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WAQF ACT: AN OVERVIEW FROM CONSTITUTIONAL LENS

Paarth Jain¹

INTRODUCTION

India's constitutional identity is rooted firmly in the principles of secularism, equality, liberty, and social justice. In this democratic setup exists a complicated relationship between the state and religion, where religious endowments and personal laws function under constitutional control. Of these, the Waqf system, based on Islamic law, is a distinctive legal and social institution that has survived and developed over centuries in the Indian subcontinent. Regulated presently by the Waqf Act, 1995, the institution of waqf controls the dedication of immovable or movable property for purposes accepted as pious, religious, or charitable under Islamic law.

This paper aims to analyze the Waqf Act in the light of the Indian Constitution, raising queries regarding its conformity to constitutional ideals, assessing the institutional and administrative arrangements, and investigating its consequences for minority rights, secular administration, and equality before law.

The Waqf Act is an exception in otherwise secular legislative order in India. It authorizes religious communities to administer endowed property independently, by institutions like the State Waqf Boards and the Central Waqf Council. But at the same time, it creates basic constitutional concerns:

INSTITUTIONS

The State Waqf Boards are the pillar of waqf administration in India and are established under Section 13 of the Waqf Act, 1995,² which superseded the previous Waqf Act of 1954. Their establishment was based on the necessity of institutionalizing the oversight of religious endowments in a way that is in line with contemporary administrative standards while providing due recognition to the religious autonomy of the Muslim community. Historically, in Mughal

¹ The author is a LLM student at GD Goesnka UNiveristy, Gurugram.

² Waqf Act, No. 43 of 1995, India Code (1995).

and colonial times, waqf properties were normally governed by local informal arrangements or under the custody of qadis and hereditary mutawallis. Without a single system of regulation, there were quarrels, appropriation, and fission of waqf estates. Realizing the requirement for reform, the British government passed the Mussalman Waqf Validating Acts of 1913³ and 1930,⁴ but even these did not stipulate centralized administrative control. After independence, the Government of India followed a more institutionalized route by passing the 1954 Waqf Act, which was subsequently consolidated and reformed through the 1995 legislation, directing every state and union territory to form a State Waqf Board.

These Boards are statutory corporate entities with perpetual succession, legal personality, and the capacity to acquire, hold, and dispose of property in terms of the provisions of the Act. Their composition is such that it is intended to represent a balance between state control and community representation. Usually, members are recruited from different sections of society, such as Muslim legislators, bar councils, Islamic theology scholars (Ulema), mutawallis of waqf properties, and professionals with administrative and financial expertise. Although this diversity is meant to enhance representativeness, the selection and nomination process is usually characterized by political interference, which compromises autonomy and effectiveness. The Board Chairperson is internally elected, and the Board is serviced by a Chief Executive Officer (CEO), normally appointed from state administrative services.

Functionally, the State Waqf Boards are tasked with a range of duties that mix religious devotion with contemporary administrative style. They are also tasked with keeping a comprehensive and up-to-date register of all waqf properties within the state, monitoring the appointment and behavior of mutawallis, ensuring that the income accruing from waqf properties is expended for the purposes intended by the waqif (donor), instituting proceedings to avoid illegal alienation or encroachment of waqf lands, and monitoring the financial administration of waqf estates. Besides, the Boards must draw up annual reports, budgets, and audits for the purpose of transparency. They can also take charge of direct administration of a waqf institution in situations of gross mismanagement or disagreement. In practice, however, most of these functions are quite aspirational given structural and logistic deficits. The majority of the State

³Mussalman Wakf Validating Act, No. 6 of 1913, India Code (1913).

⁴Mussalman Wakf Validating Act, No. 32 of 1930, India Code (1930).

Boards experience chronic understaffing, outdated record systems, ineffective legal teams, and technological non-integration, which make it difficult for them to effectively discharge their responsibilities.

One of the most serious challenges experienced by State Waqf Boards is land encroachment and illicit transfer of waqf assets. As per reports from different quarters, such as the Sachar Committee (2006) and the Joint Parliamentary Committee on Waqf (2009), waqf lands have been encroached upon systematically by private parties, institutions, and even government departments, usually in connivance with the silence of board officials. In spite of being vested with powers to file lawsuits, the Boards cannot recover encroached lands in many instances due to deficient enforcement mechanisms, delay in the legal process, and lack of political will. In addition, financial mismanagement, lack of real-time auditing, and disagreements regarding mutawalli succession have caused a wide erosion of public trust in such institutions. In other instances, the Boards themselves have been found to be involved in illicit land transactions, which calls into question major concerns for accountability. Not only do these weaknesses undermine the revenue-generating capacity of waqf assets which might otherwise go towards schooling, hospitals, and social welfare initiatives but they also weaken the very religious sanctity that the waqf institution is originally set up to safeguard.

Along with the services of the State Boards is the Central Waqf Council (CWC), which is the topmost national advisory body under the Waqf Act, 1995, under Section 9. Set up initially in 1964 by the report of the Wakf Inquiry Committee (1971), the Council is placed under the administrative control of the Ministry of Minority Affairs, Government of India. Its main responsibility is to advise the Central Government on policy issues related to waqf and to advise and assist the operation of State Waqf Boards. The Council is headed by the Union Minister for Minority Affairs and consists of not more than twenty members, including Members of Parliament, legal professionals, Islamic scholars, and professionals in the law, finance, and administration fields. Even though it is not an enforcement organization, the Central Waqf Council is a key facilitator for inter-state coordination, preparation of strategic guidelines for waqf administration, and helping the modernization of waqf administration throughout India.

The CWC has led some significant initiatives towards improving transparency in, as well as efficiency of, waqf administration. First among these is the Waqf Management System of India (WAMSI), a digitization initiative to develop an integrated online database of all waqf properties across the nation. In addition to WAMSI, the Council has also partnered with the Indian Space Research Organisation (ISRO) to carry out GIS mapping of waqf lands, facilitating real-time monitoring, avoidance of encroachments, and improved planning for development schemes. The Council also provides financial assistance, interest-free loan, and legal assistance to weaker State Boards and has initiated training and capacity building programs for the waqf staff. It has tried, through its several schemes, to deploy waqf revenues to bring social well-being to the Muslim community in general, but particularly in terms of women's education, vocational training, and orphan care.

