ISSUE BRIEF

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Waqf (Amendment) Act 2025: Another Blow by the BJP Government to India's Muslim Identity

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(Views expressed in the brief are those of the author, and do not represent those of ISSI)

Introduction

As if the so-called 'bulldozer justice' drive was not enough to dispossess the Indian Muslims of their rightful properties, the Modi-led Bharatiya Janata Party (BJP) has introduced yet another draconian legislation concerning the Waqf properties endowed for religious and charitable purposes under the Muslim Personal Law. Renaming the parent Act as *United Waqf Management, Empowerment, Efficiency, and Development Act 1995*, the legislation is ironically being referred to as *Umeed* (hope) for Muslims by some BJP leaders. However, an analysis of its text illustrates that going beyond violating the constitutional guarantees of equality, religious freedom, and the right to manage religious affairs available for the minorities in Articles 14, 15, 25, 26, and 30 of the Indian Constitution, the legislation is a fresh attempt to further disenfranchise Muslims of India apart from peeling off the Muslim identity in the country.

The Legislation: An Overview

The recent development is an amendment to the Waqf Act, 1995, of the Indian Constitution —the parent Act overseeing the administration of waqf properties across the country. Upon winning the third successive term, the BJP government had presented this Bill in August 2024. However, it was

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referred to a Joint Parliamentary Committee (JPC) after sharp criticism from Parliament and the public. The JPC cleared the Bill for further parliamentary process in January 2025 while its meetings were mostly boycotted by the members from the opposition benches. The Lok Sabha (lower house) passed the Bill with a simple majority of 288-232, while in Rajya Sabha (upper house), it secured 128-95 votes. Later, the Bill became law after the President's formal approval.[1]

The Waqf (Amendment) Act 2025 brings about several fundamental changes to the management of waqf properties across India, clipping authorities of the Central Waqf Council and State Waqf Boards, while giving the Central and State governments more powers in the administration. The Act changes the composition of waqf bodies at all levels, allowing non-Muslims to be part of them. Further, according to the legislation, non-Muslims cannot donate their properties to the Muslim waqf for any charitable purpose, while those doing the same from the Muslim community must be 'practicing Islam' for five years (this is aimed at converts to Islam). The law also clips authority of the Waqf Boards to identify and possess potential waqf properties. However, it does not provide any remedy for the waqf properties encroached by the government or private groups, as identified by the Sachar Committee.[2] In doing so, it gives powers to the district collectors to take possession of the disputed properties in government's favor. Furthermore, the Act allows for separate waqf boards for Aghakhani and Bohra communities, where applicable.

How it undermines the Constitution?

The new law goes in sheer contrast to the protections, rights, and freedoms embedded in the Indian Constitution for minorities. For instance, Article 14 stipulates that all citizens (including minorities) are treated equally before the law. Article 15 prohibits discrimination on all basis, including on grounds of religious affiliation. Article 26 guarantees religious denominations the right to establish and maintain institutions for religious and charitable purposes. In contrast, the clauses recently put in the Waqf Act 1995 clearly indicate a pattern of discrimination against the Muslim minority. All religious communities including Hindus have the leverage to administer their religious affairs and institutions according to their beliefs and customs. Muslims have been forced to include non-Muslims in the bodies overseeing their religious and welfare missions such as mosques, shrines, graveyards, educational institutions, hospitals, and other charitable properties. As per the new law,

[1] For a complete draft of the Bill, please refer to Government of India. *The Waqf (Amendment) Bill, 2024*. Bill No. 109 of 2024. New Delhi: Ministry of Minority Affairs, 2024. https://prsindia.org/billtrack/the-waqf-amendment-bill-2024

[2] Rajindar Sachar et al., "Social, Economic and Educational Status of the Muslim Community of India," *Ministry of Minority Affairs* (New Delhi, India: Ministry of Minority Affairs, Government of India, November 2006), accessed April 14, 2025, https://www.minorityaffairs.gov.in/show_content.php?lang=1&level=0&ls_id=14&lid=14.

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11 out of 22 members of the Central Waqf Council can be non-Muslims. Similarly, state Waqf Boards must include 2 non-Muslim members while their number can exceed to 7 out of 11 if the state government permits. This way, Parliament has paved the way for endless interference in the waqf affairs across the country. Ironically, while non-Muslims are now an essential part of the waqf bodies at central and state levels, they do not enjoy the freedom to donate their properties for any charitable purpose administered by Muslims.

On the other hand, the clause to bar neo-Muslims from donating their properties to waqf until they complete five years 'practicing Islam' is yet another attempt to restrict religious freedom of Muslims. It goes against the Article 25 of the Constitution that secures the right of every individual to freely profess, practice, and propagate their religion. The condition 'practicing Islam' in itself is ambiguous as even Muslims can be described as not practicing Islam at some point.

