



## Waqf (Amendment) Bill, 2024: What Is and What Ought to Be

**Dr. Ramesh Kumar Bharti<sup>1</sup> & Anjalika<sup>2</sup>**

<sup>1</sup>&<sup>2</sup>Assistant Professor, Department of Law

C.M.P Degree College, University of Allahabad, Prayagraj, Uttar Pradesh, India

E-mail: [rkbharticmplaw@gmail.com](mailto:rkbharticmplaw@gmail.com)

### Abstract

*The Waqf (Amendment) Bill, 2024, introduces significant reforms aimed at improving the governance, transparency, and accountability of waqf properties in India. This legislation addresses critical issues such as mandatory property registration, stricter oversight, digitization, and enhanced inclusivity through the representation of non-Muslims and women on waqf boards. However, the amendments have sparked debates over religious autonomy, bureaucratic centralization, and the potential marginalization of the Muslim community's traditional control over waqf assets. This research critically examines the bill's key features, including its impact on property management, dispute resolution, and governance reforms, while highlighting areas for improvement to balance modern administrative needs with religious sensitivities. The study proposes recommendations for more inclusive, efficient, and equitable waqf administration, ensuring that the intended goals of transparency and social justice are achieved without compromising constitutional rights or community autonomy.*

**Keywords:** *Waqf, Waqf Amendment Bill, 2024, Legislative Reforms, Property Rights, Social Justice*

### Introduction

The Waqf (Amendment) Bill, 2024, presents a pivotal juncture in the management of religious and charitable properties in India. Rooted in the Islamic concept of waqf, which involves dedicating property for pious or charitable causes, this amendment seeks to reform the governance of waqf properties amidst growing concerns about transparency, efficiency, and accountability. Historically governed by the Waqf Act of 1995, the Waqf administration has faced criticism for inefficiencies, disputes, and lack of oversight, prompting calls for legislative updates.

The proposed amendments introduce sweeping changes, including enhanced registration processes, stricter oversight by district collectors, and mandatory digitization of property records. However, they also redefine governance structures by incorporating non-Muslim representation and revising the legal framework for property disputes. These measures aim to

address mismanagement and promote inclusivity but have sparked debates on religious autonomy, bureaucratic overreach, and the potential marginalization of community-driven management.

Balancing accountability with respect for religious principles, the amendment underscores the necessity of aligning waqf administration with modern governance standards while safeguarding minority rights. By critically examining the existing framework and proposed reforms, this research delves into the implications of the Waqf (Amendment) Bill, 2024, exploring what is and what ought to be in the evolving landscape of waqf governance.

### **Research Objectives**

This research aims to -

- Examine the key provisions of the 2024 Amendment.
- Highlight existing gaps and suggest practical recommendations.
- To compare the new amendments with previous legislation to identify improvements.
- Evaluate the impact of the proposed changes on stakeholders, including waqf boards and communities.
- Suggest strategies for more transparent and equitable implementation.

### **Research Questions**

- What are the main features and potential drawbacks of the Waqf (Amendment) Bill, 2024?
- How can these amendments be enhanced to ensure more effective implementation and promote social justice?

### **Literature Review**

Marium Shaikh's article, "*The Waqf Amendment Bill 2024 v. The Waqf Act 1995: A Comparative Analysis of Reforms and Challenges*," offers an insightful examination of proposed changes to the Waqf Act. It delves into key amendments addressing transparency, district collectors' roles, and the contentious 'Waqf alal Aulad' provision. The paper evaluates the bill's potential impact on governance and the Muslim community's rights under Article 26 of the Constitution. Shaikh's balanced critique underscores the need for reforms that uphold both administrative integrity and community interests.

Hayatullah Laluddin's article, "*Revisiting the Concept of Waqf: Its Maintenance, Issues and Challenges*," revisits the concept of waqf by examining its meanings, legitimacy in Islamic teachings, and its historical development. The paper explores the challenges surrounding the management of waqf properties, including the concept of *istibdal* (property exchange), and stresses the need for a modern reinterpretation of waqf aligned with *maqasid shari'ah*. Laluddin calls for a revised and comprehensive understanding of waqf to ensure its effectiveness in poverty alleviation and equitable wealth distribution.

The WAMSI data entry progress for the Uttar Pradesh Sunni and Shia Central Boards of Waqfs, as of November 24, 2024, showcases notable advancement in the documentation of Waqf assets. The Sunni Board oversees a much larger number of estates (124,735) and immovable properties (217,161) than the Shia Board, which manages 3,102 estates and 15,386 properties. Both boards have minimal records for movable assets and leasing details. The Sunni Board also reports a slightly higher volume of litigation cases, both external and internal, compared to the Shia Board. These entries are provisional and subject to verification.

