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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE WAQF (AMENDMENT) BILL, 2025: LEGAL REFORMS, CONSTITUTIONAL IMPACTS, AND FUTURE DIRECTIONS

AUTHORED BY - ALKA BANO

Abstract

The Waqf (Amendment) Bill, 2025 introduces significant changes to the governance of waqf properties in India. This paper provides an analytical comparison between the Waqf Act, 1995, and the proposed amendments, emphasizing key legal provisions, constitutional aspects, and the rationale behind major changes, such as the repeal of Section 40. The amendment seeks to enhance transparency, digitalization, and legal safeguards, but it also raises concerns about government oversight and religious autonomy. This study examines the implications, advantages, and disadvantages of the new bill while providing suggestions for a balanced and effective implementation.

Keywords:

Waqf Act, Waqf Amendment Bill 2025, Islamic Endowment, Property Rights, Legal Reforms, Government Oversight, Religious Autonomy, Digitalization of Waqf

INTRODUCTION

Legal and Constitutional Analysis: Waqf Act, 1995 vs. Waqf (Amendment) Bill, 2025 "A Trust in Perpetuity: Understanding Waqf"

The term "**Wakf**" (or **Waqf**) originates from **Islamic law** and refers to a **permanent religious endowment**. It signifies the irrevocable dedication of a property or asset for religious, charitable, or public welfare purposes, with ownership effectively transferred to God. The income generated from waqf properties is utilized for various social and philanthropic cause, including mosques, educational institutions, healthcare facilities, and welfare organizations.

In **India**, the Waqf Act, 1995, which defines waqf as, governs waqf properties:

"Any person's permanent dedication of any kind of property, whether it be immovable or movable, for any purpose that is deemed religious, pious, or charitable under Muslim law".

CONSTITUTIONAL SAFEGUARDS: LEGAL PROVISIONS

GOVERNING WAQF

1. Article 25: Freedom of Conscience and Free Profession, Practice, and Propagation of Religion

- **Constitutional Link:** Article 25 guarantees the right to freely practice, profess, and propagate religion. This includes the management of religious properties such as Waqf properties, which considered religious endowments under Islamic law¹.
- **Waqf Bill 2025 Link:** The Waqf Bill 2025 upholds this right by providing a framework for the administration and management of Waqf properties while maintaining the religious autonomy of the Muslim community. However, it also introduces increased government oversight, raising concerns about the extent of state intervention in religious matters. The bill aims to *balance religious freedom with the need for transparency and accountability in Waqf administration*².

2. Article 26: Freedom to Manage Religious Affairs

- **Constitutional Link:** Article 26 of the Constitution allows religious denominations to manage their own affairs in matters of religion, including the establishment and administration of institutions, trusts, and religious endowments such as Waqf properties³.
- **Waqf Bill 2025 Link:** The bill seeks to regulate the administration of Waqf properties through Waqf Boards and the government, but it also ensures that religious communities, particularly Muslims, retain control over how Waqf properties are managed in line with their faith. The inclusion of non-Muslim members in Waqf Boards, as proposed by the bill, has raised concerns about possible interference in religious affairs, although it is justified as a step towards better governance⁴.

¹ Professionals's The Constitution of India, [Bare Act], Art 25,(2025).

² The Waqf (Amendment) Bill, 2025: Benefits of Bill in PIB (2025-04-04), <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2025/apr/doc202543531701.pdf> (last visited April 4, 2025).

³ Professionals's The Constitution of India, [Bare Act], Art 26,(2025).

⁴ The Waqf (Amendment) Bill, 2025: Benefits of Bill in PIB (2025-04-04), <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2025/apr/doc202543531701.pdf> (last visited April 4, 2025).

3. Article 15: Prohibition of Discrimination on Grounds of Religion

- **Constitutional Link:** Article 15 prohibits discrimination on the grounds of religion, caste, sex, or place of birth. It ensures equality before the law and provides protection from discriminatory practices⁵.
- **Waqf Bill 2025 Link:** The Waqf Bill 2025 takes steps to make the administration of Waqf properties more inclusive by involving diverse groups, including Muslim women and non-Muslim representatives, in the management. This inclusion is consistent with the spirit of Article 15, as it seeks to eliminate discrimination and ensure broader representation in the governance of religious endowments⁶.

