



**PARLIAMENT OF INDIA**

**RAJYA SABHA**

REPORT OF THE SELECT COMMITTEE ON  
THE WAKF (AMENDMENT) BILL, 2010

PRESENTED TO THE RAJYA SABHA ON THE 16<sup>th</sup> December, 2011

RAJYA SABHA SECRETARIAT

NEW DELHI

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## **C O N T E N T S**

	Pages
1. COMPOSITION OF THE SELECT COMMITTEE	(i)
2. REPORT OF THE SELECT COMMITTEE	1-22
3. BILL AS REPORTED BY THE SELECT COMMITTEE	23-36
4. APPENDICES	37-42
I. MOTION IN THE RAJYA SABHA FOR REFERENCE OF THE BILL TO THE SELECT COMMITTEE	38
II. LIST OF DELEGATIONS/ORGANISATIONS WHO APPEARED BEFORE THE SELECT COMMITTEE.	39
III. LIST OF INDIVIDUALS/ORGANISATIONS, ETC., FROM WHOM WRITTEN SUBMISSIONS WERE RECEIVED	40- 41
IV. LIST OF STATE GOVERNMENTS/UT ADMINISTRATIONS WHO SENT SUGGESTIONS ON THE BILL	42
5. MINUTES OF THE MEETINGS	43-91

## **COMPOSITION OF THE COMMITTEE**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Parvez Hashmi
4. Shri Tariq Anwar
5. Dr. Prabha Thakur
6. Shri Mukhtar Abbas Naqvi
7. Shri Prakash Javadekar
8. Shri Anil Madhav Dave
9. Shri Balwinder Singh Bhunder
- \*10. Shri Moinul Hassan
11. Shri Munquad Ali
12. Shri Mohammed Adeeb
13. Dr. Bhalchandra Mungekar

## **SECRETARIAT**

1. Shri Surinder K. Watts, Joint Secretary
2. Shri M.K. Khan, Director
3. Ms. S. Pankajavalli, Deputy Director
4. Shri Ranjan Chaturvedi, Assistant Director
5. Shri R.P. Sharma, Committee Officer

## **REPRESENTATIVES OF MINISTRY OF MINORITY AFFAIRS**

1. Shri Surajit Mitra, Secretary
2. Shri E.R. Solomon, Joint Secretary
3. Shri Mohd. Afzal, Deputy Secretary

## **REPRESENTATIVES OF MINISTRY OF LAW AND JUSTICE**

1. Shri N.K. Nampoothiry, Additional Secretary, Legislative Department
2. Dr. Sanjay Singh, Joint Secretary, Legislative Department
3. Shri R. K. Pattanayak, Deputy Legislative Counsel
4. Shri K.V. Kumar, Deputy Legislative Counsel

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\* Appointed w.e.f. 23.11.2011 vice Shri Mohammed Amin, MP retired from membership of Rajya Sabha w.e.f. 18.08.2011.

## REPORT

I, the Chairman of the Select Committee of the Rajya Sabha on the Wakf (Amendment) Bill, 2010, to whom the aforesaid Bill, as passed by the Lok Sabha on the 7<sup>th</sup> May, 2010, was referred, having been authorised by the Select Committee to submit the Report on its behalf, present this Report of the Committee alongwith the Bill, as amended by the Committee, annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 27<sup>th</sup> April, 2010, with a view to remove the infirmities/deficiencies in the existing Wakf Act, 1995. The Wakf (Amendment) Bill, 2010 proposed to amend the Wakf Act, 1995, *inter-alia*, to provide for the following, namely:

- (i) Survey of wakfs within a specific period and that the survey data is appropriately reflected in the land records by the revenue authorities;
- (ii) Change the composition of the Central Wakf Council and the State Wakf Boards, so as to provide for representation of women, professionals and experts in the Council and the Boards,
- (iii) Prohibition on the sale and gift of wakf properties;
- (iv) Stringent penal provisions to prevent encroachments and to streamline the process of removal of encroachments;
- (v) Increase the maximum permissible period of lease or sub-lease of wakf properties to thirty years;
- (vi) Provide statutory power of monitoring to the Central Wakf Council;
- (vii) Constitution of Tribunals for determination of all the disputes, questions and other matters relating to wakf or wakf properties, consisting of a Chairman, who is not below the rank of District, Session or Civil Judge Class I, and two other members namely, an officer from the State Civil Service equivalent in

rank to that of Additional District Magistrate and another person having knowledge of Muslim law and jurisprudence.

3. The Motion for reference of the Bill, as passed by the Lok Sabha, to a Select Committee of the Rajya Sabha, was moved by Dr. Salman Khurshid, Minister of Minority Affairs on the 31st August, 2010 and was adopted by the House on the same day (Appendix- I). The Committee held 22 meetings. It also held discussions with some experts in the field.

4. At its first meeting held on the 24th September, 2010, the Committee deliberated upon the course of action as well as the procedure for examination of the Bill. As decided by the Committee, views of various State Governments, as well as that of various reputed organisations/institutions and eminent experts on the Wakf Affairs were solicited. The views of the representatives of the Ministry of Minority Affairs, Ministry of Law and Justice ( The Legislative Department and the Department of Legal Affairs) were also heard. Besides, the Committee referred to the recommendations/observations contained in the Reports of the Joint Parliamentary Committee on Wakf. Hon'ble Deputy Chairman, Rajya Sabha also made a presentation on the subject before the Committee on the 8<sup>th</sup> December, 2010.

5. The Committee heard oral evidence of 18 delegations/organisations (Appendix-II). Besides, some individuals/organisations, etc., also made written submissions before it. The Committee tried to hear maximum possible witnesses. It was to present its Report to the House within six weeks. It was, however, granted four extensions of time i.e., upto 30<sup>th</sup> November 2010; upto 11<sup>th</sup> March, 2011; upto the last day of the first week of Monsoon Session 2011; and upto the first day of the last week of the Winter Session, 2011.

6. Though the provisions of the Wakf Act, 1995 did not apply to the State of Jammu and Kashmir, yet it had a unique system of Wakf administration. The Committee, therefore, undertook a study visit to Leh, Jammu and Srinagar from 9<sup>th</sup> to 13<sup>th</sup> June, 2011, and interacted with a wide spectrum of the people, representatives of the concerned Departments of the State Government and the agencies involved in the administration of Wakf. Some eminent personalities from the State shared their experience with the Committee, so as to facilitate strengthening of various provisions of the Act.

7. The Committee considered the draft Report at its meeting held on the 12th December, 2011, and adopted the same, with some changes.

8. The Committee initiated clause-by-clause consideration of the Bill on the 28<sup>th</sup> April, 2011. In subsequent 11 meetings, the Committee decided to modify 19 Clauses. The changes suggested by the Committee in the Bill and the reasons therefor are set out in the succeeding paragraphs of this Report:-

### **Clause 5**

This clause seeks to amend section 3 of the Act relating to definitions.

Sub-clause (i) seeks to insert definition of the word “encroacher” in section 3 so as to mean any person occupying Waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by the concerned Board of Wakf. ***The Committee modified the definition of ‘encroacher’ further to include ‘any person or institution, public or private’, with a view to obviate the possibility of encroachment by any public or private institution.***

Sub-clause (iv) seeks to amend clause (k) of section 3 so as to substitute the words “worship” and “khangah” by the words “offer prayer” and “khanqah”, respectively.

**The Committee also decided to include ‘Peerkhana’ and ‘Karbala’, in the list of religious institutions mentioned in Section 3 (k) (i), before the word maqbara.**

### **Clause 6**

This clause seeks to amend section 4 of the Act relating to preliminary survey of wakfs.

Sub-clause (a) seeks to insert a new sub-section (1A) in section 4, so as to make it obligatory on the part of every State Government to maintain a list of auqaf and to complete the survey, within a period of one year, from the date of commencement of the proposed legislation, in case a survey was not done before such commencement. Further, in case no Survey Commissioner of wakf has been appointed, the State Government shall appoint such a

Commissioner within three months from the date of commencement of the proposed legislation.

**The Committee felt that the formulation “ ... the commencement of the Wakf (Amendment) Bill, 2010” may be inaccurate, considering that the Bill could not be passed in 2010. It, therefore, decided that the year of the Bill may be determined in consultation with the Legislative Department, while redrafting the Bill.**

Sub-clause (b) seeks to amend the proviso to sub-section (6) of section 4, so as to provide for a second or subsequent survey after every ten years, in place of the existing period of twenty years, from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3) of the said section 4.

**The Committee observed that status of the Wakf properties once notified in the Gazette, should not be questioned. The Committee, therefore, decided to modify the existing proviso by making a provision that Wakf properties already notified shall not be reviewed again in subsequent survey, except in respect of properties whose status has been changed in accordance with the provisions of any law.**

#### **Clause 11**

This clause seeks to amend section 9 of the Act which deals with establishment and constitution of Central Wakf Council.

It proposes to substitute sub section (1) and to insert a new sub-section (1A), *inter alia*, to empower the Central Wakf Council to issue directives to the State Wakf Boards on such issues and in such manner, as provided under the proposed sub-sections (4) and (5).

It further proposes to substitute sub-clause (ii) and to insert a proviso after sub-clause (viii) of clause (b) of sub-section (2), so as to broaden the field of selection of persons of national eminence and to provide at least two women members in the Central Wakf Council. It also proposes to insert new sub-sections (4) and (5), so as to empower the Central Wakf Council to issue directive to the State Wakf Boards, under intimation to the concerned State Government, and to provide for a mechanism for resolution of any dispute arising out of such directive.

**The Committee agreed with the intent of Sub Clause (b) to include four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture and medicine. It also decided to substitute the word ‘or’ occurring between words ‘architecture’ or medicine with the word ‘and’.**

**In Sub Clause (c ) in the proposed new Sub- Section (4), the word ‘Central’ appeared to be superfluous and the Committee decided to retain only the word Council, as the definitions given in Section 3 (e) of the Act, recognize the ‘ Council’ as the Central Wakf Council.**

**The Committee also decided that in Sub-Clause (c ), in the proposed Sub-Section ( 5), in addition to retired Supreme Court Judge, option of retired Chief Justice of a High Court, too should be included, to preside over the proposed Board of Adjudication. The Committee, therefore, decided to modify the Sub–Section, accordingly.**

### **Clause 12**

This clause seeks to amend section 13 of the Act relating to incorporation of Board of Wakf. It is proposed to amend the said section, by inserting a proviso to sub section (1) and a new sub-section (2A), to provide for establishment of a Board of the Wakf, where such Board has not been established, within a period of one year from the date of commencement of the proposed legislation and to provide that where a Board of the Wakf is established under sub-section (2) of section 13, the Members shall consist of Shia members in the case Shia Wakf and Sunni members in the case of Sunni Wakf.

**In Sub Clause (a), the Committee decided that the Board of the Wakf should be established within six months, instead of the proposed one year, from the commencement of the Wakf (Amendment) Act, 2011.**

**In Sub Clause (b), in the proposed new Sub Section (2A), the Committee decided that members of the Board of Waqf , in case of Shia Waqf, should belong to that community and in the case of Sunni Waqf, members should belong to the said community.**



### **Clause 13**

This clause seeks to amend Section 14 of the Act relating to composition of a Board of the Wakf. It proposes to substitute the expression “the Union Territory of Delhi” with the expression “the National Capital Territory of Delhi”, and to substitute sub-clauses (iii) and (iv) of clause (b) of sub-section (1), to expand the scope of selection of members. It further seeks to substitute the existing clauses (c) to (e) of sub section (1) of the said section, to expand the field of selection, to include persons from amongst Muslims with professional experience in town planning or business management, social work, finance or revenue, agriculture and developmental activities and recognized scholars in Islamic Theology, besides a nominee of the State Government, who should be an officer of the State Government belonging to the muslim community, not below the rank of Deputy Secretary to the State Government. It further proposes to insert a new sub-section (1A) and a proviso, to ensure that a minimum of three and maximum of five members are appointed by the Central Government in case of a Union territory and that at least two of them should be women.

**In respect of Sub Clause (1) (ii) (a) regarding the representation of Muslim member enrolled with the Bar Council of the concerned State, the Committee decided that in case there was no Muslim member enrolled with the Bar Council of State, the State Government may nominate any reputed person from that State, having knowledge or experience of law.**

### **Clause 15**

This clause seeks to insert a new section 20A dealing with removal of a Chairperson by vote of no confidence. It provides for removal of the Chairperson of a Board on the ground of no confidence. The said section also lays down the manner for such removal. A resolution expressing confidence or no confidence in any person elected as Chairperson of a Board could be moved only within twelve months of his election, and with prior permission of the State Government.

**In the newly inserted Section 20(A) sub Section (j) (B), providing for election by show of hands, the Committee decided that the election should be done by method of secret ballot.**

### **Clause 16**

This clause seeks to amend section 23 of the Act, which deals with appointment of Chief Executive Officer, his term of office and other conditions of service. It proposes to substitute sub-section (1) and to insert a new sub-section (1A) which provides for a full time Chief Executive Officer of the Board, who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette, from a panel of two names suggested by the Board, who shall not be below the rank of Deputy Secretary to the State Government and in case such Muslim officer is not available in the State, an officer, not below the rank of Under Secretary to the State Government, could be appointed.

**The Committee decided to substitute the words ‘an officer’ with the words ‘a Muslim Officer’.**

**The Committee also decided to provide that in case of non-availability of a Muslim Officer of the rank of Deputy Secretary to State Government, a Muslim Officer of equivalent rank may be appointed on deputation.**

### **New Clause 18**

Drawing upon the view taken by the Committee regarding amendment to Section 24 of the parent Act and omission of Section 28, the committee decided that Section 28 of the present Act may be amended as under :-

**“Subject to the provisions of this Act and the rules made thereunder, the District Magistrate or in his absence an Additional District Magistrate or Sub Divisional Officer in a district in the State shall be responsible for implementation of the decisions of the Board which may be conveyed through the Chief Executive Officer and the Board may, wherever considered necessary, issue suitable directions to the authorities concerned for implementation of its decisions.”**

This way, the Committee has tried to make the District Magistrate or in his absence an Additional District Magistrate or Sub-divisional Magistrate in a district in a State responsible

for implementation of the decisions of the Board, which may be conveyed through the CEO of the Board.

**Clause 19**  
**( Original Clause 18)**

This clause seeks to amend section 29 of the Act relating to powers of the Chief Executive Officer to inspect records, registers, etc., by re-numbering the existing section 29 as sub-section (1) thereof and substitution of the words “subject to such conditions and restrictions as may be prescribed and subject to payment of such fees as may be leviable under any law for the time being in force” with the words “subject to such conditions as may be prescribed”. It further seeks to insert sub-sections (2) and (3), with a proviso. The proposed sub-section (2) provides that the Muttawalli or any other person having custody of the documents relating to the wakf properties, should produce them before the Chief Executive Officer within the prescribed time. The proposed sub-section (3) provides that a person or any organisation or agency or the Government has to supply copies of documents within ten working days, when asked for by the Chief Executive Officer, with the approval of the Board.

**The Committee decided to delete the words “at all reasonable time” occurring in the proposed sub-section I of Section 29 of the principal Act, thereby removing the time limit for inspecting any office or record, registers or documents related to a wakf or immovable or movable properties.**

**Clause 21**  
**( Original Clause 20)**

This clause seeks to amend section 32 of the Act which lays down the powers and functions of the State Wakf Board. Clause (j) of sub-section (2) is sought to be amended to do away with the powers of the Board to sanction transfer of immovable property of a wakf by way of sale or gift. The existing proviso to clause (j) is proposed to be substituted, to provide that no such sanction shall be given by the Board, unless more than fifty per cent of the total membership of the Board is present and at least two-thirds of the members of the Board present vote in favour of such transaction and for recording of reasons in writing, when the Board decides not to sanction such transaction. It further proposes to insert a new sub-clause (*na*), to enable the

Board to determine fair rent of the wakf land or building. It also proposes to amend sub-section (4) to broaden the powers of the Board to execute the developmental works in respect of an educational institution, shopping centre, market or residential flats or such other development. It also proposes to amend sub-section (5), to do away with the requirement of obtaining approval of the Government for taking over the building or works, if the muttawali concerned is not willing or is incapable of executing the desired works.

