Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2025 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

The Waqf Act: An Encroachment of Religious Autonomy?

Akanksha[a]

[a]Lovely Professional University, Jalandhar, India

Received 14 May 2025; *Accepted* 16 May 2025; *Published* 19 June 2025

This article critically assesses the Waqf (Amendment) Act, 2024, against the backdrop of the religious autonomy regime of the Indian Constitution, minority rights, and secular government. While the Act attempts to update waqf property administration by introducing digitisation, stricter compliance processes, and stronger state oversight, it also raises grave concerns about the infringement of Articles 25[1], 26[2], and 29[3]. This article uses doctrinal analysis as a tool of research in order to understand the institutions of waqf and their religious autonomy. The inclusion of non-Muslim members within Waqf Boards, the expansion of governmental authority to authorise and monitor waqf assets, and the lack of true community consultation signal a shift from participatory reform towards authoritarian management. This research argues that such measures, while presented as anti-corruption efforts, are likely to disempower the religious self-management of the Muslim community and destabilise judicial precedents safeguarding institutional autonomy. By doctrinal analysis and constitutional scrutiny, the article contends that change must originate from within societies in terms of capacity building and accountability, without compromising their legal and spiritual sovereignty.

Keywords: *waqf, constitution, community, government, assets.*

[1] Constitution of India 1950, art 25
[2] Constitution of India 1950, art 26
[3] Constitution of India 1950, art 29

INTRODUCTION

Waqf is a centuries-old Islamic institution that is the living flesh of charity in Islam. Waqf is the permanent transfer of property, whether it be immovable or movable, by a Muslim for charitable, educational, or religious purposes. The instant it is created as waqf, the property is made inalienable and must be used solely for the object for which it has been given. This people-centred charity has historically been a key component in building Islamic communities, funding mosques and madrasas, schools, hospitals, orphanages, public wells, and traveler's inns. Waqf was not only a religious act; it was a systemised mode of social welfare, offering a safety net for the needy and redistributing wealth.

In India, waqf has a rich history of more than a thousand years with roots dating back to the Delhi Sultanate and Mughal eras. Today, India is home to one of the world's finest treasure houses of waqf properties, scattered across more than 6 lakh registered estates, ranging from ancient religious shrines and graveyards to commercial property that generates revenue for the public good. The Waqf Boards, which were established by the Waqf Act of 1995, are independent organisations tasked with safeguarding, managing, and utilising waqf property by Islamic law.

Far from their religious importance, waqf properties are significant to community development. Revenues accrued by waqf funds provide scholarships to needy students, operate schools and clinics, and generate livelihood for widows, orphans, and aged persons. But while most of them are vulnerable to encroachment, bureaucratic interlopers, and mismanagement, the need for reform is inevitable, but equally inevitable is the need to ensure the religious independence and constitutional freedom of the Muslim minority. The change in law must preserve the integrity of the waqf and accountability without sacrificing minority self-governance.

KEY FEATURES OF THE WAQF BILL, 2024

Inclusion of Non-Muslim Members: One of the most controversial aspects of the Waqf (Amendment) Act 2024 is the requirement that at least one non-Muslim member must be included on the Central Waqf Council and in each State Waqf Board. The government argues this as a measure towards more inclusivity and watchfulness because it would reduce internal corruption and introduce an external point of view to the waqf administration. But

this has caused a lot of uproar from Muslim communities and lawyers, who see it as an encroachment into a religious institution that is very much intended to serve the Muslim community. Religious institutions in India have long been dominated by practitioners of their religion, as a matter of commitment to the right of religious freedom under Article 26[4]. Critics maintain that this new provision establishes a sour precedent under which the door could be opened to foreign intervention into other minority religious communities' internal affairs, too.

Greater Government Power: The bill extends the power of the government to a hitherto unprecedented scale in the governance of waqf properties. It empowers central and state governments to validate and verify waqf properties, overruling historical documents and past judgments by the Waqf Boards. More sinister is the provision empowering the government to interfere in waqf disputes and management decisions without obtaining prior permission from the concerned Board.

