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PROPERTY MANAGEMENT VS. RELIGIOUS PRACTICE: ANALYSE CONTEMPORARY CHALLENGES OF WAQF REGULATIONS

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I. ABSTRACT

The comprehensive analysis concludes that the Waqf (Amendment) Act, 2025, which renames the principal legislation to the Unified Waqf Management, Empowerment, Efficiency, and Development Act, 1995, successfully addresses critical historical administrative and financial failings concerning Mutawalli (Waqf manager) accountability. This success is achieved through several structural mechanisms: the acceleration of removal procedures under the amended Section 64, the enforcement of stringent compliance standards, and the introduction of robust judicial review via the appellate provisions of Section 83(9). The Waqf (Amendment) Act, 2025, has introduced one of the most contentious legislative changes in the history of Islamic endowment law in India by prospectively abolishing the concept of Waqf by User (Section 4(ix)(b)). Historically recognized as a dedication based on long-standing communal use rather than formal documentation, this doctrine provided a mechanism for recognizing properties dedicated through custom. This paper conducts a constitutional analysis of this abolition, weighing the claims of infringement on religious freedom (Articles 25 and 26) against the State's justification based on administrative necessity, curbing systemic property encroachment, and promoting transparency. Judicial observations at the interim stage indicate a prima facie acceptance of the State's argument that the measure is a necessary and non-arbitrary exercise of legislative power aimed at correcting historical mismanagement and property fraud. One example cited is the disproportionate burden related to evidentiary requirements. Islamic law historically recognized the validity of oral contracts and testimonies in establishing a Waqf. However, the 2025 Act imposes stringent documentation and registration requirements, implicitly excluding traditional oral Waqfs. Critics point out that

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no such centralized or disproportionate burdens exist under the Hindu Religious and Charitable Endowments (HRCE) Acts, which govern similar charitable properties. This differential treatment, where one religious endowment is singled out for intrusive regulation and stringent documentation requirements not paralleled in other religious trusts, is alleged to breach the constitutional guarantee of equality. Petitioners contend that the 1995 Act, and its subsequent amendments, operate like "external Muslim invaders looting properties of other communities," breaching Articles 25, 26, 29, and 300A, and manifesting hostile discrimination under Articles 14 and 15. Legally, a valid waqf requires a founder who donates the ownership of the property in the name of Allah, and that property is used for poor students, mosques, and hospitals. The 3 core principles of this organization are permanence, immutability, and non-transferability. Historically, waqf has played an important role in Muslim society. Waqf represents a unique Islamic model that combines spiritual merit with long-term social capital formation. The concept of Waqf occupies a significant place in Islamic jurisprudence as a unique form of charitable endowment.

II. KEYWORDS

Waqf, Islamic Law, Religious Autonomy, Market Volatility, Legislative Amendments, Constitutional Rights

III. INTRODUCTION

The institution of Waqf, defined as the permanent dedication of movable or immovable property for a charitable, religious, or pious purpose recognized by Islamic law, represents a foundational pillar of Islamic socio-economic history. The term "Waqf" is derived from the word "Waqafa," which means to hold, to prevent, or to restrain. (Jawwad) Waqf refers to a perpetual charitable mechanism. A couple of the main objectives of the Waqf include serving charitable purposes in helping the poor, the paupers, and the indigents.

Waqif (endeavors) generally create a Waqf out of religiosity as an expression of their faith, which promises constant spiritual reward. The waqif (donor) dedicates assets, transferring ownership entirely to Allah (SWT), thereby making the property inalienable and perpetually devoted to the intended beneficiary (mawquf 'alaih). This mechanism, often rooted in the concept of Sadaqah Jariyah (continuous charity), has historically served as a sustainable, self-funding mechanism for social infrastructure, including hospitals, schools, and essential public facilities, as evidenced by extensive systems in empires like the Ottoman Caliphate.

However, the efficacy of *Waqf* in the modern global context is subject to complex legal, financial, and administrative challenges. Contemporary research must move beyond mere historical recount to rigorously interrogate how classical jurisprudential principles can adapt to modern financial instruments and how persistent governance deficits can be solved through strategic state regulation and technological innovation. Waqf played an important role in establishing a flourishing civilization that is full of moral character and rational human behaviour. It created a comprehensive scientific and cultural renaissance.

