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Leveraging Community Initiatives: The Case of Wakfs

1. Introduction

The Chapters in this Report bring to the fore a considerable amount of deficits in a number of socio-economic and developmental measures that were empirically evaluated for the Muslim community in comparison with the other SRCs. Since such deficits are faced by all poor people, efforts to bring about improvement in the condition of Muslims would require additional funds to be earmarked from the ongoing programmes, such as the Sarva Shiksha Abhiyan (SSA), Public Health Programmes, JawaharLal Nehru National Urban Renewal Mission (JNNURM) etc and increased allocations to institutions of higher learning. It is increasingly recognized that additional investments and fresh programme initiatives can receive a boost from community involvement and financial participation of the local area resources that can be accessed through the process of bequests and donations, also known as the third sector activity. In fact, community participation in terms of physical contribution of resources can facilitate the implementation of many programmes like provision of land to establish schools and ICDS centres in villages, urban fringes and slums. That can also take care of the requirement of playground to establish even a primary school. Similarly, promotion of special help groups (SHGs) and micro-financial institutions (MFIs) require both institutional and financial resources to be contributed by the community groups.

It is in this context that the initiatives of the Muslim community to enhance its welfare should be seen. The initiatives relating to Madarsas were discussed in Chapter 4. The other important community-specific initiative relates to Wakfs. To earmark a part of what one has earned or inherited and set it apart in perpetuity for charitable purposes is considered an act of piety. As such, generous Muslims adhering to the principles of 'endowment' embedded in Islam often bequeath large and valuable acreage of properties in the name of God. The proceeds from these properties are dedicated to meet the exclusive needs of the poor and also to the perpetual maintenance of the bequeathed property. This type of property

The proceeds from Wakf properties are dedicated to meet the exclusive needs of the poor and also to the perpetual maintenance of the bequeathed property



The objectives of Wakfs in Islam are recognized as religious, pious and charitable

bequests made by Muslims is called 'Wakf'.

The objectives of Wakfs recognized in Islam as religious, pious and charitable include, though are not limited to, the following:

- Establishing, maintaining and fostering the educational institutions, hostels, libraries, sports facilities and so on. Awarding of scholarships so as to promote education.
- Providing health care, relief and financial aid to all poor including the victims of communal riots and natural disasters.
- Construction of musafirkhanas and marriage halls for community use.
- Maintenance of mosques, dargahs, graveyards and consolidation of Wakf properties.
- Financial support to poor widows, indigent and physically handicapped persons; arranging the marriage of indigent girls and maintenance of divorced women.
- Payment of salary to Imams and Muazzins as ordered by Supreme Court.

The person who so dedicates his or her property is known as Waakif and the person nominated by the Waakif to manage the affairs of the Wakf property is known as Mutawalli. Apart from landed (often agricultural) and built up commercial and residential properties, Wakfs in India include Mosques, Dargahs, Khanqahs, Maqbaras, Ashoorkhanas, Qabristans (graveyards), Takiyas, Idgahs, Imambaras, Anjumans and so on.

The Britishers who were finding ways to subdue Muslim resistance passed Land Resumption Act taxing Wakf lands and thus dealing a crushing blow to Muslim traditions. "An amount of 1.1 million pounds was thus collected in taxes in Bengal from formerly tax-exempt lands. A large part of this sum was derived from lands (hitherto) held rent free by Musalmans or by Mohammadan foundations. The panic and hatred which ensued have stamped themselves forever on the rural records. Hundreds of ancient families were ruined and the educational system of the Musalmans which was almost entirely maintained by such grants, received its death blow. The Mohammadan foundations suffered the most."¹ Although the Wakf is a perpetual bequest, the Mutawallis, often tend to have almost absolute control over the income generated from it.

2. Economic Potential of Wakf Assets in India

The Committee asked all the state Wakf Boards and Central Wakf Council to provide data on the nature, type and distribution of Wakf properties especially taking the location factor into account². It was expected that such data would be routinely available as the Wakf surveys of the properties have to be undertaken on a regular basis as per the Act. However, the information was not available as in many states

1. The Politicization of Islam by Keman H. Karpas, 2001
2. A large number of Wakfs are located in prime areas such as the central city wards and mohallas. Incidentally, all reference in this chapter is to public Wakfs (in no case to family Wakfs known as Wakf-'al-al-aulad)



such surveys were not up-to-date. Data on the income from rental and other sources were also sought. A roundtable brainstorming workshop was held in Delhi to get first hand information and views about the Wakfs across India. The chairpersons and CEOs of Wakf Boards, a few academics and practitioners of Wakf law and former chairpersons of Wakf Boards participated. The Committee also received a number of representations from mutawallis and their associations.

There are more than 4.9 lakh registered Wakfs spread over different states and union territories of India³. Large concentration of the Wakf properties is found in West Bengal (148,200) followed by Uttar Pradesh (122,839). Other states with a sizeable number of Wakfs are Kerala, Karnataka and Andhra Pradesh (see Table 11.1)⁴. The total area under Wakf properties all over India is estimated at about 6 lakh acres and the book value at about Rs 6,000 crores. However, the market value of these properties will be higher manifold. For instance, a recent estimate of the current value of Wakf properties in Delhi alone is in excess of Rs. 6,000 Crores (Rs. 60 billion). A good number of the Wakf properties in urban areas are found to be located in city centres where the current value is many times more than the book value⁵. However, the current annual income from these properties is only about Rs. 163 crores, which amounts to a meagre rate of return of 2.7 per cent. Of this amount the Wakf Boards are entitled to receive a share at the rate of 7% which is used for the working expenses of the Wakf Boards. The remaining amount is expected to be spent on the stated objectives of the respective Wakfs.

