

Indian Journal of Modern Research and Reviews

This Journal is a member of the '*Committee on Publication Ethics*'

Online ISSN:2584-184X



Review Paper

The Waqf (Amendment) Act, 2025: A Judicial Test of Religious Freedom and Equality

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DOI: <https://doi.org/10.5281/zenodo.17430320>

ABSTRACT

The institution of *waqf*—a permanent dedication of property for religious, charitable, or socially beneficial purposes—has historically served as a vital instrument of Islamic philanthropy in India. From its institutionalization during the Abbasid Caliphate to its consolidation under the Mughal Empire, *waqf* evolved as both a religious and socio-economic mechanism. Colonial codification through the Waqf Validating Acts of 1913 and 1930 and post-independence legislation, including the Waqf Acts of 1954 and 1995, sought to regulate and preserve *waqf* assets. The 2025 amendment, now termed the Unified Waqf Management, Empowerment, Efficiency, and Development (UMEED) Act, 1995, marks a significant shift by mandating inclusivity, digital accountability, and professional oversight. While the government justifies these reforms as transparency-oriented, critics argue they dilute religious autonomy and infringe upon fundamental rights under Articles 25 and 26 of the Constitution. The pending constitutional review before the Supreme Court will determine whether the reforms represent legitimate secular governance or unconstitutional interference in minority religious administration. This paper examines the historical evolution, legislative trajectory, and constitutional implications of the Waqf (Amendment) Act, 2025, situating it within India's broader jurisprudence on religious freedom, equality, and institutional accountability.

Manuscript Info.

- ✓ ISSN No: 2584- 184X
- ✓ Received: 12-08-2025
- ✓ Accepted: 25-09-2025
- ✓ Published: 24-10-2025
- ✓ MRR:3(10):2025;11-14
- ✓ ©2025, All Rights Reserved.
- ✓ Peer Review Process: Yes
- ✓ Plagiarism Checked: Yes

How To Cite this Article

Arshad M, Prahalad, Kaur J. The Waqf (Amendment) Act, 2025: a judicial test of religious freedom and equality. Ind J Mod Res Rev. 2025;3(10):11-14.

KEYWORDS: Waqf Act 1995, UMEED Act 2025, religious endowments, constitutional law, Article 25, Article 26, minority rights

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1. INTRODUCTION

Under Muslim law¹ A waqf refers to the permanent dedication of movable or immovable property for charitable, religious, or socially beneficial purposes. The concept, which first appeared during the Umayyad period, became fully institutionalised under the Abbasid Caliphate. In India, waqf was introduced during the Delhi Sultanate and later expanded under the Mughal Empire. With time, it became an established feature of Islamic philanthropy in the subcontinent.²

During the colonial era, the British recognised the institution through the Waqf Validating Acts of 1913 and 1930, which gave it legal sanction. After independence, the Government of India enacted the Waqf Act of 1954 to regulate administration and protect waqf assets. This framework was later consolidated into the Waqf Act of 1995³ the functioning of Waqf Boards in India primarily under the Waqf Act, 1995, as amended in 2013. It may be noted that pursuant to the 2025 amendment, the Act has been renamed as the Unified Waqf Management, Empowerment, Efficiency, and Development (UMEED) Act, 1995, which created State Waqf Boards and laid down procedures for registration, surveys, and management of waqf property. The 1995 Act aimed to strike a balance between the religious and cultural autonomy of waqf institutions and their accountability as bodies of public trust.

Despite these safeguards, concerns have persisted regarding widespread mismanagement, encroachment, and the underutilisation of waqf assets. These challenges have repeatedly sparked demands for reform, culminating in periodic amendments to strengthen transparency and ensure that waqf properties are used effectively for the purposes for which they were dedicated.

