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# An Extensive Analysis of the Waqf Act, 1995

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## ABSTRACT

*'Once a waqf, always a waqf', this was the interpretation of the Supreme court in its 1998 judgement case no. 4372 SCR 398 given by justice Dr. Anand. What does waqf mean? Waqf means any property donated for charitable or for the purpose of humanity belongs to Allah. After a thorough survey if the waqf board declares a property to be waqf property then that decision is irreversible unless and until the board itself modifies it or makes any change in its verdict, the waqf is not restricted to religious places of worship, it also refers to assets, lands, buildings, leases, currency, etc. The concept of waqf in today's modern day and age poses a question to the principle of natural justice, surprisingly such provisions do not exist in west Asian countries like Turkey, Sudan, Egypt and Saudi Arabia, in this research paper we will dig deeper into the waqf's fundamentals, its history, its significance, its constitutional legality and we will also take a look at its loopholes. This research paper discusses the history and present of the waqf extensively from a neutral, logical and factual basis keeping aside political views from the entire topic. As the waqf today has important land holdings such as the Delhi high court, central vista project and more such 123 prime locations. The research paper will discuss the legitimacy of the board on holding these assets and will go in depth of the constitutional and legal acceptance of the same.*

**Keywords:** Waqf Act, Land acquisition, Mughal era.

## I. INTRODUCTION

The Waqf board is the third largest land holder in India after the defense and railways. 77% of Delhi is under Waqf land. The Waqf board lays claims to 3,54,931 estates and 8,66,035 properties comprising of 8,02,000 acres of Indian land with UP having the highest share of 2,13,833 Sunni waqf board properties and 15,386 Shia waqf board properties, this data is from the waqf management system of India whose motto is 'once a waqf, always a waqf'. But to understand what is waqf, we need to dig deeper into its history.

## II. JURISPRUDENTIAL UNDERSTANDING OF WQAF ACT

Waqf act can be linked with 3 jurisprudential theories

- 1) Analytical positivism:- It is a legal philosophy that emphasizes the application of logical argumentation and empirical data in the study of the law. It is an institution of legal and

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jurisprudential philosophy. The French philosopher Auguste Comte is credited with coining the word "positivism". From languages and logical concepts, the word "analytical" originates. Legal philosophers like John Austin and Jeremy Bentham created analytical positivism. Three premises are the main emphasis of analytical positivism:

- Sovereignty or the fundamental principle as the legal framework
- a focus on the "as is" law and a rejection of morality
- insisting on the penalty, which served as a forceful mechanism to implement the law

The analytical school's slogan is *ubi civitas ibi lex*, which translates to "there can be no anarchy where there is a state."

According to analytical positivism, a law's legitimacy depends on where it came from and who issued it. Analytical positivism would closely examine the process of legislating and the enacting power in the Waqf Act issue.

Whether the Waqf Act was drafted by a recognised legal body and followed recognised regulations would determine its legal legitimacy.

In the field of law, analytical positivism emphasises the value of linguistic transparency and elucidation. An Analytical Positive thinker would carefully examine the definitions, words, and sections of the Waqf Act in order to ascertain its meaning.

The main goal would be to comprehend the legal ideas and their articulation about waqf (charitable endowments) as they are presented in the Act.

The division between morals and the law constitutes one of analytical positivism's key ideas. This implies that a law's constitutional validity is not determined by its moral consequences or legality.

Analytical positivism proposes that we stay clear of discussing the righteous or ethical implications of endowments for charity in the framework of the Waqf Act and instead concentrate on the legal guidelines and standards established by the Act.

Analytical positivism acknowledges that a regulation can only be deemed lawful if it is established by a legitimate body and can be enforced by penalties. The Waqf boards efficacy can thus be evaluated based on its capacity to create lawful guidelines for the management of waqf holdings.

The Act's defined legal repercussions for breaking any of its terms would be seen as essential to the Analytical Positivist interpretation.

## 2) Natural Law

According to the Natural law view, human behaviour is governed by an overarching ethical rule, and laws created by humans must uphold these ethical principles in order to be deemed just and legitimate. A legislation is deemed unlawful from a Natural legislation standpoint if it contradicts core moral values.

A Natural Law examination of the Waqf Act (1995) would look at the Act's compatibility with ethical behaviour, equity, and fairness as basic concepts. It would evaluate how the Act in a morally acceptable manner upholds the liberties of people and communities engaged in waqf systems.