The Waqf Act, 1995, serves as a key legal framework governing the administration and management of Waqf properties in India. It aims to ensure proper utilization of Waqf assets for the welfare of the Muslim community, establishing Waqf Boards for oversight. However, challenges in implementation and governance have raised concerns about its effectiveness in safeguarding these assets.

The Waqf Amendment Bill 2024 introduces significant changes to the management of Waqf properties in India, aiming to address inefficiencies and improve transparency. It proposes measures such as enhanced roles for district collectors, the introduction of auditors from the Comptroller and Auditor General (CAG), and provisions for appeals to higher courts. The Bill also seeks to redefine aspects like the concept of *Waqf alal Aulad* and broaden the scope of non-Hindu involvement in Waqf matters. While the amendments are seen as a step toward better governance, they have sparked debates concerning their impact on the Muslim community's rights and the integrity of Waqf management.

### **Research Methodology**

For our research, we have adopted a doctrinal research methodology, which involves a thorough analysis of legal principles, statutes, and case law. We primarily relied on secondary data published by various reputable authorities. Additionally, we have followed the 7<sup>th</sup> edition of the APA citation style to ensure our references are properly formatted and consistent.

### **The Concept of Waqf**

Under Islamic law, a Waqf is created when an individual donates property for religious or charitable causes. According to Muslim tradition, this involves permanently dedicating movable or immovable assets to purposes considered religious, pious, or charitable.

According to **Abu Hanifa**,<sup>i</sup> a waqf involves setting aside a specific property owned by the person creating it (the waqif) and dedicating its benefits or income to charitable causes, aiding the poor, or other worthy purposes, including supporting loans.<sup>ii</sup>

Further **Abu Yusuf**<sup>iii</sup> describes under key aspects of waqf:

- The Property is considered under the ownership of God.
- The Founder relinquishes all personal rights over it.
- Its benefits are intended for the welfare of humanity.<sup>iv</sup>

Section 2 of the Mussalman Wakf Validating Act, 1913, describes a waqf as a lasting commitment of property by an individual of the Muslim faith for purposes acknowledged under Muslim law as religious, charitable, or spiritually meaningful.<sup>v</sup>

A "waqf" refers to the permanent dedication of movable or immovable property by an individual for purposes deemed religious, charitable, or pious under Islamic law.<sup>vi</sup> This includes:

1. Property designated for religious or charitable use, even if its original use has changed over time.
2. Lands or assets listed under various names in revenue records, such as Shamlat Patti or Shamlat Deh.
3. Grants, including those specifically allocated for religious or charitable services in line with Islamic principles.

4. Family waqfs (waqf-alal-aulad), where property is dedicated to family welfare but, if no heirs remain, the income must support causes like education, development, and social welfare as recognized by Islamic law.<sup>vii</sup>

The term "waqif" refers to the person who makes such a dedication.<sup>viii</sup>

In the case of *M. Kazim vs. A. Asghar Ali*<sup>ix</sup> it was noted that, in a legal context, a waqf refers to dedicating specific property for a religious or pious purpose.<sup>x</sup>

### **Waqf Property**

Waqf property refers to assets that Muslims dedicate for religious, charitable, or personal purposes. The ownership of such property is considered to belong to God. A Waqf can be established through a deed, oral declaration, or by long-term use for religious or charitable activities. Once a property is declared a Waqf, its status is permanent; it becomes non-transferable and is held indefinitely for the intended purpose.

### **Overview of The Waqf Act, 1995**

The Waqf Act of 1995, enacted on November 22, 1995, was designed to ensure the proper management and transparent administration of Waqf properties.<sup>xi</sup> It established Waqf Boards responsible for overseeing these properties and ensuring they are used effectively for the benefit of the community. Additionally, the Act created the Central Waqf Council, which supervises Waqf assets and advises the government on matters related to their management.<sup>xii</sup>

In 2013, amendments were introduced to strengthen the authority of the Waqf Boards, which sparked some concerns and debates. The Act clearly defines the roles and responsibilities of various entities, including the Central Waqf Council, State Waqf Boards, and the Chief Executive Officer. It also outlines the duties of a Mutawalli, who manages individual Waqf properties.<sup>xiii</sup>

The Act established Waqf Tribunals to handle disputes related to Waqf properties. These tribunals operate similarly to civil courts and follow the provisions of the Code of Civil Procedure, 1908.<sup>xiv</sup> Their decisions are final and binding, and cases handled by these tribunals cannot be taken to regular civil courts or appealed in higher courts.<sup>xv</sup>

Recent proposed amendments reflect a growing call for better governance of Waqf properties. However, these changes have sparked debates about religious freedom and state involvement in religious affairs, raising concerns about potential overreach by the government.

