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The Waqf (Amendment) Bill, 2024: A Constitutional Dilemma of Articles 26 and 14

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The Waqf (Amendment) Bill, 2024, has sparked intense constitutional debates surrounding religious autonomy and state oversight. Rooted in the centuries-old Islamic tradition of waqf, religious endowments in India are regulated by the Waqf Act, 1995, through Central and State Waqf Boards. The recent amendment introduces key changes aimed at enhancing transparency, governance, and financial accountability. However, concerns have been raised regarding its potential infringement on religious autonomy under Article 26, particularly the inclusion of non-Muslims in Waqf Boards, the elimination of 'Waqf by User,' and increased government control over waqf properties. Critics argue that these provisions weaken the autonomy of religious institutions and disproportionately target Muslim endowments. Conversely, proponents contend that the Bill strengthens Article 14's commitment to equality by ensuring better representation, curbing corruption, and enhancing inclusivity especially by incorporating marginalised Muslim sects and women into waqf administration. This article examines the constitutional dilemmas posed by the amendment, analysing whether it disrupts religious self-governance or serves as a necessary step towards accountability. Ultimately, it argues for a balanced approach, which ensures that the Bill's implementation upholds both faith-based governance and democratic principles in India's pluralistic society.

Keywords: *waqf, amendment, religion, freedom.*

INTRODUCTION

For centuries, the concept of waqf has been woven into the fabric of Islamic philanthropy¹, often described as a sacred trust, an eternal commitment of property for the welfare of the community. In modern India, this age-old tradition is looked after by the Waqf Council², a statutory body entrusted with safeguarding and regulating these religious endowments. The Waqf Board was established through the Waqf Act, 1995³. Central and State levels operate with it to ensure that assets given for religious and charitable purposes reach their intended beneficiaries. However, recently, the Waqf (Amendment) Bill 2024,⁴ introduced in Lok Sabha on 8 August 2024⁵ has given rise to discourse on faith and law, tradition and autonomy on one hand and law, governance and oversight on the other. At the centre of the argument is a critical constitutional question, which is whether The Waqf (Amendment) Bill, 2024, infringes upon religious autonomy under Article 26⁶ or does it uphold the principles of equality and fairness enshrined in Article 14⁷? This has fuelled a lot of debates, which present two sharp opposing perspectives. On one side, critics argue that the Waqf Board imposes the state's control over religious property, violating the community's autonomy under Article 26. On the other hand, proponents maintain that it serves as a necessary regulatory framework, preventing discrimination and thus reinforcing Article 14's commitment to equality before the law. This article aims to explore both viewpoints, unravelling the constitutional dilemmas surrounding the Waqf (Amendment) Bill, 2024, in contemporary India.

WHAT IS WAQF?

Waqf properties are religious endowments in Islam, which are used for religious, charitable, or private purposes. It can be established through a deed or instrument. The term *Waqf* refers to the holding of anything in the subconscious possession of the Almighty God in a way that permits

¹ Murat Cizakca, 'Awqaf in History and Its Implications for Modern Islamic Economies' (1998) 6(1) Islamic Economic Studies 43 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3164811> accessed 09 February 2025

² 'About Us' (Central Waqf Council) <<https://centralwaqfcouncil.gov.in/>> accessed 07 February 2025

³ The Waqf Act 1995

⁴ The Waqf (Amendment) Bill 2024

⁵ Ismat Ara, 'Why the proposed amendments to the law governing Waqf properties have triggered a fierce debate' *Frontline* (18 August 2024) <<https://frontline.thehindu.com/social-issues/waqf-bill-amendment-muslim-community-women-law-babri-masjid-bjp/article68524997.ece>> accessed 09 February 2025

⁶ Constitution of India 1950, art 26

⁷ Constitution of India 1950, art 14

its revenues to be used for the betterment of humanity. Once a dedication is made, then there cannot be any changes, nor can it be sold, given, or inherited⁸. As a waqf is created, the property is detained. After the creation of a waqf, the owner as well as its beneficiaries are no longer entitled to the property. The ownership remains with God. Waqf value as a property is intrinsically linked to educational institutions, graveyards, mosques, and shelter homes⁹. To create a Waqf, one must be of sound mind and hold valid ownership of the property.

