IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

W.P.(C) NO. 276/2025 / W.P.(C) NO. 314/2025 / W.P.(C) NO. 284/2025

W.P.(C) NO. 331/2025 / W.P.(C) NO. 269/2025

IN THE MATTER OF:

IN RE: THE WAQF (AMENDMENT) ACT, 2025 (1)

IN RE: THE WAQF (AMENDMENT) ACT, 2025 (2)

IN RE: THE WAQF (AMENDMENT) ACT, 2025 (3)

IN RE: THE WAQF (AMENDMENT) ACT, 2025 (4)

IN RE: THE WAQF (AMENDMENT) ACT, 2025 (5)

AND OTHER CONNECTED MATTERS

PRELIMINARY COUNTER AFFIDAVIT ON BEHALF OF THE UNION OF INDIA

VOLUME-I

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PAPER BOOK

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ADVOCATE FOR THE RESPONDENT- UOI:

SUDARSHAN LAMBA

VOLUME-I

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PRELIMINARY COUNTER AFFIDAVIT ON BEHALF OF UNION OF INDIA

I, Shersha C Shaik Mohiddin, aged about 59 Years, S/o C.M. Shaik Mohiddin, currently working as Joint Secretary, Ministry of Minority Affairs, Government of India, do hereby solemnly affirm and state as follows:

1. That I am authorized to file this Counter Affidavit on behalf of the Respondent, in the aforesaid matter, in my official capacity. On the basis of the available official record, I am fully conversant with the facts of the present case, hence competent to swear this affidavit. The present affidavit is on the basis of information derived from the official records maintained by the Department and the proceedings before the Joint Parliamentary Committee [JPC].

2. That I have read the contents of the writ petitions and other attached documents and I say that the contents therein to the extent they are inconsistent with the submission hereinafter made in this counter-affidavit, are incorrect

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and are denied, unless any averment or contention is specifically admitted or traversed, the same may be treated as denied.

3. That I have perused the present writ petitions filed by the Petitioners and in reply, humbly submit that the present petitions are liable to be dismissed. The Respondent is filing this Preliminary Affidavit to clarify the position before this Hon'ble Court.

4. At the outset it is respectfully submitted that this Affidavit in reply is being filed as a preliminary reply and only to deal with the issues flagged during the earlier hearing on 16.04.2025. I reserve my rights to file a further and detailed affidavit along with further material as and when necessary before further hearing and / or before final hearing.

5. At the further outset, I respectfully raise two preliminary issues for the kind consideration of this Hon'ble Court-

(a) It is submitted that it is a settled position in law that constitutional courts would not stay a statutory provision, either directly or indirectly, and will decide the matter finally. There is a presumption of constitutionality that applies to laws made by Parliament. This presumption would be *a fortiori* when the law has been made on the recommendations of a Joint Parliamentary Committee, by a detailed report prepared after an exhaustive exercise followed by an extensive debate in both Houses of Parliament.

While the Hon'ble Court would undoubtedly have the power to examine the constitutionality of the law, at the interim stage, the grant of an injunction against the operation of any provision of the law, either directly or indirectly, would be violative of this presumption of

constitutionality which is one of the facets of the delicate balance of power between the different branches of the State.

(b) It bears emphasis that the petitions being heard by this Hon'ble Court do not complain of injustice in any individual case that needs to be protected by an interim order in a specific case and no facts or specific details are given. The petitions challenge the law on general averments of legislative overreach primarily in relation to rights under Article 25 and 26 of the Constitution for the people belonging to the Muslim community generally. While this Hon'ble Court would examine these challenges when the cases are heard, a blanket stay [or a partial stay] without being aware of the adverse consequences of such an order in a generality of cases [even on members of the Muslim community itself] were the petitions to be unsuccessful would, it is submitted, be uncalled for, especially in the context of the presumption of validity of such laws.

(c) These petitions proceed on the false premise that the amendments take away the any of the rights conferred under Article 25 or 26. The fundamental purpose of the Waqf Act is to confer validity upon such dedications, which were considered to be invalid under common law. When an enactment confers validity, such enactment enjoins certain duties and responsibilities upon such dedications. The primary religious right being the right to make a dedication is not interfered with and neither is the neither is administration of any specific waqf interfered with as the same continues to be vested with the *mutawalli* as per the purpose behind such waqf.

It is submitted that however, in order to enjoy the host of legal protections and statutory benefits conferred by a law that recognises

such dedications [which, but for such law, may well be declared invalid], it is always open to Parliament to lay down a statutory framework to ensure that the statutory protections and benefits are not either overexpansive or misused , and to take away such protection where it is considered to be in public good.

(d) Another aspect of the matter that needs to be considered is the sharp distinction between religious rights and the management of properties that are dedicated to religion. The Waqf Act, 1995 conferred a recognition of waqfs as a valid statutory dedication of property and that remains unchanged continuing to protect the religious rights of a Muslim individual or a community in general. The secular provisions of proving such a dedication, and the management of such properties including preventing their waste or misuse are permissible under the constitutional framework. The new petitions conflate all the rights under Article 25/26 and treat ***mere*** regulation as a violation of the Constitution.

(e) It is submitted that the scope of judicial review, either in a petition under Article 32 or Article 226 challenging a statutory enactment, would be restricted to only two parameters:

(i) The legislative competence of the legislature; and

(ii) The violation of fundamental rights.

6. It is submitted that so far as the legislative competence is concerned, it is not even the case of the Petitioners that the Parliament is incompetent to pass the amending Act. When it is an admitted position before the Court that the competent legislature has passed a Bill, that too after an elaborate and exhaustive exercise as referred below, this Hon'ble Court would not second-

guess the provisions based upon a tentative and prima facie reading of the provisions at an interim stage.

In the above referred two circumstances, this Hon'ble Court may consider not to grant any interim order and hear the main petitions finally.

7. At the further outset, it is respectfully submitted that there are two sets of diametrically opposite petitions filed by two sets of Petitioners before this Hon'ble Court – one challenging the Wakf Act, 1995 in totality [with the 2013 amendments] ["**original petitions**"] and the other set of Petitioners challenging only the 2025 amendments ["**new petitions**"].

It may be noted that interim relief was specifically pleaded and prayed for in the original petitions. However, in none of these petitions has this Hon'ble Court or any other Hon'ble High Court passed any interim order. The said petitions were and have been pending across the constitutional Courts for a considerable time. The original set of petitions based on Article 14 have not been heard in order to take a *prima facie* view of whether the original Act or the 2013 amendments are unconstitutional. It is submitted that this Hon'ble Court and the Hon'ble High Courts maintained a particular degree of judicial consistency while ***not granting any interim order***.

8. It is submitted that on the other hand, the new petitions challenging the 2025 amendments, which were filed even before the 2025 Amendment Bill became an enactment and mentioned before this Hon'ble Court even before the 2025 Amendment Act became operational, are being primarily heard for considering the question of passing an interim order.

Considering the settled constitutional principles of *presumption of constitutionality*, intrinsic value behind democratic processes and high threshold to be met before passing any interim orders, it would be in the fitness of things to decline any interim orders as was done in the original petitions.

It is submitted that considering the two different sets of petitions and two different stances/purviews from which the 1995 Act, the 2013 amendments and the 2025 amendments have, wholly or in part, been challenged by both sets of Petitioners, judicial consistency requires the constitutional Courts to bestow same treatment to both set of petitions as far as interim relief is concerned.

DETAILED EXERCISE UNDERTAKEN AND EXAMINATION OF THE DATA AND VIEWS OF THE STAKEHOLDERS BEFORE THE AMENDMENT

9. It is submitted that the amendments which are questioned in the present batch of petitions are a result of a very comprehensive, in-depth and analytical study by a Committee formed by the Parliament consisting of the members of different political parties to ensure that the Waqf Boards in the country are properly administered, that they function with transparency, that the repeated abuse of waqf legislation which resulted into deprivation of the personal properties of individuals and resulted in the encroachment of government properties [which is nothing but a community property owned collectively by the citizens of India] is prevented, an inclusivity is brought in.

10. It is submitted that before the present impugned amendments, there has been a detailed Executive level and Parliamentary level exercise in order to understand the problems plaguing the previous statutory regime, the consequences, and the appropriate measures that were required to remedy the same. A copy of the data showing a remarkable increase in properties governed by the Waqf Boards post 2013 is annexed herewith and marked as **Annexure R – 1**.

11. It is submitted that there have been reported misuse of waqf provisions to encroach private properties and the government properties. It is really

shocking to know that after the amendment brought in the year 2013, there is 116% rise in auqaf area. It is submitted that right before even Mughal era, pre-independence era and post-independence era, the total of wakfs created was 18,29,163.896 acres of land in India.

Shockingly after 2013, the addition of wakf land is 20,92,072.536 acres.

12. It is submitted that the figures given in **Annexure R – 1** are the figures which are uploaded by the respective waqfs and Waqf Boards voluntarily on WAMSI Portal. It has been the consistent experience that every waqf and every waqf board do not upload the details in public domain with a view avoid transparency and regulatory oversight.

As pointed out hereinunder by insertion of Section 3 B it has become mandatory to upload the details and make everything transparent by putting it in public domain.

A window of 6 months is given to file details of waqfs on the portal and database under Section 3B. Once the updation takes place as per amended Section 3B, the figures will go substantially higher.

13. In other words, till 2013 [i.e. the period which includes Mughal era, pre-independence era and post-independence era], the total area of waqf created were **1829163.896 acres of land**. It is really shocking to note that only after 2013, the addition of waqf lands is **2092072.563 acres** in just 11 years.

In other words, even the first legislation in 1913 is considered, to be the first regulatory measure, 18 lakh acres was occupied by waqf till 2013 i.e. in 100 years [and more if we count pre-1913 era also]. Only between 2013-2024, a phenomenal increase is found and the figure of 20 lakh acres **is additional and not the total figure**. The total comes to **3921236.459 acres of land**.

The increase in waqf properties by 116% itself called for a serious look at statutory architecture of the 1995 Act [specifically as amended by the 2013

amendments] that protected auqaf particularly in the face of serious complaints of land grabbing and encroachments on private lands, government lands, etc. received continuously by the elected representatives coming from all across the country who constitute the Parliament and make the statutory enactment representing the will of the people.

14. The Central Government, therefore, introduced the *Waqf* [Amendment] Bill, 2024 [hereinafter referred to as Bill] and the same was introduced in Lok Sabha on 08.08.2024. The Hon'ble Minister for Minority Affairs considering the significance and importance of the subject matter came to the conclusion that it required an in-depth study. It is submitted that therefore stakeholders' consultation was undertaken by moving a Motion for reference of the Bill to Joint Committee on Waqf Amendment Bill on 09.08.2024. This Motion was passed in Lok Sabha and concurred by the Rajya Sabha.

15. As per the mandate of the House, the Joint Committee on Waqf Amendment Bill, 2024 [hereinafter referred to as the "Joint Parliamentary Committee" or "JPC"] was constituted consisting of 31 elected members from different political parties. It is submitted that many of the petitioners were also the members of the Joint Parliamentary Committee and participated and contributed in every meeting along with other members.

16. As per the mandate of the House, the Committee was to submit its Report to the House by the last date of the first week of the Winter Session. However, considering the in-depth study which was required, extension of time was sought by the JPC and given till the last day of the Budget Session by passing a Motion of Extension by Lok Sabha on 28.11.2024. This again reflected the will of the elected representatives to ensure a detailed study and analysis before the Joint Parliamentary Committee places its Report before the House.

17. The Joint Parliamentary Committee conducted an unprecedented and exhaustive exercise. A Press Communique was issued on 29.08.2024 in national and regional newspapers inviting suggestions and objections to the Bill. The Committee also decided to invite experts / stakeholders and other concerned organisations in particular to give their views freely before the aforesaid 31 Member Committee.

18. It is submitted that the Joint Parliamentary Committee held 36 sittings and heard the views of all concerned stakeholders. The Committee received 97,27,772 memorandums from across the country showing participation from all over the country in this historic law-making process. All the memorandums were forwarded to the Ministry of Minority Affairs for obtaining their comments.

19. It is submitted that the Committee also visited about 10 major cities in the country and undertook personal discussions with experts, stakeholders / concerned organisations, *waqf* boards and the representatives of State Governments as well as State Minority Commissions.

20. The Joint Parliamentary Committee conducted exhaustive deliberations on each issue contained in the Bill. It is submitted that the discussions included 284 stakeholders, 25 State *Waqf* Boards, 15 State Governments, 5 minority Commissions and 20 Ministers / MPs / MLAs etc. The Committee thereafter prepared, considered and adopted the Report consisting of 655 pages by majority. The notes of dissent of 08 members were also placed along with the Report to be placed before the Parliament. A copy of the said Report is enclosed herewith and marked as **Annexure R - 2**.

21. Apart from the representations received by the Joint Parliamentary Committee, the Ministry of Minority Affairs also received representations highlighting the need for legislative amendments which include -

a) Mismanagement of Waqf properties.

b) Deliberate encroachment and unlawful transfer of Waqf land.

c) Inefficient functioning of Waqf Tribunals.

d) Sweeping powers to arbitrarily declare property as Waqf (as per Section 40 of the 1995 Act).

e) Allegations against Waqf Board officials, along with general grievances.

f) Representation from the Ahmadiya community.

22. The Ministry of Minority Affairs which is the nodal Ministry of the Government of India for the Bill also conducted extensive consultations with a wide range of stakeholders like officials of concerned State *Waqf* Boards, representatives of State Governments, Chairpersons and CEOs of State *Waqf* Boards from 19 States / UTs and general public regarding improvement in the management of the *Waqf* to avoid and prevent any misuse of the statutory provisions.

23. The Committee heard the view of representatives from the State Government of

- Maharashtra
- Gujarat
- Andhra Pradesh
- Telangana
- Tamil Nadu
- Karnataka
- Assam
- Odisha
- Madhya Pradesh

- Rajasthan
- Bihar
- West Bengal
- Uttar Pradesh

24. The Committee also held discussions with the representatives of 25 *Waqf* Boards mentioned hereunder and sought written submissions from the remaining *viz*.-

(i) Uttar Pradesh Sunni Waqf Board
(ii) Telangana
(iii) Rajasthan
(iv) Punjab
(v) Haryana
(vi) Uttarakhand
(vii) Delhi
(viii) Maharashtra
(ix) Madhya Pradesh
(x) Gujarat
(xi) Andhra Pradesh
(xii) Kerala
(xiii) Karnataka
(xiv) Tamil Nadu
(xv) Chhattisgarh
(xvi) Assam
(xvii) Manipur
(xviii) Tripura
(xix) Meghalaya
(xx) Odisha
(xxi) Bihar Shia Waqf Board

(xxii) Bihar Sunni Waqf Board

(xxiii) Jharkhand

(xxiv) West Bengal

(xxv) Uttar Pradesh Shia Waqf Board

25. It is submitted that over and above the nodal Ministry *viz*. the Ministry of Minority Affairs, the Committee heard the views of Ministry of Law and Justice, Ministry of Housing and Urban Affairs, Ministry of Road Transport and Highways, Ministry of Railways and Ministry of Culture (Archaeological Survey of India) on the subject of the proposed amendments.

26. The Committee gathered inputs from a wide range of stakeholders, notable amongst whom are the following :

1. All India Sunni Jamiyatul Ulama, Mumbai
2. Indian Muslims of Civil Rights (IMCR), New Delhi.
3. Uttar Pradesh Sunni Central Waqf Board.
4. Rajasthan Board of Muslim Waqf.
5. Zakat Foundation of India
6. Telangana Waqf Board
7. Prof. Faizan Mustafa, Vice Chancellor Chanakya National Law University, Patna
8. All India Pasmanda Muslim Mahaaz, Delhi
9. All India Muslim Personal Law Board (AIMPLB), Delhi
10. All India Sufi Sajjadanashin Council (AISSC), Ajmer
11. Muslim Rashtriya Manch, Delhi
12. Bharat First, Delhi
13. Jamiat Ulama-i-Hind, Delhi
14. Justice in Reality, Cuttack, Odisha
15. Panchasakha Bani Prachar Mandali, Cuttack, Odisha
16. Indian Union Muslim League (IUML)

17. Call for Justice group
18. Waqf Tenant Welfare Association
19. Resident Welfare Association (All Blocks) B.K.Dutt Colony, New Delhi
20. Jamaat-e-Islam-e-Hind, Delhi
21. Muslim Women Intellectual Group led by Dr. Shalini Ali
22. Jamiyat Himaytul Islam
23. Shia Muslim Dharmguru and Intellectual Group
24. Vishwa Shanti Parishad
25. Akhil Bhartiya Adhivakta parishad
26. Anveshak
27. Anjuman-e-Shiateali Dawoodi Bohra Community
28. Muttaheda Majlis-e-Ulema, Jammu and Kashmir (Mirwaiz Umar Farooq)

27. The Committee, while going through a clause by clause reading and discussion found that apart from lack of transparency, lack of professional administration, lack of statutory infrastructure for survey and other problems which defeats the object of *waqf*, large number of properties belonging to the private individuals or entities were being claimed as '*waqf* by user'. It is submitted that despite there being a regime of mandatory registration of all kinds of *waqf* including '*waqf* by user' making registration mandatory almost since a century i.e. since 1923, individuals or organizations used to claim private lands and government lands as *waqf* including under '*waqf* by user' which not only lead to deprivation of valuable property rights of individual citizens but similarly unauthorized claims over public properties.

Waqf by user provision was also criticized by the stakeholders since it allowed properties belonging to government to be wrongfully claimed as *waqf*. As per the data received by the Joint Committee up to 05.09.2024, from 25 out

of 32 Cities / UTs *waqf* boards, a total of 5975 government properties have been declared as *waqf* properties.

28. It is submitted that the Committee deliberated clause-by-clause of the Bill on 27.01.2025 and adopted its final report on 29.01.2025.

The Joint Committee submitted its report to the Hon'ble Speaker of Lok Sabha on 31.01.2025 which was laid in both the Houses of the Parliament on 13.02.2025. The Bill was debated extensively in the Parliament in Both Houses and was passed by the Lok Sabha on 02.04.2025 and by the Rajya Sabha on 03.04.2025. The Bill was notified on 08.04.2025. It was this detailed exercise that ultimately led to the statutory amendments by a competent legislature.

WAQF BY USER AND MANDATORY REGISTRATION PROVISIONS OVER THE PAST CENTURY

29. The '*Waqf*' is defined in Waqf Act, 1995 [as it existed prior to the amendment in 2025] as under :

> **3. Definitions. —**In this Act, unless the context otherwise requires,
>
> **(r)** "waqf" means the permanent dedication by any person of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—
>
> (i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;
>
> (ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;
>
> (iii) "grants", including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and
>
> (iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and

> such other purposes as recognised by Muslim law, and "waqif" means any person making such dedication;"

30. At the outset it bears emphasis that taking away the statutory protection to a waqf by user does not deprive a person of the Muslim community to create a waqf. It impinges on the form by which such a dedication is to be made, which is the secular dimension of the dedication, and not the right of an individual to dedicate his or her property to God. It is submitted that the concept of '*waqf* by user' was in vogue during the period where the writing or executing deeds for anything was a rare phenomenon.

The following chronology would satisfy this Hon'ble Court that a deliberate, purposeful and intentionally misleading narrative is built very mischievously giving an impression that those *waqf*s [including '*waqf* by user'] which do not have document to support their claims will be affected. This is not only untrue and false but purposefully and deliberately misleading this Hon'ble Court.

The following chronology would satisfy this Hon'ble Court that for being protected as '*waqf* by user' under proviso to Section 3[1][r], no trust, deed or any documentary proof has been insisted upon in the amendment or even prior thereto. The only mandatory requirement for being protected under the proviso is that such '*waqf* by user' should be **registered as on 08.04.2025** since the registration has always been mandatory as per the statute governing *waqf*s since last 100 years. Those, who deliberately evaded or avoided to get '*waqf* by user' registered [despite non-registration being punitive under the statute] cannot claim the benefits of the proviso.

Mussalman Wakf Act, 1923

31. The Central Government [during the British regime] found it necessary to make a statutory provision regulating and governing *waqf*. The situation is reflected from the Statement of Objects and Reasons of the Mussalman Wakf Act, 1923 which is reflected hereunder:-

> "**Statement of Objects and Reasons** – The object of the present Bill is sufficiently indicated by the Preamble to the Bill. For several years passed, there has been a growing feeling amongst the Mahomedan community, throughout the country that the numerous endowments which have been or are being made daily by pious and public-spirited Mahomedans are being wasted or systematically misappropriated by those into whose hands the trust may have come in the course of time. **Instances of such misuse of trust property are unfortunately so very common that a wakf endowment has now come to be regarded by the public as only a clever device to tie up property in order to defeat creditors and generally to evade the law under the cloak of a plausible dedication to the Almighty.** In some cases, the mutawallis are persons who are utterly unfit to carry on the administration of wakf and who, by their moral delinquencies bring discredit not merely on the endowment but on the community itself. It is believed that the feeling is unanimous that some step should be taken in order that incompetent and unscrupulous mutawallis may be checked in their career of waste and mismanagement, and that the endowments themselves may be appropriated to the purposes for which they had been originally dedicated.
>
> **In some cases, difficulties have arisen in finding out whether any particular properties are really subject to wakf or not. There are numerous wakf properties all over the country unknown to the public which the mutawallis are treating their own private property and dealing with in any way they think fit or necessary.** It, therefore, seems that there should be a system of compulsory registration requiring a mutawalli to notify to some responsible officer not merely about the fact of the wakf, of which he is the mutawalli, but also the nature and extent and other incidents of the endowment. Further, even where a wakf is well-known and mutawalli is obviously thoroughly incompetent to carry on his duties, the public find a difficulty in instituting suits to remove him from his post by reason of the cumbrous procedure laid down in the Code of Civil Procedure. It is with a view to facilitate the institution of such suits that a provision has been made in the Bill. Lastly, there appears to be a general consensus of opinion amongst the Mahomedans throughout the country

> that there should be some responsible officer, who may go about and find for himself whether the various wakf properties scattered throughout the country are being properly managed or not. It is not intended that Government should be called upon to bear the burden of appointing such an officer or his staff, and a provision has, therefore, been made in the Bill authorizing the Central Committee (to be appointed in pursuance of the provisions of the Bill) to levy a rateable contribution from the mutawallis for the purpose of meeting the cost on entertaining such an officer and his staff."

32. The Mussalman Wakf Act, 1923 was the Central Act extending to the whole of India. It is submitted that in the said Mussalman Wakf Act, 1923, it was made mandatory to get all *waqf* registered. For the said process of registration, it was not mandatory to have a written wakf deed.

33. It was a statutory mandate for Mutawallis to furnish to the **Court** within the local limits of whose jurisdiction the property of the wakf was situated containing the details of the wakf like a description of the *wakf* property, the gross annual income etc. under Section 3 of the Act of 1923. Section 3 of the Mussalman Wakf Act of 1923 reads as under-

> **"Section 3**
>
> **3. Obligation to furnish particulars relating to wakf**. — (1) Within six months from the commencement of this Act every mutawalli shall furnish to the Court within the local limits of whose jurisdiction the property of the wakf of which he is the mutawalli is situated or to any one of two more such Courts, a statement containing the following particulars, namely—
>
> (a) a description of the wakf property sufficient for the identification thereof;
>
> (b) the gross annual income from such property;
>
> (c) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or of the period which has elapsed since the creation of the wakf, whichever period is shorter;
>
> (d) the amount of Government revenue and ceases, and of all rents, annually payable in respect of the wakf property;

(e) an estimate of the expenses annually incurred in the realisation of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (c) relate;

(f) the amount set apart under the wakf for—

(i) the salary of the mutawalli and allowances to individuals;

(ii) purely religious purposes;

(iii) charitable purposes;

(iv) any other purposes; and

(g) any other particulars which may be prescribed.

(2) Every such statement shall be accompanied by a copy of the deed or instrument creating the wakf or, if no such deed or instrument has been executed or a copy thereof cannot be obtained shall contain full particulars, as far as they are known to the mutawalli, of the origin, nature and objects of the wakf.

(3) Where—

(a) a wakf is created after the commencement of this Act, or

(b) in the case of a wakf such as is described in section 3 of the Wakf Validation Act, 1913 (6 of 1913) the person creating the wakf or any member of his family or any of his descendants is at the commencement of this Act alive and entitled to claim any benefit thereunder,

the statement referred to in sub-section (1) shall be furnished, in the case referred to in clause (a), within six months of the date on which the wakf is created or, if it has been created by a written document, of the date on which such document is executed, or, in the case referred to in clause (b), within six months of the date of the death of the person entitled to such benefit as aforesaid, or of the last survivor of any such persons, as the case may be."

The sanctity of this provision mandates providing details. This provision also did not mandate filing of any deed or documents creating *waqf*.

34. The Act thereafter required publication the said details, to obtain full particulars and to ensure that if any person is objecting to the declaration of his

property as a *waqf*, he will have a remedy of protecting his right in the property which, according to him, is wrongly being declared as *waqf*. Section 4 is quoted as under :

> **"Section. 4. Publication of particulars and requisition of further particulars.—**
>
> (1) When any statement has been furnished under section 3, the court shall cause notice of the furnishing thereof to be affixed in some conspicuous place in the Court-house and to be published in such other manner, if any, as may be prescribed, and thereafter any person may apply to the Court by a petition in writing, accompanied by the prescribed fee, for the issue of an order requiring the mutwalli to furnish further particulars or documents.
>
> (2) On such application being made, the Court may, after making such inquiry, if any, as it thinks fir, if it is of opinion that any further particulars or documents are necessary in order that full information may be obtained regarding the origin, nature or objects of the wakf or the condition or management of the wakf property, cause to be served on the muttwalli an order requiring him to furnish such particulars or documents within such time as the Court may direct in the order"

35. It may be relevant to note that the Mussalman Wakf Act, 1923, vested the responsibility of providing the particulars on the Mutawalli. The Mutawalli can be any person who is, for the time being, administering any *waqf* property. A copy of the Mussalman Wakf Act, 1923 is enclosed herewith and marked as **Annexure R – 3.** The statutory regime of *waqf* continued thereafter.

36. It is submitted that the petitioners despite trying to persuade this Hon'ble Court on the ground that they cannot be called upon to produce documents of more than a century vintage, have failed to show that registration of *waqf* had its own sanctity, the details of *waqf*s were required to be placed before the Court [and not before any administrative authority] and such list was to be published.

37. It is submitted that the Act of 1923 [100 years back] required *waqf*s to place before the Court the statements of accounts every year. Section 5 of the Act of 1923 reads as under-

> **5. Statement of accounts.—**Within three months after the thirty-first day of March next following the date on which the statement referred to in section 3 has been furnished and thereafter within three months of the thirty-first day of March in every year, every mutwalli shall prepare and furnish to the Court to which such statement was furnished a full and true statement of accounts, in such form and containing such particulars as may be prescribed, of all moneys received or expended by him on behalf of the wakf of which he is the mutwalli during the period of twelve months ending on such thirty-first day of March or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf:
>
> Provided that the Court may, if it is satisfied that there is sufficient cause for so doing, extend the time allowed for the furnishing of any statement of accounts under this section.

38. The Act of 1923 also mandated audit of the accounts under Section 6 which reads as under:-

> **"6. Audit of account**.—Every statement of accounts shall, before it is furnished to the Court under section 5, be audited—
>
> (a) in the case a wakf the gross income of which during the year in question, after deduction of the land revenue and cesses, if any, payable to the Government, exceeds two thousand rupees, by a person who is the holder of a certificate granted by the Central Government under section 144 of the Indian Companies Act, 1913 (7 of 1913), or is a member of any institution or association the members of which have been declared under that section to be entitled to act as auditors of companies throughout the territories to which this Act applies; or
>
> (b) in the case of any other wakf, by any person authorised in this behalf by general or special order of the said Court.

39. It would be relevant to note that placing the details before the Court was not treated by the Act of 1923 to be a mere empty formality. Considering the Statement of Objects and Reasons quoted hereinabove, the statute mandated that particulars being furnished before the Court under Sections 3, 4 and 5 shall be written in the language of the Court and shall be verified in the manner provided in the Code of Civil Procedure, 1908. Section 8 of the Act reads as under:-

> "**8. Verification.—**Every statement of particulars furnished under section 3 or section 4, and every statement of accounts furnished under Section 5, shall be written in the language of the Court to which it is furnished, and shall be verified in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the signing and verification of pleadings."

40. It is submitted that non-compliance of the statutory provisions of Sections 3, 4, and 5 referred above was made punitive and the person responsible was punishable with fine which may extended to Rs.500 which may be extended to Rs. 2000 [in the year 1923]. Section 10 of the Act reads as under-

> "**10. Penalties.—**Any person who is required by or under section 3 or section 4 to furnish a statement of particulars or any document relating to a wakf, or who is required by Section 5 to furnish a statement of accounts, shall, if he, without reasonable cause the burden of proving which shall lie upon him fails to furnish such statement or document, as the case may be, in due time, or furnishes a statement which he knows or has reason to believe to be false, misleading or untrue in any material particular, or, in the case of a statement of account, furnishes a statement which has not been audited in the manner required by Section 6, be punishable with fine which may extend to five hundred rupees, or, in the case of a second or subsequent offence, with fine which may extend to two thousand rupees.

