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STATE CONTROL OF WAQF ADMINISTRATION AND THE SECULAR FRAMEWORK OF THE INDIAN CONSTITUTION

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INTRODUCTION

Secularism, as provided under the Indian Constitution, means not only the non-alignment of the [2]State to any single religion but also adherence to the principle of equal respect and non-preferential treatment of all religions. The constitutional framework, specifically Articles 25 to 28 and the Preamble, ensures freedom of conscience, free profession, practice and propagation of religion, and protection against religious discrimination or compulsion. The Indian model of secularism differs from its Western equivalents in that it does not promote total separation of church and State. Instead, it is marked by what academicians term "principled distance" a system that allows the State to interact with religion to balance social injustices or secure accountability, as long as such interaction is evenhanded and does not lead to religious partiality or domination. In this context, the State intervention in the management of Muslim religious trusts by statutory organizations such as Waqf Boards presents serious constitutional issues: Is this intervention a compromise of secularism? Is it consistent with the assurances of religious autonomy under Articles 25 to 28? And is it neutral and even-handed treatment implied by the Preamble?

STATE INTERVENTION IN WAQF MAAGEMENT

The Waqf Act, 1995 formalizes the role of the State in waqf administration by establishing State Waqf Boards as quasi-governmental statutory corporations. These Boards are responsible for overseeing, controlling, and managing all registered waqfs of the State. Their authority comprises sanctioning budgets presented by mutawallis (caretakers), appointing or dismissing mutawallis in some instances, conducting surveys and inventories of waqf properties, settling disputes over waqf lands, leasing waqf properties, and even assuming direct management of a waqf in the event of mismanagement. Members of Waqf Boards are primarily appointed or elected in accordance with political or governmental means, and the Boards function subject to

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[2]Sikh Gurdwaras Act, 1925.

the monitoring of the Ministry of Minority Affairs. This legislative scheme puts the entire Muslim religious property management ecosystem in a half-state-controlled domain giving considerable reasons for uncertainty about whether it is compliant with the constitutional commitment to religious independence and secular state.

"The Waqf Act, 1995 institutionalizes the State's role in waqf management by vesting State Waqf Boards as quasi-government statutory corporations with the task of regulating, overseeing, and managing registered waqfs of the State.". Their powers include authorizing budgets submitted by mutawallis (trustees), appointing or removing mutawallis in certain cases, making surveys and accounts of waqf properties, resolving waqf land disputes, letting waqf properties on lease, and even taking direct control of a waqf when it is mismanaged. Waqf Board members are mostly appointed or elected based on political or governmental aspects, and the Boards operate under the watch of the Ministry of Minority Affairs. This legislative framework places the complete Muslim religious real estate management system in a half-state-controlled territory providing substantial grounds for skepticism regarding whether it meets the constitutional promise to religious autonomy and secular state.

The Waqf Act, 1995, is a seminal legislation that revolutionized the management of waqf properties in India by developing a sound and formalized framework through the establishment of State Waqf Boards.

These Boards are quasi-governmental statutory corporations possessing significant powers with regard to managing and regulating Muslim religious endowments. Waqf Boards have custody of a wide gamut of functions, such as records of waqf properties, permission of budgets of waqfs, approval of lease deeds, monitoring the behaviour of mutawallis (guardians), launching proceedings against encroachments, and even direct take-over of a waqf in cases of gross mismanagement. The involvement of the State is further entrenched through the manner in which these Boards are constituted, often involving nominations or elections that are influenced by political mechanisms, and continuous oversight exercised by the Ministry of Minority Affairs. The institutionalization of such extensive State control over religious endowments poses a grave

challenge to the constitutionally ingrained values of religious autonomy, especially under Articles 25 to 28, and the secular flavour of the Preamble. Waqf, being an Islamic institution, is based on the concept of abiding and irrevocable alienation of property by a Muslim person for the purpose of religion or charity.

This property is made public in nature, not inheritable or transferable by sale, and should be dealt with according to the intention of the donor. Waqf institutions have been important in Muslim communities historically in supporting mosques, schools, health centers, and community welfare schemes. In India, the administration of waqf properties has been developed through several colonial and post-colonial legislations. The first efforts to legislate the management of waqf were through the Mussalman Waqf Validating Acts of 1913 and 1930, and subsequently through the Wakf Act of 1954, which established State Wakf Boards but with numerous loopholes in enforcement, supervision, and consistency. The Waqf Act of 1995 was enacted with the specific intention of filling these gaps and tightening the institutional machinery to avoid the misappropriation, encroachment, and dereliction of waqf properties. Although the inspiration for the Waqf Act was commendable—preserving and safeguarding religious endowments its working mechanism raises deep constitutional issues.

