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# The Waqf Land Reality: Analysing the Legal, Social & Economic Aspects of the Waqf Amendment Bill 2024

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## ABSTRACT

*Waqf properties are the third-largest landholdings in India, following only the Railways and the Defence sector. Despite their vast expanse, these lands are often caught in a web of legal and administrative challenges, since Waqf Boards hold unchecked authority to make final decisions on disputes. The proposed Waqf Amendment Bill brings new changes to the table, and this paper aims to analyse whether the changes are beneficial or not. By utilizing and applying economic theories of transaction costs and economic efficiency this paper seeks to explore these changes and highlight the urgent need for reform. The study is not only limited to the Waqf Amendment Bill but also the interaction and interplay of other statutes due to the proposed changes, namely the Real Estate Regulatory Authority Act and the Transfer of Property Act. The paper also explores the social changes which could be the possible results of the amendments. Today, more than 73000 waqf properties are currently in dispute, which emphasizes the need for change, hence this paper focuses on providing actionable recommendations and conclude with suggestions which will benefit all stakeholders.*

**Keywords:** *Waqf Amendment Bill 2024, stakeholder impact, socio-economic analysis, effects, implications*

## I. INTRODUCTION

The Waqf Amendment Bill is intended to play critical role in determining the economic impacts on the real estate sector of the country. Waqf is a charitable endowment and the Bill sees to regulate the process of creating the endowment to encourage proper management. Due to its volume and the number of properties it holds, the Bill seeks to reform the existing issues related to unchecked power and increasing number of disputes. The amendments are intended to encourage free market transactions and thus increasing the economic value of the waqf properties. Waqf refers to the property which is given or created as charity or for the benefit of

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the society and it is done for religious purpose.<sup>2</sup> Currently, The Waqf Act 1995<sup>3</sup> defines the legal definition of Waqf under Section 3(r).

While there are different stakeholders, meanings and validations of the waqf in different Islamic sects, the rights and responsibilities of the important stakeholders mentioned in the act which include the *Waqif*, the *Mawquf* and the *Mutawalli* are addressed and questioned by the New Amendment Bill. The most important detail of creation of the Waqf is determined by the intention or purpose for which the Waqf was created in the first place.<sup>4</sup> Here, by utilizing the Doctrine of Cypress the courts can interfere to execute the decree otherwise courts are not the governing body, rather the Waqf Tribunals are. Boards are constituted in every state consisting of members from the Parliament and other Muslim organisations maintaining Muslim representation. The Waqf Tribunal acts like a civil court under the Code of Civil Procedure, 1908.<sup>5</sup>

Most of these existing provisions are proposed to be changed so as to bring uniformity and order in the current act. The economic effects which these amendments may lead to are analysed in this paper so as to reach a conclusion whether the amendments are positive for the Indian economy or not. Overall, the real estate sector has seen increasing growth in the recent years in terms of GDP, however the real estate and property market sector largely remain unregulated, thus the amendment is a good move to regulate the 3<sup>rd</sup> largest land holdings in India.<sup>6</sup> This paper will address the economic and social implications which could arise if the amendment Bill is passed in the Parliament.

## II. LEGAL HISTORY OF WAQF

The history of Waqf dates back to the pious objective of community welfare and welfare economics combined with philanthropy as mentioned in Islamic literature.<sup>7</sup> It was characterized by public welfare and charity. The property designated and created as Waqf is made in perpetuity and cannot be reversed from it. The practice of donating for charity has existed since the onset of the Muslim rulers in medieval India and has seeped itself into modern India as well.

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<sup>2</sup> *Concept And Essentials of A Valid WAKF*. (2021). Legalserviceindia.com. <https://www.legalserviceindia.com/legal/article-1746-concept-and-essentials-of-a-valid-wakf.html>.

<sup>3</sup> The Waqf Act, 1995, § 3(r), No. 43, Acts of Parliament, 1995 (India).

<sup>4</sup> *Ratilal Panachand Gandhi v. State of Bombay*, 1954 AIR 388.

<sup>5</sup> *Sv Cheriyaakoya Thangal v. S.V.P. Pookoya & Others.*, Civil Appeal No. 4629/2024.

<sup>6</sup> Dev Agrawal, *National Journal of Real Estate Law*, National Journal of Real Estate Law (2022), (last visited Dec 20, 2024).

<sup>7</sup> Adzkiya', U., Fittria, A. and Wathani, S. (2023) 'Islamic Philanthropy: Exploring Zakat, Waqf, and Sadaqah in Islamic Finance and Economics: edited by Abdul Ghafar Ismail, Rose Abdullah, and Muhammad Hasbi Zaenal, Palgrave Macmillan (2022). Hardcover. ISBN 978-3-031-06889-8. E-book. ISBN 978-3-031-06890-4.' *Quantitative Finance*, 23(11), pp. 1561–1563. doi: 10.1080/14697688.2023.2224395.

The Act of 1863 was the first attempt of the British to manage Waqf and later through the British period, the practice of charitable endowments was regulated by the Mussalman Wakf Validating Act of 1913<sup>89</sup>. The British did not support the Waqfs objectives after gaining control through the statutes and the same was reflected in Abdul Fatah Mohammad v. Russomoy Dhur Chowdhury case.<sup>10</sup> After independence, another act was made in 1954 which was later replaced by the 1995 Act.<sup>11</sup> Numerous amendments have been made since then particularly the 2013 amendment and the Waqf Repeal Bill of 2022 was also controversial in nature as they reflected tensions over regulating Muslim properties<sup>12</sup>

These amendments have drastically affected the housing, renting prices and the leasing rules leading to imbalance in the market.<sup>13</sup> Boards and tribunals were established under these statutes which basically regulated the management and administration of the workings of the waqf which included solving encroachment issues and any conflicts.<sup>14</sup> The 2024 amendment seeks to change many things including, removing the concept of ‘Waqf by user’ and other controversial and contentious amendments as these provisions have been existing since a longtime and acceptance of removal is contentious.<sup>15</sup>

Waqf is an important Islamic economic concept and acts as a philanthropic activity. In current times, often these noble objectives are subdued due to corruption which necessitates the need for legal regulation and frameworks which can properly manage these charitable endowments, both socially and economically.<sup>16</sup>

### Other Countries

It is not just India which has huge acres of Waqf land, Countries like Malaysia, Indonesia, Egypt and many countries in the middle east like Saudi Arabia have legal provisions to maintain waqf

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<sup>8</sup> Mussalman Wakf Validating Act, 1913, No. 6, Acts of Parliament, 1913 (India).