Notwithstanding its strategic significance, the Central Waqf Council is not unblemished. Having no statutory coercive powers to enforce action or accountability on State Waqf Boards, it is an advisory body and its influence depends on the willing cooperation of state governments, several of whom accord waqf issues low administrative priority. Additionally, the Council is regularly criticized for its shortage of field presence, glacial decision-making processes, and reliance on yearly government grants, which hinders its power to enforce large-scale reforms or move quickly in emergencies. Lack of penal provisions for default by State Boards further undermines its authority.

Both the Central Waqf Council and the State Waqf Boards represent tensions involved in governing religious institutions under a secular constitutional setup. Though they are tools for the safeguarding of minority religious freedoms and the administration of one of the most precious reservoirs of charitable real property in the nation, they also pose serious questions regarding state interference in matters religious, institutional inefficiency, and the imposition of regulatory consistency. Their presence and operation need to be assessed not only in administrative terms but also under the wider scope of constitutional law namely, in connection with Articles 14, 25, 26, and 29 that ensure equality, religious freedom, and cultural self-determination. The critical analysis of these institutions thus constitutes an integral part of understanding how the Indian state addresses the intricate space of pluralism, governance, and religion-based legal frameworks.

CONSTITUTIONAL ARTICLES

Does religion-specific endowment legislation meet the secular character of the Indian state? How does legislation strike a balance between Articles 25 and 26 (right to freedom of religion) and Article 14⁵(equality before the law)? What are the implications under the constitution of a state-sponsored entity such as the Waqf Board operating to administer religious property?

India's constitutional identity is rooted firmly in the principles of secularism, equality, liberty, and social justice. Under this democratic system is an intricate nexus between the state and religion, in which religious endowments and personal laws run under constitutional regulation. Of these, the waqf system based on Islamic law is a peculiar legal and social institution that has survived and adapted over centuries in the Indian subcontinent. Administered presently by the Waqf Act, 1995, the institution of waqf governs the dedication of immovable or movable property for purposes accepted as pious, religious, or charitable under Islamic law.

This paper attempts to critically examine and analyze the Waqf Act on the touchstone of the Indian Constitution, challenging its consistency with constitutional values, assessing the institutional and administrative mechanisms, and analyzing its implications for minority rights, secular governance, and equality before law.

The Waqf Act is a legal exception in India's otherwise secular legislative framework. It enables religious communities to administer endowed properties independently by way of a well-defined and tiered statutory regime, most prominently the State Waqf Boards and the Central Waqf Council. These bodies provide the administrative core of waqf regulation in India. But the fact that these religiously defined entities exist poses radical questions regarding their constitutional legitimacy and challenge to the notion of state neutrality in matters of religion.

From a constitutional point of view, three main provisions stand pre-eminent in any discussion about waqf governance: Article 25 providing freedom of religion; Article 26, guaranteeing religious denominations the autonomy to look after their affairs; and Article 14, establishing equality before law. Each provision interacts with the waqf framework in unique ways and

⁵ Constitution of India, art. 14.

requires to be well understood in depth to evaluate the extent to which the Waqf Act defends or compromises constitutional morality.

Article 25: Liberty of Religion

Article 25 of the Indian Constitution states that all individuals are equally entitled to freedom of conscience and the right to profess, practice, and propagate religion. This basic right guarantees that people and communities are able to follow their religious obligations without interference from the state, except on grounds of public order, morality, and health. The waqf institution being a religiously sanctioned charitable endowment derives part of its legitimacy from this very constitutional safeguard. The act of creating a waqf is considered a religious obligation in Islamic law, especially in Sunni traditions, and is thus an expression of religious freedom under Article 25.

But the state intervention in waqf affairs, like the appointment of waqf board members, the ousting of mutawallis, or intervention in the spending of waqf revenues, raises a constitutional issue. Critics hold that such state intervention dilutes the autonomy envisaged by Article 25. However, the counter-argument would be in the state's duty to ensure that religious freedoms do not spill over into mismanagement or exclusivity, especially where waqf properties are utilized for education, health, or public services. The "public order, morality, and health" restriction under Article 25(1) gives the constitutional support for such state control. Therefore, the balance in the analysis must be struck between the freedom of religious expression by waqf and the state's duty to regulate in the public interest.

Article 26: Liberty to Regulate Religious Affairs

Whereas Article 25 secures individual freedoms to practice religion, Article 26 guarantees extensions of such protection to religious denominations and institutions to have the liberty to regulate their own religious affairs. In particular, Article 26(b) gives each religious denomination a right to "manage its own affairs in matters of religion," and Article 26(d) grants them the right to "administer such property in accordance with law." The system of waqf perfectly falls under this provision, as it is an Islamic religious institution managing property that is religious and charitable in nature.

The word "in accordance with law" comes into play here. Although Article 26 ensures religious denominations the right to manage their properties, it does not provide absolute immunity from regulation. In *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954)*,⁶ the Supreme Court explained that although religious denominations enjoy autonomy in religious matters, their management of property can be regulated by secular legislation. The Waqf Act thus stands as a secular legal mechanism to ensure that religious property is managed transparently and in alignment with national laws. Yet, issues arise when the state's role becomes excessive, blurring the line between regulation and control. The appointment of government representatives to waqf boards, obligatory registration requirements, and state audits have been accused of violating the autonomy promised under Article 26. This tension between oversight and autonomy is at the center of the constitutional conflict regarding the Waqf Act.

Article 14: Right to Equality

Of all the contentious constitutional issues concerning the Waqf Act, perhaps the most controversial is its consistency with Article 14, which provides equality before the law and equal protection of the laws to all citizens. Article 14 is the foundation of the Indian constitutional framework, guaranteeing that no group of people receives undeserved privilege or is discriminated against. A law that operates solely for a single religious community such as the Waqf Act in favor of Muslims gives rise to reasonable apprehensions of asymmetrical legal pluralism.

