

INTERNATIONAL JOURNAL FOR  
**CONSTITUTION**  
& DEVELOPMENT OF LAW [IJCDL]

ISSN. 3049-3579 (ONLINE)

2025

VOLUME 1 ISSUE 3

This Article is brought to you for "free" and "open access" by the International Journal for Constitution and Development of Law. It has been accepted for inclusion in the Journal after due review.

To submit your Manuscript for Publication at International Journal for Constitution and Development of Law, kindly email your Manuscript at [ijcdl.official@gmail.com](mailto:ijcdl.official@gmail.com).

**WAQF TRIBUNALS UNDER THE WAQF ACT: A CRITICAL  
EVALUATION OF PROCEDURAL AND JURISDICTIONAL EFFICACY  
IN FULFILLING THE CONSTITUTIONAL MANDATE OF ACCESS TO  
JUSTICE UNDER ARTICLE 21**

Vaibhav Chaudhary<sup>1</sup>

**INTRODUCTION**

The Waqf Act of 1995 was passed with a view to better administering waqf properties and settling disputes concerning them. One of the salient features of this Act is the creation of Waqf Tribunals, judicial authorities with special powers intended to decide issues concerning waqf properties. This chapter critically analyzes the Waqf Act's procedural and jurisdictional framework, with particular emphasis on the operation and effectiveness of Waqf Tribunals, and assesses whether such mechanisms are adequate to meet the constitutional mandate of access to justice as embodied in Article 21 of the Indian Constitution.

A cornerstone of the Act is the establishment of Waqf Tribunals under Section 83, conceived as specialized quasi-judicial bodies endowed with exclusive jurisdiction to adjudicate disputes relating to waqf properties, including questions of whether a property is waqf, eviction of encroachers, recovery of waqf properties, and matters concerning mutawallis (managers), accounts, and administration. Comprising a judicial member (typically a serving or retired District Judge or equivalent), an administrative member (often a state government officer), and an expert in Muslim law, these Tribunals were designed to provide speedy, expert, and contextually sensitive resolution, bypassing the overburdened civil courts. Section 85 further sought to bar the jurisdiction of civil courts in matters entrusted to the Tribunals, intending to create a unified, efficient adjudicatory mechanism free from parallel litigation.

---

<sup>1</sup> The author is a law graduate from Symbiosis Law School, Hyderabad.

## **EVOLUTION AND PURPOSE OF WAQF TRIBUNALS: A HISTORICAL AND LEGAL OVERVIEW**

The development of Waqf Tribunals in India has to be placed in the larger perspective of the historical process of the administration of waqf in the subcontinent as well as rising complexities involved in the management and protection of religious endowments. The institution of waqf, meaning the irrevocable commitment of property by a Muslim for religious, pious, or charitable purposes, has a rich and ancient history in India, going back to the Delhi Sultanate and Mughal times. With the passage of centuries, as waqf properties grew in quantity and value, so too did conflicts over their ownership, administration, and the behavior of mutawallis. These conflicts, without specific legal mechanisms, were mainly settled by civil courts, usually leading to delayed trials, absence of specialized knowledge, and varying judicial decisions.

The British colonial regime acknowledged waqf as an accepted legal phenomenon but dealt with it mainly with the perspective of civil law, legislating rules like the Mussalman Wakf Validating Acts of 1913 and 1930, which corroborated the lawfulness of waqf-alal-aulad (family waqf) in British India. Neither of these rules, however, created specialized tribunals to decide waqf-related litigations. Instead, waqf property matters remained treated similarly to other civil property cases, subject to the procedural delays and adversarial culture of the general civil courts. The requirement of a specialized mechanism to deal with waqf matters, sensitive to religious details and administrative difficulties, remained mostly unfulfilled.<sup>2</sup>

After Independence, the Indian State attempted to reorganize waqf administration to provide uniformity, transparency, and protection to waqf assets. The Wakf Act of 1954 was the initial comprehensive legislative effort in this direction. It created State Wakf Boards as corporate bodies responsible for keeping records of waqf properties and overseeing their management. Still, this Act continued to depend on civil courts for resolving disputes, so that the inefficiencies of the previous system were not greatly changed. With time, the inadequacy of civil court adjudication became increasingly obvious. Civil litigation over waqf properties typically took decades, was hampered by ignorance of Islamic law, and did not offer speedy or fair remedies.

---

<sup>2</sup>Understanding the Politics Behind the Waqf Amendment Bill, The Wire (Apr. 10, 2023), <https://thewire.in>.

Furthermore, the increasing prevalence of encroachments, unauthorized transfers, and mismanagement of waqf properties required faster, more effective mechanisms.

The requirement for a specialized forum thus became a persistent refrain in policy debates. Committees and commissions examining the waqf industry always advised the setting up of specialized tribunals. The most salient among these was the Sachar Committee Report (2006), which identified that the lack of judicial forums specializing in waqf affairs was one of the key impediments in the protection of waqf properties. The Committee discovered that in most states, waqf properties were illegally occupied by third parties, and the Boards, having no effective legal remedies, could not recover or administer these properties. Civil litigation was not only tardy but also costly to the Boards and mutawallis, especially where powerful encroachers or institutional interests were involved.

