

# Waqf-by-user denotification would be 'huge problem', says Supreme Court

Chief Justice Sanjiv Khanna, hearing around 100 petitions over the Waqf (Amendment) Act, proposes a three-point interim order to 'balance equities'; court adjourns without passing any interim order

Updated – April 17, 2025 12:04 am IST – New Delhi



KRISHNADAS RAJAGOPAL



Visitors outside the Supreme Court of India on April 16, 2025. The apex court heard on a batch of petitions challenging the constitutional validity of the Waqf (Amendment) Act, 2025. | Photo Credit: Shiv Kumar Pushpakar

The Supreme Court on Wednesday (April 16, 2025) questioned provisions of the Waqf (Amendment) Act, 2025, which de-recognised the “established” waqf-by-user category of property, allowed non-Muslims into waqf administrative bodies and granted the state power to determine if a property was waqf or government.

The two-hour hearing of around 100 petitions in a packed courtroom saw Chief Justice of India Sanjiv Khanna, heading a three-judge Bench, refer to the communal violence in West Bengal over the 2025 Act as “very disturbing”.

During the hearing, the Chief Justice went on to propose a three-point interim order to “balance equities” on all sides in the case.

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Firstly, he suggested that properties already declared waqf by courts need not, for the time being, be de-notified or treated as non-waqf properties. These would include properties categorised as ‘waqf-by-user’ or waqf by long usage without formal documentation or registration, waqf by declaration or “otherwise”.

Secondly, the CJI mooted that the designated government officer could continue to look into whether a property was waqf or government, but a connected proviso freezing the use of the property in the meanwhile as waqf (a property dedicated to Allah for charitable or religious purposes under Islam) could be stayed.

Thirdly, the Chief Justice mulled giving the go-ahead to the appointment of non-Muslims as ex-officio members in the Central Waqf Council and Waqf Boards, provided the other members were Muslims.

However, the government stalled the passing of any interim order, seeking more time to argue. The case was adjourned to Thursday (April 17, 2025) at 2 p.m. without an interim order or issuance of notice to the Centre.

### **Waqf (Amendment) Bill | Analysis and explainers from *The Hindu***

## **‘Huge problem’**

The Chief Justice said the court would not normally intervene with legislation passed by the Parliament, but there were exceptions. The CJI voiced concern that denotification of waqf-by-user properties would lead to a “huge problem”.

“Before the Britishers came, we did not have land registration law or Transfer of Property Act. Many of the masjids were constructed in the 14th, 15th and 17th centuries. Asking them to produce a registered sale deed now is an impossibility. Like in the case of Jama Masjid, which is waqf-by-user property. If you had established ‘waqf-by-user’ in the

versions of the Waqf Act prior to the 2025 Amendment Act, can it be made void now?" Chief Justice Khanna asked the Union government, represented by Solicitor General Tushar Mehta.

Senior advocate Kapil Sibal, for the petitioners, said "who was the state to say I cannot be a waqf-by-user? Many of these waqfs were created hundreds of years ago. Where do you find the records?"

Senior advocate A.M. Singhvi, also for the petitioners, said four out of eight lakh waqfs were waqf-by-user properties.

Mr. Mehta said these properties could be registered. But the CJI asked how the government intended to "register" waqf-by-user? There would be no documents.

### **EXPLAINED | What the Waqf Bill means for madrassas and Muslim education**

The petitioners questioned a provision in the 2025 Act which mandated a person to prove he had been a practising Muslim for five years before dedicating his property as waqf. This clause, they said, was a violation of Article 26 (the right to form and maintain institutions for religious and charitable intents) of the Constitution.

"In short, I have to prove to the state that I am a good Muslim," Mr. Sibal said.

Mr. Mehta said if a Muslim wanted to do charity, he could come out of the waqf fold and perform his benevolence.

Senior advocate Rajeev Dhavan said the basis of the petitioners' attack was that a waqf was essential to Islam. "Charity is an essential practice of Islam. The Act triggers a loss of control of our religion in favour of the state," he submitted.

Justice K.V. Viswanathan asked when Hindu religious endowments were controlled by Hindus, could a law allow persons from other religions to govern waqf administrative bodies. Justice Sanjay Kumar, on the Bench, wondered why the Act was specific that only some members of these bodies must be Muslims while leaving the door open for non-Muslims.

"Religious endowments of Hindus have normally only Hindus controlling them... Are you now saying that as far as Hindu endowment bodies are concerned, you will allow Muslims to be part of them," the CJI remarked.

## **EXPLAINED | What are the key changes proposed in the new Waqf Bill?**

Mr. Mehta objected to petitioners' argument that the Centre had "usurped" the Central Waqf Council, and it was "absurd" to contend only Muslims could administer or determine the status of waqfs. If that was so, the judges on the Bench could not hear this case.

"This is adjudication. When we sit here, we lose our religion," the CJI retorted.

The law officer said his reading of the provisions found only two ex-officio members, out of a total 22 in the Council, would be non-Muslims. This aspect had been clarified to the Joint Parliamentary Committee. Besides, the existing Waqf Council and Waqf Boards would continue their full tenures. Mr. Sibal intervened to point out that the Council has been non-existent for the past two-and-a-half years.

The CJI questioned the proviso in the 2025 Act which allowed the suspension of treatment of a property as waqf until a Collector or a designated officer gave his report on its status.

"What will happen to the rents from the property? Where will it be paid?" Chief Justice Khanna queried.

Mr. Mehta responded that only the identity of the property as a waqf would be suspended, and not use of the property.

Mr. Sibal asked how the state could be given the right to identify a property as waqf. The officer who did the exercise was a government servant and a judge in his own cause, the senior lawyer argued.