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ENFORCEMENT DEFICIT AND INSTITUTIONAL ACCOUNTABILITY
UNDER THE WAQF ACT, 1995: A CRITICAL ANALYSIS OF
MISMANAGEMENT AND STRUCTURAL FAILURES

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INTRODUCTION

The Waqf Act, 1995 was passed with the main aim of revamping and enhancing the management of waqf properties in India. The act aims to safeguard the religious, charitable, and social nature of these endowments while safeguarding their judicious use for the betterment of the society. Nevertheless, during the decades, the redoubtable refrain in policy reviews, audit reports, and judicial cases has been the widespread mismanagement, abuse, and encroachment of waqf immovables. This chapter aims to critically assess whether these failures are primarily rooted in the lack or insufficiency of effective enforcement, transparency, and accountability mechanisms inherent in the Waqf Act and the institutional framework it establishes.

NATURE AND EXTENT OF WAQF PROPERTIES IN INDIA

India has one of the largest repositories of waqf properties in the world, with estimates of between 4 to 6 lakh registered waqfs. These assets encompass mosques, graveyards, dargahs, madrasas, shops, schools, agricultural land, commercial complexes, and other such categories of immovable property. In spite of this huge portfolio, the revenues generated from waqf assets are grossly underutilized, and their potential for social development is unexploited. The main reason given for this poor performance is the chronic mismanagement of waqf assets a issue to which this chapter assigns primarily to systemic failures in enforcement, oversight, and transparency.

The institution of waqf in India is one of the oldest and most important types of religious charity, deeply ingrained in Islamic jurisprudence and practice. Originating from the Arabic root "waqafa," that is, stop, contain, or preserve, waqf signifies the permanent donation of a movable or immovable asset for religious or charitable aims under Islamic law. After a property is

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announced to be waqf, it is irrevocable and no longer remains the owner of the waqif (donor). Rather, it is held in trust for the advantage of a religious or charitable purpose, with God as the final owner. The property manager, the mutawalli, runs it in accordance with the donor's intentions. Waqf properties in India have increased in number and significance throughout the centuries to create one of the most massive pools of religious endowments in the world. The extent and nature of such properties are a reflection of the Indian subcontinent's cultural, religious, and economic past.²

In the past, waqf properties were brought to India along with the inception of Muslim governance during the era of the Delhi Sultanate. One of the earliest known examples of waqf is traced back to Sultan Muizuddin Sam Ghaor in the 12th century, who is said to have given away villages to endow a mosque and assigned a religious head to manage them. In the Mughal period, the institution of creating waqfs spread and was institutionalized, with the rulers, nobles, and opulent classes donating huge areas of land, market stalls, orchards, madrasas (schooling places in Islam), and other buildings for religious and philanthropic causes. These waqfs financed a range of activities: from upkeep of mosques and graveyards to the provision of education, medical services, and public kitchens. Most of India's ancient dargahs, madrasas, and mosques still function on the income derived from waqf properties donated in the pre-modern period. Essentially, waqf was a significant tool for social welfare and religious continuity among the Muslim community, particularly in the absence of a formal welfare state.

With the establishment of British colonial rule, the waqf system came under the jurisdiction of English law, whose administrators frequently did not show an understanding of the religious and moral basis of the institution. British courts viewed waqf largely as a question of trust law and were frequently distrustful of family waqfs (waqf-alal-aulad), seeing them as an attempt to avoid inheritance statutes. This resulted in the enactment of the Mussalman Waqf Validating Acts of 1913 and 1930, validating such endowments subject to the condition that they have a public charitable object. After independence, the Government of India attempted to control the waqf sector more effectively through legislation. The Waqf Act, 1954, and its subsequent amendment in 1995 were an attempt to bring waqf properties under a single administrative regime. The 1995

² Siti Mashitoh Mahamood, *Legal Framework for Waqf in Malaysia: Enhancing the Future Prospects* (2014), INTL. INST. ISLAMIC THOUGHT & CIVILISATION (ISTAC).

Act created Central and State Waqf Boards as statutory organizations responsible for the registration, maintenance, protection, and utilization of waqf properties in their respective jurisdictions. The legislation defined waqf in a broad sense and prescribed elaborate procedures for registration, appointment of mutawallis, settlement of disputes, and protection against encroachments.

According to recent estimates, India has more than 8.7 lakh registered waqf properties, which is one of the largest concentrations of Islamic religious endowments in the world. These properties are located in urban and rural areas and include a wide range of assets such as mosques, dargahs, madrasas, graveyards, agricultural land, shops, commercial complexes, educational institutions, and residential buildings. Based on statistics released through the Waqf Management System of India (WAMSI), these lands together occupy over 6 lakh acres of land. The economic worth of such assets is colossal. A 2006 Sachar Committee report estimated that if even a small percentage of these properties were developed and operated professionally, they would bring in thousands of crores every year sufficient to fund scholarships, hostels, schools, and social welfare programs for all Muslim Indians.