As the book values of the Wakfs properties are about half a century old, the current value can safely be estimated to be several times more and the market value of the Wakf properties can be put at Rs. 1.2 lakh crores (1,200 billion). If these properties are put to efficient and marketable use they can generate at least a minimum return of 10 per cent which is about Rs. 12,000 crores per annum. It has emerged from the data presented in Table 11.2, that wherever the Wakf lands have been put to efficient use they have generated an average return of about 20 per cent⁶. It is obvious, therefore, that if some of these Wakf properties situated in prime locations across the country are developed and put to commercial use, their market value and annual income will shoot up. The enhanced Wakf income could be utilized to upgrade the educational status and improve other human development dimensions of the beneficiaries of Wakfs. This is being done even now but such success stories are few and far between. The Committee would, however, like to put a caveat here. The optimum utilization of Wakf properties would require proper administrative back up by the central and state governments as well as legislative support by way of crucial amendments to the Wakf Act and some other pieces of existing legislation.

There are more than 4.9 lakh registered Wakfs spread over the country but the current annual income from these properties is only about Rs. 163 crores, which amounts to a meagre rate of return of 2.7 per cent

3. Many Wakfs have multiple properties.
4. Information in respect of other states (though smaller in size) could not be received by the Committee in time to be included in this report.
5. A large number of Wakf properties are also agricultural land.
6. The loans provided by the central Wakfs Council to State Wakf Boards for investment and development produced a rate of return of just about 20 per cent as the 21st century unfolded itself.



Report on the Social, Economic and Educational Conditions of Muslims in India

Table 11.1: Properties Gazetted as Wakfs in Indian States

States	Area (acre)	No. of properties	Book Value (in lakhs)	Total Current Income of all the properties	7% share of Wakf Board
West Bengal	59090	148200	16000	457	32
Uttar Pradesh	15000	122839	15200	1214	85
Kerala	22410	36500	135586	803	56
Andhra Pradesh	145512	35703	8135	388	326
Karnataka	18033	28731	-	1288	90
Maharashtra	92207	23566	4185	443	31
Gujarat	8792	22485	600	381	27
Rajasthan	153180	19543	196755	8314	58
Madhya Pradesh	-	15000	-	-	-
Haryana	20895	11929	1125	500	500
Punjab	1778	11243	1589	596	596
Tamil Nadu	34388	7057	165072	1385	97
Bihar	-	2459	2000	33	2
Uttaranchal	-	2032	285	268	19
Delhi	152	1977	-	67	5
Pondicherry	425	589	179	118	8
Assam	190	168	110	35	2
Total	572052	490021	546821	16290	1934

Source: As per information received by the Prime Minister's High Level Committee from State Wakf Boards in 2005-06.

Table 11.2 Returns to Investment in Wakf Properties in India

State	Loan given (Rs. in lakhs)	Annual Return before Development (Rs. in '000)	Annual Return after Development (Rs. in '000)	Increase in Return after Development (%)	Rate of Return to Loan
Kerala	49.8	96	877.7	814	15.7
Bihar	23.8	5.8	459	7,814	19.0
Karnataka	633.7	1,087.8	12,001	1,003	17.2
Maharashtra	41	9.7	590	5,988	14.2
Andhra Pradesh	58.7	30.7	1,160	3,681	19.2
Rajasthan	3.2	--	106	--	32.9
Madhya Pradesh	75.4	85	2,512	2,855	32.2
Tamil Nadu	191.4	720.3	3,747	420	15.8
Orissa	188.1	60.4	4,232	6,907	22.2
Punjab	17.6		666		37.9
INDIA	1241.6	2,086	25,760.7	1,135	19.1

Data : S.K Rashid (2005) - Protection, Maintenance and Development of Awqaf in India (with special reference to Rajasthan), Institute of Objective Studies, New Delhi: pp 74-85.



3. Constraints on the Fulfillment of Wakf Objectives

To safeguard the existence of a large number of Wakf properties in India, a comprehensive Wakf Act was passed by Parliament in 1954. Over the years, during the process of the implementation of the Wakf Act, many lacunae and loopholes were noticed and the Wakf Inquiry Committee recommended amendments that were incorporated in the Wakf Act of 1995. Despite these efforts, the management of the Wakf Boards and the properties remains unsatisfactory. This is due to inadequate empowerment of the State Wakf Boards and the Central Wakf Council.

3.1 Organizational Constraints

Though there are conscientious Mutawallis too, yet there instances where Wakfs are treated by Mutawallis as their personal properties. From dargahs the offerings are sometimes appropriated by them. In any case, Mutawallis are classically known for not coming forward to seek grants or loans from Central Wakf Council or Wakf Boards for the development of the Wakf properties. Proposals for educational institutions are replaced by them for construction of shops. Rental is negotiated at low level in lieu of extraneous considerations. Despite the above mentioned efforts, the management of the Wakf Boards and the properties remain unsatisfactory due to inadequate empowerment of the State Wakf Boards and Central Wakf Council. Wakf properties which sub-serve the larger public interest should be protected as such. However, Wakf properties where specific religious rites are observed because of the importance of the site should be respected. Such a policy will lead to effective social cohesion and economic development. Therefore an effort should be made not to include such properties in land acquisition.

Non-availability of Records

The records of Wakf properties are not well maintained and are prone to the vagaries of weather, mutilation and loss. This calls for immediate remedial action. These should be digitized under a Government programme. The Central Government may consider special grants through the Central Wakf Council to undertake this task and supervise the quality of documentation. In spite of listing of Wakfs in statutory surveys often the properties are not registered as Wakfs in revenue records and in the records of the Local Self Governments. These lacunae and inaction on the part of the state governments are the source of prolonged litigation.

