilitating the burial of the deceased, and maintaining mosques. It also contributes to children's education, the establishment of schools and vocational training centers, the operation of hospitals and clinics, and assisting individuals in repaying their debts. These efforts collectively reflect the foundational welfare objectives essential to any well-functioning society. [4]The Prophet (PBUH) introduced wakf as a means to ensure ongoing charity, allowing its benefits to be enjoyed by successive generations without diminishing the original asset. The principle behind wakf is that the property itself remains untouched—neither sold nor transferred—while its benefits serve the community over time. Only under exceptional circumstances, and with court approval, can any form of transfer occur, and even then, the perpetual nature of the wakf's core asset must be preserved. The concept of wakf is a unique Islamic innovation, rooted in authentic traditions, and developed exclusively within the Muslim community. There is no historical evidence of a similarly structured system of managing and passing on usufructual benefits to successive groups of beneficiaries prior to the advent of Islam.

[3] Qazi Muzahidul Islam Qasmi , Wakf in Islamic Fiqh,3, Institute of objective studies, New Delhi
[4] Syed Khalid Rashid: Waqf administration in India from 1947 to 1997, Radiance views weekly

[5]It is widely recognized that no political, legal, or socio-religious system has been able to establish a charitable institution that matches the depth and purpose of the Islamic concept of Wakf. Although the Western legal framework developed the idea of public trusts, it does not conceptually rival the institution of Wakf. A key difference lies in their foundational principles: a public trust can be dissolved once its primary purpose ceases to exist, whereas in Islamic law, the principle of "once a Wakf, always a Wakf" firmly upholds the idea of permanence, making the dedication irrevocable and enduring.

JURISPRUDENTIAL ANALYSIS OF WAQF

In Arabic, the term *Wakf* conveys meanings such as to hold, restrain, prohibit, or detain. Under Islamic law (Shariah), it refers to the act of retaining ownership of a property while designating its benefits for religious, charitable, or socially beneficial purposes. Traditionally, the word also implied the act of tethering an animal like a horse or camel, symbolizing restriction from personal use. In legal terminology, Wakf denotes the permanent dedication of a specific movable or immovable asset—either explicitly stated or implied—for fulfilling purposes considered virtuous under Shariah. According to classical Islamic jurists, a Wakf involves assigning property for an approved religious or charitable cause with the intention of earning spiritual reward, ensuring that the core asset (asl) remains preserved while its yields or income are used to serve the designated objectives. The act of dedicating property for any cause recognized by Islamic law as an aspect of kindness (*Wujuh-ul-birr*) or goodness (*Wujuh-ul-khair*) qualifies as a Wakf, as these terms encompass all acts of piety and benevolence. In Vidya Varuthi vs Baluswami Ayyar[6] it was observed that the concept of trust under Mohammedan Law is fundamentally different from that under English Law. Its origin lies in a principle established by the Prophet (PBUH), where property is regarded as being entrusted to the ownership of Allah, with its benefits allocated for the welfare of people. Once a property is declared as wakf—or even when language or intent suggests such a dedication, as affirmed in various other cases the donor's ownership ends, and the property is deemed to belong to the Almighty. The donor is free to designate any worthy or charitable cause to receive the benefits. The individual appointed to manage the wakf is called the ***Mutawalli***, who acts as a custodian or supervisor, ensuring the

[5] Mohd Wasim Ali, Institution of wakf in Islam Genesis and Development, 18,ALJ,6,2008

[6] Vidya Varuthi vs Baluswami Ayyar (1921),48,302

property's use aligns with its intended religious or charitable purpose. The apex court also in Sayyed Ali vs A.P wakf Board[7] It was held that wakf constitutes a permanent dedication of property for purposes acknowledged by Muslim law as pious, religious, or charitable. Once a property is identified as wakf, it permanently retains that status. In essence, the principle of "once a wakf, always a wakf" ensures that the property's character remains unchanged over time. Furthermore, such property continues to be regulated under the provisions of the Wakf Act, and even the issuance of a *patta* to a Mokhasadar does not alter or diminish its original nature as wakf property.