The State Waqf Boards established by the Act are not independent religious institutions but statutory authorities exercising personality of law, authorized to operate as quasi-governmental organizations. Their structure, according to the Act, is a combination of government nominees, elected Muslim members from legislatures and bar associations, mutawallis, and Islamic scholars. While members are supposed to be from the Muslim community, their appointment or election is always passed through political processes and bureaucratic systems. The Boards are also obliged to report to and coordinate with the Central Ministry of Minority Affairs, especially through the Central Waqf Council. This perpetual chain of subordinateship to government ministries and departments actually converts the Boards into state-controlled entities for the management of religious property, which calls for constitutional testing under the doctrine of secularism. The secularism the Indian Constitution envisions is not one of total separation of

religion and State, but one of equidistance, mutual respect, and non-interference, except to the degree necessary to uphold public order, [3]morality, and the rule of law.

Articles 25 to 28 of the Constitution establish a model of religious freedom. Article 25 provides for freedom of conscience and the right freely to profess, practice, and propagate religion. Article 26 also enables any religious denomination or portion of a religious denomination to maintain and manage its own institutions for religious and charitiable purposes and to administer in matters of religion the affairs of all religious denominations. The State is allowed to regulate the secular matters of religious practice, i.e., the administration of property or transaction of business, under Article 25(2). But this regulation should be proportionate and not amount to excessive control or takeovers of religious institutions. The organizational framework of the Waqf Boards, nevertheless, amounts to a situation where the State is not only regulating, but controlling the religious property of a given community.

The Boards are authorized to determine disputes, settle accounts, issue instructions to mutawallis, and approve or disapprove appointments. They can acquire the administration of any waqf that they determine is "mismanaged," according to their own analysis, frequently without community consent or due process. This level of power raises legitimate issues of undermining community autonomy and the potential for bureaucratic intrusion into religious matters. It becomes challenging to argue that the State is upholding neutrality when it has established institutions to directly administer one community's religious properties and not offer any such equivalent to others. Additionally, the accountability framework of Waqf Boards is skewed in favor of the government instead of the waqf stakeholders.

For instance, waqf properties need to be registered with the Board, and mutawallis are needed to submit annual budgets and accounts for approval. Any departure or administrative oversight can lead to punitive action, including dismissal. Such mechanisms can be defended on the basis of transparency and public interest, but they also demonstrate the heavy-handedness of State supervision, particularly when viewed in isolation from comparable measures for other religious communities. It is noteworthy that there is no such centralized body for dealing with Hindu, Christian, Sikh, or Buddhist religious properties at the national level. Although some states have

[3]Hindu Religious and Charitable Endowments Act (Tamil Nadu), 1959.

Hindu Religious and Charitable Endowments (HR&CE) departments, there is no Central Hindu Religious Council or specialized tribunals for temple lands. This difference hints at an institutional imbalance in religious regulation, which directly challenges the constitutional promise of equality before the law and non-discrimination based on religion. Judicial interpretation of these constitutional matters provides valuable information.

In the ***Shirur Mutt Case*** (1954), the Supreme Court ruled that religious denominations are entitled to administer their own affairs in religious matters, and although the State may regulate secular activities, it cannot intervene in fundamental religious practices. The Court made a distinction between religious ceremonies and the administration of property but emphasized that even the latter should be conducted in a way that is consistent with the religious nature of the institution. In later cases ***like Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P. (1997)***, the Court allowed State intervention in the interests of preventing mismanagement but specified that this had to be kept to the bare minimum and was proportionate. These decisions in aggregate assert that while State regulation is valid, direct administration or management by State-controlled entities ought to be dealt with caution. In this line of jurisprudence, Waqf Board functioning remains constitutionally on fuzzy ground.

On the one hand, they play a critical regulatory role preventing waqf properties from encroachment, ensuring donor wishes are respected, and speeding up resolution of disputes that would otherwise drag on in civil courts for decades. On the other hand, the Boards function more as public institutions than community-governed entities. They are overseen by government departments, the Central Waqf Council reviews their operations, and political executives tend to shape their policies. This arrangement, as effective as it is in some ways, creates a sense of superfluous State intervention within religion, and subverts the notion of religious communities needing to govern themselves in administrative affairs internal to themselves. It can be argued that the intervention of such States is a necessary evil for addressing India's chronic issues of mismanagement of waqf property.