Indian Waqf properties can be classified broadly on the basis of their utilitarian purpose. They include religious properties constituting the bulk segment, including dargahs, mosques, and graveyards. According to WAMSI statistics, over 120,000 are mosques and approximately 150,000 are graveyards, amounting to over 30% of the waqf properties. These destinations cater to communal as well as religious requirements and are either taken care of by local mutawallis or Waqf Boards directly. Second, educational waqfs comprise madrasas, Islamic seminaries, libraries, and institutions offering religious and secular education. Traditionally, such waqfs have been at the forefront of developing Islamic scholarship and literacy. Third, commercial waqfs comprise shops, markets, office buildings, and even cinema halls. These are meant to generate income that can be invested in other waqf activities. Fourth, agricultural waqf lands are prevalent in rural areas and were traditionally used to finance mosques, madrasas, and community welfare. Yet, much of such land has been encroached upon or is lying idle because of disputes, absence of records, or neglect. Lastly, residential properties like apartment buildings or rental houses

constitute another large category. These are typically rented at subsidized rates and earn modest revenues.³

Geographically, the location of waqf properties is in proportion to the demographic and historical concentration of Muslim populations in different states. Uttar Pradesh, Maharashtra, West Bengal, Karnataka, Andhra Pradesh, and Tamil Nadu are the states with the maximum number of registered waqf assets. For example, Uttar Pradesh itself has more than 1.5 lakh waqf properties. These consist of centuries-old dargahs, mosques, and large graveyards in cities and towns like Lucknow, Varanasi, and Agra. Karnataka has also turned out to be a state with aggressive waqf registration, with tens of thousands of waqf records. Still, states vary hugely when it comes to waqf property management, digitization, and revenue generation. A few states have embarked on waqf property mapping and revenue maximization efforts, while others are behind in even elementary tasks such as inventory upkeep or lease audits.⁴

Notwithstanding the magnitude and richness of the waqf asset pool, its management continues to be plagued by chronic underperformance and misutilization. The Sachar Committee and other studies estimate that the average annual return on waqf properties is below 1% of their potential value. The reasons for this underperformance are numerous. To begin with, large-scale encroachments by government departments, political players, land mafias, and private individuals have seriously depleted the waqf land base. In most instances, encroachments have been present for decades without any formal challenge by the Waqf Boards. Second, title, boundary, or mutawalli appointment disputes have held many properties in litigation for years, making them economically unproductive. Third, the leasing process for waqf properties is tainted by inefficiency and corruption. Properties are leased at sub-market prices, sometimes without written agreements, and renewal of leases is spasmodic and unrecorded. Fourth, the absence of digitization and central databases has resulted in vast tracts of waqf land going unreported, misclassified, or being completely absent in public records.

The institutional structure in charge of managing waqf properties is also afflicted with severe lacunae. State Waqf Boards, although statutory organizations, tend to be short of professional

³ Law Commission of India, *Reform of Endowment Laws in India*, Report No. 245 (2017).

⁴ A.G. Noorani, *Secularism and the Constitution*, Frontline (July 2015).

personnel, technical facilities, legal expertise, and financial independence. In many instances, Boards have operated without full-time CEOs or legal officers. Their offices are inadequately equipped, their data systems are antiquated, and they tend to be subject to political interference in important appointments. The Central Waqf Council, established to assist in policy-making and offer supervision, has scant statutory authority and works more like an advisory organization. Though provisions exist in the Waqf Act for inspection, survey, and yearly audits, enforcement is negligible, and follow-up measures on audit reports are infrequent. This institutional weakness has resulted in the waqf sector being susceptible to manipulation, disregard, and marginalization.⁵

The inability to maximize the waqf system has had far-reaching consequences for Muslim socio-economic development in India. The principle of waqf is to establish long-term, community-based welfare by assets that are protected from political and economic instability. In reality, however, the majority of waqf properties do not yield substantial income. This has translated into fewer scholarships, fewer hostels, fewer vocational training institutions, and limited medical aid for a community that remains behind in human development parameters. Furthermore, the religious and cultural significance of waqf places especially mosques, dargahs, and graveyards has been eroded by neglectful maintenance, legal conflict, or administrative indifference.

Current policy initiatives have sought to deal with these issues. The Government of India initiated the "Computerization of Records of State Waqf Boards" project during the early 2010s, which was subsequently developed into the Waqf Management System of India (WAMSI). This online portal sought to register and geo-tag all waqf assets, make mutawalli appointments easier, and monitor revenue streams. Though some progress has been made, especially in Kerala, Maharashtra, and Karnataka, implementation has been patchy. Most of these properties are not registered or mis-mapped. Integration of the WAMSI portal with revenue offices, municipal corporations, and land records is yet to be achieved, and therefore, it is not effective as a management tool.⁶

⁵ Observer Research Foundation, *Waqf and Welfare: How Legal Reforms Can Unlock Billions for Minority Upliftment*, ORF Policy Brief No. 34 (2024), <https://www.orfonline.org>.

⁶*N. Adithyan v. Travancore Devaswom Board*, (2002) 8 SCC 106 (India).

Finally, the nature and extent of waqf properties in India testify to a heritage of religious philanthropy and self-governance of communities. If well managed, these properties can be very potent instruments of social justice, economic empowerment, and religious continuity. But the situation regarding waqf property management today is not very satisfactory. Coupled with historical neglect, legal ambiguity, institutional shortcomings, and administrative ineptness, the waqf system has not been able to achieve what it could have. For real reform, there has to be an integrated approach with statewide surveys, computerization, professionalization of Waqf Boards, judicial simplification, and people's participation. Only then can the waqf institution regain its rightful place as a cornerstone of Islamic philanthropy and socio-economic development in India.