<sup>9</sup> *Waqf in India: Evolution, Challenges & the New Waqf (Amendment) Bill, 2024 (Comprehensive Guide)* - J.P. Associates. (2024, November 5). J.P. Associates. <https://jpassociates.co.in/waqf-amendment-bill-2024/>.

<sup>10</sup> Kshitij Naik, *INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES*, 7 International Journal of Law Management & Humanities (1995).

<sup>11</sup> Pulugam Devaki. (2024, August 10). *analysis of waqf act, 1923 and proposed amendments*. Lawyersclubindia; LAWyersclubindia. <https://www.lawyersclubindia.com/articles/analysis-of-waqf-act-1923-and-proposed-amendments-16900.asp>

<sup>12</sup> *Waqf In India: Evolution, Laws, Challenges & Waqf (Amendment) Bill, 2024*. (2024). Mondaq.com. <https://www.mondaq.com/india/real-estate/1539008/waqf-in-india-evolution-laws-challenges-waqf-amendment-bill-2024>

<sup>13</sup> Kohli, I. (2023). ANTI-RENT CONTROL LEGISLATION A BOON OR BANE: ECONOMIC ANALYSIS OF THE WAQF (AMENDMENT) ACT, 2013. *G.NLU JOURNAL OF LAW & ECONOMICS*, VI(1), 95–112. <https://doi.org/10.69893/gjle.2023.000047>

<sup>14</sup> *Id* at 12.

<sup>15</sup> *WAQF AMENDMENT ACT 2024 – AN EXPLAINER* - People's Union For Civil Liberties. (2024, October 16). People's Union for Civil Liberties - People's Union for Civil Liberties. <https://pucl.org/manage-writings/waqf-amendment-act-2024-an-explainer/>

<sup>16</sup> Syed Nazim Ali & Umar A Oseni, *Waqf Development and Innovation* (2021).

lands as well. Waqf has long played the role of Islamic finance in these countries and continues to play so.<sup>17</sup> India can take inspiration from different countries on how to properly regulate the real estate/ immovable properties of the Waqf in order to balance both religious and social autonomy and economic welfare. Many different strategies have been adopted by different countries to improve Waqfs administration.<sup>18</sup> Financing of the properties is necessary to increase the economic value and potential that these properties hold.<sup>19</sup> In predominantly Muslim countries, Waqf is treated as microfinance which helps in development of small businesses and local economies and it is a noble social initiative as well.<sup>20</sup> It is also a form of social finance which helps in developing local culture along with economic welfare.<sup>21</sup>

In Malaysia, for instance, *Awqaf* endowments are extremely popular and contributes to the development of charitable institutions like orphanages.<sup>22</sup> The practice of Waqf is enshrined in the constitution of Malaysia, highlighting that charitable endowments are part of the law.<sup>23</sup> A specific body of regulators or judiciary maintains the *awqaf* and no other authority is authorised to overlook *awqaf*.<sup>24</sup>

In Turkey, with its celebrated Islamic history from the Ottoman empire, Waqf is termed as the backbone of social and economic development.<sup>25</sup> The Prime Minister overlooks all of the activities of the institution which regulates the *awqaf* including housing, business, health and educational use of the waqf lands.

In Indonesia, a formal law regulating Waqf was passed in 2004, which is very recent. However, it is a holistic statute which incorporates all kinds of Waqf, movable, immovable properties and cash. Specific to land, the institution which is responsible for administration, must develop the land to support the different objectives of the Waqf.<sup>26</sup> The Ministry managing the religious affairs of the country has taken up projects to develop housing on Waqf lands, showcasing

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<sup>17</sup> Sherin Kunhibava, Aishath Muneeza, Maryam Binti Khalid, Mustapha, Z., & Thong Ming Sen. (2024). Legal Framework for Waqf. *Islamic Social Finance*, 45–68. [https://doi.org/10.1007/978-981-97-1410-0\\_3](https://doi.org/10.1007/978-981-97-1410-0_3)

<sup>18</sup> Hasanuddin, A., Ahmed, H., & Khan, A. (2024). *Strategies to Develop Waqf Administration in India (Research Paper)*. Repec.org. <https://econpapers.repec.org/paper/risirtiop/0049.htm>

<sup>19</sup> Ismail, M., Hisham Dafterdar, Murat Cizakca, Syed Othman Alhabshi, Razak, A., Seyed Kazem Sadr, Anwar, T., & Obaidullah, M. (2016). Legal Framework of the Institution of Waqf. *Palgrave Macmillan US EBooks*, 1–12. [https://doi.org/10.1057/978-1-137-58128-0\\_1](https://doi.org/10.1057/978-1-137-58128-0_1)

<sup>20</sup> Sukmana, R. (2020). Critical assessment of Islamic endowment funds (Waqf) literature: lesson for government and future directions. *Heliyon*, 6(10), e05074. <https://doi.org/10.1016/j.heliyon.2020.e05074>

<sup>21</sup> Muneer M. Alshater et al., *A bibliometric review of the Waqf literature*, Eurasian Economic Review (2021).

<sup>22</sup> *Supra*, n 20.

<sup>23</sup> *Supra*, n 20.

<sup>24</sup> *Supra*, n 20.

<sup>25</sup> *Supra*, n 20.

<sup>26</sup> *Supra*, n 20.

cooperation.<sup>27</sup>

In Singapore, with an amendment to the existing act which regulated waqf lands, despite the comparatively less population of Muslims to Chinese, the unutilized waqf lands were used for developing housing complexes.<sup>28</sup> Optimization of these land resources is necessary for India, and India should take a step forward in this direction to combat the ever-growing population and the high demand for housing facilities among other services.