### **The Waqf (Amendment) Bill, 2024: What Is**

The Government recently introduced the Waqf (Amendment) Bill, 2024, to address ongoing concerns about mismanagement within Waqf institutions. This proposed legislation, featuring 44 amendments, has stirred significant debate and controversy. Critics, including various Muslim organizations and opposition parties, argue that the bill undermines constitutional principles, claiming it unfairly targets minority communities. In contrast, the government asserts that the amendments are designed to enhance transparency and efficiency in Waqf Boards.<sup>xvi</sup>

One major change is the proposed renaming of the Waqf Act of 1995 to the "United Waqf Management, Empowerment, Efficiency, Development Act (UMEED)."<sup>xvii</sup> The government suggests this rebranding reflects a renewed focus on improving the management of Waqf properties across India. A key feature of the bill is its emphasis on inclusivity, introducing provisions to include two non-Muslim members and two Muslim women on the Waqf Board, which is expected to foster more balanced decision-making.<sup>xviii</sup>

The bill also grants expanded powers to Collectors, increasing their oversight of Waqf properties and enhancing government control. It proposes stricter verification protocols for

donations to Waqf Boards to prevent fraudulent contributions and ensure legal compliance. These measures are aimed at safeguarding Waqf assets and streamlining their administration.

Another notable aspect is the mandatory registration of all Waqf properties on a dedicated portal within six months of the bill’s enactment.<sup>xxix</sup> This requirement applies to both newly registered and existing properties, with the goal of creating a comprehensive, transparent database. Furthermore, the bill seeks to reform the Waqf Tribunals, which handle disputes related to these properties.<sup>xxx</sup> It proposes simplifying the appeals process by allowing decisions to be challenged in High Courts, providing an additional layer of judicial review.<sup>xxxi</sup>

The legislation also introduces changes to how Waqf dedications are made, specifying that oral declarations will no longer be valid.<sup>xxxi</sup> Additionally, it plans to establish separate Waqf Boards for the Bohra and Aghakhani communities,<sup>xxxiii</sup> giving them recognition similar to that of existing Sunni and Shia boards.

Importantly, the bill addresses inheritance rights, ensuring that heirs—including women—retain their rights to Waqf properties.<sup>xxxiv</sup> This provision aims to correct past issues where heirs’ rights were overlooked, and properties were repurposed for charitable uses after their deaths.

While the government emphasizes these reforms as steps towards better governance and inclusivity, the debate continues, with both supporters and critics weighing the potential impact on religious freedom and minority rights.<sup>xxxv</sup>

### **Key Changes introduced by the Waqf Amendment Bill 2024**

The Waqf Amendment Bill 2024 introduces several significant changes to the original Waqf Act of 1995. Here are the key updates:

<b>Key Changes</b>	<b>Waqf Act, 1995</b>	<b>Waqf Amendment Bill, 2024</b>
Name Change	The original Act was called <b>the Waqf Act, 1995</b> .	The new bill proposes renaming it to <b>the Unified Waqf Management, Empowerment, Efficiency, and Development Act, 1995</b> .
Registration of Waqf Properties	No provision for mandatory registration.	Mandatory registration of Waqf properties with the District Collector’s Office for evaluation.
Creation of Waqf	No explicit provision.	A new provision requiring the person to be the lawful owner of the property and competent to transfer or dedicate it.
Recognition of Government Properties as Waqf	No explicit provision.	Government properties will not be considered Waqf properties, whether identified before or after the Act’s commencement.
Dispute Resolution (Government Land)	Waqf Tribunal handles disputes.	The District Collector decides whether a property is Waqf or

		government land, with their decision being final.
Oral Recognition of Waqf	Oral recognition was admissible for consideration of a property as Waqf.	Removes the provision for oral recognition. Properties without a valid waqfnama will be considered suspect or disputed.
Waqf by Use	Provided for Waqf by use (a property could be deemed Waqf through use).	Omits provisions for “Waqf by use”; such properties are considered suspect unless a valid waqfnama exists.
Appeal Mechanism	Waqf Tribunal’s decision was final.	Disputes can now be appealed to high courts.
Audit of Waqfs	No provision for auditing.	The central government can order audits by auditors appointed by the Comptroller and Auditor-General of India or designated officers.
Composition of Waqf Boards	No women and no non-Muslim members allowed.	Provides for the appointment of a non-Muslim CEO and at least two non-Muslim members on state Waqf Boards.