The most recent reform the Waqf (Amendment) Act, 2025³ has brought this debate to the forefront once again. Critics argue that several of its provisions dilute the religious and institutional autonomy of waqf, thereby infringing upon the guarantees of freedom of religion and management of religious affairs under Articles 25 and 26 of the Constitution⁴. At the same time, the State defends the changes as measures intended to ensure accountability, transparency, and the public interest. This tension between religious freedom and state regulation situates the 2025 Amendment as a crucial judicial test of India's constitutional balance between secular governance and protection of minority rights, particularly gender inclusion, sectarian representation, and transparency in property management.⁵

I. Background and Legislative Context

The Waqf Act, 1995⁶ regulates religious endowments (waqf) in India. In April 2025, the President assented to a set of wide-ranging amendments that, inter alia, restructured the Central Waqf Council and State Waqf Boards, introduced new registration and database requirements, and provided for appellate oversight by High Courts. The government has described the reform as a transparency-oriented, governance-focused update.

II. Religious Freedom and Institutional Autonomy under Articles 25 and 26

Articles 25 and 26 of the Indian Constitution occupy a central position in the constitutional framework of fundamental rights. They enshrine the principles of religious freedom and institutional autonomy, balancing the liberty of individuals with the collective rights of communities. Article 25 guarantees every person the freedom of conscience and the right to profess, practice, and propagate religion, subject to considerations of public order, morality, health, and other constitutional provisions. Article 26 extends this guarantee by recognizing the right of every religious denomination to manage its own affairs in matters of religion, establish and maintain institutions for religious and charitable purposes, and own and administer property for such ends. Together, these provisions make clear that religious liberty in India has both an individual and collective dimension.

However, these rights have never been interpreted as absolute. The framers of the Constitution envisioned a secular state that accommodates religion but also retains the authority to regulate practices that are economic, political, or otherwise secular in nature. This inherent tension between autonomy and regulation has given rise to some of the most significant constitutional litigation in India's history.

One landmark decision is *Sardar Syedna Taher Saifuddin v. State of Bombay* (1962)⁷, in which the Supreme Court struck down the Bombay Prevention of Excommunication Act, 1949. The Act sought to prohibit excommunication within religious communities, but the Court held that it violated Articles 25 and 26 by interfering with the right of a denomination to manage its own affairs in matters of religion. The judgment emphasized that the State cannot intrude into purely religious matters, even under the guise of reform. It underscored that autonomy in religious governance is constitutionally protected, though subject to public order, morality, and health.

In contrast, the Court took a different approach in *Azeez Basha*

v. Union of India (1968)⁸, concerning the Aligarh Muslim University (AMU). The petitioners argued that AMU was a minority institution entitled to protection under Article 30(1),

¹Aqil Ahmed, *Mohammedan Law 201* (Central Law Agency, Allahabad, 23rd edn., 2009) (Revised by Prof. I. A.. Khan, Department of Law, AMU, Aligarh)

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³Waqf (Amendment) Act, 2025 (Act No. 14 of 2025), Government of India

⁴Constitution of India, 1950

⁵Website :<https://ohrh.law.ox.ac.uk/weaponising-reform-the-waqf-amendment-act-2025-and-its-assault-on-religious-freedom/> accessed on 23.07.2025

⁶The Waqf Act, 1995, and The Waqf (Amendment) Act, 2013 (Act No. 27 of 2013), Government of India. (The term “Waqf” having been introduced in place of “Wakf” by the 2013 Amendment)

⁷1962 AIR 853 1962 SCR Supl. (2) 496

⁸1968 AIR 662

which secures the right of minorities to establish and administer educational institutions of their choice. The Court, however, held that AMU was established by legislation, not by the Muslim community itself, and therefore could not claim minority status. While this ruling limited the scope of minority rights under Article 30, it also highlighted the judiciary's concern to maintain a balance between religious freedoms and the state's power to legislate in the public interest.

The tension between autonomy and regulation has also shaped the doctrine of "essential religious practices." This judicially developed test requires the Court to determine whether a contested activity constitutes a fundamental aspect of a religion. Only if a practice is deemed "essential" does it qualify for protection under Articles 25 and 26. Though widely applied, this doctrine has been controversial, as it places judges in the difficult role of interpreting theological tenets. Critics argue that such a role risks undermining both judicial neutrality and religious self-definition.