Undeniably, Waqf funds contributed to the development of education and the scientific movement in Islam. These funds were the main resource for schools, scientific centers, and libraries, which gave way to the training of many scientists, researchers, inventors, and intellectuals. Despite its inherently religious foundation, the moment of dedication initiates a complex, long-term administrative requirement. The property must be maintained, leased, accounted for, and protected by a caretaker (*mutawalli*). In the modern context, the efficacy of *Waqf* as a sustainable instrument for socio-economic development is frequently undermined by its failure to execute this administrative function effectively.

The Unified Waqf Management, Empowerment, Efficiency, and Development Act, 1995 (UWMEED Act) successfully addresses critical historical administrative and financial failings concerning Mutawalli (Waqf manager) accountability. This success is achieved through several structural mechanisms: the acceleration of removal procedures under the amended Section 64, the enforcement of stringent compliance standards, and the introduction of robust judicial review via the appellate provisions of Section 83(9). The legislative solution involves a fundamental shift of oversight authority from fragmented and often politicized communal administrative bodies (State Waqf Boards, or SWBs) toward consolidated state administrative professionalism.

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This is evidenced by the enhanced roles given to the Collector and high-ranking Chief Executive Officers (CEOs), designed to eliminate the procedural and administrative bottlenecks that historically protected mismanagement. While the efficiency of Mutawalli removal is significantly enhanced, the mechanism for Mutawalli replacement (governed implicitly by Section 66) is now heavily reliant on nominated bodies (Section 14). This approach introduces a necessary policy trade-off, balancing administrative efficiency against the traditional religious community's autonomy in selecting its spiritual and financial administrators. The 2025 Amendment constitutes a major legislative overhaul, explicitly renaming the Unified Waqf Management, Empowerment, Efficiency, and Development Act (UWMEED Act).

This renaming itself signals a profound shift in focus toward consolidated, performance-based administration. The stated aims of the Act are to overcome shortcomings of the previous acts (the 1995 Act and its 2013 amendment), enhance the efficiency of Waqf Boards, clarify definitions, streamline the registration process, and increase transparency and accountability, often utilizing technology for record management. Accompanying the amendment was the Mussalman Wakf (Repeal) Act, 2025 (Act No. 15 of 2025), which formally repealed the colonial-era Mussalman Wakf Act, 1923, effective from April 9, 2025. The stated purpose of the repeal was to eliminate inconsistencies, ambiguities, and legal contradictions resulting from the continued existence of the redundant 1923 Act, thereby ensuring uniform administration under the UWMEED Act.

Determining "The Problem" in the Historical Context of Mutawalli Management, the 2025 reforms are motivated by a century-long history of misappropriation and poor management. The Statement of Objects and Reasons from the 1923 law noted that the Muslim community was generally concerned that trustees were "wasting or systematically misappropriating" endowments. Under the guise of religious devotion, the Waqf mechanism had, in certain instances, devolved into a "clever device" to legally protect property, defeating creditors and avoiding common law.

The efficiency of Mutawalli removal under Section 64 places a corresponding administrative burden on the replacement process (governed implicitly by Section 66).

If removal is swift, the vacancy must be filled promptly and competently to prevent a vacuum that could lead to further administrative failures. [3]Hafiz Mohammad Zafar Ahmad vs UP Central Sunni Board of Waqf ruled that a mutawalli (Waqf caretaker) does not own Waqf property but only manages it. Historically, judicial procedures were described as “cumbrous,” making it exceedingly difficult for the public to institute suits to remove incompetent Mutawallis. This absence of a rapid and efficient judicial or administrative remedy created institutional inertia that consistently protected prolonged administrative failure. Furthermore, as acknowledged by the Wakf Enquiry Committee in 1976, the widespread administrative ill of purposeful wakf concealment and willful failure to record them regularly undercut financial monitoring.

