

**Indian State
and
Subjugation of Religious Minorities**

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What is Waqf? The concept of 'Waqf' is rooted in Islamic laws and traditions. It refers to an endowment made by a Muslim for charitable or religious purposes, such as building mosques, schools, hospitals, or other public institutions.

India, home to more than 200 million Muslims, has the most significant number of waqf assets in the world – over 872,000 properties spanning nearly 405,000 hectares (approximately 1 million acres) with an estimated value of around \$14 billion. 22bn. March 25, 2025

Highlights of the Bill

- The Bill changes the composition of the Central Waqf Council and Waqf Boards to include non-Muslim members.
- The Survey Commissioner has been replaced by the Collector, who is granted the power to conduct surveys of waqf properties.
- Government property identified as waqf will cease to be waqf. The Collector will determine ownership of such properties.
- The finality of the Tribunal's decisions has been revoked. The Bill provides for a direct appeal to the High Court.

Key Issues and Analysis

- Waqf is managed by Muslim law. The Bill allows and mandates non-Muslim members in State Waqf Boards and Central Waqf Council. It creates room for these bodies to comprise non-Muslim members. Similar institutions governing Hindu and Sikh endowments primarily comprise members from their respective religions.
- Removing the expert in Muslim law from Waqf Tribunals may affect the redressal of waqf-related disputes.

- The Bill limits the creation of waqf to only people professing Islam for at least five years. The rationale behind such criteria is unclear. This creates a distinction between individuals who have practiced Islam for less than five years and those who have practiced it for more than five years.

PART A: HIGHLIGHTS OF THE BILL

Context

Waqf is a permanent dedication of property by a person for a purpose that is recognized as pious, religious, or charitable by Muslim law.^[1] Such purposes include (i) maintaining mosques and graveyards, (ii) establishing educational institutions and healthcare facilities, and (iii) providing financial aid to the poor and disabled.^[2]

Charitable and religious institutions fall under the Concurrent List of the Constitution.^[3] Hence, both Parliament and State Legislatures have the power to frame laws on it. Currently, the creation and management of waqf in India are governed by the Waqf Act, 1995.¹ This Act was preceded by legislation passed in 1913, 1923, and 1954.^[4] States such as Uttar Pradesh and Bengal had passed separate laws governing waqf.^[5] However, these were repealed by the 1995 Act.

In India, waqf can be created through (i) declaration of property through oral or written deed, (ii) long-term use of land for religious or charitable purposes, or (iii) endowment upon the end of the line of succession. The creator of a waqf is referred to as a *wakif*. It is managed by an administrator (*mutawalli*). As of September 2024, India has 8.7 lakh registered immovable waqf properties.^[6]^[7] As per the Standing Committee on Social Justice and Empowerment (2014), most states had not completed the survey of waqf properties.^[8] According to the Ministry of Minority Affairs, India holds the largest waqf in the world.⁷ The Sachar Committee (2006) estimated the market value of waqf properties at Rs 1.2 lakh crore.²

Out of all the registered immovable waqf properties, 7% are encroached upon, 2% are under litigation, and the status of 50% is unknown. Over half of these properties are: (i) graveyards (17%), (ii) agricultural land (16%), (iii) mosques (14%), and (iv) shops (13%). States with the highest share include (i) Uttar Pradesh (27%), (ii) West Bengal (9%), and (iii) Punjab (9%) (see Table 5 in the Annexure for state-wise distribution).⁶

Over the years, laws governing waqf in India have widened in scope. The 1913 Act only validated waqf deeds. This was expanded in 1923 to require mandatory registration of Waqf property. In 1954, the Central Waqf Council and State Waqf Boards were instituted for better identification and management of waqf. The 1995 Act introduced (i)

Tribunals to adjudicate waqf-related disputes and (ii) elected members and nominated scholars in Islamic theology into the Board.

Several committees have examined the state of waqf in India. They highlighted issues such as (i) unrealized revenue potential, (ii) encroachment, (iii) poor maintenance, (iv) pendency of cases in waqf Tribunals, and (v) lack of transparency and efficiency in conducting surveys. In 2013, the Act was amended to (i) include a definition of encroacher, (ii) expand the size of the Tribunal, and (iii) establish greater oversight of Waqf Boards on the management of waqf.

The Waqf (Amendment) Bill 2024 was introduced in the Lok Sabha on August 8, 2024. It amends the Waqf Act, 1995, to revise (i) the composition of the Council and Boards, (ii) the criteria for forming waqf, and (iii) the powers of the Board in identifying waqf property. The Bill has been referred to a Joint Parliamentary Committee (Chair: Mr. Jagdambika Pal).