Encroachments on Wakf Properties

Encroachments on the Wakf properties are made not only by private persons but also by the government and its agencies as was brought to the notice of the Committee across the country. The encroachments are in two forms - (1) an absolute usurpation of property with no rents or other payments of any sort; and (2) those where the occupying party pays a nominal rent which has not been revised for decades. The number of private encroachments is very large. They are scattered all over the country and are often involved in litigation. Focussed attention is, therefore, called for on encroachments by the State that is the custodian of the Wakf interests.

The management of the Wakf Boards is unsatisfactory due to inadequate empowerment of the State Wakf Boards and Central Wakf Council

Encroachments by the State who is the custodian of the Wakf interests is common



The attitude of the state governments and their agencies has resulted in large scale abrogation of the cherished and charitable objectives of the Wakfs

A list of properties which are gazetted as Wakf properties⁷ but are currently under the unauthorized occupation by the governments and their agencies submitted to the Committee is presented in Box 11.2. (An illustrative list of properties claimed to be under unauthorized and illegal occupation by the private as well as the government agencies from all over India can be found in Appendix 11.1). It would be seen that the attitude of the state governments and their agencies has resulted in large scale abrogation of the cherished and charitable objectives of the Wakfs for which such endowments were created. In fact encroachment by the State on the Wakf lands, besides causing embarrassment to the authorities and emboldening private encroachers, has stood in the way of reform and reconstruction. As early as nineteen seventies Prime Minister Indira Gandhi wrote a letter to the Chief Ministers asking them to either vacate or pay to the Wakf Boards the market value of the Wakf properties. Alternatively, the directive was to pay lease rent at market rents for the Wakf properties encroached upon by the governments and their agencies (See Box 11.3).

Box 11.2	
Some instances of unauthorized occupation of gazetted Wakfs by Governments and their agencies reported to the Committee by various state Wakf Boards during 2005-06	
State	No. of Wakf properties
Delhi ⁸	316
Rajasthan	60
Karnataka	42
Madhya Pradesh	53
Uttar Pradesh	60
Orissa	53

Note: This is not an exhaustive list of properties.

7. The list provided to the Committee is not exhaustive and further details can be obtained from the respective state Wakf Boards.

8. Archaeological Survey of India, Delhi Development Authority, Railways, Cantonment, Delhi Police, Central Public Works Department, New Delhi Municipal Committee, Delhi Municipal Corporation, Delhi Transport Corporation, Delhi Jal Board and Lady Harding Medical College and Hospital.



Box 11.3
Prime Minister Indira Gandhi's letter addressed to the Chief Ministers

APPENDIX VII

No. 71-PMO/76

New Delhi, March 26, 1976

I have been concerned for some time about improving the administration of Wakfs. The State Governments must ensure that Wakfs are properly maintained and administered by the State Wakf Boards in terms of the Wakf Act of 1954. The following are some matters which require your urgent attention.

For a variety of reasons, including unsettled conditions after partition, a large number of Wakf properties have gone into the adverse possession of private parties as well as State Government departments and local bodies. The Wakf Boards could well start legal proceedings against the concerned State Government Departments. Obviously such litigation would not be desirable. Hence you should settle the issue on an administrative basis. As far back as 1961, we had made the following three concrete suggestions for quick settlement of such cases:

- (i) Where feasible, the Wakf property should be vacated and handed over to the Wakf concerned;
- (ii) Where costly buildings have been put up on the land and their vacation is not feasible, the State Governments may enter into permanent leases with the Wakf Boards, after paying to the Boards the bulk of the market value as premium; or
- (iii) In the alternative, the State Governments may arrange to make over the fair market value of the lands to the Boards, which will relinquish their rights over the land if in their direct management, or obtain from the Mutawallis concerned with their consent, the necessary deeds of relinquishment.

I understand that the Wakf Boards have sent your Government lists of Wakf properties in the possession of Government departments and local bodies. Please see that these are dealt with as suggested above. A periodic review should be undertaken and a monthly report sent to me and to the Minister for Wakfs.

Most Wakf properties are leased out on very nominal price which cannot be increased because of Rent Control Acts. In its Interim Report the Wakf Inquiry Committee has suggested that all public Wakfs serving a religious or charitable purpose or for that matter all public trusts and endowments belonging to any community, should be exempted from the provisions of the Rent Control Acts. The Committee rightly felt that Wakfs, which are not meant to benefit individuals, should be treated differently from individual landlords. I understand that at the suggestion of the Centre, the States of Andhra Pradesh, Kerala, Karnataka and Tamil Nadu have already agreed to exempt public Wakf properties from their respective Rent Control Acts. Please look into the possibility of making a similar exemption in your State.

Yours sincerely,

(Sd)

(INDIRA GANDHI)



To attain the objective of putting the Wakf properties to optimum use, fresh institutional support is essential

The importance of stricter monitoring of the Wakf management in general and the vacation of encroachments in particular cannot be over-emphasized

3.2 Present day Management of Wakfs

To attain the objective of putting the Wakf properties to optimum use fresh institutional support is essential. Presently state Wakf Boards comprise Muslim MPs, MLAs and some others. They may not be necessarily equipped with the technical expertise and knowledge required to exploit the Wakf resources optimally. The importance of stricter monitoring of the Wakf management in general and the vacation of encroachments in particular cannot be over-emphasized. The respective state governments have remained indifferent for many years and the matter once again received the Parliament's attention and a Joint Parliamentary Committee was constituted during 1996-2006. The comprehensive recommendations of this JPC are yet awaited. However, its reports in respect of nine states (Tripura, Manipur, Maharashtra, Goa, Assam, Meghalaya, Dadra & Nagar Haveli , Pondicherry , Lakshadweep) and Ajmer Dargah Act are available on the Web :-<http://RAJYASABHA.NIC.IN/BOOK2/REPORTS/WAKF/REPORTSLIST.HTML>