## 3) Sociological theory :-

Comprehending the Waqf Act of 1995: Sociological Interpretation places emphasis on the interplay among society as a whole and the rule of law. It examines the ways in which social circumstances influence and are influenced by legal norms and organisations. A Sociological Interpretation approach would take into account the ways in which the Waqf Act (1995) affects the social dynamics, financial frameworks, and cultural processes surrounding waqf holdings.

One important factor to take into account would be how the Waqf Act (1995) affected social relationships, especially in areas where waqf arrangements were in place.

Sociological jurisprudence will examine the Act's benefits for social fairness, equilibrium, and the welfare of those whose lives it affects.

### **III. THE WAQF ACT - ITS HISTORY AND PRESENT**

Throughout the whole Sultanate and Mughal eras, waqfs were built by both private citizens and the monarchy. Waqf management demonstrated a theocratic and authoritarian style of governance all through this time. The Qazis oversaw the management of the waqfs at the local level, which was eventually handled by a religious institution known as Sadr-as-Sudur. The structure of power was centralized to the extent that the Qazis, the Sultan (in the Sultanate), and the Badshah (under Mughal control) were all at the top of the line of command. The Ullama, or Islamic clerics and academics, were often the source of the levels of Qazis and Sadr. Shariah, not a secular sense of justice, was the governing law and the incumbent judge's commitment. Consequently, these courts would have effectively demonstrated a significant prejudice towards presumption, irrespective of the judge's personal integrity and character. In the event that a non-

Muslim argues for proprietary or other interest in a property that is being considered for waqf status, the Qazi must weigh the limited rights of the dhimmi against the public policy requirement of waqf as a means of promoting Islamic ideology. The decision must be made in favors of the Mughals. This reasoning might have been especially persuasive in the case if the waqf land in dispute was once owned by a temple or other house of worship.

The intimate relationship between the waqf in pre-British India and proselytization as well as religious and cultural appropriation was another important feature of this institution. The Sufis were at the Centre of this 700-year-long movement of proselytization. The idea that Sufis are Islamic "missionaries" among non-Muslims was first presented by Thomas Arnold, and there is a wealth of literature on this subject. Subsequently, soft narratives have been used by revisionist historians in an attempt to soften Arnold's hard facts. According to Muzaffar Alam's argument, Sufi organizations, or silsilas, started to grow around the 12th century and encouraged and promoted a number of views that Muslims and Hindus shared. Alam continues by saying that despite the fact that some Sufis were oppressive and puritanical, many Hindus were converted to Islam by their overall sense of moderation. This technique of "accretion and reform," as described by Islamophilic and modernist Richard Eaton, is how the Sufi saints would adopt Hindu and local rituals and ostensibly convert the populace to Islam. They would subsequently be persuaded of Islam's fundamental oneness by succeeding reform movements, and they were solidly integrating into the Muslim Ummah. A silsilah, or tradition, was developed by the Sufis as a network of Pirs/Murshids and pupils (Murids or Shagrids). Wajh-i-ma'ash, a type of waqf that is a component of provision for sustenance, is what kept these Sufi networks alive. At times, entire villages with some uncultivated property (i.e., forest land) were given to certain Sufis, with the requirement that they put it under cultivation.

Richard Eaton explains this process explicitly using the city of Chittagong and Sylhet as examples, he demonstrates how charismatic Muslim Pirs drove out the natives and formed Muslim colonial societies, which eventually overran the demographically sparse native population (Buddhist, Hindu, or Animist) and gradually imposed Islam. The local mosque was built by these settlement associations, and the congregation is helped by large land donations. Most of the land grants came in the form of waqf. Consequently, waqf supplied the multigenerational funding required for the Sufi order to start converting the Indian population.

Around the world, there is a practice of demolishing and converting other sectarian sites within a waqf. The finest instances of this phenomena are the Ka'ba and Al-Aqsa Mosque in Jerusalem. This nation's longstanding silence surrounds this procedure. What was the previous legal standing of the lands provided during the Mughal and Sultanate periods through waqf? By

ignoring this query, Richard Eaton implies that the fact that the lands were wooded did not make them terra nullis.