Criticizing that such religion-specific legislations as the Waqf Act are contrary to the policy of uniformity and equal treatment, critics raise questions as to why Muslim endowments need a special law to govern and state-funded exclusive boards to manage, whereas Hindu religious endowments are regulated under various state-specific laws such as the Hindu Religious and Charitable Endowments (HRCE) Acts and Christian and Parsi trusts by the Indian Trusts Act? This division has resulted in unequal legal standards, differential levels of transparency, and inconsistencies in rights of appeal, property use, and revenue distribution. Nevertheless, the

⁶ The Comm'r, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 (India).

Supreme Court held differential treatment under Article 14 where it is for a reasonable classification based on intelligible differentia and is reasonably related to the object of the enactment sought to be achieved. Here, the Waqf Act's emphasis on Muslim endowments can be regarded as a defensive legal provision under Article 29 and Article 30, which protect cultural and religious minority rights.

However, this constitutional rationale does not excuse the system from critical examination. The danger is in consolidating communal administrative regimes, which may inadvertently exclude communities from mainstream decision-making or lead to ineffective parallel bureaucracies. Therefore, the Waqf Act needs to meet the test of substantive equality, and not merely formal legal approval. It needs to show that differential treatment of waqf institutions leads to effective empowerment, justice, and accountability, and not mere symbolic or selective privilege.

Under the aegis of these constitutional protections, the system of waqfs in India finds itself situated at the point of intersection among religious liberty, institutional autonomy, and legal equity. It makes a strong test case of the way religious laws governing endowment tread the nested expectations of pluralist accommodation and secular statecraft. While the Waqf Act seeks to safeguard religious and charitable intent of endowments and enhance communal welfare, it has to always do so within the limits and essence of the Indian Constitution. This paper thus aims at untangling the complex nexus between constitutional morality and faith-based governance, and evaluating whether the existing architecture of waqf law reinforces or subverts the vision of inclusive justice and egalitarianism enshrined in the Indian constitutional order.

The early origins of waqf in India date back to the Delhi Sultanate and Mughal eras, and their codification on a formal basis commenced under British administration with the Mussalman Waqf Validating Acts of 1913 and 1930. After independence, the institution continued to be legislatively acknowledged, leading to the detailed Waqf Act of 1995, followed by the amendment of 2013. In contemporary India, the waqf institution holds an enormous portfolio estimated at over 5 lakh properties positioning it as one of the largest land-holding organizations in the nation. These properties encompass mosques, dargahs, graveyards, madrasas, and commercial properties themselves that add to the economic, religious, and cultural life of the Muslim community.

But in addition to its religious sanctity and social significance, the waqf system also suffers from grave charges of corruption, illegal occupation, mismanagement, and political interference. Judicial examination has frequently brought to light the inability of waqf institutions to operate in a transparent manner, casting doubt on the constitutional legitimacy of community-based systems of governance. The Supreme Court as well as some High Courts have, from time to time, presided over waqf disputes involving balancing the fundamental rights with administrative accountability and public interest.

This research thus intersects law, religion, state power, and minority rights. It asks if the present legislative and administrative scheme of the Waqf Act is supportive or antagonistic to the Indian Constitution. It engages with the doctrine of equality, challenges the state's role in religious administration, and tests whether the presence of a religion-specific statutory regime harmonizes with the constitutional assurance of uniform justice for all.

In addition, the study embraces the comparative approach as it draws insights from other endowment religious law like the Hindu Religious and Charitable Endowments (HRCE) Acts, and church property regulations within the Christian religious denomination. These comparisons enable analysis of whether indeed India's multiple legal system seriously complies with neutrality and equitability or only upholds asymmetrical pluralism of the law.

At a moment when national debate is increasingly about Uniform Civil Code, minority rights, and constitutional morality, this paper seeks to contribute to the scholarly and legal understanding of how community-specific legislation such as the Waqf Act squares with the larger constitutional tapestry. It is not merely a study of a piece of legislation, but of the underlying tensions and concordances between religion and law, between freedom and regulation, and between diversity and uniformity in India's democratic order.

The Waqf Act, 1995, of the Indian Parliament aims at better administration and governance of waqf properties in India. Such properties permanently dedicated for religious, pious, or charitable objectives known under Islamic law form a significant part of the Muslim community's cultural and religious heritage. Though the Act seeks to protect waqf properties from abuse and encroachment, and to ensure their use in conformity with the intentions of the

waqif (donor), the constitutional framework of India poses a number of serious legal and philosophical issues to the Act. In a secular democracy based on the rule of law, any religious-specific law has to meet the tests of equality, secularism, and constitutional morality.

ISSUES WITH THE WAQF ACT

Differential Treatment and a Violation of Article 14

The primary problem that crops up is the sole religious nature of the Waqf Act, which extends only to Muslim endowments without any correlative statutory scheme for endowments established by other religious groups. This differential legal treatment confronts the equality clause under Article 14 of the Constitution, which enjoins equal protection of laws to all citizens regardless of religion. Although it could be argued that such legislation protects the cultural rights of minorities under Articles 29 and 30, the lack of a uniform legal framework for managing religious endowments gives the impression of legislation favoring and select recognition. This legal non-uniformity raises a larger constitutional issue: can a secular state, committed to the ideals of neutrality and equality, impose statutory regimes that favor one religion only without granting similar protection or regulation to others?

The Waqf Act, 1995 applies solely to the management of waqf properties religious or charitable endowments under Islamic law. It's being exclusive gives rise to the leading constitutional issue: can legislation be passed to safeguard the religious property of a single community, while withholding equivalent statutory protection to the religious and charitable property of others?

India is a secular, plural democracy and the Constitution enshrines equality before law and equal protection of laws to every citizen through Article 14. But Waqf Act is a denomination-based legislation and applicable to Muslims only without a counterpart statutory legislation in respect of such endowments of other denominations of religion like Hindu mathas, Christian missions, Sikh gurdwaras, or Jain derasars. Though state-level legislation exists for temple trusts and charitable endowments, none equals the centralizing, institutionalizing, and expansive framework established by the Waqf Act in the case of Muslim properties.