**In addition to precluding the sale or gift of a waqf property by the Waqf Boards, the Committee decided to remove the power of Waqf Boards to even ‘ mortgage’ any waqf property. The Committee, accordingly, decided to modify Sub Clause (I) (a). In Sub Clause (I) (b), the Committee was of the view that sanction for any transfer of immovable property should not be given unless at least two thirds of the total membership of the Board was present, and at least two third of members of the Board present vote in favour of such transaction. In Sub Clause (I) (c), in the proposed new sub Clause (na), the Committee decided to substitute the word ‘fair’ rent with ‘market’ rent. For the purpose of development of Wakf Properties, the Committee decided to include in Sub Clause (II), the expression “market, housing or residential flats and the like” after the words “as a shopping center”.**

### **Clause 22**

**(Original Clause 21)**

This clause seeks to amend sub-section (1) of section 33 of the Act relating to powers of inspection by the Chief Executive Officer or the person authorised by him. It is proposed to enable the Chief Executive Officer to authorize, in writing, any other officer to inspect all movable and immovable properties, all records, accounts and other documents, with a view to examining the extent of failure or negligence on the part of a muttawali in the performance of his duties and responsibilities with respect to wakf properties.

**The Committee observed that the words ‘either himself or any other person authorized by him in writing in this behalf,’ occurring in Section 33 (1) of the Principal Act, were superfluous and decided that the same may be deleted in the parent Act.**

**Clause 25**

**( Original Clause 24)**

This clause seeks to amend section 44 of the Act relating to budget of the wakf. It proposes to amend sub-sections (1), (2) and (3) relating to requirements for maintenance of accounts of wakfs by a mutawalli. The proposed amendment envisages exclusion of a mutawalli, having a net annual income up to fifty thousand rupees, from the requirement of this section, for preparation of budget every year. It further proposes to submit the budget by mutawalli to the Board at least thirty days before the beginning of the financial year.

**With a view to ensure positive response to audit provisions and to strengthen autonomy of Wakf Boards, in Sub Clause (a), the Committee is inclined to make it incumbent upon every mutawalli to prepare a budget and, therefore, disagreed with the proposed exclusion upto threshold net annual income of Rupees fifty thousand. It accordingly, decided to delete the Clause and to re-number the remaining Sub-Clauses.**

**Clause 27**

**(Original Clause 26)**

This clause seeks to amend section 47 of the Act relating to audit of accounts of wakfs. It proposes to amend the existing clauses (a) and (b) of sub-section (1) and the first proviso to sub-section (3) of section 47. It is proposed to raise the threshold income level for compulsory audit of the accounts of wakf to one lakh rupees and to provide for appointment of auditors from the panel drawn up by the State Government.

**In Clause 26 (i) the Committee is inclined to reduce the proposed threshold income level from Rupees one lakh to Rupees fifty thousand for compulsory audit. Further, the Committee did not agree with the existing provision in Section 47(1) (a) of the parent Act, providing for annual audit of only 2% of smaller wakfs. The Committee suggested deletion of such provisions from the parent Act. In case of Section 47 (1) ( c) of the parent Act regarding powers of the State Government to have the accounts of a wakf audited, the Committee decided that the State Government should do so under intimation to the Wakf Board.**

**Further, in case of proposed Clause 26(ii) regarding audit of the Wakfs by empanelled auditors, the Committee was inclined to reduce the threshold from the proposed Rupees One lakh and above to ‘more than rupees fifty thousand and less than rupees one lakh.**

**The Committee decided that Section 47 of the parent Act be amended and accordingly modified Clause 26.**

**Clause 28**  
**(Original Clause 27)**

This clause seeks to amend section 51 of the Act, making alienation of the wakf property, without sanction of Board, to be void. It proposes to substitute the existing sub-section (1) which, *inter alia*, provides that notwithstanding anything contained in the wakf deed, any exchange or mortgage of any immovable property, which is wakf property, shall be void unless such exchange or mortgage is effected with prior sanction of the Board. Further, no mosque, dargah, khanqah, graveyard or imambara shall be exchanged or mortgaged except in accordance with any law for the time being in force. The proposed sub-section (1A) provides that any sale, gift or total transfer of wakf property shall be *void ab initio and* that it shall not affect any acquisition of wakf properties for a public purpose under the Land Acquisition Act, 1894 or any other law relating to acquisition of land. Such acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991 and the purpose for which the land is being acquired shall be undisputedly for a public purpose, and there shall be no alternative land being available which shall be considered as more or less suitable for that purpose. The compensation shall be the prevailing market value, plus the solatium, and an equally suitable land in lieu of the acquired property, to safeguard adequately the interest and objective of the wakf.

**The Committee decided to delete the words ‘except in accordance with any law for the time being in force’ in the proviso to the proposed new sub-section I of Section 51 of the Act, thereby making exchange or mortgage of mosque, dargah, khanqah, graveyard or imamabara, improbable.**

**In Sub Clause (1A), the Committee apprehended that the expression ‘total transfer’ may be misconstrued and, therefore, decided to delete the word ‘total’, for unqualified preclusion of transfer of wakf property.**

**In Sub Clause (1A), in the proviso to the proposed new sub-section 1A of Section 51 of the Act, which allows for application of Land Acquisition Act, 1874, the Committee decided that such acquisition should be effected in consultation with the Wakf Board. Accordingly, it decided that after the words ‘acquisition of land’, the words ‘subject to consultation with Board’ should be inserted.**

**The Committee decided that either the prevailing market value plus reasonable solatium should be paid as compensation in lieu of acquired property or equally valuable land should be provided. Accordingly in the same proviso to the proposed new sub-section 1A of the Act, the words ‘plus the solatium and’ were substituted by the word ‘or’ and the words ‘with reasonable solatium’ were inserted after the words ‘equally valuable land’.**

### **Clause 30**

**(Original Clause 29)**

This clause seeks to insert a new section 52A in the Act, which provides for penalty for alienation, purchase or possession of wakf property, without sanction of the Board. If any person alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property, being a wakf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years. The offence shall be a cognizable and non-bailable. Further no court shall take cognizance of any offence under this section, save on a complaint made by the Board or an officer duly authorised by the Board in this behalf, and no court, inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class, shall try any offence punishable under this clause.

**In the proposed new Sub-Section (3) of the new Section 52 (A), the Committee is of the view that in addition to Board, the said complaint should also be allowed to be made by any officer, duly authorized by the State Government. Accordingly, the word ‘an’**

**was substituted by the word ‘any’ and the word ‘Board’ was substituted by the words ‘State Government’.**

**Clause 32**

**( Original Clause 31)**

This clause seeks to amend section 56 of the Act relating to restriction on power to grant lease of wakf property. It proposes to amend sub-sections (1) and (2) of the said section, so as to enhance the period of lease from three years to thirty years. It further proposes to insert two provisos at the end of the existing sub-section (1), which provides for a lease or sub-lease for any period exceeding three years, and upto ten years for commercial activities for such period and purposes, as may be specified in the rules made by the Central Government. In case of education or health, a lease or sub-lease exceeding ten years and upto thirty years may be made as specified in the rules to be made by the Central Government. It also provides that the Board shall immediately intimate the State Government regarding a lease or sub-lease for any period exceeding one year and exchange or mortgage of any wakf property, and thereafter, it may become effective after expiry of forty-five days from the date on which the Board gives intimation to the State Government. The rules which may be made by the Central Government would be required to be laid before Parliament.

**The Committee decided that in the case of commercial activities, the lease should be for a period upto fifteen years and for education or health purposes, the lease should be for a period upto thirty years. It also disagreed with the proposal that rules regarding grant of lease of wakf property should be made by the Central Government, therefore, such formulations should be deleted from the Clause.**

**Clause 35**

**( Original Clause 34)**

This clause seeks to amend section 68 of the Act relating to duty of mutawalli or committee to deliver possession of records, etc. It proposes to substitute the words “Magistrate of the first class” and “Magistrate” with the words “Executive Magistrate or Sub-Divisional Magistrate” to whom the removed mutawalli or a member of a management committee removed by the Board has to deliver possession of records, accounts and all properties of the wakf.



**Instead of an Executive Magistrate, as provided in the Bill, the Committee decided to widen the options by including the District Magistrate or the Additional District Magistrate, in addition to Sub-Divisional Magistrate, to whom the removed mutawalli or a member of the management committee removed by the Board, will deliver possession of the records, accounts and all properties of the wakf.**

**Clause 40**  
**( Original Clause 39)**

This clause seeks to amend section 81 of the Act which deals with orders on auditor's report. The proposed amendment seeks to provide that the State Government shall forward a copy of the auditor's report on the accounts of the Wakf Board and the orders passed thereon to the Central Wakf Council, within one month of laying of the report.

**The Committee decided to add 'before the State Legislature', after the words ' laying of the report', as a measure of abundant clarification.**

**Clause 48**  
**(Original Clause 47)**

This clause seeks to insert a new section 104A in the Act, to provide for prohibition of sale, gift or transfer of wakf property. It proposes that no person shall, notwithstanding anything contained in the Act or any other law for the time being in force or any wakf deed, sell, gift or totally transfer any movable or immovable property, which is a wakf property, to any other person, to prevent alienation of wakf property given or donated by persons not professing Islam and any such sale, gift or transfer of property shall be *void ab initio*.

**The Committee apprehended that the expression 'totally transfer' may be misconstrued and, therefore, decided to delete the word 'total', to ensure unqualified preclusion of transfer of waqf property.**

### **Enacting Formula and Clause 1**

Amendments made in the enacting Formula and Clause I are of formal nature, necessitated due to passage of time.

9. The Committee, at all stages of its consideration of the Bill, has been guided by an abiding concern to protect, preserve and restore the waqf properties as per the will of the waqif for the welfare of deserving section of the Muslim community. The Bill is supposed to make Waqf Boards more professional and effective forum for the administration of waqfs.

10. Apart from appropriate modifications in respective Clauses of the Bill, the Committee has also given some recommendations which are of critical importance for achieving the objectives of the wakf administration but were not covered by the Bill. It is important that these recommendations are duly incorporated.

11. The Committee wishes to express its gratitude to all the distinguished persons/expert bodies who appeared before the Committee or furnished the requisite information in connection with examination of the Bill. The Committee is particularly thankful to the Wakf Authorities of Jammu & Kashmir Government, the Chairman and other functionaries of the J&K Muslim Aukaf Trust and other individuals who met it in Leh, Jammu and Srinagar. The Committee also wishes to place on record its appreciation to the representatives of the Ministries of Minority Affairs and Law & Justice (Legislative Department and Department of Legal Affairs) for rendering valuable assistance to the Committee in its deliberations.

12. The Committee recommend that the Bill, as reported by it, be passed. The Government may also take further measures, as recommended by it in this Report.

Prof. Saif ud din Soz

Chairman, Select Committee on  
the Waqf ( Amendment) Bill, 2010

New Delhi

December 12, 2011

### **ADDITIONAL (GENERAL) RECOMMENDATIONS**

1. Based on the experience ever since the Waqf Act, 1995 came into force, the Bill proposed extensive amendments in the parent Act. However, there has to be a continuous exercise to evolve any piece of legislation to respond to the infirmities that accentuate over a period of time. There are some issues that have not been addressed adequately in this Bill.
2. The Committee, while considering the provisions of the Bill, referred to those recommendations of the 9<sup>th</sup> Report of the Joint Parliamentary Committee on Waqf, which had not been incorporated in the Bill and sought the response of the Ministry, for not incorporating the same in the Bill. The Committee laid particular emphasis on those important issues that were covered by the JPC on Waqf, but were not reflected in the Bill and made commensurate recommendations:—

#### **1. Development and Promotion of the Waqf properties**

Development of the waqf properties has been recognized by the JPC and the Government. The Committee was informed it has been decided, in-principle, to set up National Waqf Development Corporation and State Waqf Development Corporation, for developing the waqfs. The Joint Parliamentary Committee had recommended that a new chapter “Development and Promotion” may be added at the appropriate place in the Act which should provide that the Central Government shall, as soon as possible, establish a National Board for promotion of education among Muslims and utilize the surplus funds of the Waqf institutions in the Country generated through development of Waqf properties. Also, a National Waqf Development Corporation be constituted by the Central Government with revolving corpus funds of Rs.500 crores.

The Ministry of Minority Affairs submitted that there was a proposal in the proposed restructure of the National Minorities Development & Finance Corporation to set up the National Waqf Development Agency, which has already been approved in-principle.

**Though there is an in-principle agreement on setting up of National Waqf Development Corporation and State Waqf Development Corporations for developing the waqfs, no provision has been made to that effect in the Bill. The Committee proposed an**

**institution, National Waqf Development Agency, independent of NMDFC, as this body has nothing to do with Waqf properties.**

## **2. Waqf properties under the purview of Public Premises ( Eviction of Unauthorised Occupants) Act**

The Joint Parliamentary Committee had suggested that all the State Governments may bring the Waqf properties under the purview of the Public Premises (Eviction of Unauthorized Occupants) Acts, for the purpose of removal of encroachments.

The Ministry of Minority Affairs, in its reply, submitted that it was for the State Governments to amend in their respective Public Premises Acts. The Ministry had written to the State Governments to include waqf properties in the definition of ‘Public Premises’.

In his submission before the Committee on the issue of incorporating the relevant provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1970, the representative of Legislative Department, Ministry of Law and Justice, stated:

*“as the hon. Committee wants the scheme of eviction, that is, summary procedure as available under the Public Premises (Eviction of Unauthorised Occupants) Act, should be squarely applicable to the Wakf properties, in my personal opinion, it would make it amply clear and accurate if we bring that scheme of that legislation within a chapter of the Wakf Act because it is not possible to successfully argue that the Wakf falls within the public premises as envisaged under that legislation and as provided under that legislation. So, if we want to have that scheme in this legislation, I feel that we can bring those two or three things, namely, the concept of Estate Officer, the concept of summary eviction, etc., of that legislation within the scheme of this legislation. I think that it will be easy and we will be able to bring it into this law. This is what I personally feel.”*

Further, in his presentation before the Committee, the representative of the Department of Legal Affairs submitted before the Committee that though the existing Act implicitly excluded such provision, a specific provision needs to be added.

*“Sir, as of now, this Act explicitly excludes that. A specific provision has to be added. It is implicitly there. Encroachment, eviction, etc. have been spelt out. If you want to put it specifically, you can do it.”*

**In view of the submissions made by the Ministry of Minority Affairs, the Legislative Department and the Department of Legal Affairs, the Committee is of the view that the relevant provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 may be incorporated in the Bill or alternatively the State produce legislation of their own to the same effect.**

### **3. Exemption of Waqf properties from Rent Control Acts**

The Joint Parliamentary Committee had recommended that all the State governments may exempt Waqf properties in their respective states from the purview of the Rent Control Act. For this purpose, the State Governments may make necessary amendments in the Rent Control Act.

The Ministry of Minority Affairs submitted that it was for the State Governments to amend the Rent Control Act, to exempt the Waqf properties.

In his submission before the Committee, the representative of the Department of Legal Affairs had agreed with the recommendation of the JPC in this respect.

The Committee concurred with the observation made in the Sachar Committee Report that in order to exempt the Waqf properties from the Rent Control Acts of the States, an over-riding provision in the Waqf Act should be introduced.

**In view of Government's intention to make waqf properties financially viable, the Committee recommends that waqf properties be exempted from the Rent Control Act.**

### **4. Deemed Mutation of Waqf Properties**

The Joint Parliamentary Committee had recommended that once a Survey Commissioner notifies the Waqf property, the same shall be treated as "Deemed Mutation" for the purposes of revenue records and determination of title to the property.

This recommendation also has not been included in the Bill. The Ministry of Minority Affairs submitted that due process of State Revenue laws has to be followed.

**The Committee recommends that once a Survey Commissioner has notified the Waqf properties, it should be treated as "Deemed Mutation" for the purposes of revenue records and for determination of title to the property.**

**5. Disqualification of persons who have been held guilty of encroachment on a Waqf property for being appointed or for continuing as a member of the Board**

**In addition to the existing list of disqualifications as prescribed in the parent Act, for being appointed or for continuing as a member of the Board, as prescribed in the parent Act, the Committee recommends that any person who has been held guilty of encroachment on Waqf property, shall not be eligible for appointment/continuation as a Member of the Board.**

**6. Meetings of the Waqf Boards**

**The Committee finds that much inefficiency has set in due to lack of adequate supervision by the Waqf Boards. To address the issue, the Committee recommends that the rules must provide for regular meetings of the State Waqf Boards. The time gap between two meetings of the Board should not exceed 90 days.**

**7. Meetings of the Central Waqf Council**

**The Committee finds that neither the Waqf Act, 1995 nor do the Rules framed thereunder, stipulate the periodicity of the meetings of the Central Waqf Council (CWC). In the absence of such stipulation, the meetings of the Council have been too infrequent and spaced out, to meet its mandate effectively. The Committee, therefore, recommends that not more than 120 days should lapse between two meetings of the Central Waqf Council.**

**8. Representation of Shia Community in Central Waqf Council.**

**The Committee agrees with the suggestion that the Shia community should be adequately represented in the Central Waqf Council.**

**9. Exemption from application of Sections 18 and 28A of Land Acquisition Act, 1894**

In the context of Section 91 of the Waqf Act, 1995 pertaining to application of Section 1 of the Land Acquisition Act, 1894, the Committee agreed that the concerned Waqf Boards should be given adequate opportunity to plead the case in the event of acquisition of Waqf property, as provided in the Bill. The Committee felt that such opportunity to seek redressal should not be restricted by the application of Sections 18 and 28A of the Land Acquisition Act, 1894.

