



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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THE CONSTITUTIONAL VALIDITY OF THE WAQF (AMENDMENT) ACT, 2025 : A CRITICAL LEGAL ANALYSIS

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ABSTRACT

The Waqf (Amendment) Act 2025 has become one of the most hotly debated pieces of legislation regarding how waqf properties will be governed in India. The Waqf (Amendment) Act 2025¹ intends to improve transparency, accountability and efficiency in the management of waqf properties and to change the structure of the operation of the Waqf Boards and other authorities responsible for approving applications for waqf properties.

The purpose of this commentary is to provide an analysis of the constitutional validity of the Waqf (Amendment) Act 2025 by examining Articles 14, 25, 26, 29 and 300A² of the Indian Constitution, together with relevant case law and the competing rights and duties of the state to regulate waqf property and individuals who have been granted waqf property.

INTRODUCTION

Waqf refers to the way in which a Muslim gives away either movable or immovable property to do something good according to Islamic law³. For example, using land or a house to provide a religious benefit for a poor person, or providing funds to build or maintain a mosque, are both examples of how waqf can be carried out.

The law regarding the management of Waqf property⁴ in India is governed by the Waqf Act, 1995 which is designed to ensure that Waqf properties are managed properly by the various Waqf Boards set up by the Government of India.

¹ Waqf (Amendment) Act, 2025, No. 14 of 2025, Gazette of India.

² INDIA CONST. arts. 14, 25, 26, 29, 300A.

³ Waqf Act, 1995, No. 43 of 1995, § 3(r), India Code.

⁴ Waqf Act, 1995, No. 43 of 1995, §§ 13–32, India Code.

Amendments made to the Waqf Act, including the Waqf [Amendment] Act, 2025, have been the topic of much debate in both legal and political circles. Most members of the Muslim community believe⁵ that the amendments to the Act are an effort by the Government to interfere with the religious rights that are protected by the Constitution of India, and to take away the autonomy of the Muslim community regarding their religious institutions.

There is a great deal of dispute about whether or not the Waqf Act as amended conforms to or violates the Constitution of India, so that will have to be determined by the Courts if there are future challenges to the Act.

LEGISLATIVE BACKGROUND

The Waqf Act was first introduced in 1995⁶ to provide improved management of waqf properties across India. Many years later, various concerns regarding corruption and unauthorised occupation of waqf properties as well as discrepancies relating to the ownership of waqf properties led to demands from local Muslim concerned parties for the waqf property legislative framework to be amended and improved.

The Waqf (Amendment) Act was passed in 2025⁷ and contains various amendments to the legislation that were intended to improve the quality of oversight mechanisms, improve documentation practices and increase the level of independent government oversight of waqf institutions. The waqf amendment and its associated changes have been challenged by a number of organisations in constitutional courts based on their argument that the waqf amendments had the greatest impact

and influence on Muslim religious endowments and the amendments exceeded levels of government intervention that would make them permissible.

CONSTITUTIONAL ISSUES INVOLVED

I. Article 25 - The Right to Freedom of Religion

The Constitution guarantees everyone the freedom of conscience as well as the right to practice their religion or to practice their religion to the fullest extent allowed by state law, provided

⁵ Petitions challenging the constitutional validity of the Waqf (Amendment) Act, 2025 before the Supreme Court of India.

⁶ Waqf Act, 1995, Statement of Objects and Reasons.

⁷ Waqf (Amendment) Act, 2025, Gazette Notification.

that it does not violate any laws regarding public order, public morals, public health, or other constitutional provisions⁸.

Opponents of the Amendment contend that the extensive control that government has over the Waqf institutions of Islam interferes with their religious exercise and the charitable obligations that are associated with waqf properties and that these countries will administer their Waqf property in accordance with the dictates of the Islamic faith and therefore should have the constitutional right to administer their Waqf property in accordance with this. However, the Supreme Court has always held that only 'essential' religious practices are protected by the Constitution⁹, and that the non-religious or administrative aspects of religious-based institutions are subject to government regulation. The question then becomes whether the amendment merely regulates the administration of religious

II. Article 26: Freedom to manage Religious Affairs

Every religious group deserves the right to operate itself and manage its own property as stipulated by Article 26.

Some critics argue that if the government continues to exert more authority in waqf management, this will infringe on the independent rights granted to religious groups under Article 26. Religious organizations should have more authority to retain their charitable and religious assets free from excessive state intervention¹⁰.

In previous rulings, the Supreme Court has distinguished between religious issues and the management of those properties. Although religious issues are still subject to protection by the Constitution, however the state can regulate the management¹¹ of those properties through laws in the public's best interest. If the amendments focus on transparency, accountability, and misuse prevention, the courts will likely uphold their constitutionality.

