

# Legislative Brief

## The Waqf (Amendment) Bill, 2024

The Waqf (Amendment) Bill, 2024 was introduced in Lok Sabha on August 8, 2024. The Bill has been referred to a Joint Parliamentary Committee (Chair: Mr. Jagdambika Pal).

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**October 29, 2024**

### 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- ◆ The Survey Commissioner has been replaced by the Collector, granting him powers to conduct surveys of waqf properties.
- ◆ Government property identified as waqf will cease to be waqf. Collector will determine ownership of such properties.
- ◆ Finality of the Tribunal's decisions has been revoked. The Bill provides for direct appeal to the High Court.

### Key Issues and Analysis

- ◆ Waqf is managed as per 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 majorly comprise of non-Muslim members. Similar institutions governing Hindu and Sikh endowments primarily comprise of members from their respective religions.
- ◆ Removing the expert in Muslim law from Waqf Tribunals may affect redressal of waqf-related disputes.
- ◆ The Bill limits 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 persons practicing Islam for less than five years, and those doing so 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 recognised as pious, religious or charitable by Muslim law.<sup>1</sup> 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.<sup>2</sup>

Charitable and religious institutions fall under the Concurrent List of the Constitution.<sup>3</sup> Hence, both Parliament and State Legislatures have powers to frame laws on it. Currently, creation and management of waqf in India is governed by the Waqf Act, 1995.<sup>1</sup> This Act was preceded by legislations passed in 1913, 1923 and 1954.<sup>4</sup> States such as Uttar Pradesh and Bengal had passed separate laws governing waqf.<sup>5</sup> However, these were repealed by the 1995 Act.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 a land for religious or charitable purposes, or (iii) endowment upon the end of line of succession. Creator of a waqf is a *wakif*. It is managed by an administrator (*mutawalli*). As of September 2024, India has 8.7 lakh registered immovable waqf properties.<sup>6,7</sup> As per the Standing Committee on Social Justice and empowerment (2014), most states had not completed the survey of waqf properties.<sup>8</sup> As per the Ministry of Minority Affairs, India has the largest waqf holding in the world.<sup>7</sup> The Sachar Committee (2006) estimated the market value of waqf properties at Rs 1.2 lakh crore.<sup>2</sup>

Out of all the registered immovable waqf properties, 7% are encroached, 2% are under litigation and the status of 50% is unknown.<sup>6</sup> 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).<sup>6</sup>

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.<sup>9,10,2</sup> They highlighted issues such as: (i) unrealised 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 size of the Tribunal, and (iii) establish greater oversight of Waqf Boards on management of waqf.<sup>11</sup>

The Waqf (Amendment) Bill, 2024 was introduced in Lok Sabha on August 28, 2024. It amends the Waqf Act, 1995 to revise: (i) composition of the Council and Boards, (ii) criteria for forming waqf, and (iii) 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 practicing Islam for at least five years may declare a waqf. It clarifies that the person must own the property being declared. It removes waqf by 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 preliminary survey 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 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 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 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 own accord, on an application by the Board, or an aggrieved party. The Bill omits provisions deeming finality to Tribunal's decisions. 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 according to *Muslim law*.<sup>1,4</sup> The Muslim Personal Law (Shariat) Application Act, 1937 specifies that in all questions regarding waqf, the rule on decisions where the parties are Muslims shall be the Muslim Personal Law (Shariat).<sup>12</sup> They are thus special

laws for Muslims, in contrast with secular laws such as the Indian Trusts Act, 1882 and the Societies Registration Act, 1860, which also allow for creation of institutions for charitable purposes.<sup>13,14</sup> 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 be in violation of Article 26 of the Constitution. Article 26 provides the fundamental right for religious communities to administer and manage their own affairs. Laws governing certain other religious and charitable institutions require most Board members and administrators to belong to their religious denominations.<sup>15,16,17</sup> (See Table 2 for an illustrative set of laws).

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

Act:  
Sections  
9(2),14

The Waqf Act, 1995 requires the Central Waqf Council and State Waqf Boards to consist mostly 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 four were nominated by the state government. The Bill changes this to allow the state government to nominate all Board members.

Bill:  
Clauses 9,11

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.

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-Muslims.

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.