**The Committee recommends that nothing contained in sections 18 and 28A of the Land Acquisition Act, 1894 with respect to limitation, should apply to acquisition of the Waqf properties. Such provision shall be in consonance with the stated objective of the Bill, to preserve the wakf properties from any alienation.**

#### **10. Apportionment of compensation on acquisition of Waqf Property**

As the Bill proposes to widen the definition of encroachment and to declare illegal encroachment as void *ab initio*, the Committee observed that the Act should explicitly deny the encroacher of the waqf property any right of claim any compensation.

**The Committee, therefore, recommends that nothing contained in section 30 of the Land Acquisition Act, 1894, regarding apportionment of compensation between the Board and the lessee or any person claiming any right, title or interest, in any manner whatsoever, should apply to acquisition of the Waqf properties, provided that Board may decide to compensate the lessee as it deems proper.**

#### **11. Reversion of Waqf property if not put to use for public purpose**

**The Committee recommends that if Waqf land already acquired is not put to use within one year for the public purpose for which it was acquired, then it shall revert back to the Waqf Board/Mutawalli concerned.**

**The Committee also recommends that there should be a review of Waqf lands acquired since 1995 to ascertain whether they have been put to the use for the public purpose for**

which they were acquired. In case there is a default in use or if the land/property so acquired is encroached upon or put to some other use, then the lands should automatically revert back to the Waqf Board/Mutawalli concerned. However, if such reversion is not feasible, then the market value of the said property should be paid to the Waqf Board/Mutawalli concerned at present day prices after deducting the cost of acquisition already paid or land of equivalent present market value be given to the Wakf Board.

**12. Resoration of waqf properties occupied by Government/Government agencies to Waqf Board**

The Committee recommends that all Waqf lands occupied by the Government or their agencies are to be vacated within 6 months or market rent for the same be paid to the Waqf Board/Mutawalli concerned since occupation of the said properties. This would be in keeping with the direction issued by the then Prime Minister Mrs. Indira Gandhi vide letter of March/April 1975.

**13. Collector to give notice to Waqf Board in the event of acquisition of waqf property**

In Sub –Section (I) of the Section 91 of the principal Act, the words ‘ if .... it appears to the Collector’ may be omitted and it should be made mandatory on the part of Collector to give notice of acquisition to the Waqf Board in respect of acquisition of all waqf properties.

**14. Change in Section 3 pertaining to Definitions**

Inclusion of words “ by reason of any entry in the name including Shamlat Patti, Shamlat Deh, Jumla Malkan or any other name in any revenue record” in Section 3 (r ) (i) may be considered.



## **15. Treating Waqf Law as a Special law**

As the Waqf Laws and Rules framed thereunder are intended to serve special purpose of the Muslim community, they should be treated as special laws.

**The Committees, accordingly, recommends that the provisions of this Act and of the rules and orders made hereunder shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any instrument having effect by virtue of any such law.**

The Committee recommends that in addition to proposed amendments in the Bill the measures covered in this Chapter should also be taken into consideration to achieve the stated objectives of the Bill.

	<p style="text-align: right;"><b>13-12-2011/6:00 pm.</b></p> <p style="text-align: center;"><b>THE WAKF (AMENDMENT) BILL, 2010</b> (AS REPORTED BY THE SELECT COMMITTEE)</p>	
	<p style="text-align: center;"><b>THE WAKF (AMENDMENT) BILL, <u>2011</u></b> (AS REPORTED BY THE SELECT COMMITTEE) <i>[Words underlined indicate the amendments and asterisks indicate omissions suggested by the Select Committee]</i></p> <p style="text-align: center;">A BILL <i>to amend the Wakf Act, 1995.</i></p> <p style="text-align: center;">BE it enacted by Parliament in the Sixty-<u>second</u> Year of the Republic of India as follows:—</p>	
	<p><b>1. (1)</b> This Act may be called the Wakf (Amendment) Act, <u>2011</u>.</p> <p>(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.</p>	Short title and commencement.
43 of 1995.	<b>2.</b> In the long title to the Wakf Act, 1995 (hereinafter referred to as the principal Act), for the word “Wakfs”, the word “Auqaf” shall be substituted.	Amendment of long title.
	<b>3.</b> In section 1 of the principal Act, in sub-section (1), for the word “Wakf”, the word “Waqf” shall be substituted.	Amendment of section 1.

Substitution of references to certain expressions by certain other expressions.	<p><b>4.</b> Throughout the principal Act, for the words “wakf”, “wakfs” and “wakif”, wherever they occur, the words “waqf”, “auqaf” and “waqif” shall, respectively, be substituted, and such other consequential amendments as the rules of grammar may require shall also be made.</p>	
Amendment of section 3.	<p><b>5.</b> In section 3 of the principal Act,—</p> <p>(i) after clause (e), the following clause shall be inserted, namely:—</p> <p>‘(ee) “encroacher” means any person or <u>institution, public or private</u>, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by the Board;’;</p> <p>(ii) for clause (g), the following clause shall be substituted, namely:—</p> <p>‘(g) “list of auqaf” means the list of auqaf published under sub-section (2) of section 5 or contained in the register of auqaf maintained under section 37;’;</p> <p>(iii) in clause (i), after the proviso, the following provisos shall be inserted, namely:—</p> <p>“Provided further that the mutawalli shall be a citizen of India and shall fulfil such other qualifications as may be prescribed:</p> <p>Provided also that in case a waqf has specified any ** qualifications, such qualifications may be provided in the rules as may be made by the State Government;”;</p> <p>(iv) in clause (k), in sub-clause (i), for the words “worship” and “khangah”, the words “offer prayer” and “khanqah, <u>peerkhana and karbala</u>” shall, respectively, be substituted;</p> <p>(v) in clause (r), for the words ‘and “wakf” means any person making such dedication;’, the words ‘and “waqif” means any person making such dedication, subject to the condition that when the line of succession fails, the income of the waqf shall be spent for education, development and welfare of the community;’ shall be substituted.</p>	
Amendment of section 4.	<p><b>6.</b> In section 4 of the principal Act,—</p> <p>(a) after sub-section (I), the following sub-section shall be inserted, namely:—</p> <p>“(IA) Every State Government shall maintain a list of auqaf referred to in sub-section (I) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, <u>2011</u>, in case such survey was not done before the commencement of the Wakf (Amendment) Act, <u>2011</u>:</p> <p>Provided that where no Survey Commissioner of Waqf has been appointed, a Survey Commissioner for auqaf shall be appointed within three months from the date of such commencement.’;</p> <p>(b) <u>in sub-section (6),—</u></p> <p>(i) <u>in the proviso, for the words “twenty years”, the words “ten years” shall be substituted;</u></p> <p>(ii) <u>after the proviso, the following proviso shall be inserted, namely:—</u></p>	

	<u>“Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.”.</u>	
Amendment of section 5.	<p><b>7.</b> In section 5 of the principal Act,—</p> <p>(a) in sub-section (2), for the words “publish in the Official Gazette”, the words “forward it back to the Government within a period of six months for publication in the Official Gazette” shall be substituted;</p> <p>(b) after sub-section (2), the following sub-sections shall be inserted, namely:—</p> <p>“(3) The list published in the Official Gazette under sub-section (2) shall be referred to by the revenue authorities whenever they are updating the land records.</p> <p>(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.”.</p>	
	<p><b>8.</b> In section 6 of the principal Act, in sub-section (1),—</p> <p>(a) for the words “any person interested therein”, the words “any person aggrieved” shall be substituted;</p> <p>(b) after the proviso, the following proviso shall be inserted, namely:—</p> <p>“Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.”;</p> <p>(c) the <i>Explanation</i> shall be omitted.</p>	Amendment of section 6.
	<p><b>9.</b> In section 7 of the principal Act,—</p> <p>(a) in sub-section (1),—</p> <p>(i) for the words “any question”, the words “any question or dispute” shall be substituted;</p> <p>(ii) for the words “or any person interested”, the words “or any person aggrieved by the publication of the list of auqaf under section 5” shall be substituted;</p> <p>(b) after sub-section (5), the following sub-section shall be inserted, namely:—</p> <p>“(6) The Tribunal shall have <u>the</u> powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:</p> <p>Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.”.</p>	Amendment of section 7.
	<p><b>10.</b> For section 8 of the principal Act, the following section shall be substituted, namely:—</p> <p>“8. The total cost of making a survey including the cost of publication of the list or lists of auqaf under this Chapter shall be borne by the State Government.”.</p>	<p>Substitution of new section for section 8.</p> <p>State Government to bear cost of survey.</p>

	<p><b>11.</b> In section 9 of the principal Act,—</p> <p>(a) for sub-section (1), the following sub-sections shall be substituted, namely:—</p> <p>“(1) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.</p> <p>(1A) The Council referred to in sub-section (1) shall issue directives to the Boards, on such issues and in such manner, as provided under sub-sections (4) and (5).”;</p> <p>(b) in sub-section (2), in clause (b),—</p> <p>(i) for sub-clause (ii), the following sub-clause shall be substituted, namely:—</p> <p>“(ii) four persons of national eminence, one each from the fields of administration or management, financial management, engineering or architecture <u>and</u> medicine.”;</p> <p>(ii) after sub-clause (viii), the following proviso shall be inserted, namely:—</p> <p>“Provided that at least two of the members appointed under sub-clauses (i) to (viii) shall be women.”;</p> <p>(c) after sub-section (3), the following sub-sections shall be inserted, namely:—</p> <p>“(4) The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the ** Council and <u>it</u> may <i>suo motu</i> call for information on specific issues from the Board, if it is satisfied that there was <i>prima facie</i> evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.</p> <p>(5) Any dispute arising out of a directive issued by the ** Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court <u>or a retired Chief Justice of a High Court</u> and the <u>fees</u> and travelling and other allowances payable to the Presiding Officer shall be such as may be <u>specified</u> by that Government.”.</p>	Amendment of section 9.
Amendment of section 13.	<p><b>12.</b> In section 13 of the principal Act,—</p> <p>(a) after sub-section (1), the following proviso shall be inserted, namely:—</p> <p>“Provided that in case where a Board of Waqf has not been established, as required under this sub-section, a Board of Waqf shall, without prejudice to the provisions of this Act or any other law for the time being in force, be established within <u>six months</u> from the date of * commencement of the Wakf (Amendment) Act, <u>2011</u>.”;</p>	

	<p>(b) after sub-section (2), the following sub-section shall be inserted, namely:—</p> <p>“(2A) Where a Board of Waqf is established under sub-section (2) of section 13, in the case of Shia waqf, the Members shall <u>belong to that community</u> and in the case of Sunni waqf, the Members shall <u>belong to the said community</u>.”.</p>	
Amendment of section 14.	<p><b>13.</b> In section 14 of the principal Act,—</p> <p>(I) in sub-section (I),—</p> <p>(i) for the words “the Union territory of Delhi”, wherever they occur, the words “the National Capital Territory of Delhi” shall be substituted;</p> <p>(ii) in clause (b),—</p> <p>(a) for sub-clause (iii), the following sub-clause shall be substituted, namely:—</p> <p>“(iii) Muslim members enrolled with the Bar Council of the concerned State or Union territory:</p> <p>Provided that in case there is no Muslim member <u>enrolled with</u> the Bar Council of a State, the State Government may nominate any reputed person from that State having knowledge or experience of law, and”;</p> <p>(b) after sub-clause (iv), the following <i>Explanations</i> shall be inserted, namely:—</p> <p>“<i>Explanation I.</i>— For the removal of doubts, it is hereby declared that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.</p> <p><i>Explanation II.</i>—For the removal of doubts it is hereby declared that in case a Muslim member ceases to be a Member of Parliament from the State or National Capital Territory of Delhi as referred to in sub-clause (i) of clause (b) or ceases to be a Member of the State Legislative Assembly as required under sub-clause (ii) of clause (b), such member shall be deemed to have vacated the office of the member of the Board for the State or National Capital Territory of Delhi, as the case may be, from the date from which such member ceased to be a Member of Parliament from the State or National Capital Territory of Delhi, or a Member of the State Legislative Assembly, as the case may be;”;</p> <p>(iii) for clauses (c) to (e), the following clauses shall be substituted, namely:—</p> <p>“(c) one person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government;</p> <p>(d) one person from amongst Muslims, to be nominated by the State Government from recognised scholars in Islamic Theology;</p> <p>(e) one person from amongst Muslims, to be nominated by the State Government from amongst the officers of the State Government not below the rank of Deputy Secretary to the State Government;”;</p> <p>(II) after sub-section (I), the following sub-section shall be inserted, namely:—</p> <p>“(IA) No Minister of the Central Government or, as the case may be, a State Government, shall be elected or nominated as a member of the Board:</p>	

	<p>Provided that in case of a Union territory, the Board shall consist of not less than three and not more than five members to be appointed by the Central Government from categories specified under sub-clauses (i) to (iv) of clause (b) or clauses (c) to (e) in sub-section (1):</p> <p>Provided further that at least two Members appointed on the Board shall be women:</p> <p>Provided also that in every case where the system of mutawalli exists, there shall be one mutawalli as the member of the Board.”;</p> <p>(III) sub-section (7) shall be omitted.</p>	
Amendment of section 15.	<b>14.</b> In section 15 of the principal Act, the words, brackets and figures “from the date of notification referred to in sub-section (9) of section 14” shall be inserted at the end.	
<p>Insertion of new section 20A.</p> <p>Removal of Chairperson by vote of no confidence.</p>	<p><b>15.</b> After section 20 of the principal Act, the following section shall be inserted, namely:—</p> <p>“20A. Without prejudice to the provisions of section 20, the Chairperson of a Board may be removed by vote of no confidence in the following manner, namely:—</p> <p>(a) no resolution expressing a vote of confidence or no confidence in any person elected as Chairperson of a Board shall be moved except in the manner prescribed and twelve months have not elapsed after the date of his election as a Chairperson and be removed except with the prior permission of the State Government;</p> <p>(b) notice for no confidence shall be addressed to the State Government stating clearly the grounds on which such motion is proposed to be moved and shall be signed by at least half <u>of</u> the total members of the Board;</p> <p>(c) at least three members of the Board signing the notice of no confidence shall personally present to the State Government, the notice together with an affidavit signed by them to the effect that the signatures on the no confidence motion are genuine and have been made by the signatories after hearing or reading the contents of the notice;</p> <p>(d) on receipt of the notice of no confidence, as provided hereinabove, the State Government shall fix such time, date and place as may be considered suitable for holding a meeting for the purpose of the proposed no confidence motion:</p> <p>Provided that at least fifteen days notice shall be given for such a meeting;</p> <p>(e) notice for meeting under clause (d) shall also provide that in the event of the no confidence motion being duly carried on or, election of the new Chairperson, as the case may be, shall also be held in the same meeting;</p> <p>(f) the State Government shall also nominate a Gazetted Officer (other than an officer of the department which is concerned with the supervision and administration of the Board) to act as presiding officer of the meeting in which the resolution for no confidence shall be considered;</p> <p>(g) the quorum for such a meeting of the Board shall be one-half of the total number of members of the Board;</p> <p>(h) the resolution for no confidence shall be deemed to be carried out, if passed by a simple majority of the members present;</p>	

