

WAKF (AMENDMENT) BILL 2010

VITAL CONCERNS OF MUSLIM COMMUNITY

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Sachar Committee's Recommendations (As per Ministry of Minority Affairs file on the subject)				JPC on Wakf (Recommendations)	Ministry of Minority Affairs' proposal incorporated in Wakf Amendment Bill 2010 that was not recommended either by Sachar Committee or by JPC	Zakat Foundation of India (ZFI)'s Comments / RTI Query made to the MoMA (MoMA stands for Ministry of Minority Affairs)
Sachar Comm ittee's Recom mendat ion no.	Chapter, Para and Page no. of the Sachar Committe e's Report	Text of the Sachar Committee's Recommendation (Pertaining to Wakfs)	(a) Summarised comments of the Ministry / Department (b) Comments of the Ministry of Minority Affairs (MoMA) (c) Conclusion arrived (at the at inter-ministerial meeting that later found its way to the Cabinet Note)	(THIRD REPORT OF JOINT PARLIAMENTARY COMMITTEE ON AMENDMENTS TO THE WAKF ACT, 1995 PRESENTED TO THE RAJYA SABHA ON 04 MARCH 2008 and LAID ON THE TABLE OF THE LOK SABHA ON THE 4TH MARCH, 2008)		
1	2	3	4	5	6	7
1. Preventing undue bureaucratic intervention in Waqf work						
	Chapter - 11 Para-3.2 Page-225	The Minorities Department of U.P. Government has unauthorizedly passed orders over-ruling the quasi-judicial orders given by the Wakf Board. A copy of the most recent example of the UP government	(a) Ministry of Minority Affairs Amendments to Wakf Act are being considered and <u>a view will be taken once the JPC on Wakf submits its report.</u> (b) Ministry of Minority Affairs	Section 97 Section 97 deals with direction by State Government. The Committee decided that the following proviso may be added at the end of Section: “Provided that while issuing any directions under		The proviso proposed to be added to Sec 97 needs to be rephrased as follows: “Provided that while issuing any directions under this Section, the State Government shall not interfere with the provisions of any Wakf deed or any

		over ruling the Wakf Board order is available with the Committee. Such action is ultra vires the Wakf Act. The Wakf Act 1995 may be amended to prevent such interference.	Same as in (a) above. (c) Conclusion arrived (at the inter-ministerial meeting that later found its way to the Cabinet Note) Amendments to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report.	this Section, the State Government shall not interfere with the provisions of any Wakf deed or any usage, practice or custom of the Wakf.”		usage, practice or custom of the Wakf nor shall issue any direction that violates any provision of this Act.”
2. Survey of Waqf Properties						
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				Compulsory appointment of Survey Commissioners of Waqfs In Sub-section (1) of Section 4, the words “The State Government may, by notification in the Official Gazette...” be substituted by the words “The State Government shall , by notification in the Official Gazette...”	<u>MoMA</u> over-ruled the JPC and has not incorporated this important recommendation of the jPC into the Waqf Amendment Bill.	The amendment recommended by JPC must be incorporated in the Waqf Bill 2010.
				Survey to	<u>MoMA</u> again	This important

				<p><u>include cases since Independence:</u></p> <p>Provided further that such second or subsequent survey shall include all such Wakfs and Wakf properties which were in existence as on 15.8.1947.</p>	<p>over-ruled the JPC and did not incorporate this vital recommendation of the JPC in the Waqf Amendment Bill, 2010.</p>	<p>recommendation of JPC must be incorporated in the Waqf Amendment Bill, 2010.</p>
				<p><u>Deemed Mutation</u></p> <p>Once a Survey Commissioner notifies the Wakf property, the same Shall be treated as ‘Deemed Mutation’”, for the purposes of revenue records and determination of title to the property.</p>	<p>MoMA again over-ruled the JPC and did not incorporate this vital recommendation of the JPC in the Waqf Amendment Bill, 2010.</p>	<p>This important recommendation of JPC must be incorporated in the Waqf Amendment Bill, 2010.</p>
3. Constitution of Central Waqf Council						
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62	Chapter - 11	(i) <u>Independent</u>	(a) Ministry of Minority Affairs	This matter was not touched upon in the	MoMA	(i) <u>Independent President of CWC</u>