LEGISLATIVE EVOLUTION ON WAQF

The concept of *waqf* in India traces its roots to Islamic law, under which waqf refers to the permanent dedication of property for religious, pious, or charitable purposes. The origin of waqf in India dates back to the early medieval period, particularly during the Delhi Sultanate and Mughal eras, when rulers and nobles donated large tracts of land and property for mosques, madrasas, and charitable institutions. However, formal legislative recognition and regulation of waqf began during the British colonial period. The earliest attempt to codify and regulate waqf under statutory law occurred with the enactment of the *Bengal Regulation XIX of 1810*. This Regulation empowered the colonial government to supervise religious endowments to ensure they were not misused or misappropriated. It primarily targeted Hindu and Muslim religious institutions and marked the beginning of state involvement in religious endowments. However, a landmark development came with the *Privy Council's judgment in the Abul Fata v. Russomoy Dhur Chowdhury*[8] case The court held that a waqf created primarily for the benefit of the settlor's family, with only residual charitable purposes, was invalid. This ruling was widely criticized by the Muslim community as it conflicted with Hanafi jurisprudence, which permitted family waqfs (waqf-alal-aulad). In response to public outcry, the British government passed the *Mussalman Waqf Validating Act, 1913*, which recognized the validity of family waqfs and reversed the effect of the Privy Council's judgment.To provide further clarity, the *Mussalman Waqf Validating Act of 1930* was passed to reinforce the 1913 Act and remove ambiguities. Despite these efforts, administration and governance of waqfs remained fragmented and often

[7] Syed Ali vs AP wakf board (1998) 2 SCC 642
[8] Abdul Fata vs Russomoy Dhur Chowdhury (1891), ILR 18 CAL 399

vulnerable to misuse due to the absence of a central regulatory authority. After independence, the Indian state took further steps to regulate waqfs systematically. The *Waqf Act, 1954* was enacted to provide for the better administration and supervision of waqf properties through the establishment of waqf boards at the state level. It was the first comprehensive post-independence legislation on waqf. However, over time, shortcomings such as lack of centralized coordination and inefficient functioning of boards became apparent.To address these challenges, the *Waqf Act, 1995* was introduced. This Act repealed the 1954 legislation and aimed to ensure better protection, registration, and management of waqf properties. It also established the *Central Waqf Council* as an advisory body to the government on waqf matters. The 1995 Act introduced stricter provisions for the registration and maintenance of waqf property records and empowered the Waqf Tribunals to adjudicate disputes related to waqfs. Subsequent amendments, notably in 2013, further strengthened the 1995 Act. These amendments aimed at curbing encroachments, improving accountability of waqf boards, and digitizing waqf records through the creation of a centralized database. In conclusion, the legislative history of waqf in India reflects a gradual evolution from colonial supervision to post-independence reforms aimed at protecting religious endowments. Although significant progress has been made, challenges in implementation and governance continue to persist, necessitating ongoing policy and legal reform.

CRITICAL ANALYSIS OF WAQF AMENDMENT ACT 2025

On April 4, 2025, Parliament approved the Waqf (Amendment) Bill, 2025, following an extensive 12-hour debate in the Lok Sabha and a 14-hour deliberation in the Rajya Sabha. The Bill, which introduces major changes to the Waqf Act of 1995, faced strong criticism from opposition parties. One of the key features of the amendment is the significant increase in the Union government's authority over Waqf properties. The Bill received Presidential assent on April 5, 2025.