4. Article 30: Right of Minorities to Establish and Administer Educational Institutions

- **Constitutional Link:** Article 30 grants minorities the right to establish and administer educational institutions of their choice. This right extends to the management of properties used for religious, educational, and charitable purposes⁷.
- **Waqf Bill 2025 Link:** The Waqf Bill 2025 facilitates the use of Waqf properties for educational and charitable purposes, especially for the benefit of the Muslim community. By regulating the administration of these properties, the bill aims to enhance the effectiveness of educational institutions and other welfare programs funded by Waqf resources, ensuring that they contribute to the welfare of the minority community in a structured manner⁸.

5. Article 46: Advancement of Scheduled Tribes, Scheduled Castes, and Other Weaker Sections' Economic and Educational Interests:

- **Constitutional Link:** Article 46 directs the State to promote the educational and economic interests of Scheduled Castes (SCs), Scheduled Tribes (STs), and other weaker sections of society⁹.
- **Waqf Bill 2025 Link:** The bill aims to enhance the welfare of economically weaker sections, including Muslim women, by allocating resources from Waqf properties for

⁵ Professionals's The Constitution of India, [Bare Act], Art 15, (2025).

⁶ The Waqf (Amendment) Bill, 2025: Benefits of Bill in PIB (2025-04-04), <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2025/apr/doc202543531701.pdf> (last visited April 4, 2025).

⁷ Professionals's The Constitution of India, [Bare Act], Art 30,(2025).

⁸ The Waqf (Amendment) Bill, 2025: Benefits of Bill in PIB (2025-04-04), <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2025/apr/doc202543531701.pdf> (last visited April 4, 2025).

⁹ Professionals's The Constitution of India, [Bare Act], Art 46,(2025).

social and economic development. This aligns with Article 46, as the bill seeks to ensure that Waqf resources are used for the benefit of marginalized groups, including for education, healthcare, and empowerment programs.

6. Article 13: Laws Inconsistent with Fundamental Rights

- Constitutional Link:** Article 13 ensures that any law that is inconsistent with the Constitution or fundamental rights is invalid. It grants courts the authority to strike down such laws¹⁰.
- Waqf Bill 2025 Link:** If provisions of the Waqf Bill 2025 are challenged as being in conflict with fundamental rights (e.g., religious freedoms or the right to property), the bill’s legality can be reviewed under Article 13. Critics of the bill argue that increased state control over Waqf properties could infringe upon the community’s right to manage its religious affairs, which could potentially lead to legal challenges under Article 13¹¹.

THE EVOLUTION OF WAQF LAW: A COMPARATIVE ANALYSIS¹²

Aspect	Waqf Act, 1995 ¹³	Waqf (Amendment) Bill, 2025 ¹⁴
Composition of Waqf Boards	Exclusively Muslim members.	Includes non-Muslim members to promote transparency.
Authority Over Waqf Property Identification	Waqf Boards had unilateral authority.	Removes 'waqf by user' provision, requiring government verification for disputes.
Inclusion of Women & Minority Sects	No specific mandate.	Requires at least two Muslim women and diverse sectarian representation.
Inheritance Protection	No clear guidelines before waqf declaration.	Ensures inheritance rights are secured before a property is designated as waqf.
Digitalization & Transparency	No requirement for digital records.	Mandates digital registration to prevent fraud.

¹⁰ Professionals’s The Constitution of India, [Bare Act], Art 13,(2025).
¹¹ The Waqf (Amendment) Bill, 2025: Benefits of Bill in PIB (2025-04-04), <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2025/apr/doc202543531701.pdf> (last visited April 4, 2025).
¹² The Waqf (Amendment) Bill, 2025: An overview of the Act vs Bill in PIB ((2025-04-04), <https://pib.gov.in/PressReleasePage.aspx?PRID=2118799> , (last visited April 4, 2025).
¹³ Professionals’s The Waqf Act,1995 [Bare Act],(2025).
¹⁴ The Waqf (Amendment) Bill, 2025 in Ministry of Minority Affairs (2025-04-04), <https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/1743763149.pdf> (last visited April 4, 2025).