	<p>Para-4.1 Page-229</p>	<p><u>President of CWC</u></p> <p>A Union Minister occupies the position as the ex-officio <u>President of the Central Wakf Council</u>. 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.</p>	<p>Amendments to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report.</p> <p>(b) Ministry of Minority Affairs Same as in (a) above</p> <p>(c) Conclusion arrived (at the at inter-ministerial meeting that later found its way to the Cabinet Note) Amendments to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report.</p>	<p>JPC Report.</p>	<p>ignored this vital recommendation of Sachar Committee without giving any reasons.</p>	<p>Needs to be incorporated in the Bill</p>
<p>62</p>	<p>Chapter - 11 Para-4.1 Page-229</p>	<p>(ii) <u>CWC Secretary to be of the level of</u></p>	<p>(a) Ministry of Minority Affairs</p>	<p>This matter was not touched upon in the JPC Report</p>	<p>(ii) <u>CWC Secretary to be of the level</u></p>	<p>(ii) <u>CWC Secretary to be of the level of Joint Secretary to Govt of India</u></p>

		<p>Joint Secretary to Govt of India</p> <p>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.</p>	<p>Amendments to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report.</p> <p>(b) Ministry of Minority Affairs Same as in (a) above</p> <p>(c) Conclusion arrived (at the at inter-ministerial meeting that later found its way to the Cabinet Note) Amendments to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report.</p>		<p>of Joint Secretary to Govt of India</p> <p>CWC Secretary has to be naturally much senior to the CEOs of the state governments. Also, his being senior enough in central government hierarchy shall facilitate the CWC's day-to-day interaction with various govt departments.</p> <p>MoMA ignored this vital recommendation of Sachar Committee without giving any reasons.</p>	<p>Needs to be incorporated in the Bill.</p>
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4. Constitution of State Wakf Boards

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63	Chapter -	(i) Chairman and	(a) Ministry of Minority		(i) ZFI has noted	(i)(a) Without assigning any

	<p>11 Para-4.1 Page-229</p>	<p>Members of the State Wakf Boards 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.</p>	<p>Affairs Amendments to Wakf Act are being considered and <u>a view will be taken</u> once the JPC on Wakf submits its report].</p> <p>(b) Ministry of Minority Affairs Same as in (a) above</p> <p>(c) Conclusion arrived (at the at inter-ministerial meeting that later found its way to the Cabinet Note)</p> <p>Amendments to Wakf Act are being considered and <u>a view will be taken</u> once the JPC on Wakf submits its report.</p>		<p>that, as per the Wakf Amendment Bill 2011, one of the following shall be elected as a Member of the State Wakf Board:</p> <p>“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 of the Bar Council of a State, the State Government may nominate any reputed person from that State having knowledge or experience of law.”</p> <p>(ii) One Member is to be nominated by the State Government from among the officers of the State Government not below the rank of Deputy Secretary.</p>	<p>reason, MoMA has ignored the Sachar Committee’s recommendation, that the Chairman of SWB should be a retired High Court Judge or a former vice-chancellor or one who has established educational institutions. The end result is that this important position shall continue to be an object of politicking without much regard for the Waqf interests. This omission by MoMA needs to be rectified.</p> <p>(i)(b) The portion in red colour leaves the scope that a person from any community can be appointed. <u>Therefore, the Wakf Amendment Bill needs to be amended to include the word ‘Muslim’ before the word ‘reputed’.</u></p> <p>(ii) The Member who is a Muslim officer of the state government should be of the level of Principal Secretary to the state government. If such a Muslim officer is not available, then the senior-most available Muslim officer of the state government shall</p>
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					<p>(iii) The following existing provision regarding composition of the Waqf Board is proposed by the MoMA to be deleted:</p> <p>“One and not more than two members to be nominated by the State Government representing eminent Muslim organisations.”</p> <p>(iv) Provided that the members from categories mentioned in sub-clauses (i) to (iv)*, shall be elected from the electoral college constituted for each category. (* MPs, MLAs, Lawyers, Mutawallis)</p>	<p>be the Member of Waqf Board under this category.</p> <p>(iii) The existing provision needs to be retained, even if the number of Members of the Waqf Board goes up by one.</p> <p>(iv) The Amendment Bill needs to (a) define ‘Electoral College’ and (b) provide who will constitute it and (c) how.</p>
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					'Electoral College' has not been defined nor is it told who will constitute it and procedure thereof.	
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5. Status of CEO & Creation of Indian Waqf Service