This causes apprehensions regarding legislative unevenness in a secular state. The argument of critics is that granting such comprehensive statutory support and government machinery (such as Central and State Waqf Boards) to one religion, while leaving other religious communities to run their institutions under general trust law or enactments specific to a state, provides an unevenness in the legal handling of religions.

Further, the Waqf Act contains important quasi-sovereign features like notification power over land as waqf property, the vesting of control over state-regulated Waqf Boards, and restricting judicial review through expert Tribunals. These powers, when used exclusively for an individual community, give rise to an impression of state patronage or favoritism, which runs counter to the commitment of religious neutrality reflected in India's secular Constitution.

The selective enforcement can have the potential to infringe Article 14 on two grounds:

1. Unequal Treatment of Equals – All religious denominations in India do have charitable institutions and properties. Granting a statutory administrative apparatus to one religion and leaving others to decentralized or diffused state laws is a legal classification not founded on intelligible differentia, nor one that has a rational nexus to a legitimate constitutional goal.
2. Arbitrariness in State Action – The Waqf Boards, being state-supported bodies, enjoy extensive administrative powers impacting not merely Muslims but even non-Muslims (e.g., in disputes relating to land involving third parties). The differential enforcement of the Act without extending the same relief or protection to other communities amounts to arbitrary administration, thus running contrary to the anti-arbitrariness concept of Article 14 as established in *E.P. Royappa v. State of Tamil Nadu* and *Maneka Gandhi v. Union of India*.⁷ From a comparative constitutional perspective, the absence of conformity in religious endowment laws also poses difficulties for judicial enforcement. Courts become situated in the situation of interpreting various laws for the same disputes, based on what religion is at issue undercutting the idea of legal certainty and procedural equality.

In short, the main flaw in the Waqf Act is its community-exclusive character, which has the potential to contravene the spirit and letter of Article 14 by establishing a religious classification

⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (India).

without sufficient constitutional rationale, thus upsetting the equilibrium between group rights and equal legal status for all citizens.

A Threat to Secularism

Secondly, the institutional setup of the Waqf Boards, established and administered by State governments and the Central Waqf Council, puts the constitutional principle of secularism, enshrined in the Basic Structure Doctrine as developed by the Supreme Court in *Kesavananda Bharati v. State of Kerala*,⁸ into bold relief. The involvement of state officials in religious property management, such as the authority to dismiss mutawallis (caretakers), authorize budgets, and rule on disputes, can be seen as state entanglement in religious administration. This is problematic under Articles 25 to 28, which ensure the freedom of religion and prohibit the State from interfering with the religious affairs of communities. Whereas the state also has a justifiable interest in maintaining public order and preventing abuses of charitable property, its excessive intervention through the Waqf Boards can be beyond the allowed limits of administrative control in matters of religion. The Indian Constitution proclaims the country to be a sovereign, socialist, secular, democratic republic in its Preamble. Secular means that the State will not help, patronize, or interfere with any religion and will treat all religions on an equal footing a rule reaffirmed in several path-breaking Supreme Court judgments, such as *Kesavananda Bharati v. State of Kerala* and *S.R. Bommai v. Union of India*.⁹ The Basic Structure Doctrine, which the judiciary has fixed, includes secularism as one of the unalterable aspects of the Indian Constitution.

Against this constitutional background, the organization and operation of Waqf Boards under the Waqf Act, 1995, pose serious questions. The Act requires the establishment of Central and State Waqf Boards, whose nominees or representatives are appointed or elected in line with procedures determined by the State and Central Governments. These Boards are statutory organizations functioning under the administrative control of Ministry of Minority Affairs at the Centre and concerned departments of each State. The Central Waqf Council, for example, is headed by the Union Minister for Minority Affairs and administered by using public funds.

⁸Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461 (India).

⁹ S.R. Bommai v. Union of India, AIR 1994 SC 1918 (India).

This explicit State intervention in the management of the religious affairs and properties of a single particular community is uncomfortable with the principle of secularism. The Waqf Boards are entrusted with:

- Maintenance and surveying of religious properties,
- Auditing local mutawallis' budgets (managers),
- Carrying out inquiries and taking charge of waqfs,
- Instituting legal proceedings by Waqf Tribunals,
- Disposing or leasing of religious property.

These are not regulatory powers but active management, supervision, and overriding of decisions by religious functionaries at times. While regulation of religious properties is allowed under some circumstances (e.g., to avoid mismanagement), the extent of administrative control given to the State in the Waqf Act can pass the threshold from regulation to religious interference.

Constitutionally, this poses two particular issues:

1. *Violation of Articles 25 to 28:*

- Article 25 assures freedom of conscience and the right to freely profess, practice, and propagate religion.¹⁰
- Article 26 also guarantees the right of every religious denomination to administer its own affairs in religious matters and to acquire and hold property and administer it in accordance with law.¹¹
- Article 27 forbids the employment of public funds for promoting any specific religion,¹² and Article 28 prevents religious teaching in institutions that are fully financed by the State.¹³

Since Waqf Boards are State-funded and controlled by public officials, their functioning gives rise to the possibility of indirect State patronage or preference, at least in administrative terms,

¹⁰ Constitution of India, art. 25.

¹¹ Constitution of India, art. 26.

¹² Constitution of India, art. 27.

¹³ Constitution of India, art. 28.

for one specific religion. This can be seen as running counter to the constitutional requirement of religious neutrality.

2. State Patronage vs. State Regulation

Indian secularism is not absolute separation (as in the USA) but one of principled distance—permitting intervention of the State into religious matters whenever it becomes a matter of social reform, equality, or public good (e.g., *Shayara Bano v. Union of India*,¹⁴ Triple Talaq Case). But in the Waqf Act, social reform is not the concern; it is standard and large-scale administrative regulation over religious property and operations, something which can also be interpreted as state patronage, rather than just state regulation. This runs counter to the impartial attitude which the State has to adopt towards a multi-religious society.