ENFORCEMENT MECHANISMS UNDER THE WAQF ACT: AN INCOMPLETE ARCHITECTURE

The Waqf Act of 1995, passed by the Parliament of India, was conceived as a forward-looking legislative framework aimed at providing for the effective administration, protection, and utilization of waqf properties in the nation. Fundamentally, the Act seeks to protect such religious trusts from encroachment, abuse, and mismanagement, while permitting their income and usefulness to benefit the Muslim community as intended by the waqif (donor). Yet, even with the Act's vision and elaborate structure, its enforcement framework is still largely incomplete. This shortfall has accounted for rampant encroachments, loss of revenues, and systemic inefficiencies. The framework now in existence lacks the effectiveness in converting legal intention into material impact. Structural shortcomings, disparate functions, failure to exercise punitive authority, deficiencies of trained persons, and inefficiency of processual mechanisms of the enforcement architecture of the Act have resulted in reaching the view that although regulation is provided through the Act, its enforcement remains ineffective.⁷

The Waqf Act enforcement relies, for the most part, on a three-layered framework: Central Waqf Council (CWC), State Waqf Boards (SWBs), and Waqf Tribunals. State Waqf Boards are the key trustees of waqf properties and are in charge of registering them, managing them, and

⁷*K.V. Narayanaswamy Iyer v. State of Madras*, AIR 1954 Mad 385 (India).

guarding them. The Central Waqf Council, however, is to be used as an executive and superintending organization, providing policy guidance, appraising Board functioning, and suggesting advice to the government on matters concerning waqfs. The Waqf Tribunals are also planned as the full-time adjudication tribunals with sole authority on waqf issues. Conceptually, the institutional design seems to be satisfactory. But in reality, it is filled with institutional contradictions and gaps in implementation that seriously dilute its potential. For example, though the Boards are vested with wide-ranging responsibilities, they are rarely provided with the necessary resources, legal know-how, or administrative freedom to impose their sanction.⁸

A major point of concern is the lack of a separate enforcement section in the State Waqf Boards. In contrast to municipal authorities, land revenue departments, or urban planning commissions, Waqf Boards have no in-house enforcement squads, inspection units, or vigilance mechanisms. Consequently, even in obvious instances of encroachment, unauthorized leasing, or misappropriation of waqf properties, the Boards rely on the willingness of the local police, district administration, or revenue officials, most of whom will have vested interests or evidence bureaucratic apathy. This reliance not only slows down enforcement actions but also leads to a failure of accountability when remedial steps are not being taken. Also, the powers of the Boards are circumscribed by statute; they cannot evict encroachers directly but have to go to the magistrate under Section 54 of the Act, which again causes procedural delays.

Section 54, a very important provision to address unauthorized occupation, prescribes a procedure in which the Board, if it finds encroachment, serves notice to the occupant, asks for explanation, and then approaches the magistrate for eviction. Far from being effective in practice, this procedure is handicapped by the absence of any obligatory timelines, penal sanctions for default, and special procedures for expeditious disposal. It does not confer summary powers of eviction on the Board, which is a common provision in other property legislation like the Public Premises (Eviction of Unauthorized Occupants) Act. Therefore, by the time the Board obtains a favorable order through the magistrate, the property is usually either

⁸ Prashant Jha, Who Watches the Watchers: Structural Problems in Waqf Governance, 56(48) *Econ. & Pol. Wkly.* 12 (2021).

structurally modified, further alienated, or under new litigation. The omission of teeth in this provision makes it effectively toothless in reality, and therefore encroachments thrive unbridled.⁹

Yet another significant failure in the enforcement mechanism is the lack of strong penal provisions. The Act sanctions fines and penalties against illegal transfers, mismanagement, or deliberate concealment of waqf property, but these are nominal in amount and infrequently enforced. The absence of actual criminal or financial repercussions is such that those who unlawfully lease, sell, or transfer waqf properties have the ability to do so without fear of penalty. Even in cases where wrongdoing is proven, the penalty will not act as a deterrent. For instance, the penalty imposed for unauthorized leasing is usually below the profit achieved from such activity. The Boards themselves are usually unwilling to prosecute powerful encroachers or mutawallis because of political pressure or fear of reprisal. Additionally, hardly any Boards have specialized legal staff to start and continue prosecution in a court of law. The whole punitive machinery is therefore underutilized, and waqf properties are left open to abuse and loss.¹⁰

The function of Waqf Tribunals in enforcement is also weaker than expected. These quasi-judicial forums were established to speed up the settlement of waqf disputes, provide quick remedies, and alleviate the workload on civil courts. Though the Act provides that civil courts shall not have any jurisdiction in cases triable by the Tribunal, the reality on the ground is that the majority of states have not set up properly functioning Tribunals. More often than not, one Tribunal services an entire state, rendering access to justice an organizational nightmare for rural or economically underprivileged stakeholders. Additionally, the Tribunals are mostly not manned by trained judicial officers who are experienced in waqf jurisprudence. Tribunals either do not function or are marred by cases backlog, inadequate staff, and infrastructural insufficiencies in some states. These circumstances slow down resolution of disputes and weaken the deterrent power of legal sanctions.