Mandate of the Joint Parliamentary Committee on Wakfs - 1996-2006

1. Assess, ascertain and identify the Wakf properties in the country.
2. Identify the Wakf properties which have been encroached upon in various States and Union Territories and to suggest ways to retrieve the property.
3. Identify the Wakf properties illegally gifted, transferred, mortgaged, leased or sold etc. and to suggest ways to fix responsibility and to retrieve the property.
4. Suggest ways and measures for proper utilization of the Wakf properties.
6. Ascertain the status of implementation of the Wakf Act 1995 by various State Governments.
7. Suggest such amendments to the Wakf Act 1995 as may be considered necessary, so as to achieve its objectives including retrieval of the Wakf properties encroached upon.
8. To examine the functioning of the Central Wakf Council and suggest suitable measures for making it effective.
9. To look into the working of the State Wakf Boards and recommend suitable measures for their proper and smooth functioning.
10. Suggest suitable legislative measures to realize all or any of the above objects.

General Issues and Constraints: Problems Faced by State Wakf Boards

Various State Wakf Boards brought to the notice of the Committee a number of problems out of which a selected few are presented here as examples. Such occurrences are detrimental to the interests of Wakf and also infringe the entitlement of its designated beneficiaries in particular and the poor in general.

Private Occupation of Prime Wakf Properties:

Often Wakf properties are situated in the heart of a town / city. These are



commercially valuable assets of the Wakf Boards and should be available for appropriate development and enhancement of the revenues. However, such properties have often been occupied either by corporations or third parties. An effective methodology would need to be evolved for expeditious settlement of such disputes⁹.

Over-ruling or Conflicting Orders by State Governments

The Minorities Department of U. P. Government has unauthorisedly passed orders over-ruling the quasi-judicial orders given by the Wakf Board a copy of the most recent example of the UP government over ruling the Wakf Boards orders is available with the community. The Department has, in this way, been staying over-ruling and vacating the Board orders. Such actions are ultra vires the Wakf Act. Both Sunni and Shia Boards drafted and submitted in 2004 the proposed Rules for the functioning of the Wakf Board and for implementation of the Wakf Act 1995. But the Department has yet to take action thereupon. While the U.P. Government could be advised to look into the matter, the Wakf Act 1995 may be amended to prevent such interference.

Transfer of Records and Jurisdiction

Due to non-transfer, delay in transfer or confusion in administrative jurisdiction Wakf properties often suffer from mismanagement. Clarity would have to be brought about both administratively and by legislation so as to improve Wakf management. See example in the footnote below¹⁰.

Undoing the Trifurcation of Punjab Wakf Board

Till 2004 there was a combined Wakf Board for Punjab, Haryana, Himachal Pradesh and Chandigarh. The Wakf resources of all these states were pooled together and were being utilized for the people of erstwhile undivided Punjab. This

Due to non-transfer, delay in transfer or confusion in administrative jurisdiction Wakf properties often suffer from mismanagement

9. One case of mis-utilisation of prime Wakf property is that of Sajan Lal Shia Wakf property located in the heart of the city of Hyderabad. It was a graveyard and is now under the occupation of the prestigious Viceroy Hotel. The latter is not even accepting that it is a Wakf property and is not allowing the Surveyor of Wakfs to discharge his duty. Similarly, Prince Ghulam Mohammad Wakf Estate situated at a prime location in Kolkata was on lease favouring the Shaw Wallace Company on a meager rent since 1906. The lease was terminated by the Wakf Board in 1984. The lessee approached the High Court where the matter is pending for the last 22 years. For the intervening period the High Court decided that an amount of Rs. 25,000/- per month should be paid as occupation charges to the Wakf Board. However, the market rental is of the order of Rs. 10 lakhs per annum.

10. The case of Maharastra Wakf Board is placed below; however these problems vary across states and contexts. Maharashtra: Before the commencement of the Wakf Act 1995 in Maharashtra, all the Muslim trusts and Wakfs (except those in Marathwara Region which were governed by Wakf Act 1954) were covered under the purview of Bombay Public Trusts Act 1950 and were handled by the Charity Commissioner of Maharashtra. However, the Wakf Act 1995 was enforced from 1 January 1996. It was thus mandatory for the Charity Commissioner of Maharashtra to transfer all the Mosques, Idgahs, Imambaras, Dargahs, Khanqahs, Maqbaras and graveyards etc to the Maharastra Wakf Board. In the meanwhile even the Wakf Survey Commissioner completed his job and the State Government published the list of Wakfs under section 5(2) of the Wakf Act 1995 in the Government Gazette on 13 November 2003. The Charity Commissioner was directed to transfer the amount collected by him from Wakf properties after the jurisdiction over them stood transferred to the Wakf Board. The Charity Commissioner ignored the legislative-cum-administrative mandate as well as the Wakf Minister's direction and has continued to collect a share from the Wakf income. After persistent follow up by the Wakf Board, the Charity Commissioner has transferred only part of the record to the Wakf Board in 2006. Hence the interests of the Wakfs are being jeopardized as proper follow up is not possible in various legal cases as well as complaints received by the Wakf Board cannot be properly investigated in the absence of complete record. In some cases the Charity Commissioner is also alienating Wakf properties without jurisdiction.¹⁰



Many states have huge amounts that are outstanding but not paid to the Wakf Boards for various reasons

There are a number of situations in which even the recommendations given by the Joint Parliamentary Committee have not been implemented

provided the required flexibility in fiscal matters vis-à-vis the general welfare and particularly the provision of educational & vocational institutions and medical facilities etc. However, the trifurcation of the Wakf Board entailed huge enhancement of administrative expenditure as now there are three separate Boards and corresponding administrative infrastructure. There are 11,000 Wakf properties in Punjab but not many Muslims to take advantage there from. Haryana has a huge Mewat belt where large number of Muslims are among the most backward in the country. But they can no longer enjoy the usufruct of prime Wakf properties situated in Punjab. The people of Himachal Pradesh and Chandigarh are now practically bereft of the welfare measures hitherto available to them. The Committee analysed the representations made to it in this regard and studied the issue. It is of the view that the Central Government may revert to the status quo ante and undo the trifurcation of the erstwhile Punjab Wakf Board.