	<p>(i) if a resolution for no confidence is carried out, the Chairperson shall cease to hold office forthwith and shall be succeeded by his successor who shall be elected by another resolution in the same meeting;</p> <p>(j) election of the new Chairperson shall be conducted under clause (i), in the meeting under the chairmanship of the said presiding officer referred to in clause (f), in the following manner, namely:—</p> <p>(A) Chairperson shall be elected from amongst the elected members of the Board;</p> <p>(B) nomination of candidates shall be proposed and seconded in the meeting itself and election after withdrawal, if any, shall be held by <u>method of secret ballot</u>;</p> <p>(C) election shall be held by simple majority of the members present in the meeting and in case of equality of votes, the matter shall be decided by drawing of lots; and</p> <p>(D) proceedings of the meeting shall be signed by the presiding officer;</p> <p>(k) new Chairperson elected under clause (h) shall hold the office only up to the remainder of the term of the Chairperson removed by the resolution of no confidence; and</p> <p>(l) if the motion for passing the resolution of no confidence fails for want of quorum or lack of requisite majority at the meeting, no subsequent meeting for considering the motion of no confidence shall be held within six months of the date of the previous meeting.”.</p>	
	<p><b>16. In section 23 of the principal Act, for sub-section (I), the following sub-section shall be substituted, namely:—</b></p> <p>“(I) There shall be a full-time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette, from a panel of two names suggested by the Board and who shall not be below the rank of Deputy Secretary to the State Government <u>and in case of non availability of a Muslim officer of that rank, a Muslim officer of equivalent rank may be appointed on deputation.</u>”.</p> <p style="text-align: center;">* * * * *</p>	Amendment of section 23.
	<p><b>17. For section 27 of the principal Act, the following section shall be substituted, namely:—</b></p> <p>“27. The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the Chief Executive Officer or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary, except the powers and functions of the Board mentioned under clauses (c), (d), (g) and (j) of sub-section (2) of section 32 and section 110.”.</p>	<p>Substitution of new section for section 27.</p> <p>Delegation of powers by Board.</p>
	<p><b>18. For section 28 of the principal Act, the following section shall be substituted, namely:—</b></p> <p>“28. Subject to the provisions of this Act and the rules made thereunder, the District Magistrate or in his absence an Additional District Magistrate or Sub Divisional Magistrate of a district in the State shall be responsible for <u>implementation of the decisions of the Board which may be conveyed through the Chief Executive Officer and the Board may, wherever consider necessary,</u></p>	<p>Substitution of new section for section 28.</p> <p>Power of District Magistrate, Additional District Magistrate or Sub Divisional Magistrate to implement the</p>



	<u>issue suitable directions to the authorities concerned for implementation of its decisions.</u>	<u>directions of the Board.</u>
	<p><b>19.</b> Section 29 of the principal Act shall be numbered as sub-section (1) thereof, and—</p> <p>(a) in sub-section (1) as so numbered, for the words “subject to such conditions and restrictions as may be prescribed and subject to the payment of such fees as may be leviable under any law for the time being in force <u>be entitled at all reasonable time</u>”, the words “subject to such conditions as may be prescribed <u>be entitled</u>” shall be substituted;</p> <p>(b) after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:—</p> <p>“(2) The mutawalli or any other person having the custody of any document related to waqf properties shall produce the same, within the prescribed period, before the Chief Executive Officer on being called upon to do so in writing.</p> <p>(3) Subject to such conditions as may be prescribed, an agency of the Government or any other organisation shall supply, within ten working days, copies of the records, registers of properties or other documents relating to waqf properties or claimed to be waqf properties, to the Chief Executive Officer on a written request to this effect from him:</p> <p>Provided that before taking any course of action as mentioned in sub-sections (2) and (3), the Chief Executive Officer shall obtain approval of the Board.”.</p>	Amendment of section 29.
Amendment of section 31.	<p><b>20.</b> In section 31 of the principal Act, the following shall be inserted at the end, namely:—</p> <p>“or a Member of Union territory Legislature or a Member of a State Legislature if so declared under a law made by the appropriate State Legislature”.</p>	
Amendment of section 32.	<p><b>21.</b> In section 32 of the principal Act,—</p> <p>(1) in sub-section (2), in clause (j),—</p> <p>(a) for the words “sale, gift, mortgage, exchange or lease”, the words “lease or exchange” shall be substituted;</p> <p>(b) for the proviso, the following provisos shall be substituted, namely:—</p> <p>“Provided that no such sanction shall be given unless <u>two-thirds</u> of the total membership of the Board are present and <u>a majority of not less than two-thirds of the members present cast their vote</u> in favour of such transaction:</p> <p>Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.”;</p> <p>(c) after sub-clause (n), the following sub-clause shall be inserted, namely:—</p> <p>“(na) to determine or cause to be determined, in such manner as may be specified by the Board, <u>market</u> rent of the waqf land or building”;</p> <p>(II) in sub-section (4), for the words “offers a feasible potential for development as a shopping centre, market, housing flats and the like”, the words “has the potential for development as an educational institution, shopping centre, market, <u>housing or residential flats</u> and the like” shall be substituted;</p>	

	(III) in sub-section (5), the words “with the prior approval of the Government,” shall be omitted.	
Amendment of section 33.	<p><b>22.</b> In section 33 of the principal Act, in sub-section (1),—</p> <p>(a) after the words “the Chief Executive Officer”, the words “or any other officer authorised by him in writing” shall be inserted;</p> <p>(b) <u>the words “either himself or any other person authorised by him in writing in this behalf” shall be omitted.</u></p>	
Amendment of section 36.	<b>23.</b> In section 36 of the principal Act, in sub-section (2), in the proviso, for the words “made by the wakf”, the words “made by the waqif” shall be substituted.	
Amendment of section 37.	<p><b>24.</b> Section 37 of the principal Act shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:—</p> <p>“(2) The Board shall forward the details of the properties entered in the register of auqaf to the concerned land record office having jurisdiction of the waqf property.</p> <p>(3) On receipt of the details as mentioned in sub-section (2), the land record office shall, according to established procedure, either make necessary entries in the land record or communicate, within a period of six months from the date of registration of waqf property under section 36, its objections to the Board.”.</p>	
	<p><b>25.</b> In section 44 of the principal Act,—</p> <p style="text-align: center;">* * * * *</p> <p>(a) in sub-section (2), for the words “ninety days”, the words “thirty days” shall be substituted;</p> <p>(b) for sub-section (3), the following sub-section shall be substituted, namely:—</p> <p>“(3) In case the Board considers any item in the budget being contrary to the objects of the waqf and the provisions of this Act, it may give such direction for addition or deletion of such item as it may deem fit.”.</p>	Amendment of section 44.
	<b>26.</b> In section 46 of the principal Act, in sub-section (2), for the figure, letters and words “1st day of May”, at both the places where they occur, the figure, letters and words “1st day of July” shall be substituted.	Amendment of section 46.
	<p><b>27.</b> In section 47 of the principal Act,—</p> <p>(I) <u>in sub-section (1),—</u></p> <p>(i) <u>in clause (a),—</u></p> <p>(a) <u>for the words “ten thousand rupees”, the words “fifty thousand rupees” shall be substituted;</u></p> <p>(b) <u>the words “and the accounts of two percent. of such wakfs shall be audited annually an auditor appointed by the Board” shall be omitted;</u></p> <p>(ii) <u>in clause (b), for the words “ten thousand rupees”, the words “fifty thousand rupees” shall be substituted;</u></p> <p>(iii) <u>in clause (c), after the words “the State Government may.”, the</u></p>	Amendment of section 47.

	<p><u>words “under intimation to the Board,” shall be inserted;</u></p> <p>(II) in sub-section (3), in the first proviso, for the words “more than ten thousand rupees but less than fifteen thousand rupees”, the words “<u>more than fifty thousand rupees but less than one lakh rupees</u>” shall be substituted.</p>	
<p>1 of 1894.</p> <p>42 of 1991.</p>	<p><b>28.</b> In section 51 of the principal Act, for sub-section (I), the following sub-sections shall be substituted, namely:—</p> <p>“(I) Notwithstanding anything contained in the waqf deed, any <u>lease or exchange</u> of any immovable property which is waqf property, shall be void unless such <u>lease or exchange</u> is effected with the prior sanction of the Board:</p> <p>Provided that no mosque, dargah, khanqah, graveyard or imambara shall be <u>leased or exchanged</u>. * * *</p> <p>(IA) Any sale, gift, <u>mortgage</u> or transfer of waqf property shall be void <i>ab initio</i>:</p> <p>Provided that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 or any other law relating to acquisition of land <u>if such acquisition is made in consultation with the Board</u>:</p> <p>Provided further that—</p> <p>(a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991;</p> <p>(b) the purpose for which the land is being acquired shall be undisputedly for a public purpose;</p> <p>(c) ** no alternative land <u>is</u> available which shall be considered as more or less suitable for that purpose; and</p> <p>(d) <u>to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or an equally suitable land with reasonable solatium in lieu of the acquired property.</u>”.</p>	<p>Amendment of section 51.</p>
<p>Amendment of section 52.</p>	<p><b>29.</b> In section 52 of the principal Act, in sub-section (I), after the words and figures “provisions of section 51”, the words and figures “or section 56” shall be inserted.</p>	
<p>Insertion of new section 52A.</p> <p>Penalty for alienation of waqf property without sanction of Board.</p>	<p><b>30.</b> After section 52 of the principal Act, the following section shall be inserted, namely:—</p> <p>“52A. (I) Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years:</p> <p>Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time being in force, be vested in the Board without any compensation therefor.</p> <p>(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 any offence punishable under this section shall be cognizable and non-bailable.</p>	<p>2 of 1974.</p>

	<p>(3) No court shall take cognizance of any offence under this section <u>except</u> on a complaint made by the Board or <u>any</u> officer duly authorised by <u>the State Government</u> in this behalf.</p> <p>(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.”.</p>	
Amendment of section 55.	<b>31.</b> In section 55 of the principal Act, before the words “the Sub-divisional Magistrate”, the words “the Executive Magistrate or” shall be inserted.	
Amendment of section 56.	<p><b>32.</b> In section 56 of the principal Act,—</p> <p>(a) in sub-section (1),—</p> <p>(i) for the words “three years”, the words “thirty years” shall be substituted;</p> <p>(ii) the following provisos shall be inserted at the end, namely:—</p> <p>“Provided that a lease or sub-lease for any period ***** up to <u>fifteen</u> years may be made for commercial activities: * * *</p> <p>Provided further that a lease or sub-lease ***** upto thirty years may be made for education <u>or</u> health <u>purposes</u>.; * * *</p> <p>(b) in sub-section (2), for the words “three years”, the words “thirty years” shall be substituted;</p> <p>(c) in sub-section (3), the following proviso shall be inserted at the end, namely:—</p> <p>“Provided that the Board shall immediately intimate the State Government regarding a lease or sub-lease for any period exceeding one year and exchange or mortgage of any waqf property and thereafter it may become effective after the expiry of forty-five days from the date on which the Board intimates the State Government.”.</p> <p style="text-align: center;">* * * * *</p>	
	<b>33.</b> In section 61 of the principal Act, in sub-section (1), for the words “eight thousand rupees”, the words, brackets and letters “ten thousand rupees for non-compliance of clauses (a) to (d) and in case of non-compliance of clauses (e) to (h), he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to ten thousand rupees” shall be substituted.	Amendment of section 61.
	<p><b>34.</b> In section 65 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—</p> <p>“(5) Notwithstanding anything contained in sub-section (1), the Board shall take over the administration of a waqf, if the waqf Board has evidence before it to prove that management of the waqf has contravened the provisions of this Act.”.</p>	Amendment of section 65.
	<p><b>35.</b> In section 68 of the principal Act,—</p> <p>(i) <u>in sub-section (2), for the words “Magistrate of the first class” and “Magistrate”, the words “District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent” shall be substituted;</u></p>	Amendment of section 68.

	(ii) <u>in sub-sections (3), (4), (5) and sub-section (6), for the words “the Magistrate”, the words “any Magistrate” shall be substituted.</u>	
	<p><b>36.</b> In section 69 of the principal Act, for sub-section (I), the following sub-section shall be substituted, namely:—</p> <p>“(I) Where the Board is satisfied after an enquiry, whether on its own motion or on the application of not less than five persons interested in any waqf, to frame a scheme for the proper administration of the waqf, it may, by an order, frame such scheme for the administration of the waqf, after giving reasonable opportunity and after consultation with the mutawalli or others in the prescribed manner.”.</p>	Amendment of section 69.
	<p><b>37.</b> In section 71 of the principal Act, in sub-section (I), for the figures “73”, the figures “70” shall be substituted.</p>	Amendment of section 71.
	<p><b>38.</b> In section 72 of the principal Act, in sub-section (I), in <i>Explanation I</i>, in clause (iii),—</p> <p>(i) after the words “following purposes”, the words “in respect of lands directly under cultivation by the mutawalli for the benefit of the waqf” shall be inserted;</p> <p>(ii) in sub-clause (f), in the proviso, for the words “ten per cent.”, the words “twenty per cent.” shall be substituted;</p> <p>(iii) after the proviso, the following proviso shall be inserted, namely:—</p> <p>“Provided further that no such deduction shall be permitted in respect of waqf land given on lease, by whatever name called, whether <i>batai</i> or share cropping or any other name.”.</p>	Amendment of section 72.
Amendment of section 77.	<p><b>39.</b> In section 77 of the principal Act, in sub-section (4), after clause (f), the following clause shall be inserted, namely:—</p> <p>“(g) payment of maintenance to Muslim women as ordered by a court of competent jurisdiction under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986.”.</p>	25 of 1986.
Amendment of section 81.	<p><b>40.</b> In section 81 of the principal Act, after the words “as it thinks fit”, the following shall be inserted at the end, namely:—</p> <p><u>“and a copy of the said auditor’s report, along with orders shall be forwarded by the State Government to the *** Council within a period of thirty days of laying of such report before each House of the State legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.”.</u></p>	
Amendment of section 83.	<p><b>41.</b> In section 83 of the principal Act, for sub-section (4), the following sub-sections shall be substituted, namely:—</p> <p><b>“(4) Every Tribunal shall consist of—</b></p> <p><b>(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;</b></p> <p><b>(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;</b></p>	

	<p>(c) one person having knowledge of Muslim law and jurisprudence, Member,</p> <p>and the appointment of every such person shall be made either by name or by designation.</p> <p>(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as <i>ex officio</i> members shall be such as may be <u>prescribed</u>.”.</p>	
Amendment of section 85.	<b>42.</b> In section 85 of the principal Act, for the words “civil court”, the words “civil court, revenue court and any other authority” shall be substituted.	
Amendment of section 86.	<b>43.</b> In section 86 of the principal Act, in clause (b), after the words “a previous mutawalli”, the words “or by any other person” shall be inserted.	
Amendment of section 90.	<b>44.</b> In section 90 of the principal Act, in sub-section (3), for the words “one month”, the words “six months” shall be substituted.	
Amendment of section 97.	<p><b>45.</b> In section 97 of the principal Act, the following proviso shall be inserted at the end, namely:—</p> <p>“Provided that the State Government shall not issue any direction being contrary to any waqf deed or any usage; practice or custom of the waqf.”.</p>	
Amendment of section 99.	<p><b>46.</b> In section 99 of the principal Act,—</p> <p>(a) in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—</p> <p>“Provided further that the power of the State Government under this section shall not be exercised unless there is a <i>prima facie</i> evidence of financial irregularity, misconduct or violation of the provisions of this Act.”;</p> <p>(b) in sub-section (3), for clause (a), the following clause shall be substituted, namely:—</p> <p>“(a) extend the period of supersession by another six months with reasons to be recorded in writing and, the period of continuous supersession shall not exceed more than a year; or”.</p>	
Amendment of section 102.	<b>47.</b> In section 102 of the principal Act, in sub-section (2), for the words “after consulting the State Governments”, the words “after consulting the *** Council and the State Governments” shall be substituted.	
Insertion of new section 104A.	<b>48.</b> After section 104 of the principal Act, the following section shall be inserted, namely:—	
Prohibition of sale, gift, mortgage or transfer of waqf property.	<p>“104A. (1) <u>Notwithstanding anything contained in this Act or any other law for the time being in force or any waqf deed, no person shall sell, gift, mortgage or transfer any movable or immovable property which is a waqf property to any other person.</u></p> <p>(2) Any sale, gift, mortgage or transfer of property referred to in sub-section (1) shall be void <i>ab initio</i>.”.</p>	
Amendment of section	<b>49.</b> In section 106 of the principal Act, in sub-section (1), for the words “after consultation with the Government”, the words “after consultation with the ***	

106.	Council and the Government” shall be substituted.	
Amendment of section 109.	<p><b>50.</b> In section 109 of the principal Act, in sub-section (2),—</p> <p>(a) for clause (i), the following clauses shall be substituted, namely:—</p> <p>“(i) the qualifications required to be fulfilled by a person to be appointed as a mutawalli under clause (i) of section 3;</p> <p>(ia) other particulars which the report of the Survey Commissioner may contain under clause (f) of sub-section (3) of section 4;”;</p> <p>(b) in clause (vi), for the word “under”, the words, brackets and figure “under sub-section (1) of ” shall be substituted;</p> <p>(c) after clause (vi), the following clauses shall be inserted, namely:—</p> <p>“(via) the period within which the mutawalli or any other person may produce documents related to waqf properties under sub-section (2) of section 29;</p> <p>(vib) the conditions under which an agency of the Government or any other organisation may supply copies of records, registers and other documents under sub-section (3) of section 29;”;</p> <p>(d) after clause (xxii), the following clause shall be inserted, namely:—</p> <p>“(xxiia) the terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as <i>ex officio</i> members under sub-section (4A) of section 83;”.</p>	

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# **A P P E N D I C E S**

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(vide para 3 of the Report)

**MOTION FOR REFERENCE OF THE BILL TO THE SELECT COMMITTEE OF  
RAJYA SABHA**

**THE WAKF (AMENDMENT) BILL, 2010, AS PASSED BY LOK SABHA.**

Shri Salman Khursheed, Minister of State (Independent Charge) of the Ministries of Corporate Affairs and Minority Affairs, moved the following motion : -

“That the Bill to amend the Wakf Act, 1995, as passed by Lok Sabha, be referred to a Selection Committee of the Rajya Sabha consisting of the following Members : -

1. Prof. Saif-ud-Din Soz
2. Shri Raashid Alvi
3. Shri Parvez Hashmi
4. Shri Tariq Anwar
5. Dr. Prabha Thakur
6. Shri Mukhtar Abbas Naqvi
7. Shri Prakash Javadekar
8. Shri Anil Madhav Dave
9. Shri Balwinder Singh Bhunder
10. Shri Mohammed Amin
11. Shri Munquad Ali
12. Shri Mohammed Adeeb
13. Dr. Bhalchandra Mungekar

with instructions to report to the Rajya Sabha by six weeks.”

