



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Legal Reforms to Social Impact: Assessing the Unified Waqf Management Act and Its Implications

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*Received 23 November 2024; Accepted 24 December 2024; Published 27 December 2024*

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*The Unified Waqf Management, Empowerment, and Efficiency Act 2024 modernises the governance of waqf properties by increasing transparency, inclusiveness, and accountability. These major reforms include an allowance to appeal to the High Courts, digitisation of records, and representative membership of the board, including non-Muslim and minority sects, which help to fill in various gaps regarding mismanagement and fraud that were widespread in earlier provisions. Nevertheless, the Act has faced opposition in the name of restriction over the autonomy of waqf boards and tribunals, abolition of 'Waqf by user' and widespread delegation of power to district collectors with a chance of arbitrariness. It also lacks the use of ADR machinery, due to which the problems of prolonged litigation in courts are visible and it also burdens the tribunals. This article will evaluate these challenges and offer solutions, such as restoring 'user Waqf,' introducing ADR processes, and checks on government authority and many other solutions to address the lacuna in this act. Although the Act established waqf governance, significant changes are still required for amendments to that effect, and a committee must be appointed to address such issues.*

**Keywords:** *unified waqf management, empowerment, and efficiency act, waqf boards, waqf by user, adr machinery.*

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## INTRODUCTION

The Waqf Amendment Act 2024 was introduced in Lok Sabha on 8 August 2024<sup>1</sup> and passed to streamline and ensure effective management of Waqf properties. This act was later renamed the Unified Waqf Management, Empowerment, and Efficiency Act<sup>2</sup>. It highlighted its objectives to act as a unified management and expand the government's powers in declaring a property as Waqf. This act changed many provisions of the older Waqf Act 1995 and now, as per the new act, appeals against the order passed by the Waqf tribunal can be done in the High Court. Earlier, it was only the Mutawalli whose orders were binding and thus, it could not be challenged. It has increased the importance of surveys that are conducted through collectors as per state revenue Law.

This new act has not only changed the old provisions of the Waqf Board Act, but many lacunas are also prevalent in the new act and the balance between legal tapestries, especially the Transfer of the Property Act 1882, needs to be addressed effectively in the new bill. In the end, the problems, as well as some viable solutions, are also addressed for tackling the problems associated with the new act.

## CHANGES MADE IN THE WAQF BOARD AMENDMENT ACT 2024

**Novelty in the Name and Composition of the Tribunal:** The Waqf Board Amendment Act has been renamed as the Unified Waqf Management, Empowerment, and Efficiency Act because this name itself has made the nature of tribunals inclusive because there can be non-Muslims, Judges, and people from lower Muslim communities. This act not only empowers but also addresses discrimination against non-Muslim members because, as per Section 83(4),<sup>3</sup> there is no mention of any non-Muslim member in the tribunal and Section 14<sup>4</sup> also does not provide membership to non-Muslims or the lower caste Muslims, such as Bohra and Aga Khani communities.

**Appeals against the Order of the Tribunal:** The Waqf Act 1995 constituted a board that had the

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<sup>1</sup> 'The Waqf (Amendment) Bill, 2024' (PRS Legislative Research) <<https://prsindia.org/billtrack/the-waqf-amendment-bill-2024>> accessed 21 November 2024

<sup>2</sup> The Waqf (Amendment) Bill 2024, s 2

<sup>3</sup> Waqf Act 1995, s 83(4)

<sup>4</sup> Waqf Act 1995, s 14

powers of a civil court as per the CPC 1908 and the order passed by the tribunal was considered final because there can be no appeals against those orders.<sup>5</sup> The new Waqf Board Amendment Act 2024 has removed such irregularities and now the orders passed by the tribunal are subjected to appeal before the High Court within 90 days, so the coinciding authority of the tribunal and Civil court is no longer prevalent.

