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WAQF UNDER SCRUTINY

SUPREME COURT'S INTERIM VERDICT EXPLAINED

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INTRODUCTION

The Waqf Act 1955 is the main law that governs the administration of Waqf properties in India. Waqf Properties includes charitable endowments under the Muslim law used specially for religious and charitable purposes like mosque, graveyard, schools, etc. The Waqf (Amendment) Bill, 2024 was introduced in the House of the People on 8th August 2024 by Union Minister for Minorities Affairs, Kiran Rijju and the bill was referred to Joint Parliamentary Committee for review. It was passed from House of the People (Lok Sabha) & Council of States (Rajya Sabha) from 3rd and 4th April, 2025, respectively. The President's assent was given to the Bill on 5th April, 2025 and it was enforced from 8th April, 2025.

The Act quickly became a controversial legislation in the recent times for which multiple petitions were filed in the Supreme Court of India questioning its constitutional validity. The petition is led by *Asaduddin Owaisi v. Union of India (W.P.(C) No. 269/2025)* and clubbed with other similar petitions. The case title, *in re: Waqf (Amendment) Act, 2025*, proceedings was started on 17th April 2025 and the bench of Chief Justice of India BR Gavai and Justice Augustine George Masih passed an interim order.

KEY SECTIONS CHALLENGED IN THE COURT

The Major Sections challenged in the court are:

1. SECTION 3(r) - DEFINES "WAQF": The waqf amendment acts refined waqf; stated that **"only a person who is perching Islam for more than 5 years can create WAQF"**. It was challenged in the court citing the infringement of Article 25 (freedom of religion) and Article 26 (right of religious denominations to manage their own affairs). Further

it was contended that it infringes Article 14 (right to equality) by imposing arbitrary religious qualifications, excluding new converts and denying equal protection. The court stayed the 5 years of practicing Islam citing the absence of any rule to verify this practice under Section 109 of the Act.

2. SECTION 3C - POWERS OF A DESIGNATED OFFICE: The new Act provides enormous power to the government officer (not below the rank of collector) to decide whether a property claimed by waqf is actually a government property or not. The *Sub-section (3) & (4)* allows the officer to alter revenue records accordingly. It was contested that this provision creates executive monopoly over the disputed property to the designated officer hampering Judicial Oversight and distorting the doctrine of separation of power among the organs of the government. It was further argued that unilateral changes in the revenue records are infringement of Article 300(A) (Right to property). The court stayed the sub-section (3) & (4) under Section 3C with the reasoning to protect the status quo of waqf properties as these sub-sections are arbitrary; violates constitutional separation of power.
3. SECTION 9 & 14 - APPOINTMENT TO WAQF BOARD & COUNCIL: The Act changed the procedure of appointment in the Central Waqf Council (Section 9) & the State Waqf Boards (Section 14), giving the executive the better control and allowing higher representation of non-Muslims in both. It was argued that the amendment infringes community autonomy guaranteed under Article 25-26 of the constitution as the balance is tilted towards outsiders. The court withholds the provisions but directed the government to appoint maximum 4 non-Muslim at Central Waqf Council and 3 at the State Waqf Board; also took the government's assurance of not any appointment making under this Act until further order of the court.
4. SECTION 3(r)(1) - WAQF BY USER DELETED: The Amendment Act of 2025 also deleted the "Waqf by User" i.e.; properties treated as waqf will be on the basis of long-time usage by the community. It was put forward that this elimination curtails the community practices and infringes the vested religious rights under Article 25. The court withhold the provision after government's assurance that no notified or registered waqf would be de-notified till the pendency of this case.

COURT'S PARTIAL STAY INSTEAD OF BLANKET INJUNCTION

The Supreme Court of India withhold majority of the provisions and partially stays some of the required provisions of the Amendment Act, 2025. It followed a balanced approach. The

court presumed that Parliamentary Enactment of the Act contains mostly valid sections and refrained from blanket stay over the whole Act. It cited the judgement of *State of Rajasthan v. Union of India* case which says that “Blanket Stays are Rare”.¹ The court stayed only those provisions of the Act which risked the immediate arbitrariness in the Waqf or cause irreparable harm to the rights of the Muslims in the Waqf. The court accepted the assurance given by the government on appointments and denotifications and refrained from giving any coercive order. This interim order is a classic example of judicial restraint with respect for separation of power while preserving the fundamental rights of the minorities.

SUGGESTIONS & WAY FORWARD

The interim order provided a crucial breathing space to the Waqf institutions by preserving status quo in their board with no sudden process of executive reclassification. The 5-year religious practices can't be operative until government frames rules under section 109 of the Act. The composition of the board broadly and the council remains community oriented with capped non-Muslim representatives.

However, still some questions are pending before the hon'ble court such as:

1. Can Religious Qualification Test be imposed by the Parliament in consistency with Article 25-26?
2. Is this legally possible and constitutionally allowed that the executive officers act as quasi-judicial tribunals in matters related to property disputes?
3. What limit can be fixed for the State's interference in the religious endowments of the minorities?

The upcoming judgement in this case is going to shape the Democracy and functioning of the government on the topic of State-Religion relations in India for years to come.

CONCLUSION

The Supreme Court's interim ruling in; In re: Waqf (Amendment) Act, 2025 showcase the balance between the legislation and judiciary's constitutional safeguards. By staying specific provisions of the Act, i.e.; Section 3(r): 5-year rule, Sub sections (3) & (4) of Section 3(C) with recorded executive assurances, the court make sure that fundamental rights under Article 14, 25, 26 & right under Article 300(A) are protected without encroaching the entire law made by

¹ AIR 1977 SC 1361

the Legislature. As the matter is pending for its final hearing, the case can be seen as a constitutional landmark which will test the limits of legislative powers over religious institutions, the scope of Article 25 and the principle of Separation of Powers between the different organs of the government in the India's secular democracy.²³⁴⁵

² <https://government.economictimes.indiatimes.com/news/governance/supreme-court-halts-controversial-waqf-amendment-act-2025-provisions-over-constitutional-issues/123894364> "Apex court stays some Waqf clauses, refuses to stall law," *Economic Times*, 18 Sept 2025.

³ <https://economictimes.indiatimes.com/news/india/sc-stays-a-key-provision-in-waqf-amendment-act-puts-5-year-islam-practice-rule-on-hold/articleshow/123892004.cms> "SC stays key provisions in Waqf Amendment Act, puts 5-year Islam practice rule on hold," *Economic Times*, 19 Sept 2025.

⁴ <https://timesofindia.indiatimes.com/city/mumbai/sc-verdict-limited-mumbai-activist-who-challenged-waqf-amendment-act/articleshow/123939425.cms> "SC verdict limited: Mumbai activist who challenged Waqf Amendment Act," *Times of India*, 19 Sept 2025

⁵ In re: *Waqf (Amendment) Act, 2025 – Asaduddin Owaisi v. Union of India*, W.P.(C) No. 269/2025, SC Record of Proceedings, 17 April 2025.