The conceivable scenario is that rival assertions to these lands were quelled by local Hindu peasant farmers, tribal communities, and on rare occasions Hindu or Buddhist religious institutions. by the Ulama dominated Qazis and local officials; only to be forgotten and denied later. Even now, the waqfs' influence has been utilized for establishing claims to Hindu sites. Such claims were made inter-alia in Ayodhya Case and in the Gyanvapi dispute. Such claims were even made against national monuments. The Places of Worship (Special Provisions) Act of 1991 has rendered these bold requests further feasible. Even when the legal logic is weak, the idea of a property “belonging to Allah, perpetual and inalienable”, provide strong emotional and polemical force to these arguments.

Generally speaking, the British did not assist the waqfs after the end of Muslim authority. The Privy Council's ruling in *Abdul Fatah Mohammad v. Russomoy Dhur Chowdhury* was indicative of their mindset. In this instance, it was decided that a waqf intended for family enrichment and charitable donations is illusory due to its tiny amount, ambiguity, or remoteness. Muslim jurists fiercely disagreed with this ruling, believing it to be against Islamic waqf law. The Musselman Waqf Validating Act 1913 (validating several waqf -al-al auld) was then introduced by the Empire. Generally, the Official Trustees Act of 1913, the Charitable and Ecclesiastical Trusts Act of 1920, and other secular laws were used by the British empire to handle legal matters. The Waqf Acts of Bihar & Orissa Mussalman Waqf Act 1926, Bengal Waqf Act 1934, Bombay Mussalman Waqf Act 1935, United Provinces Muslim Waqfs Act 1936, and many more were enacted after the Montagu–Chelmsford Reforms 1919, when communal polarization in Indian politics increased. Regardless of the repeal of many of these Acts by the Waqf Act 1954, the fundamental components of our legal framework still remain.

In the year 1954, India passed the Waqf Act after gaining independence from Britain. A Waqf Board was established under the law, which was modelled after previous waqfs laws. This Board has a wide range of administrative and quasi-judicial responsibilities, making it basically a political institution. The Board's primary responsibilities are to monitor and, if required, remove mutawallis, to approve the disposition of waqf land "in compliance with Muslim law," and to represent the waqf in legal proceedings. It established the Board of Waqf with an arsenal of cash and mandated the mandatory registration of Waqf properties. Those with training in Islamic law or finance and law, as well as members of Muslim groups such as the State Jamiat-ul-Ulama-i-Hind or the State Shia Conference, were to staff the Waqf Boards. Each of them had to be a Muslim. Later, in 1969, an amended act created a Central Waqf Council.

The waqf's economic and social authority was established by this Act. It gave rise to the Waqf Board, a formidable administrative demon that is conceptually comparable to the Mughal Sadr. The community now has a disproportionate amount of wealth that is not accessible to anybody else due to the centralization and pooling of waqf resources. Strictly speaking, the Waqf Act increases the assets' economic worth since it permits the Waqf Boards to sell, lease, or even mortgage waqf assets. In essence, a property with no market value and only book value is one that cannot be transferred or alienated. One may argue that after independence India's appeasement policies began with the Waqf Act of 1954. It helped shape Muslim politics that eventually became focused on community possessions and interests. This helped Islamist groups like the AIMIM, AIDUF, AIMPLB, and others come to be. It should be mentioned that Muslims receive particular treatment under the Waqf framework. For Sikhs, Christians, or Hindus, there are no such institutions. The Sikh Gurudwara Act, 1925, does not include the administration of all types of property; rather, it only deals with the maintenance of Gurudwaras. The Congress administration that came to power after freedom was not nearly as kind to the Hindus even though it was building a Muslim political base. Laws such as the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959, the Religious Endowments Act 1863, and the Indian Trusts Act 1882 still apply to Hindu temples, placing them under strict governmental supervision. Three amendments were made to the Waqf Act 1954: in 1964, 1969, and 1984. A significant change in 1995 would be considered adequate. The Waqf Act of 1995 was implemented as a result of the so-called secular parties' need to virtue signal its Muslim support base. With regard to the Waqf Tribunal, the new Act introduced a novel and risky innovation. The tribunal has broad jurisdiction to rule on disputes regarding assets that are contested to be waqf assets, as well as rights in properties that are acknowledged to be waqf properties, including leases, tenancies, and other agreements. The state administrations will determine the precise jurisdictional boundaries of this tribunal.