### Comparison of Reforms in the 2024 Waqf Amendment Bill and the Waqf Act 1995

The 2024 Waqf Amendment Bill introduces significant changes to the Waqf Act of 1995, aiming to address issues of mismanagement, corruption, and inefficiency in Waqf property administration. This comparison highlights the key reforms and differences between the two, shedding light on their potential impact and the debates they have sparked.

#### Enhancing Transparency

The 2024 Waqf Amendment Bill introduces significant steps to improve the transparency and management of waqf properties.<sup>xxvi</sup> A key reform is the establishment of an online portal for registering waqf properties. This platform will ensure that property records are regularly updated and easily accessible to the public, addressing a major shortcoming in the 1995 Act, which lacked a centralized and continuously updated database.<sup>xxvii</sup>

However, a controversial aspect of this reform is the requirement for all waqf properties registered under the 1995 Act to upload their details onto the portal within six months of the amendment coming into effect.<sup>xxviii</sup> Critics argue that this timeframe is too short, potentially leading to the deregistration of properties that fail to comply.

Another improvement involves mandating state governments to publish waqf property lists online within 15 days of their official notification.<sup>xxix</sup> Unlike the earlier Act, this will provide the public with timely access to information. Additionally, revenue authorities must now issue a 90-day public notice before altering land records related to waqf properties, with announcements published in two newspapers, including one in the local language.<sup>xxx</sup> This provision, absent in the 1995 Act, allows affected parties to voice objections.



## **Strengthening Legal and Administrative Processes**

A major shift in the 2024 Amendment is the prohibition of oral waqf dedications, which were previously permitted. Now, creating a waqf requires a formal document, ensuring greater legal clarity.<sup>xxxix</sup> The provision allowing applicants to submit alternative information when a formal deed was missing has also been removed, tightening registration rules.<sup>xxxii</sup>

The role of the survey commissioner has been replaced by the district collector, who will conduct property surveys under state revenue laws.<sup>xxxiii</sup> The collector will possess the powers of a civil court and enjoy legal immunity, similar to the survey commissioner in the 1995 Act.<sup>xxxiv</sup> Additionally, the collector, rather than the Waqf Board, will now assess the validity of waqf applications, which some argue diminishes the board's authority.

Another significant change is the proposed removal of Section 40<sup>xxxv</sup>, which currently allows the Waqf Board to determine if a property qualifies as waqf.<sup>xxxvi</sup> Under the new amendment, the collector will make this determination, and properties in dispute will not be considered waqf until the collector submits a report.

## **Revising Governance and Representation**

The 2024 Amendment proposes substantial changes to the governance structure. It removes the requirement that the Chief Executive Officer (CEO) of the Waqf Board must be Muslim. The new rule allows non-Muslims to hold this position, sparking concerns about their understanding of Islamic principles necessary for managing religious properties.<sup>xxxvii</sup>

The requirement for a tribunal member with expertise in Muslim law has also been eliminated. Tribunals will now consist of a chairman with a background as a district judge and a member of joint secretary rank.<sup>xxxviii</sup>

Critics question whether this composition can adequately address waqf-related issues, which often require specialised knowledge of Islamic law.

For the first time, the amendment introduces representation for two Muslim women and two non-Muslim members on the council, promoting inclusivity.<sup>xxxix</sup> Additionally, State Governments now have the authority to establish separate boards for Aghakhani and Bohra communities, expanding beyond the Sunni and Shia boards mandated by the 1995 Act.<sup>xl</sup>

## **Addressing Social Welfare**

The new amendment expands the scope of social welfare. While the 1995 Act allowed waqf income to support education and development in cases of succession failure,<sup>xli</sup> the amendment includes provisions for the maintenance of widows, divorced women, and orphans, broadening the social impact of waqf funds.<sup>xlii</sup>

## **Revising Property and Legal Definitions**

The amendment refines the definition of waqf by stipulating that only individuals who have practiced Islam for at least five years can dedicate property, excluding non-Muslims from creating waqf. However, non-Muslims can still manage waqf properties.<sup>xliii</sup>

A critical change is the removal of a provision that ensured property remained waqf even if not used for its original purpose. The amendment also specifies that any property initially identified as government land cannot be declared waqf, giving the district collector full authority to determine property status.