41. It is submitted that further, the concept of '*Waqf* by user' was in existence even then which is clear from the provincial Acts of that era. To illustrate, Section 6[10] of the Bengal Wakf Act, 1934 reads as under-

> **"Section 6[10] of the Bengal Wakf Act, 1934**
>
> "wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Islamic law as pious, religious or charitable and includes a wakf by user; and "wakif" means any person making such dedication;"

42. It is submitted that despite the existence of the concept of 'waqf by user', the requirement of registration or self-declarations before the Court were made mandatory in order to ensure that the regulatory provisions of the enactments achieve the intended objectives. It is submitted that therefore, there has been a clear and mandatory legislative regime, which has sought to enforce and implement registration requirements on all kinds of waqfs since at least 1923.

Wakf Act, 1954

43. It is submitted that post-independence, the Parliament enacted the Wakf Act, 1954. A copy of the Wakf Act, 1954 [as amended from time to time] is enclosed herewith and marked as **Annexure R – 4.** The concept of '*Waqf* by user' which was already in vogue [with an obligation to register even in absence of any *waqf* deed] came in the Wakf Act, 1954. The relevant provision i.e. Section 3[l] of the Act reads as under

> **"Section 3[l]**
>
> (l) "wakf" means the permanent dedication by a person professing Islam or any other person of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—
>
> (i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;
>
> (ii) grants including mashrut-ul-khidmat [muafies, khairati, qazi services, madadmash for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iii) a wakf-alal-aulad; Provided that in the case of a dedication by a person not professing Islam, the Wakf shall be void if, on the death of such person, any objection to such dedication is raised by one or more of his legal representatives:"

44. It is submitted that the scheme of Wakf Act, 1954 again makes it very clear that it was impermissible to have the existence of any *waqf* including '*Waqf* by user' without being registered.

Under Section 4 of the Act of 1954, the State Government was mandated to appoint a Commissioner of *Waqf* to survey the *waqf* property **existing** in the State at the date of commencement of the Act. This obviously applies to '*Waqf* by user' as the definition of '*Waqf*' included '*Waqf* by user'. If there was any real '*Waqf* by user' in existence, it would have been identified in the survey of the respective State Governments through the Commissioners of *Waqf* under Section 4 of the Act. Section 4 of the Act reads as under-

"Section 4

4. Preliminary survey of wakfs. — (1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Wakfs and as many additional or assistant Survey Commissioners of wakfs as may be necessary for the purpose of making a survey of wakf properties existing in the State at the date of the commencement of this Act.

(2) All additional and assistant Survey Commissioners of wakfs shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report in respect of wakfs existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely: —

(a) the number of wakfs in the State, or as the case may be, any part thereof, showing the Shia wakfs and Sunni wakfs separately;

(b) the nature and objects of each wakf;

(c) the gross income of the property comprised in each wakf;

(d) the amount of land revenue, ceases, rates and taxes payable in respect of such property;

(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and

(f) such other particulars relating to each wakf as may be prescribed.

(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) any other matter which may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of wakf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

> Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3).

The Commissioner under Section 4, had extremely wide powers.

45. It is submitted that the Act thereafter imposed an obligation upon the *Waqf* Board to examine the report of the Survey Commissioner and to publish in the Office Gazette a list of *waqf*.

This publication was obviously mandated so as to ensure that any *waqf* claims [including claim of '*Waqf* by user'] can be subjected to challenge by an aggrieved party before the competent civil court [which then had the jurisdiction] under Section 6 of the 1954 Act. Sections 5 and 6 of the 1954 Act reads as under-

> **"Section 5**
>
> **5. Publications of list of wakfs.** — (1) On receipt of a report under subsection (3) of Section 4, the State Government shall forward a copy of the same to the Board.
>
> (2) The Board shall examine the report forwarded to it under subsection (1) and publish, in the Official Gazette, a list of wakfs in the State, or as the case may be, the part of the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such particulars as may be prescribed.
>
> **Section 6**
>
> **6. Disputes regarding wakfs**.—(1) If any question arises whether a particular property specified as wakf property in a list of wakfs published under sub-section (2) of Section 5 is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a civil court of competent jurisdiction for the decision of the question and the decision of the civil court in respect of such matter shall be final:

Provided that no such suit shall be entertained by the civil court after the expiry of one year from the date of the publication of the list of wakfs under sub-section (2) of Section 5:

Provided further that in the case of the list of wakfs relating to any part of the State and published or purporting to have been published before the commencement of the Wakf (Amendment) Act, 1969, such suit may be entertained by the civil court within the period of one year from such commencement.

Explanation.—For the purposes of this section and Section 6-A, the expression 'any person interested therein', occurring in sub-section (1) of this section and in sub-section (1) of Section 6-A, shall, in relation to any property specified as wakf property in a list of wakfs published, under sub-section (2) of Section 5, after the commencement of the Wakf (Amendment) Act, 1984, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in than behalf during the course of the relevant inquiry under Section 4."

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder.

(4) The list of wakfs published under sub-section (2) of Section 5 shall, unless it is modified in pursuance of a decision of the civil court under sub-section (1), be final and conclusive.

(5) On and from the commencement of the Wakf (Amendment) Act, 1984 in a State, no suit or other legal proceeding shall be instituted or commenced in a civil court in that State in relation to any question referred to in sub-section (1).

Section 6-A [added through an amendment later]

6-A. power of tribunal to determine disputes regarding wakfs. —

(1) If, if after the commencement of the wakf (Amendment) Act, 1984, any question arises whether the particular property specified as wakf property in a list of wakfs published under sub-section (2) of section 5 is wakf property or not or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board of the mutawalli of the wakf, or any person interested therein, ma apply to the tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the tribunal in respect of such matter shall be final:

Provided that—

(a) in the case list of wakfs relating to any part of the State and published or purporting to have been published after the commencement of the wakfs (Amendment) Act, 1984, no such application shall be entertained after the expiry of one year from the date of publication of the list of Wakfs under subsection (2) of section 5; and

(b) in the case of list of wakfs relating to any part of the State and published or purporting to have been published at any time within a period of one year immediately preceding the commencement of the Wakf (Amendment) Act, 1984 such an application may be entertained by the tribunal within the period of one year from such commencement:

Provided after that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not be re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provision of sub-section (5) no proceeding under this section in respect of any wakf shall be stayed by any court, tribunal or other authority by reason of the pendency of any suit, application or of any appeal or other proceeding arising out of any such suit application, appeal or other proceeding.

(3) The wakf commissioner shall not be made a party to any application under sub-section (1).

(4) The list of wakf published under sub-section (2) of section 5, and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

> (5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of the Wakf (Amendment) Act, 1984, or which is the subject matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be."

Subject to Section 6[4] of the 1954 Act, the Gazette list of *waqf*s published under Section 5 was final.

46. It is submitted that even if for some reason or the other the Survey Commissioner missed a particular *waqf* in his exercise under Section 4, the Act specifically mandated registration of *waqf* itself under Section 25 of the Act. This provision again reflects clearly and categorically that for registration, no written deed of *waqf* is required but the registration will require certain details only. Section 25 of the Act reads as under :

> **"Section 25**
>
> **25. Registration.** — (1) Every wakf whether created before or after the commencement of this Act shall be **registered** at the office of the Wakf Commissioner.
>
> (2) Application for registration shall be made by the mutawalli:
>
> Provided that such applications may be made by the wakif or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.
>
> (3) An application for registration shall be made in such form and manner and at such place as the Wakf Commissioner may prescribe and shall contain the following particulars, so far as possible—
>
> (a) a description of the wakf properties sufficient for the identification thereof;
>
> (b) the gross annual income from such properties;

(c) the amount of land revenue and ceases, and of all rates and taxes annually payable in respect of the wakf properties;

(d) an estimate of the expenses annually incurred in the realisation of the income of the wakf properties;

(e) the amount set apart under the wakf for—

(i) the salary of the mutawalli and allowances to individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars prescribed by the Wakf Commissioner.

(4) Every such application shall be accompanied by a copy of the wakf deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakf.

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Wakf Commissioner may require the applicant to supply any further particulars or information that he may consider necessary.

(7) On receipt of an application for registration, the Wakf Commissioner may, before the registration of the wakf, make such inquiries as he thinks fit in respect of the genuineness and validity of the application and the correctness of any particulars therein and when the application is made by any person other than the person administering the wakf property, the Wakf Commissioner shall, before registering the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.

(8) In the case of wakfs created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of wakfs created after such commencement, within three months from the date of the creation of the wakf.

> (9) Every wakf registered under this section before the commencement of the Wakf (Amendment) Act, 1984 shall be deemed to have been registered on such commencement, at the office of the Wakf Commissioner.
>
> (10) Every application for registration under this section pending immediately before the commencement of the Wakf (Amendment) Act, 1984 before the Board shall, on such commencement, stand transferred to the Wakf Commissioner and the Wakf Commissioner shall deal with such application as if it were an application pending before him."

47. Pertinently, in the Act of 1954, a window was kept for those *waqf* [including '*Waqf* by user'] who could not get themselves registered prior to 1954 under Section 25[8], to get registration within three months from the date of commencement. Any *waqf* including '*Waqf* by user' was under an obligation to get itself registered as '*Waqf* by user' under Section 25 without raising a false pretext that it does not have *waqf* deed or document.

48. It is submitted that Section 26 thereafter mandated maintaining the Register of *Waqf,* which would also mention "class of *waqf*". This is clear from the fact that if there is a '*Waqf* by user', it would be so shown in the register statutorily maintained under Section 26 of the Act. Section 26 of the 1954 Act reads as under :

> **"Section 26**
>
> 26. Register of wakfs. — (1) The Wakf Commissioner shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds, when available and the following particulars, namely: —
>
> (a) the class of the wakf;
>
> (b) the name of the mutawalli;
>
> (c) the rule of succession to the office of mutawalli under the wakf deed or by custom or by usage;
>
> (d) particulars of all wakf properties and all title deeds and documents relating thereto;

(e) particulars of the scheme of administration and the scheme of expenditure at the time of registration;

(f) such other particulars as may be prescribed.

(2) The register of wakfs maintained under this section immediately before the commencement of the Wakf (Amendment) Act, 1984 shall be deemed, on such commencement, to be the register maintained by the Wakf Commissioner under sub-section (1)."

49. It is submitted that the sanctity of there being a proper registration of all categories of *waqf*s [including '*Waqf* by user'] was recognized by the Parliament right from 1954. This is reflected from the provisions of Section 27 of the Wakf Act, 1954 which required the Board itself to collect information about the existence of any *waqf*. Section 27 reads as under :

"Section 27

27. Decision if a property is wakf property. — (1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf, it may, after making such inquiry as it may deem fit, decide the question.

(2) The decision of the Board on any question under sub-section (1) shall, unless revoked or modified by a civil court of competent jurisdiction, 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 wakf 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 wakf property, call upon the trust or society, as the case may be, either to register such property under this Act as wakf 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 civil court of competent jurisdiction."

50. If the Board is satisfied about the existence of the wakf which is avoiding registration, then in terms of the statutory mandate under Section 28, the wakf board can direct *Mutawalli* [which includes any person as per the definition] to apply for registration. Section 28 of the Act reads as under: -

> **"Section 28**
>
> **28. Power to cause registration of wakf and to amend register.** —The Wakf Commissioner may direct a mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may himself cause the wakf to be registered or may at any time amend the register of wakfs.

51. It is submitted that the sanctity of registration has always been realized by the Parliament while making statutory provisions of waqfs. It clearly appears that this mandatory requirement of registration is to take care of two situations –

(i) No waqf property is administered without the administrative supervision of the Waqf Board;

(ii) No person or body misuses waqfs without being subjected to the statutory regulations.

To ensure and emphasise the importance of registration of waqfs, the Wakf Act, 1954 provided for penalties under Section 41 of the Act which reads as under-

Section 41

41. Penalties. —If a mutawalli fails—

(a) to apply for the registration of a wakf;

(b) to furnish statements of particulars or accounts or returns as required by this Act;

(c) to supply information or particulars as required by the Board;

(d) to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto;

(e) to deliver possession of any wakf property, if ordered by the Board or the court;

(f) to carry out the directions of the Board;

(g) * * *

(h) to discharge any public dues; or

(i) to do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the court that there was reasonable cause for his failure, be punishable with [fine which may extend to two thousand rupees.

(1-A) Notwithstanding anything contained in sub-section (1), if,

—

(a) a mutawalli omits or fails, with a view to concealing the existence of a wakf, to apply for its registration under this Act,

—

(i) in the case of a wakf created before the commencement of the Wakf (Amendment) Act, 1984, within the period specified therefore in sub-section (8) of Section 25 or within a period of one month from such commencement, whichever period expires later; or

(ii) in the case of any wakf created after such commencement, within three months from the date of the creation of the wakf; or

(b) a mutawalli furnishes any statement, return or information to the Wakf Commissioner or the Board, as the case may be, which he knows or has reason to believe to be false, misleading, untrue or, incorrect in any material particular, he shall be punishable with imprisonment for a term

which may extend to six months and also with fine which may extend to five thousand rupees.

(2) No court shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or the Wakf Commissioner or by an officer duly authorised by the Board or the Wakf Commissioner in this behalf.

(3) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the fine imposed under sub-section (1), when realised, shall be credited to the Wakf Fund.

(5) In every case where an offender is convicted after the commencement of the Wakf (Amendment) Act, 1984, of an offence punishable under sub-section (1), and sentenced to a fine, the court shall also impose such term of imprisonment in default of payment of fine as is authorized by law for such default."

52. It is submitted that despite having mandatory registration of all Waqfs including "Waqf by user" right from 1923, the menace of deliberate non-registration continued as several waqfs did not wish to come under the statutory regulatory mechanism. This was taken note of by the "Wakf Enquiry Committee" appointed by the Central Government for the purpose of evaluating working of the Wakf Act, 1954 in its final report of 1976.

53. The Committee consisted of the following persons –

a. Sayeed Ahmad – Chairman

b. M.H. Mohsin – Member

c. Ishaq

Later Mr. Zulfikar Alik Khan replaced S.H. Mohsin.

54. The said Committee was also very clear that concealment of waqf and its wilful non-registration is a serious issue. It, therefore, advised –

> "Bar to hear or decide suits
>
> (i) Deliberate concealing of wakfs and wilful failure to have them registered is a deeply prevalent malady affecting the administration of wakfs. Attaching the highest importance to this matter, we have separately provided for imprisonment in such cases as a punitive measure. We consider that a carrot-and-stick policy is also required in the matter; dangling the carrot wherever possible and using the stick whenever it becomes necessary. We consider that, in the implementation of this policy, we have a very salutary provision under Section 31 of the Bombay Public Trusts Act 29 of 1950, which bars the hearing of any suits in respect of a public trust which has not been registered under the Act. We consider that a similar provision is necessary in the Central Wakf Act of 1954, and no Mutawalli who has failed to have wakfs registered as required under the Central Wakf Act of 1954 should be provided with the facility of enforcing any right in a court of law unless he has duly registered his wakf as required under the Act. We, therefore, recommend that a fresh Section 55A may be added to the Central Wakf Act of 1954 on the following lines:
>
> > "(a) 55(1) No suit to enforce a right on behalf of a wakf which has not been registered under this Act shall be heard or decided in any court of law or tribunal."
> >
> > "(2) The provisions of sub-section (1) shall apply to a claim of set-off or other proceedings to enforce a right on behalf of such wakf."

55. Based upon this recommendation, the Parliament amended the Wakf Act, 1954 by Wakf [Amendment] Act, 1984 providing for following amendment inserting Section 55E which read as under: -

> "**55E**. (1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after the commencement of the Wakf (Amendment) Act, 1984, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any court after

> such commencement unless such wakf has been registered, after such commencement, in accordance with the provisions of this Act.
>
> (2) The provisions of sub-section (1) shall apply, as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act."

A copy of the Wakf [Amendment] Act, 1984 is enclosed herewith and marked as **Annexure R – 5.**

The amendment in 1984 Act was not brought into effect though it amended several sections. The reasons for non-implementation are mentioned in the Statement of Objects and Reasons when the Wakf Act, 1995 was enacted.

56. As already mentioned hereinabove, it has always been felt and was for the first time even recorded by a report prepared by the Central Government appointed Committee that non registration is a deliberate act by Wakfs. Even at the cost of repetition the part of the report of Central Government 'Wakf Enquiry Committee" referred above to show that non registration was deliberate and not due to any other reason is reproduced below. The Central Government appointed Committee observed as under as back as in the year 1976 i.e., 50 years ago-

> "(i) Deliberate concealing of wakfs and willful failure to have them registered is a deeply prevalent malady affecting the administration of wakfs. Attaching the highest importance to this matter, we have separately provided for imprisonment in such cases as a punitive measure....."

57. It is submitted that after the Act of 1954, amendments were made in 1959, 1964, 1969 and even in 1984. The amendment though were salutary were not brought into effect by the Central Government since they were opposed by

Muslim community [as mentioned in the Statement of Objects and Reasons of the Wakf Act, 1995 itself].

The Wakf Act, 1995

58. With a view to further streamline the administration of wakf without interfering with the administration of wakf itself, the Parliament enacted the Wakf Act, 1995. A copy of the Waqf Act, 1995 [as originally enacted] is enclosed herewith and marked as **Annexure R – 6.** The 195 Act provided the definition of 'wakf' under Section 3[r] which reads as under (unamended/prior to the 2013 amendment) –

> **"Section 3 [r]**
>
> (r) "wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—
>
> (i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;
>
> (ii) "grants", including mashrut-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and
>
> (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable,
>
> and "wakf" means any person making such dedication;"

59. For the present context it suffices to say that 'Wakf by user' continued to be part of the definition of wakf though the Parliament was fully conscious [as evident from the various reports referred above] that certain persons were not registering wakf deliberately to avoid being under a statutory regime, being answerable, being accountable and to avoid being required to show accounts and transactions of land dealings etc.

60. The legislative policy of ensuring mandatory registration so that no category of wakf goes unnoticed and thereby unregulated by statutory provisions, remained consistent even in Act of 1995. Section 4 of the 1995 Act again mandated each State Government to appoint Survey Commissioners for making "survey of Auqaf" in the State like Section 4 of the 1954 Act. Section 4 of the 1995 Act (as amended by the 2013 Act),reads as under-

> "**Section 4**
>
> 4. Preliminary survey of auqaf. —
>
> (1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Auqaf and as many Additional or Assistant Survey Commissioners of Auqaf as may be necessary for the purpose of making a survey of auqaf in the State.
>
> (1A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013 (27 of 2013), in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:
>
> Provided that where no Survey Commissioner of Waqf has been appointed, a Survey Commissioner for auqaf shall be appointed within three months from the date of such commencement.
>
> (2) All Additional and Assistant Survey Commissioner of Auqaf shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Auqaf.
>
> (3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of auqaf existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely: —
>
> (a) the number of auqaf in the State showing the Shia auqaf and Sunni auqaf separately;
>
> (b) the nature and objects of each waqf;
>
> (c) the gross income of the property comprised in each waqf;

(d) the amount of land revenue, cesses, rates and taxes payable in respect of each waqf;

(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each waqf; and

(f) such other particulars relating to each waqf as may be prescribed.

(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.

(5) If, during any such inquiry, any dispute arises as to whether a particular waqf is a Shia waqf or Sunni waqf and there are clear indications in the deed of waqf as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of waqf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of ten years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3):

Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.

61. It is submitted that the legislative intent and policy has always been very clear with regard to waqf being registered so that it remains under the statutory regime with respect to its secular aspects like maintenance of accounts, survey of properties, transparent administration, and supervision in case of transfer of property of wakf.

Though Section 4 provided for a survey to be conducted as far back as in the year 1995, the Parliament inserted Section 1A in Section 4 by Act 27 of 2013 giving one more window of one year for the Survey Commissioner to complete the survey so that no waqf of any nature [including 'Waqf by user'] goes unregistered [thereby avoiding, ignoring and defying the regulatory mechanism of regulating its secular aspects of transparent administration, proper accounting of accounts, transparent manner of transfer of property etc.]

62. It is submitted that survey would catch up all existing Auqaf and would be published by the Waqf Board under Section 5 of the Act (as amended by the 2013 Act) which reads as under-

> **"Section 5**
>
> 5. Publication of list of auqaf. — (1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.
>
> (2) The Board shall examine the report forwarded to it under sub-section (1) and forward it back to the Government within a period of six months for publication in the Official Gazette a list of Sunni auqaf or Shia auqaf in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.
>
> (3) The revenue authorities shall—
>
> (i) include the list of auqaf referred to in sub-section (2), while updating the land records; and

(ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records.

(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time."

63. It is submitted that Section 5 requiring publication clearly had three objects-

(i) To put everyone to notice that a particular property is declared as waqf so as to enable an affected aggrieved party to challenge the same;

(ii) The claim of there being a waqf is recorded in contemporaneous land records so that the owner of every land [if the waqf is not the real owner] come to know about it and take recourse to law;

(iii) No person or entity can claim existence of waqf, if not registered.

This was akin to Section 5 of the 1954 Act

64. It is submitted that Sections 6 and 7 provided for adjudication of disputes regarding waqfs [changed to "Auqaf" - which is plural of Waqf in 2013] like Section 6 of the 1954 Act. If anyone wants to question whether any property is a waqf property or not, he can approach the Waqf Tribunal [which would include any aggrieved person who claims that his property is declared waqf wrongly]. Sections 6 and 7 of the Act (as amended by the 2013 Act) reads as under-

"Section 6

6. Disputes regarding auqaf.—(1) If any question arises whether a particular property specified as waqf property in the list of auqaf is waqf property or not or whether a waqf specified in such list is a Shia waqf or Sunni waqf, the Board or the mutawalli of the waqf or any person aggrieved

may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of auqaf:

Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any waqf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of auqaf shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

Section 7

7. Power of Tribunal to determine disputes regarding auqaf.—(1) If, after the commencement of this Act, any question or dispute arises, whether a particular property specified as waqf property in a list of auqaf is waqf property or not, or whether a waqf specified in such list is a Shia waqf or a Sunni waqf, the Board or the mutawalli of the waqf, or any person aggrieved by the publication of the list of auqaf under section 5 therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that—

(a) in the case of the list of auqaf relating to any part of the State and published after the commencement of this Act no such

application shall be entertained after the expiry of one year from the date of publication of the list of auqaf; and

(b) in the case of the list of auqaf relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any waqf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1)

(4) The list of auqaf and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of the Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

> Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.

65. It is submitted that the moment Auqaf are identified under Sections 4 and 5, it would be part of the Register of Waqfs, giving an opportunity to an aggrieved party to challenge such registration and the claim of any alleged 'Waqf by user'.

66. The 1995 Act also continues the mandate of registration of all waqf including 'waqf by user' under Section 36 like Section 25 of the 1954 Act. Section 36 of the 1995 Act reads as under:

> **"36. Registration**. — (1) Every waqf, whether created before or after the commencement of this Act, shall be registered at the office of the Board.
>
> (2) Application for registration shall be made by the mutawalli:
>
> Provided that such applications may be made by the waqf or his descendants or a beneficiary of the waqf or any Muslim belonging to the sect to which the waqf belongs.
>
> (3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain the following particulars: —
>
> (a) a description of the waqf properties sufficient for the identification thereof;
>
> (b) the gross annual income from such properties;
>
> (c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the waqf properties;
>
> (d) an estimate of the expenses annually incurred in the realisation of the income of the waqf properties;
>
> (e) the amount set apart under the waqf for—
>
> (i) the salary of the mutawalli and allowances to the individuals;
>
> (ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(f) any other particulars provided by the Board by regulations.

(4) Every such application shall be accompanied by a copy of the waqf deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the waqf.

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary

(7) On receipt of an application for registration, the Board may, before the registration of the waqf make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the waqf property, the Board shall, before registering the waqf, give notice of the application to the person administering the waqf property and shall hear him if he desires to be heard.

(8) In the case of auqaf created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of auqaf created after such commencement, within three months from the date of the creation of the waqf:

Provided that where there is no Board at the time of creation of a waqf, such application will be made within three months from the date of establishment of the Board."

67. It is submitted that a closer scrutiny would show that there is a detailed and elaborate procedure prescribed for getting any wakf [including 'waqf by user'] registered. This provision is not only for proper administration of waqf in the country but serves the salutary purpose of declaration that a particular piece of land or property is registered as waqf. Importantly, even creation of waqf by a deed in writing was optional till it is made compulsory in the present amendment.

Secondly, any person can get the waqf registered and it is not necessary for only the 'wakif' [his descendants or any other body] or Mutawalli to get it registered. Even a beneficiary or any Muslim can get the waqf registered.

Even in 1995, no documents were insisted upon as made clear in Section 36[4].

68. It is submitted that even in case of registration of waqf by user, the law has taken care that an applicant will have to give the following details –

> "(3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain the following particulars: —
>
> (a) a description of the waqf properties sufficient for the identification thereof;
>
> (b) the gross annual income from such properties;
>
> (c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the waqf properties;
>
> (d) an estimate of the expenses annually incurred in the realisation of the income of the waqf properties;
>
> (e) the amount set apart under the waqf for—
>
> (i) the salary of the mutawalli and allowances to the individuals;
>
> (ii) purely religious purposes;
>
> (iii) charitable purposes; and
>
> (iv) any other purposes;
>
> (f) any other particulars provided by the Board by regulations.

69. It is submitted that even in case of waqf by user, the application has always been requiring to be accompanied with only particulars of origin, nature and object of the waqf and other details. This is provided under Section 36[4]. Every application made under sub-section [2] is to be mandatorily signed and verified in a manner provided in the Civil Procedure Code as provided under Section 36[5] of the Waqf Act. This shows the legislative intent of the sanctity given to even an application for registration.

70. It is submitted that even after such particulars which are referred above, with an application signed and verified as pleadings under the Code of Civil Procedure, it was / is not open for the Waqf Board to mechanically register the waqf as it was enjoined with a responsibility to conduct an inquiry and to require the applicant to supply further particulars or information which may be necessary.

Most importantly, there has always been a statutory mandate upon the Board, after receipt of the application to verify the correctness of any particulars therein and decided the genuineness and validity and follow the procedure as contemplated under Section 36[7]. This requirement (which existed from the beginning) has always been intended to be more important in case of 'waqf by user'.

71. It is submitted that in case any person goes for registration of 'waqf by user', it was mandatory for the Board to conduct an enquiry and record a specific finding that in fact, the property is used as 'waqf by user', such property matches the description of the property given by the applicant and will have to specify the purpose of the waqf and other details.

This is the sanctity of registration of waqf in general and more importantly its registration when waqf is claimed merely by long use as 'waqf by user'. It is

submitted that if experience has established that absence of a formal dedication creates confusion and at times is contrary to public interest, the change in a law that confers the benefit of recognition upon a dedication of property by limiting it to formal dedications that are registered cannot be a violation of religious rights.

72. It is submitted that Parliament has always maintained a legislative policy of requiring registration of waqf to be mandatory and, therefore, the Legislature while enacting Waqf Act, 1995 also gave the last window for unregistered waqfs to get themselves registered. Section 36[8] in this respect reads as under-

> **"Section 36[8]**
>
> (8) In the case of auqaf created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of auqaf created after such commencement, within three months from the date of the creation of the waqf: Provided that where there is no Board at the time of creation of a waqf, such application will be made within three months from the date of establishment of the Board."

73. It is submitted that at this juncture, it would be relevant to notice Section 32 and Section 40 of the Wakf Act, 1995. Section 32 provides for powers and functions of the Board. Section 32 reads as under-

> **"32. Powers and functions of the Board. –**
>
> (1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:
>
> Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the school of Muslim law to which the wakf belongs.

> Explanation. – For the removal of doubts, it is hereby declared that in this sub-section, "wakf" includes a wakf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.
>
> (2) Without prejudice to the generality of the foregoing power, **the functions of the Board shall be—**
>
> **(a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every wakf;**
>
> xxxx

74. It is submitted that the said provisions clearly provide that as a part of the function of the Board, it is to maintain a record not only relating to waqf but its 'origin', which may or may not be based on any documents.

75. It is submitted that Section 40 of the Act [as it existed prior to the amendment of 2025] to be an additional responsibility upon the Board to collect information regarding any property which it has reason to believe to be a wakf property like Section 27 of the 1954 Act. Section 40 reads as under:-

> **"40. Decision if a property is wakf property. –**
>
> **(1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf 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 or under the Societies Registration Act, 1860 or under any other Act. is wakf 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 wakf property, call upon the trust or society, as the case may be, either to register such property under this Act

as wakf 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."