Three people staff the tribunal: one is a specialist in Muslim law, one is a member of the state civil service, and one is a member of the judicial service. The Waqf Act of 1995 prohibits the civil court from having jurisdiction over certain matters. Even more concerning, neither the tribunal's verdict nor any of its interim orders may be appealed. Although this tribunal is neither the Qazi or Sadr's Shariat court, it is the closest one to exist in a country that is secular. By its very nature, this tribunal is biased towards waqf; in contrast to the civil court, which is focused on providing justice, the tribunal is focused on protecting and improving the administration of the auqaf. Thus, compared to the civil court, it is far more difficult for innocent third parties to assert their legitimate rights before this tribunal.

Numerous Sikh and Hindu refugees who had sought sanctuary in these properties since the division were deprived of their rights when the same Act moved many of the evacuee assets that were allegedly waqfs to Waqf Boards. Hindu Devotee properties in Bangladesh and Pakistan were never accorded this kind of preferential status. But no matter how many changes were made, the demand for compromises kept rising. The Sachar Committee report fueled the flames of controversy. It was discovered that the estimated total area of Waqf properties in India is around 6 lakh acres, with a book value of approximately Rs 6,000 crore. Sachar was preoccupied with using waqf as an instrument for community growth, a theme directly raised out of Islamic economics. It is irrelevant to ask, though, if the Indian state had previously sought to use "community assets" in a similar manner for the upliftment of any other community, say Hindus? Either way, it was successful in causing an incredibly harsh 2013 amendment to the Act, which established harsh penalties for illegal alienation on waqf properties and extremely harsh guidelines for clearing encroachments. Plenty of these encroachers may actually be poorer segments of the "community" that it wants to protect. 2013 amendment's greatest impact, nevertheless, is its ring-fencing of the waqf lands from any claims made for national development. Acquisition of waqf lands is prohibited unless extremely difficult and unfeasible conditions are met. Given that the majority of waqf land is located in urban areas, India's urban growth is structurally hampered.

Here we can see that, The Basis of Waqf is superfluous but necessary for identity politics, there are three types of waqfs.

- Waqf by users: Any property, construction, or portion thereof that has been permanently utilised for a religious or pious purpose with the owner's consent or knowledge is considered waqf by user.
- Waqf Mashrut-ul Khidmat: This is a communal waqf that signifies an award designated for providing services, and where the wa'kifs, or creators of the waqf, have dedicated the asset for the betterment of the Muslim community.
- Waqf al-al-aulad: A waqf made specifically for the children and family of the wa'kifs.

Waqfs may only be established for religious purposes that adhere to Shariat. Waqf's three main characteristics are inalienability, irrevocability, and immortality. Establishing a waqf does not involve any formalities, such as licencing or drafting a deed. It is not even necessary to explicitly designate a certain property as waqf; it can be established by user or goodwill. It is perpetually bestowed in Allah, the Islamic god, upon its declaration as waqf. There is nothing exactly like the waqf that is found in other Indian groups. Waqf is theoretically similar to a trust, however



with notable distinctions. Waqf is first and foremost a faith-based institution; unlike trusts, waqf cannot exist outside of sharia-sanctioned activities. Because the mutawalli has extremely limited powers, akin to receivers under the CPC, and unlike the trustee under sections 16, 20, 36, and 40 of the Indian Trusts Act 1882, the waqf presupposes an Islamic system with a Qazi implementing it. Second, they are fundamental features of a waqf, unlike trusts, which aren't always irreversible or eternal. Third, there is no need for clarity, in contrast to trusts, particularly public charity trusts (i.e., reveal a specified philanthropic aim). The cy-pres doctrine can be used to disperse the quantities.

The fact that the law of trusts is utilised by civil courts and offers broad fundamental and legal protections for board members, beneficiaries, and non-beneficiaries may be the most significant distinction. A Muslim religious trust may be subject to the unique rules governing public trusts found in CPC sections 92 and 93. From a layman's perspective, the easiest way to understand this is to say that waqf is a type of pre-trust that basically exists in the universe of Dar al Islam, where all potential social or commercial concerns are subordinated to the waqf's immense theological benefits. Conversely, the common-law system of trusts has gone a long way from its canon law/equity law roots to become a truly equitable, secular all-weather theory that aims to balance disparate social and political interests.