In Iran, the society has evolved with different revolutions and the law is comprehensive in nature which creates and manages the Waqf properties in Iran. It specifies ownership rights and the institutions functions.<sup>29</sup>

In Pakistan, similar to India till 1947, the Mussalman Wakf Validating Act was present but after independence, a comprehensive central law was made which controlled the *awqaf*. The lands lean towards the Islamic religious piousness rather than public welfare and philanthropic nature of Waqf, however, there have been projects which have developed shops and pharmacies.<sup>30</sup>

In Kuwait, the development of Waqf has existed since ancient times and the government is promoting public welfare through a specific Ministry which manages the *awqaf* and Islamic affairs.<sup>31</sup>

In Saudi Arabia, being more of a traditionalist and conservative state, the laws are quite strict, however the waqfs promote public welfare and the same is governed by Islamic law experts in finance and social justice.<sup>32</sup> Less reforms have been seen due to the strict nature of the laws which has been done through constant management of Waqf properties.<sup>33</sup>

In Egypt, many legislations have been made to manage Waqf properties and multiple reforms have been done to provide public welfare to all. There is a specific ministry in the government dedicated to Waqf which ensures that all administration runs smoothly.<sup>34</sup>

Taking inspiration from the governance practices of some of these countries can help India balance the religious affairs of waqf as well as the economic aspect of the properties. By

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<sup>27</sup> Gemala Dewi, & Irvan Saputra. (2020). *Utilizing the Function of Waqf Land for Development of Flats Building for Public Housing (Study of Cooperation Agreement Between the Indonesian Government with the Executive Board of Nahdlatul Ulama)*. <https://doi.org/10.2991/assehr.k.200306.228>

<sup>28</sup> *Supra*, n 20.

<sup>29</sup> Iskandar, I., & Sofuoğlu, H. (2023). Exploring the Evolution of Waqf Laws and Contemporary Practices in Muslim Countries. *Islam Realitas: Journal of Islamic and Social Studies*, 9(1), 57. [https://doi.org/10.30983/islam\\_realitas.v9i1.6229](https://doi.org/10.30983/islam_realitas.v9i1.6229)

<sup>30</sup> *Id* at 28.

<sup>31</sup> *Supra*, n 29.

<sup>32</sup> *Supra*, n 29.

<sup>33</sup> *Supra*, n 29.

<sup>34</sup> *Supra*, n 29.

adjusting practices and provisions from the experienced countries and applying wherever suitable in the Indian context, India can create a holistic regulation which will be beneficial to all stakeholders: from *Waqif* to the *Mawqif* and *Mutawalli* and also the Boards and Tribunals which maintain governance on the properties.

### III. LITERATURE REVIEW AND REASONING BEHIND PROPOSING AMENDMENTS

The Sachar Committee Report of 2006 which looked into the condition of the Muslims in India presented notable findings regarding the Waqf properties. The report mentioned that the market value of the Waqf properties was more than the current and book value, showcasing a large loss. It highlighted that the waqf properties should be put to efficient use so as to incur a positive return.<sup>35</sup> The lack of efficient management by the Boards leads to a loss in enhanced revenue which could promise higher returns and thus higher positive economic impact.<sup>36</sup>

Numerous instances of misuse have led the government to propose amendments to The Waqf Act, like that of Maulana Kalbe Jawwad who was a *Mutawalli* and was accused of utilizing funds from Waqf properties to benefit himself.<sup>37</sup> As per the Sachar Committee Report (2006), 6 lakh acres worth of Waqf properties were present in India, which now have increased to 8 lakh in 2024. Due to corruption and misuse of Waqf properties, the funds are utilized for illicit purposes which results in a cycle of Muslims stuck in poverty who then get attracted to the garb of corruption and illegal activities.<sup>38</sup> The bureaucratic inefficiencies and lapses coupled with lack of accountability result in underutilization of waqf lands.<sup>39</sup>

Moreover, the ambiguity and confusion in The Waqf Act itself poses a need for transparency and accountability which must be ensured.<sup>40</sup> More often than not, the financial scams are associated with the waqf properties, like the recent Delhi Waqf Board scam where a MLA was arrested from a certain political party under allegations of false appointments in Delhi Waqf Board.<sup>41</sup> The Boards have authoritative power over the economic worth of the properties since

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<sup>35</sup> Sachar Committee, Social, Economic, and Educational Status of the Muslim Community of India 4 (2006).

<sup>36</sup> Hussain, A. (2024). URBAN INDIA THE ECONOMIC VALUE OF WAQF ASSETS IN INDIA: A STUDY OF THE SACHAR COMMITTEE'S REPORT. *UGC Care Listed Journal*, 2, 44.

<sup>37</sup> Service, E. N. (2015, June 17). *Syed Waseem Rizvi hits back at Maulana Kalbe Jawwad: "Sold waqf properties, land for graves."* The Indian Express. <https://indianexpress.com/article/cities/lucknow/syed-waseem-rizvi-hits-back-at-maulana-kalbe-jawwad-sold-waqf-properties-land-for-graves/>

<sup>38</sup> Khan I.A., 'Administration of Waqf's properties in India: Rhetoric or Realities' (2014) Proceeding of the International Conference on Masjid, Zakat and Waqf, <http://conference.kuis.edu.my/imaf/images/e proceedings/2014/wakaf/w01-imaf2014.pdf>.

<sup>39</sup> Sanganeria, A., & Li, B. (n.d.). *Indian Journal of Integrated Research in Law SIGNIFICANCE OF WAQF BOARDS UNDER ISLAMIC LAWS: AN ANALYSIS*. Retrieved December 20, 2024, from <https://ijirl.com/wp-content/uploads/2024/11/SIGNIFICANCE-OF-WAQF-BOARDS-UNDER-ISLAMIC-LAWS-AN-ANALYSIS.pdf>

<sup>40</sup> *Id* at 38.