Outstanding Amounts due to Wakfs

Many states have huge amounts that are outstanding but not paid to the Wakf Boards for various reasons. For example, Maharashtra Wakf Board informed the Committee that the state Government owes an amount of Rs 81,68,285/- and associated interest to the Maharshttra Wakf Board against acquisition of properties in Aurangabad, Jalna, Parbhani, Nanded, Beed, Osmanabad, Latur, Pune, Nasik, Amrawati, Sangli, Nagpur, Ahmednagar and Dhule¹¹. It is necessary that appropriate directives should be incorporated in the Wakf Act with respect to the payment of the outstanding dues within a reasonable time.

Non-implementation of the JPC Recommendations

There are a number of situations in which even the recommendations given by the Joint Parliamentary Committee have not been implemented. Following is one such case study: In Shillong, Umshyrpi College was established in 1994 by Muslims of Meghalaya. For a long time the College Committee has been requesting the State Government to withdraw the acquisition proceedings in respect of the Wakf land at Grove Side, Keating Road, Shillong and to allot it to the College for its expansion. The Wakf Board and the Mutawalli of the Wakf concerned, namely Golam Rahman Wakf Estate, have approved the proposal. Even the Joint Parliamentary Committee recommended it to the Chief Minister and the Union Minister of Welfare wrote to him in this regard. But this work has not yet been done though the land required by the College is lying in disuse. The Central Government may consider taking up the matter with Meghalaya Government and asking the latter to pass necessary order withdrawing the acquisition proceedings in respect of the said property and allotting it to Umshyrpi College¹².

A Case Study of National Capital Territory of Delhi

The Government of India acquired large areas of land between 1911 and 1915 for

11. Letter no. MSBW/REG/668/2006 of the CEO, Maharashtra State Wakf Board of Wakfs addressed to the Committee
12. Letter No. MSWB/PMO/2005-06/1029 dated 08 August 2005 of Meghalaya Board of Wakfs addressed to the Committee.



construction of the New Capital/Extension of Delhi city. A number of Wakf properties were also acquired although compensation was not received or accepted in case of many of these properties. In 1940, individual agreements were made by the Government of India in 42 cases with the Sunni-Majlis-e-Auqaf (predecessor of Delhi Wakf Board) permitting the use of the properties for religious purposes. By notification in the Delhi Gazette in 1970 a large number of properties, including those under agreement, were declared as Wakf properties. This was challenged by over 300 suits in the District Courts by the Land & Development Officer (L&DO) and the Delhi Development Authority (DDA), both under the Ministry of Urban Development, Government of India.

Between 1974 and 1984 four high-powered committees examined the disputes between the parties. The matter was also examined by a Group of Ministers comprising six Cabinet ministers. A Committee of Officers including representatives from the Ministry of Works and Housing, Ministry of Home Affairs, Delhi Development Authority, Land & Development Officer and the Delhi Wakf Board surveyed the properties in detail to assess the nature of each property in the context of the requirements for development of the capital city. They verified that in the case of 123 properties it was clear that they could be classified as Wakf properties and recommended that they be transferred to the Delhi Wakf Board. The Government of India approved the recommendation of the Committee on 31.1.84 and ordered the transfer of 123 properties (61 in the control of L&DO and 62 in the control of the DDA). Besides these 123 properties, it was found by the Committee of Officers that there were 40 other properties which were also Wakf properties but which were situated inside government properties such as the public parks. It was decided that in respect of these properties the ownership would continue to vest with the government and the Delhi Wakf Board would be permitted to use them as Wakf properties.

In spite of the above mandates, as a consequence of a writ petition, the Delhi High Court on 1st June 1984 ordered that 'status quo regarding the property should be maintained and possession should be retained by the government. The Union of India has stated in its reply before the High Court that, only after thorough scrutiny of the notified Wakf properties and verification at site, it was decided to transfer to the Delhi Wakf Board only such properties which were:

- i. Clearly Wakf in nature,
- ii. Not required for public utilities and
- iii. Could clearly be separated from the adjacent public buildings.
- iv. The transfer of Wakf properties to Delhi Wakf Board is for their effective management and in the public interest.
- v. Wakf properties that did not exist at site but had been notified in the Gazette were ignored.

Accordingly all disputes between the Government agencies and the Delhi Wakf Board had come to an end and all pending cases from both sides were to be

A number of Wakf properties were also acquired although compensation was not received or accepted in case of many of these properties



The Delhi Wakf Board has effectively been deprived of the use of its valuable properties

High legislative, administrative and judicial priority should be accorded to Wakf in order to improve the management of about five lakhs Wakf properties spread across India

withdrawn from the courts. However, due to the interim stay of 6th June 1984 no further action has been taken in this regard. It is sad that even after 22 years and 112 listings of the case the matter is not heard due to lack of enthusiasm on the part of the Government.

During the intervening 22 years the Wakf properties have been extensively encroached upon and this is an ongoing process. It would be seen that the Delhi Wakf Board has effectively been deprived of the use of its valuable properties. It has been unable to generate resources from its assets to discharge its statutory Wakf obligations and is currently impoverished.

In 2003 the market value of these 123 properties was estimated at about Rs.3,000 crores by the petitioners. Property prices in Delhi have since doubled. Therefore these, Wakf properties could now be valued at Rs.6,000 crores. Due to the protracted litigation their economic value could not be tapped. If the commercial potential is now exploited it could generate enough resources to meet many needs of the Muslim community in Delhi. The Government of India may consider instructing its law officer to take active interest in the matter and have the long pending court matter disposed off at the earliest. This could be done by getting the legal support upgraded and imparting the overdue urgency to the finalization of this case.

