

6. Supreme Court Uphold Waqf Amendment Act 2025 – Polity

The Supreme Court has upheld the Waqf (Amendment) Act, 2025, but stayed contentious provisions, such as the requirement for a waqf creator to be a "practicing Muslim" and a Collector's power to alter a property's status. The Court also capped the number of non-Muslim members on Waqf boards to balance inclusivity with minority autonomy.

Supreme Court Upholds Waqf (Amendment) Act, 2025, with Key Modifications

The Supreme Court has largely upheld the constitutional validity of the Waqf (Amendment) Act, 2025. However, in a significant move, the Court has stayed or modified certain key provisions to strike a balance between state regulation, transparency, and the constitutionally protected rights of minority communities to manage their religious affairs.

Understanding 'Waqf'

Meaning – 'Waqf' is an Arabic word that refers to properties permanently dedicated for religious or charitable purposes under Islamic law. Once a property is declared a waqf, its sale or transfer is prohibited.

Ownership Concept – The ownership of the property is symbolically transferred from the person creating the waqf (the wakif) to Allah, making the dedication irrevocable.

Management – The property is managed by a designated manager known as a mutawalli.

Origin in India – The concept traces its roots back to the Delhi Sultanate when Sultan Muizuddin Sam Ghaor dedicated villages to a mosque in Multan. The institution was legally protected in British India by the Mussalman Waqf Validating Act of 1913.

Constitutional and Legal Framework

Constitutional Status – "Charitable and religious institutions" are listed under the Concurrent List of the Constitution, which means both the Parliament and State Legislatures have the power to enact laws concerning them.

Geographic Distribution – The states with the highest share of Waqf properties are Uttar Pradesh (27%), West Bengal (9%), and Punjab (9%).

Evolution of Waqf Laws –

1913 & 1923 Acts – Validated and mandated the registration of Waqf properties.

1954 Act – Established the Central Waqf Council and State Waqf Boards for better management.

1995 Act – Introduced Waqf Tribunals for dispute resolution and diversified the composition of Waqf Boards.

Key Amendments Introduced by the Waqf (Amendment) Act, 2025

Central Waqf Council Composition – The Union Minister in-charge of waqf is the ex-officio chairperson. The Act removes the mandatory Muslim requirement for certain nominated members (like MPs and retired judges) and mandates two non-Muslim members.

State Waqf Boards Composition – Empowers state governments to nominate members and requires the inclusion of two non-Muslim members, at least two Muslim women, and one member each from the Shia, Sunni, and Backward Muslim communities.

Waqf Tribunals – The composition was changed to include a District Court judge (as Chairman) and a Joint Secretary rank officer, removing the requirement for an expert in Muslim law.

Appeals – Allows appeals against Tribunal decisions to be filed in the High Court within 90 days, whereas previously Tribunal decisions were final.

Survey of Properties – The District Collector now oversees the survey of Waqf properties, replacing the Survey Commissioner.

Government Property as Waqf – The Act explicitly states that any government property identified as waqf will cease to be so, with the Collector empowered to determine ownership and update revenue records.

Women's Inheritance – Mandates that women must receive their rightful inheritance before a property can be dedicated as a waqf.

Supreme Court's Interventions and Modifications to the Act

The Supreme Court made several crucial interventions to balance the new law –

"Practicing Islam" Requirement – The Act required a person creating a waqf to prove they have been a practicing Muslim for at least five years.

Court's Ruling – The Court has **stayed this provision**, stating it cannot be enforced until the government frames clear, objective, and non-arbitrary rules for determining what "practicing Islam" entails.

Collector's Power Over Waqf Properties – The Act empowered District Collectors to determine if a property claimed as waqf belongs to the government.

Court's Ruling – The Court called the provision allowing the government to strip a property of its waqf status *before* a final inquiry is complete **"prima facie arbitrary."** It has directed that the status of waqf properties cannot be altered or dispossessed until a final decision is made by the Waqf Tribunal and any subsequent appeals are exhausted.

Representation of Non-Muslims in Waqf Administration – The Act allowed for a potentially large number of non-Muslim members on the Central Council and State Boards.

Court's Ruling – To balance inclusivity with minority autonomy, the Court has **capped the number of non-Muslim members at 4** (out of 22) for the Central Waqf Council and **3** (out of 11) for State Waqf Boards. It also stated that the CEO of a Waqf Board should, "as far as possible," be a Muslim (making it a preference, not a mandatory rule).

Deletion of "Waqf by User" – The earlier law allowed a property to be declared waqf based on long-standing religious use, even without formal documents. The 2025 Act deleted this provision.

Court's Ruling – The Court upheld the deletion but clarified that this change will only apply prospectively. This means existing properties registered as "waqf-by-user" before April 8, 2025, remain protected.

Protected Monuments and Tribal Lands – The Court declined to interfere with the Act's provisions that void the waqf status of properties that are either protected monuments or belong to Scheduled Tribes.

Conclusion

The Supreme Court has upheld the principle that a law passed by Parliament is presumed to be constitutional. While it refused to stay the entire Waqf (Amendment) Act, 2025, it has temporarily stayed certain contentious provisions to protect the interests of all parties and ensure a balance of equities while the case is being heard in full.

Source – <https://www.thehindu.com/news/national/supreme-court-refuses-to-stay-waqf-amendment-act-2025-in-its-entirety/article70051641.ece>