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BETWEEN FAITH AND THE STATE: CONSTITUTIONAL SCRUTINY OF THE WAQF (AMENDMENT) ACT, 2025

Simrah Haindaday

In September 2025, a bench of the Supreme Court of India, presided over by Chief Justice B. R. Gavai, rendered a decision in regard to the Waqf (Amendment) Act, 2025. Several writ petitions contesting the constitutional validity of the amendments made to the Waqf Act, 1995 came before the Supreme Court. The judgement passed by the Hon'ble Court brings forth important questions about the competency of the legislative to strike a balance between secular governance and religious autonomy.

The Waqf Amendment Act, 2025 which came into effect in April 2025 after being passed by the Parliament and receiving Presidential assent has been a subject of debate for several months leading up to its enactment and thereafter. The intent of the amendment, according to the legislative authorities, is to reform Waqf property management through enhanced governance and transparency. However, the petitioners submitted before the court that the Act infringed upon fundamental rights guaranteed by the Constitution under Articles 14, 15, 19, 21, 25, 26, 29, 30 and 300A.

Three key constitutional and legal issues related to the validity of the de-recognition of "Waqf by User", special provisions pertaining to government property, and changes in institutional control and composition were presented before the Hon'ble Supreme Court at the interim stage. The Court recognised that the petitioners had not only contested administrative changes but also raised broader constitutional concerns that touch upon equality, secularism, and property rights. As a result, all issues relevant to interim relief were kept open for thorough consideration in the proceedings

The petitioners, represented by senior advocates Kapil Sibal, Rajeev Dhavan, Abhishek M. Singhvi, and A. H. Ahmadi, contended that while the Act's stated intention is to safeguard Waqf, they believe that the substantive effect is to expropriate Waqf property and limit the community's right to manage its own religious endowments.

They argued that the amendment to Section 3(r), which requires documentation of five years of practicing Islam before declaring a property to be Waqf and also prospectively recognises "Waqf by user", is discriminatory and arbitrary. It was submitted that such a requirement is absent in the administration of any other religion and thus, violated principles of equality and freedom of religion entailed in Articles 14, 15, 24, and 26.

They further argued that Section 3E violates the rights of Scheduled Tribes to religious autonomy by prohibiting them from allocating land for Waqf. Sections 9, 14, and 23 pertaining to the alteration of the composition of the Central Waqf Council and State Waqf Boards were also contested by the petitioner on the grounds that they have shifted the process of appointments from elections to government nominations, and allow non-Muslims to form a majority in a Muslim administration. They argued that this undermined the community's constitutional right to manage its own religious affairs.

Further, Section 3C was criticised for giving the State sweeping powers to determine ownership of Waqf property by excluding government property from Waqf. This they believed would allow the State to arbitrarily dispose off Waqfs in the name of government property. In connection to the registration of Waqf properties, Section 36 was criticised as creating a Catch-22 situation which gives to remedies to unregistered Waqfs.

Several other sections were also criticised collectively by the petitioners asserting that the Waqf (Amendment) Act, 2025 centralises control in the State, marginalises Muslim institutions, and thereby violates several fundamental constitutional guarantees.

Solicitor General Tushar Mehta defended these contentions against the Amended Act on the grounds that the legislation is firmly within the purview of the Parliament's competence and carries a presumption of validity. He contended that the burden of proving unconstitutionality lies with the petitioners and that they have severely failed to do so, and thus, the Hon'ble Court must exercise restraint before staying a statute and its provisions unless they are absolutely arbitrary and go beyond the bounds of the Constitution. He based his arguments on the

responsibility of the State to modify legal frameworks according to evolving social realities, especially when it comes to public property and accountability.