76. Similarly, as was the power in 1954, the Board had the power to direct the Mutawalli to apply for registration under Section 41 which reads as under:-

"41. Power to cause registration of wakf and to amend register.

The Board may direct a mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may itself cause the wakf to be registered or may at any time amend the register of wakfs."

77. It may be pointed out that Section 40 was found to be the most misused provision as the Waqf Board used to, under Section 40 of the Act, declare any property of private individuals or those belonging to the Government as waqf properties.

78. It is submitted that even the change in the management is required to be notified under Section 42. The registration takes within its fold several responsibilities which removes any possibility of fictitious waqfs being in existence. Section 44 of the 1995 Act requires Mutawalli to prepare a budget, finances under the direct management of the Board, submission of accounts under Section 46, auditing of accounts under Section 47, etc. Similar provision existed even before the 1995 Act as stated hereinabove.

79. It is submitted that thus, there exists a historical perspective to highlight why "unregistered" 'waqf by user' are not protected in the proviso to Section

3[1][r]. It is thus clear that those waqfs which have not registered themselves [including 'waqfs by user'] since 1923, 1954, or at least prior to 01.01.1996 [date on which Act of 1995 came in force] nor have they been found to be in existence during the survey by the Survey Commissioner and an independent exercise mandated by law from the State Waqf Board (as explained above) and have no legal existence and any belated claim at this stage is not maintainable. This legislative policy in the proviso has, therefore, a rationale and is not arbitrary.

80. The Act of 1995 also mandated the maintenance of statutory register under Section 37 which would, *inter alia*, contain the 'class of waqf' which would include 'waqf by user'. The said provision also mandates forwarding of the details of register to the 'concerned land revenue office' having jurisdiction over the waqf property.

81. In other words, if a genuine waqf including 'waqf by user' ever existed, it would have passed through the aforesaid process and would find mention of its name at two places:-

(i) Register maintained under Section 37 of the Act of 1995 [as well as register maintained under the Act of 1954 and Court record under the Act of 1923]; and

(ii) In the revenue record of the area.

82. It is submitted that like the previous Acts i.e. the Act of 1923 and the Act of 1954, the Waqf Act of 1995 also provided for penalties if application for registration is not made. The penalties which started with fine has increased to imprisonment. This clearly reflects that non-registration of any kind of waqf (including 'waqf by user') is not acceptable since 100 years. The penalty is both an imprisonment for six months and fine. Section 61 of the Act [prior to 2013 amendment] reads as under:

"61. Penalties. –

(1) If a mutawalli fails to –

(a) apply for the registration of a wakfs;

(b) furnish statements of particulars or accounts or returns as required under this Act;

(c) supply information or particulars as required by the Board;

(d) allow inspection of wakf properties, accounts, records or deeds and documents relating thereto;

(e) deliver possession of any wakf property, if ordered by the Board or Tribunal;

(f) carry out the directions of the Board;

(g) discharge any public dues; or

(h) do any other act which he is lawfully required to do by or under this Act;

he shall, unless he satisfies the court or the Tribunal that there was reasonable cause for his failure, be punishable with fine which may extend to eight thousand rupees.

(2) Notwithstanding anything contained in sub-section (1), if—

(a) a mutawalli omits or fails, with a view to concealing the existing of a wakf, to apply for its registration under this Act,—

(i) in the case of a wakf created before the commencement of this Act, within the period specified therefor in sub-section (8) of section 36;

(ii) in the case of any wakf created after such commencement, within three months from the date of the creation of the wakf; or

(b) a mutawalli furnishes any statement, return, or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular, he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees.

(3) No court, shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer duly authorized by the board in this behalf.

> (4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.
>
> (5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the fine imposed under sub-section (1), when realised, shall be credited to the Wakf Fund.
>
> (6) In every case where offender is convicted after the commencement of this Act, of an offence punishable under sub-section (1) and sentenced to a fine, the court shall also impose such term of imprisonment in default of payment of fine as is authorized by law for such default."

83. It is submitted that 1995 Act made a salutary provision which categorically reflects the policy behind registration of the waqf being mandatory. The Waqf Act, 1995 took a much-desired step by introduction of Section 87 in the Waqf Act which reads as under:

> **"Section 87 - Bar to the enforcement of right on behalf of unregistered wakfs.**
>
> Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commencement unless such Wakf has been registered, in accordance with the provisions of this Act.
>
> (2) The provisions of sub-section (1) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act."

84. The Parliament, however, introduced a Bill in 2013 [which came into effect on 01.11.2013] and deleted Section 87 and no logic or rationale is available

either in Statement of Objects and Reasons or anywhere else. However, the remaining sections i.e. Sections 4, 5, 6, 7, 36 and 37 remained in the statute.

A copy of the Waqf [Amendment] Act, 2013 is attached herewith and marked as **Annexure R – 7**.

85. The above referred historical background of requirement of registration would satisfy this Hon'ble Court about the rationale in carving out of proviso in Section 2[3][r]. The proviso is to protect only those "waqf by user" which are registered in tune to the prevailing position that mandated all waqfs to be registered. The exception carved out i.e. 'waqf by user' on government land and private property with a clear rationale, object and purpose and in line with Section 3C which provides for a detailed provisions for adjudication concerning government property.

Examination before the Joint Parliamentary Committee

86. It is submitted that the issue of 'Waqf by user' was debated, discussed and stakeholders were consulted in detail. The Joint Parliamentary Committee has examined the history of waqf law in India right from the Islamic period, British colonial period and post-independence period as reflected in paras 1.5 to 1.11 of the Report. A copy of the report of Joint Parliamentary Committee of 18th Lok Sabha of Waqf [Amendment] Bill, 2024 is already enclosed herewith and is marked as **Annexure R – 2.**

This Report was presented to the Hon'ble Speaker on 30.01.2025, was presented to Lok Sabha on 13.02.2025 and was also laid in Rajya Sabha on 13.02.2025.

It is submitted that the original bill as placed before the JPC did not have the proviso to Section 3[1][r]. The JPC, after deliberations and after going

through the above legislative history, suggested the proviso which is accepted by both Houses of the Parliament.

87. The relevant paragraphs from the Joint Parliamentary Committee Report on the question of 'Waqf by user' is reproduced hereunder-

> "3.6.15 Several Stakeholders have expressed before the Committee their misgivings that with the deletion of 'waqf by user' clause, the legal position of all waqf properties especially historical properties would come into question, in response the Ministry of Minority Affairs have categorically clarified before the Committee as under: -
>
> "Sir, Waqf deed is mandatory only for new Waqfs. That is clear in the Act.... Therefore, for registered waqf properties, there is no mandatory requirement for a Waqf deed".
>
> ...
>
> 3.6.17 The Ministry was asked to state categorically how the deletion of Section 3(r)(i) in the Amendment Bill, will impact the protection and management of auqaf specifically historical and unregistered waqf properties that were previously safeguarded under this clause. They also wanted to know how the removal of the "waqf by user" provision would affect the legal status of properties that are currently recognized as waqf solely based on their usage. In reply The Ministry of Minority Affairs have submitted as under:
>
> > "**The removal of this provision does not affect registered Waqf just because they are not having Waqf deed**"
> >
> > "Section 3B (1) & (2) of the Waqf (Amendment) Bill 2024, ensures protection for properties that were declared as Waqf by user prior to the commencement of the Waqf (Amendment) Act, 2024. The details of Waqf and the property dedicated to the Waqf shall be filed on the central portal and database within six months of the Act's commencement. The details required include, inter alia the deed of Waqf, if available. Therefore, for registered Waqf properties, there is no mandatory requirement for a Waqf deed. This ensures that existing registered Waqf properties will not be reopened due to the absence of a Waqf deed".

3.6.18 The Ministry of Law and Justice in their submission has clarified their position on the omission of the 'Waqf by User' provisions and its ramifications as under

> It is submitted that Waqf (Amendment) Bill, 2024 proposes to omit "waqf by user" as the Bill also proposes that every new waqf shall be created by waqf deed only. The "waqf by user" relies heavily on historical usage without formal documentation, which creates ambiguity and unnecessary litigations. The proposed amendment shall apply prospectively.

...

"**The removal of this provision will not adversely affect existing waqf, registered prior to the commencement of the waqf (Amendment) Act 2024**: Section 3B (1) & (2) of the waqf (Amendment) Bill 2024, ensures protection for properties that were declared as waqf by user prior to the commencement of the waqf (Amendment) Act, 2024. The waqf and the property dedicated to the waqf shall file their details on the central portal and database within six months of the Act's commencement. The details required include, among other things, t**he deed of waqf, if available**. Therefore, for registered waqf properties, there is no mandatory requirement for a waqf deed. This ensures that existing registered waqf properties will not be reopened due to the absence of a waqf deed"

88. The Committee, therefore, after the aforesaid elaborate exercise recommended as under-

> "3.7.3 Regarding the amendments proposed in the definition of waqf, the Committee have observed that the proposed omission of 'waqf by user' through Clause 3(ix) (b) of the Amending Bill, have created apprehensions among various stakeholders and the Muslim community at large regarding the status of the existing 'waqf by user' which largely includes properties used for religious purposes. The Committee, in order to evade such apprehensions, propose that a proviso clearly specifying that the omission of 'waqf by user' from the definition of the waqf will apply prospectively, that is, the cases of existing waqf properties already registered as 'waqf by user' will not be reopened and will remain as waqf properties, even if they do not have a waqf deed. This would however be subject to the condition that the property wholly or in part must not be involved in a dispute or be a government property. Accordingly, the following amendment to Clause 3(ix) is proposed:

"(e) the following proviso shall be inserted, namely: -

> "Provided that the existing waqf by user properties registered on or before the commencement of Waqf (Amendment) Act, 2024 as waqf by user will remain as waqf properties except that the property, wholly or in part, is in dispute or is a government property."

89. It is submitted that therefore, it is too late in the day for anyone to claim today that although it claims to be a genuine waqf, it is still not registered. It is submitted that the above referred legislative history makes it clear that –

(i) A much hyped submission before this Court and elsewhere that waqf [including 'Waqf by user'] cannot be expected to have documents, is a false and mischievous argument;

(ii) While registration of all kinds of waqfs [including 'Waqf by user'] has always been mandatory, the legal regime never required the *waqf deed* as a mandatory condition. In other words, it was mandatory to register 'Waqf by user' even in absence of waqf deed by giving other details since more than 100 years.

(iii) It is not possible to believe in law or on facts that any existing 'Waqf by user' never applied for registration (though mandatory), could not be found out by the State Waqf Board and would escape the scrutiny of the survey conducted under the Wakf Act, 1923, Wakf Act, 1954, Wakf Act, 1995 and the amended Section 6[1][a] in 2013 and thereby could not be registered.

(iv) Those claimants now claiming a property to be 'Waqf by user' are fictitious as they were never found in survey by Survey Commissioner, enquiry conducted by the Waqf Board nor got themselves registered

despite penal provisions being in existence for non-registration since 100 years and several windows given thereafter for registration.

90. It is submitted that further the 2025 amendment has provided under Section 36(1A) that a waqf may now be established only through a valid deed of waqf. It is submitted that the section reads as follows:

> **"Section 36. Registration.—**
>
> xxx
>
> **(1A) On and from the commencement of the Waqf (Amendment) Act, 2025, no waqf shall be created without execution of a waqf deed."**

91. It is submitted that the amendment to Section 36 has not interfered with the status of existing/registered *auqaf* by user. It is submitted that the use of the words "on and from the commencement of the Waqf (Amendment) Act 2025" specifies that the change is prospective in nature. It is submitted that any existing property which has been registered as waqf by user will retain its status. It is submitted that a proviso to that effect has been inserted in Section 3 of the Act by the 2025 Amendment. It is submitted that the proviso states as follows:

> "Provided that the existing waqf by user properties **registered on or before the commencement of the Waqf (Amendment) Act, 2025** as waqf by user will remain as waqf properties except that the property, wholly or in part, is in dispute or is a government property;"

A copy of the Waqf [Amendment] Act, 2025 is attached herewith and marked as **Annexure R – 8**.

92. It is submitted that the above proviso makes it clear that the mandatory requirement of a 'waqf deed' applies prospectively from the date of the 2025 amendment i.e., if any new waqf is created after 08.04.2025. Waqfs by user registered before the amendment would therefore continue to be treated as waqf in terms of the proviso.

93. It is submitted that the only change introduced by the amendment to Section 36 is that henceforth, the sole means of creating a valid waqf would be through a waqf deed. When the country has entered into a completely different era in 2025, no one can still insist for 'oral' creation of waqf when no other document (sale deed, gift deed, will etc.) is permitted without written form. It is submitted that this change has been introduced in order to ensure that establishment of waqfs can be properly documented. It is submitted that requiring a valid waqf deed would also serve to reduce disputes as to whether a particular property is a waqf property or not and at least after 2025, nobody can say from where they can be expected to produce documents. It is submitted that an exception was provided for pre-existing *auqaf* by user because it was recognised that these were established at a time when documentation was not as prevalent and widely practised as it is at present. It is submitted that with the passage of time, this position has changed and documentation has become simpler and more convenient. It is submitted that keeping in mind this change, the requirement of compulsory *waqf* deed has been introduced.

94. It is submitted that this change is one of the several changes introduced by the amendment act in order to both formalise and modernise the system of managing *auqaf*. It is submitted that the Amendment Act also aims to ensure that waqf properties are properly inventoried and relevant information about the waqf property is made publicly available in order to bring about transparency in the functioning of *auqaf*.

95. In light of the statutory scheme reflected above, no one can have a rightful claim to raise a claim of 'Waqf by user' if it is not registered and if Legislature, in its wisdom, excludes unregistered 'Waqf by user' from the proviso, and thereby takes away a statutory benediction for good reasons. This does not impinge on any religious rights as it does not take away any rights but only

takes away a beneficial legislation being made applicable to the exercise of such a right in such a manner.

96. It is submitted that it is thus clear that arguments challenging the deletion of 'Waqf by user' in the impugned amending Act is unsustainable and purposefully misleading since –

(i) 'Waqf by user' [which are registered] will have no effect and will continue;

(ii) It is not open for anyone to rationally, logically, honestly and statutorily say that we could not get 'Waqf by user' registered because we did not have waqf deed since it never been requirement for registration of 'Waqf by user'.

97. It is submitted that at this juncture, one fundamental question needs to be raised and answered. It is respectfully submitted that for any valid waqf, there are two necessary and mandatory ingredients-

i. Property and a proper owner of the property;
ii. Dedication of the said property for any purpose recognized by the Muslim law as pious, religious or charitable.

98. In case of 'waqf by user', there is bound to be an owner of the property. The long use without any intention to dedicate the property itself cannot be inferred to be dedication. In other words, even in case of 'waqf by user' of any property, there would be an owner of the property whose express or tacit permission to use the property for some purpose recognized by the Muslim law as pious, religious or charitable would be treated as dedication.

99. In absence of such a dedication [either express or implied] there cannot be a valid waqf. It is keeping this principle in mind that right from the year 1923, several laws do not mandate a waqf deed but mandates the applicant to

give details like description of the property etc. The very same statute right from 1923 as well as in 1954 as well as in 1995 requires the Court, Survey Commissioner or the State Waqf Board to conduct an enquiry. The details of property being provided would enable the authorities to undertake this exercise to find out the owner of the property, be it private or government. After having found out the owner of the property, a mutation may be made in the revenue record mentioning the owner of the property and the nature of its usage as 'waqf by user'.

100. It is submitted that if anyone has tried to evade this entire legislative architecture [and acted in gross violation of the same] existing since last 100 years, there is no justification to argue that exclusion of unregistered 'waqf by user' is either arbitrary, unreasonable or without any logic, purpose or intent.

101. It is submitted that if the effect of the section saving only registered 'Waqf by user' is interfered with either directly or indirectly by any interim order, it will not only defeat the object and provision itself, it will result in the following anomalies which the order of any Court cannot lead to :

(i) It will amount to creation of legislative regime by judicial order [and that too an interim order] wherein Parliament has by law, consciously taken it away.

(ii) It would defeat the object, intent and purpose of the Act in general and the 2025 amendments in particular;

This would give a premium to unregistered 'Waqf by user' who have been defying law of the land since more than 100 years though non registration has always been a penal act;

(iii) It would legitimize something i.e. unregistered 'Waqf by user' which is precluded and penalised by law;

(iv) It would be impossible for this Court or for that matter any authority to prevent anyone fictitiously claiming 'Waqf by user' in 2025 though it has never been identified in the statutory process of Survey Commissioner, the process of the Waqf Boards of each State and has never chosen to apply for registration and has never been reflected in any record including revenue records;

(v) It would encourage the mischief which is reflected in the report of Waqf Enquiry Committee in the year 1976 quoted hereinabove which categorically notes that some waqfs are deliberately trying to avoid registration, concealing waqf which affects the administration of waqfs.

(vi) Any interim order will not only cause public mischief but will also harms Muslims as well who are supporting the amendment.

No requirement of Waqf deed for registration for uploading of data

102. It is submitted that the Petitioners have deliberately created a confusion on one vital issue before this Hon'ble Court and elsewhere. It is suggested that, while building up a false narrative in this Hon'ble court and otherwise, that the amended provision demands waqf deeds and other documents.

As pointed out hereinabove, right from the year 1923, the position of law is clear that the existence of the waqf can be established without a waqf deed while getting it registered.

103. In this false narrative building exercise by the Petitioner and others, it is contended that even in 2025 Amendment, the old waqfs are called upon to declare a Waqf Deed. It is submitted that this is a deliberately fostered misconception and mischievous false narration that the law amended in 2025 requires old documents which can never be available.

104. It is submitted that till the amendment of 2025 came, all waqf were required to upload their details on a web portal called 'Waqf Asset Management System of India' [WAMPSI]. It is found that most of the Waqf Boards have been functioning in the most non transparent manner and have either not uploaded the details in public domain or have uploaded partial details in public domain. In an era of transparency, it is absolutely necessary that all details concerning waqf / waqf boards be uploaded in WAMSI portal. It is for this reason that section 3B is added by way of an amendment.

With a view to ensure scrupulous compliance of this provision, section 61 providing for penalties is added for non-compliance with section 3B. this penal provision is made in section 61(1)(a)(v).

105. Apart from the facts narrated hereinabove showing the history right from 1923 even the present amended provision does not require what is being projected as a part of false narrative before this Hon'ble Court and outside. The provision contained in Section 3B is only for the purpose of updating the data base and portal in which the details mentioned therein is to be uploaded. Section 3B reads as under: -

> **"3-B. Filing of details of waqf on portal and database. —**
>
> (1) Every waqf registered under this Act, prior to the commencement of the Waqf (Amendment) Act, 2025, shall file the details of the waqf and the property dedicated to the waqf on the portal and database, within a period of six months from such commencement:
>
> Provided that the Tribunal may, on an application made to it by the mutawalli, extend such period of six months under this section for a further period not exceeding six months as it may consider appropriate, if he satisfies the Tribunal that he had sufficient cause for not filing the details of the waqf on the portal within such period.
>
> (2) The details of the waqf under sub-section (1), amongst other information, shall include the following, namely—

(a) the identification and boundaries of waqf properties, their use and occupier;

(b) the name and address of the creator of the waqf, mode and date of such creation;

(c) the deed of waqf, if available;

(d) the present mutawalli and its management;

(e) the gross annual income from such waqf properties;

(f) the amount of land-revenue, ceases, rates and taxes annually payable in respect of the waqf properties;

(g) an estimate of the expenses annually incurred in the realisation of the income of the waqf properties;

(h) the amount set apart under the waqf for—

(i) the salary of the mutawalli and allowances to the individuals;

(ii) purely religious purposes;

(iii) charitable purposes; and

(iv) any other purposes;

(i) details of court cases, if any, involving such waqf property;

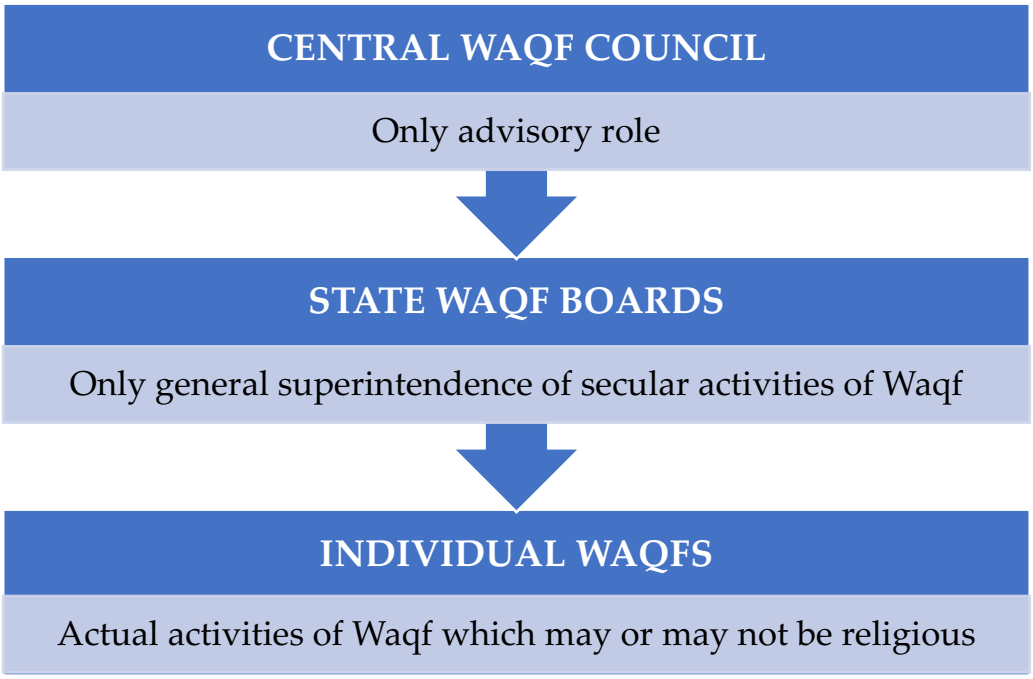
(j) any other particular as may be prescribed by the Central Government."

106. A perusal of the details shown in Section 3B[2][a] to [j] will show that there is no information which is demanded which a genuine waqf cannot have. The provisions of Section 3B merely makes functioning of waqf transparent by making a database open to access with details prescribed under Section 3B[2] and is not a provision for either creating any right or abolishing any right.

CHANGE IN COMPOSITION OF WAQF COUNCIL AND WAQF BOARDS

107. It is submitted that the Waqf Act essentially regulates secular activities of waqf. To understand the distinction between the Waqf Act, 1995 and the other

enactments, it is relevant to note that the Waqf Act operates in a three-tiered structure shown as under-



108. It is submitted that the system of waqf, under the Act, operates in three different spheres.

a. The first sphere is Central Waqf Council. This Council merely exercises advisory role for advising the Central Government. It has nothing to deal with any activity of waqf per se irrespective of whether waqf is a religious waqf or for other religious purposes.

b. The second layer is the State Waqf Board in each State. This Board also exercises regulatory powers concerned secular activities of waqf and provides for an effective and transparent statutory regime for administrating waqf property in accordance with the law. The waqf Board also does not interfere with the religious activities in any specific waqf or charitable activities of any other waqf.

c. The last layer is the individual waqf operating in the country. This waqf, whether for religious purposes or other charitable purposes, is solely

governed by internal management provided by each waqf whether by way of waqf deed or otherwise. It is for the waqf only to decide in all non-secular activities of wakf and its function.

It is submitted that there is no other Central Law, State Waqf Act, 1995, which has a comparable statutory regime ensuring a delegate compliance with Article 25 and Article 26 of the Constitution of India.

Waqf – to be distinguished with other religious institutions

109. At the outset, it may be pointed out that though there is no statutory interference in the waqf *per se* and the first two tiers merely takes care of secular administration of waqfs, the waqfs, by its very nature, can be for non-religious purposes also. There are waqfs for orphans, waqfs for hospitals and health care facilities, waqf for educational institutions, waqf for scholarships, waqf for support of the poor and needy through various programmes. In the emerging world scenario, various innovative forms of waqfs have also emerged such as Cash Waqfs, Corporate Waqfs and Waqfs Sukuk [Islamic bonds].

110. The concept of waqf, therefore, is distinguishable from mere religious denominations or places of worship. This aspect is elaborated hereafter. However, it may be pointed out that Waqf Act, 1995 in general and the amendments made in 2025 in particular merely deals with supervising of administration and secular aspects of waqf and waqf properties which would become clear from the architecture of the Act reflected from the chapters in which the Waqf Act is divided as under :

- **Chapter I**: Preliminary
- **Chapter II**: Survey of Auqaf
- **Chapter III**: Central Waqf Council
- **Chapter IV**: Establishment of Boards and their Functions

- **Chapter V**: Registration of Auqaf
- **Chapter VI**: Maintenance of Accounts of Auqaf
- **Chapter VII**: Finance of the Board
- **Chapter VIII**: Judicial Proceedings

111. It is submitted that none of the provisions attempts to enter into the third tier of Waqf itself [though a waqf may or may not be religious always]. The Act merely takes care of administration, effective management, proper accounting, registration etc. through the first two tiers, without touching upon its essential aspect pertaining to religion.

Change in 2025 Amendment

112. It is submitted that considering the nature of the waqf itself, the Amendment Act has changed the composition of the Central Waqf Council under Section 9 as well as the Waqf Boards created for each state under Section 14. It is submitted that the amended sections provide as follows:

> **"9. Establishment and constitution of Central Waqf Council.—**
>
> (1) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.
>
> (1A) The Council referred to in sub-section (1) shall issued directives to the Boards, on such issues andin such manner, as provided under sub-sections (4) and (5).
>
> (2) The Council shall consist of—
>
> (a) the Union Minister in charge of waqf—Chairperson, ex officio;
>
> (b) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;
>
> (c) the following members to be appointed by the Central Government from amongst Muslims, namely:—

(i) three persons to represent Muslim organisations having all India character and national importance;
(ii) Chairpersons of three Boards by rotation;
(iii) one person to represent the mutawallis of the waqf having a gross annual income of five lakh rupees and above;
(iv) three persons who are eminent scholars in Muslim law;

(d) two persons who have been Judges of the Supreme Court or a High Court;

(e) one Advocate of national eminence;

(f) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine;

(g) Additional Secretary or Joint Secretary to the Government of India dealing with waqf matters in the Union Ministry or department—member, ex officio:

Provided that two of the members appointed under clause (c) shall be women:

PROVIDED FURTHER THAT TWO MEMBERS APPOINTED UNDER THIS SUB-SECTION, EXCLUDING EX OFFICIO MEMBERS, SHALL BE NON-MUSLIM.".

(3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be, prescribed by rules made by the Central Government.

(4) The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the Council and it may suo motu call for information on specific issues from the Board, if it is satisfied that there was prima facie evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.

(5) Any dispute arising out of a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the

Supreme Court or a retired Chief Justice of a High Court and the fees and travelling and other allowances payable to the Presiding Officer shall be such as may be specified by that Government.

14. Composition of Board-

(1) The Board for a State and the National Capital Territory of Delhi shall consist of, not more than eleven members, to be nominated by the State Government,—

(a) a Chairperson;

(b) (i) one Member of Parliament from the State or, as the case may be, the National Capital Territory of Delhi;

(ii) one Member of the State Legislature;

(c) the following members belonging to Muslim community, namely:—

(i) one mutawalli of the waqf having an annual income of one lakh rupees and above;

(ii) one eminent scholar of Islamic theology;

(iii) two or more elected members from the Municipalities or Panchayats:

Provided that in case there is no Muslim member available from any of the categories in sub-clauses (i) to (iii), additional members from category in sub-clause (iii) may be nominated;

(d) two persons who have professional experience in business management, social work, finance or revenue, agriculture and development activities;

(e) Joint Secretary to the State Government dealing with the waqf matters, ex officio;

(f) one Member of the Bar Council of the concerned State or Union territory:

Provided that two members of the Board appointed under clause (c) shall be women:

PROVIDED FURTHER THAT TWO OF TOTAL MEMBERS OF THE BOARD APPOINTED UNDER THIS SUB-SECTION, EXCLUDING EX OFFICIO MEMBERS, SHALL BE NON-MUSLIM:

Provided also that the Board shall have at least one member each from Shia, Sunni and other backward classes among Muslim Communities:

> Provided also that one member each from Bohra and Aghakhani communities shall be nominated in the Board in case they have functional auqaf in the State or Union territory:
>
> **Provided also that the elected members of Board holding office on the commencement of the Waqf (Amendment) Act, 2025 shall continue to hold office as such until the expiry of their term of office.**
>
> (2) No Minister of the Central Government or, as the case may be, a State Government, shall be nominated as a member of the Board.
>
> (3) In case of a Union territory, the Board shall consist of not less than five and not more than seven members to be nominated by the Central Government under sub-section (1)
> (6) In determining the number of members belonging to Shia, Sunni, Bohra, Aghakhani or other backward classes among Muslim communities, the State Government or, as the case may be, the Central Government in case of a Union territory shall have regard to the number and value of Shia, Sunni, Bohra, Aghakhani and other backward classes among Muslim auqaf to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.
>
> (9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette."

