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### **THE WAQF ACT, 1995 – AN OVERVIEW & STATUTORY BODIES**

#### **Introduction**

Waqf in India is governed under the Waqf Act of 1995 (hereinafter referred as ‘**The Act**’). Although, there is no express mention of waqf in the Quran, it is an Islamic practice that has existed for a very long time. Prior to the enactment of Waqf Act, 1995, the Central Waqf Act, 1954 was in force but there were various lacunas in the implementation of the Act as various states such as Uttar Pradesh, West Bengal, Part of Maharashtra and Gujarat as well as some North Eastern States had their special laws to regulate Waqf. The Central Waqf Act, 1954 was amended thrice i.e. in 1959, 1964, and 1969. In 1970, a Waqf Inquiry Committee was set up to enquire into the administration of waqf at all levels and provide recommendations which resulted in the introduction of the Waqf (Amendment) Act of 1984. But the Act was largely opposed and criticized by the Muslim Community as it allowed State and Center to interfere in the administration of a waqf. Finally, a uniform act was enacted and enforced on 1<sup>st</sup> July 1996 which was later amended in 2013.

#### **Meaning of Waqf**

Waqf is an unconditional and permanent dedication of property for religious, pious, charity, and all the benefits including grants, property owned by the village community, a waqf-alal-aulad, or any other person making such dedication.<sup>1</sup>

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<sup>1</sup> Section 3(r) of the Waqf Act, 1995.



## MAJESTY LEGAL

Advocates & Solicitors

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It can be divided in two classes i.e. Public and Private. A public Waqf is one for a public, religious or charitable object. A private Waqf is one for the benefit of the settlor's family and his descendant which is called Waqf-alal-aulad.<sup>2</sup>

Waqfs are properties that are dedicated to God and the title to the properties vests in God whereas a charitable trust exist for a philanthropic purpose and the title to the properties remains vested in the trustees.<sup>3</sup>

In *Waqf Board, Rajasthan v. Jindal Saw Limited & Ors*<sup>4</sup>, the Hon'ble Supreme Court held that *"there is no evidence at any given point of time that the structure was being used as a mosque. There is no allegation or proof of either of dedication or user or grant which can be termed as a waqf within the meaning of the Act. .... The report of the experts is relevant only to the extent that the structure has no archaeological or historical importance. In the absence of any proof of dedication or user, a dilapidated wall or a platform cannot be conferred a status of a religious place for the purpose of offering prayers/Namaaz."*

In *Mond. Ismail Faruqui V. Union of India*<sup>5</sup>, the Hon'ble Supreme Court held that *"where a Mosque has been adversely possessed by non-Muslims, it losses its sacred character as a mosque. It was further stated that a mosque in India is an immovable property and the right to worship at a particular place is lost when the right to property on which it stands is lost by adverse possession."*

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<sup>2</sup> *State Of Andhra Pradesh (Now State Of Telangana) v. A.P. State Wakf Board & Ors.*, 2022 SCC Online SC 159.

<sup>3</sup> *Maharashtra State Board of Waqfs v. Yusuf Bhai Chawala*, (2012) 6 SCC 328.

<sup>4</sup> Civil appeal no. 2788 of 2022 in SLP (Civil) no. 16196 of 2021.

<sup>5</sup> (1994) 6 SCC 360.



## MAJESTY LEGAL

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In *NR. Abdul Azeez v. Sunaresa Chattiar*<sup>6</sup>, by the Madras High Court, that “*the fundamental principle here is when a mosque is built and constructed by public worship, it ceases to be the property of the builder and vests in God. A mosque is a place of worship that cannot be reverted to its original owner and every Muslim has a right to enter and offer prayers.*”

In the case of *Karnataka Board of Wakfs v. Mohd. Nazeer Ahmad*<sup>7</sup>, it was held that “*if a Muslim man provides his house to the travelers irrespective of their religion and status for their stay, this cannot be considered as a valid Waqf on the ground that under Muslim law a Waqf has a religious motive, that it should be created for the benefit of Muslim community. When a Waqf is constituted, it is always a presumption that it is a gift of some property, made in favor of God. This is a legal fiction.*”

### **Statutory bodies constituted under Waqf Act.**

#### **1. Central Waqf Council**

The Central Wakf Council has been established by an official gazette notification issued by the Central Government. It is a supervisory body as it can direct state board of waqf, to furnish information from them regarding their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports, and audit reports, or any other information.<sup>8</sup> Any dispute arising out of directions

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<sup>6</sup>1992 SCC OnLine Mad 13.

<sup>7</sup> 1982 SCC OnLine Kar 94.

<sup>8</sup> Section 9 of the Waqf Act, 1995.



## MAJESTY LEGAL

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issued to the state board is adjudicated by the Board of Adjudication, which is constituted by the Central Government through an official gazette notification.<sup>9</sup>

The Central Waqf Council shall consist of members, who shall be Muslim and a minimum two of them shall be women.<sup>10</sup> The members will include the Union Minister as an ex-officio Chairman, three MPs, two Judges of Supreme Court or a High Court and other members as determined under Section 9 of the Act.<sup>11</sup>

### **2. Board of Waqf**

Board of Waqf (hereinafter referred as “**the Board**”) is established by the State Government through an official gazette notification<sup>12</sup> or by the Central Government under Section 106 of the Act. Section 13(3) defines it as “*a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.*”

The Board shall consist of members in accordance to Section 14 of the Act including a Chairman, one or two Muslim members either from MPs of the State, or MLA, or member of State Bar Council, or Mutawallis having annual income of rupees 1 lakh or above and other member<sup>13</sup>.