In response to the criticism against removal of “Waqf by user”, Mehta clarified that the change is prospective in nature and will safeguard Waqf registered before April 8, 2025. He argued that since the State holds public property in trust for its citizens, the purpose of excluding government property from Waqf is to prevent encroachment upon such public property. He added that the removal of “Waqf by user” was necessary to stop the abuse and unauthorised registration of government property under the pretence of Waqf. He also denied claims that Section 3C allows arbitrary state control and stated that the inquiry mechanism created by the Amended Act ensures transparency in the resolution of ownership disputes.

Mr. Mehta also argued against the claims of religious interference stating the the advisory duties of the Central Waqf Council do not relate to spiritual governance but only to financial supervision and secular administration. He clarified the number of non-Muslim members allowed in the administrative body and also explained the inclusion as a way to uphold constitutional secularism without infringing rights under Article 25 and 25. He also made an argument that by placing a restriction on the formation of Waqfs on lands of Scheduled Tribes, the legislation aims to protect tribal rights, which is an important positive discrimination entailed in the Constitution. Lastly, he defended the applicability of the Limitation Act, 1963, and the alignment of the Act’s overall design with Article 26(d) as one that regulates secular activities of Waqfs and not their religious nature.

After hearing both sides, the Hon’ble Supreme Court rejected the petitioner’s prayer for a complete stay on the operation of the Waqf (Amendment) Act, 2025, holding that the petitioners had not shown any “flagrant” constitutional violations that would justify suspending the entire Act. The Court reiterated that laws are presumed to be constitutional and that they can only be declared unconstitutional if there is clear evidence of blatant violation of fundamental rights or legislative competence. However, the Hon’ble Court did grant interim relief in certain provisions.

First, it stayed a clause in Section 3(r) that requires proof of practising Islam for at least five years before creating a Waqf. This relief is granted until the Central Government frames rules that establishes a verification system.

Second, the proviso to Section 3C (2) and subsection (3) and (4) that empower revenue officers to treat property as non-Waqf while an inquiry is underway and to alter records, was stayed as prima-facie arbitrary.

Third, the Hon'ble Supreme Court has directed title disputes over Waqf property must not be adjudicated by executive officers but rather by Waqf Tribunals under Section 83.

Fourth, it made it clear that the Central Waqf Council shall have not more than four non-Muslim members, and the State Boards no more than three.

Apart from these specified modifications, all other sections of the Amendment Act, including those related to registration, composition, and limitation will continue to remain in effect pending final adjudication.

The Hon'ble Court grounded its reasoning for denying a complete stay in established constitutional jurisprudence affirming the presumption of legislative validity. The decision held that the Parliament has the authority to control the administrative and secular facets of Waqf institutions in order to deal with the mismanagement that can be seen right from the Mussalman Waqf Act of 1923. The court cited precedents like *Shri Ram Krishna Dalmia v. Justice S. R. Tendulkar* and more to note that the classification is acceptable if it is logically related to legislative objectives.

The Court also reasoned that the requirement of ownership for creating a Waqf is in alignment with Islamic law and principles, and that particularly in light of the Fifth and Sixth Schedules, the prohibition against usage of government or tribal lands is justifiable under public and constitutional interests. It also upheld the composition requirements of Waqf boards emphasising that their functions are administrative in nature and not spiritual, and hence consistent with Articles 25 and 26. Overall, the decision was grounded in protection of legislative intent as well as cautious consideration of fundamental rights.

The interim order issued in this case is an excellent example of judicial restraint combined with constitutional pragmatism. It perfectly upholds the presumption of legislative validity and Parliament's authority to regulate secular aspects of religious endowments. However, its decision to suspend certain provisions indicates their dedication to protect minority rights and procedural fairness.

Yet, this decision does leave deeper constitutional questions unresolved, and many critics have contended that judicial deference runs the risk of normalising government interference in religious affairs in the name of regulation, which could thereby lead to subtly redefining India's secularism. The awaited outcome is likely to influence future jurisprudence on minority rights and the broader implications of administrative intrusion. Ultimately, this decision embodies judicial restraint and constitutional vigilance in the world's most pluralistic society.