A. RESEARCH OBJECTIVES

- To examine the impact of the Waqf (Amendment) Act, 2025, on the management and administration of Waqf properties in India.
- To analyze the legal, financial, and administrative reforms introduced by the 2025 amendment and their effect on Mutawalli accountability.
- To explore the constitutional implications of abolishing “Waqf by User” and its compatibility with Articles 25, 26, and 29 of the Indian Constitution.
- To assess the role of state regulation in the management of religious properties and its impact on religious autonomy.

B. RESEARCH QUESTIONS

- How does the Waqf (Amendment) Act, 2025, alter the administration and financial management of Waqf properties in India?
- What are the constitutional challenges posed by the abolition of “Waqf by User,” and how does it impact religious freedom?
- To what extent do the reforms introduced by the 2025 amendment address historical mismanagement of Waqf properties?

[3] Hafiz Mohammad Zafar Ahmad vs UP Central Sunni Board of Waqf AIR 1965 ALLAHABAD 333

- How do the new regulatory provisions in the amendment affect the autonomy of religious communities in managing their Waqf properties?

C. RESEARCH METHODOLOGY

The research adopts a mixed-methods approach, combining qualitative and quantitative methodologies. Quantitative analysis will involve examining legal documents, such as the Waqf (Amendment) Act, 2025, and historical data on Waqf property management to assess the impact of legal reforms. Qualitative analysis will include case studies of landmark Waqf-related cases and interviews with legal experts, Waqf Board officials, and religious leaders to gather insights into the practical implications of the amendments. Additionally, surveys will be conducted to gauge the perceptions of stakeholders on the effects of the new regulations on religious freedoms and property management. This approach allows for a comprehensive understanding of the legal, social, and constitutional challenges surrounding the Waqf reforms.

IV. THE CONFLICT OVER AUTONOMY

The Indian Waqf (Amendment) Act, 2025, represents a contemporary example of a state attempting to address corruption and lack of transparency through sweeping legal changes. While the government justifies these changes as promoting institutional transparency (e.g., mandatory digitization of records) and preventing unlawful claims (e.g., abolishing the 'waqf-by-user' doctrine), several provisions challenge the traditional religious autonomy granted to *Waqf* institutions.

The most significant area of challenge is the perception that the new provisions dilute the religious and constitutional autonomy of Waqf bodies, which are entrusted to the community for self-governance. Senior Advocate Kapil Sibal argued that the amendment was a “parliamentary usurpation of the faith of 200 million persons.” Further, he submitted that the abolition of ‘waqf by user’ would mean that deeds would need to be furnished for properties that are over 300 years old. The Supreme Court dealt with a batch of Writ Petitions challenging the constitutional validity of the UWMEED Act, 2025.

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The petitioners argued that various sections of the Act were *ultra vires* the Constitution, violating Articles 14, 15, 19, 21, 25, 26, 29, 30, and 300A. While the Court rejected the prayer to stay the entire statute, it issued specific interim directions to balance the equities and protect the interests of all parties pending final hearing. Petitioners challenged the deletion of "Waqf by User" provisions, arguing that requiring registration for existing waqfs and removing the "by user" recognition adversely affects long-standing religious properties.

Government Property (Section 3C)- It was argued that Section 3C is arbitrary as it allows a Collector (an executive officer) to decide if a property is Government property, potentially stripping Waqf status without judicial process. They contested amendments to Sections 9, 14, and 23, which allow non-Muslims in the Central Waqf Council and State Waqf Boards, arguing this interferes with religious management and also challenged the new definition of "Waqf" requiring a dedicator to demonstrate they have practiced Islam for at least five years, calling it discriminatory.

The Court applied the principle that statutes are presumed constitutional and stays are granted only in rare cases of manifest arbitrariness or lack of legislative competence. The Court declined to stay the Act in its entirety but found prima facie issues with specific provisions, such as

- **Practice of Islam (5 Years) Stayed:** The requirement in Section 3(r) for a person to show they have practiced Islam for at least five years is stayed until the State Government frames rules determining how this is proven.
- **Government Property Inquiry (Section 3C) Partially Stayed:** The proviso to Section 3C(2) (treating property as non-waqf pending report) and Sub-sections (3) & (4) (automatic correction of revenue records based on Collector's report) are stayed.
- **Status of Property during Inquiry Status Quo:** Until the Waqf Tribunal finally decides the title under Section 83, the Waqf cannot be dispossessed, nor can revenue records be changed. However, no third-party rights can be created on such property during the inquiry.