Additionally, the provision<sup>xliv</sup> allowing the Waqf Board chairperson's removal through a no-confidence vote has been eliminated, solidifying their position.<sup>xlv</sup>

## **Improving Oversight and Management**

To enhance oversight, the amendment allows appeals to the High Court against tribunal decisions within 90 days, introducing a check on their authority. This addresses concerns about the finality of tribunal decisions under the 1995 Act.<sup>xlvi</sup>

The amendment also seeks to protect inheritance rights, particularly for women, ensuring they receive their due share when waqf properties are formed. It mandates audits by the Comptroller and Auditor General (CAG) to address corruption and mismanagement issues faced by state-level Waqf Boards.<sup>xlvii</sup>

## **Modifying Penalties and Financial Contributions**

The new bill reduces the severity of penalties by removing the term "rigorous" from imprisonment sentences for unauthorized waqf property transactions. Additionally, it lowers the mandatory contribution from waqf income to the Waqf Board from 7% to 5%, potentially easing the financial burden on smaller waqfs. The Waqf (Amendment) Bill 2024, cl 1

## **Comparative Analysis: Waqf Act 1995 vs. Waqf Amendment Bill 2024**

The Waqf Amendment Bill 2024 introduces several significant changes to address longstanding issues of mismanagement, corruption, and inefficiency in the administration of Waqf properties. However, whether the proposed amendments effectively achieve their goals remains a topic of intense debate among policymakers, legal experts, and the Muslim community.

## **Digitization and Transparency**

One of the key provisions of the bill mandates the digitization of all Waqf property records within six months.<sup>xlvi</sup> While enhancing transparency through technology is widely appreciated, the strict timeframe is considered unrealistic, especially for rural Waqf boards lacking adequate infrastructure and skilled personnel. Critics argue that many properties could lose their legal status if not digitized within the deadline, potentially opening the door for government takeovers. AIMIM President Asaduddin Owaisi has notably voiced concerns, suggesting that the bill might be an attempt to seize Waqf assets.<sup>xlix</sup>

## **Enhanced Role of District Collectors**

The bill replaces the role of the survey commissioner with the district collector, who will now oversee property surveys under state revenue laws. Additionally, collectors are empowered to determine whether a property is classified as Waqf or government-owned and to amend revenue records accordingly. This centralisation of authority has raised alarms about potential bias, as collectors are government officials who might favour state interests. Moreover, adding Waqf's responsibilities to already overburdened collectors could lead to inefficiencies, undermining the bill's aim to improve property management.<sup>1</sup>

## **Board Composition and Inclusivity**

A contentious aspect of the bill is the proposal to include two non-Muslim members on the Waqf board<sup>li</sup> and remove the requirement for the Chief Executive Officer to be Muslim.<sup>lii</sup> While intended to promote inclusivity, this has sparked controversy. Many in the Muslim community argue that Waqf properties, being religious in nature, should be managed exclusively by Muslims. The removal of the mandate for an expert in Muslim law on the tribunal has further fueled concerns about the exclusion of the community from key decision-making roles. Opponents also question the consistency of this approach, asking whether similar inclusivity measures would apply to other religious bodies like temple boards.



### **Tribunal Decisions and Judicial Review**

Another notable change is the removal of the tribunal's final authority, allowing appeals to be filed with the high court within 90 days of a tribunal's decision. This provision introduces an essential layer of judicial review, addressing previous concerns about unchecked power and potential land encroachment issues.

However, some argue that since Waqf matters are inherently religious, the tribunal's authority should remain final to preserve the community's autonomy.<sup>liii</sup>

### **Changes to Penalties and Legal Consequences**

The bill proposes replacing "rigorous imprisonment" with "imprisonment" and removes the terms "cognizable" and "non-bailable" from the Act. While this might appear to soften penalties, imprisonment of up to two years remains possible. Critics fear these changes could weaken accountability mechanisms designed to protect Waqf properties, although key consequences for illegal alienation of Waqf assets remain intact.<sup>liv</sup>

### **Amendments to Waqf alal Aulad**

The bill ensures that heirs, including women, retain their rights in Waqf alal aulad properties, a positive step towards gender equity. However, it raises broader questions about uniformity across legal systems, especially when compared to other laws like the Hindu Succession Act, which allow individuals greater freedom in designating heirs.<sup>lv</sup>

The Waqf Amendment Bill 2024 introduces reforms aimed at improving transparency and management of Waqf properties. However, concerns about unrealistic timelines, centralization of power, and the potential erosion of community control remain significant. The debate underscores the need for balanced legislation that respects religious sensitivities while promoting accountability and inclusivity.

### **Critical Analysis: Gaps and Shortcomings**

The Waqf (Amendment) Bill, 2024 has generated significant debate and criticism since its introduction in the Lok Sabha. One major concern is that it may infringe upon the religious freedoms of the Muslim community, particularly in relation to Articles 14, 25, 26, and 29 of the Constitution, which protect religious rights. Critics argue that mandating non-Muslim members on Waqf boards interferes with the community's autonomy over its religious properties.

Another point of criticism is the bill's centralization of power, granting state authorities, including district collectors, more control over Waqf properties and disputes. This has raised concerns about potential bureaucratic delays and complications. Additionally, the bill has been criticized for not adequately involving the Muslim community in its formulation, leading to concerns about its acceptance.