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<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Section 13 of the Waqf Act, 1995.

<sup>13</sup> Section 14 of the Waqf Act, 1995.



## MAJESTY LEGAL

Advocates & Solicitors

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The Board has wide powers under the Act. It determines the nature of a waqf property whether it is Sunni or Shia<sup>14</sup>. It may conduct an enquiry then pass an order which shall be final unless it is revoked or modified by the tribunal.<sup>15</sup>

The Board shall also register properties as waqf and maintain it thereon.<sup>16</sup> It will forward the information to concern land record office having jurisdiction of the waqf property<sup>17</sup>. It may also appoint a Mutawalli<sup>18</sup> or an executive<sup>19</sup> to manage and maintain waqf property.

It can also issues direction to the Chief Executive Officer (hereinafter referred as “CEO”), who is appointed by the State Government<sup>20</sup>, to conduct investigation, inspection or any other function as determined by the Board.<sup>21</sup>

### 3. Tribunal

The State Government through an official gazette shall constitute a Tribunal to adjudicate any disputes arising in relation to waqf property or against any order of the Board<sup>22</sup> wherein the decision of the Tribunal shall be final except when the Hon’ble High Court can either through its own or on an application by the Board, Mutawalli, or any other

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<sup>14</sup> Section 40 of the Waqf Act, 1995.

<sup>15</sup> *Ibid.*

<sup>16</sup> Section 36 of the Waqf Act, 1995.

<sup>17</sup> Section 37(2) of the Waqf Act, 1995.

<sup>18</sup> Section 63 of the Waqf Act, 1995.

<sup>19</sup> Section 38 of the Waqf Act, 1995.

<sup>20</sup> Section 23 of Waqf Act, 1995.

<sup>21</sup> Section 25 & Section 26 of Waqf Act, 1995.

<sup>22</sup> Section 83 of the Waqf Act, 1995.





## MAJESTY LEGAL

Advocates & Solicitors

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aggrieved person, confirm, reverse or modify or pass any other order as it may deem fit.<sup>23</sup>

It consists of<sup>24</sup>:-

- (a) A chairman who shall be a State Judicial Service not below the rank of Session or civil Judge
- (b) A member who shall be an officer of State Civil Services equivalent to the rank of Additional District Magistrate
- (c) A member having knowledge of Muslim Law and Jurisprudence.

Further, the Act provides that the tribunal shall have the jurisdiction of a civil court and have all its power<sup>25</sup>. It is interesting to observe that **the Act bars the Jurisdiction of the civil court<sup>26</sup> in matters that are solely to be determined by the Tribunal.**

In *Punjab Waqf Board v. Sham Singh Harike*<sup>27</sup>, it was held that “*in order to determine the said bar of jurisdiction of a civil court, one has to ask question as to whether the issue raised in the suit or proceeding concerned is required to be decided under the Waqf Act, 1995 by the Tribunal, under any provision or not. If the answer to that question is in the affirmative, the bar of jurisdiction of civil court would operate*”.

In *Rashid Wali Beg v. Farid Pindari*<sup>28</sup>, the court held that “*on a cumulative reading of various provisions of the 1995 Act, held, bar of jurisdiction of a civil court under the*

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<sup>23</sup> Section 83(9) of the Waqf Act, 1995.

<sup>24</sup> Section 83 of Waqf Act, 1995.

<sup>25</sup> Section 83(5) of the Waqf Act, 1995.

<sup>26</sup> Section 85 of the Waqf Act, 1995.

<sup>27</sup> (2019) 4 SCC 698.

<sup>28</sup> (2022) 4 SCC 414.



## MAJESTY LEGAL

Advocates & Solicitors

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*1995 Act is not total and omnipotent and that there may be cases which may still be entertained by civil courts”.*

In *Faseela M. v. Munnarul Islam Madrasa Committee*<sup>29</sup>, the court held “*that a suit for eviction of tenants from waqf property not covered under section 6 and 7 of the Act and exclusively trial by a Civil Court.*”

Thus, the Tribunal shall have the jurisdiction in all matter pertaining to Waqf as determined by the Act.

### **Conclusion**

The Waqf Act, 1995 brought substantive changes to the administration of Waqf in India. The most significant feature of the Act is that it brought the regulation of the Waqf properties under a uniform law. It established statutory bodies to regulate, administer and supervise waqf and adjudicate any dispute arising out of the waqf. However, the Act restricts intervention of courts including the Hon’ble Supreme Court of India to adjudicate upon the disputes, causing the matters to be settled by the violator, which is *prima facie* infringement of jurisprudential fundamental principles of natural justice and rule of law.

The Act has given wide powers and sole authority to declare and acquire the lands of individuals as waqf(s) property. The board has unlimited powers and rights to claim properties in name of Islamic donations/charity which increased the properties of waqf tremendously across India which may be termed as encroachment over individual

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<sup>29</sup> (2014) 16 SCC 38.



## **MAJESTY LEGAL**

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property rights. The unfair and unjustifiable power to board and tribunal under Section 40, 51, 52, 54, 83, 92, 101 and 107 of the Waqf Act.

The Waqf Act violates the basic structure of constitution i.e. Secularism as it deals with a acquisition of property for a religious cause, therefore, such act is irrelevant in India.

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