This shift in control runs counter to the very essence of community-managed administration and self-governance. There is also fear that the power will be abused to certify some waqf properties as non-waqf or make commercial or infrastructure land grabs of prime urban property, much of which is owned by waqf institutions now. There are warnings from opponents that these measures will reduce the Waqf Boards to the status of passive bodies, performing in the shadow of official orders and not independent religious trustees.

Digitisation and Centralisation: The most significant technological overhaul suggested under the Act is to establish a systematic online portal for all records and transactions of waqf. This facility will carry out registration, audit, revenue monitoring, and litigation proceedings for the properties of the waqf across India. Even though digitalisation makes it easier to access, which is more transparent, and avoids any potential mistakes through humans while capturing data, such centralised control of individualised information has also raised some apprehensions. The leaders of the community are concerned that the platform will be a tool for more bureaucratic control, limiting the independence of local Waqf Boards and making them excessively reliant on centralised decision-making. Additionally, issues about data privacy, server security, and digital competence among members of the board

[4] Constitution of India 1950, art 26

and caretakers (mutawallis) are at stake. Lacking proper protection and readiness at the community level, the transition can disenfranchise stakeholders instead of empowering them.

Stricter Compliance and Penal Provisions: The bill also proposes stricter compliance standards for waqf property management and penal provisions for misappropriation, negligence, or financial misconduct. While the purpose is to add accountability and control corruption, the enforcement mechanism looks too penalised in the background of inadequate training and infrastructure given to many mutawallis and smaller Waqf Boards. There is also a fear that such provisions would be selectively applied to cause harassment or legal intimidation against community leaders, particularly those who are vocal against state intervention or are fighting government action. The absence of open procedural rules for investigation and law enforcement is another cause for worry, with a fear of arbitrary conduct and abuse of power.

THE RELIGIOUS AUTONOMY DILEMMA

The crux of the controversy regarding the Waqf (Amendment) Act, 2024, is in a core constitutional concern: the undermining of religious autonomy assured to minority groups by the Indian Constitution. According to Article 26[5], every religious denomination or portion of a denomination is particularly granted the following rights: to administer such property by law, to own and acquire movable and immovable property, and to manage its affairs in matters of religion. These principles, which forbid the state from meddling in a religion's internal religious, cultural, or philanthropic institutions, are fundamental to the Indian Republic's pluralistic and secular character but are not legal rights. The same has been duly argued that state interference often leads to the erosion of constitutional pluralism.

The amendment requirement to appoint the non-Muslim members to the Central and State Waqf Boards constitutes interference in a religious body formed solely to address the administration of Muslim religious properties. The spirit of Articles 26(b)[6] and 26(d)[7], which jointly provide a denomination with the authority to manage and administer its institutions and properties, is violated, as is the exclusive communal right to conduct its religious affairs.

[5] Constitution of India 1950, art 26
[6] *Ibid*
[7] *Ibid*

It is akin to imposing who can be a priest in a temple, a pastor in a church, or a granthi in a gurdwara, something the Indian state has gone out of its way to avoid doing to maintain its secular makeup.

Further, the increased state control in the form of authority to verify and override waqf property documents and interfere in disputes without the Waqf Board's approval is against the policy of non-interference under Article 25[8], which guarantees to every citizen the freedom of conscience and right to freely profess, practice and propagate religion. Even while the state unquestionably can place reasonable restraints in the interest of public order, morality, and health, these must meet the requirements of proportionality and necessity. State control enforced without a cogent reason subverts this equilibrium and opens up a floodgate of capricious regulation of religious bodies. 2006, Schar Report argues that Muslim marginalisation necessitates strengthening Waqf Boards' autonomy to address socio-economic gaps, not diluting it.[9]

In addition, Article 29[10], which safeguards the rights of minorities to their particular culture, defends the principle that groups should be given autonomy to maintain and administer institutions that are characteristic of their tradition. Waqf, based on its inherent connections to the Islamic community, its well-being and customs, is simultaneously a legal body and a cultural and spiritual citadel of Muslim heritage in India.