4. Overcoming Constraints: Some Recommendations

4.1 Organizational Reforms

This chapter brings to light the importance of Wakf as a socio-religious institution almost equivalent to the present day 'non-government organizations' involved in welfare activities. However, at present, the management of Wakf properties is seriously impaired both due to high incidence of litigation and poor management. Often important Wakf cases, and thereby valuable properties, are lost because of lack of financial and administrative resources. Therefore strengthening Wakf Boards administratively with necessary financial and legal backup is absolutely necessary. High legislative, administrative and judicial priority should be accorded to Wakf in order to improve the management of about five lakhs Wakf properties spread across India. Governments both at the centre and in the states have, perhaps because of their heavy preoccupations, found it fit just to maintain the status quo, without realizing the high potential that Wakfs have both for generating wealth and meeting the welfare requirements of the poor and the needy. With appropriate legislative and legal empowerment as indicated in this chapter, the management of Wakf properties can be revitalized so as to make them not only financially viable but also rewarding. Following are some recommendations designed to improve the management and functioning of the Wakfs across India.

It appears to be essential to provide a technical advisory body for development of Wakf properties both at the state and national levels. This body may comprise representatives from state Wakfs Boards, area experts from institutions such as



School of Planning and Architecture, National Institute of Design and IITs and academics such as sociologists, economists, financial and legal experts. A representative from appropriate government department should also be part of this body. Any Wakf property whose current undeveloped market value is estimated to be Rs.1 crore or more, or whose area is more than one bigha in urban and above 2 acres in rural parts of India should be referred to the Technical Advisory Body. All Wakf properties should be developed, mortgaged or encumbered only with the concurrence of the State or Central Technical Advisory Body as the case may be.

- **Woman Representation:** It is of utmost importance to provide for atleast two women each in the Central Wakf Council and each state Wakf Board. Besides providing gender equity this will help in improving direct access to welfare measures for women and children.
- **Composition of the Central Wakf Council (CWC):** A Union Minister occupies the position as the ex-officio President of the Central Wakf Council. Given his preoccupations, often the Council is not able to prepare and take timely action on matters of urgency. It is, therefore, proposed that a full time President should be appointed from out of eminent persons like retired high court judges, chancellors and vice chancellors of central universities and former chiefs of state Wakf Boards. The President may hold office for a period of three years. The other members of the Central Wakf Council could be nominated from a list of eminent Muslims drawn from various professions such as architects, doctors, lawyers, chartered accountants and academicians. The representation of MPs and MLAs as at present may be combined and their gross number in each state Wakf Board may be reduced from the existing four to two. The Secretary of the Central Wakf Council should be an officer of the rank of at least Joint Secretary to Government of India so that meaningful and effective communication and interaction with government authorities is facilitated. In order to be effective, this officer must have a good knowledge of Wakf matters, Muslim scriptures and proficiency in Urdu.
- **State Wakf Boards:** The chairmen and members of the state Wakf Board can be selected from a list of eminent persons in each state. For example, a retired high court judge, the former vice chancellors, and those who have established Muslim educational institutions of repute should be considered for appointment in the Wakf Board. The other members of the Wakf Boards can be nominated from a list of Muslim professionals drawn from various professions such as the architects, doctors, lawyers, chartered accountants and academicians. The representation of MPs and MLAs as at present may be combined and their gross number in each state Wakf Board may be reduced from the existing four to two. The Act does not provide any qualification for a person to be appointed by the state Government as Chief Executive Officer of the Board. It has been found that in cases where the Chief Executive Officer is not high ranking in the hierarchy of state bureaucracy the interests of the Wakf

It is of utmost importance to provide for atleast two women each in the Central Wakf Council and each state Wakf Board

The chairman and members of the state Wakf Board can be selected from a list of eminent persons in each state



The government may, consider creating a new cadre of officers with knowledge of Islamic law to deal with the specific affairs of the Wakfs efficiently

A National Wakf Development Corporation may be constituted by the central Government with a revolving corpus fund of Rs 500 crores

Board often suffer. It is, therefore, necessary that the Chief Executive Officer must be full time and must rank with senior officers of the state Government. Ideally a Class I Officer of All India or Central Services directly recruited through UPSC should be appointed as CEO.

- **Group-A Officers for Wakfs:** There is strong case to create a new cadre of officers to manage the affairs of State Wakf Boards and Central Wakf Council. It is estimated that up to 200 Group-A officers are needed to service the Wakfs affairs across India. The government may, therefore, consider creating a new cadre of officers to be recruited by the UPSC so that they can deal with the specific affairs of the Wakfs efficiently. Such officers, however, should have the knowledge of Islamic law and Urdu, as most of the documents relating to Wakfs are in that language. Some officers of this cadre could, subject to the concurrence of the Central Haj Committee, be seconded to the Central and State Haj Committees for giving them administrative support.
- **Maintenance of Accounts:** It is recommended that all the Wakfs are compulsorily brought under the scheme of 'financial audit'.
- **National & State Wakf Development Corporations:** A National Wakf Development Corporation may be constituted by the central Government with a revolving corpus fund of Rs 500 crores. It would also be advisable to seek out matching funds to be added to the corpus from the community and NGOs. The CMD of this corporation should be well versed in Muslim religious practices and be proficient in Urdu. The corporation may continue providing financial and technical help for development of Wakf properties with a view to enhance Wakf resources. Similar corporations should be established in all the states.
- **Ajmer Dargah Act needs to be amended:** Wakf Act 1954 was amended in 1995. Now some more amendments are being suggested in this Report. However, Dargah Khwaja Saheb Ajmer Act 1955 has never been amended while the problems there are same as in the case of all other Wakfs in the rest of India. Hence it is necessary to introduce comprehensive changes in Dargah Khwaja Saheb Ajmer Act also.

