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WAKF TO WAQF: TIMELINE OF THIRD LARGEST LANDOWNER OF INDIA

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INTRODUCTION

Waqf is considered to be an essential part of Islamic jurisprudence, but it has no mention in the Quran though can be derived from the verses of the prophet. It is **Arabic** term **Waqaf** a meaning therefore to 'detain or hold or tie up'.

When Omer sought the advice of the Prophet for the pious use of a piece of land called Sammagh in Khaibar, the Prophet said[2]: "*Tie up the property and devote the usufruct to human beings and it is not to be sold or made the subject of gift or inheritance; devote its produce to your children, your kindred and the poor in the way of God.*"

In short, the prophet advised it for the use of travelers and Abu Bakar signed it for children.

The concept of *waqf was established* with the advent of Islamic rule.

The idea of waqf in India dates back to the Delhi Sultanate when Sultan Muizuddin Sam Ghaor dedicated two villages in favour of the Jama Masjid of Multan and handed its administration to Shaikhul Islam. As Islamic rule flourished, the number of waqf properties increased.

WAQF DURING BRITISH PERIOD [3]

Earlier Britishers refrain from entertaining religious issues.

The first regulation that was *Bengal Code Regulation XIX of 1810 was aimed to manage the rents and produce for the upkeep of mosques, temples and public buildings.*

[1] The author is a student of law at Allahabad University.
[2] https://www.abacademies.org/articles/waqf-and-economic-distribution-justice-sustainable-poverty-alleviation-efforts-12495.html.
[3] https://abvp.org/article/waqf-history-and-evolution

Later in 1839, the Christian missionaries' objection led to mismanagement and embezzlement of temples and mosques. Later the britisher enacted the Religious **Endowments Act of 1863** relieving the government of direct control and introducing management by local committees with court intervention when needed. Charitable endowment act 1890 established treasures for charitable property. In 1920, the Charitable and Religious Trusts Act allowed any interested person to seek **judicial oversight of trusts**, providing more stringent control.

the Judicial Committee of the Privy Council also in Vidya Varuthi Thirtha Swamigal Vs. Balusamy Iyer2 (AIR 1922 PC123), waqf means "*tying up of property in the ownership of God, the Almighty and the devotion of the profits for the benefit of human beings*".

In 1894 judgment, came in Abdul Fata Mahomed Ishak v. Russomoy Dhur case which became a landmark decision in the matter. It ruled that primarily benefiting the family was invalid unless those were dedicated to charity.

THE MUSSALMAN WAKF VALIDATING ACT, 1913 (ACT NO. VI OF 1913)[4]

The primary purpose was to clarify and validate the rights of Muslims to create wakfs for the benefit of their families and descendants, which had earlier legal debate. With a legal status that was long demanded.

Section 3: ***This section specifically stated that it is lawful for any person who practices the Muslim faith to create a wakf, provided it complies with the provisions of Muslim law.***

This Act defines the ****wakf* as permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious, or charitable.***

Also consolidated that Hanafi Mussalman who follows the faith and doctrine of the Hanafi school of Mussalman law.

[4] https://indiankanoon.org/doc/1852964/

MUSSALMAN WAKF ACT, 1923[5] –

Act was to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties;WHEAREAS it is expedient to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties;

With Introduced mandatory registration (3(1)), appointment of mutawallis (managers under section 2c), and granted civil courts limited power to inquire into waqf mismanagement(2(b)).

The 1923 is procedural (to regulate and manage waqf properties) than 1913 which with substantive law, validating the creation of waqf-alal-aulad (waqfs for the benefit of the settler's family), which had been previously declared invalid by British courts.

The significance of this act is to provide legal and religious right against *especially waqf-alal-aulad, i.e., waqf for descendants) as invalid and overturned prior judicial decisions (notably Abdul Fata Mahomed Ishak v. Russomoy Dhur Chowdhury, 1894).*

THE WAQF ACT OF 1954

includes several important sections that outline its provisions and framework,

Such as, Section3 defines key terms such as waqf, mutawalli, and waqf property. Section 4 mandates surveys of waqf properties to create a comprehensive record. Section 5 requires the preparation of a list of waqf properties in each state. Section 15 establishes State Waqf Boards for the administration and supervision of waqf properties, Section 27 provides guidelines for the maintenance of accounts and auditing of waqf funds, Section 55 deals with the resolution of disputes related to waqf properties through tribunals. These sections collectively aim to ensure transparency, accountability, and proper management of waqf properties.

[5] https://www.indiacode.nic.in/repealedfileopen?rfilename=A1923-42.pdf

THE WAQF AMENDMENT ACT 1995

It talks about the Central Waqf Council and State Waqf Boards, which play a vital role in the supervision and regulation of waqf properties.

