

# WAKF BOARDS IN INDIA: A CRITIQUE OF ITS WORKING AND ITS POLITICIZATION

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## INTRODUCTION

Since the birth of our country, our Constitution has advocated equal religious freedom to all, and in 1976, with the Forty Second Amendment, we constitutionally asserted that we were “secular”. The Islamic Faith, like its counterparts, abides by its own regulations and beliefs, encompassed by The Muslim Personal Law Application Act, 1937 and The Wakf Act<sup>1</sup> (addressed as “The Act” hereon) that deals with gifts and management of religious endowments made in the name of God. It would be fair to say that the working of such a board might not be as black and white, as one may assume. More often than not, we observe religious institutions injected with political agendas and socio-political circumstances, thereby, tainting the carrying out of their religious duties, the very essence of the inception of these institutions. In this essay, I will speak about the historical interpretations of the Wakf and its early exploitations using British jurisprudence, the disruption and dilution of religious duties and functions of the board; especially of the *imams and mutawallis* due to political deviations, the internal inefficiencies of the board due to the infusion of socio-political and economic elements, and finally a futuristic analysis and recommendations on how to *democratize* and develop the Wakf boards in India through due process. This essay will highlight the three conflicts that attempt to deconstruct the transition and legal position of the Wakf board in the realms of personal law and legal jurisprudence, i.e. a) the historical conflict b) the functions conflict and c) the legal conflict.

## THE HISTORICAL CONFLICT – FIRST SIGNS OF POLITICAL INTERVENTION AND THE “MODERN JUDICIAL RIGOUR”

Wakf, in simple terms, was defined by A. Majid, literally as “detention or tying up” but more appropriately upon the inquiry of Arabic scholars as “appropriation (of property) or settlement.”<sup>ii</sup> It was believed to be the employed property of God which ought to be used for the benefit of the poor and for the purposes of public utility, which meant the appropriation of the specific property is now in the name of God and effectively ‘under his mercy’. The “advantage (of said property) thereof will be applied to charitable purposes and other good objects”. While the Religious Endowments Act, 1863 provided the leeway for the British administration to control the adjudication of charitable endowments, they still depended on the scriptures and existing interpretations to truly understand the intricacies of the Wakf deeds and their validity. To understand the current socio-political leaning of Wakf Boards in India, it is important to deconstruct the mentalities and mechanisms it adopted at the time of its inception. Ehtesham Unnid spoke about the legal jurors and Muslim scholar’s early struggles with striking a balance between the use of Wakf property for charitable purposes or for the personal use of the grantor’s family.<sup>iii</sup> Justice Ameer Ali interpreted the meaning of Wakf and *sadaaqa* in a more expansive and substantive sense, as a gift with the objective of pleasing the almighty, and to provide for one’s parents and kin. At this juncture, it was important for the British administration and learned scholars to ascertain whether the devolvement of such property to both one’s family and to the poor warranted the same sanctity and moral compass when compared to property solely endowed for the purpose of charity. Hobhouse and Justice Kemp first attempted to answer the question of whether any endowment that is not granted for charitable purposes in an absolute sense, qualifies to be a Wakf property. Justice Branson believed Islamic charity was not to be observed in a limited sense as most British courts interpreted Mohammedan Law, and that the personal law never made a true distinction between endowments for personal and charitable use. A *Wakf* could be used for familial use until its “ultimate trust for the poor” was satisfied, and that a mere “aggrandisement of the family estate” argument to make the property inalienable was invalid from a juristic sense. However, this interpretation in turn provided a route to legalize the movement of property from a generation to their unborn successors using ‘the veil’ that the Wakf board provides, failing to achieve its true objective that lies in ameliorating the livelihoods of the misfortunate and poor,

observing the first hints of political intersection in the Sharia interpretations. The famous Shuk Lal Poddar vs *Bikani Mia*'s case<sup>iv</sup> judgement stated that such an interpretation of the law enabled the donor to give with one hand and take back from the other, and protected the donor families' enjoyment of estate free from liability, without any desire to benefit the poor, sugar-coated with empty promises, embodying the amalgamation of religious text with "modern judicial rigour". In cases such as *Mohamed Housuf vs Tamil Nadu Wakf Board*<sup>v</sup>, this interpretation was misused as the petitioners claimed that the Wakf property in question was a private Wakf and that the tribunal's jurisdiction was restricted to charitable Wakfs, to which the court ruled that section 36(a) of the Wakf Act was mandatory to adhere to and that the Wakf board was the "controlling authority of all Wakfs in a State".