<sup>41</sup> Service, E. N. (2024, April 15). *Delhi Waqf Board case: SC declines to hear AAP MLA Amanatullah Khan's*

the right to sell and lease lies with them.<sup>42</sup>

In theory, the amendments are an advantageous step to tap into the economic potential that the Waqf properties offer, but their economic implications are yet to be analysed. The Waqf Board is the most important body which holds paramount interest and power in determining the perpetuity of a waqf property.<sup>43</sup> It is important to note that these endowments or waqfs can be public or private in nature depending on the purpose. The relevance of Waqf is not only limited to the large number of landholdings and properties but also, the purpose it serves. It has a socio-economic purpose which lies in increasing education and reducing poverty.<sup>44</sup> It is said that waqf can be determined as another sector apart from the traditional public and private sector.<sup>45</sup> It is said that The Waqf Act is an aid to the government in terms of fulfilling its objectives like poverty alleviation and promotion of education among many other objectives that the government has.<sup>46</sup> The main criticisms of The Waqf Act are related to its nature and function which pose a very huge challenge with respect to economic development.<sup>47</sup> The concentration of decision-making power is neglected as a huge issue which is against the Act's essential purpose, to promote economic development through education programmes and other societal upbringing measure.

#### IV. PROPOSED AMENDMENTS

Of the 44 proposed changes, one of them is to rename the Waqf Act to Unified Waqf Management Empowerment Efficiency Development, which aligns with the Government's aim to create an efficient and justice driven process for the determination and maintenance of waqf properties. It is proposed to amend the definition of waqf mentioned in Section 3(r) of the 1995 Act to mean "the permanent dedication of property, whether movable or immovable, by any individual who has practiced Islam for at least five years and owns property for the purposes recognized by Muslim law as pious, religious or charitable".<sup>48</sup> The primary objective of creating a Waqf property should include the maintenance and protection of widows and orphans along

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*bail plea*. The Indian Express. <https://indianexpress.com/article/cities/delhi/delhi-waqf-board-case-sc-declines-to-hear-aap-mla-amanatullah-khans-bail-plea-9272425/>

<sup>42</sup> *Supra*, n 10.

<sup>43</sup> *Supra*, n 10.

<sup>44</sup> Narasimhan, S. (2008). *ECONOMIC RELEVANCE OF WAKF IN INDIAN FAMILY LAW-A COMPARATIVE ANALYSIS WITH INDIA'S NEIGHBOURS* Written by Shilpha Narasimhan 3rd Year BA LLB Student, Jindal Global Law School (pp. 334-343). <https://thelawbrigade.com/wp-content/uploads/2019/05/Shilpha-Narasimhan.pdf>

<sup>45</sup> *Id* at 43.

<sup>46</sup> *Supra*, n 44.

<sup>47</sup> Amin, M. M. (2023, December 2). *Waqf Laws in India*. Economic and Political Weekly. <https://www.epw.in/journal/2023/48/commentary/waqf-laws-india.html>

<sup>48</sup> *Supra*, n 3.

with other objectives which the Islamic law recognises.

The amendments propose strict conditions for creating a Waqf property, firstly, that only people who are lawful and competent owners can create a waqf property and secondly, this creation will not infringe the rights of heirs regarding inheritance. An online portal is suggested which shall increase ease of access for the properties that were registered before the 2024 amendment. The Collector shall be empowered with the power to resolve disputes in case of any ownership issues in the Waqf property. The power of the Survey Commissioner is now in the hands of the Collector according to the new proposed amendments, whereby the collector will have jurisdiction to survey the property apart from resolving disputes as per Section 4 of the act.

The awareness of a property being determined as Waqf is also increased as Revenue Authorities must issue a 90-day public notice in 2 daily newspapers as well as update their records regularly. Specifically, Section 40 of the act is proposed to be removed completely so as to solve the problem of unchecked power of the Waqf Boards.<sup>49</sup> This amendment can be held in contention in light of the landmark judgement of M.P. Waqff Board vs Subhan Shah<sup>50</sup> which established the powers and functions of the Waqf Board. Moreover, regarding the finality of the decision of the Waqf Tribunal, now the decision can be challenged on the basis of validity within 2 years of its publication, which was not possible earlier.

The inclusion of non-Muslim members and women members is a crucial and most criticised amendment by the Muslim community in India, since the stakeholders were previously not included. It is a controversial proposed amendment which includes inclusion of members from the Bohra or Aghakhani, Shia and Sunni Muslims as well.

A mandatory Waqf deed is required for a property to be termed as Waqf and the Collector must verify the same. The Central Government through the Comptroller and Auditor General of India shall maintain the auditing process. The removal of Islamic law experts from the Waqf Tribunal is a controversial proposed amendment since without any member having knowledge of the issue related to waqf properties, adjudicating any dispute would be futile and justice would not be served.<sup>51</sup>

Another change proposed by the bill is to limit the ability to create a waqf to only the people who have been practicing Islam for at least 5 years. This is very controversial and vague since

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<sup>49</sup> LEGAL LOCK ADMIN. (2024, October 8). *The Waqf (Amendment) Bill, 2024: A Comparative Analysis of the Proposed Changes* › *The Legal Lock*. The Legal Lock › MAKING LAW SIMPLE! <https://thelegallock.com/the-waqf-amendment-bill-2024-a-comparative-analysis-of-the-proposed-changes/>

<sup>50</sup> M.P. waqff Board v. Subhan Shah, 2006 (10) SCC 696.