Charity is at the heart of Islam and constitutional protection guaranteed to it is eroded: Article 25(1) of the Constitution affirms the individual's right to freely profess, practice, and propagate religion, though this right is not absolute. It is subject to considerations of public order, morality, health, and the other fundamental rights outlined in Part III of the Constitution. Further, Article 25(2) empowers the State to enact laws that regulate or limit economic, financial, political, or other secular aspects linked to religious practices. It also allows the State to make laws aimed at promoting social welfare and reform, including laws that ensure access to public Hindu religious institutions for all sections and classes of Hindus. Within these constitutional limits, the right to religious freedom remains protected and cannot be restricted arbitrarily by the State. Most theistic religions rely on physical spaces such as places of worship or religious institutions to carry out their spiritual practices—though belief systems like Confucianism may not require such structures. Likewise, the principle of charity is emphasized across nearly all major faiths. Swami Vivekananda famously proclaimed that serving humanity is equivalent to serving God. In Christianity, the Bible teaches that "Whoever is kind to the poor lends to the Lord, and he will reward them for what they have done." Similarly, in Islam, charitable acts are central to the faith. A fundamental aim for every devout Muslim is to attain paradise (Jannah) in the afterlife. Here the government Under the pretext of "secularisation" of Waqfs, the legislation has undermined key religious freedoms, including the autonomy of religious institutions, the right to carry out essential religious practices, and the right to acquire, manage, and preserve immovable property dedicated for religious purposes. It does so by implying that the dedication of property to Waqf is neither a fundamental practice nor an intrinsic element of the Islamic faith. Furthermore, by permitting individuals from outside the Muslim community to participate in the administration of Waqf properties, the contested law infringes upon the constitutional protections guaranteed under Article 26.

Abolition of 'Waqf by user' is violative of Article 25 and 26 of the Constitution and 5 year waiting period is unreasonable : The amendment to Section 3(r), introduced through Section 4(ix) of the Amending Act, imposes a condition that only Muslims who have been practicing Islam for a minimum of five years are eligible to create a Waqf. This requirement represents an arbitrary and unreasonable limitation imposed by the State on the exercise of the Islamic faith. It effectively treats a Muslim as being on a five-year "probation" period before being deemed sufficiently devout to dedicate property as Waqf. Such a State-imposed standard for determining who qualifies as a Muslim is both unconstitutional and authoritarian in nature. Furthermore, the removal of clause (i) from Section 3(r) effectively eliminates traditional methods of establishing a Waqf, including Waqf by usage and oral dedication—both of which have been firmly rooted in Muslim personal law and are safeguarded under Article 26(c) of the Constitution.

Additionally, the Constitution Bench of the Hon'ble Supreme Court, in the case of *M. Siddiq (Ram Janmabhumi Temple - Five-Judge Bench) v. Suresh Das*[9] held that under Muslim law, an explicit declaration is not always necessary to establish a waqf. A waqf may be inferred from the surrounding circumstances or the conduct of the person making the dedication (wakif). Even in the absence of a formal declaration, a waqf can be legally acknowledged if the property has been used for public religious purposes over an extended period. This concept, known as waqf by user, has also been codified in Section 3(r) of the Waqf Act, 1995. Customs such as these are recognised as legitimate sources of law under Article 13(3) of the Constitution. Indian jurisprudence accepts the creation of waqf through long-standing usage, even without formal documentation. Whether or not a property qualifies as waqf on the basis of usage is a question of evidence, with the main criterion being whether the property has been used for public religious worship by members of the Islamic community.Additionally, the requirement of a five-year waiting period for Muslims to create a waqf unfairly discriminates against converts, effectively preventing them from fulfilling religious obligations through charitable endowments. This restriction directly infringes upon the fundamental right to religious freedom guaranteed under Article 25 of the Constitution.Moreover, such a condition is not imposed on individuals of other faiths—Hindus are free to dedicate property to temples, and Christians can donate to churches without any similar prerequisites. Imposing this restriction solely on Muslims undermines the constitutional principles of equality and non-discrimination enshrined in Articles 14 and 15.Finally, it is impermissible for the State to determine whether an individual is sufficiently devout to make a religious donation. Doing so effectively positions the State as an arbiter of religious sincerity, which constitutes an arbitrary and unreasonable intrusion upon the right to freely practice one's faith as protected under Article 25 of the Constitution.

Granting authority to a Designated Officer or Collector to unilaterally determine whether a government property qualifies as waqf property violates the constitutional safeguards provided under Articles 14, 19, 21, 25, 26, and 29 : Sections 3C(1) and 3C(2), introduced through Section 5 of the amended Act, have the effect of retrospectively reopening waqfs that were created prior to the legislation's enactment. In many such cases, the original donor may have passed away long ago, leaving no one to defend the legitimacy of the dedication or assert the waqf's validity.