Key Features

Key changes in the Bill include:

- **Formation of waqf:** The Act allows waqf to be formed by (i) declaration, (ii) recognition based on long-term use (waqf by user), or (iii) endowment when the line of succession ends (waqf-alal-aulad). The Bill states that only a person who has practiced Islam for at least five years may declare a waqf. It clarifies that the person must own the property being claimed. It removes waqf by the user. It also specifies that waqf-alal-aulad must not disinherit heirs, including female heirs.
- **Survey of waqf:** Under the Act, a Survey Commissioner is appointed to conduct a preliminary study of waqf properties. The Bill replaces the Survey Commissioner with the District Collector.
- **Government property as waqf:** The Bill states that any government property identified as waqf will cease to be so. The Collector of the area will determine ownership in case of uncertainty and submit a report to the state government. If deemed a government property, he will update the revenue records.
- **Composition of the Central Waqf Council:** Under the Act, the Union Minister in charge of waqf is the ex officio chairperson of the Council. Members of the Council include Members of Parliament, persons of national eminence, retired Supreme Court or High Court judges, and eminent scholars in Muslim law. The Act requires that all Council members, barring the Minister, must be Muslims, and at least two must be women. The Bill removes the requirement for the MPs, former judges, and eminent persons appointed to the Council to be Muslim. It further mandates that two members must be non-Muslims.

- **Composition of Waqf Boards:** The Act provides for the election of up to two members each from electoral colleges of a state's Muslim: (i) MPs, (ii) MLAs and MLCs, and (iii) Bar Council members, to the Board. The Bill amends this to empower the state government to nominate one person from each of the above groups to the Board. They need not be Muslims. It adds that the Board must have (i) two non-Muslim members and (ii) at least one member each from the Shias, Sunnis, and Backward classes of Muslims. The Act provides that at least two members must be women. The Bill mandates that two Muslim members be women.
- **Composition of Tribunals:** Tribunals constituted under the Act comprise of: (I) a Judge of the rank equivalent to a Class-1, District, Sessions, or Civil Judge (Chairman), (ii) a state officer equal to an Additional District Magistrate, and (iii) an expert in Muslim law. The Bill removes the expert in Muslim law from the Tribunal. It changes the composition to: (I) a current or former District Court judge as its chairman, and (ii) a current or former officer of the rank of joint secretary to the state government.
- **Appeals against orders of Tribunals:** Under the Act, decisions of the Tribunal are final, and appeals against its decisions in Courts are prohibited. The High Court can consider matters on its basis upon an application by the Board or an application by an aggrieved party. The Bill omits provisions deeming the Tribunal's decisions final. A Tribunal's orders may be appealed in the High Court within 90 days.

PART B: KEY ISSUES AND ANALYSIS

Reducing Muslim representation in waqf governance

The Waqf Acts of 1913, 1923, 1954, and 1995 required waqf to be created by *Muslim law*. The Muslim Personal Law (Shariat) Application Act, 1937, specifies that in all questions regarding waqf, the rule of decisions where the parties are Muslims shall be governed by the Muslim Personal Law (Shariat). They are thus special laws for Muslims, in contrast to secular laws such as the Indian Trusts Act of 1882 and the Societies Registration Act of 1860, which also allow for the creation of institutions for charitable purposes. The Act required the bodies governing waqf to be exclusively constituted of Muslim members. The Bill amends this to require non-Muslim members in the bodies.

Waqf is part of Muslim Personal law. Allowing non-Muslim members to be a majority in institutions governing waqf may violate Article 26 of the Constitution. Article 26 provides the fundamental right for religious communities to administer and manage their affairs. Laws governing certain other religious and charitable institutions require most Board

members and administrators to belong to their religious denominations. (See Table 2 for an illustrative set of laws).

Non-Muslim members in the Central Waqf Council and Waqf Boards

The Waqf Act of 1995 requires the Central Waqf Council and State Waqf Boards to consist mainly of Muslims. The Bill alters their composition to mandate the presence of non-Muslim members. It also permits non-Muslim members to be in a majority in the Waqf Council and State Waqf Boards. Under the Act, four to eight members of the State Waqf Boards were elected, and the state government nominated four. The Bill changes this to allow the state government to appoint all Board members.