Against this backdrop, the Waqf Act, 1995 was passed by Parliament with a specific aim of revamping the waqf administration system. One of the most significant innovations of the Act was the creation of Waqf Tribunals under Section 83, a specific quasi-judicial institution intended to fast-track and specialize adjudication of waqf-related matters. The rationale behind was that waqf disputes comprise a combination of religious, property, and administrative issues not adequately served by generalist civil courts. Further, the distinctive doctrinal features of waqf—perpetuity, irrevocability of dedication, and legal principle that no waqf property is saleable or alienable except on specific compliance needed judicial officers well-versed in waqf jurisprudence. Accordingly, the setting up of Waqf Tribunals was not a case of institutional convenience alone; it was an endeavour to introduce substance of justice by conforming judicial organizations to the peculiar legal nature of waqf.<sup>3</sup>

State Governments were empowered under the Act to set up one or more Waqf Tribunals for their State or States. Every Tribunal was to have a presiding officer from the State Judicial Service, generally at the rank of District or Civil Judge. Additional members were appointed by a few states having administrative or waqf expertise. These Tribunals were vested with comprehensive powers under the Act. Section 83(1) provided that "any mutawalli, person interested in a waqf or any other person aggrieved by an order made under this Act, or rules

---

<sup>3</sup>CAG Report Flags Mismanagement in Tamil Nadu Waqf Board, The Hindu (Sept. 8, 2022), <https://thehindu.com>.

made thereunder, may make an application within the time specified in this behalf to the Tribunal for the determination of any dispute, question or other matter relating to the waqf." Effectively, the Tribunals were conferred original jurisdiction over all but a very few waqf disputes, ranging from ownership of property and rights of beneficiaries to validity of Board orders and removal of mutawallis.

Perhaps the most important legal implication of Waqf Tribunals being created was the exclusion of civil court jurisdiction by Section 85 of the Act. This clause provided that "no suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal." In so doing, the Act sought to make the waqf matters subject to an exclusive adjudicatory system, thus preventing duplication of litigation and quick disposal. The provision also emphasized the legislature's intention to establish a self-sustained legal environment within the waqf sphere, regulated by the Act and decided by specialized forums.

Constitutionally, the establishment of Waqf Tribunals has to be understood in the context of Article 21, which provides for the right to life and personal liberty, and has been interpreted by the Supreme Court in an expansive manner to encompass the right to access to justice. In *Hussainara Khatoon v. State of Bihar (1979)*<sup>4</sup> and *A.R. Antulay v. R.S. Nayak (1988)*<sup>5</sup>, the Court held that a fair, prompt, and effective judicial process is an integral part of the right to life. By this logic, the establishment of specialized tribunals can be considered a positive step towards actualizing the constitutional mandate provided that such tribunals function efficiently, fairly, and are accessible to those they are intended to serve.<sup>6</sup>

However, the actual functioning of Waqf Tribunals across India has been far from uniform, and their performance has raised serious concerns about their capacity to fulfill the objectives for which they were created. In many states, Waqf Tribunals are not permanently constituted and often function intermittently. Some states have only one Tribunal covering vast geographical areas, which poses significant logistical hurdles for litigants. For example, a mutawalli in a

---

<sup>4</sup> *Hussainara Khatoon v. State of Bihar* 1979 AIR 1369.

<sup>5</sup> *A.R. Antulay v. R.S. Nayak* 1988 AIR 1531.

<sup>6</sup> *Waqf Land in Urban India: Encroachments and State Apathy*, Times of India (Jan. 20, 2024), <https://timesofindia.indiatimes.com>.

remote district may need to travel hundreds of kilometers to file an application or attend a hearing. Where, for example, in states such as Bihar, Madhya Pradesh, and Uttar Pradesh, backlogs of cases are large with grievances pending over many years; where, in other cases, Tribunals have been exposed to staff vacancies, inadequate infrastructure, and administrative neglect, each reducing their competence.

In a few states, the choice of Tribunal members has also become controversial, with charges of nepotism or the appointment of officers without a proper grasp of waqf jurisprudence. There is no single training program or certification process to guarantee that Tribunal members possess the requisite know-how in waqf-law, Islamic charitable ethics, or endowment history. The decisional quality thus differs substantially across jurisdictions. Further, the absence of an appellate provision under the Waqf Act exacerbates the issue. Affected parties are forced to go to the High Court in exercise of its writ or supervisory jurisdiction a doctrinally correct but practically cumbersome relief for ordinary litigants. The lack of an appeal process by statute in the Act itself violates the principle of layered justice and can be a contravention of the spirit of Article 21, which focuses on both accessibility and equity.<sup>7</sup>

It is also relevant to mention that exclusion of civil court jurisdiction, aimed at simplifying adjudication, has frequently led to confusion and conflict of jurisdiction. Civil courts have, in some instances, been required to ascertain whether a given dispute is within the jurisdiction of the Waqf Tribunal or whether it touches on third-party rights excluded by the Act. The Supreme Court in *Bhanwar Lal v. Rajasthan Board of Muslim Wakfs (2004)*<sup>8</sup> made it clear that disputes between non-waqf parties or issues not within the foursquare corners of the Waqf Act may, nonetheless, be adjudicated by civil courts. This judicial incursion, though inevitable, reflects on the absence of procedural precision and the requirement of stricter jurisdictional demarcation in the Act.

In spite of these difficulties, the establishment of Waqf Tribunals is a laudable legislative experiment. No other religious community in India has a specialized quasi-judicial institution to settle disputes relating to its religious properties. The Tribunals, if made more effective, could be

---

<sup>7</sup>Prashant Jha, Who Watches the Watchers: Structural Problems in Waqf Governance, 56(48) *Econ. & Pol. Wkly.* 12 (2021).

<sup>8</sup> *Bhanwar Lal and another Vs. Rajasthan Board of Muslim Waqf* (2014) 16 SCC 51.

a model for community-sensitive, effective, and legally sound adjudication. To make this possible, however, there must be far-reaching reforms. These can be the mandatory creation of permanent Tribunals in each district where there is a significant waqf property, uniform training for adjudicators, the establishment of a separate appellate tribunal or chamber in High Courts, computerization of case records, and better logistical infrastructure. A separate Tribunal manual or code of procedure could also be drawn up to guarantee consistency and transparency.