## **THE FUNCTIONS CONFLICT: IMAMS AND MUTAWALLIS AND THEIR POLITICAL DEVIATION FROM ESTABLISHED RELIGIOUS DUTY**

Fast-forwarding time, the influence of political agenda has immersed into the Islamic dialogue multiple-fold. Religious laws and the institutions governing it are now submerged in the realms of satisfying political motives and in turn mitigating their main purposes of the maintenance and regulation of religious endowment. Modern day Imams have observed pay-cuts, inhospitable shelters, and truncated benefits that the constitution and the deed promised them in exchange for performing principle functions of leading the prayers in the mosques, that are governed by the Act. Under Muslim personal law, Imams and Mutawallis are religious priests and managers of property who perform the essential duty of the congregation of prayer and maintenance and management of these charitable endowments. The first signs of political deviation were first observed by the ill-treatments of these individuals and their forced transition from a religious congregator to a political intermediary. In the *All India Imam Organisation vs Union of India and Ors 1993* case<sup>vi</sup>, it was ruled that under Sections 15 and 36 of the Act, the Imams were justified in receiving higher remunerations and the their right to live with human dignity promised in Article 21 cannot simply be overshadowed by the fact that they are performing these religious duties on a voluntary and honorary basis. The court rejected the argument that the Boards across India would not be able to entail the expenditures of paying

all their imams as one's financial capability cannot trump its duty to perform fundamental rights. This judgement threw light upon the Board's active detachment and refusal from taking responsibility of the undertakings and maintenance of these properties and the employees within its ambit. It would not be far from the truth to say that the alleged financial inability claimed by these boards was all but a political farce to manipulate and conceal the excessive political intervention and exploitation of these Wakf Boards at the time to influence elections and governmental policy in the late 20<sup>th</sup> century. In 1996, the indulgence of the Congress Party in the policy and governing of these Wakf Boards began to heighten trying to make religious matters "a State concern."<sup>vii</sup> The misconceptions of the party that Imams controlled the narrative and mindsets of Muslims drove them to push for increase in salaries for these priests which would, in turn, enable the Muslim masses, that were identified to be a very important demographic to 'attain' from an election stand-point, to be incentivized to vote back the Congress party in the upcoming Lok Sabha elections using the guise of religious inclusivity and tolerance. The board incurred several monetary deficits in lieu of maintenance of property and employees and their livelihoods further deteriorated as their improved salaries would result in a cost of 400 crores which was, at the time, an unrealistic demand to be fulfilled by the government and the board. This situation created a dichotomy of circumstance: Whether the boards ought to depend on government intervention for financial aid in exchange of furtherance of their political agendas or if the two entities were to remain independent of each other and not create a muddled infusion between the religious and public spheres.

## **THE LEGAL AND POLITICAL CONFLICT: THE POLITICIZED WAKF AND ITS LEGAL IMPLICATIONS**

The circumstances at hand began to work itself towards the conclusion that these funds slowly started being pocketed by the *mutawallis* and the party members who started encroaching Wakf lands for private use and personal profit maximisation.<sup>viii</sup> Unregistered Wakf properties in India have crossed the 400,000 mark, wherein about as many as 13000 just in Andhra Pradesh, according to a survey taken in 2003.<sup>ix</sup> These encroachments made by private and governmental entities materialize in two forms: a) "absolute usurpation of property" taking absolute claim of the Wakf land and providing no legal or monetary relief to the actual owners and b) tenants