There have been several reports, both by the Comptroller and Auditor General (CAG) and the Sachar Committee, which put the waqf administration in India in poor light. Properties are encroached, revenues are not utilized appropriately, and mutawallis do not receive administrative training. According to this view, the Waqf Boards have been viewed as watchdog bodies to ensure accountability and modernization. But this consideration, though utilitarian, needs to be balanced against constitutional guarantees. Efficiency of administration cannot stand in the way of religious autonomy, particularly if such control is exercised selectively. The question of State control over leasing and disposal of waqf property is also highly controversial.

The Waqf Act permits leasing of waqf property for fixed periods, subject to the sanction of the Board and, in most instances, the State government. This puts considerable decision-making power in the hands of political appointees and bureaucrats, potentially superseding the will of the waqif or the needs of the beneficiaries. Additionally, cases of unauthorized leasing, undervaluation, and conspiracy involving Board members and private developers have come to light in several states, further undermining the integrity of this administrative system. The issue is not just that of over-control, but also encompasses lack of homogeneous accountability.[4]

Even though Waqf Boards are governmental agencies, they are not always held to the same high standards of scrutiny and transparency as other government agencies. In addition, there is no appellate framework within the Waqf Act to enable mutawallis or beneficiaries to appeal Board decisions, except through writ petitions in the High Courts a costly and lengthy remedy. This is not only against procedural fairness but also puts Waqf Boards out of effective community oversight, which is contrary to the vision of participatory religious governance under Article 26. The constitutional challenge thus resides in the balancing of the legitimate regulatory interest of the State and the religious autonomy protected by the Constitution. A potential reform can be in terms of converting Waqf Boards into autonomous regulatory bodies, having members from civil society, judicial officers, and community leaders, thus lessening the obvious executive role. Or, a codal law on religious endowments applying across all communities without diluting their doctrinal differences—may address the existing asymmetry and reestablish constitutional balance.

[4]Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987.

In conclusion, formalization of State intervention in waqf management by means of setting up Waqf Boards under the Waqf Act, 1995, involves both functional innovation and a constitutional puzzle.

CONSTITUTIONAL VALIDITY UNDER FREEDOM OF RELIGION

While the Boards have ensured simplified governance of waqfs and curbs on misappropriation, the form and workings of the Boards create strong grounds to question whether they adhere to the constitutional precepts of religious autonomy and secularism. The combination of religious property management and political and bureaucratic control requires the waqf governance model to be rethought urgently. In order to harmonize waqf administration with constitutional ideals, it is essential to curtail State control, enhance transparency, facilitate community participation, and enforce the religious freedom promised under Articles 25 to 28. Without these reforms, the current system can become a precedent for greater state intrusion into religious life something the Constitution was intended to protect against

To assess the constitutional validity of such State involvement, one must first understand the contours of Articles 25 to 28. Article 25(1) guarantees to all persons the freedom of conscience and the right to freely profess, practice, and propagate religion. Article 25(2), however, allows the State to regulate or restrict any economic, financial, political or secular activity associated with religious practice. Article 26, more so in this case, grants religious denominations the right to their internal management of affairs in religion, the running and maintenance of religious institutions, and the acquisition and control of property in accordance with the law. Article 27 prohibits compulsion on citizens to make contributions to taxation for the propagation of any specific religion, and Article 28 provides freedom of religious instruction and attendance at educational institutions.[5]

Among these, Article 26(b) and (d) hold particular significance from the point of view of waqf administration. They promise to each religious group or section of a religious group the right to "manage its own affairs in matters of religion" and "administer property in accordance with law." The Supreme Court, in various classic cases, has held that the right to control religious affairs

[5]Indian Succession Act, No. 39 of 1925

implies independence over institutions, rituals, finances, and internal governance—subject only to reasonable regulation by the State. In the Shirur Mutt Case (The Commissioner, Hindu Religious Endowments, Madras v. LakshmindraThirthaSwamiar of Shirur Mutt, AIR 1954 SC 282), the Court noted that religious denominations' autonomy should be preserved and State intervention should be restricted to secular matters such as financial management or matters of public interest, and not religious administration as such.

But in the case of Waqf Boards, the extent of State control arguably goes beyond mere regulation of secular activity. The Boards are not advisory or optional but possess statutory powers over the appointment, supervision, and, in certain cases, removal of the mutawalli—a function that historically rested with the waqif (donor) or the community. They govern waqf finances, sanction developmental schemes, and even leases and sales of waqf land (with conditions subject to law). Such administrative choices have a bearing on the religious, cultural, and charitable life of the Muslim community. Further, the Boards operate more as government departments than as internal religious bodies—they are accountable to ministries, partly financed by the State, and contain government-nominated members. This alignment of State power with religious governance is in danger of undermining the religious community's Article 26 protected autonomy.