Additionally, the politicization of appointments to Waqf Boards, the use of these Boards for community-based electoral mobilization, and the controversies surrounding waqf land allocations to favored institutions have further eroded public confidence in the secular character of waqf governance. The perception that the government selectively manages one religion's property using public administrative infrastructure is both legally contentious and socially divisive.

Finally, the extent and form of State intervention in the management of waqf pose significant issues regarding the breach of secularism, state interference with religious autonomy, and discriminatory state treatment, combined, which undermine the Indian constitutional guarantee of equal respect for every religion. The problem calls for a re-thought of the limits between legal state regulation and illegal religious interference based on India's secular democratic paradigm.

Judicial Exclusion And Procedural Challenges Under The Waqf Act: A Constitutional Examination

A third issue arises from curtailing judicial recourse and the convoluted system of jurisdiction under the Waqf Act. The Act provides the authority to specially constituted Waqf Tribunals to decide all the disputes relating to waqf and at the same time excludes the jurisdiction of civil

¹⁴ *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

courts. Such Tribunals in actual practice have been irregular in their functioning, under-equipped at times, and incapable of providing timely and effective remedies. The lack of appellate tribunals in some states and inconsistency between Tribunals and High Courts' judgments has further confused the legal scenario. This restricted access to justice is a potential breach of Article 21, which promises the right to life and liberty and includes in it the right to legal recourse and a hearing. The existing procedural mechanism excludes affected parties like beneficiaries, third-party buyers, or even governments challenging waqf status from seeking full-fledged legal recourse.

The Waqf Act, 1995 provided for a specialized mechanism of dispute resolution in the form of setting up of Waqf Tribunals. Although the underlying idea in enacting such legislation was to hasten the determination of disputes relating to waqf property and prevent overloading of civil courts, the exclusive grant of jurisdiction to Waqf Tribunals and the express exclusion of jurisdiction of civil courts under Section 85 of the Act has been the source of serious constitutional issues. Specifically, it impacts the right to access justice as provided under Article 21 of the Constitution, which has been judicially interpreted to embrace the right to a fair, accessible, and timely legal redress.

1. Statutory Framework and Judicial Exclusion

Section 83 of the Waqf Act authorizes State Governments to constitute Waqf Tribunals to decide disputes, questions, or issues relating to waqf properties. The Tribunals have been conferred exclusive jurisdiction, and according to Section 85, civil courts are prohibited from entertaining any suit or legal proceedings which fall within the purview of these Tribunals. This implies that a parallel judicial system has been established exclusively for one class of disputes which are disputes concerning Muslim religious endowments.

Theoretically, creation of specialized tribunals is not unconstitutional in itself. The Indian system appreciates that tribunalization of justice can ease the caseload pressures on civil courts and enable subject-matter expertise in sophisticated domains like taxation, service law, or intellectual property. Yet, the legitimacy of such exclusion depends on three critical conditions:

1. The tribunal should provide equally effective and procedurally fair justice as civil courts.

2. The tribunal should be impartial, efficient, and adequately equipped.
3. There should be an unmistakable appellate mechanism and the decisions should continue to be open to judicial review by constitutional courts.

Sadly, in the Waqf Tribunal context, these safeguards seem to be applied inconsistently or ineffectively.

2. Practical Deficiencies in Waqf Tribunals

A fundamental issue is the inadequacy of Waqf Tribunals in practice. A number of states either have no functional Tribunals or have appointed Revenue Officers, Executive Magistrates, or bureaucrats rather than trained judicial officers as presiding officers. This leads to a lack of judicial independence and subverts the very basis principle of impartial adjudication.

Even in states having functional Tribunals, some issues like:

- Irregular staff,
- Lack of legal infrastructure,
- Restricted transparency, and
- Secrecy of waqf records and their non-digitization

have slowed down proceedings and frequently resulted in non-verbal or weakly argued orders. The lack of standardized rules of procedure and evidence, which otherwise regulate civil litigation under the Code of Civil Procedure, has also undermined procedural protections for the parties.

Consequently, numerous litigants especially third-party buyers of waqf land, tenants, beneficiaries, and even state governments have lacked confidence in the fairness and effectiveness of the Tribunals. This not only defies the ideal of affordable justice but quite possibly violates the "procedure laid down by law" requirement in terms of Article 21, as set by ***Maneka Gandhi v. Union of India (1978)***, whereby the Court asserted that any such law impacting individual rights shall be fair, equitable, and reasonable.

3. Absence of Appellate Framework and Jurisprudential Conflictures

One serious issue of concern is that the Act does not have a single uniform appellate mechanism. The Waqf Act does not clearly state whether appeals against the orders of Waqf Tribunals should be with the High Court or Supreme Court, or whether judicial review is the sole remedy. In certain instances, orders of Tribunals are challenged directly in the form of writ petitions under Article 226/227 before the concerned High Courts. Such uncertainty in appellate hierarchy leads to delays and inconsistency in jurisprudence.

High Courts and Waqf Tribunals have repeatedly given conflicting judgments on matters like the waqf nature of a property, rights of tenants, and Waqf Board powers. The Waqf Boards in most of the states function as parties and quasi-regulators, thus giving rise to conflict of interests and further complicating the legal process for the concerned parties.

4. Exclusion of Civil Courts and Third-Party Litigants

The most constitutionally objectionable feature is that civil courts are completely shut out from considering waqf-related issues, even where third-party private persons are concerned like bona fide purchasers, long-term tenants, or beneficiaries who do not come within the definition of "mutawalli" or "persons interested" under the Act. In most cases, third parties find that property they bought decades ago is declared waqf land suddenly by unilateral Board notice, with them having no ready legal recourse.

This exclusion practically denies basic legal recourse to parties who might not even have been aware of the waqf status of the property or had acquired rights in good faith. The plight worsens when Waqf Boards establish notice to property as waqf land without serving notice or hearing opportunity to such persons, thus contravening the doctrine of natural justice.