The second dimension of enforcement of crucial importance is the safeguarding and upkeep of records. Under the Act, a detailed survey and recordation of waqf properties must be conducted with the latest records updated and verified periodically. Nevertheless, in a majority of states, the

⁹ Vineet Pathak, *Law Relating to Waqf in India: Problems and Solutions* 157–180 (Eastern Book Co. 2014).

¹⁰ Danish Sheikh, *Tribunals and Procedural Fairness: Post L. Chandra Kumar Challenges*, 6(3) NUJS L. Rev. 327 (2014).

surveying process remains incomplete or obsolete. A number of waqf properties remain unregistered or misrecorded in land revenue registers. The lack of digitized, geotagged, and publicly available records facilitates fraud, encroachment, and unauthorized transactions. While the government initiated the Waqf Management System of India (WAMSI) project to digitize waqf data and establish a central database, implementation has been uneven and delayed. In the absence of reliable and transparent records, enforcement is made difficult, as the first step in any protective measure determining title and boundaries itself becomes disputed.

The issue is exacerbated by the non-coordination among the Waqf Boards and other government offices like land records, urban development, and municipal corporations. Frequent waqf lands are appropriated for public schemes like roads, parks, or government buildings without notice, fair compensation, or mutation. Lacking as it does both compulsory consultation or pre-acquisition notification to the Boards, these acquisitions tend to be finalized prior to Board notice. There is no unified system of notification in order to raise the alert regarding transactions over waqf land in government registries, and there is no statutory requirement for registration authorities to check for waqf status prior to sanctioning sale deeds. These systemic loopholes indicate the weakness of the enforcement framework, where the legal authority of the Board is not honored in inter-departmental operations.¹¹

In addition, the Central Waqf Council, thought to be a supervisory and advisory authority at the national level, does not have statutory powers of enforcement. Whereas the Council has the authority to scrutinize State Board performance, issue advisories, and make data compilations, it is not authorized to enforce compliance or penalize performing Boards. Lacking vertical accountability, even in instances where offenses are documented or brought to the attention of the CWC, follow-up is limited. The role of the Council is also undermined by being dependent upon the Ministry of Minority Affairs for budget and administrative purposes, which restricts its autonomy and independence in functioning as a regulator. In contrast to central regulators of other sectors such as SEBI or TRAI, there is no investigative, penal, or supervisory control with the CWC.¹²

¹¹ Mohammad Ali, *Waqf Laws and Administration in India* (Serials Publ'ns 2011).

¹² Shefali Jha, *Secularism in the Constituent Assembly Debates, 1946–1950*, 45(1) Econ. & Pol. Wkly. 39 (2010).

The political economy of waqf properties adds a further layer of complexity to enforcement. Board appointments are frequently politicized, and the choices are based on patronage more than merit. This creates conflicts of interest, diluted decision-making, and selective enforcement. Board members themselves, in a few instances, have been accused of complicity in irregularities, including undervalued leases or unapproved transfers. The lack of a strong conflict-of-interest framework or external oversight mechanism enables such practices to run unchecked. There is no formal third-party audit system, ombudsman services, or whistleblower protection that can reveal or remedy systemic failures. This internal corruption undermines the institutional strength of the Boards and turns enforcement into a matter of discretion instead of obligation.

The combined impact of these failures is the systematic weakening of the waqf asset base and increasing community distrust in the waqf administration system. Precious religious and charitable endowments are idle, encumbered, or in a state of disrepair, while their potential to benefit the community goes unrealized. The absence of enforcement not only results in material loss but also constitutes a denial of the community's right to administer its religious and philanthropic affairs, which is guaranteed under Article 26 of the Constitution. Additionally, differential treatment of waqf properties religious endowments belonging to other communities are better legally protected and supported institutionally is questionable under Article 14, particularly if the state doesn't act upon documented irregularities.

In order to deal with the crisis of enforcement, an approach with multiple prongs is necessary. First, amendments to statutes must give Waqf Boards quasi-judicial powers to grant summary eviction orders, appealable, as in the case of estate officers under the Public Premises Act. Second, every Board should have an enforcement wing with legal professionals, surveyors, field officers, and retired revenue officials to initiate and oversee action on violations. Third, Waqf Tribunals need to be made fully functional in all states, with regional benches, time-bound disposal mandates for cases, and periodic performance audits. Fourth, the WAMSI database needs to be linked with state land records and property registration systems so that waqf status is marked in real-time during any sale, lease, or mutation transaction. Fifth, the Central Waqf Council needs to be elevated to a regulatory agency with oversight duties, annual review responsibilities, and penal powers over defaulting Boards. Finally, transparency needs to be

made institutional by periodic publication of waqf revenues, expenditures, audits, leases, and enforcement actions on public dashboards.¹³

In summary, though the Waqf Act, 1995, offers the legislative framework for administration of waqf properties, its enforcement provisions are fundamentally incomplete. Lack of institutional powers, internal capability, intra-department coordination, and community responsibility has made the system ineffective in safeguarding waqf assets. Unless soon there is reform to empower institutions, digitize systems, and punish transgressions, the potential of waqf as an instrument of religious benevolence and social justice will not be realized. The enforcement reform is not merely an administrative necessity but a constitutional and ethical responsibility to safeguard public trust, maintain religious freedom, and ensure that the charitable intention of waqf founders is not violated by state inaction or institutional failure.