In conclusion, Waqf Tribunals' evolution is a law and policy reaction to inefficiencies in the settlement of waqf-related cases over the years. It represents a significant step towards acknowledging the distinctive nature of waqf property and the necessity of specialized court mechanisms to safeguard its integrity. The vision behind their establishment speedy, specialized, and available justice bears affinity with the constitutional vision set out in Article 21. But the reality of their implementation is short of this vision. Meeting the procedural, infrastructural, and jurisdictional gaps in Waqf Tribunals' operation is not a question of institutional efficiency; it is one of constitutional imperative. Only through such reforms can the Tribunals fulfill their intended purpose and contribute meaningfully to the protection and dignified administration of one of India's oldest religious endowment systems.

### **REASONS FOR CREATING WAQF TRIBUNALS**

The key reasons for creating Waqf Tribunals were:

1. Specialized Jurisprudence: To provide that disputes over waqf properties are resolved by bodies having special knowledge of waqf laws.
2. Prompt Settlement: To mitigate the backlog and delay relating to proceedings in civil courts by providing an exclusive forum for waqf disputes.
3. Uniformity in Judgments: To achieve consistency and certainty in judgments on waqf matters.

## **I. Specialized Adjudication: A Root Rationale for Establishing Waqf Tribunals**

Another of the most important and root rationales for instituting Waqf Tribunals under the Waqf Act, 1995 was the requirement for specialized adjudication in cases relating to Muslim religious endowments. Waqf, being an institution regulated by Islamic law, has a complicated relationship between religious duties, doctrinal principles, administrative procedure, and public interest factors such that the secular civil courts, though expert in the common law of property and trusts, have hitherto lacked the context-specific knowledge to deal with the nuances of waqf law. Thus, the creation of a special judicial forum was not merely a procedural innovation but also a matter of substance, intended to ensure that disputes are disposed of with proper regard to the religious and legal distinctiveness of waqf.<sup>9</sup>

Specialization is required mainly due to doctrinal idiosyncrasies of law of waqf that make it distinct from other types of public or charitable trusts. A waqf is defined as an irrevocable dedication of property. Once a dedication is done, it can no longer belong to the waqif (donor) or his heirs. The property thereafter vests in God, the mutawalli serving only as manager or trustee. The waqf should be for some purpose that Islam holds to be pious, religious, or charitable. These Islamic jurisprudence principles, as a foundation for the waqf institution, are not statutorily formulated in Indian property law or in the Indian Trusts Act and hence need to be interpreted and applied by a judicial forum that understands them. Judges who do not have a grasp of these principles might lack the full understanding of religious requirements attached to waqf management.

Furthermore, waqf disputes often involve questions of religious identity, intention of the waqif, customary practice within Islamic traditions, and interpretations of Hanafi or Shafi'i jurisprudence. Whether property has been legally declared to be waqf, whether the object of the waqf continues to be the same as its original dedication, whether the mutawalli has overstepped his role, or whether the property may be leased for a temporary period—all these questions require a sophisticated grasp of law as well as theology. The more generalist form of judicial setup of civil courts, with focus on mainly adversary property disputes, does not leave intellectual or procedural room to pass judgment on such cases with sensitivity that they entail.

---

<sup>9</sup>S. Deshpande, Religious Endowments and the Indian Constitution, 7 *Indian J. Const. L.* 38 (2016).

Indian courts, for all the decades gone by, have generated a lopsided as well as intermittent body of court judgments on waqf simply due to absence of specialization. For example, in certain instances, courts have held that family waqfs (waqf-alal-aulad) have never been authentic public trusts, whereas in other instances, courts have held the contrary. Likewise, courts have been divided as regards interpreting the power of mutawalli, whether waqf leases are valid or not, and the extent of the regulation of the state. This difference is not simply theoretical; it matters in actuality in regard to managing waqf properties in different circumstances. An expert tribunal structure, composed of judicial officers specially trained in waqf law, was perceived as a solution for ushering in uniformity and doctrinal consistency in the resolution of waqf matters.<sup>10</sup>

The Sachar Committee of 2006, which undertook a classic assessment of the socio-economic status of Muslims in India, categorically identified the issues of heterogeneity arising from the lack of specialized forums to resolve waqf disputes. It observed that State Waqf Boards usually encountered immense challenges in suing encroachers, cheats, and illegal occupiers of waqf land. Proceedings in civil courts were long-winded, costly, and mostly ineffective because of the absence of domain knowledge. The Committee suggested the immediate setting up and consolidation of Waqf Tribunals, with proper jurisdictional authority and professionally trained members, as a crucial institutional reform required to protect and preserve waqf assets.

Beyond theological sensitivity and legal expertise, waqf disputes frequently entail an appreciation for community dynamics, religious sentiment, and socio-cultural relationships that govern religious properties. Take the case of whether a specific mosque is a waqf property, or whether the revenues therefrom should go to a madrasa or a dargah. These cannot be viewed as simple questions of ownership of property. They are of profound religious and emotional import to local communities, and any judicial ruling in such cases will have to be guided by a sensitive and well-informed perspective. A special tribunal, functioning in a quasi-judicial setup, is more capable of handling these dimensions with caution and perception.