STATE CONTROL AND THE DISMANTLING OF RELIGIOUS AUTONOMY

The Waqf Act, 1995, even on its face, purporting to provide improved administration and protection of Muslim religious trusts, establishes a statutory framework in which the State controls religious property and institutions to a large extent. The State Waqf Boards created under the Act are not supervisory boards with the role of oversight or regulation alone. Instead, they are significant statutory bodies endowed with quasi-judicial, executive, and administrative powers, frequently performing functions that were traditionally handled by the religious community itself. The concentration of power in institutions created by the State organized, regulated, and partially supported by the government constitutes a serious constitutional issue,

particularly under Article 26, which entitles religious denominations to administer their own affairs relating to religion and manage their properties as per law.[6]

Traditionally, the institution of waqf in Islamic law has long been rooted in the concept of religious and charitable autonomy. A waqf is a voluntary, perpetual, and inalienable gift of property by a Muslim (the waqif) to be used for religious or pious ends. When a property is established as waqf, it becomes no one's property but the property of a religious or charitable purpose. Such a waqf was run by the appointed mutawalli (manager) of the waqif or by a locally nominated individual, and traditionally, this was a community-regulated and faith-rooted tradition that was informed by Islamic law and local customs. The entry of a centralized, secular State into this sphere is a major change in the nature and philosophy of waqf administration.

The State Waqf Boards, under the Waqf Act, 1995, have been given a wide and frequently one-sided range of powers. These consist of appointment, supervision, and removal of mutawallis, management of waqf funds, screening of annual budgets, sanctioning of development schemes, approval of leases, and monitoring of the use of properties. In some instances, the Board might even assume direct control over a waqf, if it feels that there has been mismanagement. While such centralization is permissible on accountability and public interest grounds, it involves a stark concentrating of powers. The waqif's age-old powers to appoint a substitute, identify successors, and delineate property-use terms are brought under investigation and approval by an agency set up by statute with, in every sense save nominal ones, administrative department status.

This phenomenon stands in sharp contrast to the constitutional vision of religious autonomy as guaranteed under Article 26. Clause (a) of Article 26 guarantees every religious denomination the right to establish and maintain institutions for religious and charitable purposes. Clause (b) secures the right to administer its own affairs in religious matters, whereas Clause (c) and (d) secure the right to own and manage movable and immovable property according to law. The combined effect of these clauses is the acknowledgment of internal self-administration for religious denominations, such as their autonomy to decide how religious properties and activities

[6]Code of Civil Procedure, 1908, § 9.

should be organized, financed, and managed. State regulation is only allowed in secular issues and has to be narrowly framed so as not to encroach upon religious liberties.

The Supreme Court's historic judgment in the ***Shirur Mutt case (The Commissioner, Hindu Religious Endowments, Madras v. Shri LakshmindraThirthaSwamiar of Shirur Mutt***[7], has been the doctrinal foundation in this context for years. In that event, the Court held that although the State can regulate the secular affairs of religious institutions, it cannot intrude into religious doctrines, rituals, or essential practices. More significantly, the Court acknowledged the right of religious denominations to control their own affairs in matters of religion as well as internal administration. The Court held that autonomy in administration, even in property matters, is an integral part of religious freedom, provided such administration does not violate public order, morality, or health.

Applying this principle to the Waqf Act, it becomes evident that the Waqf Boards cross the threshold from regulation to administration. They do not simply supervise or facilitate legal compliance; they become stakeholders and adjudicators of decisions that are central to the religious life of the waqf institution. Appointment and removal of mutawallis a function traditionally in the hands of the waqif or religious community is now entirely at the discretion of the Board, subject only to minimal procedural protection. Additionally, the fiscal powers wielded by the Boards—such as approving budgets, redirecting waqf revenues, and making decisions concerning leasing or developing waqf land spread to domains that have direct implications on religious activities and the intention of the donor.[8]

Additionally, these Boards are politically controlled and bureaucratically organized. State Waqf Boards are typically constituted by government-nominated members, lawmakers, lawyers, and bureaucrats, some of whom may have no direct relation to the waqf institution involved. Their authority in taking decisions, even ostensibly for the purpose of good governance, might not always coincide with the values, intentions, or cultural nuances of the people for whom the waqf was instituted. The Boards must also report to the Ministry of Minority Affairs, which has retention of powers and management of budgetary allocations to the Central Waqf Council. This

[7] Shirur Mutt case (The Commissioner, Hindu Religious Endowments, Madras v. Shri LakshmindraThirthaSwamiar of Shirur Mutt, AIR 1954 SC 282).
[8]Prevention of Corruption Act, No. 49 of 1988.

structure establishes a direct line of accountability running upwards to the State, rather than sideways to stakeholders of the waqf or downwards towards the religious community.