TRANSPARENCY DEFICITS: HIDDEN IN PLAIN SIGHT

Transparency is one of the key pillars of good governance. Whether in public administration, corporate governance, or religious trust management, transparency promotes accountability, discourages corruption, enables informed participation, and enhances public trust. In the context of waqf administration in India, the lack of a transparent operational and regulatory environment has severely undermined the institution's effectiveness. The waqf system is, by intention, a permanent and altruistic setup in which dedicated properties are governed for religious, charitable, or social welfare purposes. The running of waqf properties in India today, however, is still enshrouded in secrecy typified by outdated bookkeeping, the lack of public financial reporting, and a frightening lack of real-time mechanisms to track leases, sales, or encroachments. This transparency deficit has not only enabled mismanagement but has also led to systemic corruption, unauthorized transactions, and the loss of public confidence in waqf boards.¹⁴

One of the most prominent indicators of the transparency deficit in waqf administration is the absence of digitization of records. While the Central Waqf Council and the Ministry of Minority

¹³ Mohammad Asrar Qureshi, *Muslim Law in India* 278–95 (Central Law Agency 2010).

¹⁴ Central Waqf Council, *Waqf Management System of India (WAMSI) Portal*, available at <https://centralwaqfcouncil.gov.in>.

Affairs initiated the "Computerisation of Records of State Waqf Boards" scheme in 2009 to establish a centralized digital database of all waqf properties in India, the scheme has been plagued by serious delays, inconsistencies, and implementation lapses. Most states have either not participated in the scheme at all or have digitized in a piecemeal and superficial way. Consequently, most waqf property records such as ownership documents, survey reports, lease details, and revenue records continue to be available only in physical forms. These paper records are not only susceptible to loss, theft, and tampering but are also not accessible to the general public or even the beneficiaries of the waqf. Outdated records, incomplete asset lists, and substandard documentation procedures still pervade the bureaucratic scene, dashing any hopes of systematic and responsible governance.

This record management backwardness has far-reaching effects. For example, waqf boards are often unable to protect their title over properties in court cases owing to lost or incomplete documents. This has allowed land grabbers, encroachers, and even some government departments to claim ownership of waqf lands without legal opposition. In many reported instances, complete waqf estates have been transferred, sold, or developed for private or public ends without knowledge or approval of the concerned waqf board. In some cases, even the fact that there existed a waqf has been lost because of the lack of archival documentation or computerization. The failure to generate evidence of ownership or registration in real time has thus left the waqf industry particularly vulnerable to diversion and bogus transactions. Additionally, since the majority of waqf boards do not have GIS or in-house mapping solutions, most properties are incorrectly identified, misclassified, or simply left out of revenue and municipal records. Such a lack of coordination between state revenue departments, municipal governments, and waqf boards, and most importantly, the non-digitized status of waqf data, serves to worsen the issue.

No less problematic is the lack of public availability of waqf board financial data. In a properly regulated public trust or corporate organization, financial statements, audit reports, income-expense accounts, and budget projections are periodically disclosed and openly questioned. But in the case of waqf boards, these disclosures are either non-existent or deliberately concealed. Audit reports are hardly ever ready in time, and if they are, they are never hosted on public websites or made available to the beneficiaries or oversight associations. Most waqf boards do

not prepare even internal budgets or plans for utilization of revenue, nor make them public. Such secrecy provides a fertile ground for corruption, embezzlement, and abuse of funds. In the absence of public oversight, authorities are able to siphon income from waqf assets for unauthorized use, inflate figures for expenditure, or falsify financial information to hide losses and malpractices. Even major-ticket leases or joint ventures are usually done without community consultation or terms disclosure, so tracing whether fair market value was paid or the proceeds were reinvested in the waqf's intended activities becomes almost impossible.¹⁵

The necessity for financial disclosure is even more critical when we bear in mind that waqf properties, if managed professionally, could earn yearly returns of tens of thousands of crores of rupees. This income may then be utilized to finance scholarships, hospitals, schools, hostels, and welfare programs for Muslim minority sections. The Sachar Committee Report (2006) had strongly highlighted this possibility and had suggested institutional reforms to increase financial transparency. Yet, almost two decades later, things remain dismal. The Central Waqf Council has circulated several circulars instructing State Waqf Boards to release annual reports and income statements, but these instructions are mostly unheeded. The non-enforcement of Section 78 of the Waqf Act, requiring submission of annual reports to the State Government, indicates a deeper malaise: the absence of will and capacity to enforce compliance. The lack of third-party audits, public consultation procedures, and legislative oversight renders financial malpractice undetectable and even more challenging to address. Indeed, various prominent scams of waqf boards like the Karnataka Waqf Board land scam illustrate how opaque financial procedures directly lead to systemic corruption and violation of public trust.

Another major component of the transparency deficit is the failure to track and publish information regarding the leasing and sale of waqf properties. Waqf boards regularly lease out land, buildings, and commercial spaces to private parties, businesses, and developers. These leases are supposed to be governed by statutory regulations including fixed tenure, fair rent, periodic renewals, and approval procedures. Despite this, in reality most of such transactions are carried out with very little documentation and virtually no public scrutiny. Boards do not keep current, searchable records of active leases, lease applications pending, canceled agreements, or

¹⁵ Ministry of Minority Affairs, *Annual Report 2020–21*, Gov't of India, available at <https://minorityaffairs.gov.in>.

current litigations. Lease terms and conditions—particularly those on high-value urban land—are mostly hidden from the public eye, facilitating collusive deals, rent under-reporting, and breach of lease provisions. In most instances, the leases are renewed without recomputation of market rents, or inherited by successors by mere acquiescence, enabling long-term tenancies to evolve into de facto ownership. The sales of waqf properties itself have been sanctioned in certain situations under Section 51 of the Act, supposedly on 'beneficial' terms, but without open procedures or competitive bidding.