The removal of provisions recognizing "Waqf by user" is also seen as problematic, as it could affect properties that have been used for Waqf purposes over time without formal records. Moreover, shifting the authority over property disputes to district collectors instead of a dedicated Waqf Tribunal could lead to more legal challenges.

Lastly, the inclusion of non-Muslim representatives on the boards is viewed by some as a threat to the integrity of these boards, due to possible misunderstandings of Islamic law.

**Waqf Assets Management System of India (WAMSI) Data Entry Progress Details  
(As of November 24, 2024)<sup>vi</sup>**

Waqf Estates	UP Sunni Central Board of Waqfs	UP Shia Central Board Waqfs
Waqf Estates	Q	3,102
Immovable Properties	217,161	15,386
Movable Properties	3	0
Annual Return Record	2,038	83
Leasing Details Records	0	0
Litigation (External) Records	1,043	21
Litigation (Internal) Records	119	27

The above table represents the WAMSI data entry for the U.P. Sunni and Shia Central Boards of Waqfs reflects significant progress in documenting Waqf assets and records. The Sunni Board manages a substantially larger number of Waqf estates (124,735) and immovable properties (217,161) compared to the Shia Board's 3,102 estates and 15,386 properties. Both boards show minimal entries for movable assets and leasing details, with the Sunni Board recording slightly higher litigation data. These figures are subject to verification by the respective Waqf Boards.

The WAMSI data for the U.P. Sunni and Shia Central Boards of Waqfs reveals notable discrepancies and raises several concerns about transparency and management practices. While the Sunni Board oversees a significantly larger number of estates and immovable properties, the absence of substantial entries for movable assets and leasing details is striking. This raises questions about the completeness and accuracy of the data, especially given the vast land holdings involved.

Furthermore, the low number of annual return records and the lack of leasing information suggest potential gaps in financial reporting and oversight. The litigation figures, particularly the higher external litigation cases for the Sunni Board, point to ongoing disputes, possibly reflecting administrative inefficiencies or poor governance. Overall, the data highlights the need for a more robust verification process and improved accountability measures to ensure that Waqf assets are properly managed and transparently documented.

### **What Ought to Be: Recommendations**

In order to address the challenges faced in the administration and management of Waqf properties, it is essential to propose thoughtful and effective recommendations. These suggestions aim to enhance transparency, streamline governance, and ensure that Waqf assets are utilized for the benefit of society, particularly in line with the principles of fairness and justice. By implementing these changes, the potential of Waqf to serve as a tool for social welfare can be fully realized.

**Property Issues:** In Uttar Pradesh alone, there are over 2,35,000 Waqf properties, yet more than half of them lack clear ownership records or proper documentation. Many of these properties

also have no traceable records of donors or waqifs, raising significant legal and ethical concerns about transparency and accountability in their management.

**Regulation Challenges:** Many schools operating on Waqf land often lack proper government permissions, violating established norms and regulations. The principle of "once a Waqf, always a Waqf" also calls for re-evaluation, particularly in cases where properties were acquired without rightful ownership. Additionally, the non-transferability of Waqf properties stands in contradiction to general property laws, creating legal inconsistencies that need to be addressed.

**Survey and Cost Burden:** Surveys of Waqf properties are mandated every 10 years, funded by taxpayers. This cost should be borne by Waqf boards given their vast wealth (e.g., ~9.4 lakh acres of land worth ₹1.2 lakh crore).

**Legal Anomalies:** Waqf disputes are governed by Sharia law under Section 83, effectively excluding non-Muslims from accessing their civil rights in such cases. Additionally, Section 85 bars civil courts from jurisdiction, leaving aggrieved parties with limited avenues for legal recourse. The absence of a statute of limitations for Waqf properties further complicates matters, as it allows claims to be made indefinitely, creating significant legal uncertainty.

**Need for Transparency and Accountability:** A review mechanism is essential to prevent the arbitrary conversion of public or heritage lands into Waqf properties. Additionally, unused Waqf lands should be repurposed for public welfare initiatives, such as schools, colleges, or hospitals. Finally, the restriction on acquiring Waqf properties for public purposes should be lifted to ensure better utilization of these assets for broader community benefits.

**Retrospective Effect:** Properties registered without proper documentation, such as in the Rajasthan masjid cases, should be thoroughly scrutinized, with a clear cut-off date established for validation. The inclusion of judicial review provisions in the amendment is a welcome and positive step forward.

**Mutawalli (Caretaker) Reforms:** The proposed amendment allowing non-Muslims to be appointed as Mutawallis promotes broader participation and inclusivity. Additionally, the state should have the authority to remove underperforming Mutawallis beyond the limited conditions specified in Section 66.