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		<p>(ii) C.E.O.</p> <p>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 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.</p> <p>(All-India list of incumbent CEOs, collected by ZFI under RTI Act, is appended at the end of this booklet)</p>	<p>(a) Ministry of Minority Affairs Amendments to Wakf Act are being considered and <u>a view will be taken</u> once the JPC on Wakf submits its report].</p> <p>(b) Ministry of Minority Affairs Same as in (a) above</p> <p>(c) Conclusion arrived (at the at inter-ministerial meeting that later found its way to the Cabinet Note)</p> <p>Amendments to Wakf Act are being considered and <u>a view will be taken</u> once the JPC on Wakf submits its report.</p>	<p>There shall be a Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government from a panel of two names suggested by the Board and he should not be below the rank of a Director of the State Government, by notification in the Official Gazette”.</p>	<p>There shall be a full-time Chief Executive Officer who shall not be below the rank of Deputy Secretary to the State Government.</p> <p>In case such Muslim officer is not available in the State, an officer not below the rank of Under Secretary to the State Government may be appointed.”</p>	<p>Indian Wakf Service must be created as so thoughtfully suggested by Sachar Committee. (See next entry in this chart).</p> <p>However, the Bill should provide that for the period before the newly created Indian Wakf Service is fully in place, the CEO should not be below the rank of Director to the State Government.</p> <p style="text-align: right;">This topic continues on next page</p>
64	Chapter -	Group-A Officers for	(a) Ministry of Minority		MoMA did not give	MoMA should please let us have authenticated copies of the papers that were

	<p>11 Para-4.1 Page-230</p>	<p>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.</p>	<p>Affairs This is not recommended. (b) Ministry of Minority Affairs Same as in (a) above (c) The creation of a new cadre of officers to manage the affairs of State Wakf Boards and Central Wakf Council is not recommended.</p>	<p>The JPC Report did not touch upon this matter.</p>	<p>any reason why this recommendation of Sachar Committee was not forwarded for acceptance by the Cabinet.</p> <p>Under orders of the Central Information Commission, the MoMA's file on the subject was inspected by Zakat Foundation of India. It shows that at any level senior to Deputy Secretary this matter was not discussed at all. Its fate went by default. The endorsement of what came from the lowest bureaucratic level was done at higher levels mechanically without any application of mind. Sachar Committee's strong arguments were not refuted by any counter arguments.</p>	<p>put up by Ministry to the Union Cabinet on the basis of which the Cabinet took a decision to not accept this particular recommendation of the Sachar Committee.</p> <p>(Please note that this request of ours is not covered by the statutory exemption clause regarding 'Cabinet Papers' because, we are now asking for those papers which were considered by the Cabinet before taking the decision that was done long ago.</p> <p>For this purpose, Proviso to Section 8(1)(i) is reproduced here for ready reference:</p> <p>Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over.)</p> <p><u>The matter must be reopened and reviewed at appropriate levels. Each argument given by Sachar Committee in support of its recommendation must be examined in depth. Decision should be taken in the long term interests of the Muslim Community.</u></p>
<p>6. Development of Waqf Properties</p>						