HOW DOES THE BOARD WORK?

The Waqf Board operates under the Waqf Act, 1995, a legal framework designed to regulate and safeguard waqf properties. The Act establishes both Central Waqf Boards¹⁰ and State Waqf Boards¹¹, which oversee the administration and protection of these religious endowments. A Survey Commissioner (earlier) is appointed to identify and document waqf properties through local investigations, scrutiny of documents, and public hearings¹². Additionally, the mutawalli (custodian) is responsible for managing the waqf property while ensuring that its revenues serve the intended religious or charitable purposes.¹³

The Waqf Board's primary functions include financial oversight, dispute resolution, and protection against encroachment. However, critics have long pointed out inefficiencies, mismanagement, and allegations of corruption, which have necessitated reforms. The Waqf (Amendment) Bill, 2024, introduces 14 key changes¹⁴ aimed at increasing transparency, preventing unauthorised claims, and restructuring governance. These changes, while positioned as administrative improvements, have fuelled constitutional concerns regarding religious autonomy, government intervention, and the balance between faith and governance. The next sections analyse these competing perspectives in detail.

⁸ Mohd Wasim Ali, 'Institution of Wakf in Islam: Genesis and Development' (2007-2008) 18 ALJ 125

⁹ 'Decoded: How Is a Waqf Created and What Are the Powers of Waqf Board?' *Business Standard* (05 August 2024) https://www.business-standard.com/india-news/decoded-how-is-a-waqf-created-and-what-are-the-powers-of-waqf-board-124080500469_1.html accessed 13 February 2025

¹⁰ The Waqf Act 1995, s 9(1)

¹¹ The Waqf Act 1995, s 13(1)

¹² The Waqf Act 1995, s 4

¹³ The Waqf Act 1995, s 50

¹⁴ Asad Rehman, 'Waqf Panel Clears 14 Amendments by NDA MPs, Rejects 44 by Opposition' *Indian Express* (New Delhi, 28 January 2025) <<https://indianexpress.com/article/political-pulse/waqf-panel-approves-amendments-nda-rejects-opposition-9801759/>> accessed 13 February 2025

ENCROACHMENT ON THE RELIGIOUS AUTONOMY UNDER ARTICLE 26?

The Indian Constitution instilled a grand vision of harmony and religious freedom, which also includes the right of every faith to manage its own institutions. Article 26 stands as a pillar of this promise, an assurance that communities could govern their religious affairs without external interference. Critics contend on its face, the Waqf Act's most recent amendment reads as modernisation to ease administration, boost oversight, and add a dash of inclusiveness. Behind that gauzy facade lies something more unsettling still: the quiet, creeping diminishment of the autonomy of religious institutions, in particular of the Muslims.

Violation of Religious Autonomy: The first glaring issue is the inclusion of non-Muslims to the board as well as in the Central Waqf Council¹⁵ mandated in the amendment. This is in direct violation of Article 26 of the Constitution, which provides every religious denomination the right to govern their affairs. It contradicts *S.P. Mittal v Union of India*,¹⁶ where the apex court held that 'A law which takes away the rights of administration from the hands of a religious denomination altogether and vests in another authority would amount to a violation of the right guaranteed under clause (d) of Article 26.'

Critics highlight the selective application of secularism, unlike The Sikh Gurdwaras Act 1925,¹⁷ which requires all the members to be Sikh or the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997¹⁸ which requires all the members to be Hindu. India's constitutional commitment to religious freedom cannot afford to be a selective principle, applied unevenly across different faiths. If the State claims to respect religious autonomy, it must extend the same deference to waqf institutions as it does to Hindu temples and Sikh gurdwaras. At stake is not just the ownership of land but the very soul of religious self-governance.