<sup>51</sup> *The Waqf (Amendment) Bill, 2024*. (2024a, August 28). PRS Legislative Research. <https://prsindia.org/billtrack/the-waqf-amendment-bill-2024>

the application of the same is unclear, retrospective or prospective and moreover, the discrimination between people who have been practicing Islam for at least 5 years and those who have not been could be a big lawsuit in the country.<sup>52</sup>

## V. ANALYSIS

An economic analysis of the law is necessary in determining the efficiency and value of the assets which India has and how they are being utilised.<sup>53</sup> Almost 413787 immovable waqf properties are not governed by management rendering the intended use of the Waqf, be it education or social service, futile.<sup>54</sup>

The Sachar Committee Report suggests that if the Waqf properties are managed properly and effectively they could generate up to 12000 crores annually against the current 200 crores revenue.<sup>55</sup> These land assets will further improve the socio-economic conditions of Muslims who continue to live in poverty when proper and effective management is there to administer the needs of the community.<sup>56</sup> The amendment also introduces strict annual audits which will improve the financial transparency required to achieve the economic value which the assets hold.<sup>57</sup> This will indirectly help to prevent misuse of the property and encourage proper management.<sup>58</sup> The compulsory verification will further promote the proper management which in turn will reduce the number of disputes which may arise, thus ensuring effective management.

Data suggests that the disputes which are stuck in litigation both, internal and external add up to 13202 in number which is a huge ordeal for the economy since these disputes can be avoided with speedy dispute resolution process and changes in the administration, thus avoiding the possibility of dispute from the beginning itself.<sup>59</sup> The bill also prohibits the conversion of Government properties to Waqf, which will limit the litigation and dispute proceedings.<sup>60</sup> Here, the costs of litigation and disputed properties reduce the corresponding benefit which could be achieved with proper management and administration. Transaction costs refer to the expenses which are involved in completing and executing a deal. It involves negotiation or bargaining

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<sup>52</sup> *Supra*, n 49.

<sup>53</sup> Hans-Bernd Schäfer, & Ott, C. (2022). Economics, property rights and economic analysis of law. *Edward Elgar Publishing EBooks*. <https://doi.org/10.4337/9780857935076.00010>

<sup>54</sup> MINISTRY OF MINORITY AFFAIRS, WAQF ASSET MANAGEMENT SYSTEM OF INDIA (2024).

<sup>55</sup> Financial Express, *Financialexpress.com* (2024), <https://www.financialexpress.com/opinion/waqf-amendment-bill-2024-is-a-step-forward/3588475/> (last visited Dec 20, 2024).

<sup>56</sup> MINISTRY OF MINORITY AFFAIRS, EXPLAINER OF WAQF AMENDMENT BILL 2024 (2024).

<sup>57</sup> The Waqf (Amendment) Bill, 2024, Cl. 22, No. 109 of 2024 (India).

<sup>58</sup> *Supra*, n 55.

<sup>59</sup> *Supra*, n 54.

<sup>60</sup> *Supra*, n 56.

costs, search costs as well as enforcement costs which encompass the umbrella term of Transaction Cost. With transaction costs reduced, the economic welfare could be achieved and this can be achieved by the new proposed amendments which encourage the Collector as well as the mandatory verification and registration process.

If proper implementation and verification process of the Waqf land is done before it is submitted for charitable process, the search costs under transaction costs can be avoided. This can be done through the centralized database which has been made by the governments initiative of the Waqf Management System of India or the WAMSI project.<sup>61</sup> This helps in combatting the issue of transparency and accountability which was the main problem of the Act since the unchecked powers of the boards led to the underutilization of the Waqf lands and use not for the charitable purpose, rather for corruption and selfish reasons.

The negotiation or bargaining costs can be lowered by using standardized lease agreements and thus streamlining the negotiation process. This will create a chain reaction effect and thus reduce the enforcement costs as well which involve the cost of litigation and dispute resolution mechanism. This will have a dual impact, firstly if the Waqf property is leased then the same can be implemented smoothly without any disputes, secondly the intended purpose of charity can be fulfilled generating overall social benefit and economic benefit for the country.

Thus, the proposed amendment of revoking the finality of decisions of the Waqf Board and empowering the collectors for surveys and the verification process, overall streamlining the process will reduce costs and increase economic efficiency. Thus, the amendments will make sure that the third largest landholding in India are utilised to its full economic and social potential. However, there are negative aspects of this as well, as the District Collector has been given the final power of being an arbiter on deciding which property will be determined as Waqf<sup>62</sup>, which could be misused. To make sure that this particular amendment is actually effective, it is necessary to have a check on the power of the District Collector which can be done through periodic reporting.

The current process lacks ease and is more complex in nature, thus more time consuming and repetitive, while the post amendment process (if the bill is passed) is more streamlined and thorough with the functions of each and every authority as well as other stakeholders clearly mentioned, therefore simpler and easy to follow. The same is reflected through the flowchart

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<sup>61</sup> *Supra*, n 54.

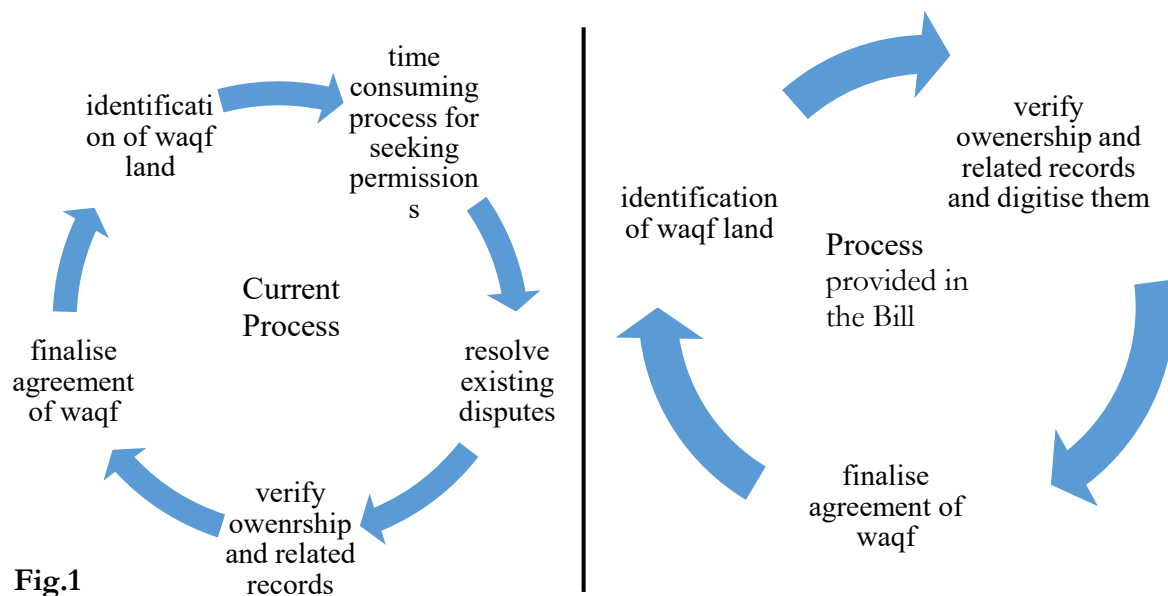
<sup>62</sup> HT News Desk. (2024, August 8). *Explained: What is the Waqf (Amendment) Bill, 2024?* Hindustan Times. <https://www.hindustantimes.com/india-news/explained-what-is-the-waqf-amendment-bill-2024-101723085532695.html>