The Supreme Court in *Bajaj Hindustan Sugar Ltd. v. Balrampur Chini Mills Ltd. (2021)*¹⁵ reaffirmed that any statutory bar to jurisdiction should be interpreted strictly, and access to civil courts cannot be refused unless there is an equally efficacious alternative remedy. In the

¹⁵ *Bajaj Hindustan Sugar Ltd. v. Balrampur Chini Mills Ltd.*, (2021) SCC OnLine SC 620 (India)

case of the Waqf Act, this principle is violated, as the available mechanism does not provide equal procedural fairness nor complete legal redress.

5. Violation of Article 21: Right to Justice

The Indian Supreme Court has repeatedly widened the ambit of Article 21 to encompass access to legal remedy, fair hearing, speedy trial, and unbiased forum. In *Hussainara Khatoon v. State of Bihar (1979)*,¹⁶ the Court ruled that justice delayed is justice denied, and in *A.R. Antulay v. R.S. Nayak (1992)*,¹⁷ the right to fair trial by a competent court was held to be a constitutional mandate.

The Waqf Act, in its procedural framework, seems to fall short of this constitutional requirement. By restricting access to civil courts, over-reliance on under-performing Tribunals, and leaving out major categories of affected stakeholders, the law could be transgressing the spirit of procedural due process as interpreted under Article 21.

In *S.P. Sampath Kumar v. Union of India (1987)*,¹⁸ the Court held that when tribunals take the place of courts, they must reflect the independence, integrity, and procedural fairness of ordinary courts. Failure by Waqf Tribunals to reach this standard poses serious constitutional issues.

6. Need for Reform and Harmonization

A more balanced approach that safeguards both the religious sanctity of waqf property and the legal rights of all parties involved would serve to realign the Act with constitutional standards.

Administrative Inefficiencies, Lack of Transparency, and Accountability in Waqf Governance: A Crisis of Public Trust

The fourth issue relates to non-transparency, institutional accountability, and systemic inefficiencies in the administration of waqf lands. In a public trust to be utilized for religious and charitable causes, the waqf lands tend to be ill-documented, mishandled, or illegally occupied,

¹⁶Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369 (India).

¹⁷ A.R. Antulay v. R.S. Nayak, AIR 1992 SC 1701 (India).

¹⁸ S.P. Sampath Kumar v. Union of India, AIR 1987 SC 386 (India).

and consecutive CAG reports have pointed toward non-digitized records, traceless inventories, and un-audited accounts. Political interference in Waqf Board appointments, conflicts of interest, and absence of supervision over mutawallis have resulted in extensive charges of corruption. In some states, Waqf Boards have been dissolved or suspended on the grounds of misgovernance. These administrative lapses water down the intent of the Act, negate the purpose of the waqif, and pose basic questions about the State's role to ensure good governance and proper utilization of public property intended for religious and charitable objectives.

The management of waqf assets in India initially proposed to be religious, charitable, and community welfare-oriented has faced growing scrutiny as a result of chronic mismanagement, a lack of transparency, and institutional failure in supervision. These defects directly oppose the intent of the Waqf Act, 1995, which was established to provide for organized management and use of waqf resources according to the desire of the waqif (donor) and greater public interest. In spite of the statutory and institutional provisions delineated in the Act, ground realities point to an entrenched governance crisis, raising questions regarding the role of the State in protecting public trust, ensuring religious institution accountability, and ensuring effective public administration in consonance with constitutional values.

1. Unavailability of Transparent Land Records and Inventories

One of the basic issues in the waqf system is the unavailability of credible, up-to-date, and accessible land records. Successive reports from the Comptroller and Auditor General (CAG) and parliamentary committees have highlighted that many waqf properties are either not registered, lack proper documentation, or are based on ambiguous revenue records. In many states, surveys mandated under Section 4 of the Waqf Act are either incomplete or outdated, with property inventories missing or inaccurate. In a few instances, whole waqf properties have remained unaccounted, lost over years of neglect or complicity on the part of officials and encroachers.

CAG has further identified that digital records of waqf properties a critical means of real-time monitoring and safeguarding against encroachment have not been uniformly maintained by states. India Waqf Management System (WAMSI), initiated to establish a centralized digital

registry, is not being utilized because state governments, Waqf Boards, and local revenue departments have failed to cooperate with each other. In the absence of valid inventories, monitoring, auditing, and even legal safeguarding of waqf assets is an uphill battle.

2. Widespread Encroachments and Land Grabbing

As a result of weak documentation and enforcement, encroachment on waqf properties is widespread. The Sachar Committee estimated in 2011 that there are more than 4.9 lakh registered waqf properties in India, many of which are worth thousands of crores, but much of these are under illegal occupation by private parties, commercial establishments, or even government departments. For example, in states such as Uttar Pradesh, Tamil Nadu, and Maharashtra, many high-value urban waqf plots have been commercially used up without legal title, legitimate lease agreements, or advantage to the waqf fund.

Lack of willingness or ability of Waqf Boards to file recovery proceedings, added to administrative lethargy and political patronage, has created an environment in which land mafias and vested interests are free to play. This is a dilution of the very essence of the waqf institution, which was established to direct wealth towards education, healthcare, community welfare, and religious services.

3. Political Interference and Lack of Institutional Autonomy

The structure and operations of State Waqf Boards are usually at the mercy of political agendas. While the Act lays down a formal process for recommending members from different constituencies professional experts, religious scholars, elected members of Muslim organizations the ultimate selections are usually made keeping in mind political loyalties and vote banks. This compromises institutional autonomy, and subverts attempts to manage the Boards as impartial, legally responsible public trusts.

Also, charges of nepotism, favoritism in leasing or sale of waqf property, and selection of under-capable or conflicted persons as key administrative incumbents have additionally eroded confidence. In various cases, such Boards have either been dissolved or suspended not because

of political disaffection but on account of financial malfeasance, lack of performance, or established mal-governance.

This takeover of religious institutions by political operatives not only perverts their mandate but also dilutes the impression of neutral state oversight. The very concept of waqf—as an enduring and inviolable trust for the common good—is undermined when public institutions act as party networks instead of unbiased custodians of community assets.