The motion was adopted

(vide para 5 of the Report)

**LIST OF DELEGATIONS/ORGANISATIONS WHO APPEARED BEFORE  
THE SELECT COMMITTEE**

1. Ministry of Minority Affairs
2. Haryana Wakf Board
3. National Heritage Protection Council, New Delhi
4. Central Wakf Council
5. All India Muslim Personal Law Board
6. Mustjab Muslim Welfare Committee, Ropar (Punjab)
7. National Minorities Development and Finance Corporation
8. Legislative Department (Ministry of Law and Justice)
9. All India Shia Personal Law Board
10. Punjab Wakf Board
11. Jamiat-e-Ulama, Himachal Pradesh
12. Representatives of Shia Community
13. National Minorities Development and Finance Corporation
14. All India Muslim Majlis-e-Mushawarat
15. Bar Council, Raipur
16. Bar Council, Maharashtra
17. Department of Legal Affairs
18. Representatives of All India Muslim Personal Law Board

**LIST OF INDIVIDUALS/ORGANISATIONS ETC., FROM WHOM WRITTEN  
SUBMISSIONS WERE RECEIVED**

1. Shri Mohd. Amin, MP
2. Shri Mukhtar Abbas Naqvi, MP
3. Haryana Wakf Board.
4. Central Wakf Council, New Delhi
5. Mustjab Muslim Welfare Committee, Punjab
6. Shri Imtiaz Ahmed, Advocate, Counsel for the Haryana Wakf Board
7. Rajasthan Board of Muslim Wakfs, Jaipur.
8. Jamiat-Ulma Himachal, Idara Isalaphul Fikr, Masjid Complex Bileanganj, Simla
9. All India Shia Personal Law Board.
10. All India Muslim Personal Law Board
11. Shri Shyed Shah Nawas Husain
12. Jamiat-e-Ulma Himachal
13. Col. B. H. Zaidi, President Shia Wakf Board, Delhi.
14. Shri Abdul Rashid Ansari, Former Member, Delhi Wakf Board.
15. Shri Shakir Husain Ansari, former Ex-Vice Chairman, Haj Committee of India
16. Dr. (Smt.) Masarrat Shahid, Chairperson, MMD & FC.
17. Shia Council of India (Syed Shauzab Kazim Jarwali Rizvi).
18. Mohammed Fazlurahim Mujaddiddi – Pector-Jamea-TVL-Hidaya Jaipur
19. Bar Council of Uttarakhand
20. Bar Council of India
21. Shri K. Rahman Khan, Deputy Chairman Rajya Sabha
22. Abdul Rashid Ansari, Former Member, Delhi Wakf Board.
23. P.A. Inamdar, President, Maharashtra Cosmopolitan Education Society.
24. Mohibbulah Nadvi Imam & Khateeb Jama Masjid (Parliament)
25. Surya Humayun Mirza Wakf
26. National Heritage Protection Council, New Delhi
27. Punjab Wakf Board
28. Andhra Pradesh State Wakf Board
29. Shri A.H. Qazi Addl. Advocate General
30. Mohd. Farooq, Ex.-Estate Officer, Panipat
31. Kerala State Board of Wakf

32. Jammu & Kashmir Wakf Council
33. Minorities Development Department, Govt. of Maharashtra
34. All India Personal Law Board
35. Kerala Muslim Jama-ATH Council, Trivenduram
36. Smt. Prabha Thakur, Member Select Committee on Wakf Amendment Bill, 2011.

**LIST OF STATE GOVERNMENTS/UT ADMINISTRATIONS WHO SENT  
SUGGESTIONS ON THE BILL**

1. State Government of Karnataka.
2. State Government of Himachal Pradesh
3. U.T. Government of Lakshadweep
4. U.T. Government of Andaman & Nicobar Administration Sectt.
5. U.T. Government Pondicherry
6. State Government of Nagaland
7. State Government of Uttar Pradesh
8. State Government of Chattisgarh
9. State Government of Manipur
10. U.T. Government of Daman and Diu
11. State Government of Madhya Pradesh
12. State Government of Mizoram
13. State Government of Maharashtra
14. State Government of Tamil Nadu

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# MINUTES

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**PARLIAMENT OF INDIA  
RAJYA SABHA SECRETARIAT**

**MINUTES OF THE MEETINGS OF THE SELECT COMMITTEE  
ON THE WAKF (AMENDMENT) BILL, 2010**

**I**

**FIRST MEETING**

The Committee met at 3.00 p.m. on Friday, the 24th September, 2010 in Room No. '63', First Floor, Parliament House, New Delhi

**MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Tariq Anwar
4. Dr. Prabha Thakur
5. Shri Mukhtar Abbas Naqvi
6. Shri Prakash Javadekar
7. Shri Balwinder Singh Bhunder
8. Shri Munquad Ali
9. Shri Mohammed Adeeb
10. Dr. Bhalchandra Mungekar

**WITNESSES**

**I. Representatives of the Ministry of Minority Affairs**

1. Shri Vivek Mehrotra, Secretary
2. Shri E. R. Solomon, Joint Secretary
3. Shri Mohd. Afzal, Deputy Secretary

**II. Representatives of the Ministry of Law and Justice (Legislative Department)**

1. Shri N. K. Nampoothiry, Additional Secretary
2. Shri R. K. Pattanayak, Deputy Legislative Counsel

**SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M. K. Khan, Director
3. Shri T. N. Pandey, Joint Director
4. Ms. S. Pankajavalli, Deputy Director
5. Shri Ranjan Chaturvedi, Assistant Director
6. Shri R. P. Sharma, Committee Officer

2. The Chairman of the Select Committee welcomed the Members. He outlined the complexities involved in the issue and the work done by the Joint Parliamentary Committee on Wakf. He sought suggestions from the Members regarding the modalities for examination of the Wakf (Amendment) Bill, 2010. The Committee took note of the suggestions made by Shri Mohammed Adeb, M.P. and a Member of the Committee.

3. The Members were of the view that the protracted course of consideration of the Bill would involve appraisal of the recommendations of the Joint Parliamentary Committee on Wakf and other bodies on the subject. The Committee also felt the need for inviting views of State Governments on the provisions of the Bill, as it entailed questions pertaining to land. Besides, the Committee needed to hear various stakeholders and experts, particularly the All India Muslim Personal Law Board, All India Majlis-e-Mushawarat, All India Shia Personal Law Board, etc. on various provisions of the Bill.

4. Considering the long-term implication of various provisions of the Bill, the Committee felt that the six weeks' time to examine the Bill was too short. It decided that Hon'ble Chairman may be requested to extend the time for presentation of the Report upto the first day of the last week of the Winter Session, 2010.

5. The Secretary, Ministry of Minority Affairs then, made a presentation on various provisions of the Wakf (Amendment) Bill, 2010, as passed by the Lok Sabha. The Members raised queries regarding those recommendations of the JPC on Wakf, which had not been included in the Amendment Bill. The Secretary gave recommendation-wise explanation. He also informed the Committee that the Government had already accepted most of the recommendations of the Joint Parliamentary Committee. The Committee held preliminary discussion over certain recommendations, particularly those pertaining to 'deemed mutation' of wakf property, powers of Wakf Boards, eligibility for membership of the Wakf Boards, powers of the CEO of a Wakf Board, definition of 'encroacher', etc.

6. The Committee also sought the opinion of the Legislative Department, Ministry of Law and Justice on certain issues pertaining to land and the State Land Revenue laws, etc. The representative of the Legislative Department assured to submit their opinion at a later date.

7. A verbatim record of the proceedings of the meeting was kept.

8. The Committee adjourned at 5.00 p.m.



## **II**

### **SECOND MEETING**

The Committee met at 3.30 p.m. on Monday, the 18th October, 2010 in Room No. '63', First Floor, Parliament House, New Delhi

#### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Mukhtar Abbas Naqvi
4. Shri Anil Madhav Dave
5. Shri Balwinder Singh Bhunder
6. Shri Mohammed Amin
7. Shri Munquad Ali
8. Shri Mohammed Adeeb
9. Dr. Bhalchandra Mungekar

#### **WITNESSES**

##### **I. Ministry of Minority Affairs**

Shri Vivek Mehrotra, Secretary

##### **II. Haryana Wakf Board**

1. Dr. Parvez Ahmad, IFS, Chief Executive Officer
2. Shri Iqbal Ahmad Khan, Senior Law Officer
3. Shri Imtiaz Ahmad, Advocate, Supreme Court

##### **III. National Heritage Protection Council, New Delhi**

1. Shri Mohammad Saleem, General Secretary
2. Shri Asrar Ahmed, President, Supreme Court Lawyer's Discussion Forum
3. Ms. Rana Parveen Saddiqui, Member, Bar Council of Delhi
4. Shri. M. U. Saddiqui, Former Deputy Secretary, Home, Delhi State
5. Shri Anwar Sadiq, Chartered Accountant
6. Maulana Ata-ur-Rehman Qasmi, President, Shah Wali Ullah Institute
7. Shri Athar Alam, Advocate & General Secretary

#### **REPRESENTATIVES OF THE MINISTRIES**

##### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri E. R. Solomon, Joint Secretary
2. Shri Mohd. Afzal, Deputy Secretary
3. Shri B. D. Barua, Under Secretary

## **II. MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)**

1. Shri N. K. Nampoothiry, Additional Secretary
2. Shri R. K. Pattanayak, Deputy Legislative Counsel

### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M. K. Khan, Director
3. Shri T. N. Pandey, Joint Director
4. Ms. S. Pankajavalli, Deputy Director
5. Shri Ranjan Chaturvedi, Assistant Director
6. Shri R. P. Sharma, Committee Officer

2. The Chairman of the Committee gave brief outline of the agenda for the meeting. He directed the Secretariat to circulate the written suggestions given by Shri Mohammed Amin and Shri Mukhtar Abbas Naqvi, Members of the Committee to be included in the agenda for the next meeting. He also directed that in view of limited time available to the Committee, the State Governments may be requested to send their written views on various provisions of the Bill to the Secretariat, within a stipulated period.

3. The Committee then resumed consideration of recommendations contained in the ninth report of the JPC on Wakf, regarding inclusion of Wakf properties under the purview of the Public Premises (Eviction of Unauthorized Occupants) Act in different States and exemption of Wakf properties from State Rent Control Acts. After hearing the views of Secretary, Ministry of Minority Affairs and the Additional Secretary, Legislative Department, the Committee observed that the Union Government may continue to persuade the State Governments in this regard.

4. The Committee then heard the views of the representatives of Haryana Wakf Board. The Committee directed the representatives of Haryana Wakf Board to submit their detailed suggestions, in the form of a written memorandum, within a week.

5. The Committee also heard views of the representatives of the National Heritage Protection Council. The witnesses underlined the issues pertaining to survey of Wakf properties, exemption from Land Acquisition Act, powers of eviction to the CEO, election of enrolled members of Bar Council to the State Wakf Boards, etc. The Chairman asked them to submit their suggestions, in form of a written memorandum, within a week.

6. The Chairman directed that the representations submitted by the Haryana Wakf Board and the National Heritage Protection Council, may be forwarded to the Ministry of Minority Affairs and the Legislative Department, for their comments.

7. The Committee decided to invite the representatives of the Ministry of Minority Affairs, Legislative Department, All India Muslim Personal Law Board (AIMPLB) and the Secretary, Central Wakf Council, in its subsequent meeting (s).

8. A verbatim record of the proceedings of the meeting was kept.

9. The Committee adjourned at 6.00 p.m.

### **III**

#### **THIRD MEETING**

The Committee met at 3.00 p.m. on Thursday, the 4th November, 2010 in Room No. '63', First Floor, Parliament House, New Delhi

#### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Parvez Hashmi
4. Shri Mukhtar Abbas Naqvi
5. Shri Mohammed Amin
6. Shri Mohammed Adeeb

#### **WITNESSES**

##### **I. Central Wakf Council**

Dr. M. R. Haque, Secretary

##### **II. All India Muslim Personal Law Board**

1. Maulana Mohd. Wali Rahmani, Secretary
2. Shri Kamal Farooqui
3. Shri Zafar A. Rahmani
4. Shri Najmi Waziri, Advocate

##### **III. Mustjab Muslim Welfare Committee, Ropar (Punjab)**

1. Shri Rehmat Ali, Secretary General
2. Shri T. H. Falahi
3. Shri Umar Din

## **REPRESENTATIVES OF THE MINISTRIES**

### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri E. R. Soloman, Joint Secretary
2. Shri Mohd. Afzal, Deputy Secretary
3. Shri B. D. Barua, Under Secretary
4. Shri Zakir Husain, Sr. Research Investigator

### **II. MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)**

1. Shri N. K. Nampoothiry, Additional Secretary
2. Shri R. K. Pattanayak, Deputy Legislative Counsel

### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M. K. Khan, Director
3. Shri T. N. Pandey, Joint Director
4. Shri R. P. Sharma, Committee Officer

2. The Chairman welcomed the witnesses. The Committee then heard the views of Secretary, Central Wakf Council on the Wakf (Amendment) Bill, 2010. The witness stated that there have been shortcomings in the Wakf Act, 1995 and if these are removed, it will be a great help in the administration of Wakf properties in the country. Further, some Wakf properties have been encroached. There was a need to enlarge the scope of the Wakf Act, 1995, so that Wakf properties could be evicted of encroachments, as per the provisions of Public Premises Act. As per the provisions of the present Wakf Act, Wakf Boards have the right to declare a property as Wakf property. But Muttawalis are efficient enough to decide the rent of a particular property given on lease. There are so many Wakf properties in the country which have not been registered as Wakf. There is a need to register these as Wakf property. The Wakf Commissioner and Muttawallis, who are responsible for not registering the Wakf properties as Wakf should be punished. The Masjid, Makbara, Imambara and Kabristan should be excluded from the purview of acquisition. The Wakf organizations, which have been engaging themselves in handling the Wakf matters in States, should be nominated as Members in Wakf Boards.

3. The Committee then heard the views of Secretary, All India Muslim Personal Law Board. He also impressed upon the need for registration of all the wakf properties in the country. He mentioned that some points have not been included in the draft bill. He spoke about the appointment of CEO, registration of wakf properties, acquisition of wakf properties and declaration regarding removal of encroachments under Public Premises Act. He stated that in some States like U.P., West Bengal and Rajasthan, the scope of Public Premises Act had been enlarged to include the wakf matters. He suggested that the scope of the Wakf Act, 1995 may be enlarged to that extent. The Chairman assured him that the Committee would look into all the suggestions placed before the Committee.

4. The Committee, then heard the views of the Secretary General, Mustjab Muslim Welfare Committee, Nangal, Punjab. The witness impressed upon the need to examine the issue of encroachment of Wakf properties. He stated that some wakf properties had been encroached by the State Government in Punjab. He stated that the Act should be amended in such a manner, so as to save these wakf properties. He further mentioned that a property,

donated by a non-muslim or Gram Panchayat, should be registered as Wakf property. He also suggested that Section 14 of the Wakf Act should be amended because there is no muslim MP/MLA in Haryana and Himachal Pradesh. The wakf properties are being usurped in Haryana and Himachal Pradesh, after trifurcation of the Punjab Wakf Board.

5. The Chairman directed the Secretariat that the written submissions received from the above witnesses may be forwarded to the Ministry of Minority Affairs and Ministry of Law and Justice (Legislative Department) for seeking their comments in the matter.