4.2 Legal and Administrative Remedies

- **Removal of Avoidable Judicial Dichotomy:** Amendment of Wakf Act Section (6) sub-section (1) : The Supreme Court in Board of Muslim Wakf, Rajasthan vs Radha Kishan and Others stated that where a non-Muslim is in possession of a certain property his right, title and interest therein can not be put in jeopardy merely because the property is included in the list of Wakfs. Such a person is not required to file a suit (within a period of one year) for declaration of his title, as required in the Wakf Act. That is to say, the special rule of limitation laid down in the proviso to sub-section (1) of Section 6 is not applicable to non-Muslims. Such interpretation is detrimental to the interests of Wakf and may well tend to encourage encroachments. Section 6 may therefore be amended to avoid the



confusion and the amendment should be given retrospective effect from the date of notification of the property as Wakf. In section 6(1) of the Wakf Act 1995 after the expression "or any person interested therein" the following words may be added "irrespective of his / her / its religion".

- **Enhanced Lease Period:** Increase the maximum period of lease of Wakf properties from 3 to 30 years where the property is used by registered charitable societies or trusts for building and/or running educational or health care institutions, or for other social and economic developmental purposes consistent with the objects of the Wakf (if any specified) and as permissible under Islamic law.
- **Define 'Encroacher':** The definition of 'Encroacher' needs to be inserted in Section 3. This definition should say that 'Encroacher' means "any person occupying the Wakf premises without the authority of law and includes a person whose tenancy, lease or license has expired or has been terminated by the Board, or who has altered the property leased out or occupied by him without the prior written permission of the Wakf Board concerned". The inclusion of this definition will help the Wakf Boards in removing encroachments. Secondly, a person occupying the Wakf premises should be included in the definition of "person interested". Thirdly, the "Wakf premises" should be defined to mean "any Mosque, Graveyard, Mazar, Takiya, Eidgah, Imambara, Dargah, Khanqah, Maqbara, Anjuman and land appurtenant or belonging to them, the property dedicated for their maintenance, the property purchased from their income, the land, garden, well, baoli, school, hospital and other institutions dedicated as Wakf and the passages used leading to the Wakf premises". This definition will help in the proceedings under Section 54, for removal of unauthorised occupants of Wakf property.
- **Rent Control Act:** Often the Rent Control Act (RCA) provides protection to the tenants in such a way that the owners lose incentive to develop and maintain properties. Wakf properties are in the purview of RCAs in most of the states¹³. Thus the application of the RCA to Wakfs is damaging the noble interests of Wakfs and hurting the entitlements of the beneficiaries. Therefore, an amendment exempting the Wakf properties from the purview of the RCA within the Wakf Act is urgently needed. This can be done by introducing an over-riding provision in the Wakf Act.
- **Extension of Time for Recovery from Adverse Possession:** The Public Wakf (Extension) of Limitation Act, 1959 facilitated the recovery of properties forming part of public Wakfs by way of suits. Under the said Act the time for filing suits for recovery of Wakf properties against adverse possession was extended till 31st December 1970. Various states extended the said time further; these are as follows :

Increase the maximum period of lease of Wakf properties from 3 to 30 years where the property is used for education, health care and other purposes consistent with the objects of the Wakf and as permissible under Islamic law

An amendment exempting the Wakf properties from the purview of the Rent Control Act within the Wakf Act is urgently needed

13. For example, the Wakfs are taken out of the purview of RCA in Uttar Pradesh and Andhra Pradesh.



Failure on the part of the State and statutory bodies entrusted with safeguarding...administering Wakf properties has caused disquiet in the Muslim community

Bihar & UT Delhi	till	31st December 1985
Haryana	till	31st December 1975
Madhya Pradesh	till	31st December 1983
Himachal Pradesh	till	31st December 1978
Orissa	till	31st December 1981
Rajasthan	till	31st December 1980
West Bengal	till	31st December 1976

However, since 1947, most state Wakf Boards were either not properly constituted or were not sufficiently equipped to utilise or take advantage of the periods of extension of limitation. Although the administration and supervision of public works is the statutory obligation of the State, often for very long periods there has existed a virtual vacuum or absence of Wakf administration. Consequently, a large number of Wakf properties have been subjected to adverse possession and suits for recovery of the same have become time-barred. Therefore, the period of limitation should be extended till 2035 with retrospective effect. Otherwise, very valuable properties would stand unfairly encroached upon and appropriated by strangers. This would be tantamount to a collective failure of the State Wakf machinery. Due to their inaction or insufficient action the government would be deemed to be a party to the undue loss/shrinking of Wakf properties. Such failure on the part of the State and/or the statutory bodies entrusted with safeguarding/managing/developing/administering Wakf properties has caused disquiet in the Muslim community.

