

SC on amended Waqf Act: What has been stayed, what remains

Supreme Court Waqf Amendment: While refusing to put a blanket stay on the entire amended Waqf law, the SC temporarily put on hold certain provisions. We explain what the court said.

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SC on amended Waqf Act: The SC stay will remain in place till the petitions are conclusively decided. (File)

Supreme Court Waqf Amendment: The Supreme Court on Monday (September 15) passed an interim order staying the operation of several provisions of the new Waqf (Amendment)

[Act, 2025](#), passed by Parliament in April.

While refusing to put a blanket stay on the entire law, a Bench comprising Chief Justice of India BR Gavai and AG Masih temporarily put on hold provisions that gave district collectors wide-ranging powers over Waqf properties and mandated a five-year period of practising Islam to create a Waqf.

The court also capped the number of non-Muslims who can be appointed to the Central Waqf Council and State Waqf Boards. The order came in response to a batch of nearly 65 petitions challenging the constitutional validity of the new law.

The stay will remain in place till the petitions are conclusively decided.

Here is what the Supreme Court's interim order does and the background of the challenge.

Challenge to the Waqf Act

Earlier this year, a host of petitioners challenged the law, arguing that it interfered with the fundamental right of the Muslim community to manage its own religious affairs, guaranteed under Article 26 of the Constitution.

The petitioners include a wide array of political leaders and organisations, such as AIMIM MP [Asaduddin Owaisi](#), TMC MP [Mahua Moitra](#), RJD MP [Manoj Kumar Jha](#), the YSR Congress Party, and the [Communist Party of India](#).

What the Supreme Court has stayed

The court's interim order provides relief on some of the most significant changes brought by the 2025 Act.

Powers of the District Collector: The petitioners had challenged Section 3C of the amended Waqf Act, which empowered a district collector (or a designated officer) to inquire whether a property claimed as Waqf is actually government property.

A key point of contention was a provision in this section which stated that the moment an inquiry began, the property would immediately cease to be treated as Waqf, even before a final

decision was made. The Supreme Court stayed this specific provision. This means that a property will retain its status as a Waqf property while any such inquiry is pending.

The court also stayed the subsequent parts of Section 3C, which allowed the designated officer, upon concluding the inquiry, to directly order corrections in revenue and Waqf board records.

The Bench observed that entrusting a revenue officer with the determination of property titles was prima facie arbitrary and not in line with the principle of separation of powers. However, to balance interests, the court directed that while Waqfs will not be dispossessed, no third-party rights can be created on such disputed properties until the matter is finally decided by a Waqf Tribunal.

Inclusion of non-Muslims in Waqf boards: One of the primary arguments of the petitioners was that the new law allowed for a non-Muslim majority in Waqf boards and the Central Waqf Council, which they argued was a violation of their right to manage their own religious affairs.

While the Centre argued that the number of non-Muslims would be limited, the Supreme Court, to avoid ambiguity, issued a specific direction. It ordered that the Central Waqf Council, which has 22 members, shall not consist of more than four non-Muslim members. Similarly, it directed that State Waqf Boards, with 11 members, shall not have more than three non-Muslim members.

The ‘practising Islam for 5 years’ rule: The 2025 Act amended the very definition of ‘Waqf’, stating that it could only be created by a “person showing or demonstrating that he is practising Islam for at least five years”. The petitioners argued this was discriminatory and arbitrary.

The Supreme Court has stayed this provision, but with a condition. The stay will remain in effect until the government frames rules and provides a clear mechanism for determining how a person’s religious practice over five years is to be ascertained.

What the court did not stay

The Supreme Court refused the petitioners’ prayer to stay the entire Act. Significantly, it did not stay two other major changes.

Doing away with ‘Waqf by use’: The petitioners had strongly opposed the omission of the concept of “Waqf by use”. This long-standing principle meant that land used for Muslim religious or charitable purposes for a long time could be deemed to be a Waqf even if it was not formally

registered as such. The government had argued that this concept was being misused to encroach upon government lands. The court, in its order, did not find a prima facie case to stay the prospective abolition of this concept.

Applicability of the Limitation Act: The 1995 Waqf Act had specifically excluded the application of the Limitation Act, which allowed Waqfs to act against encroachments on their properties without any time limit. The 2025 law removed this exemption, meaning legal claims against encroachment must be made within a specific period. The court did not stay this provision, observing that its application removes a discrimination that existed earlier.

The court clarified that its observations are prima facie for the purpose of deciding the interim stay and would not prevent the parties from making detailed arguments on the validity of the law during subsequent hearings.

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