**Uniformity Across Religions:** As the nation progresses toward a Uniform Civil Code, similar regulations for Hindu, Sikh, and Christian religious properties should also be considered to ensure fairness.

**Safeguarding Minority Rights:** While the Constitution protects minority rights, management of religious properties must align with scientific temper and legal principles.

**Section-Specific Suggestions:** Section 108 (formerly 66H), concerning properties of emigrants, such as those who moved to Pakistan, should include a clear cut-off date to avoid ambiguity. Additionally, Section 23 must guarantee judicial recourse for decisions related to appointing high-ranking officers like CEOs.

The Waqf Amendment Bill must balance the protection of religious rights with the principles of equality, transparency, and accountability. Careful implementation and monitoring are key to ensuring it serves both minority interests and the public good.

In the case of *Sardar Syedna Taher Saifuddin Saheb vs. the State of Bombay*,<sup>lvii</sup> the Supreme Court clarified that while religious matters are generally outside the purview of government interference, this freedom is not without limits. The state has the authority to regulate religious practices if they pose a threat to public order, morality, or health. Essentially, religious freedoms are safeguarded, but can be restricted if they endanger societal harmony or violate ethical norms.<sup>lviii</sup> In *Bramchari Sidheswar Bhai & Ors. vs. State of West Bengal*,<sup>lix</sup> the Court

emphasized that the state should avoid interfering in religious affairs, especially those of specific religious groups, unless such practices disrupt public order, morality, or health. The Court recognized the Ramakrishna Mission as a distinct religious entity within Hinduism, affirming its right to independently manage its religious and educational institutions.<sup>lx</sup>

## Conclusion

The Waqf (Amendment) Bill, 2024, represents a significant effort to modernize the administration of waqf properties and address long-standing challenges related to transparency, accountability, and governance. While the proposed changes aim to streamline processes and reduce mismanagement, they have also sparked critical debates over issues of religious autonomy, inclusivity, and state intervention. The inclusion of diverse representatives and stricter regulatory mechanisms signals a shift toward greater oversight, but concerns remain about the erosion of community control and the potential over-centralization of authority. The bill's emphasis on digitization, accountability, and equitable management offers opportunities for reform, yet its implementation must be cautious and balanced to avoid unintended consequences. As India progresses toward a more inclusive and transparent governance framework for religious properties, it is crucial to respect cultural and constitutional principles while ensuring the efficient use of waqf resources for public welfare. The Waqf (Amendment) Bill stands as a critical milestone in this journey, but its success will ultimately depend on careful execution, stakeholder engagement, and a commitment to justice and fairness for all communities.

## References

<sup>i</sup> Abu Hanifah (699–767), born in Kūfah, Iraq, and later based in Baghdad, was a renowned Muslim jurist and theologian. His efforts in organizing and structuring Islamic legal principles led to the establishment of one of the four main schools of Islamic law (madhhabs).

<sup>ii</sup> Asthana, S. (2024, October 27). *Waqf under Muslim Law*. iPleaders. <https://blog.iplayers.in/concept-waqf-muslim-law/>

<sup>iii</sup> A prominent jurist and student of Abu Hanifa, he lived from 729 to 798 and served as a chief judge under Caliph Harun al-Rashid. He is best known for his influential work *Kitab al-Kharaj*, a detailed study on taxation and financial matters. Additionally, he authored one of the earliest known compilations on the principles of Islamic jurisprudence.

<sup>iv</sup> Asthana, S. (2024, October 27). *Waqf under Muslim Law*. iPleaders. <https://blog.iplayers.in/concept-waqf-muslim-law/>

<sup>v</sup> The Mussalman Wakf Validating Act, 1913, S. 2.

<sup>vi</sup> The Waqf Act 1995, S. 3(r).

<sup>vii</sup> *Ibid*.

<sup>viii</sup> *Ibid*.

<sup>ix</sup> AIR 1932 Patna 238.

<sup>x</sup> M. Kazim vs. A Asghar Ali, AIR 1932 Patana 238.

<sup>xi</sup> The Waqf Act, 1995.

<sup>xii</sup> *Introduction | Central Waqf Council*. (n.d.). <https://centralwaqfcouncil.gov.in/content/introduction>.

<sup>xiii</sup> Rai, D. (2021, September 1). *Understanding the essential provisions of the Waqf Act, 1995 - iPleaders*. iPleaders. <https://blog.iplayers.in/understanding-the-essential-provisions-of-the-waqf-act-1995/>

<sup>xiv</sup> The Waqf Act, 1995, S. 83(5).