**Table 1: Composition of Waqf Boards in the Act and Bill**

Parameter	Waqf Act, 1995	Waqf (Amendment) Bill, 2024
Total members	8-12 Members	Up to 11 members
Nature of appointment	Elected and nominated, all Muslim	All nominated
Change in composition	Elected (1-2 from each) <ul style="list-style-type: none"> <li>▪ Muslim MPs</li> <li>▪ Muslim MLA/MLCs</li> <li>▪ Muslim Bar Council members</li> <li>▪ Mutawallis</li> </ul>	Nominated, can be non-Muslim <ul style="list-style-type: none"> <li>▪ One chairperson</li> <li>▪ One MP</li> <li>▪ One MLA</li> <li>▪ Two professionals</li> <li>▪ One officer of the state government</li> <li>▪ One member of the Bar Council</li> </ul>
	Nominated <ul style="list-style-type: none"> <li>▪ One Muslim professional</li> <li>▪ Two scholars; Shia and Sunni theology</li> <li>▪ One Muslim state government officer</li> </ul>	Must be Muslim <ul style="list-style-type: none"> <li>▪ One Mutawalli</li> <li>▪ One scholar of Islamic theology</li> <li>▪ Two members of Panchayat/Municipality</li> </ul>

Sources: The Waqf Act, 1995; The Waqf (Amendment) Bill, 2024; PRS.

### 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 function in conformity with the waqf deed, purpose of waqf and the Muslim law. The Bill removes the requirement of 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) had noted that there is a need of government officers with knowledge of Islamic law to deal with the waqf matters efficiently.<sup>2</sup>

**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 the Executive Officer, who are public servants, must be Hindus.	The Executive Officer must be a Hindu.	All members of the Executive Committee must be Sikh.

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 expert in Muslim Law from the Waqf Tribunal

**Act:** Section 83(4)  
**Bill:** Clause 35(c)

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 permanent dedication of property for any purpose recognised 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 principles of Muslim law. In other laws, such as the Companies Act, 2013 and Electricity Act, 2003, the appellate Tribunals are required to have technical experts in addition to judicial members.<sup>18,19</sup>

## Requiring religious affiliation for five years may violate Article 14

**Act:** Section 3(r)  
**Bill:** Clause 3(ix)(a)

In the laws of 1913, 1923, 1954, and 1995, waqf was defined as a permanent dedication of property only by persons professing Islam.<sup>1,4</sup> In 2013, the 1995 Act, was amended to widen the scope of waqf to include property dedicated by any person, thus, including non-Muslims.<sup>20</sup> 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.<sup>21</sup>

This creates a distinction between persons practicing Islam for less than five years and those who have done so 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).<sup>22</sup> Article 14 allows two classes to be treated differently only if there is a clear public purpose being served by such differentiation.

## Comparison with Trust law

Other than through waqf, endowments can be done through trusts. Trusts are governed by the Indian Trusts Act, 1882.<sup>13</sup> Some states such as Maharashtra and Gujarat have set up a Charities Commissioner to govern public trusts.<sup>23</sup> The table below compares some key provisions of the Waqf Act, 1995 and Indian Trusts Act, 1882.

**Table 3: Comparison of 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 line of succession ends	A 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	Trustee is the administrator, 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 in accordance with Shariat Act of 1937.

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

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

## Drafting issues

**Act:** Section 16 (a)  
**Bill:** Clause 12

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.

**Act:** Sections 3(r)(i)  
**Bill:** Clause 3(ix)(b)

The Act recognises waqf by user, and states that such properties remain waqfs even if the user does not exist. The Bill removes waqf by user. It is unclear whether this change will only apply prospectively or if it would also apply retrospectively to existing waqf by user properties. If the latter, then existing waqf by user properties may cease to be waqfs.

## Comparison of Waqf laws across certain countries

Waqf governance differs across countries. In Malaysia, some states have respective waqf laws.<sup>24,25,26</sup> Indonesia, Bangladesh and United Arab Emirates (UAE) have a national law.<sup>27,28,29</sup> (see Table 4).