- **The Ancient Monuments and Archeological Sites and Remains (AMASR) Act, 1958:** This Act has often been at cross purposes with the Wakf Act. Very often the former has an over riding effect. There are innumerable cases where the Wakf property, despite being a place of worship and of religious reverence, cannot be touched by the Wakf Board because it is declared as protected monument¹⁴. Given the present state of large number of Wakf properties under the control of the Archeological Survey of India (ASI), it would only be proper if their lists are annually reviewed and their condition is assessed in a joint meeting of senior officers of the ASI with the representatives of the Central Wakf Council. The minutes should be signed by both the parties, copies should be preserved by both of them as well as the ministries concerned. An indicative list of properties which are under the physical control of the ASI but but are gazetted as Wakf properties can be found in Appendix 11.1.
- **Thika Act :** The West Bengal Assembly in 1981 enacted a Thika and Other Tenancies and Lands (Acquisition and Regulations) Act popularly known as Thika Act which was amended in 2001. By virtue of this Act the tenants of a large number of properties across the state became their owners. While the Act exempts the application of Thika Act to the government and municipal

14. The reference is to properties which are already gazetted as Wakf properties but are under the control and occupation of the Archeological Survey of India. The reference made here is not to such properties which have historical monuments such as the Taj Mahal, Qutab Minar and Humayun's Tomb, etc.



properties, the same benefit was not extended to cover the Wakf properties. Consequently the Wakf Board lost a large number of properties and income there from. Efforts have been made by the Wakf Board and NGOs to seek exemption of Wakf land from the Thika Act. The West Bengal Government may be advised to accord the solicited exemption.

- The Committee is of the firm view that law should not be used for acquiring Wakf properties and recommends that to ensure this on permanent basis the Government should take appropriate action.
- **Wakf Rules:** Even after a lapse of eleven years since the Wakf Act 1995 was enacted, a large number of states have not framed the Wakf Rules; this is one of the main reasons for non-implementation of the provisions of the Wakf Act and perpetuation of corruption and lack of accountability. Refresher training courses are to be offered regularly so that the staff of the State Wakf Boards are adequately trained. This work could be supervised by the Central Wakf Council.

4.3 Enabling Legal Provisions

- **Amendments to Wakf Act 1995**
The Committee suggests that the following issues should be dealt with in the Wakf Act 1995 in such a way that the state Wakf Boards become effective and are empowered to properly deal with the removal of encroachment of Wakf properties. Additionally it has been observed that the Wakf Tribunals as notified in the Wakf Act have been found to be not as effective as they were envisaged to be (Section 83 and 84). The primary reason is that the members of the state judicial service who preside over the Wakf Tribunals normally hold dual or multiple charges, i.e., as district, sessions or civil judge. Consequently, they have paucity of time in attending to Wakf matters and the Tribunals in some instance sit only a few days in a month. It is common knowledge that delay in adjudication of properties especially suffering from encroachment / unauthorized construction/ illegal occupation / misuser creates its own resultant problems. Additionally the Wakf Board is deprived of the legitimate use of and profits accruing from the property. It would therefore be appropriate to amend Section 83 (4) of the Wakf Act to specify that the Wakf Tribunal will be manned by full time presiding officer appointed exclusively for Wakf purposes. The Wakf Tribunal would also have the power to give the interim relief and award damages etc., as the case may be.

According to the the Islamic precepts the ownership of Wakfs rests only with God, the Mutawallis are the managers of the properties and the usufruct is meant only for the poor and needy. These principles do not get reflected in a number of other laws that have relevance to proper implementation of the Wakf Act. Wakf deserves to get benefited in two ways: firstly, some enactments that are found in various laws need to be amended to facilitate the functioning of Wakfs and, secondly there are a few other Acts that offer empowerment in

The Committee is of the firm view that law should not be used for acquiring Wakf properties and recommends that to ensure this on permanent basis the Government should take appropriate action

Wakf Tribunal should be manned by full time presiding officer appointed exclusively for Wakf purposes



The Public Premises (Eviction of Unauthorized Occupation) Act, 1971 should be applied to remove encroachment from Wakf properties and arrears of rent, at market rates, should be recovered as arrears of land revenue

The exemption of Wakf properties from some enactments would serve the greater philanthropic purpose of Wakf properties

such a way that Wakf Boards can take advantage of by getting legally empowered. The state level examples for both the above types are given below:

- **Public Premises (Eviction of Unauthorized Occupants) Act**

All Wakfs as notified in the Gazette should be treated as public premises. Wakfs are meant for a large section of the public. Some activities of Wakfs such as running schools, orphanages, monthly financial assistance to the needy, are philanthropic and secular in nature. Any encroachment on these properties should be treated like encroachment on government land. The Public Premises (Eviction of Unauthorized Occupation) Act, 1971 should be applied to remove encroachment from Wakf properties and arrears of rent, at market rates, should be recovered as arrears of land revenue.

- **Other Legal Structures which can empower Wakfs**

As stated in the beginning of this chapter the character of Wakf properties is quite different from privately held properties. The ownership of Wakf properties is vested in God, understood in mundane sense as an artificial juridical person. And, the usufruct invariably belongs to the downtrodden, the poor and the needy. Yet, the state and central legislation, does not usually take cognizance of such difference. While the exemption of Wakf properties from some enactments would serve the greater philanthropic purpose of Wakf properties, appropriate though minor amendments in the following Acts would strengthen the functioning of the Wakfs without in any way hurting their general public objective. Government may like to take necessary action after consulting Wakf Boards and enlightened public opinion.

Some of such enactments are:

- Rent Control Act, Land Reforms Act
- Agricultural Land Ceilings Act
- Urban Land Ceiling Act
- Registration of Properties Act
- Tenancy Act
- Stamp Duty Act
- Court Fee Act
- Income-tax Act
- Private Forest Vesting & Assignments Act

5. Summing up

This chapter brings to light the deeper malaise and misuse of the Wakf properties both by individuals and institutions. Such a state of affairs exists due to a number of organizational, managerial and legal impediments. The information provided above should be sufficient to initiate corrective action especially by the governments and the legal system which will enable the Wakfs to put the properties to good use for expanding and augmenting and putting at a proper level the welfare activities of Wakfs. This would supplement to some extent the broad based



ameliorative endeavours of the State which necessarily have a massive magnitude. This will also be a step towards self-reliance by the Muslim community. It is possible to use the Wakf properties to put in place world class facilities such as universities and colleges, hospitals and health centers and convention centers. The properties can also be used to put up old age homes, polytechnics, and coaching centres.