<u>Aspect</u>	<u>Waqf Act, 1995¹³</u>	<u>Waqf (Amendment) Bill, 2025¹⁴</u>
Legal Dispute Resolution	Waqf Tribunals had final authority.	Allows appeals to the High Court.
Government Oversight	Limited involvement.	Strengthens government authority over disputed waqf properties.

WAQF ACT, 1995¹⁵ – MAJOR PROVISIONS AND THEIR CORRELATION WITH THE BILL¹⁶

1. **Section 3** – Defines waqf, waqf properties, and the role of Waqf Boards. (Retained with expanded definitions in the 2025 Bill)
2. **Sections 4-5** – Mandates surveys and registration of waqf properties. (Strengthened with mandatory digital registration in 2025 Bill)
3. **Section 40** – Grants Waqf Boards the authority to declare properties as waqf. (Repealed in 2025 Bill to prevent unilateral declarations)
4. **Section 51** – Restricts transfer of waqf properties without government approval. (Expanded in 2025 Bill with stricter penalties for violations)
5. **Sections 83-85** – The establish Waqf Tribunals for dispute resolution. (2025 Bill introduces an appeal mechanism to High Courts)

PROPOSED CHANGES IN THE WAQF (AMENDMENT) BILL, 2025

1. **Abolition of the 'Waqf by User' Concept** – The Properties can no longer be declared waqf based solely on long-term religious use.
2. **Strengthened Government Oversight** – That enhanced role in resolving property disputes.
3. **Mandatory Digital Records** – Ensures transparency through digital documentation.
4. **Expanded Right to Appeal** – Disputes can now be escalated to High Courts.
5. **Stricter Penalties** – Increases penalties for mismanagement and illegal waqf property transfers.
6. **Repeal of Section 40** – Removes the Waqf Board's unilateral power to declare a property as waqf.

¹⁵ Professionals's The Waqf Act,1995 [Bare Act],(2025).

¹⁶ The Waqf (Amendment) Bill, 2025 in Ministry of Minority Affairs (2025-04-04), <https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/1743763149.pdf> (last visited April 4, 2025).

THE DEBATE OVER SECTION 40: A CRITICAL PERSPECTIVE¹⁷

The **repeal of Section 40** is one of the most contentious provisions in the amendment. The government has provided the following justifications:

- a) **Prevention of Arbitrary Declarations** – The earlier law allowed Waqf Boards to declare any property as waqf without independent verification, leading to property disputes and allegations of land takeovers.
- b) **Legal Safeguards for Property Owners** – The amendment ensures that waqf declarations undergo a **due legal process**, including government verification, protecting individual property rights.
- c) **Addressing Land Encroachment Concerns** – Past instances of incorrect categorization of private and government lands as waqf resulted in prolonged litigation. The repeal aims to prevent such misclassifications.
- d) **Constitutional Compliance** – Aligns with **property rights enshrined in the Constitution**, ensuring that ownership disputes are resolved fairly.

DIGITALIZATION OF WAKF: ENHANCING TRANSPARENCY AND EFFICIENCY¹⁸

A significant aspect of the Waqf (Amendment) Bill, 2025 is the digitalization of waqf records, which aims to curb corruption and mismanagement. The bill mandates:

1. **Online Registration of Waqf Properties** – Ensuring that all properties are recorded in a centralized, publicly accessible database.
2. **Geo-Tagging of Waqf Assets** – Enabling accurate identification and monitoring of waqf lands.
3. **Electronic Dispute Resolution System** – Allowing for digital submission of grievances and legal proceedings.
4. **Annual Public Reports** – Requiring Waqf Boards to publish yearly updates on waqf property utilization.
5. **Minimize Fraud** – These reforms are design to minimize fraud, promote accountability, and enhance ease of governance.