<p>Under the Act, the Central Waqf Council is chaired by the Union Minister in charge of waqf. Barring the Minister, all members of the Council must be Muslims. The Bill removes the requirement for certain members to be Muslim. It further mandates that two members must be non-Muslims. The Bill leaves room for 12 out of 22 Council members to be non-Muslim.</p> <p>The Act requires all members of state Waqf Boards to be Muslim. The Bill changes this to mandate at least two non-Muslim members and allows for seven out of 11 members to be non-Muslim.</p> <p>The Act mandates that two Board members be women. The Bill amends this to mandate that two of the Muslim members be women. There is no such mandate for the non-Muslim members.</p>	Table 1: Composition of Waqf Boards in the Act and		
	Parameter	Waqf Act, 1995	Waqf (An
	Total members	8-12 Members	Up to 11 m
	Nature of appointment	Elected and nominated, all Muslim	All nomin
Change in composition		Elected (1-2 from each) <ul style="list-style-type: none">• Muslim MPs• Muslim MLA/MLCs• Muslim Bar Council members• Mutawallis	Nominate <ul style="list-style-type: none">• On• On• On• Tw• Ongo• OnCo
		Nominated <ul style="list-style-type: none">• One Muslim professional	Must be M <ul style="list-style-type: none">• On• Onthe

		<ul style="list-style-type: none"> Two scholars, Shia and Sunni theology One Muslim state government officer 	<ul style="list-style-type: none"> Two Pa
	Sources: The Waqf Act, 1995; The Waqf (Amendment) B		

The Chief Executive Officer does not need to be a Muslim.

Under the Act, state governments are required to appoint a Chief Executive Officer (CEO) to the State Waqf Board. The CEO is a Muslim officer equivalent to a Deputy Secretary of the state government. In case a Muslim officer of that rank is unavailable, a Muslim officer of an equivalent rank may be appointed. The CEO must operate by the waqf deed, the purpose of the waqf, and Islamic law. The Bill removes the requirement for the CEO to be a Muslim. Under other religious and charitable endowment laws, administrators equivalent to the CEO are required to belong to the respective religion (see Table 2).

The Sachar Committee (2006) noted that there is a need for government officers with knowledge of Islamic law to deal with waqf matters efficiently.²

Table 2: Comparison of various laws governing religious and charitable institutions

Acts	Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997	Andhra Pradesh Charitable and Hindu Religious and Endowments Act, 1987	The Sikh Gurdwaras Act, 1925
Board	All members of the Rajya Dharmika Parishat must be Hindu.	13 out of 21 members of the Andhra Pradesh Dharmika Parishad must be Hindu.	All members of the Board are required to be Sikh.

CEO/ Commissioner/ Executives	Commissioners and executive officers, who are public servants, must be Hindus.	The Executive Officer must be a Hindu.	All members of the Executive Committee must be Sikh.
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Sources: The Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997; The Andhra Pradesh Charitable and Hindu Religious and Endowments Act, 1987; The Sikh Gurdwaras Act, 1925; PRS.

Removal of an expert in Muslim Law from the Waqf Tribunal

The Act requires states to constitute Tribunals to address disputes over waqf. The three-member Tribunal consists of (i) a Judge of the rank equivalent to a Class-1, District, Sessions, or Civil Judge (Chairman), (ii) a state officer equal to an Additional District Magistrate, and (iii) an expert in Muslim law and jurisprudence. The Bill removes the expert in Muslim law from the Tribunal.

Waqf is defined as the permanent dedication of property for any purpose recognized by *Muslim law* as pious, religious, or charitable. A beneficiary can benefit from such religious, charitable, and pious objects sanctioned by *Muslim law*. It may be argued that a member with expertise in Muslim law is needed in the Tribunal to help adjudicate waqf-related disputes according to the principles of Muslim law. In other laws, such as the Companies Act of 2013 and the Electricity Act of 2003, the appellate Tribunals are required to have technical experts in addition to judicial members.

Requiring religious affiliation for five years may violate Article 14

In the laws of 1913, 1923, 1954, and 1995, waqf was defined as a permanent dedication of property only by persons professing Islam. In 2013, the 1995 Act **was amended to widen the scope of waqf to include property dedicated by any person, thus including non-Muslims**. The 2024 Bill reverses this position and adds a requirement that the waqf creator must be a person practicing Islam for at least five years.

This creates a distinction between individuals who have practiced Islam for less than five years and those who have practiced it for more than five years. The rationale behind this distinction is not clear. In the absence of a clear purpose for such distinction, this may violate Article 14 of the Constitution (right to equality). Article 14 allows two classes to be treated differently only if a clear public purpose is served by such differentiation.

Comparison with Trust law

In addition to waqf, endowments can also be established through trusts. The Indian Trusts Act of 1882 governs trusts. Some states, such as Maharashtra and Gujarat, have established a Charities Commissioner to oversee public trusts.[\[23\]](#) The table below compares some key provisions of the Waqf Act of 1995 and the Indian Trusts Act of 1882.