This state-like functioning of Waqf Boards has been objected to on the ground that they are de facto government departments functioning in religious attire, thus diluting the sanctity and autonomy of waqf administration. The Boards publish circulars, issue administrative orders, carry out inspections, initiate disciplinary proceedings, and exercise control over religious finances—all acts classically performed by State agencies. In Uttar Pradesh and West Bengal, Waqf Boards have been unfairly accused of overreach on several occasions, including arbitrarily removing mutawallis, politically motivated lease choices, and diversion of waqf property for commercial purposes. In most instances, communities have felt distrustful of the Boards, alleging that the Boards are opaque, politically captured, and detached from the religious ethos they were established to uphold.

Also, the lack of proper appellate infrastructure aggravates the issue. Whereas the Waqf Tribunals are offered as a dispute resolution platform in the Act, they are invariably underfunded, sporadically constituted, and procedurally constrained. Should a mutawalli be arbitrarily removed or if a community challenges a leasing action, their option is to approach the High Court under Article 226 a process that is procedurally costly, time-consuming, and out of reach for the majority. There is no intra-community based redressal mechanism within the Act, nor any obligation on the Boards to refer to religious leaders or community organizations prior to taking decisions with religious connotations. This top-down governance model, completely disconnected from participatory accountability, is contrary to Article 26's promise of self-administration.[9]

By contrast, the majority of other religious groups in India are permitted to regulate their religious properties and institutions through self-regulatory systems, though subject to general laws. Hindu temples, for example, are regulated through temple trusts or state-level religious endowment boards (like the HR&CE departments), but even these are not overseen by central ministries or formed as centralized agencies. Christian churches and institutions are

[9]Sachar Committee Report, Prime Minister's High-Level Committee, *Report on the Social, Economic and Educational Status of the Muslim Community of India* (Gov't of India 2006)

predominantly regulated under the Indian Trusts Act, the Societies Registration Act, or denominational ecclesiastical law. The only difference is that no other religious community in India is under the type of centralized, statutory, and state-influenced control as Muslims are through the Waqf Boards. This imbalance not only contravenes Article 26 but could also offend Article 14's promise of equal treatment under the law.

In addition, the State's domination of leases and sales of waqf properties, while subject to legal prerequisites and Board sanction, in effect grants the government a voice in decisions that should be taken by religious trustees or beneficiaries. Although such provisions are intended to avoid abuse or alienation of waqf property, in reality, they have introduced the scope for excessive bureaucratic intervention and political manipulation. There have been several cases of prime waqf land being rented out at peanuts, frequently to politically influential parties, with the community enjoying no or minimal say. The lack of veto power or reversal by religious communities over such deals points towards a fundamental imbalance in the control architecture.

Lastly, the funding organization of Waqf Boards helps reinforce their quasi-governmental nature. While they raise revenue from waqf properties, they are also given grants, subsidies, and administrative funding by the government. They have their budgets audited and their operations put to parliamentary scrutiny in certain instances. This system of funding, together with political appointments and bureaucratic supervision, consolidates the perception that these Boards are no longer institutions serving the community but religious regulatory agencies serving the State. This is inherently in conflict with the constitutional mandate that religious institutions have to be controlled by the denominations they represent, not by the government in their stead.

In total, the State Waqf Boards' powers and functions especially appointing and removing mutawallis, managing finances, leasing lands, and managing waqfs directly evidence a trend from regulation to governance, from supervision to domination. This change, though perhaps justified on grounds of administrative expediency or accountability, needs to be balanced against the very constitutional core principle of religious autonomy under Article 26. The continued functioning of Waqf Boards as state-sponsored institutions is against the rights of the Muslim community to administer its religious affairs autonomously and equally. A rethinking of the model is urgently required—one that respects the constitutional rights of communities,

incorporates democratic and religious accountability, and reorients State involvement towards facilitation, not control.

The jurisprudence of the Supreme Court also has lessons to impart as to the extent to which State intervention may be taken into religious governance. In ***RatilalPanachand Gandhi v. State of Bombay (1954),*** the Court held that "the freedom of religion guaranteed by Articles 25 and 26 is not limited to doctrines but extends to acts done in pursuance of religion and includes a guarantee for rituals, observances, ceremonies, and modes of worship." The judgment also observed that although secular elements can be controlled by law, such control cannot be in the nature of control. In ***Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P. (1997)***, the Court permitted State intervention in temple management on the basis of mismanagement but clarified that such interference should be reasonable, minimal, and not change the essential character of religious institutions. Thus, a regulatory body such as the Waqf Board should prove that it does not constitute overriding or usurping religious control but enables improved administration.

