



The Ephemeral Line Between Faith and Politics: Waqf and Muslim Identity in India

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Introduction

Article 14 of the Indian Constitution states, “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” This foundational principle of the Indian constitution promises justice and fairness regardless of religion, caste, or socio-economic status, but as the recent policies continue to disproportionately impact the rights and institutions of Indian Muslims, the Right to Equality often seems elusive. The encroachment of fundamental rights given in the Indian Constitution, be it the selective application of Article 14 or the infringement of religious freedom guaranteed in Articles 25 to 28, is systematically shrinking the religious, economic, and socio-political spaces for Muslims in India. These laws, which were meant to ensure pluralism, now feel conditional, dependent not on the Constitution, but on prevailing majoritarian comfort. One such distortion of Muslim identity and encroachment on its personal laws comes in the form of the Waqf (Amendment) Bill, 2024. Among the long list of systematic institutional interferences such as the misuse of the Unlawful Activities Prevention Act, targeted demolition drives, selective interpretation of the Places of Worship Act, Citizenship Amendment Act (CAA-NRC) and others, this act, is yet another attempt to assert that Muslims are not the mainstream citizens of this country.

A short note on the Theological and Historical Foundations of Waqf

The word “waqf” has its origin in the Arabic word “waqufa,” meaning to detain or to hold or to tie up, signifying the irrevocable dedication of property for religious or charitable purposes.¹ In his

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work titled *Waqf in Central Asia*, historian R. D. McChesney describes it as “the divine ownership of assets whose usufruct is dedicated to specific charitable purposes.”ⁱⁱ Though the Quran does not explicitly mention the word ‘waqf’, it does have a very strong theological basis. In at least 20 versesⁱⁱⁱ, the scripture encourages people to spend their wealth on charity. Thus, the institution of waqf is an indelible cornerstone of Islamic jurisprudence, and ever since the advent of Islam, it has been an explicit expression of philanthropy for Muslims all over the world.

In India, a wide array of properties falls under waqf, which includes mosques, idgahs, dargahs, khanqahs, imambaras, and kabristans (graveyards), among others. The practice of establishing waqf properties in India dates back to the early medieval period^{iv}, with the Delhi Sultanate (1206-1526) witnessing the first systematic development of these endowments. Under the Mughals, waqf institutions flourished as expressions of imperial patronage and personal piety alike. But the encounter with British imperialism fundamentally transformed the administration of waqf properties. Under British rule, waqf-related disputes often made their way to the Privy Council, which at first declined to acknowledge their legality, especially family waqfs. But, the introduction of the Mussalman Wakf Validating Act of 1913 officially recognized and validated these types of endowments, restoring the community’s right to structure waqfs for both familial and charitable purposes.

Following the Independence of India the Waqf Act of 1954^v was introduced to regulate waqf properties and finally, the Waqf Act of 1995^{vi} took its place, which remains the governing law today, whose legality is in jeopardy due to the Waqf Amendment Act, 2025^{vii}. The Act of 1995 outlines mandatory rules and related state surveys to identify waqf properties, including the rules for the creation of state waqf boards to manage and oversee these properties. Formation of the Central Waqf Council^{viii} and an advisory body^{ix} under the Ministry of Minority Affairs is also mandated under the Act. A key amendment in 2013 strengthened these regulations, introducing stricter measures to prevent illegal transfers of waqf properties.^x

Waqf (Amendment) Act, 2024 and the Politics of Muslim Representation

The Waqf Amendment Act, 2025, which amends the principal Act i.e., The Waqf Act 1995, is yet another step of the current regime to reshape the sociopolitical landscape, especially that of the country’s Muslim community. The Act, which promises efficiency, inclusion, and reduction of

corruption in the maintenance of waqf properties, has several problematic provisions that may change the nature of waqf itself and will eventually make the reclaiming of waqf properties practically impossible, particularly from government encroachments.

The inclusion of non-Muslims in Waqf management raises questions about the constitutional right of religious denominations to manage their properties.^{xi} The Act, in the name of representation, allows non-muslims to manage waqf properties, raising serious concerns about the integrity and intent of the current regime. Critics also argue that this Act allows the Waqf Board to unilaterally declare land as Waqf property, potentially leading to land grabs and disputes over ownership. The removal of the 'Waqf by User'^{xii} provision and Section 40 is seen as a means to facilitate this, as it gives the board excessive power without proper checks. The proposed tribunal system has also drawn criticism for its lack of independence, as it would consist primarily of government-appointed judges rather than an impartial judiciary, raising legitimate concerns about potential bias in dispute resolution.