113. It is submitted that Section 9 provides for the composition of the Waqf Council. Waqf Council is not undertaking any "affairs of religion" but is merely an advisory body to advise Central Government, the State Governments and the Boards on matters concerned working of Boards and due administration of Auqafs.

114. The Council consists of a total of 22 Members [as per the Amendment Act of 2025] out of which a maximum of four can be non-Muslims. The non- Muslim Members are clearly, therefore, in minority.

115. It is submitted that similarly Section 14 [as quoted above] provides for the composition of the State Waqf Board. The functions of the Waqf Board are provided for in Section 32 of the Act which reads as under-

"Section 32

32. Powers and function of the Board.—

(1) Subject to any rules that may be made under this Act, the general superintendence of all auqaf in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the auqaf under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such auqaf were created or intended:

Provided that in exercising its powers under this Act in respect of any waqf, the Board shall act in conformity with the directions of the waqf, the purposes of the waqf and any usage or custom of the waqf sanctioned by the school of Muslim law to which the waqf belongs.

Explanation. —For the removal of doubts, it is hereby declared that in this sub-section, "waqf" includes a waqf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be—

(a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every waqf;

(b) to ensure that the income and other property of auqaf are applied to the objects and for the purposes for which such auqaf were intended or created;

(c) to give directions for the administration of auqaf;

(d) to settle schemes of management for a waqf: Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) to direct—

(i) the utilisation of the surplus income of a waqf consistent with the objects of a waqf;

(ii) in what manner the income of a waqf, the objects of which are not evident from any written instrument, shall be utilized;

(iii) in any case where any object of waqf has ceased to exist or has become incapable of achievement, that so much of the income of the waqf as was previously applied to that object shall be applied to any other object, which shall be

> similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:
>
> Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.
>
> (f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of account of auqaf;
>
> (g) to appoint and remove mutawallis in accordance with the provisions of this Act;
>
> (h) to take measures for the recovery of lost properties of any waqf;
>
> (i) to institute and defend suits and proceedings relating to auqaf;
>
> (j) to sanction lease of any immovable property of a waqf in accordance with the provisions of this Act and the rules made thereunder:
>
> Provided that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction:
>
> Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.
>
> (k) to administer the Waqf Fund;
>
> (l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the waqf property as the Board may, from time to time, require;
>
> (m) to inspect, or cause inspection of, waqf properties, accounts, records or deeds and documents relating thereto;
>
> (n) to investigate and determine the nature and extent of waqf and waqf property, and to cause, whenever necessary, a survey of such waqf property;
>
> (na) to determine or cause to be determined, in such manner as may be specified by the Board, market rent of the waqf land or building;
>
> (o) generally do all such acts as may be necessary for the control, maintenance and administration of auqaf.
>
> xxx

116. It merely exercises superintendence over the functioning of waqfs [which will be administered and managed by Muslims or anyone as desired by Waqif]

It is for this reason that Waqf Boards are always considered to be secular entities dealing with and ensuring proper management and administration of waqfs within its jurisdiction by exercising functions like maintaining record, overseeing the accounting of income, approving budgets etc. All the activities under Section 32 are secular activities and do not touch upon any religious activity of the Waqf.

117. The State Boards consists of a total of 11 Members [as per the Amendment Act of 2025] out of which a maximum of three can be non-Muslims. The non-Muslim Members are clearly, therefore, in minority.

118. It is submitted that there are judicial pronouncements also taking the view that Waqf Board is a secular body and is not a representative body of Muslims.

119. It is further submitted that the relevant Ministry has unequivocally stated the following before the JPC with regard to the interpretation of the proviso concerning non-Muslim members in the Council and the Boards :

> "9.6.6 Further explaining about the inclusion of non-Muslim Members in the Council and responding to the concerns regarding the possibility wherein the Muslim members may be in minority in the Council, the Ministry of Minority Affairs stated as under:
>
> > **".....the changes introduced in the constitution of the Central Waqf Council (CWC) are designed to create two categories: one category exclusively for Muslims (10 members)..... and another category (12 members). Out of this (second) category, two members will be Non-Muslim. Remaining all will be Muslims."**

[This is the response of the Nodal Ministry to the provision in the Bill as placed before the JPC.]

xxx

Observations/Recommendations of the Committee:

> **9.7 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the**

views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs, find that considering the statutory nature of the Central Waqf Council, inclusion of two non-Muslim members will make it more broad based and promote inclusivity and diversity in waqf property management. The Bill has further emphasized upon the participation of Muslim women in the Council. Hence, the Committee accept all the amendments proposed under the Clause. However, it has been brought to the knowledge of the Committee that the presence of non-Muslim ex-officio Members may result in fulfilling the requirement of the proposed amendment whereas this may go against the intent of the proposed amendments. Hence, the following amendment is proposed in second proviso of Clause 9:

> **"Provided further that two members appointed under this sub-section excluding exOfficio members, shall be non-Muslims."**

xxx

Observations/Recommendations of the Committee:

11.7 The Committee, after thorough deliberation upon the proposals made in the Clause under examination, including the views/suggestions of the stakeholders and the justification given by the Ministry of Minority Affairs, find that the composition of State Waqf Boards has been expanded to include two non-Muslim members and ensure broader representation from Shia, Sunni and backward Muslim communities which will promote inclusivity and diversity in waqf property management. The Committee feel that nonMuslims can be beneficiaries, parties to disputes, or otherwise interested in waqf matters, which justifies their inclusion in the administration of waqf. Hence, the Committee accept the amendments proposed under the Clause. However, it has been brought to the knowledge of the Committee that the presence of non-Muslim ex-officio Members may result in fulfilling the requirement of the proposed amendment whereas this may go against the intent of the proposed amendments. Hence, the following amendments are proposed in Clause 11:

(1) the proposed sub-Section (1)(e) of Section 14 be substituted as given:

> "Joint Secretary of the State Government dealing with waqf matters-member, ex officio;"

(2) the second provisio to sub-section (1) of Section 14 be amended as given:

"Provided further that two members of the Board appointed under this sub-section excluding ex officio members, shall be non-Muslims:"

120. It is submitted that changes in the composition of the Central Waqf Council (which is only an advisory body) and the Waqf Board (which only supervises secular activities) do no impair the Muslim community's rights under Article 26. The following aspects may be noted in this regard :

a. In case of Central Waqf Council [consisting of total 22 members], maximum of four members can be non-Muslims. If the *ex-officio* chairman i.e. Minister concerned and the Joint Secretary of the Government who is also *ex-officio* are Muslims, then only two members can be non-Muslims.

b. In case of Waqf Board [consisting of total 11 members], maximum of three members can be non-Muslims. If the *ex-officio* Joint Secretary is a Muslim, then only two members can be non-Muslim.

c. Thus, it is clear that non-Muslim members are in a microscopic minority and they are included to give inclusivity and with a view to ensure their participation. Since the secular aspects of waqf administrations may require dealing with issues concerning non-Muslims who are either beneficiaries, aggrieved parties or affected parties.

d. Muslim members will form an overwhelming majority of the Board;

e. The Boards functions are wide ranging and often involves issues which may require dealing with members of other faiths.

121. It is submitted that as stated above, Article 26 does not confer an absolute right to administer a property in accordance with the tenets of religion. It is submitted that in fact this Hon'ble Court has drawn a distinction between practices which are "integral" to religion and practices which though associated

with religion are essentially of a secular nature and the later may be validly regulated by law.

122. It is submitted that before delving into the issue of composition of Boards, it is necessary to make the initial clarification. It is submitted that the concept of religious endowment and perpetual charity is a time-honoured practice across all religions. It is submitted that across all these traditions, the underlying principle is consistent - once property is dedicated for religious or charitable use, it is removed from personal ownership and vested in a legal or sacred trust, to be administered under specific principles of stewardship. It is submitted that waqf, as a concept, encompasses, both endowments and other forms of charities. It is submitted that thus, a suitably tailored regime is the need of the hour. It is respectfully submitted that the State's regulation of such endowments, including under the Waqf Act, the Hindu Religious and Charitable Endowments Acts, and public trust laws, is not a violation of religious freedoms or any principles of arbitrariness. No community can claim as of right the benefits of a statutory protection to its dedications while insisting that even the secular regulatory functions be limited to members of that community.

123. It is submitted that the concept has evolved with time and cannot be merely considered to be limited to the religious institutions and places of worship. Further, in view of this wider understanding of waqf, the parallel with other religious institutions or endowments enactment would be inappropriate. The waqf regime, which is wider and ever evolving, requires a suitably tailored approach rather than lock-stock and barrel lifting of religious endowment approach.

124. The contention regarding composition of Waqf Council and Waqf Boards with inclusion of non-Muslim members in numerical minority. As pointed out

hereinabove and hereunder in Waqf Council, there is a possibility of maximum 04 non-Muslims out of 22. In Waqf Boards of each State, there is a possibility of maximum 03 members who can be non-Muslims [if the ex officio member happens to be a non-Muslim] out of 11 members.

While considering an interim order at the stage where constitutional validity is yet to be determined after extensive arguments one of the most relevant considerations for the court would be as to whether any irreversible situation arise if an interim order is not made. If this consideration is juxtaposed with Section 9 and Section 14, it is clear that here will be no irreversible position even if minority non-Muslim members are appointed.

125. It is submitted that further, as stated above, the Petitioner's parallels with Hindu Endowment Acts existing in few States are unfounded and militate against the broad nature of "Waqf Board" and limited Religious and Endowment enactments in few States. The following points may be noted in this regard :

a. The concept of a waqf is wider and ever evolving – involving religious institutions and other general charitable functions like education, healthcare, orphanage, food to needy etc. Therefore, waqf requires a suitably tailored approach rather than lock-stock and barrel lifting of 'religious endowment' approach.

b. It is submitted that further, not all States have Hindu Religious Endowments laws and in numerous States, the Hindu endowments and other general charities are wholly governed by local laws of Charities/Trusts which deal with all communities in general.

c. Further, comparing a wide panel or collegial bodies of State Boards and National Council [wherein the majority is still with Muslim members], cannot be compared to an individual post like that of the Charity

Commissioner who exercises equivalent powers over all Hindu religion's institutions/Ashrams/Mutts/Temples, etc.

d. Importantly, the creation, management, regulation and maintenance of waqf - which is the primary responsibility of the State Boards often involves dealing with non-Muslim communities and affects their rights, particularly their right to property. In such a scenario, having an inclusive panel with merely three members [out of 11 in Waqf Boards] as non-Muslims and an overwhelming majority of members from Muslim community, balances the constitutional equities on both sides. The same arguments holds good for the advisory body of Waqf Council.

e. It is submitted that Central Waqf Council Rules, 1998 and rules governing waqf boards in each State [to be made by the respective State Governments] can make suitable provisions like Rule 6 of Central Waqf Council Rules, 1998 to deal with any contingency which may arise due to presence of non-Muslim members who are as such in microscopic minority.

f. Further, Hindu endowments or other endowments and enactments regulating the same concern ***only*** the respective community with little to no interaction of the said endowments with members of other communities.

As opposed to the same, the wide nature of waqf ensures that its creation, management, regulation and maintenance results in interactions with members of other communities apart from Muslims. In such a scenario, comparing Waqf Boards with Commissioners/Boards under State laws concerning Hindu endowments would not be an apt comparison. The nature of waqf is ***sui generis*** and requires a suitably tailored approach.

g. It is submitted that except the States where there are State specific general laws for supervision of religious endowments, there are many States in which there are no such specific laws for non-Muslims.

In the Bombay Public Trusts Act, 1950, applicable to States of Maharashtra and Gujarat, which covers both religious and secular public trusts and establishes the Charity Commissioner's office with extensive supervisory authority. It is submitted that under this Act, all public trusts must be registered and are subject to direction, inquiry, inspection, audit, and oversight by the Charity Commissioner under Sections 36, 37, 38 and 39. Further, as per Section 41A, the Charity Commissioner is empowered to issue directions to any trustee of a public trust or any person connected therewith to ensure that such trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust.

Similar position arises in many other States where Hindu / non-Muslim religious institutions are governed by secular Public Charitable Trust Act. In such cases, the Charity Commissioner [by whichever name called and who may loosely be similar to State Waqf Boards] may or may not be a Hindu.

h. Even waqfs used to be under administration, supervision and control of non-Muslim Charity Commissioners in many States. It is respectfully submitted that the Waqf Act, 1954 was not made applicable to the State of Maharashtra till coming into force of Waqf Act, 1995 i.e. on 01.01.1996. In other words, prior to 01.01.1996, Muslim Trusts and Waqfs [except those in the region which were governed by Wakf Act, 1954] were covered and governed by Bombay Trust Act, 1950 and were managed,

administered and supervised by the Charity Commissioner of Maharashtra who may or may not be a Muslim.

126. It is submitted that the functions discharged by the Central Waqf Council and the Waqf Boards are generally administrative in nature. The Council functions as an advisory body to the Central and State Governments while the Boards are responsible are responsible for superintendence, maintenance and regulation of *auqaf*. It is submitted that the Council and the Boards are not responsible for the performance of the religious functions associated with the waqf property. It is submitted that *auqaf* are essentially in the nature of charitable endowments, though under a religious framework. It is submitted that only because *auqaf* are sanctioned in Islam, it does not follow that all waqf-related activity is necessarily religious activity. It is submitted that the administration of waqf properties is essentially a secular function. It is submitted that as administrative bodies, the Council and the Boards' functioning can be regulated by law without causing any interference in the religious aspects of *auqaf*.

127. It is submitted that there is one more reason why the said two provisions will not fall foul on the ground that they enable a minority of members to be non-Muslims. It is reiterated that unlike religious endowments or institutions in some States pertaining to Hindu denomination, waqf can be for non-religious and charitable purposes also. Secondly, the beneficiary of any waqf [normally non-religious waqfs] can be non-Muslims also. Thirdly, Section 72[1][v][f] permits any Muslim to contribute to the charitable object of the waqf.

128. It is submitted that since Muslims are located the world over and in the present economic world scenario where there is evolution even in waqf systems across the world, there is nothing arbitrary if the competent Legislature permits non-Muslims to participate for effective administration of waqfs and thereby

modernize the way in which waqfs are governed in India to keep pace with waqfs in other part of the world. It is submitted that this would further enhance the object and purpose of the Waqfs Act itself.

Management of properties by a mutawalli is largely secular function – Boards are merely regulatory bodies

129. It is submitted that it is important to note that the constitutional Courts have held that even the Muttawali's role is essentially "secular" in nature and cannot be confused with a *Mahant*. In ***Hafiz Mohammad Zafar Ahmad v. U.P. Sunni Central Board of Waqf*, 1964 SCC OnLine All 319 : AIR 1965 All 333**, it was noted as under :

> **51.** The right of a mutwalli is not, in my opinion, equivalent to that of a mahant. A mutwalli's right is purely a right of management of the property and is not a proprietary right. The duties of a mutwalli are purely of a secular character. His duties are not of a religious character. He has no beneficial interest of any kind in the property which he administers while a mahant has such an Interest in the property belonging to the math. A mahant's right is not only a right of management of the property but he holds a beneficial Interest in it. A mutwalli is not the head of a spiritual fraternity while a mahant is. A mutwalli is nothing more than a servant of the founder of the waqf. It was held in *Zam Yar Jung* v. *Director of Endowments*, AIR 1963 SC 985 that:
>
> > "Similarly, the Muslim law relating to trusts differs fundamentally from the English law. The Mohammadan law owes its origin to a rule laid down by the Prophet of Islam; and means "the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings'. As a result of the creation of a wakf, the right of wakif is extinguished and the ownership is transferred to the Almighty. The manager of the wakf is the mutawalli the governor, superintendent, or curator. But in that capacity, he has no right in the property belonging to the wakf; the property is not vested in him and he is not a trustee in the legal sense. Therefore, there is no doubt that the wakf to which the Act applies is, in essential features, different from the trust as is known to English Law.".

130. It is submitted that further, in ***Hafiz Mohammad Zafar Ahmad v. U.P. Sunni Central Board of Waqf*, 1964 SCC OnLine All 319 : AIR 1965 All 333**, has expressly held that the right to manage the property of a waqf by the Board is a secular right. It has been held as under :

> "58. Therefore, a duty has been cast on the Board to be guided by the directions of the waalf While acting under Section 48 of the Act. Therefore it is not correct to urge that under S. 48 the Board has unfettered power to appoint any perron as mutwaui. **The right to manage the property of a waqf is a secular right and is not hit by Article 26 of the Constitution. Under Section 19 of the Act only general superintendence of all waqfs vests in the Board**. The Act does not deprive religious institutions to manage their own affairs either in religious matters or in the administration of property in accordance with law. The Board can only ensure that the waqfs are properly governed and the rights of administration of properties are not taken away by Section 19 of the Act. In my opinion the rulings relied upon by Sri Bashir Ahmad in this connection have no application to the facts of the present case."

131. In ***Syed Fazal Pookoya Thangal v. Union of India*, 1993 SCC OnLine Ker 87 : AIR 1993 Ker 308**, it has been noticed that the Waqf Board do not entail protections under Article 26. It was held as under :

> **"8.** The first point that arises for consideration is whether the Wakf Board, against whom the order Ext. P1 has been passed, can complain of violation of Article 26 of the Constitution of India. Article 26 provides inter alia that subject to public order, morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law. The right conferred under Art. 26 is on a denomination or any section thereof. A "denomination" has been defined in *Commissioner, Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*, AIR 1954 SC 282 (the *Shirur Mutt case*) by the Supreme Court with reference to the meaning of the term in the Oxford Dictionary as "a collection of individuals, classed together under the same name; a religious sect or body having a common faith and organisation and designated by a distinctive name". It was accordingly held that each one of the sects or sub-sects in a religion can be called a religious denomination as it is designated by a distinctive name — in many cases that of its founder — and had a common faith and common spiritual organisation. In *Sardar*

Syedna Tahar Saifuddin Saheb v. *State of Bombay*, AIR 1962 SC 853, Ayyangar, J. in his judgment at paragraph 54 observed that the identity of a religious denomination consists in the identity of its doctrine, creeds and tenets which are intended to ensure the unity of the faith which its adherents profess; and the indentity of the religious views are the bonds of the union which binds them together as one community. There can be no dispute that the rights guaranteed by Article 26 are available only to a denomination. Can the Kerala Wakf Board style itself as a denomination and claim protection under Article 26?. The Kerala Wakf Board is a body established under Section 9 of the Wakf Act 29 of 1954. It is not a collection of individuals or a body having a common faith and organisation. It has been established for the purpose of carrying out the function of supervision and control over the Wakfs in the State. Its functions are delineated in Section 15 of the Wakf Act as the general superintendence of all Wakfs in a State. The provision also specifies that it shall be the duty of the Board so to exercise its powers as to ensure that the Wakfs under its superintendence are properly maintained, controlled and administered and the income thereof duly applied to the objects and for the purposes for which the Wakfs were created or intended. Sub-section (2) of the section specifies some of the functions and powers of the Board without prejudice to the generality of the powers conferred by sub-section (1). The Act contains detailed provisions for the constitution of the Board, its composition, the removal of its members, and the procedure to be followed by it in relation to the discharge of its functions and duties. I shall refer later to the provisions regarding its finances.

9. Sub-section (2) of Section 9 also provides that the Wakf Board shall be 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 the conditions and restrictions as may be prescribed, and shall by the said name sue and be sued.

10. The Wakf Board is not a conglomeration of individuals. It is not even akin to a company where a number of individuals join together to constitute it. It is a statutory body, pure and simple. It is not a representative body of the Muslim community. It has no soul and no faith, except the faith of dutiful performance of its functions and duties under the Act.

11. It is well known that management of Wakf properties has since long been controlled by the State. Various laws have been enacted from time to time in various parts of the country by either the Central Legislature or the State Legislatures for achiveving this purpose. Wakf properties have thus been the subject of special protection by the State through the enactment of these laws with a view to see that they are properly preserved and that the income therefrom is not frittered, misutilised or diverted for purposes other than those authorised by the

objects of the Wakf. It is the power so exercised by the State that now stands vested in the Wakf Boards in each State, specially established for the purpose. What the Wakf Board does is to carry out functions which were hitherto being undertaken by the State. It is exercising a part of the State's functions and is an instrumentality of the State. The Wakf Board is a creature of the Wakf Act. It has no existence otherwise. It stands or falls with the Wakf Act. It has to exercise those functions and powers which are vested in it under the provisions of the Wakf Act. It is not a collection of individuals, or a sect or body with a common faith which alone will make it a denomination for the purpose of Article 26. If it is not a denomination, it has no rights under Article 26, liable to be violated by Section 4(2) of the Act or the order Ext. P1 by casting the liability to make payment of maintenance to a destitute divorced woman. **Article 26 is therefore out of operation so far as the Wakf Board is concerned."**

132. In ***Syed Shah Muhammad Al Hussaini v. Union of India,*** **1998 SCC OnLine Kar 623**, it was held as under :

> **"**5. **It is well recognised that wakf under the Islamic Law meant dedication of property for purposes recognised by the Muslim law as pious, religious and charitable. Such purposes cannot be given a narrow concept as has been tried to be done by the Petitioner, which if followed would frustrate the purpose for which the property is dedicated by a Muslim. The Act only provides for the better administration of the wakfs and for matters connected therewith or incidental thereto and does not either restrict or control the wakf or the intended purpose or object for which it was created**.
>
> ...
>
> 9. The learned Counsel appearing for the Petitioner submits that as under Section 14(1)(b)(i) to (iv) persons not fully conversant with Islam can be appointed as Members of the Board, the purpose of the Act is likely to be jeopardised and defeated. **It is submitted that the composition of the Board as contemplated under the Act would defeat the very spirit of the wakf as envisaged under Muslim Law. It is stated that as a Member of Parliament, Member of State Legislature and of the Bar Council is elected by the whole section of the society including non-Muslims, such an elected person cannot really represent the interests of the Muslims or protect the community or preaching of Islam. The argument though apparently looks glittering, but when examined in depth drowns at the bottom of the well requiring no consideration worth the name. The intention of the composition of the Board and the purpose of the Act is to administer the property and not to give representation to the**

Muslim jurists or theologists. The elected Muslim Members have been sought to be included in the Board upon consideration of their obligation and responsibility to the people in general and Muslims in particular. Responsible elected Members of the Parliament, State Legislature and Bar Council are rightly intended and expected to come to the expectation of the law makers and contribute positively for providing better administration of wakfs and for matters connected therewith or incidental thereto.

...

15. Freedom of conscience and religion recognises the right to profess, practise and propagate religion subject to the restrictions imposed by the State on the ground of public order, morality, health, social welfare and reform. Freedom of conscience means to acquire a knowledge or sense of right or wrong, moral judgment that opposes the violation of previously recognised ethical principles, which led to the feelings of guilt if one violates such a principle. Such freedom therefore cannot be connected with any particular religion or of any faith in God. It is commonly understood as the right of a person not to be converted into another man's religion. Article 26 of the Constitution, provides the freedom to manage religious affairs. Every religious denomination or any section thereof have the right to:

(a) establish and maintain institutions for religious and charitable purposes;

(b) manage its own affairs in matters of religion;

(c) own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

Under Clause (d) of Article 26 a religious denomination has a right to own, acquire and administer the property for the purposes to which it was dedicated, but only in accordance with law, which means that the State can regulate the administration of trust properties by means of law enacted validly. What is protected by this Clause is the administration which is required to remain with the religious institution, though it may be regulated by law. The law, which is found to be interfering with matter which are essentially religious is not permissible.

...

17. **The scheme of the Act reflects that Chapter II has been enacted for the purposes of having a survey of the wakfs in the State and the**

publication of such wakfs. Disputes regarding wakfs are intended to be resolved by the Tribunal constituted for the purposes of the Act. Chapter III deals with the establishment and constitution of Central Wakf Council and Chapter IV with the establishment of State Boards and their functions. Section 14, as already noted, prescribes the composition of the board. Section 15 prescribes the term of the office and Section 16 deals with the disqualification of a person to be a Member of the Board Section 23 authorises the State Government to appoint a Chief Executive Officer of the Board in consultation with the Board and by Notification in the Official Gazette. Such an Officer is the ex-officio Secretary of the Board and is to remain under the administrative control of the Board Section 25 deals with the duties and powers of the Chief Executive Officer. The powers and functions of the Board are specified in Section 32. Chapter V deals with the Registration of the Wakfs and Chapter VI with the maintenance of the accounts of the wakfs. Finance of the Board had been dealt with under Chapter-VII and the judicial proceedings under Chapter VIII.

The Scheme of the Act does not in any way show the interference of the State in the matters of religion thus allegedly violating the guarantees as provided under Articles 25 and 26 of the Constitution. The Writ Petition appears to have been filed upon unfounded apprehensions and concocted grounds. The allegations made in the Petition are based upon hypothesis, which have nothing to do with the reality. The object of the Petition apparently does not appear to be genuine or in the interest of the religion for whose benefit it is proclaimed to have been filed. Quashing of Section 14 or any other part of the Act would defeat the very purpose for which the Act was enacted resulting in the mis-management of the wakf property, which would endanger the purpose for which the wakfs are acknowledged 10 have been created and dedicated. All the pleas raised on behalf of the Petitioner being unfounded are liable to be rejected.

No other point was urged on behalf of the Petitioner."

133. It is submitted that presence of non-Muslims in the Waqf Board does not infringe Article 26. It is reiterated that administration of waqf properties is not a "religious" function protected under Article 26. It is submitted that in fact, this would fall in the category of secular functions which are amenable to legislation. It is submitted that a distinction has to be drawn between religious and secular activities associated with waqf.

134. It is submitted that therefore, as stated above the primary need is to obtain a broad based technically competent and capable panel wherein overwhelming majority [minimum 18 out of 22 in Central Waqf Council and minimum 8 out of 11 in Waqf Boards] to Muslims even after the amendment. It is submitted that the Waqf Boards are concerned with the latter category. It is therefore submitted that change in the composition of the Central Waqf Council and the State Waqf Boards does not violate Article 26.

SPECIAL PROVISION CONCERNING GOVERNMENT PROPERTIES

135. It is respectfully submitted that there may not be any dispute about two propositions-

(i) Only a person who is the lawful owner of the property can create a waqf;

(ii) That there cannot be a creation of waqf on Government Property as the Government holds the property for and on behalf of all the citizens of India.

It is submitted that it has been consistently found over a period of time and documented at various levels that government properties and even private properties are declared as waqf properties. It is submitted that this is done under the old regime wherein adequate safeguards were absent.

It is further submitted that in a secular Constitution, where Government Properties are now accorded the status of being held in public trust, to suggest that a beneficial legislation that confers validity on religious dedications should give primacy to such alleged dedications and their administration over property held in trust by the governments for the benefit of the citizens of the country, is utterly misconceived.

136. It is submitted that the provision of Sections 3A, 3B and 3C take care of the said situation which has been prevailing since several decades. It is submitted that there are startling examples whereby the Government lands or even the private lands were declared as waqf properties [in both the cases, obviously, a person making waqf cannot be the owner of the property]. It is submitted that although it may not be appropriate to give examples of such properties as they may be subject of litigation between the claimants of waqf and the rightful owner ,however, one example may suffice. In case of ***Viceroy Hotels Limited and Others v. Telangana State Wakf Board and Others*** **2024 SCC OnLine TS 689**, a claim was made as the property owned by the said Hotel on a prime land in Hyderabad to be 'Waqf by user'. It is submitted that the hotel agitated its claim before the Hon'ble Telangana High Court against Telangana State Waqf Board. Interestingly, the Board had itself determined the property to be not a waqf property in 1958 but they revisited the issue in 2007 and declared it to be waqf property.

The High Court quashed the claimed of the Waqf Board and declared the Hotel to be a lawful owner of the property.

It is submitted that thereafter, the SLP filed by Telangana State Waqf Board was dismissed by this Hon'ble Court in ***SLP(C)*** **7078 of 2025.**

It is submitted that there are several such examples which would show how the 'waqf by user' and the power "declaring any land as waqf *suo motu* by waqf board" has proved to be a safe haven of encroachment of government properties and private properties.

137. It is submitted that it is undisputable that a government land and the private land cannot be the subject matter of waqf, the proviso to Section 3[1][r] made an exception even if the waqf is registered.

138. It is submitted that even in case of registered waqf if there is a dispute pending between the parties, such dispute would be governed by the orders passed by the competent court / adjudicating body.

139. It is submitted that so far as the government land / property is concerned, a new provision is inserted being Section 3C providing for a detailed procedure if any government property is either identified or declared as waqf property before or after the commencement of amendment of 2025.

140. It is submitted that with a view to provide for a procedure where the question concerning whether property is a government property, it was initially provided that the Collector shall decide the dispute. The main objection against this provision was to the effect that the Collector is the head of the district and, therefore, in charge of the revenue records. It was alleged that this would make him a judge in his own cause.

