

Supreme Court's Major Decision on the Waqf Amendment Act 2025

21.09.2025

GS-II (Constitution, Governance), GS-I (Social Issues) and Essay

Question: *How does the Supreme Court's verdict on the Waqf (Amendment) Act, 2025 reinforce the concepts of Separation of Powers and Judicial Review under the Constitution? Discuss.*



Why in news?

THE HINDU

HOME / NEWS / INDIA

Supreme Court refuses to stay Waqf (Amendment) Act 2025 in its entirety

Supreme Court notes that 'presumption always in favour of constitutionality of a statute.' It stays certain crucial Sections in the amendment law of 2025

Updated - September 15, 2025 12:57 pm IST - NEW DELHI

SC on Waqf Amendment Act: Waqf by user to be registered; stay on clause that creator has to be practising Islam for 5 yrs

Supreme Court On Waqf Bill: The Supreme Court ruled that the provision permitting the collector to determine the right to the property is contrary to the doctrine of separation of powers.

Key Points:-

- On Monday, the Supreme Court delivered a major verdict on the validity of the **Waqf (Amendment) Act, 2025**.
- The Court clarified that there is no ground to strike down or suspend the entire Act.
- However, certain provisions could adversely affect citizens' fundamental rights and carry the risk of arbitrary misuse of power. Hence, those specific sections have been stayed.

- The bench of Chief Justice B.R. Gavai and Justice A.G. Masih noted that the evolution of Waqf laws since 1923 had been studied.
- It was found that many provisions are merely a repetition of earlier laws and need not be immediately stayed. But the controversial clauses require judicial intervention.

Objections by Muslim organizations:

Muslim bodies raised objections mainly on two issues—

1. Vesting final authority in the **Collector** could lead to illegitimate claims over Waqf properties.
2. The condition of following Islam for **five years** is discriminatory.



Stay on the “five years of Islam practice” condition for creating Waqf:

- The disputed **Section 3(1)(r)** mandated that a person could declare a Waqf only if they had been practicing Islam for at least five years.
- The Supreme Court stayed this provision, calling it arbitrary and vague.
- The Court observed that there is no clear mechanism to determine whether someone has been practicing a religion for five years or not.
- Such a condition could become a tool for discrimination and abuse of power.
- The Court directed that until state governments frame appropriate rules for testing this condition, this provision shall remain inoperative.



Cap on non-Muslim members in Waqf Boards:

- The Supreme Court upheld the inclusion of non-Muslim members in Waqf Boards and the Central Waqf Council but imposed limits on their numbers.
 - **State Waqf Boards:** maximum 3 non-Muslims out of 11 members
 - **Central Waqf Council:** maximum 4 non-Muslims out of 20 members
- The Court held that such limits are necessary to maintain balance. Excessive non-Muslim representation could affect the religious and community identity of Waqf institutions.



Supreme Court’s strict view on powers given to Collectors:

- Under the amended law, District Collectors were given final authority in disputes regarding ownership and rights over Waqf properties.
- The Supreme Court ruled this as a direct violation of the **principle of Separation of Powers**.
- The Court observed that conferring such authority on the executive (Collector) goes against the **basic structure of the Constitution**.
- Disputes over property rights can only be adjudicated by the judiciary.
- Until a tribunal or court delivers the final verdict, neither the possession of property shall change, nor shall any third party be granted rights over it.

Ban on Reporting by Government Officials

- The Act had a provision that a government-designated officer could report whether a Waqf property was encroaching upon government land, and on the basis of this report, the state government could instruct the Waqf Board to make changes in its records.
- The Supreme Court suspended this provision, terming it one-sided and unfair.
- The Court observed that such reporting could lead to false and illegitimate claims over Waqf properties and weaken the community's trust.

Compulsory Registration Upheld

- The Waqf Act 2025 included a provision for mandatory registration by the users of Waqf properties.
- This provision was also challenged. The Supreme Court held that this arrangement had already been in force from 1995 to 2013, and hence nothing new was introduced. Therefore, this provision has been upheld.

Constitutional Significance of the Judgment

- The judgment reaffirms the principle of separation of powers.
- It strengthens the constitutional rights of religious freedom and equality.
- It is an important step towards protecting minority community property and maintaining administrative balance.
- The Court made it clear that no provision can be enforced without transparency and accountability.

Waqf Act and Amendments (2024–25)

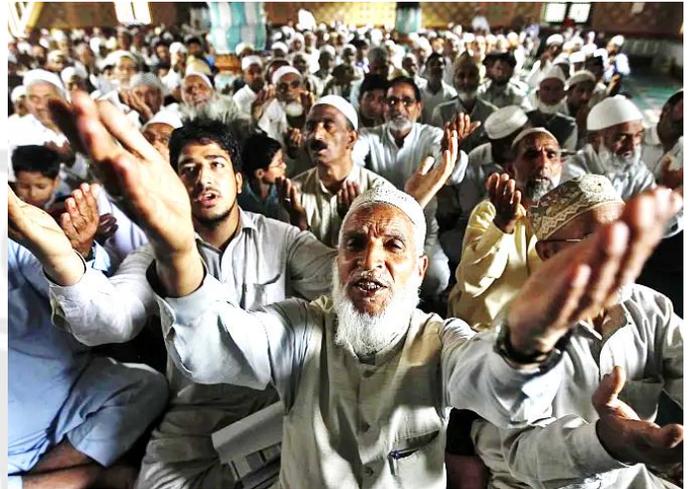
- 'Waqf' comes from the Arabic word *waqufa*, meaning "to bind, restrain, or dedicate."
- In Islam, movable or immovable property donated solely for religious or social purposes is called Waqf.
- The person donating is called *waqif/wakif*, and the caretaker is known as *mutawalli*.
- **Purpose:** Maintenance of mosques/religious institutions, helping the poor, education, and other religious/charitable activities.