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While declining to stay Section 23, the Court directed that an endeavor should be made to appoint a CEO from the Muslim community. One of the most legally significant aspects of this order is the Court's treatment of Section 3C (regarding Government property disputes). The Court identified a violation of the separation of powers doctrine. The Act empowered a Collector (an executive officer) to determine if a property belongs to the Government. And it empowers the State Government to designate an officer (above the rank of Collector) to conduct an inquiry and determine whether disputed property is, in fact, "Government property".

This provision shifts the authority for settling initial property disputes from specialized Waqf bodies and tribunals to the executive branch. The Act originally included provisions that would automatically exclude the property from being treated as Waqf property during the inquiry and mandate immediate correction of revenue records based on the executive officer's report. This was criticized as arbitrarily changing property status without judicial determination. During the interim hearing, the Supreme Court addressed this contention by issuing a directive that capped the number of non-Muslim members in the CWC at four and in the SWB at three. Furthermore, the Court directed that the Boards must "strive to ensure" that the ex officio chairperson belongs to the Muslim community.

This judicial intervention, despite the government's claim of purely secular functions, implicitly recognizes that the management of vast religious assets—including resource allocation to pious causes—contains both secular (administrative) and religious (denominational) components. The Court's decision to limit external influence validates the argument that the identity of the administrators is inextricably linked to the religious denomination's fundamental right to manage its own affairs, thereby preventing the administrative structures from losing their essential denominational character. The Central Government explicitly argued before the Supreme Court that the creation of a Waqf is not an essential religious practice of Islam. The Centre submitted that Waqf is fundamentally "charity," which is a part of every religion, but not an essential religious practice of any religion. If a Muslim chooses not to create a Waqf, they would not be considered less Muslim.

By classifying the functions of the Waqf Boards and the act of dedication as largely secular or non-essential religious practices, the government sought to justify increased regulatory control under Article 25(2)(a), which permits the state to regulate secular activities associated with religious practice. One example cited is the disproportionate burden related to evidentiary requirements. Islamic law historically recognized the validity of oral contracts and testimonies in establishing a Waqf. However, the 2025 Act imposes stringent documentation and registration requirements, implicitly excluding traditional oral Waqfs. No such centralized or disproportionate burdens exist under the Hindu Religious and Charitable Endowments (HRCE) Acts, which govern similar charitable properties.

This differential treatment, where one religious endowment is singled out for intrusive regulation and stringent documentation requirements not paralleled in other religious trusts, is alleged to breach the constitutional guarantee of equality. Petitioners contend that the 1995 Act, and its subsequent amendments, operate like "external Muslim invaders looting properties of other communities", breaching Articles 25, 26, 29, and 300A, and manifesting hostile discrimination under Articles 14 and 15.

In essence, the conflict over autonomy pits the state's legitimate policy goal of enhancing transparency and fighting historical mismanagement against the community's demand that internal, religious institutions be governed by members of the community without disproportionate external control. The 2025 Amendment repealed Section 107 of the 1995 Act, which had previously provided an exemption, making the Limitation Act, 1963, applicable to claims or interests concerning Waqf immovable property.

The constitutional challenge against this repeal argued that reintroducing the Limitation Act severely hampers the ability of Waqf Boards to reclaim properties lost to encroachment. Without the exemption, individuals who have illegally occupied Waqf land for over 12 years could potentially claim ownership through adverse possession, effectively legitimizing encroachment and weakening the protection of

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community assets. Petitioners thus argued that this imposed a detrimental restriction and a discriminatory burden.

V. ITS CONSTITUTIONALITY

The Waqf Amendment was passed following intense parliamentary debate, including over 12 hours in the Lok Sabha and 14 hours in the Rajya Sabha. The Act was renamed the Unified Waqf Management, Empowerment, Efficiency, and Development Act, 2025 (UWMEED Act). This shift in nomenclature, emphasizing "Efficiency" and "Development", signifies a legislative intent to transition Waqf administration from a system primarily guided by principles of religious autonomy to one prioritizing state-mandated governance, efficiency, and strict property accountability. This underlying policy shift immediately generates constitutional conflicts concerning the extent of permissible state regulation of religious institutions under Articles 25 and 26.