However, in reality, Waqf Boards tend to exercise wide and discretionary powers. Their ability to [10]override customary waqf succession rules, intervene in disputes without communal consensus, and control income use decisions, is a serious institutional overreach on religious functions. Such actions obfuscate the distinction between secular regulation and religious governance, weighing the balance against the autonomy of the community. This gets even more contested when political nominees to the Boards affect decisions to further electoral or ideological interests at the expense of further undermining the neutrality of the institution. Virtually, the State not just regulates but puts itself into office in a religious institution, a move that potentially disrupts the model of "principled distance" and desecrates the neutrality owed under secularism.

This is compounded by the Central Waqf Council's centralized role as a national institution that advises and directs State Waqf Boards, frequently in collaboration with the Ministry of Minority Affairs. While the Council's function is largely advisory and supervisory, its presence indicates an extra level of State intrusion into religious matters. The Ministry's intervention in budget

[10]Law Commission of India, *Report on Reform of Endowment Laws in India*, Report No. 245 (2017).

allocations, policy matters, and public relations makes the constitutional ideal of an impartial State not promoting nor unduly intervening in religious institutions more difficult to attain. This entanglement at the structural level has no analogue for other religious communities within the country Hindus, Christians, Sikhs, and others do not have corresponding central regulatory agencies mandated by the state to manage their religious trusts. This institutional imbalance not only indicates unequal treatment but also constitutes a red flag under Articles 14 and 25–28 when considered together.

STATE INTRUSION AND INSTITUTIONAL OVERREACH IN WAQF ADMINISTRATION

The Waqf Act, 1995, although purporting to protect the religious and charitable ends for which the waqf properties are endowed, has brought about an administrative system that is structurally invasive and functionally expansive. In reality, the State Waqf Boards, established under the Act as statutory bodies, enjoy wide discretionary powers that not only include financial and managerial control but also encroach into fields that have historically been regulated by religious principles and communal consensus. This power encompasses override of traditional succession patterns in waqf governance, determination of disputes independent of deference to communal or theological opinion, and unilateral determination of income distribution—all of which indicate an encroachment into the religious sphere. Such a system of governance oversteps the confines established by the Indian Constitution between secular and religious self-governance.[11]

The appointment, management, and removal of mutawallis by Waqf Boards is specifically symbolic of this transformation. The traditional method of appointment of a mutawalli was based on the waqif's specific instructions, as contained in the waqf deed, or based on local usage within the religious community. The mutawalli, while being a manager of the waqf, was regarded as a trustee in a religious sense, bound to execute the spiritual and charitable purposes of the waqif. The position is today subject to administrative discretion. The Board can decline confirmation of a successor chosen by the waqif, appoint a substitute, or even oust a current mutawalli on the basis of mismanagement or dispute. Whereas regulation is needed to avoid abuse, the total replacement of the original religious control mechanisms effectively takes the religious

[11]Ministry of Minority Affairs, *Annual Report 2020–21* (Gov't of India), available at https://minorityaffairs.gov.in.

community out of the central decision-making process. The power balance therefore moves away from the community and into the hands of a semi-governmental agency.

This movement becomes increasingly problematic in the lack of internal checks within the Boards. While mandated to speak on behalf of the Muslim community, Waqf Boards usually have members appointed by the political executive or elected via state-mediated procedures vulnerable to ideological influence or electoral opportunism. Having legislators and political appointees in the operation of what is essentially a religious administration authority makes it an atmosphere conducive to politicization of religious administration. Decisions regarding the leasing of precious waqf land, issuance of mutawalli claims, or distribution of waqf income to developmental causes can be politically driven either directly or indirectly. When administrative jobs within the Board are used as patronage posts, not only does it dilute the integrity of the waqf system, but also undermines public confidence in its impartiality.

What adds to this administrative imbalance is the absence of community involvement in key decisions. Mutawallis, beneficiaries, and elderly members of society tend to get left out of policy-making decisions or strategic planning on waqf properties. The Boards can approve leases, authorize construction works, or channel excess income to other institutions without any formal feedback from the respective religious stakeholders. Even in dispute cases, the lack of community mediation processes has left the State in the form of the Waqf Board playing the dual role of regulator and adjudicator. This is a grave concern under the principle of procedural fairness and the natural justice doctrine. It also contravenes the spirit of Article 26 of the Indian Constitution, which secures to religious denominations the right to manage their religious affairs and administer their properties in accordance with law.[12]

It is compounded by the presence and position of the Central Waqf Council, a national advisory authority to the State Waqf Boards that also has close interactions with the Ministry of Minority Affairs. Although constituted as a consultative body, the Council is a strong policy influencer for waqf policy in the states. It oversees the functioning of the State Boards, gives guidelines, carries out audits, and gives inputs to the Ministry for scheme formulation and policy guidelines. The

[12]Central Waqf Council, *Waqf Development Guidelines and Digitization Status* (2019), https://centralwaqfcouncil.gov.in.

linkage of the Council with the Central Government obfuscates the distinction between independent religious self-governance and bureaucratic control. It adds a second layer of State influence, which is neither organically linked to the religious institutions concerned nor accountable to the waqf stakeholders themselves.