6. A verbatim record of the proceedings of the meeting was kept.

7. The Committee adjourned at 4.10 p.m.

## **IV**

### **FOURTH MEETING**

The Committee met at 3.00 p.m. on Wednesday, the 24th November, 2010 in Room No. '63', First Floor, Parliament House, New Delhi

#### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Mukhtar Abbas Naqvi
4. Shri Prakash Javadekar
5. Shri Anil Madhav Dave
6. Shri Mohammad Amin
7. Shri Mohammed Adeeb
8. Dr. Bhalchandra Mungekar

#### **WITNESSES**

##### **I. National Minority Development and Finance Corporation**

Shri Abrar Ahmed, Managing Director

##### **II. Ministry of Law and Justice (Legislative Department)**

1. Shri V. K. Bhasin, Secretary
2. Shri N. K. Nampoothiry, Additional Secretary
3. Shri Diwakar Singh, Deputy Legislative Counsel
4. Shri Sreemannarayana, Assistant Legislative Counsel

##### **Representatives of the Ministry of Minority Affairs**

1. Shri E. R. Solomon, Joint Secretary
2. Shri Mohd. Afzal, Deputy Secretary
3. Shri B.D. Barua, Under Secretary

#### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M. K. Khan, Director
3. Shri T. N. Pandey, Joint Director
4. Ms. S. Pankajavalli, Deputy Director
5. Shri Ranjan Chaturvedi, Assistant Director
6. Shri R. P. Sharma, Committee Officer

2. The Committee heard the views of the Managing Director, National Minority Development and Finance Corporation (NMDFC). The Committee was informed that in accordance with the findings of the Sachhar Committee, a high-powered Committee was constituted by the Government to examine the scope for making the wakf properties financially viable. On the recommendations of such a Committee, a proposal to trifurcate the Corporation was under consideration of the Ministry. According to the proposal, the NMDFC would be made the holding Company for two subsidiaries, one for developing the wakf properties and another meant to develop micro-finance sector under public-private partnership model. The Committee expressed its reservation over the desirability of the proceeds of wakf properties being spent on non-muslim minorities. The representative of the Ministry of Minority Affairs assured the Committee of giving due consideration to the Committee's concern and that the trifurcation of the NMDFC would be done in accordance with the Company law and the Muslim law.

3. Thereafter, the Committee heard the views of the Secretary, Legislative Department (M/o Law and Justice) on various provisions of the Bill. On the specific issue of excluding the wakf properties from land acquisition, the witness informed that such acquisition shall be subject to the provisions of the proposed Land Acquisition (Amendment) Bill, 2010 and The Rehabilitation and Resettlement Bill, 2010. On a query, he informed that the Wakf (Amendment) Bill intend to amend Section 85 of the Act, to exclude any dispute pertaining to wakf, and determined by the Wakf Tribunals, from being adjudicated by the civil courts, revenue courts, etc. The Committee desired the presence of the Secretary, Legislative Department and the Ministry of Minority Affairs during the Clause-by-Clause consideration of the Bill, to assist the Select Committee.

4. The Committee then reviewed the progress of examination of the Bill. After some discussion it decided to seek further extension of time for presentation of its Report till the first day of the last week of the first phase of the Budget Session 2011 of the Rajya Sabha and authorized the Chairman of the Committee to move a motion in the House in this regard. The Committee further authorized Shri Raashid Alvi to move such motion in the absence of the Chairman and in his absence Shri Prakash Javadekar to move the motion. The Committee decided to hear two more witnesses viz, Muslim Majlis-e-Mushawarat and the All India Shia Personal Law Board, besides some select representatives of the Shia community, before going in for clause-by-clause consideration of the Bill.

5. A verbatim record of the proceedings of the meeting was kept.

6. The Committee adjourned at 4.10 p.m.

## V

### **FIFTH MEETING**

The Committee met at 5.30 p.m. on Wednesday, the 8th December, 2010 in Room No. '074', Parliament Library Building, New Delhi

#### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Parvez Hashmi
4. Shri Tariq Anwar
5. Dr. Prabha Thakur
6. Shri Mukhtar Abbas Naqvi
7. Shri Prakash Javadekar
8. Shri Anil Madhav Dave
9. Shri Balwinder Singh Bhunder
10. Shri Mohammed Amin
11. Shri Mohammed Adeeb

#### **Special Invitee**

Shri K. Rahman Khan, Deputy Chairman, Rajya Sabha

#### **WITNESSES**

##### **I. All India Shia Personal law Board**

1. Shri Mirza Mohammad Yasoob Abbas
2. Shri Ahmad Ali,
3. Shri Abbas Murtaza,
4. Shri Abbas Mujtaba,

##### **II. Punjab Wakf Board**

1. Shri Mohd. Izhar Alam, Chairman
2. Smt. Manju Qureshi, Member
3. Haji Fazaldin Bhatti, Member
4. Shri Nadeem Anwar, Member
5. Shri Mohd. Usman Rehmani, Member
6. Syed Mohd. Afzaal, Member
7. Shri Danishwar Ali, Addl. Law Officer

#### **REPRESENTATIVES OF THE MINISTRIES**

##### **I. MINISTRY OF MINORITY AFFAIRS**



1. Shri E. R. Solomon, Joint Secretary
2. Shri Mohd. Afzal, Deputy Secretary
3. Shri Zakir Hussain, Sr. Research Investigator

## II. MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)

1. Shri N. K. Nampoothiry, Additional Secretary
2. Shri K.V. Kumar, Asstt. Legislative Council

### SECRETARIAT

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M. K. Khan, Director
3. Shri T. N. Pandey, Joint Director
4. Ms. S. Pankajavalli, Deputy Director
5. Shri Ranjan Chaturvedi, Assistant Director
6. Shri R. P. Sharma, Committee Officer

2. The Chairman apprised the Committee of the progress of examination the Wakf (Amendment) Bill, 2010. The Select Committee decided *inter alia*, to hear the select Shia scholars in its next meeting.

3. The Select Committee then heard the presentation made by the representatives of the All India Shia Personal Law Board. The witnesses submitted that the Shia Wakf Boards should be established in every State; that the Act should provide reservation for the Shia community in the Central Wakf Council; that the encroachments from the wakf properties should be evicted expeditiously. A separate law, on the lines of Ajmer Sharif Dargah, may be enacted for the Husainabad Trust, Lucknow. It was also demanded that the aukaf records should be computerized. The representatives of the Ministry of Minority Affairs apprised the Committee about the Government-funded scheme to computerize the wakf records. However, no request was received from Uttar Pradesh. The Committee asked the representatives to provide data on the encroachments, along with the list of encroachers. The witnesses then withdrew.

4. The Committee then heard the representatives of the Punjab Wakf Board. The Chairman of Punjab Wakf Board informed the Committee about the constraints in securing Wakf documents which were mainly due to migration. He informed that the Wakf properties in Punjab were notified in 1974. He also informed the Committee about the recent report of Punjab Law Commission regarding fresh survey of the wakf properties in the State. He suggested that in order to secure speedy disposal of cases, single member Tribunal should be retained, which should be headed by a judicial officer of the rank of a Sessions Judge. Another suggestion was to invest a definite portion of income from wakf for the local population. On the issue of unification of Wakf Boards of Haryana, Punjab and Himanchal Pradesh, the Punjab Wakf Board felt that such unification may have adverse effect on Wakf Board's ability to effectively supervise the wakf properties spread over a large areas. The Committee asked the representatives to submit a written memorandum. The representatives then withdrew.

5. The Chairman of the Committee welcomed Hon'ble Deputy Chairman, Rajya Sabha, who gave an overview of the Ninth report of the JPC on Wakfs. Hon'ble Deputy Chairman gave the background of the constitution of the Joint Parliamentary Committee on Wakf and

the methodology adopted by it in examining the issues pertaining to Wakf. He gave a resume of salient observations of the Joint Parliamentary Committee on the issues pertaining to encroachments on wakf properties, need to bring wakf properties under the purview of Public Premises Act, exemption from Rent Control Acts, financial prospects of such properties, need for computerization, sustained litigation, staffing of wakf boards, etc. He also informed the Committee that Hon'ble Prime Minister had announced a grant of Rs 25 crore for computerization of the wakf records. He also gave an account of items/issues which could broadly be covered in the Wakf (Amendment) Bill, 2010. The Chairman, on behalf of the Committee, expressed appreciation of the efforts made by the JPC.

6. A verbatim record of the proceedings of the meeting was kept.

7. The Committee adjourned at 8.15 p.m.

## **VI**

### **SIXTH MEETING**

The Committee met at 4.00 p.m. on Thursday, the 23rd December, 2010 in Committee Room 'A', Parliament House Annexe, New Delhi.

#### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Tariq Anwar
4. Dr. Prabha Thakur
5. Shri Balwinder Singh Bhunder
6. Shri Mohammed Amin
7. Dr. Bhalchandra Mungekar

#### **WITNESSES**

##### **I. Representative of Jamiat-e-Ulama, Himachal Pradesh**

Maulana Mumtaz Ahmad Qasmi, Vice President

##### **II. Representatives of Shia Community**

1. Shri Shakir Husain Ansari, Delhi
2. Maulana Sozak Kazim Rizvi, Lucknow
3. Shri Hasan Baqar Kazimi, Allahabad
4. Shri Abdul Rashid Ansari, Delhi

#### **REPRESENTATIVES OF THE MINISTRIES**

##### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri E. R. Solomon, Joint Secretary
2. Shri Mohd. Afzal, Deputy Secretary
3. Shri Zakir Hussain, Sr. Research Investigator

##### **II. MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)**

1. Dr. Sanjay Singh, Joint Secretary & Legislative Counsel
2. Shri Diwakar Singh, Deputy Legislative Counsel
3. Shri K.V. Kumar, Asstt. Legislative Council

#### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary

2. Shri T. N. Pandey, Joint Director
3. Ms. S. Pankajavalli, Deputy Director
4. Shri R. P. Sharma, Committee Officer

2. The Chairman apprised the Committee of the progress of examination of the Wakf (Amendment) Bill, 2010.

3. The Select Committee then heard the representative of Jamiat-e-Ulama, Himachal Pradesh. He submitted a Memorandum, seeking amendment in Section 14 of the Wakf Act, 1995. As stated that several Wakf properties in Himachal Pradesh have been encroached upon. The Central Wakf Council should be given more rights, by amending Section 14 of the Act. The State Government of Himachal Pradesh also had acquired Wakf properties, by giving nominal rent to the Wakf Board.

4. The Committee then heard some select representatives of Shia Community from Delhi, Lucknow and Allahabad. They submitted written memoranda to the Committee for consideration. It was explained that there are 45-50 per cent Shia Auqafs in the country. They requested that there should be Shia representation in Wakf Boards, particularly in the States of Andhra Pradesh, West Bengal, Delhi, Gujarat and Haryana. The Chairman requested them to submit data regarding Shia Auqafs in Delhi and Uttar Pradesh. The witnesses requested for amendment in Section 14 of the Wakf Act, 1995. The Committee asked the representatives to submit their written memoranda on the remaining issues on the subject.

5. The Committee then asked the representatives of the Ministry of Minority Affairs and Department of Law and Justice to study all the suggestions received from various quarters so that the Committee could discuss the Wakf (Amendment) Bill, 2010 clause-by-clause and suggest amendments, in the light of the recommendations of the Joint Parliamentary Committee on Wakf. The representatives of both the Ministries informed the Committee that all the suggestions received as on date from various witnesses were being examined.

6. A verbatim record of the proceedings of the meeting was kept.

7. The Committee adjourned at 5.05 p.m.

## **VII**

### **SEVENTH MEETING**

The Committee met at 3.00 p.m. on Wednesday, the 5th January, 2011 in Committee Room '63', Parliament House, New Delhi.

#### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Tariq Anwar
4. Shri Anil Madhhav Dave
5. Shri Balwinder Singh Bhunder
6. Shri Mohammed Amin
7. Shri Mohammed Adeeb

#### **WITNESSES**

##### **National Minorities Development and Finance Corporation**

Dr. (Smt.) Masarrat Shahid, Chairperson

#### **REPRESENTATIVES OF THE MINISTRIES**

##### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri E. R. Solomon, Joint Secretary
2. Shri Mohd. Afzal, Deputy Secretary
3. Shri Zakir Hussain, Sr. Research Investigator

##### **II. MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT)**

1. Dr. G. N. Raju, Joint Secretary & Legislative Counsel
2. Shri Diwakar Singh, Deputy Legislative Counsel
3. Shri K.V. Kumar, Asstt. Legislative Council

#### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M. K. Khan, Director
3. Shri T. N. Pandey, Joint Director
4. Ms. S. Pankajavalli, Deputy Director
5. Shri R. P. Sharma, Committee Officer

2. The Chairman apprised Members about the progress of examination of the Wakf (Amendment) Bill, 2010.
3. The Select Committee then heard the Chairperson of National Minorities Development and Finance Corporation on various provisions of the Wakf (Amendment) Bill, 2010. She expressed her reservation over the proposal of restructuring the Corporation by the Government. She favoured appointment of full-fledged Executive Officers in Wakf Boards, so that they could bear full responsibility to implement the provisions of the amended Wakf Act, 1995. She submitted that nearly 30% of wakf lands (properties) have been encroached by different State Governments.
4. The Joint Secretary, Ministry of Minority Affairs stated that there is scheme for strengthening the Wakf Boards in the country. Restructuring of the National Minorities Development and Finance Corporation was not related to the Wakf (Amendment) Bill, 2010. One committee was perhaps examining the issue of setting up a Wakf Development Corporation, under the umbrella of the NMDFC. When its final report is received, the Ministry of Minority Affairs would place the matter before the Cabinet for further examination.
5. The Chairperson, further suggested that there should be zonal officers under the Central Wakf Council in the country, to implement the amended Act. The Chairman assured the witness that when issue of restructuring of her organisation is discussed at appropriate forum, her views will be taken care of.
6. The Committee then asked the representatives of the Ministry of Minority Affairs and Department of Law and Justice to study all the suggestions received from various quarters, so that the Committee could discuss the Wakf (Amendment) Bill, 2010 clause-by-clause and suggest amendments, in the light of the recommendations of the Joint Parliamentary Committee on Wakf. The representatives of both the Ministries informed the Committee that all the suggestions received as on date from various witnesses were being examined.
7. A verbatim record of the proceedings of the meeting was kept.
8. The Committee adjourned at 5.05 p.m.

## **VIII**

### **EIGHTH MEETING**

The Committee met at 3.30 p.m. on Friday, the 28th January, 2011 in Committee Room 'A', Parliament House Annexe, New Delhi.

#### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Dr. Prabha Thakur
4. Shri Prakash Javadekar
5. Shri Anil Madhav Dave
6. Shri Balvinder Singh Bhunder
7. Shri Mohammed Amin
8. Shri Mohammed Adeeb
9. Dr. Bhalchandra Mungekar

#### **WITNESSES**

1. Shri Syed Shahabuddin, President, All India Muslim Majlis-e-Mushawarat.
2. Shri. Faisal Rizvi, Advocate and Member Bar Council, Raipur, Chhatigarh.
3. Shri Ahmed Khan Pathan, Advocate and Member Bar Council, Maharashtra.
4. Shri R. Raghupathy, Additional Secretary, Department of Legal Affairs (Ministry of Law and Justice)

#### **REPRESENTATIVE OF MINISTRY OF LAW AND JUSTICE**

Shri N. K. Nampoothiry, Additional Secretary, Legislative Department

#### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M. K. Khan, Director
3. Shri T. N. Pandey, Joint Director
4. Ms. S. Pankajavalli, Deputy Director
5. Shri Ranjan Chaturvedi, Assistant Director
6. Shri R. P. Sharma, Committee Officer

2. The Chairman welcomed the Members and the witnesses and requested Shri Syed Shahabuddin to elaborate on the issues raised by him in his representation on the Bill. Shri Shahabuddin elaborated on his suggestions pertaining to specific Clauses in the Bill and to the

Sections 2, 3, 4, 5, 6, 9, 13, 14, 16, 19, 20, 23, 27, 32, 51, 52, 54, 56, 67, 83 and 87 of the parent Act.

3. The Committee then heard Shri Faisal Rizvi and Shri Ahmed Khan Pathan, Advocates. The witnesses raised the issue pertaining to the proposed amendment to Section 14 (b) (iii) of the parent Act, regarding representation of Muslim Members of the Bar Council of the State in the State Wakf Boards and suggested retention of the existing provision in the Act, to avoid any complexity in the election of such members.

4. The Committee then heard the Additional Secretary, Department of Legal Affairs. The Chairman sought his views on the specific queries pertaining to powers of the Tribunal to secure eviction in view of recent Supreme Court judgment. In his reply, the Additional Secretary submitted that necessary provisions will have to be incorporated in the Act to give such powers. Regarding applicability of the Public Premises Act on wakf properties, the Additional Secretary suggested that a provision shall have to be added as the current Act explicitly excluded such a provision. On the issue of Deemed Mutation of wakf properties, the Addl. Secretary suggested that it could be done only after ascertaining the views of the State Governments.