141. It is submitted that the Committee, therefore, recommended that instead of conferment of power upon the Collector, the State Government must designate an officer above the rank of Collector who shall "conduct an enquiry as per law" and determine whether such property is a government property or not and submit his report to the State Government.

142. It is submitted that government land is held in public trust for the benefit of all citizens, and not for the exclusive benefit of any religious community or interest. It is submitted that the State, acting as trustee of public land, is under a constitutional and fiduciary obligation to protect such land from unlawful claims and ensure its availability for public use, infrastructure, welfare schemes, and equitable distribution.

143. It is submitted that the Waqf (amendment) Act, 2025 has inserted Section 3C into the principal Act, which reads as follows:

> "**3C.** (1) Any Government property identified or declared as waqf property, before or after the commencement of this Act, shall not be deemed to be a waqf property
> (2) If any question arises as to whether any such property is a Government property, the State Government may, by notification, designate on Officer above the rank of Collector (hereinafter referred to as the designated officer), who shall conduct an inquiry as per law, and determine whether such property is a Government property or not and submit his report to the State Government:
> Provided that such property shall not be treated as waqf property till the designated officer submits his report.
> (3) In case the designated officer determines the property to be a Government property, he shall make necessary corrections in revenue records and submit a report in this regard to the State Government.
> (4) The State Government shall, on receipt of the report of the designated officer, direct the Board to make appropriate correction in the records."

144. It is submitted that this provision can never be objected to as it is always open for the competent legislature to provide for an adjudicatory mechanism under which a decision is taken about status of the property for government land after conducting an enquiry and after following principles of natural justice.

If the designated officer determines a property to be a government property, he shall make necessary corrections in the revenue record and submit a report in this regard and the State Government shall carry out the correction in the revenue record accordingly.

145. It is submitted this decision can always be subjected to challenge in accordance with law by the affected party. The aggrieved party can approach the Waqf Tribunal under Section 83 against which the amendment now provides for a full-fledged First Appeal before the High Court. In this regard, Section 83 of the amended Act is reproduced hereunder:

> **83. Constitution of Tribunals, etc.—**
> (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of

any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals:

Provided that any other Tribunal may, by notification, be declared as the Tribunal for the purposes of this Act.

(2) Any mutawalli person interested in a waqf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the waqf:

Provided that if there is no Tribunal or the Tribunal is not functioning, any aggrieved person may appeal to the High Court directly.

(3) Where any application made under sub-section (1) relates to any waqf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the waqf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the waqf or any other person interested in the waqf or the waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such waqf or waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of three members—
(a) one person, who is or has been a District Judge, who shall be the Chairman;

(b) one person, who is or has been an officer equivalent in the rank of Joint Secretary to the State Government—member;
(c) one person having knowledge of Muslim law and jurisprudence—member:

Provided that a Tribunal established under this Act, prior to the commencement of the Waqf (Amendment) Act, 2025, shall continue to function as such until the expiry of the term of office of the Chairman and the members thereof under this Act.

(4-A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed:
Provided that tenure of the Chairman and the member shall be five years from the date of appointment or until they attain the age of sixty-five years, whichever is earlier.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) Any person aggrieved by the order of the Tribunal, may appeal to the High Court within a period of ninety days from the date of receipt of the order of the Tribunal."

146. It is submitted that these safeguards are procedural in nature, aimed at verifying the legitimacy of claims over public land, and do not prohibit lawful waqf dedications or judicially recognized waqfs. It is submitted that the said

provision ensures that historic misclassifications and unsupported assertions of waqf status over public assets are prevented in the future.

147. It is therefore submitted that the rationale for these provisions arises from repeated and documented instances across the country where Waqf Boards had claimed title over government land, public utilities, and protected monuments without deed, survey, or adjudication—relying solely on Board's unilateral records. It is submitted that the said claims included, *inter alia*, waqf claims over Collector's offices, government schools, ASI-protected heritage sites, and land vested in State or municipal authorities.

148. It is further submitted that only because the Designated Officer has been appointed as the authority to inquire into the nature of the property, it does not mean that natural justice has been violated. It is well settled that appointment of an officer to adjudicate claims including claims by the Government is not tainted by bias. For example all the tax laws where the State claims tax from a citizen are administered by officers appointed by the State – the suggestion that their conduct is tainted by bias is absurd.

149. It is submitted that in that regard reference may be made *to* ***Crawford Bayley & Co. v. Union of India,*** **(2006) 6 SCC 25**. It is submitted that in the said case, the challenge on this very ground was to Section 3 of the Public Premises Act which allowed the Government to appoint a person as Estate Officer. This Hon'ble Court stated as follows:

> "In this connection, a reference was made to Delhi Financial Corpn. v. Rajiv Anand [(2004) 11 SCC 625] with regard to personal bias i.e. an officer of the statutory authority has been appointed as an Estate Officer, therefore, they will carry their personal bias. However, this Court in the aforesaid case held that the doctrine "no man can be a judge in his own cause" can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned.

Merely because an officer of a corporation is named to be the authority, does not by itself bring into operation the doctrine, "no man can be a judge in his own cause". For that doctrine to come into play it must be shown that the officer concerned has a personal bias or connection or a personal interest or has personally acted in the matter concerned and/or has already taken a decision one way or the other which he may be interested in supporting."

150. It is submitted in ***Hindustan Petroleum Corpn. Ltd. V. Yashwant Gajanan Joshi,*** **1991 Supp (2) SCC 592**, it was held as under:

"12. We have given our careful consideration to the arguments advanced by learned counsel for the parties and have thoroughly perused the record. There is no provision in the Act prohibiting the Central Government to make an appointment of an employee of the Corporation as competent authority. Apart from determining the compensation, many other functions are assigned to the competent authority and there may be one competent authority for all the above purposes or different persons or authorities may be authorised to perform all or any of the functions of the competent authority under the Act. The scheme of the Act shows that a competent authority has to discharge various and diverse duties under the Act. He has to attend survey of land required for pipeline, verification of land revenue records of the surveyed area, drawing up of panchnama for land, crop, plantation, trees or any other agricultural or non-agricultural activity carried on in the surveyed land or the pipeline, issue of notification under Section 3(1) of the Act, receipt of claims/objections for assessment of damages, disputes etc., issue of clearance to concerned oil company and deciding all the disputes arising out of the authorised persons, power to enter notified lands and various other duties. Thus, such persons becomes a better qualified and experienced person equipped with a proper background to decide the amount of compensation also. We cannot accept the contention of Mr Dholakia that merely because a person is an employee of the corporation, he would have a bias in deciding the compensation under Section 10(1) of the Act.

14. Now we shall consider the question of the appointment of Mrs. A.R. Gadre as competent authority in the present case.... We however wish to make it clear that we do not agree with the general proposition of the High Court that an officer of the Corporation cannot be appointed as a 'competent authority' because he may be biased in favour of the

> Corporation by reason of his employment. In the result we find no force in this appeal and it is accordingly dismissed with no order as to costs."

151. It is submitted that the contention that the government becomes a judge in its own case that would invariably act in a biased or prejudicial manner amounts to stretching the bias rule unacceptably far. It cannot be contended that government appointees would by definition be predisposed to favour the government in all cases and the Supreme Court has in cautioned against such presumptions in the following words in ***State of AP* v. *Narayana Velur Mfg Beedi Factory* (1973) 4 SCC 178**:

> "…. It may be that in certain circumstances such persons who are in the service of the Government may cease to have an independent character if the question arises of fixation of minimum wages in a scheduled employment in which the appropriate Government is directly interested. It would, therefore, depend upon the facts of each particular case whether the persons who have been appointed from out of the class of independent persons can be regarded as independent or not. But the mere fact that they happen to be government officials or government servants will not divest them of the character of independent persons. **We are not impressed with the reasoning adopted that a government official will have a bias, or that he may favour the policy which the appropriate Government may be inclined to adopt because when he is a member of an advisory committee or board he is expected to give an impartial and independent advice and not merely carry out what the Government may be inclined to do. Government officials are responsible persons and it cannot be said that they are not capable of taking a detached and impartial view"**

152. It is further submitted that the function of the designated officer in this regard is limited. It is submitted that in case the officer's report states that the property is Government property, the revenue records will be updated to reflect the same.

It is submitted that the Designated Officer is not making a final determination of rights because it is an established principle that mutation in

the revenue record is only evidence of but not conclusive of ownership. It is submitted that if the Designated Officer determines the property to be a government property under Section 3C(2), it would result in the government being reflected as the owner in the revenue record.

153. It is submitted that it would be open for the affected/aggrieved party in such a case, at any stage, to approach the Waqf Tribunal under Section 83(2) of the Act. It is submitted that the final determination with regard to the title would therefore be made by the Waqf Tribunal or in appeal, by the Hon'ble High Court and the Hon'ble Supreme Court. It is submitted that the final rights of the parties would be subject to the Court's decision. It is submitted that updating of the revenue records as provided for by Section 3C(2) and 3C(3) ensures that the record of rights is accurately maintained.

154. It is submitted that in a democracy governed by the rule of law, land and property vested in the State cannot be alienated without lawful authority and statutory procedure. It is submitted that claims of religious dedication over State land must be subjected to strict scrutiny and cannot override the principle that government property is held in trust for all citizens equally, regardless of religion.

155. It is submitted that Section 3C is consistent with Article 14 of the Constitution, which permits classification based on intelligible differentia. It is submitted that government land, being categorically distinct in its ownership, control, and purpose, constitutes a valid class for separate treatment under law, especially to prevent encroachment or misappropriation under the garb of religious endowment.

It is submitted that by protecting government land through procedural safeguards, the State fulfils its duty under Article 39(b) of the Constitution,

which directs that ownership and control of material resources of the community should be distributed to best serve the common good.

156. It is respectfully submitted that the special provisions to protect government land in the Waqf (Amendment) Act, 2025 are therefore neither arbitrary nor exclusionary, but a well-considered legislative measure to prevent abuse and preserve the integrity of public property.

ESSENTIAL RELIGIOUS ASPECTS REMAIN UNTOUCHED

157. It is submitted that the Waqf (Amendment) Act, 2025 is a constitutionally valid enactment that formalises, harmonises and modernises the pre-existing *waqf* regime with the fundamental rights to freedom of religion guaranteed under Articles 25 and 26 of the Constitution of India. It is submitted that this Act, which amends the *Waqf* Act of 1995, was passed with the objective of modernising the management of *waqf* properties in India through transparent, efficient and inclusive measures.

158. It is submitted that the reforms introduced are directed solely at the secular and administrative aspects of *waqf* institutions – such as property management, record-keeping, and governance structures – without impinging upon any essential religious practices or tenets of the Islamic faith.

It is submitted that, as elaborated below, the Act squarely falls within the permissible regulatory power of the State under Article 26 (which allows legislation in matters of administration of religious property) and Article 25 (which allows regulation of secular activities associated with religion), while fully preserving the autonomy of religious practices protected by Articles 25(1) and 26(b).

159. It is submitted that Articles 25 and 26 establish a balance between an individual's or denomination's right to religious freedom and the State's

authority to enact social welfare and regulatory measures. It is submitted that Article 25(1) guarantees to all persons the freedom of conscience and the right freely to profess, practice, and propagate religion, subject to public order, morality, and health.

It is submitted that Article 26 similarly guarantees to every religious denomination the right to manage its own affairs in matters of religion, establish and maintain institutions, own property, and administer such property. It is submitted that these rights, however, are not absolute and unqualified and the Constitution itself contains explicit clauses recognising the State's power to regulate or restrict non-essential, secular aspects of religious practice and to legislate for regulation, modernisation, formalisation or social welfare even in the realm of religion.

160. Further, it is submitted that Article 25(2)(a) expressly provides that nothing in the right to religious freedom shall prevent the State from making any law "regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice."

It is submitted that as per the constitution bench judgments of this Hon'ble Court this clause was deliberately included by the framers to ensure that activities which not essential to the religion – even if they are carried out by religious institutions or as adjuncts to religion – remain subject to State authorities and legislative oversight. It is submitted that the running of financial affairs, property transactions, and administrative arrangements of a religious endowment are classic examples of such secular activities associated with religion that can be regulated in the interest of public welfare and good governance.

161. It is submitted that Article 26 subjects the administration of religious property to the law of the land by guaranteeing denominations the right to

manage their property "in accordance with law." It is submitted that the constitutional scheme therefore distinguishes between matters of religion – which are inviolable core freedoms – and matters of property or management – which can be overseen and modified by valid legislation.

It is submitted that the constitution benches of this Hon'ble Court have consistently interpreted these provisions to mean that while the freedom to observe and practice essential religious rites is protected, the State retains competence to regulate the secular administration of religious trusts, charities, and endowments in order to prevent misuse and to promote social welfare.

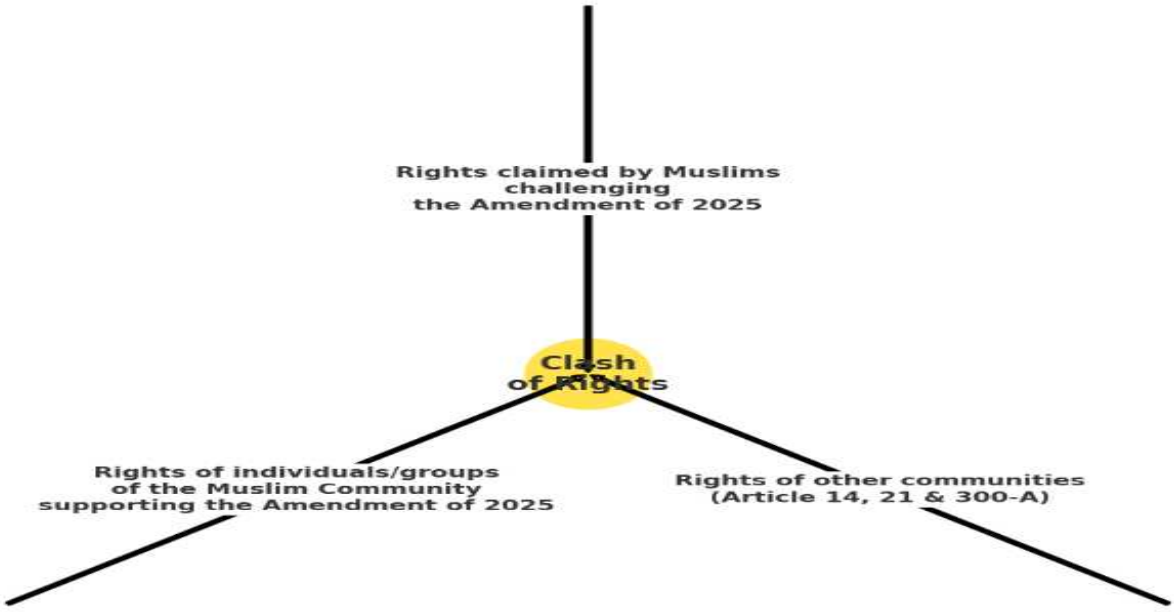
162. It is submitted that the Petitioners are seeking to interpret Article 25 and 26 in a ***silo*** and thereby ventilate only one segment of religious rights at play. However, in the instant case, there are at least 3 segments of fundamental rights which are often overlapping or conflicting and depicted as under :

a. The rights claimed by the Muslims challenging the Amendment of 2025 under Article 25 and 26;

b. The rights of other individual persons/groups of the Muslim faith who are supporting the amendment of 2025 under Article 25 and 26 which seek adequate and proper State regulation over the administration of properties by the Mutawalli's and oversight mechanism's on the functioning of the Boards;

c. The rights under Article 14, 21 and 300-A of members of other communities which are and often affected by the creation, administration and management of Waqf properties;

The following is a pictorial depiction of the said interplay :



163. In the given scenario, the Waqf Act as amended, is to be seen in after adequately synthesising the rights at play in the present case and balancing the equities therein. It is further submitted that in case wherein competing fundamental rights are involved, a unique judicial approach has been adopted by this Hon'ble Court. It is submitted that the Waqf Act is a Central Act which deals with the administration and other secular aspects of waqfs in India.

164. It is submitted that the reforms introduced are directed at the secular and administrative aspects which may at best be ***connected with*** religious beliefs and not beliefs themselves. It is submitted that 2025 Amendment Act ***does not impinge upon any essential religious practices or tenets of the Islamic faith***. It is submitted that how to create a waqf, for what purpose a waqf is to be created and how the waqf is to function internally, is wholly untouched. It is submitted that it would be erroneous to claim that all form of dedications like Waqf by user, are part of fundamental right of communities. Further, all such forms of dedications cannot be held to be falling within the umbrella of ***essential religious practice***. Further, the Advisory Council and State Boards, do not

conduct a "religious function" rather regulate or supervise or oversee secular aspects of *waqf* – primarily administration of properties.

165. In that regard it is submitted that charity in and of itself cannot be an essential aspect of religion, even though charity may be encouraged by the tenets of the religion. It is submitted that the creation, management and operation of endowments is a purely secular exercise. In ***John Vallamattom and Another v. Union of India*, (2003) 6 SCC 611**, it has been held

> "40. Coming to the last argument raised by the petitioners' counsel it may be stated that in the instant case, this Court is not concerned with the right of a person to freedom of conscience but is only concerned with a question as to whether by reason of Section 118 of the Indian Succession Act the right of Christians to profess, practise and propagate religion is violated. Article 25 is subject to the other provisions contained in Part III of the Constitution of India. What was thought of by the Constitution makers while conferring right to profess, practise and propagate religion was that freedom of conscience be supplemented by freedom of unhampered expression of spiritual conviction. Article 25 provides freedom of 'profession' meaning thereby the right of the believer to state his creed in public and freedom of practice meaning his right to give it expression in forms of private and public meaning his right to give it expression in forms of private and public worships [See Stainislaus Rev. v. State of M.P. **]. A disposition towards making gift for charitable or religious purpose may be a pious act of a person but the same cannot be said to be an integral part of any religion.** It is not the case of the petitioners that the religion of Christianity commands gift for charitable or religious purpose compulsory or the same is regarded as such by the community following Christianity. The petitioner has not been able to place any material to show that disposition of property for religious and charitable purposes is an integral part of Christian religious faith.
>
> **41. Disposition of property for religious and charitable purpose is recommended in all the religions but the same cannot be said to be an integral part of it.** If a person professing Christian religion does not show any inclination of disposition towards charitable or religious purposes, he does not cease to be a Christian. Even certain practices adopted by the persons professing a particular religion may not have anything to do with the religion itself."

It is submitted that in the same case, the concurring judgement of His Lordship Justice Sinha stated as follows

> **"47 Message of charity and compassion is to be found in all religions without any exception. Only because charity and compassion are preached in every religion, the same by itself would not be a part of the 'religious practice' within the meaning of Article 25 of the Constitution of India.**
>
> **48. Thus, the Religion of Christianity encouraging the Christians to practice charities to attain spiritual salvation is of not much relevance for this purpose. Such preaching are also found in Bhagavat Geet and Upanishad**
>
> 54. Renouncement of world by a person following any religion is necessarily not the essential practice of the religion which is meant for commonness. Gandhiji also said renouncement and enjoy
>
> 55. Such preaching for renouncement from the word have no co-relation with the tenets of Article 25 of the Constitution of India.

166. Thus, it is submitted that the proposed analogy or comparison with State Acts governing religious endowments would not be fully justified. It is submitted that, this question was pointedly raised by the Joint Parliamentary Committee and the Central Government has given detailed answers both on facts and on law. A perusal of paras 9.6.1 to 9.6.4 would show that these aspects are examined by the Joint Parliamentary Committee.

167. It is submitted that further, the 2025 Amendment Act squarely falls within the permissible regulatory power of the State. It is submitted that an important doctrinal tool developed by this Hon'ble Court is the "essential religious practices" test in this regard. In ***Commr. Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) 1 SCC 412**, [***Shirur Mutt*** Case] [Mehr Chand Mahajan (C.J), Bijan Kumar Mukerjea, Sudhi Ranjan Das, Vivian Bose, Ghulam Hasan, N.H. Bhagwati and T.L. Venkatarama Ayyar, JJ. (delivered by Bijan Kumar Mukherjea, J.)- **7 Judges**] this Hon'ble

Court, clearly laid bare the distinction between Article 26(b) and Article 26(d) [which is the relevant provision in the present case]. The Petitioners are designedly confusing the two and it goes against the settled law under Article 26. It was held as under :

> **"17.** The other thing that remains to be considered in regard to Article 26 is, what is the scope of clause (b) of the article which speaks of management "of its own affairs in matters of religion"? The language undoubtedly suggests that there could be other affairs of a religious denomination or a section thereof which are not matters of religion and to which the guarantee given by this clause would not apply. The question is, where is the line to be drawn between what are matters of religion and what are not?
>
> **18.** It will be seen that besides the right to manage its own affairs in matters of religion, which is given by clause (b), the next two clauses of Article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. **The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion.** The latter is a fundamental right which no legislature can take away, **whereas the former can be regulated by laws which the legislature can validly impose**. **It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of the Article applies. What then are matters of** religion? The word "religion" has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an American case [Davis v. Beason, 1890 SCC OnLine US SC 43 : 33 L Ed 637 : 133 US 333 at p. 342 (1890)] , it has been said "that the term religion has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His being and character and of obedience to His will. It is often confounded with cultus of form or worship of a particular sect, but is distinguishable from the latter". We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon Article 44(2) of the Constitution of Eire and we have great doubt whether a definition of "religion" as given above could have been in the minds of our Constitution makers when they framed the Constitution. Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well-known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines

> which are regarded by those who profess that religion as conducive to their spiritual well-being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."

168. In ***Ratilal Panachand Gandhi V. State Of Bombay*, 1954 SCR 1055** [***Ratilal Panachand Gandhi*** case] [Mehr Chand Mahajan (C.J), Bijan Kumar Mukerjea, Sudhi Ranjan Das, Vivian Bose, Ghulam Hasan JJ. (delivered by Bijan Kumar Mukherjea, J.)- **5 Judges**] on which considerable reliance has been placed by the Petitioners, this Hon'ble Court indeed held that the right of administration cannot be taken away altogether and vested in a secular authority. The said position does not arise in the present case as the *mutawalli* who is the actual manager of the *waqf* remain a religious person. The Petitioner have confused the *regulatory* Boards under the Act with managers of properties. It is submitted that it is clear that the Boards do not have any managerial powers over the waqfs created and neither can it be stated that the waqfs created vest in the Boards in any manner. Thus, the argument of the Petitioner in this regard, is misplaced and deserves to be rejected. It may be noted that following the relevant passage of the said case, furthers the case of the Respondent and is quoted as under:

> "**10.** Article 25 of the Constitution guarantees to every person and not merely to the citizens of India, the freedom of conscience and the right freely to profess, practise and propagate religion. This is subject, in every case, to public order, health and morality. Further exceptions are engrafted upon this right by clause (2) of the article. Sub-clause (a) of clause (2) saves the power of the State to make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and sub-clause (b) reserves the State's power to make laws providing for social reform and social welfare even though they might interfere with religious practices. Thus, subject to the restrictions which this article imposes, every person

has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people. **What sub-clause (a) of clause (2) of Article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices.**

11. So far as Article 26 is concerned, it deals with a particular aspect of the subject of religious freedom. Under this article, any religious denomination or a section of it has the guaranteed right to establish and maintain institutions for religious and charitable purposes and to manage in its own way, all affairs in matters of religion. Rights are also given to such denomination or a section of it to acquire and own movable and immovable properties and to administer such properties in accordance with law. The language of the two clauses (b) and (d) of Article 26 would at once bring out the difference between the two. In regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. **On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but here again it should be remembered that under Article 26(d), it is the religious denomination itself which has been given the right to administer its property in accordance with any law which the State may validly impose**. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26(d) of the Constitution

12. The moot point for consideration, therefore, is where is the line to be drawn between what are matters of religion and what are not? Our Constitution-makers have made no attempt to define "what religion" is and it is certainly not possible to frame an exhaustive definition of the word "religion" which would be applicable to all classes of persons. As has been indicated in the Madras case referred to above, the

definition of "religion" given by Fields, J. in the American case of Davis v. Beason [133 US 333] does not seem to us adequate or precise. "The term 'religion'" thus observed the learned Judge in the case mentioned above, "has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His Will. It is often confounded with cultus or form of worship of a particular sect, but is distinguishable from the latter". It may be noted that "religion" is not necessarily theistic and in fact there are well known religions in India like Buddhism and Jainism which do not believe in the existence of God or of any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion to be conducive to their spiritual well being, but it would not be correct to say, as seems to have been suggested by one of the learned Judges of the Bombay High Court, that matters of religion are nothing but matters of religious faith and religious belief. A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well. We may quote in this connection the observations of Latham, C.J. of the High Court of Australia in the case of Adelaide Company v. Commonwealth [67 CLR 116, 124] where the extent of protection, given to religious freedom by Section 116 of the Australian Constitution came up for consideration.

"It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil Government should not interfere with religious opinions, it nevertheless may deal as it pleases with any acts which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears to me to be difficult to maintain this distinction as relevant to the interpretation of Section 116. The section refers in express terms to the exercise of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion.

In our opinion, as we have already said in the Madras case, these observations apply fully to the provision regarding religious freedom that is embodied in our Constitution.

13. Religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. Thus if the tenets of the Jain or the Parsi religion lay down that certain rites and ceremonies are to be performed at certain times and in a particular manner, it cannot be said that these are secular activities partaking of commercial or economic character simply because they involve expenditure of money or employment of

> **priests or the use of marketable commodities.** No outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate. Of course, the scale of expenses to be incurred in connection with these religious observances may be and is a matter of administration of property belonging to religious institutions; and if the expenses on these heads are likely to deplete the endowed properties or affect the stability of the institution, proper control can certainly be exercised by State agencies as the law provides. We may refer in this connection to the observation of Davar, J. in the case of Jamshed ji v. Soonabai [33 Bom 122] and although they were made in a case where the question was whether the bequest of property by a Parsi testator for the purpose of perpetual celebration of ceremonies like Muktad baj, Vyezashni, etc., which are sanctioned by the Zoroastrian religion were valid charitable gifts, the observations, we think, are quite appropriate for our present purpose. "If this is the belief of the community" thus observed the learned Judge, "and it is proved undoubtedly to be the belief of the Zoroastrian community,—a secular Judge is bound to accept that belief—it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind". These observations do, in our opinion, afford an indication of the measure of protection that is given by Article 26(b) of our Constitution.
>
> **14.** The distinction between matters of religion and those of secular administration of religious properties may, at times, appear to be a thin one. But in cases of doubt, as Chief Justice Latham pointed out in the case [Vide Adelaide Company v. The Commonwealth, 67 CLR 116, 129] referred to above, **the court should take a common sense view and be actuated by considerations of practical necessity**. It is in the light of these principles that we will proceed to examine the different provisions of the Bombay Public Trusts Act, the validity of which has been challenged on behalf of the appellants."