[9] M Siddiq vs Suresh Das (2020) 1 SCC 1

When disputes arise regarding whether a waqf property is private or belongs to the government, such matters must be resolved by a civil court of appropriate jurisdiction. Entrusting this function to a District Collector, who lacks judicial authority, undermines due process.Section 3C(1) empowers the State Government to unilaterally classify waqf properties as government-owned, deeming them to no longer be waqf. This determination is followed by a summary inquiry led by a Designated Officer—typically someone of a rank above the Collector. This framework is constitutionally problematic because it assigns a quasi-judicial function, namely the adjudication of title, to an administrative official rather than a legal authority. Moreover, the burden of proof is unfairly placed on the mutawalli (waqf caretaker) or beneficiaries, who must justify their claim after the property is presumed not to be waqf. As a result, Section 3C violates several constitutional protections, including Articles 14, 19, 21, 21A, 25, 26, 29, and 300A.The proviso to Section 3C(2) stipulates that until the Designated Officer concludes their inquiry, the property will not be considered waqf property. This provision effectively strips waqf institutions of their rights the moment a dispute is raised, without offering an opportunity to respond or defend their interests.Established legal principles maintain that only civil courts may determine property title. Allowing revenue officials to make such determinations is not only procedurally improper but also fundamentally biased, particularly when the State itself claims ownership. This situation violates the principle of separation of powers, a core component of the Constitution's basic structure, and offends the rule of natural justice by allowing a party with vested interest to judge its own cause.As a revenue officer and custodian of government records, the Collector is not equipped or authorized to conclusively determine legal ownership, especially when such decisions impact religious endowments protected under the Constitution. Granting unchecked authority to executive officers, without judicial safeguards or procedural fairness, breaches Article 14 (equality before the law) and Article 300A (right to property). This creates a non-transparent and arbitrary system where waqf properties risk being taken over without fair remedy.It is a settled position in law that adjudicatory powers must be exercised by legally trained authorities. Previously, such powers rested with the Waqf Tribunal, which included a judicial member. Transferring these powers to a revenue authority is both arbitrary and unconstitutional, violating the separation of powers. Additionally, the amended provision fails to set any deadlines for completing inquiries or for the State Government to render decisions, making the process inherently vague and unreasonable.

Inclusion of non muslim member is arbitrary : Article 26 of the Indian Constitution secures the right of every religious denomination to manage its own religious affairs. This encompasses control over religious endowments such as waqf properties, which are intended for charitable or religious purposes within the Islamic faith. The inclusion of individuals who do not belong to the Muslim community in the administration of waqf undermines this constitutional guarantee by introducing non-faith-based oversight into what is essentially a religious function. Such involvement challenges the autonomy of the community in maintaining its religious institutions.

Additionally, Article 25, which safeguards an individual's right to freely profess, practice, and propagate religion, is also affected. Managing waqf properties is considered a religious duty grounded in Islamic tenets, and interference in this process by outsiders may restrict the ability of Muslims to fully observe their faith.

This interference further raises concerns under Article 14, which mandates equal treatment before the law. Imposing administrative structures that permit non-Muslim participation in Muslim religious bodies creates an unequal standard not applied to other faiths, whose religious institutions generally operate without such intrusion. In this way, Muslims are subjected to a unique and discriminatory burden, which is not imposed on followers of other religions.

Moreover, Article 15 prohibits discrimination based on religion. Compelling Muslim religious institutions to accept external, particularly non-Muslim, involvement imposes a condition not required of others, amounting to indirect religious discrimination. Such a mandate challenges the principles of equality, religious freedom, and the secular commitment to non-interference in religious matters by the State.

The right to manage religious institutions also includes the right to protect the internal character and religious integrity of those institutions. Articles 25 and 26 together protect both the individual and collective rights of religious communities to govern and maintain their religious properties and practices according to their beliefs.

This position has been affirmed in the landmark decision of *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan*[10] where the Supreme Court held that any law seeking to regulate religious endowments must not destroy or fundamentally alter a denomination's right to oversee and control its own religious institutions. Such legislative overreach would violate the constitutional protections afforded to religious communities, particularly when it results in the dilution or disruption of religious autonomy and governance.

[10] Tilkayat vs State of Rajasthan ,1963 SCC Online SC 52