who have occupied these properties via intergenerational transfer paying unaltered rents from the times of initial occupation. According to a survey in 2014, almost 70% of the Wakf lands in Delhi were illegally occupied and encroached by the State or State-protected emboldened private encroachers that render these Wakf bodies helpless and “toothless” due to the inability to afford adequate legal representation. The question of encroachment and governmental indifference towards the Wakf council and the maintenance of its property represents the second issue this paper attempts to deconstruct: the systemic corruption and “daylight robbery” of the Wakf Board by state-protected institutions and the misuse of decade-old Wakf endowments for personal gains rather than its use for alleviation of the underprivileged and poverty-struck Muslims all over India. Few of the examples of such misappropriated lands include the famous Jawaharlal Nehru Stadium, Delhi Court, Mukesh Ambani’s 27-storied house on Attamont Road and the famous Windsor Manor Hotel worth almost Rs.600 crores that were originally wakf lands and have been leased out for values as less as Rs.12000/pm.<sup>x</sup> Generally, in cases like this where the legal-council of these boards would have to go against highly proficient and educated lawyers, their legal acumen fails them as the contributions these boards receive under Section 72 of the Act from the mutawallis and Wakf revenues are usually below Rs. 5000. Due to these planning-deficits and “overall stagnation” of Wakf properties in terms of revenue, the Wakf property fails to elevate these Muslims from their situation of “abject poverty”. This terrible inefficiency of these Wakf lands is represented by comparing its annual income which is Rs. 165 crores to its total property value that lies north of Rs. 1.2 lakh crore. These inefficiencies and mismanagements can be directly linked to the entrenched permutation of religion and politics. In 1975, one of the most infamous incidents of political exploitation of the Wakf board came into being when a mob of over 100 people attacked police stations and set fire to a few shops around the Jama Masjid in Delhi when the Wakf Board refused to accept Syed Abdullah Bukhari, the Imam at the time, as the true successor, due to his “anti-Congress” and “anti-government” sentiments.<sup>xi</sup> The Delhi Wakf Board refused to accept the congregation of the mosque’s prayers to be led by a man who did not support the message of the Congress as they feared he would incite hatred towards the party amongst the local Muslims. The imam advocated for reorganization of the maintenance of the mosque and that it should be devoid of such governmental intervention ruining the sanctity of the mosque, due to extensive “political machination.” This incident led to a nation-wide exposé underlining the influence of “advocates of The Establishment” and not true Islamic representatives who

wanted to support the community. The inclusion of party members began to become “political patronage”, forever making these boards a political catalyst and no longer a socio-political tool for charitable enterprise and poverty alleviation.

## **A FUTURISTIC ANALYSIS: THE SECULARISM DISCOURSE OF FAMILY LAW IN INDIA**

It would be a fair inference to make if we were to say political elites and the government-favoured nominated members of the Wakf board are not analogous to the “views, expressions and ideas of Muslim communities in India.”<sup>xii</sup> Using the landmark disputes regarding the ownership of the Taj Mahal as a Wakf property, it is essential to analyse the position of Wakf Boards in the socio-political “discourse of secularism” and whether the Wakf councils have to prioritize personal law in legal conflicts of religion with other issues of public importance. Under Section 2 and 40 of The Act, the Wakf board claimed the Taj Mahal came under the Wakf jurisdiction citing the *Muhammad Shah Zafar vs Fasiuddin Ansari* case that established all mosques and places of worship came under The Act. However, Historian Irfan Habib argues that protected monuments and monuments of national importance should not come under the purview of The Act, embodying the idea of separation between “religious activities and national conservation.” There are two ways we can look at this conflict of personal law and civil law: interpret laws in a more substantive manner by which they are not restrictive and anti-religious and subsequently reconstructing a “practical harmony” by which personal laws are able to serve its religious functions without exceeding its legal jurisdiction. To ensure such a framework, by the current nomination of Parliamentary stooges and certain accommodating candidates to the boards of the Wakf, they lose their sanctity of “community institutions”, further straining the link between Muslim politics for the furtherance of civil rights and these Wakf boards.