Furthermore, the stringent limitation period for contesting Waqf declarations as provided in the Act could potentially legitimize questionable property acquisitions without any accountability on the part of the government, as affected parties might lose their right to challenge claims after a relatively brief window closes. One of the most vague provisions of the Act, which raises serious concerns, is that only a person who has been practicing Islam for at least five years can declare a Waqf.^{xiii} The question is not just why someone must prove religiosity, but how exactly is one supposed to prove that? Section 3 clause(r) of the Principal Act has been amended and now reads as 'any person showing or demonstrating that he is practising Islam for at least five years', no explanation is provided from which juncture the time frame is to be calculated. What are the parameters to qualify as 'practicing'? The legislature may justify proving religious identity to identify genuine waqifs, but parameters need to be laid down. The requirement for proof of Islamic practice infringes on constitutional rights guaranteed under Article 25 of the Indian Constitution. The Waqf Amendment Act is yet another example of how legal frameworks are being used to undermine the rights, identity, and autonomy of Muslims in India.

Legal Reform or a tool of control and Marginalization

The current government, like many other disputed legislations, has presented and passed the Act as a reform aimed at benefiting the Muslim community, while ignoring the historical context of Muslim disenfranchisement. Waqf is an integral part of the faith of Muslims all over the world, including India. Back in 2006, the Sachar Committee Report^{xiv} highlighted the challenges faced by Waqf institutions, 'mismanagement' being one of them. The committee recommended certain steps to counter these challenges, for example strengthening of Waqf Board through administrative, financial, and legal reforms, creation of a Technical Advisory Body, and measures to increase women's representation, establishment of National/State Waqf Development Corporations, calling for a full-time Waqf Tribunal, a dedicated cadre of officers, and audits to improve accountability, among others.

Instead of acting upon the committee's report, which had already recommended practical steps to counter the challenges of 'mismanagement' and representation of women, raised by the government as primary reasons for amending the 1995 Act, the entire institution of waqf is made vulnerable, amending the nature of the Act itself. The Act is another step towards making Muslims of India second-class citizens, as it continues to follow the same pattern of systematic marginalization and use of such legal frameworks and policies in a selective and a biased manner, often criminalizing or surveilling the Muslim communities, as seen in previous legislation like the CAA or the misuse of the Places of Worship Act 1991. The sheer lack of Muslim representation in parliament raises serious doubts about the commitment to legal and social reform of the Muslim community, which the government is promising. As the Muslims of India are often witnessing, the ephemeral line between faith and politics reveals itself most starkly when fundamental rights are undermined and fail to shield the minorities of India, pushing them further from the margins of justice and equality.

ⁱ Mohammad Manzoor Alam, 'Potent Potential of Awqāf in Social and Economic Development' (2018) 32 (2) JKAU https://iei.kau.edu.sa/Files/121/Files/153869_31-02-08-0MManzorAlam.pdf accessed 3 April 2025

ⁱⁱ R. D. McChesney, *Waqf in Central Asia: four hundred years in the history of a Muslim shrine, 1480-1889* (Princeton University Press 1991)

ⁱⁱⁱ Shabana Binte Mahmoodul Hasan, 'Is Waqf Mentioned in the Quran?' (*Global Sadaqah*, 14 May 2018) <https://blog.globalsadaqah.com/waqf-mentioned-in-quran> accessed 3 April 2025

^{iv} Mohammad Alamullah, 'Waqf in India: Unraveling Its Rich History and Contemporary Landscape' *Clarion India* (16 February 2024) <https://clarionindia.net/waqf-in-india-unraveling-its-rich-history-and-contemporary-landscape/> accessed 03 April 2025.

^v Waqf Act 1954, Act No 26 of 1954

^{vi} Waqf Act 1995, Act No 43 of 1995

^{vii} Waqf (Amendment) Act 2025, Act No 14 of 2025

^{viii} Waqf Act 1995, s 9

^{ix} Ibid., s 7

^x Waqf (Amendment) Act 2013, Act No 27 of 2013

^{xi} Areeb Uddin Ahmed, 'Waqf Waqf Ki Baat Hai: Understanding the Controversy Around New Waqf Bill' *The Quint* (04 April 2025)

<<https://www.thequint.com/opinion/waqf-bill-2025-passed-explainer-muslim-property-rights-diluted>> accessed 04 April 2025

^{xii} The Waqf Act 1995, s 3.

^{xiii} Waqf Act 1995, Act No 43 of 1995, s 3(r)

^{xiv} *Prime Minister's High Level Committee on Social, Economic and Educational Status of the Muslim Community of India, Social, Economic and Educational Status of the Muslim Community of India* (Government of India 2006) 238–56.