Also, the involvement of the Ministry of Minority Affairs in budgeting, policy-making, and even in public communications in the case of waqf properties, gives rise to a vertical chain of administration that subordinates religious establishments to the general bureaucratic machinery of the Indian State. This sets at variance the constitutional model of secularism which is expected to keep equidistance between religion and State. In India's pluralistic democracy, this kind of model—typically explained by scholars as "principled distance"—is intended to avoid undue State entanglement with any specific religion. But in the waqf scenario, the State not only regulates but is an active participant in the management, messaging, and operation of religious property institutions. It is challenging to argue that the State remains neutral when it functions directly within the governance system of a religious institution.

The Supreme Court, while interpreting the limits of secularism, has again stated that State intervention in matters of religion has to be kept to a minimum of regulating secular areas and cannot extend to the essential or internal affairs of religious institutions. In the ***Shirur Mutt case (1954)***, the Court stated that Article 26 ensures religious denominations autonomy in religious affairs such as the management of their property. In ***Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P. (1997)***, the Court observed that interference by the State would be permissible in the event of mismanagement but only after exercising caution and not substituting its will on behalf of the religious nature of the institution. The present activities of the Waqf Boards and the Central Waqf Council, especially under the direction of the Ministry, arguably cross the limits set by the Supreme Court between regulation and administration.

This becomes even more serious when considered in comparative perspective. Hindu religious organizations, though also subject to some degree of State control through HR&CE Acts in states such as Tamil Nadu and Andhra Pradesh, do not possess a centralized national authority such as the Central Waqf Council to coordinate their management. Christian religious organizations, e.g., churches and missionary schools, are mainly regulated through private trust deeds and

community organizations without statutory control from the Ministry of Minority Affairs. Sikh gurdwaras have relatively limited regional law, e.g., the Sikh Gurdwaras Act, 1925, which is enforceable principally in Punjab and a few neighboring states, but once more, no national structure requires state intervention. Muslim religious institutions are de facto the sole ones subjected to a central, State-supported, and State-financed regulatory framework. This differential treatment not only provokes issues regarding religious equality under Article 14 but also belies the State's secular nature under Articles 25 to 28.

Such institutional imbalance in the treatment of waqf properties and the religious endowments of other communities is indicative of a more fundamental structural anomaly in India's pluralistic government. The reason most commonly put forward in favor of the Waqf Boards and the Central Waqf Council is the historical susceptibility of waqf properties to encroachment, misappropriation, and neglect. In fact, various reports, such as the Sachar Committee Report (2006) and Comptroller and Auditor General audits, have reported mismanagement and underutilization of waqf lands. Nevertheless, this historic disadvantage cannot turn into a rationale for permanent and excessive State control. If protection is required, it should be offered in a way that enhances community autonomy, not erodes it. The proper remedy is capacity building, legal literacy, and community-controlled oversight, not the bureaucratization of religious trusts.

A further serious problem resulting from this model is the expenditure of waqf property income and the diversion of funds. The Waqf Boards, under their financial domination, decide the application of income earned on waqf property. Although the Act mandates religious, educational, and charitable utilization of such income, there is considerable discretion exercisable by Boards in deciding upon institutions to aid, development works to finance, and surpluses to invest. Lacking participatory budgeting or community auditing, such discretion is at risk of abuse. There have been allegations of money being diverted in some states by Waqf Boards to politically connected institutions or of having sanctioned construction work that does not correspond to people's priorities. Such uncontrolled discretion is counter to the waqf ethos of beneficiary-led endowment and only strengthens the State's function in setting religious expenditure priorities.

The overall impact of all these problems, politicization of appointments, denial of access to decision-making to the community, vertical State supervision, centralized policy-making, and non-parallel treatment of other communities has been to create a situation where the State functions as a trustee of waqf properties, which is religious and fiduciary in nature. This blending of religious faith and statemanship is contrary to the constitutional ideal of secularism and translates into what may be termed as institutional colonization of religious space. It desecrates not only the independence of the waqf system but also the impartiality which the Indian Constitution requires of the State in religion.