169. Further, in ***Sri Venkataramana Devaru and Others V. State of Mysore and others,*** **1958 SCR 895** [now famously known as the ***Devaru*** case] [Sudhi Ranjan Das, C.J., T.L. Venkatarama Aiyar, Syed Jafer Imam, A.K. Sarkar and Vivian Bose, JJ. (delivered by T.L. Venkatarama Aiyar)- **5 Judges**] this Hon'ble Court had analysed the interplay between Article 26 and Article 25(2)(b) and held that there must be harmonious construction of the enabling provision

under Article 25(2)(b) and Article 26. The following is the relevant passage of the said case:

> **28.** And lastly, it is argued that whereas Article 25 deals with the rights of individuals, Article 26 protects the rights of denominations, and that as what the appellants claim is the right of the Gowda Saraswath Brahmins to exclude those who do not belong to that denomination, that would remain unaffected by Article 25(2)(b). This contention ignores the true nature of the right conferred by Article 25(2)(b). That is a right conferred on "all classes and sections of Hindus" to enter into a public temple, and on the unqualified terms of that Article, that right must be available, whether it is sought to be exercised against an individual under Art 25(1) or against a denomination under Article 26(b). The fact is that though Article 25(1) deals with rights of individuals, Article 25(2) is much wider in its contents and has reference to the rights of communities, and controls both Article 25(1) and Article 26(b).
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> **29. The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction. Applying this rule, if the contention of the appellants is to be accepted, then Article 25(2)(b) will become wholly nugatory in its application to denominational temples, though, as stated above, the language of that Article includes them. On the other hand, if the contention of the respondents is accepted, then full effect can be given to Article 26(b) in all matters of religion, subject only to this that as regards one aspect of them, entry into a temple for worship, the rights declared under Article 25(2)(b) will prevail. While, in the former case, Article 25(2)(b) will be put wholly out of operation, in the latter, effect can be given to both that provision and Article 26(b). We must accordingly hold that Article 26(b) must be read subject to Article 25(2)(b).**
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> **32.** We have held that the right of a denomination to wholly exclude members of the public from worshipping in the temple, though comprised in Article 26(b), must yield to the overriding right declared by Article 25(2)(b) in favour of the public to enter into a temple for worship. But where the right claimed is not one of general and total exclusion of the public from worship in the temple at all times but of exclusion from certain religious services, they being limited by the rules of the foundation to the members of the denomination, then the question is not whether Article 25(2)(b) overrides that right so as extinguish it, but whether it is possible

— so to regulate the rights of the persons protected by Article 25(2)(b) as to give effect to both the rights. If the denominational rights are such that to give effect to them would substantially reduce the right conferred by Article 25(2)(b), then of course, on our conclusion that Article 25(2)(b) prevails as against Article 26(b), the denominational rights must vanish. **But where that is not the position, and after giving effect to the rights of the denomination what is left to the public of the right of worship is something substantial and not merely the husk of it, there is no reason why we should not so construe Article 25(2)(b) as to give effect to Article 26(b) and recognise the rights of the denomination in respect of matters which are strictly denominational, leaving the rights of the public in other respects unaffected."**

170. In ***Durgah Committee, Ajmer And Another V. Syed Hussain Ali And Others*, (1962) 1 SCR 383** [***Durgah Committee*** case] [P.B. Gajendragadkar, A.K. Sarkar, K.N. Wanchoo, K.G. Das Gupta and N. Rajagopala Ayyanagar, JJ. (delivered by P.B. Gajendragadkar)- **5 Judges**], the Hon'ble Supreme Court held that in order for any practice to be treated as a part of religion it must be regarded by the said religion as its essential and integral part. The Court also for the first time shunned the practices it regarded as "superstitious" to not fall under the umbrella of Article 25. It was held as under :

"33. We will first take the argument about the infringement of the fundamental right to freedom of religion. Articles 25 and 26 together safeguard the citizen's right to freedom of religion. Under Article 25(1), subject to public order, morality and health and to the other provisions of Part 3, all persons are equally entitled to freedom of conscience and their right freely to profess, practise and propagate religion. This freedom guarantees to every citizen not only the right to entertain such religious beliefs as may appeal to his conscience but also affords him the right to exhibit his belief in his conduct by such outward acts as may appear to him proper in order to spread his ideas for the benefit of others. Article 26 provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

The four clauses of this article constitute the fundamental freedom guaranteed to every religious denomination or any section thereof to manage its own affairs. It is entitled to establish institutions for religious purposes, it is entitled to manage its own affairs in the matters of religion, it is entitled to own and acquire movable and immovable property and to administer such property in accordance with law. What the expression "religious denomination" means has been considered by this Court in Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [(1954) SCR 1005] . Mukherjea, J., as he then was, who spoke for the Court, has quoted with approval the dictionary meaning of the word "denomination" which says that a "denomination" is a collection of individuals classed together under the same name, a religious sect or body having a common faith and organisation and designated by a distinctive name. The learned Judge has added that Article 26 contemplates not merely a religious denomination but also a section thereof. Dealing with the questions as to what are the matters of religion, the learned Judge observed that the word "religion" has not been defined in the Constitution, and it is a term which is hardly susceptible of any rigid definition. Religion, according to him, is a matter of faith with individuals or communities and it is not necessarily theistic. It undoubtedly has its basis in a system of pleas or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, but it is not correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress (pp. 1023, 1024). Dealing with the same topic, though in another context, in Venkataramna Devaru v. State of Mysore [(1958) SCR 895] Venkatarama Aiyar, J. spoke for the Court in the same vein and observed that it was settled that matters of religion in Article 26(b) include even practices which are regarded by the community as part of its religion, and in support of this statement the learned Judge referred to the observations of Mukherjea, J., which we have already cited. **Whilst we are dealing with this point it may not be out of place incidentally to strike a note of caution and observe that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Article 26. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are**

> **found to constitute an essential and integral part of a religion their claim for the protection under Article 26 may have to be carefully scrutinised; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and no other**.
>
> ...

171. In ***Tilkayat Shri Govindlalji Maharaj V. State Of Rajasthan And Others*, (1964) 1 SCR 561** [*Govindlalji Maharaj* case] [Bhuvaneshwar Prasad Sinha (C.J.), A.K Sarkar, K.C. Das Gupta, N. Rajagopala Ayyangar and J.R. Mudholkar, JJ. (delivered by Bhuvaneshwar Prasad Sinha (C.J.)- **5 Judges**], this Hon'ble Court was dealing with the validity of a legislation specifically enacted for regulation / administration of a religious institution. This Hon'ble Court after noting the nature of temples and the manner of worship amongst the Vallabha sect, decided the question whether the philosophical doctrine of the Vallabha school prohibits the existence of a public temple.

Critically the Hon'ble Court, while seeking to segregate what constitutes a religious practice and what constitutes a secular practice held that obviously secular matters claimed to be part of religion cannot have the protection of Article 25 and 26. The following is the relevant passage of the said case:

> **57.** In deciding the question as to whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not. **This formula may in some cases present difficulties in its operation. Take the case of a practice in relation to food or dress. If in a given proceeding, one section of the community claims that while performing certain rites white dress is an integral part of the religion itself, whereas another section contends that yellow dress and not the white dress is the essential part of the religion, how is the Court going to decide the question? Similar disputes may arise in regard to food. In cases where conflicting evidence is produced in respect of rival contentions as to competing religious practices the Court may not be able to resolve the dispute by a blind application of the formula that the community decides which practice in an intergral part of its religion, because the community may speak with more than one voice and the formula would, therefore, break down. This question will always have to be**

decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion. It is in the light of this possible complication which may arise in some cases that this Court struck a note of caution in the case of Dungah Committee Ajmer v. Syed Hussain Ali [(1962) 1 SCR 383 at p. 411] and observed that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Article 26.

58. In this connection, it cannot be ignored that what is protected under Articles 25(1) and 26(b) respectively are the religious practices and the right to manage affairs in matters of religion. **If the practice in question is purely secular or the affair which is controlled by the statute is essentially and absolutely secular in character, it cannot be urged that Article 25(1) or Article 26(b) has been contravened.** The protection is given to the practice of religion and to the denomination's right to manage its own affairs in matters of religion. Therefore, whenever a claim is made on behalf of an individual citizen that the impugned statute contravenes his fundamental right to practise religion or a claim is made on behalf of the denomination that the fundamental right guaranteed to it to manage its own affairs in matters of religion is contravened, it is necessary to consider whether the practice in question is religious or the affairs in respect of which the right of management is alleged to have been contravened are affairs in matters of religion. If the practice is a religious practice or the affairs are the affairs in matter of religion, then, of course, the right guaranteed by Article 25(1) and Article 26 (b) cannot be contravened.

59. It is true that the decision of the question as to whether a certain practice is a religious practice or not, as well as the question as to whether an affair in question is an affair in matters of religion or not, may present difficulties because sometimes practices, religious and secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because as is well known, under the provisions of ancient Smritis, all human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character. As an illustration, we may refer to the fact that the Smritis regard marriage as a sacrament and not a contract. Though the task of disengaging the secular from the religious may not be easy, it must nevertheless be attempted in dealing

with the claims for protection under Articles 25(1) and 26(b). If the practice which is protected under the former is a religious practice, and if the right which is protected under the latter is the right to manage affairs in matters of religion, it is necessary that in judging about the merits of the claim made in that behalf the Court must be satisfied that the practice is religious and the affair is in regard to a matter of religion. In dealing with this problem under Articles 25(1) and 26(b), Latham C.J.'s observation in Adelaide Company of Jehovah's witnesses Incorporated v. Commonwealth [67 CLR 116 at p. 123] that "what is religion to one is superstition to another", on which Mr Pathak relies, is of no relevance. **If an obviously secular matter is claimed to be matter of religion, or if an obviously secular practice is alleged to be a religious practice, the Court would be justified in rejecting the claim because the protection guaranteed by Article 25(1) and Article 26(b) cannot be extended to secular practices and affairs in regard to denominational matters which are not matters of religion, and so, a claim made by a citizen that a purely secular matter amounts to a religious practice, or a similar claim made on behalf of the denomination that a purely secular matter is an affair in matters of religion, may have to be rejected on the ground that it is based on irrational considerations and cannot attract the provisions of Article 25(1) or Article 26(b). This aspect of the matter must be borne in mind in dealing with true scope and effect of Article 25(1) and Article 26(b).**

61. That leaves one more point to be considered under Article 26(d). It urged that the right of the denomination to administer its property has virtually been taken away by the Act, and so, it is invalid. It would be noticed that Article 26(d) recognises the denomination's right to administer its property but it clearly provides that the said right to administer the property must be in accordance with law. Mr Sastri for the denomination suggested that law in the context is the law prescribed by the religious tenets of the denomination and not a legislative, enactment passed by a competent legislature. In our opinion, this argument is wholly untenable. In the context, the law means law passed by a competent legislature and **Article 26(d) provides that though the denomination has the right to administer its property, it must administer the property in accordance with law**. In other words, this clause emphatically brings out the competence of the legislature to make a law in regard to the administration of the property belonging to the denomination. It is true that under the guise of regulating the administration of the property by the denomination, the denomination's right must not be extinguished or altogether destroyed. That is what this Court has held in the case of the Commissioner Hindu Religious Endowments, Madras and Ratilal Panachand Gandhi v. State of Bombay [1954 SCR 1055] .

> **62.** Incidentally, this clause will help to determine the scope and effect of the provisions of Article 26(b). Administration of the denomination's property which is the subject-matter of this clause is obviously outside the scope of Article 26(b) Matters relating to the administration of the denomination's property fall to be governed by Article 26(d) and cannot attract the provisions of Article 26(b). Article 26(b) relates to affairs in matters of religion such as the performance of the religious rites or ceremonies, or the observance of religious festivals and the like; it does not refer to the administration of the property at all. **Article 26(d) therefore, justifies the enactment of a law to regulate the administration of the denomination's property and that is precisely what the Act has purported to in the present case. If the clause "affairs in matters of religion" were to include affairs in regard to all matters, whether religious or not, the provision under Article 26(d) for legislative regulation of the administration of the denomination property would be rendered illusory**."

172. It is submitted that thus, not every activity or custom vaguely related to religion is afforded constitutional protection – only those practices that are fundamental or essential to the religion fall within the protective ambit of Articles 25 and 26. It is submitted that this Hon'ble Court has laid down that in deciding what is an essential part of a religion, the tenets and doctrines of that religion must be looked at and only practices that are integral to the faith (for example, prescribed religious rituals, forms of worship, or core beliefs) are placed beyond legislative interference, whereas practices or activities which are not essential or are merely secular aspects connected with some religious rationale can be regulated or reformed by the State.

173. In this regard, it may be noted that Act which ended the hereditary right of succession to the office of Archakas even if the Archakas are otherwise qualified in the State of Tamil Nadu, has been upheld by a constitution bench of this Hon'ble Court. In ***Seshammal and Others Etc. v. State of Tamil Nadu*, (1972) 2 SCC 11 [*Seshammal* case]** [S.M. Sikri (C.J.), A.N. Grover, A.N. Ray, D.G. Palekar and M.H. Beg, JJ. (delivered by D.G. Palekar J.)- **5 Judges**], this Hon'ble

Court held that because the *archaka* owes his appointment to a purportedly secular authority [the Board or trustees], the act of his appointment would be essentially secular and merely because the said *archakas* perform a religious function it cannot be said that the appointment is a part of a religious practice or a matter of religion. The following is the relevant passage of the said case:

> **"20. Mr Palkhivala** on behalf of the petitioners insisted that the appointment of a person to a religious office in accordance with the hereditary principle is itself a religious usage and amounted to a vital religious practice and hence falls within Articles 25 and 26. In his submission, priests, who are to perform religious ceremonies may be chosen by a temple on such basis as the temple chooses to adopt. **It may be election, selection, competition, nomination, or hereditary succession.** He, therefore, contended that any law which interferes with the aforesaid basis of appointment would violate religious freedom guaranteed by Articles 25 and 26 of the Constitution. In his submission the right to select a priest has an immediate bearing on religious practice and the right of a denomination to manage its own affairs in matters of religion**. The priest is more important than the ritual and nothing could be more vital than chosing the priest.** Under the pretext of social reform, he contended, the State cannot reform a religion out of existence and if any denomination has accepted the hereditary principle for chosing its priest that would be a religious practice vital to the religious faith and cannot be changed on the ground that it leads to social reform. **Mere substitution of one method of appointment of the priest by another was, in his submission, no social reform.**
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> **21.** It is true that a priest or an Archaka when appointed has to perform some religious functions but the question is whether the appointment of a priest is by itself a secular function or a religious practice. Mr Palkhivala gave the illustration of the spiritual head of a math belonging to a denomination of a Hindu sect like the Shankaracharya and expressed horror at the idea that such a spiritual head could be chosen by a method recommended by the State though in conflict with the usage and the traditions of the particular institution. Where, for example, a successor of a Mathadhipati is chosen by the Mathadhipati by giving him mantra-deeksha or where the Mathadhipati is chosen by his immediate disciples, it would be, he contended, extraordinary for the State to interfere and direct that some other mode of appointment should be followed on the ground of social reform. Indeed this may strike one as an intrusion in the matter of religion. But we are afraid such an illustration is inapt when we are considering the appointment of an Archaka of a temple. The Archaka

has never been regarded as a spiritual head of any institution. He may be an accomplished person, well versed in the Agamas and rituals necessary to be performed in a temple but he does not have the status of a spiritual head. Then again the assumption made that the Archaka may be chosen in a variety of ways is not correct. The Dharam-karta or the Shebait makes the appointment and the Archaka is a servant of the temple. It has been held in K. Seshadri Aiyangar v. Ranga Bhattar [ILR 35 Mad 631] that even the position of the hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee can enquire into the conduct of such a servant and dismiss him for misconduct. As a servant he is subject to the discipline and control of the trustee as recognised by the unamended Section 56 of the principal Act which provides "all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause". **That being the position of an Archaka, the act of his appointment by the trustee is essentially secular. He owes his appointment to a secular authority. Any lay founder of a temple may appoint the Archaka. The Shebaits and Managers of temples exercise essentially a secular function in choosing and appointing the Archaka. That the son of an Archaka or the son's son has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary Archaka can claim any right to the office.** See Kali Krishan Ray v. Makhan Lal Mookerjee [ILR 50 Cal 233] , Nanabhai Narotamdas v. Trimbak Balwant Bhandare [(1878-80) Vol. 4, Unreported printed Judgments of the Bombay High Court, p. 169] and Maharanee Indurjeet Kooer v. Chundemun Misser [16 WR 99] . **Thus the appointment of an Archaka is a secular act and the fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular. It would only mean that in making the appointment the trustee is limited in respect of the sources of recruitment. Instead of casting his net wide for selecting a proper candidate, he appoints the next heir of the last holder of the office. That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious practice or a matter of religion**."

174. It is submitted that this Hon'ble Court in ***Sri Jagannath Temple Puri Management Committee and Another v. Chintamani Khuntia and Others,***

(1997) 8 SCC 422 [*Shri Jagannath Temple* case] [J. J.S. Verma, J. Suhas C. Sen and j. S.P. Kurdukar], has held that if there is a financial or economic activity connected with religious activities, the State can make law to regulate the same. The Hon'ble Court has held that the management of the temple is a secular act and the control of the activity of various servants, the disciplinary powers over such servants, the manner of payment of remuneration to such servants cannot be struck down as violative of Article 25 and 26. The following is the relevant passage of the said case:

> **"29.** It is true that placing of the Hundis at different parts of the Temple has the possibility of reducing the income of the Mekaps, but simultaneously, their duties and responsibilities have also diminished. They do not have to keep guard over the Hundis nor do they have to collect and deposit the offerings made in the Hundis with the Temple authority. Collection of money also carries with it the responsibility for accounting for the money collected. All these onerous obligations now stand reduced. It is not the case of the Sevaks that they have been asked to work without any pay. Therefore, in our view, there cannot be any question of violation of any religious right guaranteed by Articles 25 and 26 of the Constitution.
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> **xxx**
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> **32.** A further aspect of the case is that the Puri Jagannath Temple is a very ancient structure which needs to be maintained properly. One of the objects of creation of Shri Jagannath Temple Funds is to maintain the Temple and also to do various other charitable works including training of Sevaks and providing medical relief, water and sanitary arrangement for the worshippers and the pilgrims and constructing buildings for their accommodation. Money is needed for all these purposes. The Temple Committee had adopted certain measures like placing closed receptacles in place of Gadu and also Hundis to ensure proper collection of the offerings. The monies are to be used for charitable purposes. The Sevaks cannot be heard to complain that their property and also religious rights had been taken away in the process. The placing of the Hundis may restrict their activities and also reduce their share in the offerings but that does not amount to abridgement of any religious or property right of the Sevaks.
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> **xxx**
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> **35.** All these provisions go to show that the Sevaks are appointed by the Administrator and have to do the jobs assigned to them by the Administrator. The Administrator has the power to take disciplinary proceedings against them whenever necessary. The Administrator has

also been empowered to prepare a schedule of the employees of the Temple and fix their salaries etc. these provisions again go to show that the Sevaks are essentially servants of the Temple. The status of the Sevaks cannot by any means be equated with that of a Mahant or a Shebait. The Sevaks do not have any interest in the properties of the Temple which they may have to guard. They have certain duties during the seva-puja but they are not allowed to touch the deities. They have to clean the throne keeping their feet at the edge of the throne. They have to collect whatever Veta and Pindika is thrown on the throne, standing on the ground stretching their hands as far as they can reach. They bring golden ornaments from the Bhandar Mekaps for use in the three Dhupas and give them to the puja pandas and after the puja they take back the ornaments and deposit the same in the Bhandar daily. They also bring the sandal paste from the storehouse and give the same to the three Pandas. After the ritual is over, they deposit the silver plate in the Bhandar. They also bring camphor for light and remain present at the time of closure of the doors and sleep near the doors. These duties performed by the Sevaks are connected with the seva-puja but the actual seva-puja is not done by the Sevaks. The collection of offerings including monies lying scattered inside the Temple and also on the throne of the deities have nothing to do with the seva-puja. These duties are performed after the seva-puja is completed. **The collection of monies and other offerings inside the Temple cannot be treated as a practice of religion by the Sevaks. They were simply discharging their duties assigned to them for remuneration**. **Every activity inside the Temple cannot be regarded as a religious practice. Moreover, sub-clause (2) of Article 25 of the Constitution has specifically reserved the right of the State for making any law "regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice". If there is any financial or economic activity connected with religious practice, the State can make law regulating such activities even though the activity may be associated with religious practice. In the instant case, we are of the view that the various duties assigned to the Sevaks are nothing but secular activities, whether associated with religious practice or not. Moreover, the State Legislature has, in any event, power to frame laws for regulating collection and utilisation of the offerings of monies made inside the Temple by the devotees.**

49. A review of all these judgments goes to show that the consistent view of this Court has been that although the State cannot interfere with freedom of a person to profess, practise and propagate his religion, the State, however, can control the secular matters connected with religion. **All the activities, in or connected with a temple are not religious activities. The management of a temple or maintenance of discipline and order inside the temple can be controlled by the State.** If any law is

passed for taking over the management of a temple it cannot be struck down as violative of Article 25 or Article 26 of the Constitution. **The management of the temple is a secular act.** The temple authority may also control the activities of various servants of the temple. The disciplinary power over the servants of the temple, including the priests, may be given to the temple committee appointed by the State. The temple committee can decide the quantum and manner of payment of remuneration to the servants. Merely because a system of payment has been prevalent for a number of years, it is no ground for holding that such system must continue for all times. The payment of remuneration to the temple servants was not a religious act but was of purely secular nature."

175. In ***S. Narayana Deekshitulu v. State of A.P.,*** **(1996) 9 SCC 548**, taking a step further on the issue of appointment of archakas, this Hon'ble Court, held as under :

"119. **The real question, therefore, is whether appointment of an archaka is governed by the usage and whether hereditary succession is a religious usage? If it is religious usage, it would fall squarely under Article 25(1)(b) of the Constitution.** That question was posed in Seshammal case [(1972) 2 SCC 11 : (1972) 3 SCR 815] wherein this Court considered and held that though archaka is an accomplished person, well-versed in the Agamas and rituals necessary to be performed in a temple, he does not have the status of a head of the temple. He owes his appointment to Dharmakarta or Shebait. He is a servant of the temple. In K. Seshadri Aiyangar v. Ranga Bhattar [ILR 35 Mad 631 : 21 MLJ 580] the Madras High Court had held that status of hereditary archaka of a temple is that of a servant, subject to the disciplinary power of the trustee who would enquire into his conduct as servant and would be entitled to take disciplinary action against him for misconduct. As a servant, archaka is subject to the discipline and control of the trustee. The ratio therein was applied and upheld by this Court and it was held that under Section 56 of the Madras Act archaka is the holder of an office attached to a religious institution and he receives emoluments and perks according to the procedure therein. This Court had further held that the act of his appointment is essentially a secular act. He owes his appointment to a secular authority. Any lay founder of a temple may appoint an archaka. The Shebait or Manager of temple exercises essentially a secular function in choosing and appointing the archaka. Continuance of an archaka by succession to the office from generation to generation does not make any difference to the principle of appointment. No such hereditary archaka can claim any right to the office. Though after appointment the archaka

performs worship, it is no ground to hold that the appointment is either religious practice or a matter of religion. It would thus be clear that though archaka is normally a well-versed and accomplished person in the Agamas and rituals necessary to be performed in a temple, he is the holder of an office in the temple. He is subject to the disciplinary power of a trustee or an appropriate authority prescribed in the regulations or rules or the Act. **He owes his existence to an order of appointment — be it in writing or otherwise. He is subject to the discipline on a par with other members of the establishment. Though after appointment, as an integral part of the daily rituals, he performs worship in accordance with the Agama Shastras, it is no ground to hold that his appointment is either a religious practice or a matter of religion. It is not an essential part of religion or matter of religion or religious practice. Therefore, abolition of the hereditary right to appointment under Section 34 is not violative of either Article 25(1) or Article 26(b) of the Constitution.**

121. The next question is whether abolition of the emoluments attached to the office is invalid in law? Shri Parasaran has forcefully and with vehemence at his command repeatedly argued that appointment of archaka and right to receive emoluments or share in the offerings is an integral usage and practice prevalent in Madras Province from centuries. In Seshammal case [(1972) 2 SCC 11 : (1972) 3 SCR 815] the usage was not an issue since the hereditary right or usage or practice was not avoided in the Madras Act. Section 34(1)(b) has done away with the appointment on usage or custom; when the appointment is on the basis of usage and custom which acquired the status of law and is a part of religious practice, Section 34(1)(b) is unconstitutional. It is true that in Seshammal case [(1972) 2 SCC 11 : (1972) 3 SCR 815] the issues whether appointment of an archaka should be made on the basis of custom or usage prevalent in an institution or whether such appointment is in contravention of Article 25(1) or Article 26(b) of the Constitution were not directly addressed. **So long as the statute did not intervene regulating the secular appointment of an archaka, the appointment according to prevailing usage or custom was upheld by the courts. Consequently, the right to succession or appointment remained valid. But with the statutory intervention, unless the custom or usage is held an integral part of the religion, the legislature has power to regulate the appointment of an archaka or other office-holder. In view of the settled legal position that the appointment of an archaka is a secular act, the previous custom or practice or usage in making an appointment to the office of an archaka is regulated under the Act. As an object in that behalf the hereditary right or custom or usage, prevalent in that behalf, was statutorily abolished.**”

176. It is submitted that in ***Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P.,*** **(1997) 4 SCC 606**, it was held as under :

> **"28. The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos/Creator and realise his** spiritual self. Sometimes, practices religious or secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti, human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One hinges upon constitutional religious model and another diametrically more on traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a tool of social engineering and an instrument of social change evolved by a gradual and continuous process. As Benjamin Cardozo has put it in his Judicial Process, life is not logic but experience. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination all be the progress of law. **Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired.** There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. **All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc.** The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the

practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State. Whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question. And whether hereditary archaka is an essential and integral part of the Hindu religion is the crucial question.

31. The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of the religion. In Seshammal case [Seshammal v. State of T.N., (1972) 2 SCC 11] on which great reliance was placed and stress was laid by the counsel on either side, this Court while reiterating the importance of performing rituals in temples for the idol to sustain the faith of the people, insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the deity. This Court also recognised the place of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtained in the temple. Shri P.P. Rao, learned Senior Counsel also does not dispute it. It was held that Articles 25 and 26 deal with and protect religious freedom. Religion as used in those articles requires restricted interpretation in etymological sense. Religion undoubtedly has its basis in a system of beliefs which are regarded by those who profess religion to be conducive to the future well-being. It is not merely a doctrine. It has outward expression in acts as well. **It is not every aspect of the religion that requires protection of Articles 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be protected under the Constitution in the garb of religion. Articles 25 and 26 must be viewed with pragmatism**. By the very nature of things it would be extremely difficult, if not impossible, to define the expression “religion” or “matters of religion” or “religious beliefs or practice”. Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non-

religious activity. The right to observe and practise rituals and right to manage in matters of religion are protected under these articles**. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are an integral part of religion are protected. It is a well-settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation. This Court upheld the A.P. Act which regulated the management of the religious institutions and endowments and abolition of hereditary rights and the right to receive offerings and plate collections attached to the duty.**

34. It is then contended that abolition of the right to manage the Temple as Mahant is offensive of their right to religious practice and management of the Temple. This controversy is no longer res integra. This Court in Pannalal Bansilal Pitti v. State of A.P. [(1996) 2 SCC 498] was to decide the validity of the provisions of the A.P. Act in the matter of abolishing the right of hereditary trustees and appointment of the Executive Officer and non-hereditary trustee. In Sri Sri Sri Lakshamana Yatendrulu v. State of A.P. [(1996) 8 SCC 705] this Court was to decide the constitutionality of Sections 50 to 55 of the said A.P. Act dealing with action against erring Mathadhipati, maintenance of accounts and removal of Mathadhipati for misconduct and filling up of the resultant vacancies. After elaborate consideration, the provisions were upheld as valid and constitutional. Diverse provisions of the A.P. Act, 1987 were upheld. We need not reiterate them once over and to avoid burdening the judgment, we adopt the reasons given therein and agree with the same. For the same reasons, the need to examine in detail aforequoted provisions is obviated. Accordingly, we hold that the contention that some of the persons have customary and hereditary rights as archakas and that the Act extinguishes their rights and so is violative of Articles 25 and 26(b) and (d) of the Constitution, is untenable and devoid of substance.

40. The Government kept its control only on the secular side as the Temple is one of the important Hindu Temples in the State of U.P. and in Bharat. Properties and endowments vest in the deity, Lord Shri Vishwanath. The management of the Temple by mahant/panda/archaka is not their property. The Act has merely changed the management from pandas to the Board. Only the right of management in the pandas has been extinguished from the appointed day and placed in the Board for better and proper management. It is not vested in the State nor the State acquired it for itself. In other words, the affairs of Lord Shri Vishwanath Temple by pandas/mahant have become extinct and the Board has assumed the management. This entrustment of

management cannot be said to constitute acquisition of the property or extinguishment of right to property. In the light of the above, there is need to give restrictive interpretation to the word "religious faith" and "religion" so as to allow the pandas to manage the Temple both on temporal part and deny them the secular part of the management of the Temple. The ratios laid in Pannalal case [(1996) 2 SCC 498] , Lakshamana case [(1996) 8 SCC 705] and Narayana case [(1996) 9 SCC 548] do not apply to the Act in question."

177. In ***Bashir Ahmed v. State of West Bengal*, 1975 SCC OnLine Cal 109 : AIR 1976 Cal 142 at page 145,** the Hon'ble High Court of Calcutta considered the constitutionality of the Bengal Wakf Act, 1934. The Bengal Wakf Act, 1934, provides definitions of Wakf as well as Wakf-al-al-aulad. Wakf is defined under Section 6(10) as follows:—

> "Wakf means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Islamic law as pious, religious or charitable and includes a wakf by user; and "Wakif" means any person making such dedication;

Wakf-al-al-aulad is defined by Section 5(11) as follows:

> "Wakf-al-al-aulad" means a wakf under which not less than seventy-five per cent. of the net available income is for the time being payable to the wakif for himself or any member of his family or descendants.