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60	Chapter - 11 Para-4.1 Page-229	It appears to be essential to provide a technical advisory committee for development of Wakf properties both at the state and national levels. This body may comprise representatives of the State Wakf 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.	<p>(a) Ministry of Minority Affairs Setting up of National Wakf Development Corporation (NWDC) is under consideration in which experts would be represented.</p> <p>(b) Ministry of Minority Affairs Same as in (a) above</p> <p>(c) Conclusion arrived (at the at inter-ministerial meeting that later found its way to the Cabinet Note) Setting up of National Wakf Development Corporation is under consideration in which experts would be represented.</p>			MoMA should kindly let us have copies of all the documents and papers that reflect the progress made by the Government during the last four years regarding the actions taken for setting up the National Wakf Development Corporation.
66	Chapter - 11 Para-4.1 Page-230	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	<p>(a) Ministry of Minority Affairs Setting up of National Wakf Development Corporation is under consideration.</p> <p>(b) Ministry of Minority Affairs Same as in (a) above.</p> <p>(c) Setting up of National Wakf Development Corporation is under consideration.</p>	NEW CHAPTER TITLED “DEVELOPMENT AND PROMOTION” The Committee discussed about the necessity of provisions for Development of Wakf properties and decided that the new chapter “Development and		MoMA should let us have authenticated copies of all the documents and papers that reflect the progress made by the Government since the submission of the Sachar Committee Report in November 2006 regarding the actions taken for: (i) Setting up the National

		<p>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.</p>		<p>Promotion” may be added at the appropriate place in the Act:— “Development and Promotion <i>— The Central Government shall establish, as soon as possible, a National Wakf Properties Development Board, for the development of the Wakf properties in the Country.</i> <i>— 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 Wakf institutions in the Country generated through the development of Wakf properties.</i> <i>— Provided that the Central Government may frame rules for administration of these Boards as may be considered appropriate.”</i></p>		<p>Wakf Development Corporation; and (ii) The establishment of similar corporations in all the states.</p>
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				<i>A National Wakf Development Corporation may be constituted by the Central Government with a revolving corpus fund of Rs. 500 crores.</i>		
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<h2>7. Enhanced Lease Period</h2>						
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69	Chapter - 11 Para-4.2 Page-231	Enhanced Lease Period: Increase the maximum period of lease of Wakf properties from 3 to 30 years where the property is used by	(a) Ministry of Minority Affairs This will be considered after the <u>JPC report is received</u> and a view is taken on the amendment of the Act.	<i>The following new section may be added at the appropriate place</i> <i>‘While renting out the wakf land or building fair rent</i>	For the words “three years”, the words “thirty years” shall be substituted; Provided that a	(A) The MoMA should kindly provide us copies of the Ministry’s record showing the reasons in detail explaining why it

		<p>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.</p>	<p>(b) Ministry of Minority Affairs Same as in (a) above. (c) This <u>will be considered after the JPC report is received</u> and a view is taken on the amendment of the Act.</p>	<p><i>shall be determined.'</i></p>	<p>lease or sub-lease for any period exceeding three years and up to ten years may be made for commercial activities for period and purposes which may be specified in the rules to be made by the Central Government:</p> <p>Provided further that a lease or sub-lease exceeding ten years and up to thirty years may be made for education and health and for specific period as may be provided by the rules to be made by the Central Government.</p> <p>Provided that the Board shall immediately intimate the State Government regarding a lease</p>	<p>disregarded the recommendation of the JPC.</p> <p>(B) The following very significant portion of the Sachar Committee Report has been omitted while drafting the Bill:</p> <p>“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.”</p> <p>(C) Also, for drafting the Lease Rules, the Government should appoint a Committee of experts from the Muslim community. The draft should be debated by the enlightened sections of the Muslim community.</p> <p>(D) The fresh requirement, initiated by MoMA on its own, that each lease exceeding one year needs to be intimated to the state</p>
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					<p>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>government and it would be effective only after 45 days after such intimation takes the Wakf management backward and unnecessary centralization diluting the Wakf Board's powers and making the top heavy. This will also unnecessarily delay every lease of more than year.</p> <p>Hence the proposed requirement of intimation to the Government may be raised to leases of more than three years.</p>
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8. Tackling the Encroachment of Waqf properties - Eight steps