This absence of on-time monitoring and disclosure of sale and lease information enables encroachers and vested interests to take advantage of loopholes and promote illegality. For instance, a private builder may take a lease over waqf land and initiate construction without permission, relying on the board not having the monitoring facilities to notice or respond to the violation. More reprehensible still, board officers may themselves participate in such ventures for private enrichment. The lack of electronic systems for tracking these transactions implies that various waqf boards in different states operate in isolation, unaware of overlapping claims, lease duplication, or leakages of revenue. As compared to urban local bodies or revenue departments that keep online land records, property tax registers, or zoning permissions, waqf boards have not incorporated even rudimentary tracking mechanisms. This not only goes against the canons of good governance but also erodes the waqf's fiduciary duty to conserve and protect public religious properties.¹⁶

The absence of transparency also compromises legal enforceability. In the event of waqf property disputes, courts request documentary proof of ownership, lease duration, and utilization of revenue. Without verifiable and dated documents, the position of the waqf board is precarious. Additionally, encroachers or tenants take advantage of the absence of clear records to assert adverse possession or dispute the waqf character of the property. Even enforcement officers like district magistrates or local police are hesitant to enforce eviction or demolition orders unless documentary evidence is unequivocal. Opacity, therefore, not only facilitates corruption but also empowers waqf boards least in safeguarding their own properties. The inability to keep the records transparent and readily accessible breeds a vicious circle—less enforcement invites

¹⁶*L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 (India).

greater encroachment, which in turn further deters transparency, making the waqf estate more unmanageable.

The way ahead will have to be a multi-faceted reform of transparency mechanisms within waqf administration. Firstly, total digitization of waqf records must be made an absolute necessity. This involves land titles, lease deeds, revenue receipts, survey maps, and registers of litigation. The India Waqf Management System (WAMSI) portal should be upgraded, linked to state land records and GIS databases, and made publicly accessible. Second, each waqf board should be mandated to post annual reports, audited accounts, and board resolutions on their website, with a penal clause for non-compliance. Third, lease and sales agreements be subsumed within a standard electronic contract management framework, dashboards reflecting live status, end date, rent dues, and liens. Fourth, social audits and grievance redressal systems should become institutionalized for communities and beneficiaries to flag objections, improvements or violations. Fifth, state and parliamentary legislative committees must be required to scrutinize waqf board performance every year, particularly on the metrics of transparency and public participation.¹⁷

Finally, the absence of transparency in waqf administration is not a trivial administrative lapse—it is a structural crisis that imperils the very sanctity and sustainability of the waqf institution. Properties intended to benefit generations of beneficiaries are being undermined by systemic lack of transparency, weak governance, and lack of institutional accountability. Although the legislative purpose of the Waqf Act is altruistic and the spiritual purposes of waqf are everlasting, their fulfillment is contingent upon the robustness of the systems that manage them. Transparency is not a choice in this case—it is an ethical, legal, and constitutional requirement. The challenge for policymakers, waqf administrators, civil society, and the judiciary is not only to unveil the deficits hiding in plain sight, but to rectify them firmly, in public, and irrevocably. It is only then that the system of waqf can be repossessed as a strong and reliable tool of religious and social justice in India.

¹⁷*Ramesh Gobindram v. Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 (India).

ACCOUNTABILITY DEFICIT: WHO WATCHES THE WATCHERS?

Accountability is the foundation of democratic rule and institutional efficiency, holding in trust those in authority accountable for their actions and decisions, particularly where public or community resources are at stake. In the case of waqf administration in India, managing one of the world's largest public endowments for religious and charitable objectives, the lack of a robust accountability system has been a vital and chronic shortcoming. The waqf system is entrusted with managing a vast portfolio of religious endowments, intended to support mosques, dargahs, madrasas, graveyards, orphanages, and other welfare-oriented institutions in the Muslim community. These properties—numbering over 8.7 lakh as per government estimates—represent a significant socio-religious trust that requires a high degree of transparency, oversight, and answerability. Yet, the existing administrative and legal mechanism of the Waqf Act, 1995, and its amendments, has not been able to create a robust and implementable institution-led mechanism for accountability. The waqf system has consequently become engulfed in allegations of corruption, abuse of power, inefficiency, political interference, and disregard for its fiduciary duties.

One of the major causatives of this void of accountability is the inefficacy of the Central Waqf Council (CWC). Set up under Section 9 of the Waqf Act, the CWC was envisioned as a watchful and advisory body that would coordinate, scrutinize, and direct the activities of State Waqf Boards (SWBs). Yet, the role of the Council continues to be limited to giving advisories and framing model schemes or policy recommendations, none of which are obligatory upon the State Boards. In contrast to statutory regulators in other industries, like SECI for securities or TRAI for telecom, the CWC has no legal powers to enforce compliance, levy penalties, or conduct independent inspections. This institutional flaw makes it a toothless tiger, incapable of taking firm action when Boards fail in their responsibilities. Even if the CWC undertakes reviews or receives complaints about mismanagement, it cannot call Board officials, direct inquiries, or require corrective measures. Reports presented by the CWC to the Ministry of Minority Affairs or Parliament tend to get little follow-up. In some states, the recommendations made by the Council for improved financial auditing, computerization of waqf records, or accountability measures have been disregarded or implemented partially. In practice, this is to say that the

Central Waqf Council, though having national status, works as a more ceremonial institution than an efficient protector of community property.