In a multi-religious, multi-cultural democracy like India, any such action by the state that is likely to undermine the institutional autonomy of a religious group not only insults the Constitution but also gives rise to a bad precedent. Today it is waqf; tomorrow, it may be the administration of churches, temples, or gurdwaras. The Waqf (Amendment) Act, presented as a reform measure, can become an instrument of centralised control, dismantling the constitutional firewall established to safeguard minority rights. Reforms in a secular state can only happen through community consultation and empowerment, not state domination. Minority rights require institutional autonomy to sustain cultural identity in a plural democracy.[11]

[8] Constitution of India 1950, art 25
[9] *Social, Economic, and Educational Status of the Muslim Community of India* (Sachar Committee Report 2006)
[10] Constitution of India 1950, art 29
[11] Dr. Neera Chandhoke, *Beyond Secularism: Rights and Religious Identity* (OUP India 2003)

IS THIS A CONTROL OR REFORM ISSUE?

The supporters of the Waqf (Amendment) Bill 2024 claim that the bill will deal with all the age-old issues of corruption, mismanagement, and increasing waqf properties in the country. They justify additional control and institutional reform based on irregularities, disputed claims, and unexplained entries in the books of accounts. Yes, the waqf system must be modernised and made accountable, but who should do it is the question. The critics complain that the bill does not empower Muslim society to remedy these faults; it disempowers them by removing substantive decision-making authority of Muslim-majority Waqf Boards to a state-controlled model. Instead of enabling self-transformation through training, digitisation support, and open disclosure mechanisms, the bill exercises top-down control, essentially disenfranchising the voice of communities. This is being channeled into an emerging discourse of institutional distrust where policies that affect minority groups are being imposed in the absence of substantive consultation, openness, or interaction. Without open discussion and enforced external surveillance, this leads to a sense of coercive rather than cooperative transformation. In a pluralist democracy based on trust, trust comes first. Any attempt at reforming religious institutions must collaborate with the community, not around or against it. Otherwise, reforms, however good on paper, will tend to be perceived as instruments of control, rather than forces of empowerment.

JUDICIAL PRECEDENTS

1. The Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt:[12] This judicial precedent Supreme Court case established the precedent for the interpretation of Article 26 of the Constitution. In the view of the Court, a religious denomination has the constitutional right to manage its affairs in matters of religion, like managing its religious properties. It observed that while the state could control the temporal affairs of religious bodies, but could not control their affairs that pertain to religious doctrine, practice, or internal administration apart from when relating to public order, morality, or health. This case is now the building block of religious autonomy law in India and extends equally to Muslim waqf institutions.

[12] *The Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954) AIR 282

2. Azeez Basha v Union of India:[13] Although this case was against Aligarh Muslim University (AMU), it involved significant controversy over minority rights under Articles 29 and 30. The Court ruled that AMU was not a minority institution as it was founded by an Act of Parliament, but the case did raise important questions over how far the state can interfere with institutions founded by religious groups. The school of thought that institutions of the state-created government can weaken community control has run through current debates on the Waqf Amendment Bill.

3. SP Mittal v Union of India:[14] In this case, the constitutional validity of the Auroville (Emergency Provisions) Act, 1980, was in question. The Act sought to transfer the management of Auroville, an international township, from the Sri Aurobindo Society to the Government of India. The court reaffirmed that only those institutions of religious denominations under Article 26 can appeal for protection through their provisions. However, it also affirmed that the state cannot take over control of a religious body unless the secular administration is being regulated in the public welfare interest. Even then, such regulation should not enter into basic religious practices or the internal decision-making process.