It should also be mentioned that waqf-litigation is not confined to private-to-private disputes; often, State agencies, local authorities, and institutions like railway administrations, municipalities, and education departments are involved. Government schemes, public utilities, or

---

<sup>10</sup>Asim Varshney, *Waqf Properties in India: A Legal and Economic Review*, 12(2) *J. L. & Pub. Pol'y* 85 (2023).

cooperative societies encroached upon or used many waqf lands in the past. The adjudication of such cases calls for an understanding of land revenue legislation, municipal law, and government policy on land acquisition, as well as waqf law. A model of a specialized tribunal permits multi-disciplinary experience to be built and anchored, leading to better-balanced and informed decision-making.<sup>11</sup>

The experience of other nations with large Muslim populations further lends support to the establishment of bodies of specialized waqf adjudication. In nations such as Malaysia, Egypt, and Turkey, there are institutions that exclusively deal with the management of waqf, backed by Islamic jurists and civil administrators who coordinate their work. These institutions are charged with the dual mandate of ensuring adherence to Islamic law and upholding transparency and new governance measures. India's emulation of the Waqf Tribunal model is similarly motivated: religious endowments need not only be regulated by general secular property law but also by fora that recognize their religious setting and long-term community function.

Specialization in adjudication in the Indian legal system is not limited to waqf law. Environmental Tribunals, Debt Recovery Tribunals, Tax Tribunals, Consumer Courts, and Family Courts all constitute a recognition that some fields of law need specialist expertise and deviation from generalist civil litigation. Waqf Tribunals are therefore an extension of this principle into the religious endowments field, specifically adapted to the needs of the Muslim community and in keeping with the overall evolution of administrative justice mechanisms in India.

Last, but not the least, the establishment of the Waqf Tribunals fulfills not only a pragmatic or doctrinal role but also furtherance of constitutional vision for comprehensive justice. Indian Constitution ensures equality before law as well as a right to fair and adequate legal remedy. If a portion of the citizenry is systematically excluded from getting judicial relief in disputes that are unique to their religious traditions, then the guarantee of Article 21 is rendered incomplete. Specialist adjudication in the form of Waqf Tribunals is thus not just a piece of legislation but a

---

<sup>11</sup>Mohammad Shamsuddin, *Secularism and the Waqf Act: A Legal Contradiction?*, 5(1) *Indian Const. Rev.* 23 (2022).

constitutional imperative based on principles of pluralism, respect for religious difference, and the right to effective justice.<sup>12</sup>

## II. Expeditious Resolution of Waqf Disputes: A Core Justification for the Creation of Waqf Tribunals

One of the main reasons for creating Waqf Tribunals under the Waqf Act, 1995, is the urgent necessity to achieve quick and speedy settlement of disputes relating to waqf properties. The conventional system of settling such disputes in the civil courts was woefully inadequate to address the urgency as well as complexity of waqf matters. Litigation delays, coupled with the complexity of religious endowment law and incursions by interests, caused the stagnation and decay of waqf institutions nationwide. Under such circumstances, establishment of specialized Waqf Tribunals was a legislative step aimed at imparting quicker and more effective justice one congruent with the functional needs of management of religious endowments as well as the constitutional goal of access to justice in timely manner under Article 21 of the Indian Constitution.

Traditionally, Indian civil courts have remained clogged up, with proceedings taking years and frequently decades before settlement. Waqf cases, as such, require meticulous research into ownership documents, revenue records, waqf deeds, historic use, and religious customs. These issues are usually further prejudiced by the involvement of various parties, such as heirs, Boards, beneficiaries, encroachers, and government authorities. In most cases, the long duration of litigation resulted in irrevocable loss of waqf properties, such as encroachments, unlawful sales, adverse possession, or dilapidation due to neglect. The failure to obtain interim reliefs in a timely manner meant that by the time a case was ultimately determined, the property had already been lost or made economically and religiously worthless.<sup>13</sup>

The Supreme Court of India has consistently reiterated that justice delayed is justice denied, especially in property and civil rights cases. In *Hussainara Khatoon v. State of Bihar* (1979), the Court established the right to speedy trial as falling within the ambit of the right to life and

---

<sup>12</sup>Mazhar Alam, Administrative Control vs. Religious Autonomy: The Waqf Board Model in India, 9 *Asian L. Rev.* 95 (2020).

<sup>13</sup>Syed Zain Raza, Waqf Tribunals and the Right to Access Justice, 6(1) *NLU Delhi L. Rev.* 67 (2022)

liberty of persons under Article 21. Such jurisprudence goes beyond criminal law and addresses the broad principle that remedies by law shall be available, adequate, and timely to be useful. By this yardstick, the civil courts did not provide timely relief in waqf cases and thus breached the very spirit of Article 21 for the waqf stakeholders- Muslim communities, mutawallis, and the beneficiaries of religious and charitable endowments.

The establishment of Waqf Tribunals aimed to mitigate this delay by providing a forum dedicated solely to waqf cases, with restricted jurisdiction, speedy procedures, and judicial officers trained or anticipated to acquire domain expertise. The hope was that a specialized institution, relieved of the burden of general civil litigation, would be in a position to give priority to waqf disputes and dispose of them in a time-bound fashion. The Act had conceived of Waqf Tribunals as a quasi-judicial solution more formal than mediation, but less onerous than proceedings in civil courts.

Section 83 of the Waqf Act authorizes the State Governments to constitute Waqf Tribunals "for the determination of any dispute, question, or other matter relating to a waqf or waqf property." The Tribunal is conferred with the powers of a civil court, including the power to summon witnesses, to enforce attendance, to require the production of documents, and to issue commissions. Significantly, Section 85 bars civil courts from exercising jurisdiction over cases that are within the competency of the Tribunal to decide, thus channeling such disputes into a uniform, time-limited forum. Such legislative intention obviously was to curb overlapping litigation and procedural delays.<sup>14</sup>

One of the operational challenges which Waqf Tribunals were instituted to meet was the deluge of encroachment cases, in which waqf land usually in urban and semi-urban locations had been taken over by private parties, corporations, or even government departments in illegal occupation. These had to be decided urgently, since delays resulted in consolidation of possession by collusive legal processes or hostile takeover. Under the pre-1995 system, Waqf Boards could not pursue anything but the common civil suit for eviction or declaration, which would remain trapped in preliminary objections, interlocutory orders, and frequent adjournments.