below.

Current process: in the current process, transaction costs are high due to the complex process of verification and creating a Waqf. This involves a long and lengthy process of verification and frequent disputes over the property causing further delays, coupled with the unchecked power of the Waqf Boards.

Post Amendment process: The proposed amendment process has already begun since an easily accessible digital database called the WAMSI has been created by the government as the first step towards positive changes in the creation of Waqf. Also, with the WAMSI portal, transparency will increase since the properties will be registered, and formal records will increase transparency.

This will help in reducing information asymmetry which is caused by lack of knowledge and will improve accountability and transparency in creation and maintenance of Waqf. Also, it will help in smooth implementation of the function of the Waqf, when the legal process will be simplified by amendments.<sup>63</sup> Moreover, the WAMSI portal can be expanded globally to countries in the Middle East and West Asia to have a global outreach apart from helping in administration and fulfilling the functions of the waqf.<sup>64</sup>



Another one of the contentious amendments is to remove the “Waqf by use” and oral creation

<sup>63</sup> Dewi Farhati, & Akhmad Khisni. (2018). Legal Review Of Implementation Endowments Authority Relating To The Under Hand Agreement Made By Waqif (Case Study In Kua Wonosalam, Demak). *Jurnal Akta*, 5(3), 773–776. <https://doi.org/10.30659/akta.5.3.773>

<sup>64</sup> Ali, M. W., & Rakshan, A. (2022). A STUDY OF WAQF ASSET MANAGEMENT SYSTEM OF INDIA (WAMSI) SOFTWARE: GOVERNANCE, UTILITY AND SOCIO-ECONOMIC IMPACT. *Journal of Asian and African Social Science and Humanities*, 7(4), 29–40. <https://doi.org/10.55327/jaash.v7i4.253>

of property, this is helpful in the sense that it will remove the ambiguity which comes with determining and verifying the property as Waqf.<sup>65</sup> This will help in fixing the purpose of the waqf and streamlining the charitable activities which will be undertaken and will also help maintain records in the new online portal WAMSI, thus keeping a check on the number of Waqf properties and their use. It should be noted that despite the WAMSI portal, only 330000 records are available<sup>66</sup>, of the total of more than 8 lakh properties of Waqf. This is due to the slow process of digitising records, however it still a good move for easy access and transparency in management.<sup>67</sup> While, this amendment will negate the longstanding practice of creation of Waqf by use and oral creation, it will be beneficial in the long run in avoiding disputes since a paper trail or an online trail with proper records can be established with a centralised system.

The whole essence of creation of Waqf is for social and charitable benefit of the society which is being hampered due to the unfettered powers and the corruption within the waqf boards and the lengthy litigation disputes. This can be negated and the essence of the process of Waqf property creation can be established and highlighted with amendments. Waqf lands are public goods thus serving the community and are created to serve charitable purposes according to the owner's wishes. Unfortunately, due to corruption, underutilization of the property and its intended use is neglected and completely invalidated.

This can be solved with schemes to support the Waqf institutions the welfare aspect of the creation of the Waqf which is the main notion is fulfilled.<sup>68</sup> Schemes like the Shahari Waqf Sampatti Vikas Yojana are a welcome move to support the Waqf institutions for positive growth both economically and socially.<sup>69</sup> Thus, utilising existing resources like the WAMSI portal and a provision to check authority of the regulators involved will result in a positive change in development of the waqf properties.

## **VI. INTERPLAY OF REAL ESTATE (REGULATION AND DEVELOPMENT) ACT AND TRANSFER OF PROPERTY ACT WITH IMPLICATIONS OF WAQF AMENDMENT**

The implication of removing Section 40 of the Waqf act would increase the waqf owners' security over their titles as there would be no unchecked power of the Waqf Boards in determining a property as Waqf, thus it would align with the Transfer of Property Act by

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<sup>65</sup> Today, I. (2024, August 8). *Muslim women in waqf boards, central council: Key features of Waqf bill*. India Today. <https://www.indiatoday.in/india/story/waqf-amendment-bill-parliament-key-features-explained-2578991-2024-08-08>

<sup>66</sup> *Supra*, n 54.

<sup>67</sup> *Supra*, n 9.

<sup>68</sup> Waqf Properties in the Country, pib.gov.in, <https://pib.gov.in/PressReleasePage.aspx?PRID=1796198>.

<sup>69</sup> *Supra*, n 65.

reinforcing owner's rights to their property and if they want it to be created as a Waqf endowment. It will also help in reducing disputes over property as before a property is determined as a waqf it would be thoroughly checked through records, thus avoiding unnecessary disputes. It would also align with RERA's<sup>70</sup> objectives as a statute to implement transparency and also make predictions easier for trends in prices. RERA is known to be comprehensive in nature and is said to attract a lot of foreign investment in India.<sup>71</sup> It would be a good opportunity to utilise Waqf lands for charitable purposes with the help of these foreign investments as well. Moreover, the ultimate goal of the waqf which is charitable motives for good of society can be achieved with a transparent and accountable system of administration and this can be properly achieved by a smooth interplay of all the overlapping statutes.