#### **IV. FEW OF THE SECTIONS OF THE WAQF ACT 1995**

Section 4(4) gives the waqf survey commissioner the authority and power like that of a civil court

(4) says the following,

“(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters,

Namely: —

- (a) Summoning and examining any witness;
- (b) Requiring the discovery and production of any document;
- (c) Requisitioning any public record from any court or office;
- (d) Issuing commissions for the examination of any witness or accounts;
- (e) Making any local inspection or local investigation;
- (f) Such other matters as may be prescribed.”

Now shedding light upon **Section 54 of the Waqf Act 1995,**

“54. Removal of encroachment from 1 [waqf] property.—(1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is 1 [waqf] property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli. (2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed. (3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is 1 [waqf] property and that there has been an encroachment on any such 1 [waqf] property, 2 [he may, make an application to the Tribunal for grant of order of eviction for removing] such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the 1 [waqf]. 3 [(4) The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property: Provided that the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer. (5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property.]”

**Section 85 of the Waqf Act 1995,**

” 85. Bar of jurisdiction of civil courts. —No suit or other legal proceeding shall lie in any 2 [civil court, revenue court and any other authority] in respect of any dispute, question or other matter relating to any 1 [waqf], 1 [waqf] property or other matter which is required by or under this Act to be determined by a Tribunal.”

**Section 28 of the Waqf Act 1995,**

“[28. Power of District Magistrate, Additional District Magistrate or Sub-Divisional Magistrate to implement the directions of the Board.—Subject to the provisions of this Act and the rules

made thereunder, the District Magistrate or in his absence an Additional District Magistrate or Sub-Divisional Magistrate of a District in the State shall be responsible for implementation of the decisions of the Board which may be conveyed through the Chief Executive Officer and the Board may, wherever considers necessary, seek directions from the Tribunal for the implementation of its decisions.]”

### **Section 107 of the Waqf Act 1995,**

“107. Act 36 of 1963 not to apply for recovery of 1 [waqf] properties. —Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any 1 [waqf] or for possession of any interest in such property”

### **Section 40 of the waqf act**

40. Decision if a property is 1 [waqf] property. — (1) The Board may itself collect information regarding any property which it has reason to believe to be 1 [waqf] property and if any question arises whether a particular property is 1 [waqf] property or not or whether a 1 [waqf] is a Sunni 1 [waqf] or a Shia 1 [waqf], it may, after making such inquiry as it may deem fit, decide the question. (2) The decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final. (3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is 1 [waqf] property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is 1 [waqf] property, call upon the trust or society, as the case may be, either to register such property under this Act as 1 [waqf] property or show cause why such property should not be so registered: Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered. (4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.

### **The essence of these sections can be understood by the following credentials of the same**

1. The waqf board determines the nature of a particular property as ‘Waqf property’ as mentioned in its registers that date back 300-400 years and more so based on its own wisdom and thereby serving a notice to the current claimant of the land concerned and then takes the matter to the Waqf tribunal, and the tribunal more often than not rules in the favor of eviction of land.

2. The Apex court in 2019, withstanding the Waqf Act of 1995, quoted that no civil court has any jurisdiction in the matter of a suit filled in accordance to the waqf property.
3. The suits concerning any waqf land can only be heard in the Waqf Tribunal wherein the parties involved in the judicial and advocacy are decided by the state government, according to section 40(2) of the Waqf act 1995, the tribunals decision can only be overturned by itself in the context of India where in the judicial system is already suffering with lack of judges and pending cases these instances prove to be a final nail in the coffin.
4. The principles of natural justice and art. 14,15,25 of the Indian constitution pose a serious and significant question to these clauses of the Waqf Act 1995.

In the world of law there exists a statute of limitations meaning that there is a time period for acting on a dispute or filing for a suit, in India this law is implemented through the limitations Act, 1963. The section 107 of the Waqf Act 1995 contradicts this and says that act 36 of the limitations act 1963 will not apply for the recovery of the waqf properties, also Limitations Act, 1963 and its provisions do not apply to any suits regarding possessions of immovable waqf property, hence there is no such passage of time for recovering of waqf properties, it is more like a waqf-dominated setup through its tribunal.