¹⁷ The Waqf (Amendment) Bill, 2025: An overview of the Act vs Bill in PIB ((2025-04-04), <https://pib.gov.in/PressReleasePage.aspx?PRID=2118799>), (last visited April 4, 2025).

¹⁸ The Waqf (Amendment) Bill, 2025 in Ministry of Minority Affairs (2025-04-04), <https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/1743763149.pdf> (last visited April 4, 2025).

PROS AND CONS: WEIGHING THE IMPACT OF THE AMENDMENT¹⁹

ADVANTAGES

1. **Prevents Arbitrary Land Takeovers** – Ensures proper legal validation before properties are declared waqf.
2. **Promotes Transparency** – Digital records reduce corruption and mismanagement.
3. **Strengthens Legal Protection** – High Court appeal rights provide a fairer dispute resolution mechanism.
4. **Encourages Accountability** – Strict penalties deter mismanagement within waqf institutions.
5. **Increases Inclusivity** – Enhances representation of women and diverse Muslim sects in waqf administration.

DISADVANTAGES

1. **Risk of Government Overreach** – Increased governmental authority may lead to excessive interference in religious institutions.
2. **Concerns Among Muslim Communities** – Some as weakening their autonomy perceive the removal of Waqf Boards' unilateral authority.
3. **Implementation Challenges** – Transitioning to digital records and ensuring seamless government coordination may face logistical hurdles.
4. **Increased Litigation** – The provision for High Court appeals may result in judicial backlogs and prolonged legal battles.

THE GOVERNMENT'S STAND: ADDRESSING CONCERNS

The government has emphasized that the amendment does not seek to abolish waqf properties but aims to enhance governance and reduce land disputes.

KEY CLARIFICATIONS INCLUDE:

- **Existing waqf properties remain protected.**
- **The objective is to prevent fraudulent land encroachments; ensuring waqf declarations follow a transparent legal process.**

¹⁹ The Waqf (Amendment) Bill, 2025: Benefits of Bill in PIB (2025-04-04), <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2025/apr/doc202543531701.pdf> (last visited April 4, 2025).

- **Religious autonomy is not being compromised**, as the changes focus on legal safeguards rather than religious practices.

SUGGESTION

RECOMMENDATIONS FOR EQUITABLE IMPLEMENTATION

To ensure the fair and effective implementation of the Waqf (Amendment) Bill, 2025, the following steps are recommended:

1. **Independent Oversight Mechanism** – A neutral oversight committee comprising legal experts, community leaders, and government representatives can review disputes and waqf declarations.
2. **Public Awareness Initiatives** – Government and civil society should conduct awareness programs to educate citizens on their rights concerning waqf properties.
3. **Streamlining Legal Procedures** – Establishing dedicated legal cells for waqf disputes to avoid judicial delays.
4. **Regular Audits** – Implementing periodic audits of waqf properties to prevent mismanagement and corruption.

CONCLUSION

A BALANCED FUTURE: THE PATH FORWARD

The **Waqf (Amendment) Bill, 2025**, represents a significant reform in the governance of waqf properties in India. While it aims to enhance *transparency, accountability, and legal oversight*, its implementation must be *equitable, inclusive, and sensitive to religious sentiments*. A *balanced approach*—respecting both *property rights and religious autonomy*—will be crucial for its successful adoption and enforcement.

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1. Professionals's The Constitution of India, [Bare Act], Art 15, (2025).
2. Professionals's The Waqf Act, 1995 [Bare Act],(2025).
3. The Waqf (Amendment) Bill, 2025: Benefits of Bill in PIB (2025-04-04), <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2025/apr/doc202543531701.pdf> (last visited April 4, 2025).

4. The Waqf (Amendment) Bill, 2025 in Ministry of Minority Affairs (2025-04-04), <https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/1743763149.pdf> (last visited April 4, 2025).
5. The Waqf (Amendment) Bill, 2025: An overview of the Act vs Bill in PIB ((2025-04-04), <https://pib.gov.in/PressReleasePage.aspx?PRID=2118799> , (last visited April 4, 2025).