**Determination of a Property as a Waqf:** Section 40 of the Waqf Amendment Act 1995<sup>6</sup> declares that the discretion of the tribunal will be final in declaring any property as Waqf property and it cannot be challenged by any other authority except if it is revoked or modified by a tribunal itself. This authority of the board was challenged in the case of **Archaeological Survey of India v Chief Executive Officer 2024**<sup>7</sup> where the court held that the government's ownership and control over the property as an ancient monument could not be overridden by a subsequent waqf declaration. It was stated that the Ancient Monuments Preservation Act 1904 takes precedence over the Waqf Act concerning properties declared as ancient monuments and the Waqf Board has no jurisdiction to declare any property already being declared as an ancient monument<sup>8</sup>. The new Waqf Amendment Act has no such provision and the declaration of a property by a board as per the new act rests at the discretion of the State government as the Collector of the district will inform the state government about the said property and will update it in the revenue records otherwise the said property becomes a government property.<sup>9</sup>

**Recommendations of Sachar Committee:** The recommendations of the Sachar Committee,<sup>10</sup> such as the efficient management of records, the inclusion of non-Muslims to make decisions on board, Organizational reform to include women and many other recommendations have been complied with in the new act and this act has also balanced the legal and religious intricacies to

<sup>5</sup> The Waqf (Amendment) Bill 1995, s 85

<sup>6</sup> Waqf Amendment Act 1995, s 40

<sup>7</sup> *Archaeological Survey of India v Chief Executive Officer* (2024) SCC Online MP 5093

<sup>8</sup> *Ibid*

<sup>9</sup> Vijaita Singh and Ishita Mishra, 'Waqf Amendment Bill introduces District Collector as an Arbiter to Decide Whether a property is a Waqf or Government Land' *The Hindu* (08 August 2024)

<<https://www.thehindu.com/news/national/waqf-amendment-bill-introduces-district-collector-as-an-arbiter-to-decide-whether-a-property-is-a-waqf-or-government-land/article68497319.ece>> accessed 21 November 2024

<sup>10</sup> 'Recommendations contained in the Report of the High-Level Committee on Social, Economic and Educational Status of the Muslim Community of India headed by Justice Rajinder Sachar (Retd.)' (*Minority Affairs*)

<<https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/1245150177.pdf>> accessed 21 November 2024

some extent.

**Separation of Waqf Boards for different castes within the Muslim community:** This new act has demarcated the boundaries for the establishment of separate Waqf boards for the Aghakhani and Bohra Sect and the state government can establish separate Waqfs for these communities.<sup>11</sup> There was no such provision for the separation of Waqfs by the state government in the old provision. This itself crystallises the intent of the act that it seeks to promote Aghakhani and Bohra as minority Muslims for the Waqf property management.

**Central Waqf Council:** The new act mandates the formation of a separate Central Waqf Council to supervise the Central government, State government, and Waqf boards. It has expanded the membership for Judges, Non-Muslims, Women, and MPs to be part of it as per Section 9 of the new Act,<sup>12</sup> rather than just Muslims or two women as per Section 9 (2)<sup>13</sup> Of the older provision. This points to a very pristine fact that the government has degenerated the very conception of 'Mutawalli' and even the powers vested with these sections of the society. The journey of a 'property' to be declared as Waqf and transferred forever to 'Allah' requires a long technical legal procedure to be transferred rather than merely declaring a property as Waqf.