Worsening this issue is the intense level of political intervention in the process of appointment of Waqf Board members, including the Chairpersons. The Waqf Act provides for a nomination-based procedure for forming State Boards so that members can be selected from among Members of Parliament, Members of the Legislative Assembly, Muslim scholars, and accepted social workers. But in practice, these appointments are generally determined by political patronage, communal considerations, or factional bargains within ruling parties. Members of the Board are often chosen not for their efficiency, subject knowledge, or local service track record, but due to their political proximity. The Boards, therefore, end up being more in the nature of extensions of political influence rather than autonomous public trusts. This politicalization of appointment leads to severe conflicts of interest. Board members might be inclined not to go against powerful intruders or corrupt mutawallis if the latter are politically connected. Contracts and leases could be granted on a basis of favor, instead of through competitive tendering or fiscal prudence. In the worst instances, Boards have even been accused of allowing illegal waqf land to be transferred for governmental or private schemes without community consultation or due process. Where patronage-driven appointments instead of performance dominate, the transparency and public accountability incentive structure disintegrates completely.¹⁸

In addition to political intervention, the second principal flaw in the waqf accountability structure is the absence of functioning auditing and financial control mechanisms. The Waqf Act provides that every Waqf Board and mutawalli shall keep annual accounts, which shall be audited by the State Government or a agency nominated by it. The compliance with this provision is patchy at best. In most states, there are no audits for a few years, or when the audits are done, they are delayed, shallow, or inadequately documented. The audit reports, even if done, are not disclosed, and discrepancies or red flags are seldom followed up. The absence of standard guidelines in accounting and auditing makes the situation worse. While a few Boards have competent chartered accountants on their rolls and follow simple financial procedures, the rest work with old-fashioned manual ledgers, lacking proper accounts of leases, revenues, expenses, or upkeep

¹⁸ *A.R. Antulay v. R.S. Nayak*, (1992) 1 SCC 225 (India).

of properties. Discrepancies in lease rentals, suppression of income, misappropriation of funds, and unauthorized expenses are routine findings in sporadic CAG (Comptroller and Auditor General) audits of Waqf Boards. However, hardly any instances exist where errant officials or members of the Board face disciplinary action. Even where press revelations or court-mandated investigations surface blatant financial irregularities, the systemic institutional sloth guarantees impunity. The Karnataka Wakf Board Land Scam, involving what reportedly was alleged misappropriation of properties for ₹2 lakh crore, provides an example. Even with the magnitude of the anomalies unearthed by the Karnataka State Minorities Commission, there were no massive convictions or reforms in the wake of it.

Another equally disturbing aspect of the accountability gap is the absence of a formal grievance redressal system for community members, beneficiaries, or whistleblowers. The waqf system being community-centric in nature, ideally, it should operate with active feedback and engagement from local stakeholders. But in the existing regime, there is no specific ombudsman, independent complaint cell, or third-party monitoring agency to listen to complaints against mismanagement of waqf property, unauthorized transactions, or withholding of religious and charitable services. Concerned beneficiaries are either ignored or threatened with legal repercussions. There is no institutional mechanism where members of the community may call for disclosure about income generated from local waqf resources or the methodology followed to select waqf-sponsored scholarship beneficiaries, pensioners, or hostel inmates. There is no institutionalized grievance machinery in place that not only encourages impunity but also isolates the same community whose welfare is meant to be provided by the waqf system. Whistleblowers, whether waqf staff or members of the general public, are not accorded any protection or avenues for reporting administrative abuse or fraud. Other sectors like banking, health, or education, for instance have governing bodies that provide a way for public complaint, trigger investigation, and provide avenues for independent examination. The waqf sector, despite working with public religious property, is cut off from this framework of accountable governance.¹⁹

¹⁹*Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369 (India).

This widespread accountability gap produces a culture of impunity, where malpractices are unchecked, and the society is rendered voiceless. A number of instances can be referred to as examples of how such a gap manifests on the ground. Waqf properties, particularly those found in urban areas, are, in most cases, leased for decades at pennies to private entities or institutions. These leases are renewed without public tender or price re-appraisal, causing enormous financial losses. However, when asked, the Boards attribute it to lack of staff, jurisdictional uncertainty, or pending litigation. Government departments in some states have taken over waqf lands for road widening, construction of hospitals, or other public works without compensation or waqf board approval. Since there is no effective mechanism to keep state authorities responsible for encroaching on waqf assets, these cases never get contested seriously. Even in instances where protests by local communities attract media attention or court writ petitions, the case languishes in the courts for years, and the chain of accountability is still broken.²⁰

The new Waqf (Amendment) Bill, 2025, makes an effort to remedy some of these problems by making a few structural changes. It aims to authorize the central government to make rules for audits, requires digitization of waqf records, suggests expanding the membership of Waqf Boards to include non-Muslim members, and institutes a formal grievance redressal mechanism. On paper, these provisions look good. For example, placing CAG or state auditors under a central umbrella could enhance the quality and integrity of audits. Institutionalizing grievance redressal may at last empower the community. Yet, the devil remains in the implementation detail. The integration of non-Muslim members in Boards has attracted significant opposition, with opponents' view that it could undermine religious self-governance protected under Article 26 of the Constitution. There are fears that centralizing waqf audits and appointments could add to bureaucratic control rather than necessarily translate into more accountability. What is needed is not simply structural fiddling but radical re-engineering of the waqf administration culture from paternalism and secrecy to transparency, participation, and accountability.