**Table 4: Comparison of Waqf laws across countries**

Parameter	United Arab Emirates	Indonesia	Malaysia	Bangladesh
Type of Law	Central law	Central law	State laws	Central law
Waqf creator	Can be created by any individual or legal entity	Can be created by any individual, organisation, or legal entity	Can be created by any individual	Can be created by any individual professing Islam
Types of Waqf recognised	Waqf by declaration, waqf to heirs (family waqf), joint waqf (waqf for family and charity)	Waqf by declaration and waqf to heirs	Waqf by declaration, and waqf to heirs	Waqf by declaration, waqf to heirs, and waqf by user
Administrative structure	Administered by a trustee. A mosque or cemetery, or any property that does not have a trustee is managed by the competent authority for endowments in each emirate	Functions of Waqf Body: (i) advising administrator in developing waqf, and (ii) carrying out management and development of large waqf assets	All properties vest with the Council (Majlis) which is the sole trustee. They further appoint the Waqf Management Committee	Administrator carries out the following functions: (i) surveying waqf, (ii) developing waqf, and (iii) financial oversight
Composition of Administrative structure	Composition of such Authority is not provided	20-30 Members. All must be Indonesian citizens of Muslim faith	The Council comprises of up to 16 members. Five must have knowledge about Islamic law, and four have to be Muslim	Administrator and Committee advising the administrator must be Muslim
Disputes	Competent Court for dealing with such disputes	Deliberation in the first stage. Upon failure, these can be addressed through mediation and arbitration in the courts	The Syariah Court addresses disputes. The State Fatwa Committee manages cases where Islamic law is in question	Decision determining the waqf property taken by the Administrator

Note: Malaysia's National Land Code excludes 'wakaf' from its definition of Trusts.

Sources: **United Arab Emirates:** Federal Law No. 5 of 2018 on Waqf (Endowment), **Indonesia:** Central Law no. 41 of 2004, **Malaysia:** Wakaf (State of Selangor) Enactment, 2015, Wakaf (State of Sabha) Enactment, 2018, Wakaf (Terengganu) Enactment, 2016, **Bangladesh:** The Waqfs Ordinance, 1962; PRS.

## Annexure

**Table 5: State-wise distribution of 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%
			<b>Total</b>	<b>8,72,328</b>	<b>100%</b>

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

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

- [The Waqf Act, 1995.](#)
- [Report on the Social, Economic and Educational Status of the Muslim Community of India](#), Prime Minister's High Level Committee, Cabinet Secretariat, Government of India, November 2006.
- Entry No. 28, List III – Concurrent List, Constitution of India.
- [The Mussalman Wakf Validating Act, 1913](#); [The Mussalman Wakf Act, 1923](#); [The Wakf Act, 1954](#).
- [The Uttar Pradesh Muslim Waqfs Act, 1960](#); [The Bengal Wakf Act, 1934](#)
- Immovable property registered Waqf Board-wise, [Waqf Assets Management System of India](#), Ministry of Minority Affairs, accessed on September 23, 2024.
- Press Release, [Explainer on Waqf Amendment Bill, 2024](#), Ministry of Minority Affairs, September 13, 2024.
- [Report No. 20](#), Standing Committee on Social Justice and empowerment, Ministry of Minority Affairs, Lok Sabha, August 12, 2015.
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- [Report of the Select Committee on The Wakf \(Amendment\) Bill](#), 2010, Rajya Sabha, December 16, 2011.
- [The Waqf \(Amendment\) Act, 2013.](#)
- [The Muslim Personal Law \(Shariat\) Application Act, 1937.](#)
- [The Indian Trusts Act, 1882.](#)

14. [The Societies and Registration Act, 1860.](#)
15. [The Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997.](#)
16. [The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987.](#)
17. [The Sikh Gurdwaras Act, 1925.](#)
18. Section 410, [The Companies Act, 2013.](#)
19. Section 112, [The Electricity Act, 2003.](#)
20. [The Waqf \(Amendment\) Act, 2013.](#)
21. [The Waqf \(Amendment\) Bill, 2024.](#)
22. Article 14, (Part III – Fundamental Rights), Constitution of India, 1950.
23. [The Maharashtra Public Trusts Act, 1950](#); [The Bombay Public Trusts \(Gujarat Amendment\) Act, 1961.](#)
24. [Wakaf \(State of Selangor\) Enactment, 2015.](#)
25. [Wakaf \(State of Sabha\) Enactment, 2018.](#)
26. [Wakaf \(Terengganu\) Enactment, 2016.](#)
27. [Central Law no. 41 of 2004.](#)
28. [The Waqfs Ordinance, 1962.](#)
29. [Federal Law No. 5 of 2018 on Waqf \(Endowment\).](#)

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