**Survey of Waqf Properties:** The old act, the Waqf Amendment Act 1995, seeks to maintain a status quo where the members of the Muslim community itself will survey Auqaf.<sup>14</sup> This maintenance has led to the creation of a stagnant community that seeks to reign in this balance of power. However, as per the new amendment act, the survey can now be done by the collector of the district, and the pending survey will be conducted as per the state revenue laws.<sup>15</sup>

## **THE BALANCE BETWEEN LEGAL TAPESTRIES AND THE WAQF BOARD AMENDMENT ACT 2024**

The Waqf Board Amendment Act has struck a balance with Article 14 as it provides for equality before the law and fair hearing as one of the paramount principles. This has not only led to the preservation of principles of Natural Justice but also it is has led to the subjugation of the

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<sup>11</sup> The Waqf (Amendment) Bill 2024, s 10(2A)

<sup>12</sup> The Waqf (Amendment) Bill 2024, s 9

<sup>13</sup> The Waqf (Amendment) Bill 1995, s 9(2)

<sup>14</sup> The Waqf (Amendment) Bill 1995, s 4

<sup>15</sup> The Waqf (Amendment) Bill 2024, s 5(b)(1)

authority and the words of the tribunals as now not as effective as under the previous act.

This has condensed the power of the tribunal and now appeals to higher forums can be made more effectively. This new act has retained the obsolete provisions that were contentious in Section 40 of the older provision because this provision is antagonistic to eminent domain. The Supreme Court in the case of **The State of Bihar v Maharaja Dhiraj Sir Kamashwar Singh of Darbhanga and Ors**<sup>16</sup> and **M/s Delhi Airtech Services Pvt. Ltd & Anr v State of U.P & Anr**<sup>17</sup> has mentioned that the land losers will be entitled to compensation in case of a land loser. This benevolent step is required for the people so that in case their land is encroached upon or the government has declared ownership in case of absence of ownership of any person or an authority, then they will be entitled to compensation. There is no such provision for eminent domain in the new legislation and it has followed the footsteps of the previous legislation.<sup>18</sup>

The new legislation has also not mandated the court resolution process to arrive at a consensus for the ADR Process as the new bill has no provision for the settlement of disputes through ADR and this has resulted because the disputes involve a long ladder of decision and appeals due to which for petty matters the court's precious time can get wasted. Syed Khalid Rashid, in his works, has recommended the use of ADR as an alternative mode for the resolution, but for serious disputes such as the determination of waqf property and other matters, then it must be decided by the tribunal or the orders passed by courts can withstand<sup>19</sup>. The illegal encroachment on the Waqf properties is also one major constraint that the new bill aims to address, but the statement of objects of the bill denotes further improvement in the legislation in the definition of Waqf, redressal of issues of state Waqf Board etc. Due to the problem of illegal encroachment, the Waqf Properties (Eviction of Unauthorised Occupation) Bill, 2014 is still pending in the parliament and even after ten years, the bill fails to address such issues.<sup>20</sup>

<sup>16</sup> *The State of Bihar v Maharaja Dhiraj Sir Kamashwar Singh of Darbhanga and Ors* AIR 1952 SC 252

<sup>17</sup> *M/s Delhi Airtech Services Pvt. Ltd & Anr v State of U.P. & Anr* Cil App No 24/2009

<sup>18</sup> Nikhilesh Koundinya, 'Section 40 Waqf Act 1995: A Much Needed Rethink' (*The GCLS Blog*, 14 February 2023) <<https://thegclsblog.wordpress.com/2023/02/14/section-40-waqf-act-1995-a-much-needed-relook/>> accessed 21 November 2024

<sup>19</sup> Syed Khalid Rashid, 'Certain Legal and Administrative Measures for the Revival and Better Management of Awqāf' (2014) Islamic Research and Training Institute, Jeddah Working Paper No 1432-02

<sup>20</sup> 'Govt Withdraws the Waqf Properties Eviction of Unauthorized Occupants Bill, 2014' *The Economic Times* (08 August 2024) <<https://economictimes.indiatimes.com/news/india/govt-withdraws-the-waqf-properties>>