In order to establish a genuinely accountable waqf system, there are a number of concrete actions that need to be taken. First, the Central Waqf Council should be reconstituted as a regulatory body with binding powers such as the power to undertake surprise inspections, direct inquiries,

²⁰ Constitution of India art. 227.

suspend board decisions, and penalize malfeasance. It should be an active watchdog, not a passive advisor. Second, the procedure for appointing members of the Waqf Board should be made merit-based, transparent, and free of political interference. This may entail the establishment of an independent choice board made up of retired judges, community thinkers, and domain specialists. Third, financial stewardship has to be institutionalized in the form of mandatory biennial audits by impartial companies with the summaries posted in the public domain. Each Board should put out an annual report containing property, income, expense, and pending disputes with figures available online as well as hard copy. Fourth, there should be a national Waqf Ombudsman system, with regional benches, to hear and examine public complaints. The ombudsman report should be time-bound and binding, with appeal before an independent tribunal. Fifth, whistleblower protection legislation should be extended to waqf officials and community members who reveal corruption, with assurances against retaliation.

Finally, the accountability gap in India's waqf governance system is not a procedural failure it is a structural one that erodes the legitimacy, effectiveness, and constitutional correctness of an institution charged with managing holy and charitable funds. The lack of accountability for boards, officials, and governments has resulted in staggering financial losses, loss of public trust, and denial of intended community benefits. While legislative changes are a step in the right direction, they need to be followed by institutional reform, legal empowerment, civic engagement, and moral leadership. Accountability cannot be an add-on in a system handling public religious property; it needs to be its very bedrock. Until we resolve the question of who monitors the monitors, the potential of waqf as a force for social welfare and spiritual service will continue to be tragically unrealized.

EMPIRICAL EVIDENCE OF MISMANAGEMENT

There have been several reports that have brought to light the extent and nature of mismanagement due to these systemic weaknesses:

- The Sachar Committee (2006) pointed out that while waqf lands could earn thousands of crores every year, less than a fraction was being achieved owing to encroachments, subletting at less than market price, and internal corruption.

- Reports by the CAG in many states have noted that large waqf properties are not accounted for, and leases have been awarded without process. For example, in Delhi and Karnataka, waqf lands were leased to private institutions or developers at grossly low rates, many times without involving the community.
- In Uttar Pradesh, various instances have emerged whereby waqf properties were let out for decades for minimal rentals, and extensions of leases were done arbitrarily without Board approval or Waqf Act compliance.²¹

CONSTITUTIONAL IMPLICATIONS: ARTICLES 14, 21 AND THE STATE'S DUTY

The non-enforcement failures, lack of transparency, and accountability shortcomings don't stand by themselves. They create serious constitutional issues:

1. Violation of Article 21

Deprivation of the waqf community of an effective and responsive system of administration for the safeguard of its religious property violates its right to dignity and access to justice.

2. Violation of Article 14

When the administration of waqf properties is controlled by mechanisms far inferior to those applied to other public properties, and enforcement becomes contingent upon arbitrary state action, it results in unequal treatment and refusal of legal equality.

3. Violation of Article 26

The failure of religious communities to hold and protect their own endowments due to mismanagement by state-nominated boards can also be interpreted as improper interference in religious matters.

²¹ The Waqf Act, No. 43 of 1995, § 83 & 85, India Code (as amended in 2013).

CONCLUSION AND THE WAY FORWARD

Conclusively, the Waqf Act, 1995, while visionally in nature, has failed to raise a structure strong enough to keep chronic mismanagement of waqf properties in India at bay. The shortcomings in enforcement, the lack of transparency in administration, and the virtual absence of institutional accountability have cumulatively helped to damage the integrity of the waqf system and public trust in it. The consequence is not just inefficiency, but a structural injustice to the people that they were supposed to benefit from these endowments.²²

Reform should start by identifying these fundamental shortcomings:

- Requiring independent enforcement wings in Waqf Boards with the authority to investigate and take direct action.
- Complete digitization of waqf assets and making property records, financial statements, and audit reports publicly available online.
- tEstablishing a Waqf Ombudsman or Accountability Commission to hear complaints and enforce transparency standards.
- tGiving the Central Waqf Council real oversight powers and the power to recommend disciplinary action.
- Depoliticizing Board appointments by setting qualification-based criteria and selection committees.

Finally, protecting waqf properties is not just an administrative function, it is a constitutional, religious, and social responsibility. Only when the system of governance is strengthened with actual enforcement, open operations, and democratic accountability can the waqf institution realize its full potential as a strong tool of community development, religious identity, and social justice.

²²*Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615 (India).