Later cases illustrate how the Court has applied these principles in evolving contexts. In *Indian Young Lawyers Association v. State of Kerala* (2018)⁹, popularly known as the Sabarimala case, the Supreme Court held that barring women of menstruating age from entering the Sabarimala temple violated constitutional guarantees of equality and dignity. Here, the Court prioritized gender justice over claims of denominational autonomy. Similarly, in *Shayara Bano v. Union of India* (2017)¹⁰ the Court invalidated the practice of instant triple talaq (talaq-e-biddat), holding it to be arbitrary and violative of fundamental rights. Both cases illustrate the Court's willingness to limit religious autonomy when practices are seen to conflict with broader constitutional values such as equality, liberty, and dignity.

Together, the precedents set by *Sardar Syedna Taher Saifuddin and Azeez Basha* laid the foundation for a nuanced constitutional doctrine: religious communities in India enjoy autonomy under Articles 25 and 26, but always within the limits set by considerations of social reform, secular regulation, and constitutional morality. The later rulings in *Sabarimala* and *Shayara Bano* extend this reasoning, showing how the judiciary increasingly interprets religious freedom in harmony with principles of equality and fraternity.

Thus, Articles 25 and 26 cannot be read in isolation. They must be understood alongside Articles 29 and 30, which safeguard minority culture and education, and the Preamble's commitment to liberty, equality, and fraternity. The Indian model of secularism does not demand the exclusion of religion from the public sphere; instead, it seeks to create a balance where religious communities may preserve their distinct identities while aligning their practices with constitutional values.

The cases of *Sardar Syedna Taher Saifuddin* and *Azeez Basha*, along with subsequent decisions like *Sabarimala* and *Shayara Bano*, illustrate how the courts navigate this delicate balance. They highlight that in a diverse society like India, religious

freedom must coexist with secular governance and the broader constitutional vision of a just, equal, and inclusive society.

III. Key Amendments Relevant to Equality and Religious Freedom

- **Inclusive composition:** mandatory representation of at least two Muslim women on the Central Waqf Council and State Waqf Boards; inclusion of non-Muslim professionals; and representation from diverse Muslim sects (including Shia, Sunni, Bohra, and Agakhani communities where applicable).
- **Governance and accountability:** expanded powers to frame rules for registration, auditing, and accounts; strengthened anti-encroachment measures and recovery mechanisms; and time-bound appeals from Tribunal decisions to the High Court.
- **Data and disclosure:** creation of a centralized digital portal and database; compulsory filing of legacy waqf details by mutawallis within prescribed timelines.
- **Transitional arrangements:** directions affecting tenure of nominated members vis-à-vis newly prescribed compositions, generating litigation around continuity of existing Boards.

IV. Pending Challenges Before the Supreme Court

Multiple writ petitions challenging the Act's¹¹ constitutionality have been clubbed before the Supreme Court—including *Asaduddin Owaisi v. Union of India*, W.P.(C) No. 269/2025; *Arshad Madani v. Union of India*, W.P.(C) No. 276/2025; *Mohammed Fazlurrahim & Anr. v. Union of India & Ors.*, W.P.(C) No. 284/2025;¹² *Muhammad Jameel Merchant v. Union of India*, W.P.(C) No. 314/2025; *Sheikh Noorul Hassan v. Union of India & Ors.*, W.P.(C) No. 331/2025¹³

The petitioners assert that the recent amendments encroach upon constitutionally protected freedoms, particularly the right to profess and practice religion as well as the institutional autonomy of religious bodies, both of which find express safeguard under Articles 25 and 26 of the Constitution of India¹³ Arguments in Brief

Petitioners' case

- Inclusion of non-Muslims and expanded executive oversight allegedly intrude upon the management of a religious endowment, violating Articles 25–26.
- Restructuring of Boards mid-tenure and compulsory re-registration purportedly create uncertainty and chill religious administration.
- The scheme allegedly singles out waqf, imposing burdens not placed on analogous endowments, offending Article 14.

Union's response¹⁴

¹²Supreme Court of India, Order dated 17 April 2025 in W.P.(C) No. 269/2025 etc.; see case titles listed therein.