4. Ratilal Panachand Gandhi v State of Bombay:[15] In this landmark case, the Supreme Court struck down portions of the Bombay Public Trusts Act.[16] Observing that the state cannot take over the management of religious trusts in the interest of public welfare if it interferes with religious autonomy. The Court emphatically asserted that Articles 25 and 26 guarantee not merely the freedom to practice religion but also the freedom to manage religious institutions free from excessive state interference.

5. State of Rajasthan v Sajjanlal Panjawat:[17] This case had to do with the extent of state control over religious trusts and endowments. The Supreme Court held that although the state is entitled to ensure religious properties are not mismanaged, the control must be constrained and never encroach on the nature of the management rights of religious

[13] Azeez Basha v Union of India 1968 AIR 662
[14] *S.P. Mittal v Union of India* (1983) AIR 1
[15] *Ratilal Panachand Gandhi v State of Bombay* (1954) AIR 388
[16] The Bombay Public Trusts Act 1950
[17] *State of Rajasthan v Sajjanlal Panjawat* (1975) AIR 706

denominations. This ruling is particularly relevant in the waqf area, where expanded government powers under the 2024 bill may violate this feature.

6. Board of Muslim Wakfs, Rajasthan v Radha Kishna:[18] This is particularly significant to the law of waqf. The Court held that Waqf Boards have sole jurisdiction in respect of waqf properties, and civil courts can at best exercise limited jurisdiction to intervene only after a property has been notified as waqf. This decision reinforces the importance of independent and self-sustaining waqf institutions working unfettered by external interference-something which the 2024 Bill risks dismantling by boosting state authority.

CONCLUSION

The Waqf (Amendment) Act, 2024, can be brought forward as a reformist move towards transparency, but the very essence casts doubt on constitutional morality, religious freedom, and minority rights. No one doubts that waqf administration needs to be modernised and corruption must be checked, but the manner of reform is important. When legislation starts to erode people's hold on their religious institutions, compels outsiders' entry into religious institutions, and gives the state extremely wide powers of control over them, it walks very close to infringing the very rights guaranteed under Articles 25, 26, and 29 of the Constitution.

Judicial precedents have consistently guaranteed the sanctity of religious autonomy, reaffirming that the state can rule but not smother religious institutions. Allowing non-Muslim members into Waqf Boards, centralisation of data, and uncontrolled government intervention are not reform, but a destruction of hard-fought constitutional safeguards. In a country founded on the principles of pluralism, secularism, and cooperative federalism, reforms have to be the result of deliberation, trust, and empowerment, never imposed in exclusionary legislation. Real reform would be to strengthen Waqf Boards internally- build capacity, accountability, and transparency- without depriving the community of its sovereignty. The true test of a democracy is the way it handles its minorities. If it has to be inclusive, it must first ensure the integrity of all religions. Reform cannot be at the expense

[18] *Board of Muslim Wakfs, Rajasthan v Radha Krishna & Ors* 1979 AIR 289

of religious freedom and constitutional balance- otherwise, it is no longer reform but something else.

WAY FORWARD

In response to issues regarding the Waqf (Amendment) Act, 2024, the Act must focus on people's reform through broad-based consultations with Muslim scholars, Waqf Boards, and lawyers to ensure amendments conform to Islamic principles and constitutional freedoms. Continue Muslim-majority control of Waqf Boards while establishing advisory positions for external auditors to boost accountability without infringing on autonomy. Institutionalise, decentralized and digitise records with strong data privacy protection and local capacity-building for strengthening mutawallis.

Restrict state interference in cases of disputed properties to the need for judicial or Board sanction for reclassification, and introduce anti-corruption policies such as whistleblower protection. Group Rights in India must balance state regulations with community agency.[19] Bring the Act in sync with Supreme Court precedents to avoid encroachment in religious domains. Incorporate a sunset clause for review and pilot experiments in some states to calibrate effectiveness. By reconciling transparency, public trust, and constitutional protection, the Act can bring Waqf administration into the modern era without compromising minority rights and India's secular tradition.

[19] Rochana Bajpai, *Debating Difference: Group Rights and Liberal Democracy in India* (OUP 2011)