Clipping autonomous status of the waqf bodies, the legislation provides for the central and state governments and district administrations to have decisive role in certain cases. For example, properties being disputed between waqf and government cannot be used for waqf purposes until the dispute is resolved. However, district collector has the authority to occupy such properties with immediate effect and use them in government's favor. Section 40 of the 1995 Act giving authority to state Waqf Boards to inspect if a certain property historically belonged to waqf has been omitted. Alienation, purchase, or possession of a waqf property is now a bailable offence and can lead to simple imprisonment instead of the rigorous one.

Potential Implications

The waqf institution has always been an ingredient of India's Muslim identity. Even under the British rule, Muslims enjoyed full administrative control over their religious and charitable properties. The legislative measures taken after the partition were also aimed at increasing efficiency and productivity of the waqf properties. However, the latest legislation carries with itself a plethora of fears and uncertainties regarding the future of Muslim properties, no matter how well-wrapped it is in the BJP's feigned concerns for the poor and deprived Muslims.

During the parliamentary debate, it was pointed out the BJP government had already grabbed certain religious properties of other religious minorities in the past.[3] The Hindtuva-driven agenda of the BJP, which carries the burden of destruction of Babri Mosque, and the notorious 'bulldozer

[3] Ujwal Jalali, "BJP's Politics Depends on 'Pakistan, Musalman, And Khalistan': SAD MP Harsimrat," *The Tribune*, April 3, 2025, https://www.tribuneindia.com/news/punjab/bjps-politics-depends-on-pakistan-musalman-and-khalistan-sad-mp-harsimrat-badal/.

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justice' drive against Muslim socio-political workers, raises serious questions regarding the real intent behind this legislation. Although Union Home Minister Amit Shah rejected the claim of the law being implemented retrospectively, it can open up a plathora of new disputes and communal clashes keeping in view the growing claims by Hindu nationalists over historical Muslim structures.[4]

A lawmaker from the opposition benches also questioned if the BJP will come up with similar legislation to allow Muslims, or even backward Hindu classes, to be part of Hindu religious and welfare bodies.[5] The Treasury Benches preferred silence over these questions. In the absence of any such provision for other religious bodies, targeting waqf clearly aims at further institutionalizing disenfranchisement of Indian Muslims and pushing them to social margins.

Stricter government grip over waqf administration and reduced authority causes serious concerns over the future of waqf lands across the country. The saffron-robed chief minister Yogi Adityanath of Uttar Pradesh, a state with majority of the Muslim waqf properties, has already waged an aggressive war on the state's Muslim waqf. Yogi justifies his claim of 78 per cent of the waqf land being government property pointing at lacking ownership records.[6] With most of the waqf properties being centuries old, Muslims can struggle to prove ownership by producing documented records. This, in turn, will create a constant fear over historical structures that represent centuries old heritage of Muslim India.

Conclusion

The slogan of '*Jai Shri Ram*' at the Waqf Bill's passage in the Rajya Sabha was much louder than the claims made by several BJP ministers that the legislation seeks better management of waqf and well-being of poor Muslims.[7] It literally summed up the real motivation behind the legislation targeting Muslim properties. With a compromised majority in Parliament, the Modi-led BJP has been looking for ways to refurbish and consolidate its hardline Hindu nationalist support-base, for which targeting Muslim minority is a natural, oft-exploited, and most fruitful instrument. Beyond immediate political

4 "Waqf Amendment Bill Will Not Be Implemented Retrospectively, Misconceptions Being Spread for Vote Bank Politics: Amit Shah in Lok Sabha," ANI News, April 2, 2025, https://aninews.in/news/national/general-news/waqf-amendment-bill-will-not-be-implemented-retrospectively-misconceptions-being-spread-for-vote-bank-politics-amit-shah-in-lok-sabha20250402185454/.

5 Sansad TV, "RS | Sanjay Singh | the Waqf (Amendment) Bill, 2025 & the Mussalman Wakf (Repeal) Bill, 2025," April 3, 2025, https://www.youtube.com/watch?v=x9hZGH-Ylc4.

6 "Is It Waqf Board or 'Land Mafia' Board? UP CM Yogi Adityanath," *The Economic Times*, April 3, 2025, https://economictimes.indiatimes.com/news/politics-and-nation/is-it-waqf-board-or-land-mafia-board-up-cm-yogi-adityanath/articleshow/119938114.cms?from=mdr.

7 "End to Injustice, Corruption: Amit Shah Lauds Passage of Waqf Amendment Bill," ANI News, April 4, 2025, https://www.aninews.in/news/national/politics/end-to-injustice-corruption-amit-shah-lauds-passage-of-waqf-amendment-bill20250404105516/.

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goals aimed at garnering electoral dividends, the move also appears to have a deep-rooted agenda of hitting at and systematically targeting the 1000-year-old Muslim identity and heritage in India.

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