---

<sup>14</sup>Faizan Manzar, Transparency and Public Trust in Religious Institutions, 4(2) *Contemp. Rev. Middle E.* 155 (2017).

The Tribunals were designed to be swift, focused, and able to give relief in these cases without getting bogged down in procedure red tape.

Another field where the urgency of resolution is needed is in the appointment, approval, or removal of mutawallis. Such disputes tend to be succession claims, claims of mismanagement, or disputes regarding the use of waqf income. If such disputes are not speedily resolved, they result in administrative paralysis, whereby no mutawalli can be properly appointed, and the property is left unmanaged. This causes loss of revenues, decline of religious services, and public disaffection. A specialized court can give a higher priority to such cases, restore management swiftly, and arrest long-term paralysis in the running of the waqf.

It would also be crucial to highlight the social and communal aspect of waqf conflict. Waqf properties tend to be hubs of religious life — mosques, madrasas, dargahs, cemeteries — and their management or stagnation has a direct impact on the spiritual and social health of the community. If such properties remain in dispute, it generates not only legal doubt but communal tension and social division. The speedy resolution of such conflicts by a Tribunal serves to bring back stability and confidence in the community, allowing the property to be used for its intended use.

Although the purpose behind Waqf Tribunals was to speed up justice, the ground reality has been uneven. In certain states such as Kerala, Tamil Nadu, and Maharashtra, Tribunals have worked with relative effectiveness, disposing of cases more quickly than civil courts. Yet in most, Tribunals are under-resourced, under-manned, and over-worked. Some states have a single Tribunal, central in the capital, which means that rural or remote district litigants have to travel vast distances and expend great sums of money. In others, Tribunal members are not full-time appointments but part-time judges with two jobs, causing additional delays. These institutional constraints defeat the very purpose of swiftness that made the Tribunals necessary.

An additional issue is the lack of explicit procedural timeframes within the Waqf Act itself. Although the Act confers powers on Tribunals akin to civil courts, it does not require decisions in cases to be made within a specific timeframe. This enables delays to creep in, particularly when parties request repeated adjournments or where Boards fail to act on notices promptly.

Rules need to be framed under the Act providing for time-bound disposal, penalties for non-compliance, and case management protocols. Even digital case tracking, regular updates, and public dashboards can make a big difference in enhanced transparency and accountability.<sup>15</sup>

The absence of appellate or review processes under the Act also makes the delay issue more complicated. Because Tribunal orders are considered final, parties who need redress are forced to approach the High Court under writ jurisdiction, which is not always expeditious or assured. Having Regional Appellate Waqf Tribunals or having specific High Court benches to handle waqf appeals could ensure a layer of oversight without diluting the intention of timely justice.

Constitutionally, the inability to settle waqf disputes quickly erodes not only property rights but religious freedom as well, particularly under Article 26, which guarantees religious denominations the right to control their own affairs. A decades-long dispute actually freezes this right. Likewise, Article 21's access to justice guarantee cannot be made if the system does not have an effective and speedy remedy. By diverting cases to a specialized forum that is both competent and relatively insulated from the general backlog of litigation, Waqf Tribunals are intended to serve as a fulcrum of accessible justice, particularly for marginalized communities.

Finally, the institution of Waqf Tribunals was not so much an administrative reform; it was a constitutional reaction to the persistent backlog of waqf litigation, the social expense of unresolved religious disputes, and the systemic inefficiencies of the civil court system. Although their performance has been patchy in states, the basis for their establishment and the desire for speedy justice stands unconquerable. Now structural reform, improved funding, specialized training, and procedural simplification are required so that the philosophy of speedy adjudication is not lost in its implementation. Then and only then can Waqf Tribunals live up to their promise as tools not merely of expeditiousness, but also of justice and community empowerment.

---

<sup>15</sup>T. Mahmood, Uniform Civil Code and Minority Rights: Revisiting the Waqf Act, *Seminar India* Issue 625 (2011)

### **III. Uniformity in Decisions: Ensuring Doctrinal Consistency and Legal Predictability in Waqf Adjudication**

Establishment of Waqf Tribunals under Waqf Act, 1995, was not only towards specialization and fast justice but was a deliberate step in bringing in uniformity and consistency in determination of waqf-related litigations across the country. It was aimed to fulfill an essential need because waqf adjudication-based litigations during decades led to fragmented, incoherent, and generally conflicting jurisprudence. Lacking specialized judicial forums with expertise in the domain, Indian courts have traditionally resolved waqf disputes through the lens of general property and trust law, too often without sufficient regard to Islamic legal norms, administrative subtleties, or spiritual objectives that underlie waqf. The creation of Waqf Tribunals was therefore contemplated as a solution to introduce coherence in the legal fabric and ensure predictability, justice, and doctrine integrity in interpretation and enforcement of waqf laws.