The Waqf amendments will also help in improving the clarity in the real estate laws which are also relatively new, since the RERA Act was passed in 2016 only. A holistic balance with both these legal frameworks is required and it should be made sure that both these laws don't contradict each other, since they do overlap. This overlapping may cause problems in demand supply, thus disrupting equilibrium and other problems related to polarisation and imbalances.<sup>72</sup> When we create a demand and supply graph, the earlier position of these encroached and unutilised waqf lands create a stagnant problem which reduces the supply of land for public purposes for the corresponding high demand. But with changes proposed by the amendment, checking the powers of the waqf board and properly verifying the properties, the supply will shift to the right side matching the demand and this could stabilize prices of real estate and the same is reflected in the graph below. There is massive economic potential for the utilization of Waqf properties which has to be tapped into and with proper governance it can be good for the Indian economy.

Waqf lands can be a blessing for tenants since they can relax the pressure of housing markets among other charitable purposes like education through schools and healthcare through hospitals.<sup>73</sup> The prices of the real estate market have been growing at a positive rate with the demand being higher than the supply.<sup>74</sup> With RBI's help in keeping interest rates stable, India

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<sup>70</sup> The Real Estate (Regulation and Development) Act, 2016, Acts of Parliament, 2016 (India).

<sup>71</sup> Chawla, N., & Mohanty, B. (2018). Reform in the Indian real estate sector: an analysis. *International Journal of Law and Management*, 60(1), 55–68. <https://doi.org/10.1108/ijlma-10-2016-0093>

<sup>72</sup> Janaki Ram Pillarisetti. (2000). Economic reform, overlapping property rights, and polarisation in the real estate market. *Rivista Internazionale Di Scienze Economiche E Commerciali*, 235–253. <https://doi.org/10.4225/03/593600e0c453d>

<sup>73</sup> Chawla, N., & Kumar, B. (2022). *Indian real estate regulations and urban homebuyers: impact assessment*. <https://doi.org/10.21203/rs.3.rs-1572384/v3>

<sup>74</sup> Global Property Guide. (2019). India's property market remains weak, amidst a slowing economy. *Global Property Guide*. <https://www.globalpropertyguide.com/Asia/India/Price-History>

has managed to grow in its GDP through its real estate sector as well. It is important that supply be matched with the rising demand.<sup>75</sup> Reiterating that with the proposed changes, the supply slope will shift towards the right, exposing the underutilized land which could be used to curb the ever-increasing prices of real estate, thus beneficial to the economy, the tenants and the society as a whole. With a streamlined process, the interplay of the waqf act with the transfer of property act will also smoothen the process of leasing and transfers of immovable property. For dispute resolution, the doctrine of *Lis Pendens* as enshrined in Section 52 and the Doctrine of Part Performance under Section 53A of the Transfer of Property Act can protect tenants and the owner of Waqf from frauds, thus strengthening the preexisting framework.<sup>7677</sup> This will help in fostering accountability and create comprehensive recourses for dispute resolution which are much needed.

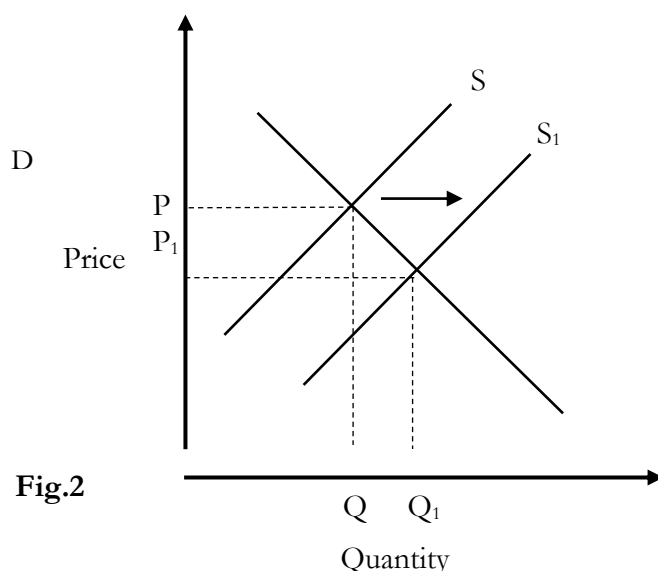


Fig.2

## VII. SUGGESTIONS

Coordination and proper management through proper and updated communication is required to combat corruption, because despite these proposed changes, corruption is a looming evil in governance.<sup>78</sup> Regular checking should be done which should include auditing of the assets and a transparent system of management of Waqf properties is the need of the hour. The faction of the people opposing the bill argue that it is hampering their religious autonomy in the name of

<sup>75</sup> Reserve Bank of India - Press Releases. (2024). Rbi.org.in. [https://rbi.org.in/scripts/BS\\_PressReleaseDisplay.aspx?prid=58605](https://rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=58605)

<sup>76</sup> The Transfer of Property Act, 1882, § 53A, No. 4, Acts of Parliament, 1882 (India).

<sup>77</sup> The Transfer of Property Act, 1882, § 52, No. 4, Acts of Parliament, 1882 (India).

<sup>78</sup> *Supra*, n 9.

modernization<sup>79</sup>, as the main goal of the bill is to let go the colonial past<sup>80</sup>, also done when the three new criminal acts were passed. While the objective is noble, it requires thorough and comprehensive dialogue, debates and considerations of the stakeholders at hand.

Merely passing the bill and having no implementation will render the bill useless and futile, which will overall negate the economic and social objective of the proposed changes as well as the most important aspect, the lives of the people attached to the Waqf property as well as a whole religion and its values. It is a sensitive issue and should be dealt with the sensitiveness, keeping all stakeholders equal in value while considering the proposed changes. It is important to note that constant monitoring and enforcement is key to implementing any statute and without that mere, changes in the act will render it useless and futile. Regular checks on the workings in administration through digitized records could be helpful. Most importantly, awareness in a positive sense is required which will ultimately help in easier process of Waqf creation and societal benefit along with benefit to the economy. Programmes could be conducted to educate local economies on the legal responsibilities under The New Amendment Bill so that proper implementation is possible.