5. A verbatim record of the proceedings of the meeting was kept.

6. The Committee adjourned at 4.50 p.m.



## **IX**

### **NINTH MEETING**

The Committee met at 4.00 p.m. on Thursday, the 3rd March, 2011 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Parvez Hashmi
3. Shri Tariq Anwar
4. Shri Mukhtar Abbas Naqvi
5. Shri Anil Madhav Dave
6. Shri Mohammed Amin
7. Shri Mohammed Adeeb
8. Dr. Bhalchandra Mungekar

### **REPRESENTATIVES OF MINISTRIES**

#### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri B.P. Sharma, Joint Secretary
2. Shri Mohd. Afzal, Deputy Secretary
3. Shri Zakir Hussain, Sr. Research Investigator

#### **II. MINISTRY OF LAW AND JUSTICE**

1. Shri N. K. Nampoothiry, Additional Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel
3. Shri K.V. Kumar, Asstt. Legislative Council

### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M. K. Khan, Director
3. Ms. S. Pankajavalli, Deputy Director
4. Shri Ranjan Chaturvedi, Assistant Director

2. The Committee took up for review the progress of its examination of the Wakf (Amendment) Bill, 2010. The Chairman apprised the members of the work done by the Committee so far. Regarding the Committee's future programme, the Chairman informed Members of the logistical constraints in conducting a meeting during the remaining period the

ongoing Budget Session and the preoccupation of the concerned Ministries with the budgetary and legislative business of the Parliament. He was of the view that the Committee may have to seek extension of time, for a comprehensive examination of the Bill. The Committee, while concurring with the views of the Chairman, decided to seek further extension of time till the last day of the first week of Monsoon Session 2011, for submission of its Report on the Bill. The Committee authorized its Chairman to move a motion in the House in this regard on Wednesday, the 9th March, 2011. The Committee further authorized Shri Tariq Anwar to move such Motion, in the absence of the Chairman and in his absence, Shri Mohammed Adeeb, to move the Motion.

3. The Committee adjourned at 4.30 p.m.

## **X**

### **TENTH MEETING**

The Committee met at 3.00 p.m. on Thursday, the 28th April, 2011 in Main Committee Room , Ground Floor, Parliament House Annexe, New Delhi.

### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Tariq Anwar
4. Shri Mukhtar Abbas Naqvi
5. Shri Balwinder Singh Bhunder
6. Shri Mohammed Adeeb
7. Dr. Bhalchandra Mungekar

### **REPRESENTATIVES OF MINISTRIES**

#### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri Vivek Mehrotra, Secretary
2. Shri E.R. Solomon, Joint Secretary
3. Shri Mohd. Afzal, Deputy Secretary
4. Shri Zakir Hussain, Sr. Research Investigator

#### **II. MINISTRY OF LAW AND JUSTICE**

1. Shri N. K. Nampoothiry, Additional Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel

### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M. K. Khan, Director
3. Ms. S. Pankajavalli, Deputy Director
4. Shri Ranjan Chaturvedi, Assistant Director
5. Shri R.P. Sharma, Committee Officer

2. The Committee reviewed the progress made so far in its examination of Wakf (Amendment) Bill, 2010. It also discussed the modalities for Clause-by-Clause consideration of the Bill. Some Members pointed out that the State of J&K has its separate law for regulating the auqaf in that State. Though the Wakf Act, 1995 was not applicable there, a study of the J&K Wakf law and the system for the management of auqaf could be helpful for

the Select Committee to formulate its views on the Amendment Bill. They were of the view that the Select Committee should undertake a visit to Jammu and Kashmir for this purpose.

3. After some discussion, the Select Committee decided to visit Jammu, Srinagar and Leh towards the end of May, 2011. It authorized the Chairman to finalise the programme for the visit and to seek necessary approvals.

4. The Select Committee decided to meet again at 11.00 a.m. on Friday, the 29<sup>th</sup> April, 2011.

5. The Committee adjourned at 3.20 p.m.

## **XI**

### **ELEVENTH MEETING**

The Committee met at 11.00 a.m. on Friday, the 29th April, 2011 in Main Committee Room , Ground Floor, Parliament House Annexe, New Delhi.

### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Tariq Anwar
4. Dr. Prabha Thakur
5. Shri Mukhtar Abbas Naqvi
6. Shri Mohammed Adeb

### **REPRESENTATIVES OF MINISTRIES**

#### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri Vivek Mehrotra, Secretary
2. Shri E.R. Solomon, Joint Secretary
3. Shri Mohd. Afzal, Deputy Secretary
4. Shri Zakir Hussain, Sr. Research Investigator

#### **II. MINISTRY OF LAW AND JUSTICE**

1. Shri N. K. Nampoothiry, Additional Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel

### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Ms. S. Pankajavalli, Deputy Director
3. Shri Ranjan Chaturvedi, Assistant Director
4. Shri R.P. Sharma, Committee Officer

2. The Committee resumed consideration of the Bill. It commenced Clause-by-Clause consideration.

#### Clause 2 to 4

3. Clauses 2, 3 and 4 of the Bill were adopted without any change.

#### Clause 5

4. The Committee held deliberations on sub-Clauses (i) and (v) of Clause 5 which proposes to amend Section 3 of the Act pertaining to Definitions. However, the Committee deferred consideration for future.
5. The Chairman asked the Ministry of Minority Affairs to re-arrange, sub-clause-wise, its inputs on the suggestions. He also directed the Secretariat to obtain the written opinion of Department of Legal Affairs on the Clause-by-Clause suggestions already forwarded to them by the Ministry of Minority Affairs, within a week.
6. A verbatim record of the proceedings of the meeting was kept.
7. The Committee adjourned at 12.45 p.m.

## **XII**

### **TWELFTH MEETING**

The Committee met at 11.00 a.m. on Wednesday, the 18th May, 2011 in Committee Room A , Ground Floor, Parliament House Annexe, New Delhi.

### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Tariq Anwar
3. Dr. Prabha Thakur
4. Shri Mukhtar Abbas Naqvi
5. Shri Prakash Javadekar
6. Shri Anil Madhav Dave
7. Shri Balwinder Singh Bhunder
8. Shri Mohammed Adeeb

### **REPRESENTATIVES OF MINISTRIES**

#### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri Vivek Mehrotra, Secretary
2. Shri E.R. Solomon, Joint Secretary
3. Shri Mohd. Afzal, Deputy Secretary
4. Shri Zakir Hussain, Sr. Research Investigator

#### **II. MINISTRY OF LAW AND JUSTICE**

1. Shri N. K. Nampoothiry, Additional Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel

### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
  2. Shri M.K. Khan, Director
  3. Ms. S. Pankajavalli, Deputy Director
  4. Shri Ranjan Chaturvedi, Assistant Director
  5. Shri R.P. Sharma, Committee Officer
2. The Committee resumed consideration of the Bill.

Clause 5, Sub Clause IV

3. The following amendment was accepted:

Line 21, after the word *substituted* the words “and the words ‘Peerkhana’ and ‘Karbala’, shall be added, before the word *maqbara*.”

The Clause as amended was adopted.

4. A summary record of the proceedings of the meeting was kept.
5. The Committee adjourned at 1.00 p.m.



## **XIII**

### **THIRTEENTH MEETING**

The Committee met at 11.00 a.m. on Wednesday, the 1st June, 2011 in Main Committee Room, Ground Floor, Parliament House Annexe, New Delhi.

#### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Parvez Hashmi
4. Shri Tariq Anwar
5. Shri Prakash Javadekar
6. Shri Anil Madhav Dave
7. Shri Mohammed Amin

#### **REPRESENTATIVES OF MINISTRIES**

##### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri Vivek Mehrotra, Secretary
2. Shri E.R. Solomon, Joint Secretary
3. Shri Mohd. Afzal, Deputy Secretary
4. Shri Zakir Hussain, Sr. Research Investigator

##### **II. MINISTRY OF LAW AND JUSTICE**

1. Shri N. K. Nampoothiry, Additional Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel

#### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
  2. Shri M.K. Khan, Director
  3. Ms. S. Pankajavalli, Deputy Director
  4. Shri Ranjan Chaturvedi, Assistant Director
  5. Shri R.P. Sharma, Committee Officer
2. The Committee resumed consideration of the Bill.

#### Clause 6 Sub Clause (a)

3. The Committee agreed that in line 33 and 34, the formulation “ ... the commencement of the Wakf ( Amendment) Bill, 2010” may be inaccurate, considering that the Bill could not

be passed in 2010. It was, therefore, agreed that the year of the Bill may be determined by the Legislative Department at the redrafting stage.

Clause 6 Sub Clause (b)

4. The Committee agreed that the status of the Wakf properties once notified in the Gazette, should not be questioned. The Committee *inter alia* agreed to add the following in line 39, after existing provisio.

*“ Provided further that Wakf properties already notified shall not be further reviewed in subsequent survey except in respect of properties whose status has been changed in accordance with the law”*

He Committee also asked the representative of the Legislative Department to provide an accordingly reformulated text of the Sub Clause.

The Clause as amended was adopted.

5. Clauses 7, 8 and 9 were adopted without amendment.

6. A summary record of the proceedings of the meeting was kept.

7. The Committee adjourned at 12.40 p.m.

## **XIV**

### **FOURTEENTH MEETING**

The Committee met at 4.00 p.m. on Thursday, the 7th July, 2011 in Room 63, Parliament House, New Delhi.

#### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Dr. Prabha Thakur
4. Shri Prakash Javadekar
5. Shri Anil Madhav Dave
6. Shri Balwinder Singh Bhunder
7. Shri Mohammed Amin
8. Shri Mohammed Adeeb
9. Dr. Bhalchandra Munekar

#### **REPRESENTATIVES OF MINISTRIES**

##### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri Vivek Mehrotra, Secretary
2. Shri Mohd. Afzal, Deputy Secretary
3. Shri Arjun Rana, Section Officer
4. Shri Zakir Hussain, Sr. Research Investigator

##### **II. MINISTRY OF LAW AND JUSTICE**

1. Shri N. K. Nampoothiry, Additional Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel
3. Shri K.V. Kumar, Asst. Legislative Counsel

#### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
  2. Shri M.K. Khan, Director
  3. Shri Ranjan Chaturvedi, Assistant Director
  4. Shri R.P. Sharma, Committee Officer
- 
2. The Committee resumed clause-by-clause consideration of the Bill.

#### Clause 10

This Clause was adopted.

#### Clause 11

##### Sub Clause (b)

In line 9, Page 4, the word 'or' was substituted by comma ( , ).

##### Sub Clause (c)

In line 20, Page 4, the word 'central' before 'council' was omitted.

In line 30, Page 4, in sub Section (5), after the words 'retired Judge of the Supreme Court' the words 'or retired Chief Justice of a High Court' were inserted.

The Clause, as amended, was adopted.

#### Clause 12

##### Sub Clause (a)

In line 38, page 4, the words 'one year' were substituted by 'six months'.

##### Sub Clause (b)

In line 42, page 4, the words 'consists of Shia members' were substituted with the words 'belong to Shia community'. In line 43, the words 'consists of Sunni members' were substituted with the words 'belong to Sunni community'.

The Clause, as amended, was adopted.

#### Clause 13

##### Sub Clause (1) (ii) (a)

In line 6, Page 5, the words 'members of Bar Council' were substituted with the words 'enrolled with Bar Council'.

The Clause, as amended, was adopted.

#### Clause 14

This Clause was adopted.

#### Clause 15

##### Newly inserted Section 20(A) sub Section (j) (B)

In line 5, Page 7, the words 'show of hands' were substituted with the words 'by secret ballot'.

The Clause, as amended, was adopted

3. A summary record of the proceedings of the meeting was kept.
4. The Committee adjourned at 6.00 p.m.

## **XV**

### **FIFTEENTH MEETING**

The Committee met at 11.00 a.m. on Friday, the 15th July, 2011 in Committee Room A, Parliament House Annexe, New Delhi.

### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Parvez Hashmi
4. Shri Tariq Anwar
5. Shri Mukhtar Abbas Naqvi
6. Shri Balwinder Singh Bhunder
7. Shri Mohammed Amin
8. Shri Mohammed Adeeb
9. Dr. Bhalchandra Mungekar

### **REPRESENTATIVES OF MINISTRIES**

#### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri Vivek Mehrotra, Secretary
2. Shri E.R. Solomon, Joint Secretary
3. Shri Mohd. Afzal, Deputy Secretary
4. Shri Arjun Rana, Section Officer
5. Shri Zakir Hussain, Sr. Research Investigator

#### **II. MINISTRY OF LAW AND JUSTICE**

1. Shri N. K. Nampoothiry, Additional Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel

### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M.K. Khan, Director
3. Shri Ranjan Chaturvedi, Assistant Director

4. Shri R.P. Sharma, Committee Officer

2. The Committee resumed clause-by-clause consideration of the Bill.

Clause 16

Sub Clause (1A)

In line 24 Page 7 of the Bill, the words ‘an officer’ were substituted with the words ‘a Muslim Officer’.

Sub Clause (1 B)

After Sub Clause (1A), the following Sub Clause (1B) was inserted-

‘(1B) In case a Muslim Officer is not available, an eligible Muslim officer of the rank of Deputy Secretary to State Government or of equivalent rank may be appointed on deputation’.

Clause 16, as amended, was adopted.

Clause 17

This Clause was adopted.

3. The Committee also considered the suggestions of All India Muslim Personal Law Board in respect of Section 28 of the Bill and asked the Secretary, Ministry of Minority Affairs to obtain suggestions of the Department of Minority Development, Government of Maharashtra, in respect of Section 24 of the Act.

4. The Committee also made an assessment of remaining work of examination of the Bill before it could finalise its Report on the Bill. Members expressed satisfaction over the discussions held so far and decided that a further extension till the first day of the last week of the Winter Session, 2011 may be sought, for submitting its Report to the House. The Committee authorized its Chairman to move a motion in the House in this regard on Tuesday, the 2<sup>nd</sup> August, 2011. The Committee further authorized Shri Tariq Anwar to move such Motion, in the absence of the Chairman and in his absence, Shri Mohammed Adeeb, to move the Motion.

5. A summary record of the proceedings of the meeting was kept.

6. The Committee adjourned at 12.40 p.m.

## XVI

### SIXTEENTH MEETING

The Committee met at 11.00 a.m. on Wednesday, the 27th July, 2011 in Room No. 63, Parliament House, New Delhi.

#### MEMBERS PRESENT

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Parvez Hashmi
4. Dr. Prabha Thakur
5. Shri Prakash Javadekar
6. Shri Balwinder Singh Bhunder
7. Shri Mohammed Amin
8. Shri Mohammed Adeeb

#### REPRESENTATIVES OF MINISTRIES

##### I. MINISTRY OF MINORITY AFFAIRS

1. Shri Vivek Mehrotra, Secretary
2. Shri E.R. Solomon, Joint Secretary
3. Shri Mohd. Afzal, Deputy Secretary
4. Shri Arjun Rana, Section Officer
5. Shri Zakir Hussain, Sr. Research Investigator

##### II. MINISTRY OF LAW AND JUSTICE

1. Shri N. K. Nampoothiry, Additional Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel
3. Shri K.V. Kumar, Asst. Legislative Counsel

#### SECRETARIAT

1. Shri M.K. Khan, Director
2. Shri R.P. Sharma, Committee Officer

2. The Committee resumed consideration of the issue relating to the plea of All India Muslim Personal Law Board for accepting the suggestion of Maharashtra Government with



regard to Sections 24 and 28. After some discussion the Committee decided to hear the views of All India Muslim Personal Law Board before taking a final view on the issue.

3. The Committee resumed clause-by-clause consideration of the Bill.

Clause 18

The words “at all reasonable time” occurring in the proposed sub-section I of Section 29, were deleted.

The Clause, as amended, was adopted.

Clause 19

The Clause was adopted.

Clause 20

Sub Clause (I) (a)

In line 15 Page 8 of the Bill, the word ‘Mortgage’ was added after the words “sale, gift”.

Sub Clause (I) (b)

In line 17 Page 8 of the Bill, the words ‘more than fifty per cent’ were substituted by the words ‘at least two third’.

Sub Clause (I) (c)

In line 26 of Page 8 of the Bill, in the proposed new sub Clause (na), the word ‘fair’ was substituted by the word ‘market’.

Sub Clause (II)

In line 28, the words “market, housing flats and the like” were added after words “as a shopping center”.

Clause 20, as amended, was adopted.

4. A summary record of the proceedings of the meeting was kept.
5. The Committee adjourned at 12.40 p.m.

## **XVII**

### **SEVENTEENTH MEETING**

The Committee met at 3.00 p.m. on Tuesday, the 16th August, 2011 in Room 63, Parliament House, New Delhi.