Waqf being an institution based on Islamic law is governed by legal principles divergent from the principles applicable to private property, corporate trusts, or charitable organizations under Indian civil law. For example, once a property is consecrated as waqf, it would be inalienable and irrevocable, no longer the individual property of the donor, and is to be governed only for the religious or charitable objectives stipulated in the deed of waqf. The role of the mutawalli is that of a manager, and not that of a beneficiary or owner, and his or her powers are restricted to managing the property in line with the donor's wishes and Islamic law. These principles are not extensively codified in Indian law, and therefore an understanding of them is based on interpretive skills derived from Islamic jurisprudence (fiqh).<sup>16</sup>

But before Waqf Tribunals came into being, civil courts both at the subordinate and High Court levels were lacking in the appropriate theological and doctrinal background to decide waqf cases. Consequently, judicial pronouncements relating to similar issues of law delivered different results based on the interpreter judge, variation in practice within regions, and procedural tactics used by the parties. For instance, courts across various states came to opposing findings on whether a lease of waqf land for periods of more than 30 years was valid, whether waqf could be

---

<sup>16</sup>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>.

established orally, whether income could be diverted from its intended cause to some other charitable purpose, and whether certain classes of beneficiaries had locus standi to challenge Board orders. These inconsistencies undermined public trust in the legal system and rendered it very challenging for Waqf Boards and mutawallis to administer waqf property within a stable legal framework.

Uniformity of legal rulings is necessary for a number of reasons. Conceptually, it ensures that like cases are treated alike, which is a fundamental principle of the rule of law and constitutional justice. Practically, it facilitates effective planning, management, and enforcement, particularly when working with extensive properties, extended leases, or multi-generational commitments. For Waqf Boards, uniform legal interpretation is essential in determining how best to utilize properties for public good without facing legal challenges. For mutawallis, certainty regarding their powers, responsibilities, and liabilities allows them to operate efficiently and with accountability. To the general public, uniform judgments minimize uncertainty and enhance confidence in the waqf system as a sound institution of religious and social benevolence.

Establishment of Waqf Tribunals was meant to bring together the interpretive power of waqf matters within a specialized forum which would employ a uniform set of principles, thus establishing a uniform legal dogma particular to waqf. In contrast to the civil court system, where one and the same matter may be decided differently from one jurisdiction to another, Waqf Tribunals were expected to enforce waqf law consistently within their respective states with the expectation that similar judicial reasoning would eventually make it up to the national level. This was particularly crucial in resolving inter-jurisdictional inconsistencies which were previously characteristic of waqf administration. For instance, while some states accepted oral waqfs, others did not. Some recognized waqf-alal-aulad (family waqfs) as public trusts; others considered them private property. These differences were not merely doctrinally problematic but also administratively unworkable, as Waqf Boards functioned on changing legal assumptions based on the forum.

The establishment of Tribunals also sought to enable doctrinal clarity and institutional learning over time. Because Waqf Tribunals were to be staffed by trained judicial officers, supported by waqf administrators and legal experts who understand waqf law, they were anticipated to achieve

jurisprudential consistency through an increasing number of case judgments. This, over time, would enable the Tribunals to evolve into centers of expertise, as are tax tribunals, family courts, or consumer forums, where judicial precedents assist in streamlining adjudication and guide legal reform. In addition, such coherence could help in the preparation of rules, guidelines, and policies at the state level, rendering waqf administration more predictable and professional.

Alas, in the absence of a well-established appellate mechanism pertaining to the Waqf Tribunals, the process of constructing a nationally uniform waqf jurisprudence has failed to materialize as expected. Since Tribunal rulings are amenable only to writ jurisdiction under Article 226 or supervisory jurisdiction under Article 227 of the Constitution, review or harmonization of conflicting decisions among states is not possible. However, the fundamental justification for their establishment continues to hold good and is urgent. Uniformity of waqf decisions can still be ensured by improved documentation, publication of Tribunal decisions, internal learning by the peers among Tribunal members, and advisory circulars of the Central Waqf Council on the basis of legal interpretations that have endured judicial examination.

In comparative jurisdictions, legal uniformity of religious endowment law is ensured by central codification and specialized interpretive forums. For example, in Malaysia, the Department of Waqf, Zakat, and Hajj and the Syariah Courts offer an integrated institutional framework that guarantees doctrinal consistency within Islamic charitable law. Likewise, in Egypt and the UAE, awqaf (plural form of waqf) are governed under codified waqf laws enforced uniformly throughout national territory. These illustrations indicate the importance of centralized interpretation and coordinated administration in maintaining both legal and spiritual purity of waqf.

Within the Indian context, the initiative towards uniformity in waqf adjudication also crosses paths with the larger constitutional doctrine of Article 14, which assures equality before law and equal protection of the laws. Although Article 14 does not discourage differential treatment on the basis of intelligible differentia, it demands that such discrimination must not cause arbitrariness or unequal treatment to persons or groups in like circumstances. If beneficiaries of waqf in one state are able to obtain justice more quickly or justly than another state merely because of variable judicial interpretations, it creates a constitutional anomaly. The establishment

of Waqf Tribunals thus serves the broader constitutional agenda of equal and fair access to justice, by reducing regional variations in judicial thinking.

Another advantage of uniform judgments is that they encourage judicial economy and administrative efficiency. If Waqf Boards, litigants, and legal professionals know settled positions of law, the extent of unnecessary litigation is curtailed. Established law avoids repeated challenges to the same issues, conserving time and public funds. It also gives legal certainty to third parties like lessees, developers, or tenants, who enter into transactions involving waqf properties in good faith. This predictability supports lawful commercial enterprise without undermining the religious and charitable nature of waqf properties.

In order to operationalize the objective of uniformity, a number of reforms are conceivable and desirable. To begin with, there needs to be a system to publish and make Waqf Tribunal judgments available, either in official gazettes, online repositories, or law journals. At present, most Tribunal orders are not being published or made available, which makes them less useful as precedents. The Central Waqf Council can be proactive and issue guidelines or best practices fashioned from Tribunal jurisprudence that State Boards and lawyers follow to keep their actions on par with accepted standards. Third, national conferences or workshops between Tribunal members, judges, scholars, and waqf administrators to discuss contentious matters and reach a doctrinal agreement. Fourth, institutionalization of appellate benches or review bodies within the High Courts to monitor consistency in Tribunal judgments and correct deviations where required.