The way ahead needs to include a proper reconsideration of the legal and administrative framework that governs waqf administration. A possibility is to overhaul the Waqf Boards as community institutions with internal checks and balances, elected councils of mutawallis, and advisory panels representing both legal and religious talent. The function of the Ministry of Minority Affairs and the Central Waqf Council should be reoriented towards capacity building, legal assistance, and conflict resolution, as opposed to day-to-day operational control. In parallel, an even-handed code of religious endowment administration, applicable to all communities with regard to doctrinal difference, can perhaps best ensure no single community is either excessively privileged or disproportionately disadvantaged by State supervision.[13]

Overall, the powers vested in the Waqf Boards and the Central Waqf Council, coupled with interference in politics and bureaucratic encroachment, have generated a framework that abrogates the constitutional guarantee of religious autonomy and secular impartiality. The lack of such frameworks for other religious communities only adds to the problem, bringing about inequality and disparity into the legal framework controlling religious property. To fulfill India's pledge to remain a full-fledged secular and inclusive democracy, religious institutions need to be shielded by the State without being governed by it. Waqf management, so high-minded in intention and history rich in character, requires an arrangement that is responsive, grassroots-governance-driven, and consonant with the Constitution—more so than the current model state-controlled in essence and character.

[13]Press Information Bureau, *Cabinet Approves Waqf Amendment Bill, 2023*, https://pib.gov.in/PressReleasePage.aspx?PRID=1908877.

A few proponents of the existing framework contend that the State intervention is protective rather than intrusive. They assert that waqf properties have traditionally been vulnerable to encroachment, unauthorized occupation, and financial misappropriation, thus requiring State regulation. There is an argument in this, given that the intent behind the Waqf Act was partly to rectify past neglect and avoid the misuse of religious and charitable property. However, religious endowment protection should be sought in a manner that does not impinge on the internal control of the community or transform religious trusteeship into bureaucratic subordination. Furthermore, the same issues plague other religious establishments, but no such legislative measures or boards have been established for them demonstrating selective policy-making, which in itself is questionable in a secular democracy.

Furthermore, the doctrine of secularism being a part of the basic structure of the Constitution implies that legislation and policies should not only refrain from express religious partiality but also resist institutionalization of religion in State apparatus. The Waqf Act, in trying to protect community property, actually invests religion-bound institutions in the State's administrative structure. That is not only a concern of religious autonomy but also of the secular nature of the State. The Court, in Aruna Roy v. Union of India (2002), made clear that Indian secularism requires non-discrimination of all religions and neutrality in public policy-making. When the State takes on the role of administrator of religious endowments, it is playing a double role that goes against this neutrality and could be a bad precedent.

The fiscal side also undermines the secular credentials of the Waqf Board system. Waqf Boards can take administrative charges from the revenues of waqf properties, but they are also assisted by the government in many ways grants, infrastructure, and personnel in most states. On a few occasions, state governments have even acquired waqf property for the sake of infrastructure developments, citing public interest, prompting legal conflicts and allegations of abuse of religious trust. Such episodes raise a conflict of interest whereby the same State that is avowed to preserve waqf property is likewise observed to purchase or lease such property for itself. This erodes the faith that religious communities have in state institutions and questions the very integrity of the Board as an autonomous or community-oriented body.[14]

[14]Explained: What is the Waqf Amendment Bill, 2023?, Indian Express (June 15, 2023), https://indianexpress.com.

Furthermore, the lack of transparency, corruption charges, and politicization of Waqf Board appointments have also contributed to undermining their credibility. In a number of cases, Waqf Boards have been disbanded or suspended on allegations of mismanagement, embezzlement, or irregularities in waqf land leasing. The Supreme Court, in ***Board of Muslim Waqfs, Rajasthan v. Radha Kishan (1979)***, held that waqf property cannot be alienated in a way contrary to its religious objective. However, this rule has been violated with alarming regularity under Board management. When such Boards function more as real estate regulators than as custodians of religion-based trusts, it is hard to justify their existence as being in accordance with constitutional secularism.

CONCLUSION

In sum, the State intervention in waqf management under Waqf Boards, albeit started with the altruistic objective of safeguarding religious endowments, has created structural, constitutional, and practical challenges. The Waqf Boards have, in the course of time, become tools of centralized authority, frequently overstepping religious autonomy, not maintaining impartiality, and confusing regulation with domination. This encroaches on the secular nature of the Constitution contemplated in Articles 25 to 28 and erodes the principle of "principled distance" which underpins Indian secularism. For the administration of waqf to be constitutionally viable, there has to be a re-imagination of the role of the State—one that guarantees accountability and transparency but does not over-step its role in religious administration. Only then can the secular spirit, as envisaged in the Preamble and elaborated in the text of the Constitution, truly be adhered to.