The constitutional authority for the Parliament to legislate on Waqf matters derives primarily from Entry 28 of List III (Concurrent List) of the Seventh Schedule, which covers "Charities and charitable institutions, charitable and religious endowments and religious institutions". Since this subject falls under the Concurrent List, both the Union Parliament and State Legislatures possess the power to enact laws. In the event of a conflict between a central law and a state law, the central law prevails, subject to certain conditions under Article 254 of the Constitution.

The doctrine of the basic structure, propounded by the Supreme Court in the landmark case of [4]Kesavananda Bharati v. State of Kerala holds that Parliament cannot amend the Constitution to alter its basic features. Secularism is unequivocally recognized as a basic feature of the Indian Constitution. The new amendment creates an unprecedented level of entanglement between the state and the administration of a specific religious community's endowments. By placing the levers of control in the hands of the central government, the law effectively makes the state the primary manager of Muslim religious properties. This, the petitioners will argue, destroys the

[4] Kesavananda Bharati Sripadagalvaru and Ors vs, State of Kerela, AIR 1973 SUPREME COURT 1461

neutrality of the state and constitutes a direct assault on the secular character of the polity.

Article 14 ensures that all individuals are treated equally under the law and receive equal legal protection. A law may be contested under Article 14 if it is unreasonable or establishes a classification that lacks a logical connection to the intended goal. [5]Syed Fazal Pookoya Thangal vs Union of India (Kerala High Court, 1993) – Clarified that the Waqf Board is a government-regulated body, not a religious representative. The alteration may be contested based on claims of capriciousness and adverse bias.

The extensive authority given to the CWC and the central government, including the ability to override a State Waqf Board on ambiguous bases like "public interest," can be seen as arbitrary and uncontrolled, providing the executive with undue discretion without sufficient regulations. A significant issue would be that the amendment targets the Muslim community for a distinct and invasive type of government oversight regarding its religious assets. There is no comparable centralized government-regulated system for Hindu temples (mostly governed by state-specific laws) or Christian churches.

This targeted and thorough intervention in the oversight of solely Muslim religious properties could be seen as a type of antagonistic discrimination, breaching the assurance of equal treatment. The state might argue that waqfs, given their distinct characteristics as everlasting endowments and their large scope, necessitate a special approach, but it will need to prove that the differing treatment is justifiable and not prejudiced. [6]Tilkayat Shri Govindlalji Maharaj vs State of Rajasthan declared that managing temple properties is a secular duty, a principle that also applies to Waqf properties. Historically, the Waqf Act, 1995, recognized three ways a property could be formally established as a Waqf.

- **Declaration:** A formal deed by the owner.
- **Endowment:** Such as a *waqf-alal-aulad* (for family members).

[5] Syed Fazal Pookoya Thangal vs Union Of India, AIR 1993 KERALA 308
[6] Tilkayat Shri Govindlalji Maharaj vs State of Rajasthan 1963 AIR 1638

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- **Waqf by User:** This doctrine allowed property to be recognized as Waqf solely based on its long-term communal use for pious, religious, or charitable purposes, even without formal documentation or declaration by the original owner.

The Unified Waqf Management, Empowerment, Efficiency, and Development Act, 2025, which amended the 1995 Act, explicitly removed the concept of "Waqf by User" for the creation of future Waqf properties. The abolition of *Waqf by User* via Section 4(ix)(b) was immediately challenged as a violation of constitutional rights, asserting an arbitrary interference with religious affairs and a wholesale takeover of community assets. This measure infringes upon the rights guaranteed under Articles 25 (freedom of conscience and free profession of religion) and 26 (freedom to manage religious affairs) of the Constitution, viewing the statutory bar as a direct attack on the tenets of Islamic law. The challenge contended that by making formal deed execution compulsory, Section 36(1A) and removing recognition of customary dedication, the Act contradicts religious custom.