In summary, the justification for instituting Waqf Tribunals to facilitate uniformity of decisions is one of the most important pillars of the legislative purpose of the Act. Uniformity of decisions ensures constitutional values, enables effective waqf administration, minimizes unnecessary litigation, and promotes public confidence in the system. Although institutional issues still exist, the fundamental vision of doctrinal uniformity through specialist adjudication is possible and needed. As India continues to become more modern and efficient in its legal framework, investing in Waqf Tribunals' capacity and consistency will be at the heart of maintaining the sanctity, utility, and constitutional propriety of the institution of waqf.

## **JURISDICTION AND POWERS OF WAQF TRIBUNALS**

Waqf Tribunals' jurisdiction is outlined in Sections 83 and 85 of the Waqf Act, 1995:

- Section 83(1): Authorises the State Government to establish a Tribunal for determination of any question, dispute or other matter touching upon a waqf or waqf property. The Tribunal is charged with deciding issues laid down in the Act.
- Section 85: Prevents the jurisdiction of civil courts in cases where the Waqf Tribunal has jurisdiction. That is, any difference, question, or other matter arising out of a waqf or waqf property, which by or under the Act is required to be settled by a Tribunal, shall be settled by such Tribunal, and no civil court shall have jurisdiction to try or entertain any suit or proceeding in such cases.

In addition, Section 83(5) provides that the Tribunal shall be considered to be a civil court and shall possess the same powers as are exercised by a civil court under the Code of Civil Procedure, 1908. These include summoning and requiring the attendance of witnesses, production and discovery of documents, and other procedural requirements for adjudication.

## **PROCEDURAL FRAMEWORK OF WAQF TRIBUNALS**

The procedural mechanism for Waqf Tribunals is set to ensure effective and equitable adjudication of disputes. Some of the important procedural features are:

1. Composition: According to the Waqf (Amendment) Act, 2013, every Tribunal will have one member, a member of State Judicial Service of the rank of District, Sessions, or Civil Judge Class I.
2. Powers: The Tribunal has powers similar to a civil court under the Code of Civil Procedure, 1908. This encompasses the right to summon witnesses, call for the production of documents, and issue commissions for examination of witnesses or documents.
3. Finality of Decisions: The Tribunal's decisions are final and binding. Section 85 clearly prohibits civil courts' jurisdiction over cases within the Tribunal's domain, hence emphasizing the authority of the Tribunal.

4. Appeals and Revisions: Although the Act does not give a direct appellate forum against the Tribunal's decisions, parties dissatisfied with the Tribunal's orders can go to the High Court in exercise of its supervisory jurisdiction as under Article 227 of the Constitution.

### **EFFICACY OF WAQF TRIBUNALS IN DELIVERING JUSTICE**

The efficacy of Waqf Tribunals in dispensing justice can be evaluated on several parameters:

1. Accessibility: The creation of specialized Tribunals was supposed to provide easier access to the adjudication process for stakeholders involved in waqf disputes. Nevertheless, in reality, the few available Tribunals and their concentration within a specific area have created difficulties for those living in rural areas. Geographical constraint can hinder access to justice, particularly for poor individuals.
2. Expeditious Disposal: One of the major reasons for establishing Waqf Tribunals was to achieve timely disposal of disputes. Although a few Tribunals have managed to curtail the pendency of cases, others have suffered due to problems like shortage of staff, non-availability of proper infrastructure, and procedural hassles. Such problems have, in some cases, eroded the aim of timely justice.
3. Specialization and Expertise: The specialized character of Waqf Tribunals means that adjudicators are experts in waqf laws. Such specialization is essential because waqf-related disputes are unique and complex in nature. Yet, issues have been raised about the quality of training and resources made available to members of the Tribunal, which can affect the quality of adjudication.
4. Enforcement of Decisions: The effectiveness of any adjudicatory organization is also gauged by the enforceability of its decisions. Although Tribunal decisions are binding, problems in enforcement have been noted, especially where decisions call for actions by other government agencies or where influential parties are involved. Such issues can undermine confidence in the effectiveness of the Tribunal.

## CONCLUSION

The establishment of Waqf Tribunals by the Waqf Act, 1995 was a fundamental change in the manner in which waqf disputes were to be disposed of in India. The idea was to substitute the slow and generalist apparatus of civil courts with the specialized tribunals, which were conceived as mechanisms that could dispose of waqf disputes rapidly, uniformly, and in a manner that is sensitive to the religious, legal, and administrative complexities of Islamic endowments. By examining their development, function, jurisdictional scope, procedural framework, their actual operation, it is apparent that though the Waqf Tribunals are a major institutional design advance, their potential can be realized only to a limited extent owing to a mix of design flaws, gaps in implementation, and procedural imprecision.<sup>17</sup>

At the core of the logic behind establishing Waqf Tribunals was the realization that waqf law is a distinct and specialized area. Grounded in Islamic jurisprudence, based on community trust, waqf institutions operate on principles that are not necessarily harmonious with secular property or trust law. The creation of tribunals as specialized forums came as a corrective measure after centuries of inefficiencies being seen in civil litigations with respect to waqf properties. They encompassed delay with excesses, judicial incapability in understanding waqf law, incongruous views regarding law, and poor redressal for meritorious cases. The transition to a quasi-judicial model through Waqf Tribunals hoped to surmount such obstacles by not only achieving quicker resolution of disputes but also doctrinal certainty and institutional responsibility.