The Hon'ble High Court of Calcutta held as under:

> **" 14. <u>The question, therefore, in this case that would have to be decided is whether under Article 25 of the Constitution the right to freedom of religion as contemplated by clause (1) of that Article had in any way been interfered with. As I read the provisions of the present Act in question I do not find in any way any interference with the freedom of conscience or the right to freely profess, practise or propagate the religion.</u>** <u>Indeed the matters of control which have been vested in the Commissioner or in the Board of Wakf are matters regulating or restricting the economic and the financial activity associated with the religious practice. Article 26 ensures freedom to manage religious affairs. That freedom includes the right to establish and maintain institutions of religion and for charitable purpose and to manage its own affairs in matters of religion, to own and acquire movable and immovable property and administer such property in accordance with law. None of these</u>

> rights, in my opinion, have been interfered with. **The right of administration as mentioned by the Supreme Court must remain with the religious body, but it should be administered in accordance with law. Law regulating the management is permissible under clause (d) of Article 26 of the Constitution. I am therefore, unable to accept that there has been violation of any provisions of the Article 25 or Article 26 of the Constitution by the provisions of the Bengal Wakf Act, 1934 as amended by the amending Act of 1973. The provisions of the Act to which I have referred to hereinbefore are essentially provisions for the preservation, protection, and improvement of the Wakf properties. These, in my opinion, do not destroy the right of management of the Wakf properties."**

178. It is submitted that applying this test to the issues at hand, the act of creating a *waqf* (endowing property for religious or charitable purposes) is indeed a practice encouraged in Islam; however, the manner in which *waqf* properties are administered, accounted for, or supervised is not a matter of religious doctrine but rather a matter of secular management. It is submitted that none of the essential Islamic tenets prescribes a specific immutable method of maintaining *waqf* records, conducting audits, or constituting management boards – these are organizational frameworks that can evolve with time and circumstances.

179. It is submitted that managing the large number of *waqf* properties across the country – which include land, buildings, and financial assets dedicated to charitable and religious causes – involves significant secular activities: maintaining accurate records, preventing misappropriation, resolving disputes, and ensuring that the income is used for the intended charitable purposes such as education, healthcare, and assistance to the needy. Further, such properties often deal with rights of people of other communities and their claims to some such properties. The regulation of such properties therefore may have a public order aspect as well. In any event, it is submitted that regulatory

powers of the State clearly keep the essential religious practices, as recognised by this Hon'ble Court, untouched.

180. It is submitted that therefore, regulations aimed at improving transparency, accountability, and efficiency in *waqf* administration do not touch upon any essential religious practice. It is submitted that the core religious aspect – dedication of property for charitable/religious use and the use of income for pious or welfare purposes – remains fully protected and unchanged; the Act does not alter the religious obligation or spiritual nature of *waqf* in any way, but only addresses the incidental secular mechanisms surrounding it.

181. It is submitted that indeed, the Constitution makers had cautioned that if every activity done by a religious institution were deemed sacrosanct, even purely secular practices could be immunized from needed regulation under the guise of religion. It is submitted that to prevent such an outcome, this Hon'ble Court, has held that non-essential religious matters – such as the administration of assets, financial expenditure, or the appointment of functionaries even if connected to religious activities, can fall under the regulatory expanse. It is submitted that as per the judgments mentioned above, any activity which may even be related with religion but does not form the essence of religious faith, are amenable to State regulation.

182. Further, as a matter of constitutional interpretation, it is necessary to note the opinion of the eleven-judge bench of this Hon'ble Court in ***T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481**, with regard to the interplay of Article 25 and 26 and other provisions of the Constitution. It may be noted that while this opinion is not complete in itself, but provides a clear indication that Article 26, cannot exist in isolation as per Indian constitutional law jurisprudence. It is submitted that the relevant part is quoted as under :

> **"221.** It was also urged that if the framers of the Constitution intended to carve out an exception to Article 30(1), they could have used the words "subject to the provisions contained in Article 29(2)" in the beginning of Article 30(1) or could have used the expression "notwithstanding" in the beginning of Article 29(2) and in absence of such words it cannot be held that Article 29(2) is an exception to Article 30(1). Reference in this regard was made to Articles 25 and 26 which contained qualifying words. In fact, the structural argument was based on the absence of qualifying words either in Article 29(2) or 30(1). This argument based on the structure of Articles 29(2) and 30(1) has no merit. In fact, it overlooks that the intention of the framers of the Constitution was to confer rights consistent with the other members of the society and to promote rather than imperil national interest. It may be noted that there is a difference in the language of Articles 25 and 26. The qualifying words of Article 25 are "subject to public order, morality and health and to the other provisions of this Part". The opening words of Article 26 are "subject to public order, morality and health". **The absence of the words "to the other provisions of this Part" as occurring in Article 25 in Article 26 does not mean that Article 26 is over and above other rights conferred in Part III of the Constitution. In Durgah Committee v. Syed Hussain Ali [AIR 1961 SC 1402 : (1962) 1 SCR 1402] and Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan [AIR 1963 SC 1638 : (1964) 1 SCR 561] it has been held that Article 26 is subject to Article 25 irrespective of the fact that the words "subject to other provisions of this Part" occurring in Article 25 are absent in Article 26**. For these reasons, it must be held that even if there are no qualifying expressions "subject to other provisions of this Part" and "notwithstanding anything" either in Article 30(1) or Article 29(2), Article 30(1) is subject to Article 29(2) of the Constitution."

183. It is submitted that thus, it is clear that by the express omission of the phrase '**other provisions of Part III'**, it cannot be said that the right under Article 26 would be subject to other provisions of Part III going by literal construction. It is submitted that all rights under Part III of the Constitution interact with each other and shape each other's content.

184. In light of the above, it may be noted that the Waqf (Amendment) Act, 2025 very clearly limits itself to secular dimensions (like record management, procedural reforms, and administrative structure) and not any matters of ritual, prayer, or fundamental Islamic obligations. It is submitted that therefore the

Act, by confining itself to non-essential practices, steers well clear of infringing the religious freedoms guaranteed by the Constitution.

185. It is submitted that the Waqf (Amendment) Act, 2025 is a textbook example of legislation that falls within the authorization of Article 26 and the protective clause of Article 25. It is submitted that Parliament, in enacting this Amendment has exercised its constitutionally sanctioned power to intervene in the secular, economic and administrative activities associated with a religious endowment for the purpose of social welfare, reform, and public order.

186. It is submitted that, similarly, under Article 26(d), while a religious denomination (in this context, the Muslim community or sub-communities thereof regarding their *waqf* institutions) has the right to administer property, it is explicitly subject to the condition that such administration must be in accordance with law. It is submitted that the phrase "in accordance with law" in Article 26(d) is a clear constitutional permissibility for the Legislature to impose reasonable regulations on how trust property dedicated for religious purposes is managed, so long as the law does not divest the community of the ownership of that property or prevent the use of the property for religious/charitable purposes.

187. It is submitted that the Waqf (Amendment) Act, 2025 affirms this boundary and in no manner whatsoever seek to transfer ownership or administration of *waqf* assets to the government nor does it dictate that *waqf* properties be used for secular purposes. It is submitted that it merely regulates the management of those assets to ensure they are effectively used for the very religious and charitable purposes for which they were endowed. It is submitted that this is precisely the kind of legislative action that the Constitution permits – even encourages – under the rubric of ensuring that religious activities and

activities associated therewith are managed in the public interest and in furtherance of social welfare.

188. As stated above, Indian constitutional jurisprudence from the early years post-Independence to recent years, has upheld a number of statutory frameworks governing religious institutions, recognising that State oversight of financial and administrative matters is compatible with religious freedom so long as the legislation does not interfere in internal religious affairs. It is submitted that in fact, the enactments upheld were directly related to the administration of the religious institutions. It is submitted that the constitutional validity of state regulations in the secular aspects of religious institutions has been consistently affirmed by this Hon'ble Court and has been applied to all religious communities and denominations in the country. It is submitted that such regulatory control reflects a long-standing policy rationale of safeguarding the public interest in religious and charitable activities and ensuring that trust property is used in accordance with its actual intended purpose.

189. It is submitted that in case of *waqf*s – owing to its unique expansive and ever evolving nature: the State's role as regulator and facilitator through this Act is constitutionally compliant. It is submitted that by enacting uniform procedures and accountability measures for *waqf* institutions, the Parliament has acted to prevent abuses, protect the sanctity of *waqf* property, and ensure that the benefits of these endowments reach the community, all of which fall within the scope of reasonable regulation under Articles 25 and 26. It is submitted that the Act, therefore, should also be seen as a law for social welfare and reform in the context of religious endowments – an initiative that strengthens the integrity and efficacy of *waqf* institutions without encroaching upon religious doctrine or worship.

EMPOWERING PROVISO UNDER SECTION 2

190. It is submitted that as per the hearing which took place on 16.04.2025, the issues of immediate concern were debated where the court *prima facie* felt that on certain issues there was an apprehension about irreversible change by the time the matter is heard finally.

191. In this category, three questions were flagged which are already responded hereinabove. The following two contentions would not be a subject matter of any interim order as it does not adversely affect anyone and may need a final hearing. However, since some of the Petitioners did flag the provisions of Section 2, the same is answered briefly hereunder.

192. It is submitted that the following is the amendment made to Section 2 of the Waqf Act [bold part introduced by the amendment] -

> "2. Application of the Act.—Save as otherwise expressly provided under this Act, this Act shall apply to all auqaf whether created before or after the commencement of this Act:
> Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer to which the Durgah Khawaja Saheb Act, 1955 (36 of 1955) applies.
>
> **Provided further that nothing in this Act shall, notwithstanding any judgement, decree or order of any court, apply to a trust (by whatever name called) established before or after the commencement of this Act or statutorily regulated by any statutory provision pertaining to public charities, by a Muslim for purpose similar to a waqf under any law for the time being in force**."

193. It is submitted that the said amendment to Section 2 of the Waqf Act, 1995, as introduced by the Waqf (Amendment) Act, 2025, marks a transformative legislative step in affirming the constitutional rights of individuals professing Islam in India to exercise freedom of religion, conscience, and association, by broadening the legal avenues through which charitable dedications may be made.

194. Freedom to exercise religion includes freedom to choose the format in which the religious affairs of a particular denomination will be governed. Mandating Muslim citizens of India to limit themselves to doing charity or serving their religion only through the medium of Waqf is neither desirable nor constitutional. A Muslim citizen of a secular nation can always choose to create either a private trust or a public charitable trust and choose to be governed by different legislations governing trusts. This proviso takes care of protection of the said fundamental rights of all Muslims.

195. The Waqf Amendment Act, 2025, provides that any "trust" whether constituted prior to or after the commencement of Act of 2025, shall not be subject to the Waqf Act, 1995.

196. As per the Joint Parliamentary Committee Report ("**JPC**") of 2025, a proviso was added to address the concerns of the the Agakhani and Bohras community, who while being a part of the Shia Community, have their own unique governance systems governed by the religious authority of the *al-Dai al-Mutlaq* that is recognised by the United Kingdom*[Dawat-E-Hadiyah Act, 1993]*, Shri Lanka *[the Dawat-E-Hadiyah (Sri Lanka) (Incorporation) Act, 1994*]. It is submitted that Dawoodi Bohra Community had sought a complete exclusion from the provisions of any legislation including the Waqf Act of 1995 that regards all their dedications as Waqfs and seeks to brings properties dedicated to charity or for the good of the community, under the administration of the Waqf Board. These communities do not follow the practice of appointing a Mutawalli, and specially in the case of the Dawoodi Bohras' the Dai Ul Muttalaq who is believe by them to be the Vicegerent of the Imam in Seclusion, is in the capacity of a sole trustee of all their dedications. According to them, making his role subject to a Waqf Board would be contrary to the faith and essential religious practices of the Dawoodi Bohra Community protected under Article

25 and 26 of the Constitution of India. The relevant portion of the JPC Report is reproduced below:

> "Further, the Committee agree with the submissions made by the Dawoodi Bohra and Aghakhani Communities which although parts of the larger Shia Muslim Community, have a distinct set of religious doctrines and practices. As a minority within the Shia community, the Dawoodi Bohras follow a unique governance system that revolves around the religious authority of the al-Dai al-Mutlaq. In this respect, the Ministry have suggested for amendments in Section 2 of the Principal Act by providing that this Act shall not apply to a trust established by a Muslim under any law for the time being in force. Consequently, the Committee recommend that the following proviso may be inserted in Section 2 of the principal Act."

197. It is submitted that the newly inserted second proviso to Section 2 of the Act explicitly excludes from the application of the Waqf Act any trust (by whatever name called) that is established either before or after the commencement of the Act, and that is regulated by a statutory provision pertaining to public charities, even if such trust is created by a Muslim for purposes similar to a waqf.

198. It is submitted that in 1963, this Hon'ble Court in ***Nawab Zain Yar Jung and Others v. The Director of Endowments and Others*, 1963 (1) SCR 469**, held as under:

> **"Having noticed this broad distinction between the wakf and the secular trust of a public and religious character, it is necessary to add that under Muslim Law there is no prohibition against the creation of a trust of the latter kind. Usually, followers of Islam would naturally prefer to dedicate their property to the Almighty and create a wakf in the conventional Mohammadan sense. But that is not to say that the follower of Islam is precluded from creating a public religious or charitable trust which does not conform to the conventional notion of a wakf and which purports to create a public religious charity in a non-religious secular sense. This position is not in dispute."**
>
> xxx
>
> "It is thus clear that the purpose for which a wakf can be created must be one which is recognised by Muslim law as pious, religious or charitable,

> and the objects of public utility which may constitute beneficiaries under the wakf must be objects for the benefit of the Muslim community."

199. It is submitted that in ***Maharashtra State Board of Wakfs v. Yusuf Bhai Chawala,*** **(2012) 6 SCC 328,** this Hon'ble Court granted interim protection against the order of the Hon'ble High Court of Bombay, wherein the Hon'ble High Court directed the Charity Commissioner under Bombay Public Trust Act 1950 to continue to administer Muslim Waqf properties including the properties registered as trust properties with him under the Bombay Public Trust Act, 1950, until the Waqf Board under the Waqf Act of 1995 is constituted. This Hon'ble Court created a distinction between Waqf Properties and Trust, and stayed the operation of the order of the Hon'ble High Court and held as under:

> "**38.** There is a vast difference between Muslim wakfs and trusts created by Muslims. The basic difference is that wakf properties are dedicated to God and the "wakif" or dedicator does not retain any title over the wakf properties. As far as trusts are concerned, the properties are not vested in God. Some of the objects of such trusts are for running charitable organisations such as hospitals, shelter homes, orphanages and charitable dispensaries, which acts, though recognised as pious, do not divest the author of the trust from the title of the properties in the trust, unless he relinquishes such title in favour of the trust or the trustees. At times, the dividing line between public trusts and wakfs may be thin, but the main factor always is that while wakf properties vest in God Almighty, the trust properties do not vest in God and the trustees in terms of deed of trust are entitled to deal with the same for the benefit of the trust and its beneficiaries
>
> .***
>
> **41.** Accordingly, at this stage, we direct that in relation to wakf properties, as distinct from trusts created by Muslims, all concerned, including the Charity Commissioner, Mumbai, shall not permit any of the persons in management of such wakf properties to either encumber or alienate any of the properties under their management, till a decision is rendered in the pending special leave petitions."

200. In *Maharashtra State Board of Wakfs v. Sk. Yusuf Bhai Chawla,* **2022 SCC OnLine SC 1653**, which is the final judgment held as under :

> **"137.** Therefore, it is true as contended by Dr. Singhvi, learned senior counsel, and also Shri Harish Salve, learned senior counsel **that this Court has maintained a distinction between a public Trust and a Wakf. The view taken by this Court has been that while it is open to a Muslim to create a Wakf and ordinarily, there would be the prospect of a Reward for dedicating property by way of Wakf, it would be entirely left to a Muslim to take a decision as to whether he should adopt the device provided by an English Trust or make the familiar dedication by way of Wakf. It may be also true that there is merit in the contention of the writ petitioners, that Article 25 provides a choice as to the manner in which a person may exercise his rights viz., as to whether he should resort to creating a Wakf or a Trust.**
>
> **
>
> 174. As to whether an institution is a Wakf or a public Trust is a mixed question of fact and law. This means it becomes a duty of whosoever upon whom the duty falls, to ascertain whether it is either and to carefully attend to the terms of the document by which the Trust is evidenced if there is such a document and find the facts and thereafter the law must be applied. The paramount feature which perhaps would figure in this inquiry would be the properties being vested either by a Trust, in the case of a Trust, for a trustee to deal with the property as such. Whether there is no power of sale, or inalienability may be a factor which may tilt the matter in favour of the institution being a Wakf provided other features which are indispensable are also present. It is no doubt true that the Amending Act of 1964, amending the words 'Beneficiary' making clear what was always the correct principle of Muslim law that fruits of a Wakf is not to be cribbed cabined and confined to the Muslim community would in the context of the object being public utility, narrow down the distinction between a trust and a wakf.
>
> **
>
> **213.** This brings us to other aspect which has been canvassed before us. Section 112 of the Act provides for repeal. There is not much controversy before us that Section 112 by virtue of the repeal it provides for would effect a repeal of the provisions of the 1950 Act insofar as it relates to public Trusts which are Wakfs. The Charity Commissioner, in effect, when it issued clarification which was challenged before the High Court also initially only stated that according to Section 43 of the Act Wakfs which are registered as Public Trusts should not be tried under the 1950 Act. As far as this understanding of the Charity Commissioner goes subject to what we will presently indicate, we would take the view that there is a distinction between a Trust and a Wakf. We have already highlighted the differences.

> It is a matter to be tested on a conspectus of various features and after complying with the law as to whether what is registered as a public Trust is, in fact, a Wakf or not. No doubt, all public Trusts which have been registered by way of a deeming provision under Section 28 of the 1950 Act will necessarily have to be treated as Wakfs. This is on the principle that once a Wakf is created unless it be a case where the title is extinguished by way of exercise of power of eminent domain by the State, the title of the Almighty though by implication cannot cease. We can state the position otherwise to be that once a Wakf, always a Wakf."

201. This Hon'ble Court held that this would be a matter to be decided on the terms of a document [Pa 156] and that this question is a mixed question of fact and law [Pa 174], this Hon'ble Court held that this was an issue to be considered in the survey. [Pa 178,] and further that the Waqf Board had the power to go into the question whether the property of Trust is indeed so or is a Wakf property [Pa 202]. In order correct this, the amendment clarifies that nothing in Act shall apply to Trusts, and having altered the basis of the law, validates all the acts in the past by which Trusts have been functioned as such and invalidates all enquiries by the Waqf Board into Trusts specially those registered under the various laws, as parliament has now clarified that the Waqf Act was never intended to anoint the Waqf board with powers to enquire into the validity of Trusts.

202. It is submitted that this carve-out is both constitutionally important, empowering choice of an individual and is jurisprudentially progressive. It recognises the right of a Muslim individual to exercise his/her discretion in choosing the most appropriate legal framework—whether under *waqf* law or under trust law—for administering charitable assets in accordance with their beliefs and intended purposes.

203. It is submitted that prior to this amendment, Muslims creating charitable institutions—even if meant for public welfare and not for religious purposes per se—risked such institutions being automatically subjected to the

supervisory framework of the Waqf Act, 1995 merely because the founder was a Muslim or because the purpose resembled that of a *waqf*.

204. It is submitted that such automatic categorisation, in the absence of a conscious dedication as *waqf* and willingness to be governed by the 1995 Act, infringed upon the Muslim individual's freedom of religion [Article 25] and autonomy over property [Article 300A], often leading to administrative overreach and unwanted classification.

205. It is thus submitted that said amendment to Section 2, for the first time legislatively clarifies that Muslims are not bound to utilise the *waqf* framework to establish public charitable institutions, even if the purpose mirrors traditional *waqf* objectives such as aiding the poor, promoting education, or serving religious causes, provided they choose to establish such institutions under another law, like the Indian Trusts Act, 1882, or state public charitable trusts laws.

206. It is submitted that this restores and reinforces the essential freedom under Article 25(1) of the Constitution, which guarantees freedom of conscience and the right freely to profess, practice, and propagate religion. It is submitted that freedom of religion includes the freedom not to be compelled to act in a religious manner or under a religious regime such as *waqf*, particularly when engaging in secular charitable acts.

207. It is submitted that the amendment equally furthers the rights under Article 26(a) and 26(d), which confer upon every religious denomination the right to establish institutions for charitable purposes and to administer property in accordance with law. It is submitted that by allowing Muslims to establish charitable entities outside the framework of *waqf*, this amendment affirms that such rights are not confined to religiously managed institutions and that the law must accommodate alternative secular regulatory mechanisms.

208. It is submitted that the amendment also furthers the principle of equality under Article 14, by ensuring that Muslims, like members of other religious communities, have the equal right to choose whether to bring their charitable acts under general/secular trust law or under a religious statute. It is submitted that this avoids arbitrary classification and prevents discrimination based on religion, as the choice of legal structure for public charity should rest with the donor and not with the administrative authorities or the personal faith of the founder.

209. It is submitted that the amendment serves a clarificatory, enabling and empowering purpose, by empowering Muslims from the prior ambiguities that allowed Waqf Boards to claim supervisory jurisdiction over institutions that were neither registered as waqf nor intended to be waqf, but merely bore a resemblance in purpose and created by a Muslim. It is submitted that this preserves the sanctity of waqf as a religious institution while recognising the pluralism of charitable expressions.

210. It is submitted that by respecting the individual Muslim's choice to opt for secular charitable legal structures rather than a religious endowment governed by the Waqf Act, the amendment advances personal liberty, religious freedom, and property autonomy—all of which are foundational to India's constitutional framework. It is submitted that this development is consistent with the broader legislative philosophy underpinning the Waqf (Amendment) Act, 2025, which seeks to streamline the Waqf framework, clarify its boundaries, and ensure that it governs only those institutions that are consciously and lawfully created as waqf. It is submitted that this is not only a matter of administrative propriety, but also one of constitutional fidelity, as it affirms that no religious identity can be the basis of restricting the avenues available for lawful secular charity.

211. It is submitted that the second proviso to Section 2 is thus a progressive and inclusive provision that strengthens the constitutional guarantees enshrined under Articles 14, 25, and 26, while protecting individuals from administrative overreach and ensuring they remain free to express charity in forms that align with their conscience, religious interpretation, or secular objectives.

212. It is submitted that the proviso is clarificatory and seeks to make obvious something that was already intrinsic in the pre-amendment regime. Having done so the Legislature can amend the law so as to remove the basis on which a judgment was passed. On such amendment, the judgment would lose its binding force. The judgment, though furthers the intent behind the proviso, if it is taken to be otherwise the said judgment is based upon the unamended Waqf Act, 1995 and by inserting the proviso, the Parliament have changed the circumstances and thereby, taken away the basis (if at all). The leading judgement in this regard is the case of ***Shri Prithvi Cotton Mills v. Broach Borough Municipality*, (1969) 2 SCC 283**. In ***Prithvi Cotton*** **[supra]**, the Bombay Municipal Boroughs Act levied a tax on land and buildings. While this tax was being contested before the Court and while the appeal was pending, the Legislature of the State of Gujarat enacted a Validating Act concerning the Municipality's authority to impose taxes. Chief Justice Hidayatullah [as he then was] opined that the Legislature possesses the authority to validate statutes and enact retrospective laws. However, in order to validate an unlawfully imposed tax, the validating act must address the underlying reason for the ineffectiveness or invalidity of the tax. The mere competence of the Legislature to impose taxes is insufficient and the Validating Act must substantially modify the circumstances under which the judgment was rendered to such an extent

that the judgment could not have been reached in the altered circumstances. It was held as under :

> **"1. M. HIDAYATULLAH, C.J.**—These matters arise under Article 226 of the Constitution and are appeals by certificate granted by the High Court of Gujarat against its judgment and order, dated September 10, 1966. The Appellant 1 is a Company which has spinning and weaving mills at Broach and manufactures and sells cotton yarn and cloth. Respondent 1 is the Broach Borough Municipality constituted under Section 8 of the Bombay Municipal Boroughs Act, 1925. In Assessment Years 1961-62, 1962-63 and 1963-64 the Municipality purporting to act under Section 73 of the Bombay Municipal Boroughs Act, 1925 and the Rules made thereunder imposed a purported rate on lands and buildings belonging to the respondents at a certain percentage of the capital value. Section 73 of the Act allows the Municipality to levy "a rate on buildings or lands or both situate within the municipal borough". The Rules under the Act applied the rates on the basis of the percentage on the capital value of lands and buildings. The assessment lists were published and tax was imposed according to the rates calculated on the basis of the capital value of the property of the appellant and bills in respect of the tax were served. The writ petitions were filed to question the assessment and to get the assessment cancelled.
>
> **2.** During the pendency of the writ petitions the Legislature of Gujarat passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963. As a result the writ petitions were amended and the Validation Act was also questioned. The appellants also filed a second writ petition questioning the validity of the Validation Act under Articles 19(1)(f)(g) and 265 of the Constitution. By the order under appeal here both the writ petitions were dismissed although a certificate of fitness was granted.
>
> **3.** The Validation Act was presumably passed because of the decision of this Court reported in Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad. [(1964) 2 SCR 608] In that case the validity of the Rules framed by the Municipal Corporation under Section 73 were called in question, particularly Rule 350-A for rating open lands which provides that the rate on the area of open lands shall be levied at 1 per centum on the valuation based upon capital value. Dealing with the word "rate" as used in these statutes, it was held by this Court that the word "rate" had acquired a special meaning in English legislative history and practice and also in Indian legislation and it meant a tax for local purposes imposed by local authorities. The basis of such tax was the annual value of the lands or buildings. It was discussed in the case that there were three methods by which the rates could be imposed: the first was to take into account the actual rent fetched by the land or building where it was actually let; the second was, where it was not let, to take rent based on hypothetical tenancy, particularly in the case of buildings; and the third was where neither of these two modes was available, by valuation based on capital value from which annual value had to be found by applying suitable percentage which might not be the same for lands and buildings. It was held that in Section 73 the word "rate" as used must have

been used in the special sense in which the word was understood in the legislative practice of India before that date. Rule 350-A which laid the rate on land at a percentage of the valuation based upon capital was therefore declared ultra vires the Act itself. In short, the word "rate" was given a specialised meaning and was held to mean a kind of impost on the annual letting value of property, if actually let out, and on a notional letting value if the property was not let out. The Legislature of Gujarat then passed the Validation Act seeking to validate the imposition of the tax as well as to avoid any future interpretation of the Act on the lines on which Rule 350-A was construed. The Act came into force on January 29, 1964. After defining the expressions used in the Act and providing for its application, the Act enacted Section 3 which concerned validation of impositions and collections of taxes or rates by Municipalities in certain cases. That section reads as follows:

> "3. Validation of imposition and Collection of taxes or rates by municipalities in certain cases.—Notwithstanding anything contained in any judgment, decree or order of a Court or Tribunal or any other authority, no tax or rate assessed or purporting to have been assessed by a municipality under the relevant municipal law or any rules made thereunder on the basis of the capital value of a building or land, as the case may be, or on the basis of a percentage of such capital value, and imposed, collected or recovered by the municipality at any time before the commencement of this Act shall be deemed to have been invalidly assessed, imposed, collected or recovered by reason of the assessment being based on the capital value or the percentage of the capital value, and not being based on the annual letting value, of the building or land, as the case may be, and the imposition, collection and recovery of the tax or rate so assessed and the provisions of the rules made under the relevant municipal law under which the tax or rate was so assessed shall be valid and shall be deemed always to have been valid and shall not be called in question merely on the ground that the assessment of the tax or rate on the basis of the capital value of the building or land, as the case may be, or on the basis of a percentage of such capital value was not authorised by law; and accordingly any tax or rate, so assessed before the commencement of this Act and leviable for a period prior to such commencement but not collected or recovered before such commencement, may be collected and recovered in accordance with the relevant municipal law, and the rules made thereunder."

If this section is valid then the imposition cannot be questioned and the short question which arises in this case is as to the validity of this section. It is not denied that a Legislature does possess the power to validate statutes and to pass retrospective laws. It is, however, contended that the Validation Act is ineffective in carrying out its avowed object. This is the only point which falls for consideration in these appeals.

4. Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a Legislature sets out to validate a tax declared by a court to be illegally **collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said**

to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating Law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the Validating Law for a valid imposition of the tax.

6. The Legislature in Section 73 had not authorised the levy of a tax in this manner but had authorised the levy of a rate. That led to the discussion whether a rule putting the tax on capital value of buildings answered the description of the impost in the Act, namely, "a rate on buildings or lands or both situate within the Municipal borough". It was held by this Court that it did not, because the word "rate" had acquired a special meaning in legislative practice. Faced with this situation the Legislature exercised its undoubted powers of redefining "rate" so as to equate it to a tax on capital value and convert the tax purported to be collected as a "rate" into a tax on lands and buildings. The Legislature in the Validation Act, therefore, provided for the following matters. First, it stated that no tax or rate by whichever name called and laid on the capital value of lands and buildings must be deemed to be invalidly assessed, imposed, collected or recovered simply on the ground that a rate is based on the annual letting value. Next it provided that the tax must be deemed to be validly assessed, imposed, collected or recovered and the imposition must be deemed to be always so authorised. The Legislature by this

> enactment retrospectively imposed the tax on lands and buildings based on their capital value and as the tax was already imposed, levied and collected on that basis, made the imposition, levy collection and recovery of the tax valid, notwithstanding the declaration by the Court that as "rate", the levy was incompetent. The Legislature not only equated the tax collected to a tax on lands and buildings, which it had the power to levy, but also to a rate giving a new meaning to the expression "rate", and while doing so it put out of action the effect of the decisions of the courts to the contrary. The exercise of power by the Legislature was valid because the Legislature does possess the power to levy a tax on lands and buildings based on capital value thereof and in validating the levy on that basis, the implication of the use of the word "rate" could be effectively removed and the tax on lands and buildings imposed instead. The tax, therefore, can no longer be questioned on the ground that Section 73 spoke of a rate and the imposition was not a rate as properly understood but a tax on capital value. In this view of the matter it is hardly necessary to invoke the 14th clause of Section 73 which contains a residuary power to impose any other tax not expressly mentioned."