- (a) Definition of 'Encroacher' (b) Magisterial powers to CEO (c) Waqf properties to be treated as 'Public Premises'
 (d) CEO to have powers of eviction (e) Punishment to encroachers (f) Penalty for public servants for not removing encroachment
 (g) 'Person interested' to include an occupant of Waqf property (h) Define 'Waqf premises'.

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70	Chapter -	DEFINITIONS	(a) Ministry of Minority	<i>Section 3</i>		Definition of 'Encroacher'

	<p>11 Para-4.2 Page-231</p>	<p>(A) '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, <u>or who has altered the property leased out or occupied by him without the prior written permission of the Wakf Board concerned</u>". The inclusion of this definition help the Wakf Boards in removing encroachments.</p>	<p>Affairs Amendments to Wakf Act are being considered and <u>a view will be taken</u> once the JPC on Wakf submits its report.</p> <p>(b) Ministry of Minority Affairs Same as in (a) above.</p> <p>(c) Amendments to Wakf Act are being considered and <u>a view will be taken</u> once the JPC on Wakf submits its report].</p>	<p>Following new definitions may be added:</p> <p>(u) Encroacher — “Encroacher” means any person occupying Wakf property without the authority of law and includes a person whose tenancy, lease or license has expired or has been terminated by the Board.</p> <p>Section 54 Section-54 deals with removal of Encroachment from Wakf Property. The committee felt that the present provisions of the Section are not sufficient and the CEO needs to be strengthened for removal of encroachments. The Committee after considering various suggestions decided that the following amendments may be made in Section-54</p> <p>The following explanation may be added after Sub-Section 1 of Section 54. “Explanation:- The word</p>		<p>In the Bill, the following definition of “ENCROACHER” has been proposed by MoMA:</p> <p>5. In section 3 of the principal Act,— (i) after clause (e), the following clause shall be inserted, namely:— (ee) “encroacher” means any person occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or license has expired or has been terminated by the Board;’</p> <p>We would like to have copies of the correspondence, papers, documents, charts etc on the basis of which the following portion of the definition of the “Encroacher”, proposed by Sachar Committee was not included by MoMA in the proposed Bill.</p> <p>or who has altered the property leased out to or occupied by him without the prior written permission of the Wakf Board concerned.</p> <p>This portion needs to be added now.</p> <p>Section 54: The MoMA has not incorporated the amendments proposed by JPC to section 54. These must be incorporated.</p>
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				<p>“encroachment” used in the above provision shall be deemed to include the property whose lease, license or the grant period has expired or terminated by the Board and- the word; “encroacher” shall also include the lessee, licensee or the grantee whose period of lease, licence or grant has expired or terminated by the Board or any other unauthorized occupant.”</p>		
				<p><u>MAGISTERIAL POWERS FOR CEO</u></p> <p>The following new Sub-Sections may be added after Sub-Section (4): — “(5) For the purposes of this Section, the Chief Executive Officer shall have powers of Collector or Assistant Collector by the State Government to issue and enforce a warrant</p>		<p>As recommended by the JPC, these new powers must be given to the CEO. MoMA should incorporate these in the Waqf Amendment Bill 2010.</p>