<sup>xv</sup> *Ibid* S. 83(7).

<sup>xvi</sup> Bharat, E. (2024, August 8). Opposition strongly opposes Waqf Bill; calls it “Draconian”, attack on constitution. *ETV Bharat News*. <https://www.etvbharat.com/en!/bharat/cong-oppose-introduction-of-waqf-bill-enn240808021> 11

<sup>xvii</sup> The Waqf (Amendment) Bill 2024, cl. 2.

<sup>xviii</sup> *Ibid*. cl 9(g).

<sup>xix</sup> *Ibid*, cl, 4.

- <sup>xx</sup> Desk, I., & Jadeja, B. (2024, September 6). *The Waqf (Amendment) Bill, 2024 - IMPRI Impact and Policy Research Institute*. IMPRI Impact and Policy Research Institute. <https://www.impriindia.com/insights/waqf-amendment-bill-2024/>
- <sup>xxi</sup> The Waqf (Amendment) Bill 2024, cl. 35(f).
- <sup>xxii</sup> *Ibid*, cl. 18 (a).
- <sup>xxiii</sup> *Ibid*, cl. 10.
- <sup>xxiv</sup> *Ibid*, cl. 4.
- <sup>xxv</sup> Shaikh, M. (n.d.). The Waqf Amendment Bill 2024 v. The Waqf Act 1995: A Comparative Analysis of Reforms and Challenges. In *Journal of Legal Research and Juridical Sciences* (Vol. 4, Issue 1, pp. 172–174) [Journal-article].
- <sup>xxvi</sup> The Waqf Amendment Bill, 2024.
- <sup>xxvii</sup> *Ibid*, cl 3(vi).
- <sup>xxviii</sup> *Ibid*, cl 4.
- <sup>xxix</sup> *Ibid*, cl 6(c).
- <sup>xxx</sup> *Ibid*, cl 3(d).
- <sup>xxxi</sup> *Ibid*, cl 18(a).
- <sup>xxxii</sup> *Ibid*, cl 18 (c).
- <sup>xxxiii</sup> *Ibid*, cl 5(b).
- <sup>xxxiv</sup> *Ibid*, cl 38.
- <sup>xxxv</sup> The Waqf Act, 1995.
- <sup>xxxvi</sup> The Waqf (Amendment) Bill 2024, cl 20.
- <sup>xxxvii</sup> The Waqf Act, 1995, S. 23(1).
- <sup>xxxviii</sup> The Waqf (Amendment) Bill 2024, cl 15.
- <sup>xxxix</sup> *Ibid*, cl 9 (g).
- <sup>xl</sup> *Ibid*, cl 10.
- <sup>xli</sup> *Ibid*, cl 3 (r)(iv).
- <sup>xlii</sup> *Ibid*, cl 3(r)(ix).
- <sup>xliii</sup> *Ibid*, cl 3(ix).
- <sup>xliv</sup> The Waqf Act, 1995, S. 20A. provides that the vote of no confidence can remove the chairperson. But the new bill removed this provision.
- <sup>xlv</sup> The Waqf (Amendment) Bill 2024, cl 14.
- <sup>xlvi</sup> The Waqf Act, 1995, S. 87(7).
- <sup>xlvii</sup> The Waqf (Amendment) Bill 2024, cl 22.
- <sup>xlviii</sup> The Waqf (Amendment) Bill 2024, cl 4.
- <sup>xliv</sup> Tnn. (2024, August 25). The new bill aims to grab Waqf assets: Owaisi. *The Times of India*. <https://timesofindia.indiatimes.com/city/hyderabad/new-waqf-amendment-bill-2024-owaisi-accuses-modi-govt-of-targeting-muslim-properties/articleshow/112789431.cms>
- <sup>l</sup> The Waqf (Amendment) Bill 2024, cl 4.
- <sup>li</sup> *Ibid*, cl 9(g).
- <sup>lii</sup> *Ibid*, cl 15.
- <sup>liii</sup> The Waqf (Amendment) Bill 2024, cl 35.
- <sup>liv</sup> *Ibid*, cl 26(a).
- <sup>lv</sup> *Ibid*, cl 4.
- <sup>lvi</sup> India, N. a. N. N. D. (n.d.). *WaQF Management System of India (WAMSI) Project - Public Interface*. <https://wamsi.nic.in/wamsi/LoginAction.do?statecode=09>
- <sup>lvii</sup> 1962
- <sup>lviii</sup> *Sardar Syedna Taher Saifuddin Saheb vs. the State of Bombay*, 1962
- <sup>lix</sup> 1995
- <sup>lx</sup> *Bramchari Sidheswar Bhai & Ors. vs. State of West Bengal*, 1995