- Section 32 empowers these boards to manage waqf properties, ensuring usage as intended purposes.
- Moreover, Section 40 allows waqf boards to declare any property as waqf (as per necessary criteria also emphasizes the registration and protection of waqf properties.), which have been controversial over property ownership.
- Section 36 mandates the registration of all waqf properties with the respective state waqf boards that are critical to maintaining records and preventing unauthorized usage.
- To address encroachments, Section 54 a legal framework is binded ensuring that waqf assets remain intact. To resolve disputes regarding waqf properties efficiently, the Act introduced **waqf tribunals** (Section 83). *These tribunals are specialized bodies that provide speedy resolutions, reducing the burden on regular courts and ensuring focused attention on waqf-related issues.*

Several criticisms on the principle of "***once a waqf, always a waqf"*** creates challenges in property ownership and legal disputes. Furthermore, the absence of judicial oversight over waqf tribunals has raised concerns about the transparency of their decisions. Hence, recently the government amended this act in 2025 with Waqf amendment act 2024/25.

THE ANALYSIS OF AMENDMENT 1954 AND 1995[6]

The 1954 Act did not include provisions for specialized tribunals to handle waqf disputes. While the 1995 Act introduced **Section 83**, that established waqf tribunals for faster and better focused resolution of dispute related to waqf properties. The 1954 Act required waqf properties to be registered but lacked stringent mechanisms for enforceability. Whereas;

[6] This is a self analysis with the help of a professor(Prof Tushar Shrivastava) of Faculty of Law , Allahabad University.

The 1995 Act, under **Section 36,** made the registration of waqf properties mandatory and emphasized maintaining accurate records to prevent encroachments.

The 1954 Act did not have specific provisions for addressing encroachments on waqf properties. whereas the 1995 Act, through **Section 54,** provided mechanisms for the removal of encroachments, ensuring better protection of waqf assets.

It is important to understand why a religious charity is controversial across the country,

By concept, waqt is a trust but it is faith based it cannot be outside shariat. Unlike the trustee under section 16, 20, 36 and 40 of the Indian Trusts Act 1882, the mutawalli have very limited powers similar to receivers under the CPC. Trust is not necessarily irrevocable or perpetual but not in waqf. In charitable trust there is no requirement of.

The point of view of a layman would be that waqf is a form of preto-trust, that essentially resides in a world of **Dar al Islam** where the overwhelming theological benefit of the waqf overrides any other proprietary and social concern that may arise.

KEY PROVISIONS IN THE WAQF (AMENDMENT) BILL, 2024, [7]

Recommended by the Joint Committee on Waqf Amendment Bill, 2024(JCWAB), introduce progressive reforms, including

Muslim-created trusts under any law will not be considered waqf, implementation of technology to have efficient and scientific development (digitalization of papers of waqf property) Protection of ‘Waqf by User’ Properties if the recognised or disputed land are government land (4.02 lakhs Waqf by User properties out of total 8.72 lakhs waqf properties as on data) only declaration or endowment allowed.

Mandating that women receive their rightful inheritance before any waqf dedication, with special provisions for divorce, widow or orphan.

[7] https://prsindia.org/billtrack/the-waqf-amendment-bill-2024

The transfer must be a muslim practising as muslim for over 5 years can donate to waqf.

Accountability of Mutabilis to register properly within six months for accountability. An officer above the rank of Collector will investigate government properties claimed as waqf, preventing unwarranted claims.

Power to determine waqf has been removed.

Includes two non-Muslims; MPs, former judges, and eminent persons need not be muslim (members include are Representatives of Muslim organisations, Chairpersons of Waqf Boards Of the Muslim members, Scholars in Islamic law, two members must be muslim women.

State governments nominated members including 2 non - Muslims from Shia, sunni , Other backward classes along Bohra, and Agakhani and required at least two women. Appeal in high court within 90 days.

The Bill removes **Section 40,** preventing Waqf Boards from arbitrarily declaring properties as Waqf, avoiding misuse like *declaring entire villages as Waqf 600 Christian families in Ernakulam district are contesting the Waqf Board's claim over their ancestral land, as per information out of 30 States/UTs, data was given only by 8 States where 515 properties have been declared as Waqf under Section 40.*

CONCLUSION

To ensure the justice of our constitution and bring transparency, address the grievance of non-Muslims property as waqf, women right on inheritance and against the encroachment of misuse of the waqf concept, amendment 2025 bring the sovereignty, equality and accountability of waqf along with modern approach to bring the holy purpose from all allegation and bring the peace.