				<p>of ejection.”</p> <p><u>Waqfs to be treated as Public Premises</u></p> <p>“(6) The Central or State Government as the case may be, by notification in the Official Gazette shall declare all or any Wakf institutions registered with the Wakf Board, other than Wakf al-al-aulad, to be public premises.</p> <p><u>CEO to have power of eviction</u></p> <p>“(7) If the Chief Executive Officer, after making such inquiry as he deems expedient in the circumstances of the case, is satisfied that any persons who were allowed temporary occupation of any of any Wakf are in unauthorised occupation of the said premises, he may, for reasons to be recorded in writing, make an order for the</p>		<p>As proposed by the JPC, this provision for declaration of Waqf properties as “public premises” must be incorporated in the Waqf Amendment Bill 2010.</p> <p>As proposed by the JPC, this provision for empowering the CEO with powers to evict an encroacher must be incorporated in the Waqf Amendment Bill 2010.</p>
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				<p>eviction of such persons forthwith and, thereupon, if such persons refuse or fail to comply with the said order of eviction, he may evict them from the premises and take possession thereof under the the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and may, for that purpose, use such force as may be necessary.’</p>		
				<p><u>Punishment to Encroachers</u></p> <p><i>New Section 54A</i> The Committee felt that there are no provisions for providing punishment to encroachers. The Committee accordingly decided that the following new Section 54A may be added after Section 54: “54-A. (1) Whoever encroaches on or alters the structure, status or use of any land,</p>		<p>Section 54A: The MoMA has not incorporated the insertion of new section 54A. This must be incorporated.</p>

				<p>building, space or other property which is Wakf property, and which has been registered as such under this Act, shall be punishable with rigorous imprisonment for a term which may extend to two years, or with fine which may extend to five lakh rupees, or with both.</p> <p>(2) Any offence punishable under this section shall be cognizable.</p> <p>(3) No court shall take cognizance of any offence punishable under this section except on complaint made by the Board or by an officer of the Board duly authorized by it 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> <p>(5) Any fine imposed under this</p>		
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				section shall, when realised, be credited to the Wakf Fund.		
				<p>Penalty for Public Servants for not removing encroachment:</p> <p>Section 55</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 a fine which may extend upto Rs.15000/- for each offence.</p>	Section 55: The MoMA overruled the JPC and did not incorporate this important amendment in the Bill.	This has been incorporated. See section 7, new subsection 6, proviso.
		(B) Person Interested: Secondly, a person occupying the Wakf premises should be included in the definition of "person interested".				Definition of 'Person Interested', as recommended by Sachar Committee, should include: "a person occupying a Wakf premises ".
		(C) 'Wakf Premises': The "Wakf premises" should be defined to mean "any Mosque, Graveyard, Mazar,		(v) Wakf premises – "Wakf premises" means any mosque, Graveyard, Mazar, Takia, Eidgah, Imambara, Dargah,		MoMA has totally ignored this proposal of Sachar Committee and JPC. The definition of 'Wakf

		<p>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".</p> <p>This definition will help in the proceedings under Section 54, for removal of unauthorised occupants of Wakf property.</p>		<p>Khanqah, Maqbara and land belonging to them, the property attached 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 will include the path and passages being used and leading to the "Wakf property".</p>		<p>Premises' as recommended by Sachar Committee and JPC must be included in the Bill.</p> <p>(The recommended definition may end with "and the passages used leading thereto".)</p>
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9. Enabling the Waqf Act to override the Rent Control Acts of the states

[Recommendations of Sachar Committee and JPC as well as Cabinet directions have been neglected by MoMA]