4. Lack of Supervision over Mutawallis

The mutawalli, or trustee, is the person directly in charge of administering a waqf estate at the local level. According to the Waqf Act, mutawallis are supposed to keep proper accounts, follow the conditions of the waqif's deed, and provide regular reports to the Waqf Board. In reality, however, control over mutawallis is weak or nonexistent. Most mutawallis function without oversight, audits, or standard operating procedures, so the whole management system is opaque and unregulated.

In addition, where mutawallis violate their responsibilities through illegal leasing of property, misappropriation of income, or connivance with encroachers the Boards have tended not to take disciplinary action, either because of political expediency or the absence of enforcement powers. What happens in such a situation is a system where local mismanagement goes unmonitored, and bodies at the center remain uninformed and powerless.

5. Impact on Public Interest and Constitutional Mandate

In essence, a waqf is a public trust their benefits were meant to reach the poor, the marginalized sections, and religious institutions like madrasas, mosques, and community centers. The above-guessed administrative failures are not just a mirror of technical inefficiencies; they constitute a dereliction of public trust and charitable intent. When waqf lands are diverted for misuses, they are allowed to languish in disuse or are pilfered, their intended beneficiaries the socio-economically backward Muslim communities in general are deprived of even minimal developmental opportunities.

This has a ripple effect on constitutional values, such as those concerned with Article 38 (encouragement of social justice), Article 39 (assuring equitable distribution of material resources), and Article 46 (safeguarding the educational and economic interests of weaker sections). Inaction by Waqf Boards in being transparent and accountable custodians of waqf property taints the State's adherence to these Directive Principles of State Policy and the overall constitutional morality behind public trust doctrines.

6. Structural and Legislative Reforms Needed

To revive public trust and constitutional credibility in waqf administration, a multi-layered reform approach is necessary:

- Mandatory digitization and geotagging of all waqf properties through advanced land-tech systems.
- Independent audits of waqf accounts by CAG-accredited agencies with findings made public every year.
- Depoliticization of Board appointments through judicial or civil society-based selection panels.
- Transparent leasing and disposal norms through e-auctions and fair market valuations.
- Mutawalli training programs and a centralized mechanism of performance review.
- Empowering the Waqf Development Corporation to become an economic partner in revenue generation of waqf estates.

The proposed reforms should not merely pursue efficiency but also infuse accountability, transparency, and participatory governance. Only then can the very spirit of waqf as a charity organization rooted in religious ethics and constitutional values be reactivated.

Administrative Control vs. Religious Autonomy: A Constitutional Conflict under Article 26

Lastly, and most importantly, the administrative control of the Waqf Boards seems to encroach on the constitutionally guaranteed autonomy of religious denominations under Article 26, which entitles them to manage their affairs in religious matters. The authority of the Waqf Boards to oversee, guide, and even overrule decisions by local waqf caretakers may be incompatible with

the right of Muslim communities to govern their religious endowments themselves. By focusing decision-making within quasi-governmental organizations, the Act threatens to undermine the ideal of religious autonomy and decentralized community control. The Supreme Court, in a series of decisions, has emphasized the importance of ensuring the sanctity of religious institutions and shielding them from excessive state interference, particularly where the interference is administrative as opposed to regulatory in its character.

The Waqf Act, 1995, while legislated with the lofty purpose of protecting religious trust and averting their misuse, seems to design a legal and administrative framework leading to centralisation of power within government-controlled bodies, most prominently the State and Central Waqf Boards. These Boards have wide-ranging powers over the administration of waqf properties, ranging from the capacity to approve or disapprove of budgets, the removal of mutawallis (trustees), launching inquiries, issuing directions, and even assuming direct control of waqfs in some situations. This level of administrative intervention has more and more sparked controversy regarding the violation of Article 26 of the Indian Constitution, which assures to each religious denomination or its section the right to regulate its own affairs in matters of religion.

1. Extent of Article 26 and Its Interpretation under Law

Article 26 of the Constitution reads:

"Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

- (a) to form and maintain religious and charitable institutions;
- (b) to conduct its own affairs in religious matters;
- (c) to acquire and hold moveable and immovable property; and
- (d) to deal with such property in accordance with law."

While the State can regulate the management of religious properties "in accordance with law," such regulation cannot take the form of control or interference in the vital religious affairs or the right of self-management of religious endowments. The Supreme Court of India has made a clear

distinction between regulatory control, which is constitutionally acceptable, and administrative control, which interferes with the autonomy protected under Article 26.

In *Ratilal Panachand Gandhi v. State of Bombay (1954)*,¹⁹ the Court held that religious denominations should have absolute autonomy to conduct their religious affairs themselves. Even in matters where administration of property is involved, State intervention is only allowed inasmuch as it is reasonable, non-intrusive, and aimed at maintaining public order or against maladministration.

2. *Waqf Boards as Quasi-Governmental Bodies*

The issue with the Waqf Act as it stands now is that it places far-reaching powers in the hands of quasi-governmental statutory authorities specifically the Waqf Boards which are in many cases appointed, overseen, or dissolved directly by the State. The Boards have the authority to:

- Intrude in day-to-day management of specific waqfs.
- Suspend or remove mutawallis.
- Dictate how proceeds from waqf property must be utilized.
- Withhold or sanction budgets and expenditures.
- Challenge the religious or administrative decisions of local waqf managers.

Although these provisions have been inserted with the aim of safeguarding waqf properties from abuse, in practice, they lead to centralized bureaucratic domination of religious institutions that had hitherto been run by local community elders, religious scholars, or family lineages who had been vested with religious duties for generations.

Such politicization and bureaucratization of the administration of waqf twists the nature of the waqf as a religious and charitable endowment system administered under Islamic jurisprudence (fiqh) and community practices. In practice, the religious community's autonomy of administration is replaced by state-sponsored boards operating under a single statutory framework.

¹⁹Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388 (India).

3. *Judicial Fears of Administrative Excess*

The Supreme Court has continually been exercising circumspection against unwarranted State intrusion in the governance of religious organizations, especially where the intrusion is administrative in nature compared to regulatory.