State Overreach-Government Control Over Waqf Properties: Another bone of contention is the strict scrutiny and interference by the government as per section 3C (2) of the bill. This changes the authority that determines the waqf properties from the survey

¹⁵ Nishtha Anushree, 'More Non-Muslims in Waqf Board? Here's What Changes to Draft Amendment Bill Approved by JPC Suggest' *Swarajya* (27 January 2025) <<https://swarajyamag.com/news-brief/more-non-muslims-in-waqf-board-heres-what-changes-to-draft-amendment-bill-approved-by-jpc-suggest>> accessed 09 February 2025

¹⁶ *S.P. Mittal v Union of India and Ors* (1983) 1 SCR 729 (SC)

¹⁷ The Sikh Gurdwaras Act 1925, s 45

¹⁸ Karnataka Hindu Religious Institutions and Charitable Endowments Act 1997, s 25(5)(ix)

commissioner or additional commissioners to the district collectors to conduct surveys of waqf properties.¹⁹ Critics argue that the government's decision to bestow district collectors with the authority to survey and oversee waqf properties constitutes an unwarranted infringement of their sanctified rights of religious communities.²⁰ Additionally, the Act is silent on the religion of public servants involved, which is not the case in The Sikh Gurdwaras Act, 1925 or Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 which requires the public servants involved to share the same religion as the charitable institution.²¹

Perhaps the most insidious blow comes in the form of the removal of 'Waqf by User'²², a doctrine that has safeguarded countless properties dedicated to religious and charitable activities. Under this principle, a property that has been used for religious purposes for an indefinite period automatically attains waqf status, even if it lacks formal documentation. The amendment demands strict documentation, thereby eliminating 'Waqf by User' altogether. This means that a Waqf property is suspect in the absence of a valid 'Waqfnama'. While this might appear to be a move toward uniformity, it blatantly disregards the historical reality that most waqf properties were never formally registered.

In *Maharashtra State Board of Waqfs v Shaikh Yusuf Bhai Chawla*²³, the Supreme Court reaffirmed that religious places such as Imambaras could attain waqf status by immemorial use, stating that the need to prove dedication may be dispensed with, as the proof of it may have been lost with time. The amendment contradicts this ruling, threatening thousands of historically recognised religious sites. For instance, in Uttar Pradesh, out of 1,21,000 registered properties under the Sunni Waqf Board, 1,12,000 are Waqf by user.²⁴ This will jeopardise thousands of religious spaces and the central purpose of making the legal framework more efficient stands

¹⁹ 'Explainer on Waqf Amendment Bill 2024' (PIB, 13 September 2024)

<<https://pib.gov.in/PressNoteDetails.aspx?NoteId=152139&ModuleId=3®=3&lang=1>> accessed 09 February 2025

²⁰ 'The Waqf (Amendment) Bill, 2024' (PRS India) <<https://prsindia.org/billtrack/the-waqf-amendment-bill-2024>> accessed 13 February 2025

²¹ *Ibid*

²² Waqf Act 1995, s 2(r)

²³ *Maharashtra State Board of Waqfs v Shaikh Yusuf Bhai Chawla* Civ App Nos 7812-7814/2022

²⁴ 'BJP's intent to dismantle Waqf Board clear in Amendment Bill, claims Owaisi' *Hindustan Times* (25 September 2024) <<https://www.hindustantimes.com/india-news/bjps-intent-to-dismantle-waqf-board-clear-in-amendment-bill-claims-owaisi-101727253757409.html>> accessed 09 February 2025

defeated, as it will not only lead to more legal disputes and costly litigation but also misappropriation of properties and erosion of religious and cultural heritage.

Furthermore, the amendment makes the definition of ‘waqif’ even more ambiguous and vague; the amendment establishes that ‘waqif’ as waqf by any person practising Islam for at least five years and having ownership of such property. This is arbitrary and discriminatory in the sense that it imposes a condition that might be detrimental to individuals who have converted to Islam recently, thereby infringing on their religious freedom under Article 26(a)²⁵ to establish and maintain institutions for religious and charitable purposes.

ADHERENCE TO ARTICLE 14? THE FINE LINE BETWEEN AUTONOMY AND ACCOUNTABILITY

However, it can be argued that the Waqf (Amendment) Bill, 2024, far from being an encroachment on religious autonomy, is a necessary step toward ensuring that waqf properties truly serve their intended beneficiaries without discrimination or misuse. In a democracy, where justice is the cornerstone of governance, no institution, religious or otherwise, can operate beyond the principles of fairness and accountability. At the heart of this legislation lies the constitutional ideal of Article 14 equality before the law, a principle that safeguards all citizens from arbitrary governance and ensures a uniform legal framework for all institutions, including religious ones.