Waqf Boards

- Waqf Boards are statutory bodies in India established under the Waqf Acts of 1954 and 1995 to oversee Waqf properties dedicated for religious and charitable purposes.
- These boards are responsible for managing, regulating, and protecting Waqf assets such as mosques, graveyards, and other charitable institutions.
- They utilize income from Waqf properties for religious and charitable purposes in line with the wishes of the donor.

Historical Background

- **First Example (1173):** Sultan Muhammad Ghori donated a village to the Jama Masjid of Multan.
- **Colonial Period (1923):** The first attempt at regulation through the Muslim Waqf Act.
- **Independent India:**
 - **1954:** First Waqf Act.
 - **1995:** New Act granting greater powers to Waqf Boards.
 - This law led to increased encroachments, as well as complaints of illegal leases and sales of Waqf properties.
 - **2013 Amendment:** Addressed these complaints by granting Waqf Boards unlimited authority to claim properties in the name of Muslim donations, while eliminating judicial intervention.
 - The vesting of unlimited adjudicatory powers in Waqf Boards made the matter even more serious.



Status of Waqf in India

- **After Independence:** 52,000 properties.
- **2009:** Increased to 3 lakh properties (4 lakh acres of land).
- **Present (2025):**
 - 8,72,292 registered immovable properties (8 lakh acres of land).
 - 16,713 movable properties.
 - Estimated value: ₹1.2 lakh crore.
 - Digitization of properties on the **WAMSI Portal**.
 - **Third largest landholder:** After the Armed Forces (Army) and Indian Railways, Waqf Boards hold the third-largest share of land ownership in the country.
 - Estimated value: Waqf Board properties are valued at approximately ₹1.2 lakh crore.
 - **Management of Waqf properties:** Managed by a *Mutawalli* (caretaker), who functions as a supervisor.

Management of Waqf Properties

- **Mutawalli:** The manager/caretaker of the property.
- **Central Waqf Council:** Supervises the State Waqf Boards.
- **Survey:** For identification and registration of properties.

Waqf (Amendment) Act, 2025

- **Passed by:** Lok Sabha (3 April 2025), Rajya Sabha (4 April 2025), Presidential assent (5 April 2025).
- **Enforced on:** 8 April 2025.
- **Objectives:**
 - To address past shortcomings.
 - To enhance the efficiency of Waqf Boards.
 - To update definitions.
 - To improve registration and record management.
 - To increase the use of technology (WAMSI).

Muslim Waqf (Repeal) Act, 2025

- **Objective:** To repeal the Muslim Waqf Act of 1923, as it was inadequate for modern India.

Key Features (1995 vs 2025)

Subject	Waqf Act, 1995	Waqf (Amendment) Act, 2025
Formation of Waqf	Declaration, user, charitable donation (<i>waqf-al-aulad</i>)	Only declaration and charitable donation; user provision removed; donor must be a Muslim for at least 5 years
Waqf-al-Aulad	Could exclude female heirs	Can no longer exclude female heirs from rights
Government Property	No clear provision	Government property cannot be declared as waqf; disputes to be resolved by Collector
Property Determination	Power vested in Waqf Board	Provision removed
Survey	Survey Commissioner	To be done by Collector; pending surveys to follow revenue laws
Central Waqf Council	All members Muslim; 2 women mandatory	Some members may be non-Muslim; promotes administrative expertise
Waqf Board	Only Muslim electorate; at least 2 women	State government can nominate; 2 non-Muslim members mandatory; representation for Shia, Sunni, Bohra, Agha Khani
Tribunal	Chairperson + Muslim law expert	Chairperson (District Judge) + Joint Secretary level officer; provision for Muslim law expert removed
Appeal	Tribunal decision final	Appeal possible in High Court within 90 days
Powers of Central Government	State government could conduct audit	Central government can order audit by CAG
Separate Waqf Boards	For Shia/Sunni	Allowed for Shia, Sunni, Bohra and Agha Khani communities

Key Issues Related to Waqf

- **Principle of Irrevocability:** “Once Waqf, always Waqf” leads to disputes.
- **Litigation & Mismanagement:** Encroachments, illegal leases, ownership disputes.
- **Lack of Judicial Oversight:** No right of appeal against Tribunal’s decision under the 1995 Act.
- **Delay in Surveys:** Incomplete in many states (e.g., Gujarat, Uttarakhand, Uttar Pradesh).
- **Misuse of Provisions:** Arbitrary claims under Section 40, leading to community dissatisfaction.
- **Constitutional Questions:** Special law for one religion, whereas no such parallel exists for others.

Constitutional & Administrative Aspects

- **Waqf management is not only religious, but also administrative, economic, and social.**
- **Minimum inclusion of non-Muslim members** (2 out of 22 in the Central Council, 2 out of 11 in State Boards) – aimed at transparency and administrative expertise.
- **Section 96:** Central government empowered to regulate secular activities of Waqf institutions (education, social, economic).

Question: The Supreme Court considered making the Collector the final authority in Waqf property disputes a violation of which constitutional principle?

- (A) Federalism
- (B) Judicial Review
- (C) Separation of Powers
- (D) Right to Equality