Three compelling reasons validate the legislative resolve to establish these tribunals: the requirements of specialized adjudication, speedy adjudication of waqf-related disputes, and uniformity in judgments. Initially, Waqf Tribunals were intended to accommodate judicial officers who have or are likely to gain greater insight into waqf law. This is what is required for deciding disputes that bring into play intricate matters of religious doctrine, property dedication, powers of mutawalli, rights of beneficiaries, and conformity with Islamic principles. In the absence of such specialization, there is a likelihood of compromising the religious sanctity of waqf as an institution and judicial legitimacy. Second, the objective of speedy justice is directly connected with the right to access justice as enshrined in Article 21 of the Constitution. Justice

---

<sup>17</sup>*Ziyyuddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*, AIR 1975 SC 1788 (India).

that comes after decades of procedural battles is justice denied—especially in religious properties, where mismanagement and encroachments directly affect the rights of the community, religious well-being, and social solidarity. Third, consistency in the decisions is necessary to enforce the constitutional guarantee of equality before the law. Conflicting judgments, as in pre-tribunal civil cases, not only cause administrative complexity but also create confusion and unfairness.<sup>18</sup>

But the working of the Waqf Tribunals has varied from state to state. While in certain jurisdictions, these tribunals have been partially successful in disposing cases with greater speed and sensitivity, in others, they are handicapped by shortage of funds, personnel, infrastructural deficiencies, and absence of procedural discipline. Most states still lack functioning Waqf Tribunals, or if they have them, with very poor geographical coverage, hence curtailing rural or marginalized stakeholders of waqfs. In addition, the lack of a decent appellate regime under the Act loads an unreasonable burden on wronged parties to move High Courts via writ petitions—something costly, time-consuming, and unreliable. This shortcoming goes against the very notion of tiered, affordable, and accessible justice that the tribunal system was to administer.

One serious challenge is the procedural ambiguity regarding tribunal functioning. Even though the Waqf Act gives the Tribunals the powers of a civil court under the Code of Civil Procedure, it does not provide specific guidelines for the conduct of proceedings, case timelines, and documentary standards. Consequently, there are ongoing delays in most cases, and procedural failures tend to undermine the credibility of the process of adjudication. Tribunals can be efficient only if they are run under a clearly demarcated procedural code specific to their specific mandate. This would involve case management provisions, e-filing, evidence recording, interim relief, and timeframes of disposal. Without such procedural clarity, even the most well-meaning tribunal will be bound to fail in its aims.

Constitutionally, the assurance of justice under Article 21 is not a matter of the availability of a forum but of the quality, promptness, and equity of the remedy it offers. Access to justice is a multi-faceted principle covering procedural simplicity, physical accessibility, affordability, competency of the judiciary, and dignity for the litigant. Against these parameters, Waqf

---

<sup>18</sup>*Sri Shirur Mutt v. Commissioner, Hindu Religious Endowments*, AIR 1954 SC 282 (India).

Tribunals have a lot to upgrade. As it stands, these usually disproportionately burden the poor and religious minorities whom they are intended to benefit, thus reinforcing the same flawed marginalization the Act was intended to remedy. Concurrently, the legal fraternity, government, and judiciary have not given sufficient attention to the consolidation of this institution, considering it a marginal issue instead of a central pillar of religious and social justice in India.<sup>19</sup>

It is also noteworthy that the ouster of civil court jurisdiction under Section 85, although aimed at simplifying adjudication, has had unforeseen effects. In other instances, litigants are not certain whether their cases fall within the jurisdiction of the Tribunal, particularly in third-party matters or complicated title disputes. This has resulted in parallel proceedings, jurisdictional uncertainty, and even conflicting judgments. A more defined jurisdictional matrix is urgently required one that marks the limits of Tribunal jurisdiction and the circumstances under which civil courts have concurrent or residual jurisdiction.

Reform is therefore both necessary and imperative. First, each state should be required to constitute a working, full-time Waqf Tribunal with sufficient manpower, infrastructure, and territorial outreach. Second, the Central Waqf Council, in partnership with State Waqf Boards and the Ministry of Minority Affairs, should have a training plan for Tribunal members and registry personnel to provide similar standards of excellence. Third, the Act must be modified to provide for a formal appellate mechanism, like Regional Appellate Tribunals or special High Court benches, to deal with appeals and provide jurisprudential consistency. Fourth, procedural rules exclusive to the Tribunals need to be formulated to regulate timelines, filing formats, fees, and evidentiary standards. Lastly, all decisions of the Tribunals must be computerized and made available in the public domain to facilitate research, advocacy, and accountability.<sup>20</sup>

Finally, Waqf Tribunals are a pioneering legislative initiative to incorporate subject-specific adjudication into the larger paradigm of justice delivery in India. Their creation was grounded on solid principles of specialization, expeditiousness, and uniformity, all of which are essential to the well-being of the waqf sector and the rights of its beneficiaries. The chasm between legislative intention and practical implementation, however, is still vast. Closing this gap is not

---

<sup>19</sup> Tahir Mahmood, *Personal Law in Crisis: The Waqf Experience*, 36(12) Econ. & Pol. Wkly. 1015 (2001).

<sup>20</sup> Majid Khadduri, *The Islamic Law of Nations: Shaybani's Siyar* (Johns Hopkins Univ. Press 2002).

merely a question of administrative effectiveness it is a constitutional imperative. If adequately empowered, funded, and reformed, Waqf Tribunals can be a model of <sup>21</sup> community-sensitive, effective, and constitutionally correct adjudication in the field of religious and charitable property. In doing so, they will reaffirm the idea that justice in India must not only be done but be seen to be done effectively, fairly, and without delay.

---

<sup>21</sup> Dr. Nuzhat Parveen Khan, *Waqf Properties and the Need for Effective Legal Mechanism*, 8(2) Indian J. Pub. Admin. 49 (2016).