III. Article 14 : Equality Before Law

Article 14 of the Constitution ensures that everyone in India has equal rights before the law, and to be treated equally under the law. The petitioners could argue that by singling out waqf

⁸ INDIA CONST. art. 25.

⁹ Comm'r, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 (India).

¹⁰ INDIA CONST. art. 26.

¹¹ Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388 (India).

institutions for special forms of Governmental control that are not imposed on similar religious endowments, the amendments created an arbitrary classification¹².

However, the State may assert that the classification has a reasonable basis in the unique nature of the legislative scheme that governs waqf properties and the State's obligation to protect the proper use of charitable properties for charitable purposes. Under general standards of constitutional doctrine, differential treatment is permitted so long as there is an intelligible differentia¹³ to the classification, and there is a rational connection between the differentia and the legitimate purpose of the legislation.

IV. Article 300A : Right to Property

It provides that no person may be deprived of his property except by law. There are concerns that the provisions relating to identifying, registering, or administering waqf properties will have a detrimental effect on the property interest of the waqf. It is also important to note that any action taken by the State affecting a property right must conform to the requirements of the Constitution and be lawful, fair, and provided with due process of law¹⁴.

Thus, if the amendments only regulate the administration of waqf properties and do not divest them of their title or ownership, then it is likely that the amendments will not withstand constitutional scrutiny under Article 300A¹⁵.

JUDICIAL PRECEDENTS

Commissioner of Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt

In this important ruling, the Supreme Court held that while Articles 25 and 26 protect religious practices, the State can regulate the management of property held for religious purposes. This ruling forms the basis of establishing what constitutes the acceptable limit of government intrusion into religious practices and institutions¹⁶.

Durgah Committee v. Syed Hussain Ali

¹² INDIA CONST. art. 14.

¹³ State of W.B. v. Anwar Ali Sarkar, AIR 1952 SC 75 (India).

¹⁴ K.T. Plantation Pvt. Ltd. v. State of Karnataka, (2011) 9 SCC 1 (India).

¹⁵ INDIA CONST. art. 300A.

¹⁶ Comm'r, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.

In this case, the Court held that not every religious practice is entitled to constitutional protection and there is a critical distinction between activities that are essential to the practice of religion and those that have a secular purpose¹⁷.

This ruling supports the proposition that recommendations to reform the administration of the waqf do not treat different religious beliefs unequally.

S.R. Bommai v. Union of India

The Supreme Court held that secularism is a basic feature of the Constitution and emphasized that the State has an obligation to maintain its neutrality towards all religions. Accordingly, when considering the Waqf (Amendment) Act of 2025, consideration must be given to whether the legislative intent is to promote administrative efficiency while not unfairly discriminating against a particular religion¹⁸.

CRITICAL ANALYSIS

Whether the Waqf (Amendment) Act 2025 is constitutionally valid will be dependent upon whether its features are evaluated as substantive encroachments upon religious autonomy or as regulatory measures. The Waqf (Amendment) Act 2025 has supporters who argue that the governance of waqf properties in Canada protects the public interest by ensuring that waqf assets remain charitable, providing for accountability and preventing fraud or abuse. They also contend that governmental regulations of administrative functions do not encroach upon religious freedom.

On the other hand, critics assert that the level of government oversight could threaten institutions' independence and could have an unequal impact on Muslim religious endowments. The critics further assert that the totality of the amendments would violate the constitutional protections provided to religious groups.

A balanced constitutional approach¹⁹ must give equal recognition to the competing principles of the autonomy of a religious organisation and the State's legitimate interest in preventing maladministration. The courts will likely determine whether the challenged provisions are sufficient in their restriction on the right to freedom of religion because they are narrowly

¹⁷ Durgah Comm., Ajmer v. Syed Hussain Ali, AIR 1961 SC 1402.

¹⁸ S.R. Bommai v. Union of India, (1994) 3 SCC 1 (India).

¹⁹ Bijoe Emmanuel v. State of Kerala, (1986) 3 SCC 615 (India).

defined to attain the administrative objectives offered while not interfering with a fundamental aspect of the religious organisation's function.

CONCLUSION

The Constitutionality of the Waqf (Amendment) Act, 2025 will depend on the amount to which the Act's provisions limit religious rights that are protected by the Constitution. As a general rule, Courts have determined that while the State can regulate (a) the secular and administrative operations of religious institutions, it cannot interfere with the essential religious operations of those institutions).

Although there are constitutional issues raised by Articles 14, 25, 26 and 300A, that will present significant challenges to the Act being able to survive judicial scrutiny, an issue will be whether or not when looking at the reasons for the passage of the Act, the Supreme Court of India finds that the principal reason for the Act is to reform the administration of religious institutions and not to control religion²⁰. However, this ongoing discussion continues to highlight the constitutional tension between Government Regulation and Religious Freedom within our Indian pluralistic Constitution.

²⁰ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 (India).