In *Azeez Basha v. Union of India (1968)*,²⁰ in dealing with the issue of religious autonomy in the case of Aligarh Muslim University, the Court insisted that religious institutions should have meaningful control over their administration, or else their autonomy and identity are lost.

In *Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P. (1997)*,²¹ the Court held that the State cannot take over the administration of a temple on an indefinite basis, as it would be tantamount to deprivation of the rights of the religious denomination under Article 26(d). It noted that temporary takeovers to avert gross mismanagement are permissible, but permanent state control destroys the constitutional guarantee of religious freedom and autonomy.

Likewise, in *Commissioner, Hindu Religious Endowments v. Sri LakshmindraThirthaSwamiar of Sri Shirur Mutt (1954)*, the Court established a salutary discrimination: whereas regulation of secularities may be the province of the State, control of internal religious affairs or disposition of property as part of religious practice cannot come from the State.

These decisions imply that any manner of administrative control undermining the religious communities' autonomy to manage their institutions even if in the guise of avoiding mismanagement—needs to be strictly tested against the benchmark of Article 26.

4. *Threat to Decentralized Community-Based Governance*

The system of waqf in its pure state was to operate as a decentralized, locally controlled religious organization, in which the donor (waqif) dedicated property perpetually and entrusted it to a mutawalli to be run in keeping with religious traditions and the intent of the donor. The powers granted to the Board now supersede this paradigm by inserting a middle, outside bureaucracy

²⁰ *Azeez Basha v. Union of India*, AIR 1968 SC 662 (India).

²¹ *Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P.*, AIR 1997 SC 2557 (India).

which could be in conformance with, or entirely distinct from, religious sympathies or local community interest.

By investing decision-making authority in State-governed institutions, the Act undermines the role of traditional religious leadership and weakens the organic link between waqf and the community it benefits. In the process, it not only disrupts the religious autonomy protected by the Constitution, but also undermines the functional efficiency and religious legitimacy of waqf management.

5. Constitutional Morality and the Limits of State Power

While the State has a prima facie interest in averting fraud, securing proper use of charitable property, and preventing communal tension, its action must be limited by constitutional morality's values. Constitutional morality requires that State actions must exhibit fairness, deference to diversity, and non-interference in religious affairs unless it is absolutely essential and proportional.

In the instance of the Waqf Act, wholesale administrative powers conferred upon Waqf Boards exceed the limits of reasonable regulation and step into the ground of institutional capture, which is likely to be abused for political purposes, without consultation or concurrence of the concerned religious community.

This not only impacts the operations of religious bodies but also instills institutional suspicion and estrangement in the community, particularly where the Boards are perceived as instruments of the state and not the people of faith.

6. The Path Forward: Reconciling Regulation with Religious Autonomy

The dilemma, then, is to balance constitutionally that is, ensuring the State oversees to avoid misuse, but doesn't intrude into the religious and philanthropic purposes of waqf trusts. Some ways in which some reforms could work to restore that balance include:

- Preserving Board powers only in supervisory matters, not operations.

- Requiring community involvement in decision-making processes, including the appointment of mutawallis and application of income.
- Organizing independent mechanisms of redressal of grievances to settle grievances without full dependency on Board sanction.
- Legal recognition of traditional practices and religious rules (fiqh) governing waqf administration, particularly in the situation of mosques, madrasas, and cemetery lands.
- Providing for judicial review of Board orders dealing with religious autonomy.

CONCLUSION

The Waqf Act, 1995, represents a unique intersection of religious tradition, charitable intent, and state regulation within India's secular constitutional framework. As a religion-specific legislation governing Islamic endowments, it seeks to preserve the pious, religious, and charitable purposes of waqf while introducing structured administrative mechanisms through the Central Waqf Council and State Waqf Boards. However, this very framework has given rise to profound constitutional tensions, particularly **concerning** equality before the law (Article 14), freedom of religion (Article 25), and the right of religious denominations to manage their own affairs (Article 26).

The Act's exclusive application to Muslim endowments, without parallel central statutory regimes for other religious communities, raises legitimate concerns about differential treatment and potential arbitrariness under Article 14. While reasonable classification grounded in minority protection (Articles 29 and 30) may offer a defense, the absence of uniform standards for transparency, accountability, and judicial recourse across religious endowments undermines the principle of substantive equality and secular neutrality. The extensive state involvement through appointments, oversight, audits, and intervention powers further risks crossing the line from permissible regulation (as upheld in cases like *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar*) to excessive interference in core religious autonomy under Article 26. This is compounded by practical realities: chronic encroachments, mismanagement, political interference, opaque records, and underperforming Waqf Tribunals that limit access to justice, potentially infringing Article 21.

These institutional and procedural shortcomings not only erode public trust in waqf governance but also dilute the original charitable and religious ethos of waqf, depriving intended beneficiaries often from marginalized sections of education, healthcare, and welfare benefits. They highlight a broader challenge in India's principled-distance model of secularism: how to reconcile minority religious freedoms with the state's duty to prevent abuse, ensure accountability, and uphold uniform justice without descending into patronage or overreach.

Ultimately, the Waqf Act embodies both the strength and the fragility of India's constitutional pluralism. It safeguards a vital dimension of Muslim religious and cultural life while exposing the difficulties of administering faith-based institutions in a secular democracy committed to equality and non-discrimination. The persistent issues of inefficiency, encroachment, and perceived favoritism demand urgent, comprehensive reforms digitization of records, depoliticization of boards, enhanced transparency, stronger mutawalli oversight, and balanced procedural safeguards that align administrative efficiency with constitutional morality.

Such reforms must preserve religious autonomy, eliminate asymmetries in endowment governance, and reinforce secular principles without eroding minority rights. Only through this recalibration can the waqf system fulfill its potential as a vehicle for social justice and charitable good, harmonizing with the inclusive, egalitarian vision of the Indian Constitution rather than standing in tension with it. In an era of evolving debates on uniform civil frameworks and minority protections, the waqf regime serves as a critical test case for India's continuing commitment to balancing diversity, religious freedom, and secular governance.