The administration of waqf properties for far too long has been filled with ambiguity, leaving wide room for corruption and mismanagement.²⁶ In effect, the new amendment aims to disrupt this not by eliminating religious identity but by ensuring that waqf institutions are true to their original philanthropic intentions.

Inclusivity and Representation: Critics argue that the Bill weakens religious autonomy²⁷, but a closer look reveals a bold stride toward inclusivity. For the first time in history, the Bohra and Aghakhani communities are granted separate representation in the Board of Auqaf along

²⁵ Constitution of India 1950, art 26(a)

²⁶ Anwarulhaq Baig, ‘Waqf Faces Encroachment, Corruption, Mismanagement: JIH’ (*Radiance Weekly*, 14 November 2023) <<https://radianceweekly.net/waqf-faces-encroachment-corruption-mismanagement-jih/>> accessed 09 February 2025

²⁷ Devanshi Batra, ‘Waqf (Amendment) Bill 2024: Government Control vs. Religious Autonomy’ (*TwoCircles.net*, 16 August 2024) <https://twocircles.net/2024aug16/450241.html?utm_source> accessed 13 February 2025

with representation of Bohra, Agakhani and other backwards classes of Muslim communities.²⁸ This is not an attack on religious institutions but a recognition of diversity within Islam itself. No longer is the waqf structure monopolised by one section of the community; it now reflects the diverse nature of Indian Muslim identity. This is in line with Article 14's commitment to non-discrimination and equal access.

More significantly, the amendment introduces a groundbreaking shift following the recommendations of the Sachar Committee²⁹: the inclusion of two Muslim women in the administration of waqf properties³⁰. In a society where religious governance has often been a male-dominated space, this provision is nothing short of revolutionary. It introduces a provision that allows non-Muslim to be part, which further bolsters the principle of equality and secularism. While proponents say this contradicts the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 this move aligns with the constitutional mandate of secularism a fundamental tenet of Article 14 and is also similar to the Andhra Pradesh Charitable and Hindu Religious and Endowments Act, 1987 where only 13 out of 21 members are required to be Hindu.³¹ In arguendo, even if it is contradictory to other similar endowment acts, it may be interpreted as the beginning of a positive precedent. In a country where temples, gurdwaras, and mosques coexist, governance must not favour one over the other. The amendment does not dismantle the waqf system; it strengthens it. It does not silence faith, but it empowers believers from all walks of life to have a voice in their religious institutions. It ensures that devotion does not come at the cost of discrimination, and faith does not stand in opposition to fairness. The old system represented an outdated hierarchy where power was concentrated in the hands of a few, which was dismantled by the new amendment and replaced with a system that represents all voices, all sects, and all believers.

²⁸ Preetha Nair, 'Bill to Amend Waqf law proposes to rename Act, separate board of Auqaf for Bohras and Aghakhani' *The New Indian Express* (07 August 2024) <<https://www.newindianexpress.com/nation/2024/Aug/06/bill-to-amend-waqf-law-proposes-to-rename-act-separate-board-of-auqaf-for-bohras-and-aghakhani>> accessed 09 February 2025

²⁹ 'Recommendations contained in the Report of the High-Level Committee on Social, Economic and Educational Status of the Muslim Community of India headed by Justice Rajinder Sachar (Retd.)' (*Minority Affairs*) <<https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/1245150177.pdf>> accessed 09 February 2025

³⁰ 'Proposed bill seeks to make women waqf board members' *The Times of India* (05 August 2024) <<https://timesofindia.indiatimes.com/india/proposed-bill-seeks-to-make-women-waqf-board-members/articleshow/112270799.cms>> accessed 09 February 2025

³¹ The Waqf (Amendment) Bill, 2024 (n 20)

Financial Accountability v State Overreach: Religious institutions, though sacred, cannot be exempt from accountability. A striking example is a Hindu farmer, who, upon attempting to sell his ancestral land for his daughter's wedding, was informed by the Registrar's office that the Waqf Board claimed ownership. According to the Waqf Board law, he would now have to go before a Muslim tribunal where someone well-versed in Islam would judge if the land belonged to him or Allah.³² The new amendment seeks to eliminate this by providing that no waqf shall be created without the execution of a waqf deed. The Collector must inquire into the genuineness of the application.³³ It seeks to introduce an online system for transparency and requires the Collector to verify the property's status before registration.