The functioning of the Waqf can be understood through the following example:-

Assume that Kshitij owns property close to Mr. Khan's land. The boundaries of the lands are unclear and may even be questioned. On Kshitij's land, Mr. Khan established a waqf by insisting it should be used as a burial site, designating his identity as well as a related individual as the mutawallis. This is made feasible by the fact that users may construct waqf and that no written record is required. After that, he registers it in the Waqf Board. The board must inquire into the property, and Kshitij could potentially oppose registering it if he is aware of it. Nonetheless, the Board retains complete authority to determine if the plot of land qualifies as waqf land or not.

Nevertheless, the Board retains complete authority to determine if the land qualifies as a waqf asset or not. As previously mentioned, the Waqf Board is a political organization whose goal is to safeguard and advance waqfs. As such, there isn't any greater chance that the proceedings under the Body will lead to a right conclusion as they did before the ancient Qazi. In legal terms, the State government must obey the Waqf Board's directives. Kshitij would have been given a limited opportunity of appealing before the tribunal, which is also severely biased against its own people.

There's no other legislative way to challenge the decision it made. It is going to especially

difficult for Kshitij if the property was officially delimited as a waqf (depending upon the Board's registrations) by the state's assessment of waqfs under Section 4 of the Act. In the middle of all of this, Kshitij would face not only Mr. Khan, but the whole waqf administration, which is supported by the Waqf Money and hundreds of employees. He is also going to be scared by the criminal prosecution provisions inserted into the Act by the 2013 changes. Of course, Kshitij can bribe Waqf authorities and escape the web. The Waqf Board is a goldmine of dishonest dealings

## **V. CONCLUSION**

Legally speaking, the waqf institution is not required. The bureaucracy of the Waqf Board and the legal structure of waqf only make sense as a matter of identity and as a political regard. However, it should be highlighted that even in a secular nation, only a logical legal framework may further the public interest rather than merely function as a "identity marker." The current state of the waqf legislation breaches individual property rights, endangers community cohesion, and may even incite radical politics. Meanwhile, there are several possibilities that need to be looked into right, once. The first is to reinstate the civil court's authority and eliminate the tribunal's exceptional jurisdiction. Secondly, it is imperative to provide robust protection of third-party rights while registering a waqf. To defend the rights of third parties under waqf, an Ombudsman may be established.

Insofar as it establishes an exclusive system of administrative and substantive safeguards for a category of assets and religious institutions of one group, to the excluding of all others, the Waqf Act of 1995 and waqf law as it exists now manifestly violate the right to equality under Article 14.

Thirdly, it may be possible to lift the prohibition on purchasing waqf land for the benefit of society. Lastly, any waqf that predated the 1995 Act and hadn't been registered at the time of its passage has to be barred from being claimed by the Waqf Board. This would stop the Board from putting out ludicrous claims on government structures and historical landmarks. Also this can be seen from the perspective of Article 44, which requires the state to create a Uniform Civil Code for every community. Beyond personal laws, the discussion of UCC should encompass waqf in addition. In a world of perfection, the Waqf Act of 1995 would be revoked and substituted with a single system of Religious Endowment Trustees.

Hindus who migrated to what has become Pakistan after the partition and arrived in India had their property seized and either given to Muslim citizens or taken over by the Pakistani government. This is not the situation for the Muslims who migrated to Pakistan from India. The

waqf was given possession of their property. the hindu refugees who came to reside on this property are thus paying rent that is liable to arbitrary hikes.

**(A) Suggestions**

Following are some suggestions from the authors to the lawmakers for securing the futures of the upcoming generations and to ensure the supremacy of law and order.

1. The extraordinary and extrajudicial powers given to the Waqf tribunal and the board must be scrapped and the powers and jurisdiction of the civil courts of this country must be reinstated.
2. Due to the overpowering nature of the tribunal and board, third party interests are overlooked upon and that must be taken into serious consideration by the legislative, judiciary and executive, to surpass this overpowering nature of the board and tribunal, a strong and neutral ombudsman should be appointed to protect the interests and third-party rights in the waqf .
3. The waqf act was amended in 1995 with major changes and reinforcements, the waqf must avoid claiming properties dating before 1995 amendment and to the properties that were not registered at the time of enactment.
4. The board must also refrain from claiming government buildings and other religious monuments as it may disarray the public order.
5. The government should also take into consideration of UCC that mandates a uniformity for all communities

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