The question remains this: What legal and social alterations can be made in the functioning of these Wakf boards to qualify them to achieve the objectives of charity, congregation and fair and unprejudiced dispute resolution. Certain clauses of the Act exude extra-judicial powers and conferred “wide powers upon the tribunals”, established under the *M. Liakath Ali vs The Tamil Nadu Wakf Board 2009*<sup>xiii</sup> case that dealt with section 65 from which certain interpretations

would dictate that it allowed the Wakf board to take away properties with bare-minimum notice exercising certain arbitrary motives. Such powers can be used to encroach upon and take away properties from fulfilment of its purpose of endowment and replace its administration by the board under Section 67 of The Act allowing them to appoint a new committee and frame convenient schemes under Section 69. Consequently, the availability of remedy under Section 83(2) provides a certain legal leeway for these Wakf boards to restrict the jurisdiction of Civil Courts to its least extent, by claiming the takeovers of these wakfs were within its jurisdiction, allowing for these entities to engage in inconsequential barter for financial gains. One solution to curtail this could be to create a heightened sense of legal scrutiny over these administrative take-overs, incorporating greater checks and balances upon the institution and more legal remedies for the aggrieved individual.

One more of the main reasons of the dilution of Islamic conscience in the working of these boards can be linked to the “nominal representation” of mutawallis in the Wakf council to look over the governing of these properties. In the *Association of A.P. Sajjada Nasheens and Others vs Secretary Representing the Union of India* case<sup>xiv</sup>, the court ruled that Section 14(i)(b) of the Act was violative of Article 14 of the Constitution and that the incessant need to appoint members of the parliament rather than adequate representation from within the Muslim community by the Mutawallis was furthering the promotion of “Commercial Complexes that destroyed the sanctity and essence of the Wakf.” Justice Ghulam Mohammed stated that in a country that has upheld the realms of adult franchise conducting elections for over a billion people, to argue that it is not practical to mobilize and elect mutawallis into the boards, to give all wakfs a fair voice on the administrative front would be violative of the fundamental right to equality. To ensure a more transparent and reflective governance of the Wakf boards in India, it is essential to absolve all facets of red-tapism against propagators of the faith by discriminating between the rich and the poor mutawallis. The incorporation of these “experienced and eminent” individuals into the representative body would create a more equitable and efficient organisation that would engage in improvement of financial models and policy to better safeguard and employ the resources of the Wakfs in India. It is thereby the need of the hour to *democratize* these institutions and not *politicize* them.

There is an essential need for a transition in the management paradigm in Indian wakfs. There must be a pro-active participation of the State in conducting “Islamic seminaries” and educate

and inform the ordinary Muslim about the legalities and application of pan-nation Awqafs. Charitable and Rich bodies should arrange and partake in the funding of the poorer mosques and enable these wakfs to be equipped with the “Fiqh (jurisprudence) of wakfs” in India, while harmoniously ensuring the conformity to Shariah guidelines. The Muslim poor comprise the greater percentage of poverty-struck individuals in India, and by alleviating these individuals from their economic misfortunes by using the revenue and charitable capital from the Wakf boards in India, these developments could have a great impact on the entire Indian socio-economic ethos. In conclusion, the greatest facet of any democracy is its ability to secularise its personal law with political cohesion. It would be regressive to believe religion and law are antagonistic terms, for when they are elements that can complement each other in the pervasive and dynamic structures of today’s political climate. The surveying and organization of lost, unrecorded and unregistered Wakfs will promote the formalization of these properties and provide a certain degree of legal charisma to these Wakfs that have been subject to systemic corruption and encroachment. Furthermore, internal mismanagement through leaders and administrators who internally abuse their positions of power must be penalized and regulated through greater accountability of these boards to the public eye. Greater representation of public opinion and the democratization of Wakfs will make a small step in erasing the age-old demolition of what these bodies stood for and will ensure the right balance of dialogue and policy in the realms of religion and personal law.

## **BIBLIOGRAPHY**

1. The Wakf Act, 1995
2. Majid A, ‘Wakf as Family Settlement among the Mohammedans’ (1908) Vol. 9, No. 1 Journal of the Society of Comparative Legislation  
<https://www.jstor.org/stable/752189>
3. Ahmad EU, ‘Family Wakf: Colonial Law and Modernist Sharia’ (2010-2011) Vol. 71 Proceedings of the Indian History Congress’ <https://www.jstor.org/stable/44147543>
4. *Shuk Lal Poddar And Anr. Vs Bikani Mia (1893)* ILR 20 Cal 116
5. *A.M.S Mohammed Housuf vs Tamil Nadu Wakf Board (1997)* 2 MLJ 78