This legislative change was a direct consequence of a policy decision to ensure strict property accountability and reinforce the foundational legal principle that only the owner of a property can dedicate it. The concept of *Waqf by User* has deep roots, for instance, in the [7]*Ram Janmabhumi Temple Case*. The original Waqf Act, 1995, explicitly included it in its definition of *Waqf*, and notably stipulated that such a *Waqf* would not cease to be an endowment merely because the user had ceased.

The primary justification presented was that the concept of *Waqf by User* had been widely and systematically misused to encroach upon vast tracts of government and public property, citing cases where Waqf Boards had made claims over thousands of acres of State land. The state argued that the deletion of the doctrine is essential "to curb the practice of encroachment of Government properties on the pretext of them being Waqf property." It is a cautious, interim holding pattern designed to prevent

[7] M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors, Civil Appeal Nos 10866-10867 of 2010

irreversible changes on the ground while the deeper constitutional questions are debated.

VI. CONCLUSION

Any analysis of the constitutionality of a legislative enactment in India must begin with the principle established by the Supreme Court that there is a strong presumption of constitutionality in favour of the statute. Dating back to judgments like [8]*Charanjit Lal Chowdhury v. Union of India*, the burden rests squarely on the petitioner challenging the law to demonstrate its invalidity. The standard for granting interim relief, such as staying the operation of a law pending final adjudication, is exceptionally high. Such relief is reserved for "rare and exceptional cases" where the legislative body is found to lack competence, or where the provisions are *ex facie* in violation of Part III of the Constitution (Fundamental Rights), or are deemed "manifestly arbitrary".

This judicial posture influences the Supreme Court's selective approach to the numerous challenges raised against the 2025 Amendment. Waqf is one of the most meaningful institutions in Muslim law, created to serve humanity across generations. It represents a permanent dedication of property for religious, charitable, or public welfare purposes, ensuring that the benefits of one person's generosity continue long after their lifetime. What makes waqf unique is its unchangeable nature. Once property is given as waqf, it cannot be sold, gifted, or inherited, and is instead preserved for the community's use forever. [9]

The Board cannot assume jurisdiction unless the property is properly established to be a waqf. Throughout history, waqf has played a major role in supporting education, maintaining mosques, funding hospitals, helping the poor, and developing public facilities. Even today, in many countries, waqf continues to act as an important source of social and economic support, filling gaps in public welfare systems and promoting community development. In essence, waqf is not just a legal concept but a tradition of compassion and long-term service to society, reminding us that true charity is the kind that continues to benefit people long after it is given.

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[8] Charanjit Lal Chowdhury v. Union of India, 1950 SCR 869
[9] The Bihar State Sunniwaqf board vs Shamshad Rahman & Ors (2010) 8 SCC 726

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The 2025 Amendment Act has triggered significant concerns regarding the balance of power within the federal structure. Legal commentators argue that the Act expands the Union's control to a degree that potentially exceeds the scope of concurrent authority, amounting to an operational overreach that usurps State autonomy. One key change involves the centralization of oversight: while the previous Act allowed the State government to have Waqf accounts audited, the 2025 Amendment empowers the Central Government to mandate audits of Waqf accounts by the Comptroller and Auditor General (CAG) or a designated officer.

The argument is that the Union's imposition of supervisory control over State Waqf Boards, through mechanisms like centralized audits, directives, or potential dismissal of State-appointed functionaries, transforms the regulatory role into one of unitary command. These challenges established precedents on federal relations, such as [10]*State of West Bengal v. Union of India,* which affirmed the States' autonomy in managing local endowments. The constitutional validity of the Act currently rests on a dual judicial strategy: upholding the legislative intent where it aligns with general law and intervening decisively where state action becomes arbitrary.

Ultimately, the most profound constitutional challenge lies not in the regulation itself, but in the targeted nature of the legislation. The UWMEED Act imposes unique burdens—such as centralized Union oversight via CAG audits, mandatory inclusion of non-Muslim members, and highly prescriptive rules for property cessation—solely upon Muslim religious trusts. The ongoing judicial scrutiny will therefore not only determine the internal administrative structure of Waqf boards but will also define the outer constitutional limits of the state's power to manage the "secular aspects" of religious life without infringing upon the fundamental guarantee of equality and religious autonomy.

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