#### **MEMBERS PRESENT**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Tariq Anwar
4. Dr. Prabha Thakur
5. Shri Mohammed Amin
6. Shri Mohammed Adeeb

#### **REPRESENTATIVES OF MINISTRIES**

##### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri Surajit Mitra, Secretary
2. Shri Mohd. Afzal, Deputy Secretary
3. Shri Arjun Rana, Section Officer
4. Shri Zakir Hussain, Sr. Research Investigator

##### **II. MINISTRY OF LAW AND JUSTICE**

1. Shri N. K. Nampoothiry, Additional Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel
3. Shri K.V. Kumar, Assistant Legislative Counsel

#### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M.K. Khan, Director
3. Ms. S. Pankajavalli, Deputy Director
4. Shri Ranjan Chaturvedi, Assistant Director
5. Shri R.P. Sharma, Committee Officer

2. The Committee resumed clause-by-clause consideration of the Bill and decided as follows:

#### Clause 21

The Clause was re-numbered as sub-clause (a). After sub-clause (a) the following sub-clause (b) was inserted :

The words ‘either himself or any other person authorized by him in writing in this behalf,’ occurring in the Section 33 (1) of the Principal Act shall be deleted.

The clause, as amended, was adopted.

#### Clauses 22 and 23

These Clauses were adopted.

#### Clause 24

##### Sub Clause (a)

This Sub-Clause was deleted.

Sub-clauses (b) and (c) were re-numbered as sub-clauses (a) and (b), respectively.

The clause, as amended, was adopted.

#### Clause 25

The Clause was adopted.

#### Clause 26

##### Clause 26 (i)

The words “one lakh rupees” were substituted by “fifty thousand rupees”. The following new clause 26 (ii) was inserted:

The words “and the accounts of two percent of such wakfs shall be audited annually by an auditor appointed by the Board”, occurring in Section 47 (1) (a) of the parent Act shall be deleted.

After clause 26 (ii), the following new clause 26 (iii) was inserted:

After the words “State Government” at the end of Section 47 (1) (c), the words “with an intimation to the Board” shall be inserted.

The existing clause 26 (ii) was renumbered as clause 26 (iv) and the words “one lakh rupees and above” were substituted by the words “more than fifty thousand rupees but less than one lakh rupees”.

The clause, as amended, was adopted.

#### Clause 27

Consideration of this clause was deferred.

3. A summary record of the proceedings of the meeting was kept.
4. The Committee adjourned at 4.40 p.m.

## **XVIII**

### **EIGHTEENTH MEETING**

The Committee met at 3.00 p.m. on Tuesday, the 23rd August, 2011 in Room 63, Parliament House, New Delhi.

#### **Members**

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Tariq Anwar
4. Dr. Prabha Thakur
5. Shri Anil Madhav Dave
6. Shri Mohammed Adeeb

#### **REPRESENTATIVES OF MINISTRIES**

##### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri Surajit Mitra, Secretary
2. Shri E.R. Solomon, Joint Secretary
3. Shri Mohd. Afzal, Deputy Secretary
4. Shri Arjun Rana, Section Officer
5. Shri Zakir Hussain, Sr. Research Investigator

##### **II. MINISTRY OF LAW AND JUSTICE**

1. Shri N. K. Nampoothiry, Additional Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel
3. Shri K.V. Kumar, Assistant Legislative Counsel

#### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M. K. Khan, Director
3. Ms. S. Pankajavalli, Deputy Director
4. Shri Ranjan Chaturvedi, Assistant Director
5. Shri R. P. Sharma, Committee Officer

2. The Committee resumed clause-by-clause consideration of the Bill and decided as follows:

#### Clause 27

In the proviso to the proposed new sub-section I of Section 51 of the Act, the words 'except in accordance with any law for the time being in force' were deleted.

#### Sub Clause (1A)

In the proviso to the proposed new sub-section 1A of Section 51 of the Act, after the words 'acquisition of land', the words 'subject to consultation with Board' were inserted.

In the proviso to the proposed new sub-section 1A of the Act, the words 'plus the solatium and' were substituted by the word 'or' and the words 'with reasonable solatium' were inserted after the words 'equally suitable land'.

The Clause, as amended, was adopted.

#### Clause 28

The Clause was adopted.

#### Clause 29

In the proposed new Sub-Section (3) of the new Section 52 (A), the word 'an' was substituted by the word 'any' and the word 'Board' was substituted by the words 'State Government'.

The Clause, as amended, was adopted.

#### Clause 30

The Clause was adopted.

#### Clause 31

In line 26, the word 'ten' was substituted by the word 'fifteen'.

In lines 26 to 28 and the words 'for period and purposes which may be specified in the rules to be made by the Central Government' were deleted.

In line 29, the word 'ten' was substituted by the word 'fifteen'.

In line 30, the word 'and' after the word 'education' was substituted by the word 'or'.

In lines 30 to 31, the words 'and for specific period as may be provided by the rules to be made by the Central Government' were deleted.

Sub Clause (d) was deleted.

The Clause, as amended, was adopted.

3. A summary record of the proceedings of the meeting was kept.

4. The Committee adjourned at 4.40 p.m.

## **XIX**

### **NINETEENTH MEETING**

The Committee met at 10.30 a.m. on Friday, the 16th September, 2011 in Main Committee Room, Parliament House Annexe, New Delhi.

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Rashid Alvi
3. Shri Parvez Hashmi
4. Dr. Prabha Thakur
5. Shri Mukhtar Abbas Naqvi
6. Shri Mohammed Adeeb

### **REPRESENTATIVES OF MINISTRIES**

#### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri E.R. Solomon, Joint Secretary
2. Shri Mohd. Afzal, Deputy Secretary
3. Shri Arjun Rana, Section Officer

#### **II. MINISTRY OF LAW AND JUSTICE**

1. Shri N. K. Nampoothiry, Additional Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel
3. Shri K.V. Kumar, Assistant Legislative Counsel

### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M.K. Khan, Director
3. Shri Ranjan Chaturvedi, Assistant Director
4. Shri R.P. Sharma, Committee Officer

2. The Committee resumed clause-by-clause consideration of the Bill and decided as follows:

#### Clauses 32 and 33

The Clauses were adopted.

#### Clause 34

In lines 20-21, the words 'Executive Magistrate or Sub-Divisional Magistrate' were substituted by the words 'District Magistrate or Additional Magistrate or Sub-Division Magistrate or their equivalent'

The Clause, as amended, was adopted.

#### Clauses 35 and 36

The Clauses were adopted.

#### Clause 37

After a brief discussion on the Clause, the Committee deferred consideration of the clause and directed the representatives of the Ministry of Minority Affairs to collect information from the Delhi and Haryana State Wakf Boards regarding annual contribution received by them, out of the income from the agricultural lands meant for wakf. The Ministry was asked to furnish information before the next meeting of the Committee.

#### Clause 38

The Clause was adopted.

3. A summary record of the proceedings of the meeting was kept.
4. The Committee adjourned at 11.40 a.m.

## **XX**

### **TWENTIETH MEETING**

The Committee met at 4.00 p.m. on Monday, the 3rd October, 2011 in Committee Room 'A', Parliament House Annexe, New Delhi.

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Rashid Alvi
3. Shri Parvez Hashmi
4. Shri Tariq Anwar
5. Shri Prakash Javadekar
6. Shri Balvinder Singh Bhunder
7. Shri Mohammed Adeeb

### **REPRESENTATIVES OF MINISTRIES**

#### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri E.R. Solomon, Joint Secretary
2. Shri Mohd. Afzal, Deputy Secretary

#### **II. MINISTRY OF LAW AND JUSTICE**

1. Shri N. K. Nampoothiry, Additional Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel

#### **III. REPRESENTATIVES OF ALL INDIA MUSLIM PERSONAL LAW BOARD**

1. Mr. M. Abdul Rahim Quraishi, Asst. Gen. Secretary
2. Maulana Md. Wali Rahmani, Secretary
3. Mr. Yusuf Hatim Muchhala, Convener Legal Cell
4. Mr. Shahzada Shabbir Bhai Nooruddin,
5. Mr. Asaduddin Owaisi, M.P.
6. Mr. Kamal Faruqui

### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M.K. Khan, Director



3. Ms. S. Pankanavalli, Deputy Director
4. Shri R.P. Sharma, Committee Officer

2. The Committee heard the views of the representatives of the All India Muslim Personal Law Board on the Sections 24 and 28 of the Wakf Act, 1995. They suggested that a new Sub Section (3) may be inserted in the existing Section 24 to provide that the District Collector or an Additional District Collector shall be ex-officio District Wakf Officer for every district in the State and that the Sub Divisional Officer shall be the ex-officio Additional Wakf Officer in a Sub Division. The Tehsildar or Additional Tehsildar /Naib Tehsildar should be Assistant Wakf Officer for the Tehsil. In order to ensure autonomy of the Board, these Officers should be made accountable to the Wakf Board. Section 28 of the Act may be deleted.

The Witnesses then withdrew.

3. Thereafter, the Committee resumed clause-by-clause consideration of the Bill and decided as follows:

#### Clauses 39

In line 5, after the words 'laying of the report' the words 'before the State Legislature' were inserted.

The Clause, as amended, was adopted.

#### Clause 40

In line 18, the word 'presented' was substituted by the word 'prescribed'.

The Clauses, as amended, was adopted.

#### Clauses 41, 42 and 43

The Clause were adopted.

3. A summary record of the proceedings of the meeting was kept.
4. The Committee adjourned at 5.15 p.m.

## **XXI**

### **TWENTY FIRST MEETING**

The Committee met at 3.30 p.m. on Thursday, the 24th November, 2011 in Committee Room 'A', Parliament House Annexe, New Delhi.

1. Prof. Saif-Ud-Din Soz - Chairman
2. Dr. Prabha Thakur
3. Shri Prakash Javadekar
4. Shri Anil Madhav Dave
5. Shri Moinul Hassan
6. Shri Mohammad Adeeb
7. Dr. Bhalchandra Munekar

### **REPRESENTATIVES OF MINISTRIES**

#### **I. MINISTRY OF MINORITY AFFAIRS**

1. Shri E.R. Solomon, Joint Secretary
2. Shri Mohd. Afzal, Deputy Secretary

#### **II. MINISTRY OF LAW AND JUSTICE**

1. Shri N. K. Nampoothiry, Additional Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel
3. Shri K.V. Kumar, Assistant Legislative Counsel

### **SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M.K. Khan, Director
3. Ms. S. Pankanavalli, Deputy Director
4. Shri Ranjan Chaturvedi, Assistant Director
5. Shri R.P. Sharma, Committee Officer

2. The Committee resumed clause-by-clause consideration of the Bill and decided as follows:

#### Clauses 44, 45 and 46

The Clauses were adopted.

#### Clause 47

In line 4 on page 13, the word 'totally' was deleted.

The Clause, as amended, was adopted.

Similarly the word “total” occurring in line 28, Page 9, the word ‘total’ was deleted, being a consequential change.

Clauses 48 and 49

The Clauses were adopted.

Clause 37

The Committee in its meeting held on 16<sup>th</sup> September 2011 had deferred consideration of the Clause so as to examine the annual contribution received by certain State Wakf Boards, out of the income from the agricultural lands meant for wakf. The Committee had asked the Ministry of Minority Affairs to furnish information. The Ministry collected the sample information from the State Wakf Boards of Haryana, Delhi and West Bengal. The Committee considered the information in context of provisions of this Clause.

The Clause was adopted.

Clause 1, Enacting Formula and Title

THE FIGURE ‘2010’ WAS SUBSTITUTED BY THE FIGURE ‘2011’ AND THE WORDS ‘SIXTY-FIRST’ WERE SUBSTITUTED BY WORDS ‘SIXTY-SECOND’. THESE AMENDMENTS ARE OF FORMAL NATURE, NECESSITATED DUE TO PASSAGE OF TIME.

THE CLAUSE 1, ENACTING FORMULA AND TITLE, AS AMENDED, WERE ADOPTED.

3. The Chairman authorized the representatives of the Legislative Department to correct patent errors if any, and to carry out amendments of consequential nature in the Bill. The Chairman also directed the representative of the Legislative Department to prepare an amended draft of the Bill, incorporating the amendments agreed to by the Committee.
4. A summary record of the proceedings of the meeting was kept.
5. The Committee adjourned at 5.15 p.m.

**TWENTY SECOND MEETING**

The Committee met at 5.00 p.m. on Monday, the 12th December, 2011 in Committee Room 'A', Parliament House Annexe, New Delhi.

1. Prof. Saif-ud-Din Soz - Chairman
2. Shri Raashid Alvi
3. Shri Tariq Anwar
4. Dr. Prabha Thakur
5. Shri Prakash Javadekar
6. Shri Anil Madhav Dave
7. Shri Balwinder Singh Bhunder
8. Shri Moinul Hassan
9. Shri Mohammad Adeeb
10. Dr. Bhalchandra Mungekar

**REPRESENTATIVES OF MINISTRIES**

**I MINISTRY OF MINORITY AFFAIRS**

Shri E. R. Solomon, Joint Secretary

**II. MINISTRY OF LAW AND JUSTICE**

1. Dr. Sanjay Singh, Joint Secretary, Legislative Department
2. Shri R. K. Pattanayak, Deputy Legislative Counsel
3. Shri K. V. Kumar, Deputy Legislative Counsel

**SECRETARIAT**

1. Shri Surinder Kumar Watts, Joint Secretary
2. Shri M. K. Khan, Director
3. Ms. S. Pankanavalli, Deputy Director
4. Shri Ranjan Chaturvedi, Assistant Director
5. Shri R. P. Sharma, Committee Officer

2. The Committee took up for consideration its Draft Report on the Wakf (Amendment) Bill, 2010, along with the draft of the amended clauses of the Bill. After some discussion, the Committee reviewed its earlier decisions on some of the clauses of the Bill and decided as under:-

Clause 6, sub-clause (b)

- (i) in the new proviso, the word 'further' was delated and the word 'again' was inserted after the word 'reviewed'.
- (ii) the words 'provisions of any' were inserted before the word 'law'.

#### Clause 11

- (i) in line 9, page 4, the word ‘or’ after the word ‘architecture’ was substituted by the word ‘and’.
- (ii) in line 20, page 4, the word ‘Council’ was substituted by the word ‘it’.
- (iii) in line 30, page 4, the word ‘fee’ was substituted by the word ‘fees’.

#### Clause 12

- (i) in line 38, page 4, the word ‘the’ before ‘commencement’ was omitted.
- (ii) in line 42, page 4, the words ‘consist of Shia Members’ were substituted by the words ‘belong to that community’.
- (iii) in line 43, page 4, the words ‘consist of Sunni Members’ were substituted by the words ‘belong to the said community’.

#### Clause 15

- (i) in line 5, page 7, the words ‘show of hands’ were substituted by the words ‘method of secret ballot’.

#### Clause 16

- (i) in line 23, page 7, after the words ‘State Government’ the words ‘and in case of non availability of a Muslim Officer of that rank, a Muslim Officer of equivalent rank may be appointed on deputation’ were inserted.
- (ii) in lines 24 and 25, page 7, the sub-section (1A) was omitted.

3. The Committee also decided to incorporate the following new Clause 18, to involve District administration in implementing the decisions of the State Waqf Boards and to re-number the subsequent Clauses from 19-50:-

#### New Clause 18

after clause 17, the following new clause 18 was inserted:

“28. Subject to the provisions of this Act and the rules made thereunder, the District Magistrate or in his absence an Additional District Magistrate or Sub Divisional Magistrate of a district in the State shall be responsible for implementation of the decisions of the Board which may be conveyed through the Chief Executive Officer and the Board may, wherever consider necessary, issue suitable directions to the authorities concerned for implementation of its decision”.

- 4. With the above and some other changes, the Committee adopted the Report.
- 5. The Committee asked the Legislative Counsel, present in the meeting, to carry out the amendments in the Bill, to give effect to the decisions of the Committee taken in the meeting, for consideration of the Chairman.

6. The Committee authorized the Chairman to carry out patent modifications and corrections in the draft Report.
7. The Committee agreed to present the Report and the evidence recorded to the House on 16<sup>th</sup> December, 2011 and authorized the Chairman, in his absence Shri Prakash Javadekar and in their absence, Shri Mohammad Adeb, to present the Report, alongwith redrafted Bill and the evidence tendered before it.
8. A verbatim record of the proceeding of the meeting was kept.
9. The Chairman thanked Members of the Committee for the keen interest taken by them in the working of the Committee and the co-operation extended to him, by them. Members also expressed their deep sense of appreciation for the able guidance given by the Chairman in the conduct of business of the Committee.
10. The Committee placed on record its appreciation for the officers of the Ministry of Minority Affairs, the Ministry of Law & Justice (Legislative Department) and the Officers and Staff of the Rajya Sabha Secretariat, for the co-operation and assistance rendered by them in the smooth working of the Committee.
11. The meeting adjourned at 7.10 pm.