213. In the case of ***Government of AP v. Hindustan Machine Tools*, (1975) 2 SCC 274**, the Kuthbullapur Gram Panchayat had imposed a house tax. The Hon'ble High Court had determined that the building constructed by the Respondent did not fall within the definition of a "house". However, subsequently, the definition of "house" was retrospectively amended by the Legislature to include factories. It is submitted that this Hon'ble Court upheld the retrospective change in definition of a "house", which included factories and since the building owned by the Respondent was classified as a factory, the tax imposition was upheld.

214. In the case of ***State of Mysore v. Fakkrusahab Babusahab Karanandi*, (1977) 1 SCC 666**, the Respondent was charged with an offence under the Mysore Excise Act. The Judicial Magistrate had declined to take cognizance of the case on the grounds that Section 60(b) of the Act, as amended by Mysore Ordinance No. 4, required the complaint to be filed by an Excise Officer. However, in the said case, the chargesheet was filed by the local Police. Subsequently, another amendment was introduced to restore the original

provision, operating retrospectively. It is submitted that this Hon'ble Court, speaking through J. Bhagwati [as he then was], explained that the effect of the second amendment was to nullify the Ordinance's deletion of the words "or police" and to reinstate the original provision. The legal fiction established by the second amendment had to be given full effect, and therefore, the words "or police" were deemed to have always been included in the provision.

215. It is submitted that in ***Madan Mohan Pathak v. Union of India*****, (1978) 2 SCC 50**. This Hon'ble Court, in the said judgement, while addressing the constitutional validity of the Life Insurance Corporation (Modification of Settlements) Act, 1976, enacted by Parliament in response to a decision by the Calcutta High Court declaring an impost or tax invalid, emphasized that regardless of the constitutional validity of the impugned Act, the Life Insurance Corporation was obligated to adhere to the writ of mandamus issued by the Calcutta High Court. It was emphasised the benefits of rights recognized by the Calcutta High Court's judgment could not be indirectly revoked under Section 3 of the impugned Act in a selective manner. It was held that if the right conferred by the judgment independently is sought to be nullified, then Section 3 would be invalid for encroaching upon judicial power.

216. In ***Bakhtawar Trust and Others v. M.D Narayan and Others*****, (2003) 5 SCC 298**, the challenge was to the Bangalore City Planning Area Zonal Regulations (Amendment and Validation) Act, wherein the maximum height of buildings was increased and previously illegal constructions were regularized. It was held that that Parliament and State legislatures have plenary powers within their field and can legislate, both prospectively and retrospectively. It was clarified that retrospective legislation may be used to validate Acts by curing defects in them, rendering ineffective judgments of the Court that declared the Acts invalid. It was noted that in validating Acts, the alteration

must be made in such a way that it is not possible for the Courts to reach the same verdict under the changed legislative landscape. Further, it was clarified that if the Legislature validates an action which was declared invalid by a Court, it must first remove the basis of invalidity and then validate the action instead of merely declaring the relevant judicial pronouncement invalid. It was held as under :

> "**14.** The validity of any statute may be assailed on the ground that it is ultra vires the legislative competence of the legislature which enacted it or it is violative of Part III or any other provision of the Constitution. It is well settled that Parliament and State Legislatures have plenary powers of legislation within the fields assigned to them and subject to some constitutional limitations, can legislate prospectively as well as retrospectively. This power to make retrospective legislation enables the legislature to validate prior executive and legislative Acts retrospectively after curing the defects that led to their invalidation and thus makes ineffective judgments of competent courts declaring the invalidity. It is also well settled that a validating Act may even make ineffective judgments and orders of competent courts provided it, by retrospective legislation, removes the cause of invalidity or the basis that had led to those decisions.
>
> **15.** The test of judging the validity of the amending and validating Act is, whether the legislature enacting the validating Act has competence over the subject-matter; whether by validation, the said legislature has removed the defect which the court had found in the previous laws; and whether the validating law is consistent with the provisions of Part III of the Constitution.
>
> **25. The decisions referred to above, manifestly show that it is open to the legislature to alter the law retrospectively, provided the alteration is made in such a manner that it would no more be possible for the Court to arrive at the same verdict. In other words, the very premise of the earlier judgment should be uprooted, thereby resulting in a fundamental change of the circumstances upon which it was founded.**
>
> **26. Where a legislature validates an executive action repugnant to the statutory provisions declared by a court of law, what the legislature is required to do is first to remove the very basis of invalidity and then validate the executive action. In order to validate an executive action or any provision of a statute, it is not sufficient for the legislature to declare that a judicial pronouncement given by a court of law would not be binding, as the legislature does not possess**

that power. A decision of a court of law has a binding effect unless the very basis upon which it is given is so altered that the said decision would not have been given in the changed circumstances."

217. In ***Bhubaneshwar Singh v. Union of India,*** **(1994) 6 SCC 77,** it was held as under :

> **"11. From time to time controversy has arisen as to whether the effect of judicial pronouncements of the High Court or the Supreme Court can be wiped out by amending the legislation with retrospective effect. Many such Amending Acts are called Validating Acts, validating the action taken under the particular enactments by removing the defect in the statute retrospectively because of which the statute or the part of it had been declared ultra vires. Such exercise has been held by this Court as not to amount to encroachment on the judicial power of the courts. The exercise of rendering ineffective the judgments or orders of competent courts by changing the very basis by legislation is a well-known device of validating legislation. This Court has repeatedly pointed out that such validating legislation which removes the cause of the invalidity cannot be considered to be an encroachment on judicial power. At the same time, any action in exercise of the power under any enactment which has been declared to be invalid by a court cannot be made valid by a Validating Act by merely saying so unless the defect which has been pointed out by the court is removed with retrospective effect. The validating legislation must remove the cause of invalidity. Till such defect or the lack of authority pointed out by the court under a statute is removed by the subsequent enactment with retrospective effect, the binding nature of the judgment of the court cannot be ignored.**

218. In ***Comorin Match Industries (P) Ltd. v. State of T.N.,*** **(1996) 4 SCC 281,** it was held as under :

> **"24. This case does not lay down that after a judgment has been pronounced on the basis of an Act, the provisions of that Act cannot be amended so as to cure the defect pointed out in the judgment retrospectively. The effect of the amending Act of 1969 is not to overrule a judgment passed by a court of law, which the legislature cannot do. What the legislature can do is to change the law on the basis of which the judgment was pronounced retrospectively and thereby nullify the effect of the judgment. When the legislature**

enacts that notwithstanding any judgment or order the new law will operate retrospectively and the assessments shall be deemed to be validly made on the basis of the amended law, the legislature is not declaring the judgment to be void but rendering things or acts deemed to have been done under amended statute valid notwithstanding any judgment or order on the basis of the unamended law to the contrary. The validity to the assessment orders which had been struck down by the Court, is imparted by the amending Act by changing the law retrospectively.

219. In ***Indian Aluminium Co. v. State of Kerala,*** **(1996) 7 SCC 637**, it was held as under:

> **"56.** From a resume of the above decisions the following principles would emerge:
>
> (1) The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transactions and require the court to give effect to them;
>
> (2) The Constitution delineated delicate balance in the exercise of the sovereign power by the legislature, executive and judiciary;
>
> (3) In a democracy governed by rule of law, the legislature exercises the power under Articles 245 and 246 and other companion articles read with the entries in the respective lists in the Seventh Schedule to make the law which includes power to amend the law.
>
> (4) Courts in their concern and endeavour to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order that rule of law permeates to fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free play in their joints so that the march of social progress and order remains unimpeded. The smooth balance built with delicacy must always be maintained;
>
> (5) In its anxiety to safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made;
>
> **(6) The court, therefore, needs to carefully scan the law to find out: (a) whether the vice pointed out by the court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements; (b) whether the legislature has competence to validate the law; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution.**

(7) The court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the legislature. Therefore, they are not encroachment on judicial power.

(8) In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. **The changed or altered conditions are such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid.** It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date. The legislature can change the character of the tax or duty from impermissible to permissible tax but the tax or levy should answer such character and the legislature is competent to recover the invalid tax validating such a tax on removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorise its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the court or the direction given for recovery thereof.

(9) The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it **but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the legislature must have competence to do the same.**

57. Considered from these perspectives, the question is: whether Section 11 can answer the tests laid down hereinbefore. It is seen that the duty was collected under an order made in exercise of Section 3 of the Essential Articles Act and it was held to be not a tax but a duty for the benefit of KSEB. That duty being a compulsory exaction for the benefit of public exchequer is a tax. Duty on supply of electricity was declared to be an additional burden and a levy within Entries 26 and 27 of List II, subject to Entry 33 of List III (Concurrent List). Duty is an additional burden and partakes the character of a tax. Entry 53 of List II (State List) empowers the State Legislature to impose tax on consumption or sale of electricity. It is, therefore, a compulsory exaction for the benefit of the Revenue. Therefore, it is an additional tax in the form of a duty under the Act. The vice pointed out in Chakolas case [(1988) 2 KLT 680] has been removed under the Act. Consequently, Section 11 validated the

> invalidity pointed out in Chakolas case [(1988) 2 KLT 680] removing the base. In the altered situation, the High Court would not have rendered Chakolas case [(1988) 2 KLT 680] under the Act. It has made the writ issued in Chakolas case [(1988) 2 KLT 680] ineffective. Instead of refunding the duty illegally collected under invalid law, Section 11 validated the illegal collections and directed the liability of the past transactions as valid under the Act and also fastened liability on the consumers. In other words, the effect of Section 11 is that the illegal collection made under invalid law is to be retained and the same shall now stand validated under the Act. Thus considered, we hold that Section 11 is not an incursion on judicial power of the court and is a valid piece of legislation as part of the Act."

220. It is submitted that this Court has made similar jurisprudential declarations in ***Vijay Mills Limited and Others vs State of Gujarat,*** **(1993) 1 SCC 345;** ***Bhubaneshwar Singh and Another vs Union of India and Others,*** **(1994) 6 SCC 77;** ***Comorin Match Industries vs State of T.N.,*** **(1996) 4 SCC 281;** ***State of T.N. vs Arooran Sugars Ltd,*** **(1997) 1 SCC 326;** ***State of HP vs Narain Singh,*** **(2009)13 SCC 165;** ***Goa Foundation vs State of Goa,*** **(2016) 6 SCC 602.** ***Chevitti Venkanna Yadav vs State of Telangana*****-(2017) 1 SCC 283**.

221. It is submitted that more recently, in ***Madras Bar Association v. Union of India & Anr.,*** **(2022) 12 SCC 455**, a Writ Petition had been filed seeking a declaration that Sections 12 and 13 of the Tribunal Reforms (Rationalization and Conditions of Service) Ordinance, 2021, and Sections 184 and 186(2) of the Finance Act, 2017, as amended by the Tribunal Reforms (Rationalization and Conditions of Service) Ordinance, 2021, were ultra vires Articles 14, 21, and 50 of the Constitution of India, as they were supposedly violative of the principles of separation of powers and independence of the judiciary, apart from being contrary to the principles laid down by this Court in previous cases. After discussing the entire case law, this Court summarised the position of law as under :

i. The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment.

ii. The test for determining the validity of a validating legislation is that the judgment pointing out the defect, could not have been passed if the altered position as sought to be brought in by the validating statute, existed before the Court at the time of rendering its judgment.

iii. Nullification of mandamus by an enactment would be an impermissible legislative exercise.

222. It is submitted that further, the declaration had no relation whatsoever with the Constitution or any constitutional principle. It was a purely statutory interpretation which would not survive once the statute [which was the soil on which the judgment was based] has been changed. It is submitted that therefore, the judgment in ***Maharashtra Waqf 2022 supra*** would not cast any shadow over proviso to Section 2 inserted by the Amendment Act 2025.

VERY HIGH THRESHOLD FOR ANY INTERIM RELIEF

223. It is submitted that the attempt of the various Petitioners which seek to challenge the constitutional validity of the various clauses of the Waqf (Amendment) Act, 2025 on the grounds of Article 14, 15, 21, 25, 26, 29, 30 and 300A is against the basic tenets of judicial review in the country. It is submitted that the same amounts to treating the law as unconstitutional at an interim stage which is impermissible. It is submitted that here exists a presumption of constitutionality which was settled as long back as in ***Chiranjit Lal Chowdhuri v. Union of India, 1950 SCR 869*** **[Para 11, 45, 46, 67]**; ***Ram Krishna Dalmia v. Justice S.R. Tendolkar, 1959 SCR 279*** **[Para 11]**; ***Mohd. Hanif Quareshi v. State of Bihar, 1959 SCR 629*** **[Para 15]**; ***Special Courts Bill, 1978, In re, (1979) 1 SCC***

***380* [Para 72.9]**; ***B. Banerjee v. Anita Pan, (1975) 1 SCC 166* [Para 12]**; ***Karnataka Bank Ltd. v. State of A.P., (2008) 2 SCC 254* [Para 19]**.

224. It is further submitted that no interim order can be granted which has the effect of staying the statute and the said principle has been settled by this Hon'ble Court in ***Bhavesh D. Parish v. Union of India*, (2000) 5 SCC 471**, Paras 30-31, wherein it was held as under:

> "30. Before we conclude there is another matter which we must advert to. It has been brought to our notice that Section 45-S of the Act has been challenged in various High Courts and a few of them have granted the stay of provisions of Section 45-S. When considering an application for staying the operation of a piece of legislation, and that too pertaining to economic reform or change, then the courts must bear in mind that unless the provision is manifestly unjust or glaringly unconstitutional, the courts must show judicial restraint in staying the applicability of the same. **Merely because a statute comes up for examination and some arguable point is raised, which persuades the courts to consider the controversy, the legislative will should not normally be put under suspension pending such consideration**. It is now well settled that there is always a presumption in favour of the constitutional validity of any legislation, unless the same is set aside after final hearing and, therefore, the tendency to grant stay of legislation relating to economic reform, at the interim stage, cannot be understood. The system of checks and balances has to be utilised in a balanced manner with the primary objective of accelerating economic growth rather than suspending its growth by doubting its constitutional efficacy at the threshold itself.
>
> 31. While the courts should not abrogate (*sic* abdicate) their duty of granting interim injunctions where necessary, equally important is the need to ensure that the judicial discretion does not abrogate from the function of weighing the overwhelming public interest in favour of the continuing operation of a fiscal statute or a piece of economic reform legislation, till on a mature consideration at the final hearing, it is found to be unconstitutional. It is, therefore, necessary to sound a word of caution against intervening at the interlocutory stage in matters of economic reforms and fiscal statutes."

225. Similarly, in ***Siliguri Municipality v. Amalendu Das*, (1984) 2 SCC 436**, [Para 2-4], it was held as under:

> "2. We are constrained to make the observations which follow as we do feel dismayed at the tendency on the part of some of the High Courts to grant interlocutory orders for the mere asking. Normally, the High Courts should

not, as a rule, in proceedings under Article 226 of the Constitution grant any stay of recovery of tax save under very exceptional circumstances. The grant of stay in such matters, should be an exception and not a rule.

3. It is needless to stress that a levy or impost does not become bad as soon as a writ petition is instituted in order to assail the validity of the levy. So also there is no warrant for presuming the levy to be bad at the very threshold of the proceedings. The only consideration at that juncture is to ensure that no prejudice is occasioned to the rate payers in case they ultimately succeed at the conclusion of the proceedings. This object can be attained by requiring the body or authority levying the impost to give an undertaking to refund or adjust against future dues, the levy of tax or rate or a part thereof, as the case may be, in the event of the entire levy or a part thereof being ultimately held to be invalid by the court without obliging the tax-payers to institute a civil suit in order to claim the amount already recovered from them. On the other hand, the Court cannot be unmindful of the need to protect the authority levying the tax, for, at that stage the Court has to proceed on the hypothesis that the challenge may or may not succeed. The Court has to show awareness of the fact that in a case like the present a municipality cannot function or meet its financial obligations if its source of revenue is blocked by an interim order restraining the municipality from recovering the taxes as per the impugned provision. And that the municipality has to maintain essential civic services like water supply, street lighting and public streets etc. apart from running public institutions like schools, dispensaries, libraries etc. What is more, supplies have to be purchased and salaries have to be paid. The grant of an interlocutory order of this nature would paralyze the administration and dislocate the entire working of the municipality. It seems that these serious ramifications of the matter were lost sight of while making the impugned order.

4. We will be failing in our duty if we do not advert to a feature which causes us dismay and distress. On a previous occasion, a Division Bench had vacated an interim order passed by a learned Single Judge on similar facts in a similar situation. Even so when a similar matter giving rise to the present appeal came up again, the same learned Judge whose order had been reversed earlier, granted a non-speaking interlocutory order of the aforesaid nature. This order was in turn confirmed by a Division Bench without a speaking order articulating reasons for granting a stay when the earlier Bench had vacated the stay. We mean no disrespect to the High Court in emphasizing the necessity for self-imposed discipline in such matters in obeisance to such weighty institutional considerations like the need to maintain decorum and comity. So also we mean no disrespect to the High Court in stressing the need for self-discipline on the part of the High Court in passing interim orders without entering into the question of amplitude and

width of the powers of the High Court to grant interim relief. **The main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation keeping in mind the presumption regarding the constitutionality of the legislation and the vulnerability of the challenge, only in order that no irreparable injury is occasioned. The Court has therefore to strike a delicate balance after considering the pros and cons of the matter lest larger public interest is not jeopardized and institutional embarrassment is eschewed."**

226. The same dictum was laid down in ***Health for Millions v. Union of India,*** **(2014) 14 SCC 496**, wherein it was held as under:

"13. We have considered the respective arguments and submissions and carefully perused the record. Since the matter is pending adjudication before the High Court, **we do not want to express any opinion on the merits and demerits of the writ petitioner's challenge to the constitutional validity of the 2003 Act and the 2004 Rules as amended in 2005 but have no hesitation in holding that the High Court was not at all justified in passing the impugned orders ignoring the well-settled proposition of law that in matters involving challenge to the constitutionality of any legislation enacted by the legislature and the rules framed thereunder the courts should be extremely loath to pass an interim order.** At the time of final adjudication, the court can strike down the statute if it is found to be ultra vires the Constitution. Likewise, the rules can be quashed if the same are found to be unconstitutional or ultra vires the provisions of the Act**. However, the operation of the statutory provisions cannot be stultified by granting an interim order except when the court is fully convinced that the particular enactment or the rules are ex facie unconstitutional and the factors, like balance of convenience, irreparable injury and public interest are in favour of passing an interim order.**

...

15. A reading of the impugned orders leaves no manner of doubt that while granting interim relief to the writ petitioners, the High Court did not apply its mind to any of the ingredients, the existence of which is sine qua non for such orders. The High Court overlooked the fact that the consumption of tobacco and tobacco products has huge adverse impact on the health of the public at large and, particularly, the poor and weaker sections of the society which are the largest consumers of such products and that unrestricted advertisement of these products will attract younger generation and innocent minds, who are not aware of grave and adverse consequences of consuming such products.

...

17. We have no doubt that the Central Government and the State Governments across the country are alive to the serious and grave consequences of advertising tobacco and various products manufactured by using tobacco. They know that the consumption of these products will result in rapid increase in the number of cancer patients and huge proportion of the Budget earmarked for health of the common man will have to be used for treating the patients of cancer."

227. Further, in ***State of U.P. v. Hirendra Pal Singh,*** **(2011) 5 SCC 305**, it was held as under:

"Leave granted. These appeals have been filed against the interim orders passed by the High Court of Allahabad (Lucknow Bench) dated 4-9-2008 in Writ Petition No. 7851 (MB) of 2008 and dated 30-11-2009 in Writ Petition No. 11170 (MB) of 2009, by which the High Court has stayed the operation of amended provisions of the U.P. Legal Remembrancer Manual (hereinafter called "the LR Manual") and further directed the State Government to consider the applications for renewal of the all District Government Counsel whose term had already expired, resorting to the unamended provisions of the LR Manual and they be allowed to serve till they attain the age up to 62 years.

...

13. In *Bhavesh D. Parish* v. *Union of India* [(2000) 5 SCC 471 : AIR 2000 SC 2047] this Court observed that (SCC p. 486, para 26) while considering the constitutional validity of statutory provisions, the court should be very slow in staying the operation of the statutory provisions. It is permissible for the court to interfere at interim stage "only in those few cases where the view reflected in the legislation is not possible to be taken at all". Thus, the court should not generally stay the operation of law.

14. In *Siliguri Municipality* v. *Amalendu Das* [(1984) 2 SCC 436 : 1984 SCC (Tax) 133 : AIR 1984 SC 653] this Court had taken note of the fact that the High Court had been passing stay orders in some cases involving the same question of law and facts though it vacated the interim orders passed earlier in some of the identical cases. In the said case, the validity of statutory provision was under challenge. This Court observed that the High Court should exercise self-restraint in passing interim orders, for maintaining consistency in similar cases.

15. The Court in *Siliguri Municipality case* [(1984) 2 SCC 436 : 1984 SCC (Tax) 133 : AIR 1984 SC 653] observed as under : (SCC p. 439, para 4)

"*4*. **... The main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation keeping in mind the**

> **presumption regarding the constitutionality of the legislation and the vulnerability of the challenge, only in order that no irreparable injury is occasioned. The Court has therefore to strike a delicate balance after considering the pros and cons of the matter lest larger public interest is not jeopardised and institutional embarrassment is eschewed."**
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> ...
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> 18. Admittedly, this Court has stayed the operation of the interim orders passed by the High Court in a large number of identical cases and all such orders have been placed on record. Some of such cases are SLP (C) No. 32910 of 2009 dated 14-12-2009; SLP (C) No. 35279 of 2009 dated 5-1-2010; and SLP (C) No. 11261 of 2010 dated 23-4-2010.
>
> ...
>
> 25. This Court in *Bhagat Ram Sharma* v. *Union of India* [1988 Supp SCC 30 : 1988 SCC (L&S) 404 : (1988) 6 ATC 783 : AIR 1988 SC 740] explained the distinction between repeal and amendment observing that amendment includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act prefaces to amend; if it is extensive, it repeals and re-enacts it."

228. Similarly, this Hon'ble Court in ***Dr. Jaya Thakur and Ors. v. Union of India and Anr.*, (2024) 9 SCC 538**, [Para 10, 12, 13, 14, 20], held as under:

> "**10.** We would not, at this stage, go into the depth and details of the challenge to the vires of Section 7(1) of the 2023 Act. The judgment in Anoop Baranwal [Anoop Baranwal v. Union of India (Election Commission Appointments), (2023) 6 SCC 161] notices the appointments of the CEC and ECs made from the 1950s till 2023, [See Anoop Baranwal (Election Commission Appointments), (2023) 6 SCC 161, paras 63-72.] but this Court intervened in the absence of any legislation. Article 324(2) postulates the appointment of the CEC and ECs by the President of India in the absence of any law made by Parliament. The judgment in Anoop Baranwal [Anoop Baranwal v. Union of India (Election Commission Appointments), (2023) 6 SCC 161] records that there was a legislative vacuum as Parliament had not made any enactment as contemplated in Article 324(2). Given the unique nature of the provision and absence of an enactment, this Court had issued directions constituting the Selection Committee as a pro tem measure. This is clear from the judgment, which states that the direction shall hold good till a law is made by Parliament.
>
> **...**

12. It is well-settled position of law that in matters involving constitutionality of legislations, courts are cautious and show judicial restraint in granting interim orders. Unless the provision is ex facie unconstitutional or manifestly violates fundamental rights, the statutory provision cannot be stultified by granting an interim order [Health for Millions v. Union of India, (2014) 14 SCC 496 : (2015) 1 SCC (Cri) 422] . Stay is not ipso facto granted for mere examination or even when some cogent contention is raised. Suspension of legislation pending consideration is an exception and not the rule. The said principle keeps in mind the presumption regarding constitutionality of legislation as well as the fact that the constitutional challenge when made may or may not result in success.

13. The courts do not, unless eminently necessary to deal with the crises situation and quell disquiet, keep the statutory provision in abeyance or direct that the same be not made operational. However, it would not be appropriate to pen down all situations as sometimes even gross or egregious violation of individual Fundamental Rights may on balance of convenience warrant an interim order. The Courts strike a delicate balance to step-in in rare and exceptional cases, being mindful of the immediate need, and the consequences as to not cause confusion and disarray.

14. The applicant petitioners urge that this Court may by an interim order direct fresh selection with the CJI as a member of the Selection Committee. This would be plainly impermissible, without declaring Section 7(1) as unconstitutional. Further, we would be enacting or writing a new law replacing or modifying Section 7(1) of the Act, as enacted by Parliament, if such a contention were accepted.

15. Moreover, any interjection or stay by this Court will be highly inappropriate and improper as it would disturb the 18th General Election for the Lok Sabha which has been scheduled and is now fixed to take place from 19-4-2024 till 1-6-2024. Balance of convenience, apart from prima facie case and irreparable injury, is one of the considerations which the Court must keep in mind while considering any application for grant of stay or injunction. Interlocutory remedy is normally intended to preserve status quo unless there are exceptional circumstances which tilt the scales and balance of convenience on account of any resultant injury. In our opinion, grant of stay would lead to uncertainty and confusion, if not chaos. That apart, even when the matter had come up earlier and the applications for stay were pressed, we had refused to grant stay.

...

> **20.** Having regard to the aforesaid position, we are not inclined to accept the prayer for grant of stay. Accordingly, the applications seeking stay are dismissed. We would clarify that the observations in this order are tentative and are not to be treated as final and binding, as the matter is sub judice."

229. It is submitted that therefore, when the Legislature has acted and enacted a law, which is to be presumed to be constitutional, replacing the regime so established would be impermissible. It is submitted that the said exercise either at an interim stage or at the final stage would be impermissible. Any order in the nature of one sought by the Petitioners, would amount to a stay of the Amendment Act, validly passed by the Parliament at an interim state, which is an exercise impermissible within the confines of judicial review envisaged under the Constitution. It is submitted that there is no case made out for interim relief and the prayers of the petitioners in that regard deserve to be rejected.

230. It is submitted that by removing major legal issues, the Amendment Act reaffirms that identification, classification, and regulation of waqf property must be subject to legal standards and judicial oversight. It is submitted that the legislative design of the Waqf (Amendment) Act, 2025 ensures that no person is denied access to courts, and that the decisions affecting property rights, religious freedom, and public charity are made within the bounds of fairness and legality. It is submitted that through these changes, the Amendment Act brings judicial accountability, transparency, and fairness.

231. It is submitted that, in light of the above, the Waqf (Amendment) Act, 2025 clearly stands on firm constitutional ground and does not violate any provisions of Part III. It is submitted that the Act respects the essential religious practices of the Muslim community by leaving matters of faith and worship untouched, while legitimately regulating the secular, administrative facets of *waqf* management as authorised by the Constitution. It is submitted that the reforms introduced serve compelling objectives of transparency,

accountability, social welfare, and inclusive governance, which are in harmony with the values of the Constitution and the public interest.

232. It is submitted that the Parliament has acted within its domain to ensure that religious endowments like *waqf* are managed in a manner that upholds the trust reposed in them by the faithful and the society at large, without trespassing on religious autonomy. It is submitted that therefore, the Waqf (Amendment) Act, 2025 is a valid and lawful exercise of legislative power, one that strengthens the institution of *waqf* and aligns it with constitutional principles, and facilitates the wholesome realisation of *waqfs* in the contemporary era.

233. It is submitted that the present limited affidavit is bona fide and in the interest of justice.

DEPONENT

शेरशा सी. शैख मोहिद्दीन / Shersha C. Shaik Mohiddin
संयुक्त सचिव / Joint Secretary
अल्पसंख्यक कार्य मंत्रालय
Ministry of Minority Affairs
भारत सरकार / Government of India
नई दिल्ली / New Delhi

VERIFICATION

Verified at New Delhi on this 24th day of April, 2025 that the contents of the above Affidavit are correct and true to the best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT

शेरशा सी. शैख मोहिद्दीन / Shersha C. Shaik Mohiddin
संयुक्त सचिव / Joint Secretary
अल्पसंख्यक कार्य मंत्रालय
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NOTARY GOVERNMENT OF INDIA SUDHIR MITTAL NOTARY PUBLIC NEW DELHI REG.No.756 NOTARIAL

Solemnly Affirmed/Sworn before Me

Notary Public, New Delhi, India

24 APR 2025

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