Accountability and transparency in the maintenance of records are prerequisites for the transfer of property as per the Transfer of Properties Act 1882 (TPA 1882), which mandates transparency in dealings and thus, consistent reports on Income and Expenditure have to be maintained. The Act thus ensures that Waqf properties are administered in a manner that balances charitable goals with legal and financial integrity. The Transfer of Property Act also mandates that the value of the property has to be maintained in cases of inflation, Volatile market state, and other scenarios, due to which the financial prudence in managing Waqf has become somewhat important. In the case of **Abdul Wahid Khan v Siddiq Ali Khan (2007)**<sup>21</sup>, the observation by the Delhi High Court reflected that the intricate balance between community engagement and financial sustainability was a challenge in the maintenance of Waqf Property because the provisions of the TPA 1882 had to be balanced to maintain the delicate nature of benevolence for the beneficiaries and the administrator's responsibility have to be complied with in it.

#### LACUNAS IN THE NEW LEGISLATION

**The Redressal of the Public/Private Divide and the Welfare Aspect:** The government, as per the new legislation, has divided the public and private spheres of the Waqf by transferring ownership to public entities for welfare, but this is not only a means for evasion of taxes, but also the justification for such action has to be provided by the government. This justification is a necessity because, as per Article 300A,<sup>22</sup> the property right is a legal right and no one can be deprived of their property except by the authority of law. This means that any executive order passed by the District Collector will be incomplete without any reasonable justification and the property cannot be merely seized by the public authority.

**Balance between Freedom of Acquisition, Religion, and Mismanagement of Waqf Property:** Articles 25<sup>23</sup> and 26<sup>24</sup> embody and provide the Right to freedom of religion and the Right to acquire property, which are fundamental rights in part III of the Constitution, but these rights are blurred by the new legislation because it prejudices the corruption in the State Waqf board

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[eviction-of-unauthorised-occupants-bill-2014/articleshow/112381808.cms?from=mdr](https://www.mca.gov.in/Articleshow/112381808.cms?from=mdr)> accessed 21 November 2024

<sup>21</sup> *Mohd Ashraf & Ors v Abdul Wahid Siddique* AIR 2020 Del 1766

<sup>22</sup> Constitution of India 1950, art 300A

<sup>23</sup> Constitution of India 1950, art 25

<sup>24</sup> Constitution of India 1950, art 26

and persistent allegations of mismanagement, corruption, and negligence have strengthened this assertion that warrants a more detailed examination to uncover the shortcomings and the substantial endeavours made by waqf in managing these assets.

**Government Overreach and Subjugation of the Autonomy of Tribunals:** The government has reduced the autonomy and independence of the tribunals because, as per the new act, appeals can be made against the order of the tribunal and the aggrieved party can appeal before the High Court if it deems the decision of the Tribunal as unfair. The proposed amendment has omitted Section 7 (1) of the 1995 Act,<sup>25</sup> in which the state government appointed the tribunal and the determination of the status of Waqf's property would be final but as per the new legislation, the right has been relinquished, so the autonomy of tribunals becomes questionable.

**Autonomy of Waqf Board and Delay in Registration:** The autonomy of the Waqf board remains a contentious issue because the new act has removed section 36 (7) of the 1995 act<sup>26</sup> and this has led to excessive government intervention, so there can be instances of a slowdown in the registration process because the office of the District Collector would be burdened.<sup>27</sup>

**The Ultra Vires exercise of Power:** The 2024 Waqf Board Amendment Act has provided codified legal frameworks for the appointment as well as the requirements of a CEO to be a Muslim as per Note 1 Clause 15 of the new bill<sup>28</sup>. This has led to the establishment of an institution that is governed centrally by the government itself. However, in the case of reckless demolition of private property owned by a Muslim, as can be evident from the scenes of Haladwani<sup>29</sup> By a collector or any such bureaucrat, then the story becomes different. The ways through which the collector will maintain the integrity of the Waqf has to be determined.