¹³<https://www.alec.co.in/show-blog-page/waqf-amendment-act-2025-faces-constitutional-scrutiny-jurists-challenge-government-control-over-religious-endowments>

¹⁴SHORT NOTE ON BEHALF OF TUSHAR MEHTA SOLICITOR GENERAL OF INDIA, IN THE MATTER OF: IN RE: THE WAQF (AMENDMENT) ACT, 2025.

⁹AIR ONLINE 2018 SC 243

¹⁰AIR 2017 SUPREME COURT 4609

- Waqf Boards and the CWC are secular, statutory managers of public-oriented property; inclusion of professionals and women advances equality and accountability, not religious interference.¹⁵

- New digital filings and audits are reasonable regulatory measures applied to protect beneficiaries and prevent encroachment.

- High Court appellate oversight provides constitutional safeguards and remedies against any abuse or error.¹⁶

On 17 April 2025, the Supreme Court directed that a status quo be maintained with respect to contentious waqf properties and further restrained the making of fresh appointments under the disputed provisions of the *Waqf (Amendment) Act, 2025*. Importantly, the Court refrained from staying the operation of the Act in its entirety. To facilitate efficient adjudication, it streamlined representation by appointing nodal counsel and batching related issues for consolidated hearings scheduled through late April and May 2025. The matter has since been reserved for orders concerning interim relief, reflecting the Court's cautious approach in balancing constitutional challenges with administrative continuity.¹⁷

V. Judicial Standards Likely to Govern Review

The Court is likely to test impugned provisions for (i) whether they regulate secular administration as opposed to essential religious practice (per the 'essential practices' doctrine), (ii) whether classifications and burdens satisfy Article 14's rationality and proportionality requirements, and (iii) whether minority institutions' autonomy is unduly impaired in a manner inconsistent with Articles 26 and 29. Given the Act's strong governance rationale, provisions that merely modernize record-keeping or enhance inclusivity may be sustained; however, measures that effectively displace community control without adequate safeguards could invite closer scrutiny.

VI. Practical Impact and Governance Implications

- **Gender inclusion:** compulsory representation of Muslim women on central and state bodies represents a structural shift toward equality in religious endowment governance.

- **Sectarian and professional diversity:** mandated representation from multiple Muslim sects and non-Muslim experts may broaden accountability and reduce capture.

- **Administrative continuity:** transitions affecting nominated members have already created legal ambiguity in some states, pending clear judicial guidance.

- **Transparency and property protection:** new registrations, digitization, and anti-encroachment tools aim to curb mismanagement and unauthorized occupation.

CONCLUSION

The constitutional fate of the Waqf (Amendment) Act, 2025, will turn on whether the Supreme Court views the impugned provisions as secular, proportionate governance of charitable property or as an overbroad intrusion into minority religious administration¹⁸. The interim orders preserving the status quo on disputed properties and pausing sensitive appointments reflect a calibrated approach. Whatever the outcome, the case is poised to clarify the boundary between minority autonomy and regulatory accountability in a modern constitutional order.

Judicial precedent has consistently underscored this delicate balance between autonomy and regulation. The *Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Thirtha Swamiar of Shirur Mutt*¹⁹ The Supreme Court affirmed that religious denominations enjoy the right under Article 26(b) to manage their own affairs in matters of religion. At the same time, in *Ismail Faruqui v. Union of India*²⁰ The Court clarified that while the State may intervene in secular aspects connected to religion, it is constitutionally restrained from intruding into essential religious practices. These decisions form the jurisprudential backdrop against which the validity of the Waqf (Amendment) Act, 2025 will be judicially tested.

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¹⁵Press Information Bureau, 'The Waqf (Amendment) Bill, 2025: An overview of the Act'; SCC Online note on Presidential assent (6 Apr 2025).

¹⁶PRS India, text of the Waqf (Amendment) Bill, 2024 (as enacted in 2025) and Gazette Rules (3 July 2025) on digital filings and database obligations.

¹⁷IN RE: THE WAQF (AMENDMENT) ACT, 2025

¹⁸Times of India reports on state board composition/continuity issues following the 2025 amendment; also UNI/TOI coverage of Supreme Court interim directions (Apr–May 2025).

¹⁹1954 AIR 282

²⁰AIR 1995 SUPREME COURT 605