However, concerns over waqf management extend beyond religious lines. In Uttar Pradesh, burial land was controversially sold by the Waqf Board for a mall, benefiting only board members while disregarding the Muslim community's interests.³⁴ Such instances highlight the need to eliminate 'Waqf by User' to avoid arbitrary claims and ensure transparency. Furthermore, a report by the Karnataka State Minorities Commission alleged that approximately 27,000 acres of land, amounting to about ₹2 trillion, were misappropriated or allocated illegally.³⁵ To enhance accountability, the Waqf (Amendment) Bill, 2024, proposes crucial audit reforms. Currently, waqf accounts are audited by auditors appointed by the Waqf Board, with occasional audits by the State Government. The proposed amendments mandate that auditors must be selected from a state-approved panel, while the Central Government can order audits by an auditor appointed by the Comptroller and Auditor-General of India (CAG) and direct the publication of audit reports³⁶. This shift enhances oversight and accountability by reducing board exclusivity and increasing state and central scrutiny over waqf financial management. These instances and

³² Ashali Varma, 'The Curious Case of the Waqf Board' *The Times of India* (25 September 2022) <<https://timesofindia.indiatimes.com/blogs/no-free-lunch/the-curious-case-of-the-waqf-board/>> accessed 09 February 2025

³³ Vijaita Singh and Ishita Mishra, 'Waqf Amendment Bill Introduces District Collector as an Arbiter to Decide Whether a Property Is a Waqf or Government Land' *The Hindu* (09 February 2024) <<https://www.thehindu.com/news/national/waqf-amendment-bill-introduces-district-collector-as-an-arbiter-to-decide-whether-a-property-is-a-waqf-or-government-land/article68497319.ece>> accessed 13 February 2025

³⁴ Varma (n 32)

³⁵ Sandeep Moudgal, 'Karnataka: Eight Years After Controversial Waqf Misappropriation Report, Tabled in Entirety' *The Times of India* (23 September 2020) <<https://timesofindia.indiatimes.com/city/bengaluru/karnataka-eight-years-after-controversial-waqf-misappropriation-report-tabled-in-entirety/articleshow/78279332.cms>> accessed 09 February 2025

³⁶ Madiya Mushtaq, 'Waqf Amendment Bill, 2024: A Threat to Religious Autonomy?' *Kashmir Observer* (27 August 2024) <<https://kashmirobsrver.net/2024/08/27/waqf-amendment-bill-2024-a-threat-to-religious-autonomy/>> accessed 09 February 2025

reforms underscore the urgent need for transparency in waqf property administration to prevent mismanagement and safeguard public interest.

CONCLUSION

The Waqf (Amendment) Bill, 2024, stands at the crossroads of faith and governance, autonomy and accountability. The introduction of non-Muslim representation and the removal of 'Waqf by User' have been interpreted as state overreach, yet the bill also marks a historic step towards inclusivity by providing representation to Bohra, Aghakhani, and other marginalised Muslim communities, as well as introducing women into the governance of waqf properties. It has also been pointed out that adding terms like 'empowerment,' 'efficiency,' or 'development' will not bring meaningful change unless backed by genuine legislative intent and reform.

The Waqf (Amendment) Bill, 2024, is not an outright attack on religious autonomy; it rather attempts to balance accountability with faith-based governance. While it seeks to dismantle opaque power structures and ensure equitable representation, it also raises important questions about the role of the state in religious affairs. At its core, the debate over the amendment is a reflection of India's evolving relationship with religious institutions and whether they should remain protected from state oversight or be subject to interference to uphold democratic principles of equality and accountability. If the amendment is to succeed, it must be implemented with sensitivity, ensuring that the reforms enhance transparency without undermining the essence of waqf as a sacred trust. The way forward lies in refining the Bill to address these concerns without diluting its core objective of transparency. Ultimately, the future of waqf in India will depend not just on legal provisions but on how effectively the principles of faith and fairness can coexist in a pluralistic democracy.