Utilising the Waqf properties for its main objective by ensuring that they are developed for goals like education and public housing is an important aspect.<sup>81</sup> Focusing on tenants' rights is important, especially under waqf since most of the land is utilized for charity and tenants are left vulnerable, a proper provision for the same would save unnecessary litigation costs and chaos associated with the utilization of the Waqf land and promote community welfare as well.<sup>82</sup> The long term economic impact of proper management of the waqf properties will be resulted in the growth of local economies with increased job creation and services like healthcare and education, which will in turn increase the social standing of the tenants or the occupants of the Waqf properties.<sup>83</sup> This increases the overall revenue generation of the Waqf land and thus more economic benefit.<sup>84</sup> While the act aims to reduce litigation by properly managing and administrating the Waqf properties, lawsuits could still be initiated on the grounds of social discrimination, specifically Article 14, 25 and 26.<sup>8586</sup> It is also important that the Chief

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<sup>79</sup> Bhaumik, A. (2024, August 8). *What are the contentious amendments to the Waqf Act and what are the implications? | Explained*. The Hindu. <https://www.thehindu.com/news/national/what-are-the-contentious-amendments-to-the-waqf-act-and-their-implications/article68498466.ece>

<sup>80</sup> *Supra*, n 54.

<sup>81</sup> *Supra*, n 27.

<sup>82</sup> *Supra*, n 79.

<sup>83</sup> *Supra*, n 54.

<sup>84</sup> *Supra*, n 55.

<sup>85</sup> *Supra*, n 51.

<sup>86</sup> *The Waqf (Amendment) Bill, 2024 - IMPRI Impact And Policy Research Institute*. (2024, September 2). IMPRI Impact and Policy Research Institute. <https://www.impriindia.com/insights/waqf-amendment-bill-2024/>

Executive Officer as proposed in the Bill be familiar with Islamic law, despite there being no compulsion on the person being assigned the position of Chief Executive Officer is a Muslim.<sup>87</sup> Even in the waqf tribunals, it should be necessary to have members who are familiar with Muslim personal law and Islamic law since Waqf is a religious endowment and to maintain its sanctity, this should be the bare minimum.<sup>88</sup>

A balance of both religious sanctity and sacredness coupled with economic and social well-being is required and can be achieved with proper management of the Waqf properties. With these recommendations as well as analysis, stakeholders can discuss and debate the amendments further to support the common interests of all involved. It is important to stay sensitive to all the issues and the stakeholders involved for the benefit of all.

## VIII. CONCLUSION

The Parliamentary Joint Committee on the Waqf Amendment Bill has its meetings where they discuss suggestions and opinions on the amendments. The support of the members will be crucial in deciding the adoption of these proposed amendments. Moreover, the Jadambika Pal led Joint Committee is approaching its deadline to submit its report, thus providing crucial feedback. Till date there have been only 25 sittings starting from August 22<sup>nd</sup>.<sup>89</sup> Also, the committee is likely to be granted an extension till the Budget Session to discuss the amendments.<sup>90</sup> There is a huge disagreement over the controversial proposed changes in the bill leading to chaos in the Parliament which is also reflected in debates all over the country.<sup>91</sup> Waqf is a charitable institution of which the revenue goes to its beneficiaries as mentioned in the holy book of Islam and amendments which further these intentions are welcomed.<sup>92</sup>

The Muslim population is against the proposed changes since they feel that the traditional approach and practices are being neglected with new and modern ones, causing a road block in the implementation or passing of the Bill's process. While the contention is largely true, it is beneficial in the long run providing security and transparency in the creation of the waqf. The resistance of these people is escalated by the inclusion of non-Muslim members in the Waqf

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<sup>87</sup> *Supra* n 54.

<sup>88</sup> *Supra* n 54.

<sup>89</sup> Indian Express Delhi epaper dated Wed, 27 Nov 24, Indianexpress.com (2024), <https://epaper.indianexpress.com/3945367/Delhi/>.

<sup>90</sup> *Id* at 88.

<sup>91</sup> Moneycontrol News, *Waqf Bill explained: What is it, what changes does it propose and why is there controversy around it?*, Moneycontrol (2024), <https://www.moneycontrol.com/news/india/waqf-bill-explained-what-is-waqf-amendment-bill-changes-controversy-news-12876907.html> (last visited Dec 20, 2024).

<sup>92</sup> Ismail, M., Hisham Dafterdar, Murat Cizakca, Syed Othman Alhabshi, Razak, A., Seyed Kazem Sadr, Anwar, T., & Obaidullah, M. (2016). Legal Framework of the Institution of Waqf. *Palgrave Macmillan US EBooks*, 1–12. [https://doi.org/10.1057/978-1-137-58128-0\\_1](https://doi.org/10.1057/978-1-137-58128-0_1)

boards as a proposed changed and is being thoroughly discussed in the meetings. This particular proposed amendment is against the religious freedom and rights of Islam according to Articles 25<sup>93</sup> and 26<sup>94</sup> of the Constitution<sup>95</sup>. This move questions the integrity of the Waqf Boards and has sparked huge debates which have culminated into a lot of hatred towards non-Muslims. This could negate the purpose of reducing disputes as non-Muslims would not have the understanding of the workings of the Waqf Boards and the autonomy of the District Collector could be questioned over the question of religion. This is a huge problem as these decisions could ruin the balance which is aimed by the government.

The amendment is overall a good move to tap into the economic benefits of the underutilized land resources; however, the implementation will be the true test of the proposed amendments success or failure. The law is still being debated and will continue to be; however, it still is a good attempt to refurbish the old law and make it suitable to present and modern times. Caution must be observed in balancing the religious rights as well as the economic and social benefit of all stakeholders.

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<sup>93</sup> INDIA CONST. art 25.

<sup>94</sup> *Supra*, n 51.

<sup>95</sup> INDIA CONST. art 26.