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An Analysis Of The Waqf Act 1995 Evolution, Implimentation And Impact On Waqf Administration In India

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Abstract

The institution of Waqf has played a pivotal role in Islamic charitable traditions, acting as a foundation for social, religious, and educational welfare. In India, waqf properties constitute a significant share of religious endowments, governed by a series of legislations culminating in the Waqf Act, 1995, and its amendments. This research paper provides a comprehensive analysis of the historical evolution of waqf, legislative developments, judicial pronouncements, and constitutional issues, while addressing contemporary challenges such as corruption, encroachment, and lack of digitization. Comparative insights from Turkey, Malaysia, and Pakistan are incorporated, followed by recommendations for modernization and governance reforms.

Keywords: Waqf, Islamic Law, Waqf Act, Minority Rights, Constitutional Law, Governance.

1. Introduction

Waqf, in Islamic jurisprudence, refers to the permanent dedication of property for religious or charitable purposes. The concept evolved as an important social and economic institution ensuring the continuity of charitable services within the Muslim community. In India, waqf administration represents a delicate intersection of religious autonomy, state regulation, and constitutional mandates. While the Waqf Act, 1995, provides a comprehensive legal framework, practical challenges such as mismanagement, corruption, and encroachments continue to undermine its objectives.

2. Historical Evolution of Waqf

The origins of waqf can be traced back to the era of Prophet Muhammad, where individuals dedicated property for charitable causes like mosques and public welfare. The institution of waqf spread to India during the Delhi Sultanate and attained prominence under Mughal rulers, who granted large tracts of land for religious and social purposes.

Under British colonial rule, waqf faced legal uncertainties as English trust law conflicted with Islamic jurisprudence. The landmark case *Abdul Fata Mahomed Ishak v. Russomoy Dhur Chowdhury* (1894) invalidated family waqfs, considering them void due to the perpetuity of benefits. This led to the enactment of the **Mussalman Waqf Validating Act, 1913**, restoring the legality of family waqfs.

3. Legislative Evolution of Waqf in India

3.1 Mussalman Waqf Validating Act, 1913

- Restored validity of waqf-alal-aulad (family waqf).

3.2 Waqf Act, 1954

- Established State Waqf Boards for management and regulation.

3.3 Waqf Act, 1995

- Introduced mandatory registration, property survey, and Waqf Tribunals for dispute resolution.

3.4 Waqf (Amendment) Act, 2013

- Strengthened penal provisions, mandated digitization, and introduced transparency measures.

4. Key Provisions of the Waqf Act, 1995

- **Definition of Waqf (Section 3):** Permanent dedication of property for purposes recognized by Muslim law.
- **State Waqf Boards (Section 13):** Statutory bodies responsible for management.
- **Registration (Section 36):** Mandatory registration of waqf properties.
- **Survey of Waqf (Section 4):** Identification of properties under waqf.
- **Prohibition on Alienation (Section 51):** No sale or transfer without Board approval.
- **Dispute Resolution (Sections 83–95):** Jurisdiction of Waqf Tribunals.

5. Judicial Pronouncements and Constitutional Dimensions

Indian courts have significantly shaped waqf law:

- **Abdul Fata Mahomed Ishak v. Russomoy Dhur Chowdhury (1894):** Initially invalidated family waqfs.
- **Board of Muslim Waqfs v. Radha Kishan (1979):** Clarified inclusive scope of waqf.
- **Ismail Faruqui v. Union of India (1994):** Addressed state involvement in religious endowments in light of secularism.

Constitutional Aspects:

- **Article 14:** Ensures equality before law.
- **Articles 25 & 26:** Guarantee religious freedom and the right to manage religious affairs.
- **Article 300A:** Provides for property rights.

6. Contemporary Challenges in Waqf Administration

- **Encroachment:** Over 70% of waqf properties are illegally occupied.
- **Corruption and Mismanagement:** Widespread misuse of funds by Waqf Boards.
- **Lack of Digitization:** Records remain incomplete, enabling fraud.
- **Conflicts with Development Projects:** Acquisition of waqf land for public purposes often sparks litigation.

7. Comparative Perspective: Global Waqf Models

- **Turkey:** Administered by the Directorate of Religious Affairs with digitization and state oversight.
- **Malaysia:** Uses corporate waqf models integrated with Islamic finance.
- **Pakistan:** Centralized under federal waqf boards ensuring strict governance.

8. Policy Reforms and Recommendations

- Full **digitization and GIS mapping** of waqf properties.
- Establishment of **independent auditing mechanisms**.
- Promotion of **public-private partnerships** for waqf-based development projects.
- **Specialized judicial training** for handling waqf disputes efficiently.

9. Conclusion

The Waqf Act, 1995, along with its amendments, provides a strong legal foundation for waqf governance. However, ineffective implementation and lack of modernization threaten the institution's integrity. Legal and technological reforms are essential to preserve waqf properties and fulfill their charitable objectives.

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