**Polarisation Aspects:** The new legislation has introduced provisions in which non-Muslim members can be part of the tribunal, which directly encroaches upon freedom of religion as per

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<sup>25</sup> The Waqf (Amendment) Bill, 2024, s 7(1)

<sup>26</sup> The Waqf (Amendment) Bill, 1995, s 36(7)

<sup>27</sup> Ayesha Azka, 'From Legitimacy to Conspiracy: Decoding the Waqf Bill, 2024' *The Leaflet* (12 September 2024) <<https://theleaflet.in/governance-and-policy/from-legitimacy-to-conspiracy-decoding-the-waqf-bill-2024>> accessed 17 November 2024

<sup>28</sup> The Waqf (Amendment) Bill 2024, cl 15 Note 1

<sup>29</sup> Ayesha Azka and Ammarah Ishaq, 'Law, Order, and Discord: The Haldwani Crisis' *The Leaflet* (09 April 2024) <<https://theleaflet.in/governance-and-policy/law-order-and-discord-the-haldwani-crisis>> accessed 17 November 2024

Article 26 of the Constitution<sup>30</sup> because it guarantees freedom to manage religious affairs as long as it does not encroach upon public order, morality, and health. However, this new legislation has been passed without any such cause because there is no evidence of disturbance of public order, morality, or health. So, this can lead to further polarisation because, during the Ram temple committee, there was no such need to change the composition of the committee itself, but when it comes to Muslim personal law then, the government has to take a U-turn and it leads to further polarisation which is flagged by the opposition.<sup>31</sup>

**Lack of Documentary Evidence and the Omission of 'Waqf by User' in the New Act:** The new act has not mandated the 'Waqf by user', which was there in the previous act. This can lead to illegal encroachment of Waqf properties by the government without any justification, as there can be no evidence for every Waqf property during its emergence and it can lead to unapproachability of the Waqf deed. This postulation of unregistered Waqf can lead to misuse of judicial review<sup>32</sup>.

**A new alternative for Section 40<sup>33</sup> of Waqf Amendment Bill 1995:** The government must conduct empirical research to find the widespread arbitrary declaration of properties by waqf boards rather than just bestowing power on the collector and State government to declare any property as Waqf property or Government property. Ahmed Ullah Khan, former dean of law at Osmania University and the author of Commentary on The Law of Waqf in India, has also explained that Section 40 only applies to disputes over properties registered with the waqf board, not any property.<sup>34</sup>

## RECOMMENDATIONS TO ADDRESS SUCH LACUNAS

**Transparency in Record Management:** The new Waqf Board Amendment Act can include online auditing and declaration of properties on a time-bound manner basis to curb fraud and

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<sup>30</sup> Constitution of India 1950, art 26

<sup>31</sup> Moushumi Das Gupta, 'Waqf Amendment Bill to Be Referred to Joint Parliamentary Committee After Opposition Calls it Anti Muslim' *The Print* (08 August 2024) <<https://theprint.in/india/waqf-amendment-bill-to-be-referred-to-joint-parliamentary-committee-after-oppn-calls-it-anti-muslim/2214596/>> accessed 21 November 2024

<sup>32</sup> The Waqf (Amendment) Bill 2024, s 36(10)

<sup>33</sup> The Waqf (Amendment) Bill 1995, s 40

<sup>34</sup> Ayush Tiwari and Zafar Aafaq, 'Why Muslim Leaders Are Objecting to New Waqf Bill' *Scroll* (09 August 2024) <<https://scroll.in/article/1071806/why-muslim-leaders-are-objecting-to-new-waqf-bill>> accessed 17 November 2024



encroachment issues.

**Adoption of ADR Mechanism:** ADR has become a tool for expeditious adjudication of disputes and many legislations, such as the Consumer Protection Act of 2019, the Companies Act, the 2013 Commercial Courts Act 2015, The Family Courts Act 1984, and numerous other legislations, have incorporated ADR as an alternative method for the resolution of disputes form of mediation and Arbitration. Similarly, such an approach must be followed for petty disputes because it can substantially reduce case pendency and burden on Tribunals as well as Courts that adjudicate such matters. There is no such provision for out-of-court settlement for such disputes.