Table 3: Comparison of the Waqf Act with the Indian Trusts Act

Parameter	Waqf Act, 1995	Indian Trusts Act, 1882
Donor/Creator	Any person competent to contract (Bill restricts this to Muslims)	Any person eligible to enter into contracts
Object of donation	Any movable or immovable property	Any movable or immovable property
Instruments of donation	Waqf can be created through (i) declaration, (ii) long-term use, or (iii) endowment when a line of succession ends.	Trust must be created by (i) written declaration and registration or (ii) transferring ownership of the property to the Trustee.
Use	Any purpose considered religious, pious, or charitable according to Muslim law	Must be created for a lawful purpose
Testamentary capacity	A Muslim cannot dispose of more than one-third of their property by will*	A Muslim cannot dispose of more than one-third of their property by will*
Administrator	Mutawalli	Trustees are the administrators unless they delegate the responsibility to someone else in a written declaration.
Governance system	State Waqf Boards	Some states have a Charities Commissioner for public trusts
Dispute resolution	Waqf Tribunals	Civil Courts

Note: *This is by the Shariat Act of 1937.

****For example, the Maharashtra Public Trusts Act, 1950, and the Bombay Public Trusts (Gujarat Amendment) Act, 1962, provide for a Charities Commissioner.**

Sources: The Waqf Act, 1995; The Indian Trusts Act, 1882; PRS.

Drafting issues

The Act requires all members of a state Waqf Board to be Muslim. A member can be disqualified if he is not a Muslim. **The Bill retains this provision. However, the Bill also mandates having two non-Muslim members on the Board. This creates a contradiction.**

The Act recognizes waqf by the user and states that such properties remain waqfs even if the user no longer exists. The Bill removes waqf by the user. It is unclear whether this change will only apply prospectively or if it will also apply retrospectively to existing waqf by user.

Table 5: State-wise distribution of the registered number of immovable properties (top seven)

State/UT	Property	In %	State/UT	Property	In %
Uttar Pradesh	2,32,547	27%	Karnataka	62,830	7%
West Bengal	80,480	9%	Kerala	53,282	6%
Punjab	75,965	9%	Telangana	45,682	5%
Tamil Nadu	66,092	8%	Others	2,55,450	29%
			Total	8,72,328	100%

Note: This includes properties registered under both Shia and Sunni Waqf Boards. These are listed by number, not by area.

Sources: Waqf Assets Management System of India, Ministry of Minority Affairs; PRS.

Out of the 5 Thakhats of the Sikhs, two are located outside Punjab.

1. Thakhat Patna Sahib: Located in Patna, Bihar, Thakhat Patna Sahib is the birthplace of Guru Gobind Singh Ji, the tenth Sikh Guru. It holds immense religious significance for Sikhs and is a significant pilgrimage site. The management of Gurdwaras in India, including Patna Sahib, is primarily under the control of the Shiromani Gurdwara Parbandhak Committee (SGPC) or local Gurdwara committees, which are responsible for their administration and maintenance. The state government

has slowly acquired more powers and interfered in the management of this vital institution of the Sikhs.

2. Hazur Sahib: This Takht is located in Nanded, Maharashtra, and is the site where Guru Gobind Singh Ji passed away. Like Patna Sahib, it is an important pilgrimage site for Sikhs. The management and administration of Hazur Sahib are overseen by the Nanded Takht Sachkhand Management Committee, which operates independently but may collaborate with the state government for certain aspects, such as security and infrastructure support. The state government has slowly acquired more powers and interfered in the management of this vital institution of the Sikhs.

SGPC was created for the management of Sikh places of worship (Gurdawars). Delhi gurdwaras were carved out under a separate committee. Haryana Guru Dwaras have been carved out under a separate committee. SGPC elections only take place when the Indian government deems it necessary. Elections have been due for a long time. The government will decide to conduct elections only when it is certain that it can maintain its control.

Hindu religious and charitable institutions are administered by Hindus and Hindus alone. No one would suggest—or accept—that in the administration of Hindu temples and religious/philanthropic institutions, non-Hindus may have a role.

The Shankaracharya, a revered religious leader in the Hindu faith, is appointed by a process that varies depending on the matha (monastery) or peetham (spiritual seat). While there isn't a single, centralized authority for appointments, the process generally involves a succession of the previous Shankaracharya, often within a lineage or within the matha itself.

At present, the four Shankaracharyas are Avimukteshvaranand Saraswati (Joshimath), Nishchalanand Saraswati (Puri), Bharati Tirtha (Sringeri), and Sadanand Saraswati (Dwarka).

Ultimately, it can be concluded that India has various laws and practices governing the management of religious institutions. While Hindu religious places are free to manage their own, non-Hindu religious places are controlled by the Hindu government, which creates a new set of laws only for religious minority places.

Recently, the Supreme Court of India has put a temporary stay for a couple of provisions in the new Wakf Act. The Chief Justice of India has become the target of insults by Hindu Parliament members and the vice president of India.