6. *All India Imam Organisation and Ors. vs Union of India* (1993) AIR 2086, SCR (3) 742
7. 'Wooing Muslim Vote' (1996) Vol. 31 No. 2/3 Economic and Political Weekly <https://www.jstor.org/stable/4403660> accessed 25th May 2020
8. Engineer A.A., 'What Have the Muslim Leaders Done?' (1978) Vol. 13 No. 24 Economic and Political Weekly <https://www.jstor.org/stable/4366719>
9. Abdullah M, 'Islamic Endowment (Waqf) in India: Towards poverty reduction of Muslims in the country' (2020) Journal of Research in Emerging Markets <http://publications.ud.ac.ae/index.php/jrems/article/view/482/153>
10. Khan I.A., 'Administration of Waqf's properties in India: Rhetoric or Realities' (2014) Proceeding of the International Conference on Masjid, Zakat and Wakf <http://conference.kuis.edu.my/i-maf/images/e-proceedings/2014/wakaf/w01-imaf-2014.pdf>
11. 'Politics of Wakf Boards' (1975) Vol. 10 No. 8 Economic and Political Weekly <https://www.jstor.org/stable/4536873>
12. Ahmed H, 'Secularising the Secular: Monumentalisation of the Taj Mahal in Postcolonial India (2013) Vol. 48, No. 50 Economic and Political Weekly <https://www.jstor.org/stable/24479048>
13. *M. Liakath Ali vs The Tamil Nadu Wakf Board* W.P. (MD) No. 9789 of 2009
14. *Association of A.P. Sajjada Nasheens and Others vs Secretary Representing the Union of India* (2009) WP Nos. of 11349 of 1996

## ENDNOTES

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<sup>i</sup> The Wakf Act, 1995

<sup>ii</sup> A. Majid, 'Wakf as Family Settlement among the Mohammedans' (1908) Vol. 9, No. 1 Journal of the Society of Comparative Legislation <https://www.jstor.org/stable/752189>

<sup>iii</sup> Sk. Ehtesham Uddin Ahmad, 'Family Wakf: Colonial Law and Modernist Sharia' (2010-2011) Vol. 71 Proceedings of the Indian History Congress' <https://www.jstor.org/stable/44147543>

<sup>iv</sup> *Shuk Lal Poddar And Anr. Vs Bikani Mia (1893)* ILR 20 Cal 116

<sup>v</sup> *A.M.S Mohammed Housuf vs Tamil Nadu Wakf Board* (1997) 2 MLJ 78

<sup>vi</sup> *All India Imam Organisation and Ors. vs Union of India* (1993) AIR 2086, SCR (3) 742

<sup>vii</sup> 'Wooing Muslim Vote' (1996) Vol. 31 No. 2/3 Economic and Political Weekly

<https://www.jstor.org/stable/4403660> accessed 25th May 2020

<sup>viii</sup> Asghar Ali Engineer, 'What Have the Muslim Leaders Done?' (1978) Vol. 13 No. 24 Economic and Political Weekly <https://www.jstor.org/stable/4366719>

<sup>ix</sup> Mohammad Abdullah, 'Islamic Endowment (Waqf) in India: Towards poverty reduction of Muslims in the country' (2020) Journal of Research in Emerging Markets

<http://publications.ud.ac.ae/index.php/jrems/article/view/482/153>

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

<sup>xi</sup> 'Politics of Wakf Boards' (1975) Vol. 10 No. 8 Economic and Political Weekly

<https://www.jstor.org/stable/4536873>

<sup>xii</sup> Hilal Ahmed, 'Secularising the Secular: Monumentalisation of the Taj Mahal in Postcolonial India (2013)

Vol. 48, No. 50 Economic and Political Weekly <https://www.jstor.org/stable/24479048>

<sup>xiii</sup> *M. Liakath Ali vs The Tamil Nadu Wakf Board* W.P. (MD) No. 9789 of 2009

<sup>xiv</sup> *Association of A.P. Sajjada Nasheens and Others vs Secretary Representing the Union of India* (2009) WP Nos. of 11349 of 1996