**Redressal of the Problem of Encroachments:** The Waqf Properties Eviction of Unauthorised Occupants Bill 2014 must be tabled and passed expeditiously so that the current legislation can become effective. Recently, it was declared that the Waqf Amendment Bill 2024 will be deliberated upon in the winter session of Parliament<sup>35</sup> these issues must be kept in mind while making amendments or deleting some provisions.

**The Thin Line between State Control and Autonomy must be balanced:** The new Waqf Amendment Act 2024 cannot maintain a balance between state control and autonomy of Waqfs and thus, it creates a perception of ‘bias’ toward Muslim communities as the composition of tribunals and many other provisions have increased membership of non-Muslim communities. So, there must be checks and balances on the power exercised by the collector and other officials, Mutawallis, etc.

**Amendments to include ‘Waqf by User’ provisions in the new Act:** The Unified Waqf Board Amendment Act attempted to exclude the ‘Waqf by user’ and due to this the principle of Eminent Domain is not adhered to, and it creates an unjust allocation of land without compensation and violates Article 300A of the Constitution to prevent such unjust encroachment even for welfare must be prevented the compensation has to be fair and reasonable.

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<sup>35</sup> Shishir Sinha, ‘Waqf Bill Among 15 Bills Listed for Winter Session of the Parliament’ *The Hindu Business Line* (20 November 2024) <<https://www.thehindubusinessline.com/economy/waqf-bill-among-15-bills-listed-for-winter-session-of-the-parliament/article68890627.ece>> accessed 20 November 2024

**Recognition of orally declared Waqf Properties:** The demarcation between government and Waqf properties must be established so that the arbitrary allocation of properties can be avoided. Even if the documents available are based on a deed that was done in the past, then it should be given legitimacy based on the duration of ownership and other aspects.

**Maintenance of Legal Boundaries and Initiation of Empirical Research:** The properties declared as Waqf property must be audited and there should be a nationwide study on the social and economic impacts of the Waqf management through periodical surveys or census so that the issues of encroachment, inefficiency, and social equity can be solved because the properties once declared or seized as Waqf can be revoked so the study to determine appropriate alternative for private property must be done effectively so that the rights of the affected parties can be preserved. Secondly, the Act must balance the overlapping provisions of the TPA 1882 and there must be a committee to review such overlapping provisions, such as the Law Commission, so that the footsteps already being followed by the 1995 Act can be prevented.

## CONCLUSION

The Unified Waqf Management, Empowerment, and Efficiency Act 2024 was passed to streamline and ensure effective management of Waqf properties. This act not only empowers but also addresses discrimination against non-Muslim members. It has no such provision for the declaration of a property by a board because, as per the new act, the discretion of the State government is final and the Collector of the district will inform the state government about the said property. The new act mandates the formation of a separate Central Waqf council to supervise the Central government, State government, and Waqf boards and has expanded the membership for Judges, Non-Muslims, Women, and MPs. The new legislation has also not mandated the court resolution process to arrive at a consensus and the settlement of disputes through ADR has not been introduced, which is one of the main lacunas in this act. Illegal encroachment on the Waqf properties is also one major constraint that the new bill aims to address, but still, it is ineffective in this aspect.

Articles 25 and 26 of the Constitution embody and provide the Right to freedom of religion and the Right to acquire property, but these rights are also blurred by the new legislation and persistent allegations of mismanagement, corruption, and negligence have strengthened this

assertion that warrants a more detailed examination to uncover the shortcomings and the substantial endeavours made by waqf in managing these assets. However, the bill has made many changes that were necessary in the composition of the tribunal, Declaration of property as a Waqf, etc. but still, many issues are prevalent that can be addressed in this bill and the need to deliberate upon such issues must be done by a committee that can either be the Law Commission or any other committee that is suitable for addressing such issues.