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71	Chapter - 11 Para-4.2 Page-231	<p>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 states. 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 overriding provision in the Wakf Act.</p>	<p>(a) Ministry of Urban Development The Rent Control Act is a State subject and as such the State governments have the exclusive power / jurisdiction to legislate on this subject.</p> <p>(b) Ministry of Minority Affairs The recommendation could be forwarded by the Ministry of Urban Development to state / UTs for appropriate action.</p> <p>(c) Conclusion arrived (at the at inter-ministerial meeting that later found its way to the Cabinet Note) The recommendation could be forwarded by the Ministry of Urban Development to state / UTs for appropriate action. Further, <u>an amendment could be considered in the Wakf Act to override the provisions of the Rent Act of the States.</u></p>	<p><i>The Committee recommends that all the state governments may exempt the Wakf properties in the respective states from the Rent Control Acts of each state concerned. For this purpose, the state governments may make necessary amendments in the Rent Control Acts.</i></p>		<p>(A) By not incorporating this important amendment in the Bill, the MoMA has overruled the following:</p> <p>The JPC The Sachar Committee The Union Cabinet.</p> <p>We would like to have copies of the documents and correspondence recording and forming the basis of such overruling by MoMA.</p> <p>Also, the direction given by the Cabinet for amending the Waqf Act to override the provisions of the Rent Act of the states must now be carried out.</p> <p>(B) MoMA will kindly let us have authenticated copies of the correspondence done by it, for these purposes, with the Ministry of Urban Development.</p>
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10. Waqf Tribunal

1	2	3	4	5	6	7
76	Chapter - 11	The Committee suggests that the	(a) Ministry of Minority Affairs	Sec 84: Time	MoMA over-rules	(i) As recommended by

	<p>Para-4.2 Page- 233-234</p>	<p>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 /</p>	<p>As far as proposal for amendment of the Wakf Act is concerned, the position has been explained against recommendation no. 59.</p> <p>[(a) Ministry of Minority Affairs Amendments to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report.</p> <p>(b)Ministry of minority Affairs Same as in (a) above.</p> <p>(c) Amendments to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report.]</p>	<p>Limitation for Tribunal’s decision</p> <p>Section 84 The JPC discussed Section 84, and decided that the following new Sub- Section may be added to the Section 84:</p> <p>“Applications so made to the Tribunal shall be decided upon by the Tribunal within one year from the date of filing of such applications.”</p>	<p>Sachar Committee (Sec 83) and JPC (Sec 84)</p>	<p>Sachar Committee, Tribunal should have power of awarding interim relief.</p> <p>Sec 83:</p> <p>(ii) As recommended by Sachar Committee, it should be provided that the chairperson and members will have full time appointment in the Tribunal and will not have, as a part of their public duty, any other charge.</p> <p>Sec 84:</p> <p>(iii) The limitation clause suggested by JPC in Section 84 of the Wakf Act needs to be incorporated in the Bill.</p>
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		<p>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 <u>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</u> and award damages etc., as the case may be.</p>				
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11. Enabling Legal Provisions

1	2	3	4	5	6	7
		<p>4.3 INCLUDE WAKFS IN THE DEFINITION OF</p>	The Ministry of Law has	Page 21:		(i) MoMA should kindly let us

		<p>PUBLIC PREMISES</p> <p>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 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:</p> <p>- Public Premises (Eviction of Unauthorized Occupants) Act</p> <p>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</p>	<p>been of the view that since Wakf properties are not owned by the Govt., they cannot be included in the definition of ‘public premises’. The matter is again re-opened.</p> <p>As regards, inclusion of Wakfs in the definition of ‘public premises’ Karnataka and Rajasthan have already made the necessary amendments. The Karnataka enactment has been challenged in the High Court and the matter is sub-judice.</p> <p>Besides, the Haryana legislature has passed an enactment bringing wakfs under the definition of ‘public premises’ and the bill has been reserved for the consideration of the President. MoMA has supported the proposal and communicated its views to the Ministry of Home Affairs.</p>	<p><i>All the State governments may bring the Wakf properties under the purview of State Public Premises (Eviction of Unauthorized Occupants) Acts, for the purpose of removal of encroachment.</i></p>		<p>have copies of the correspondence done by it with the Ministry of whereby the latter has expressed its opinion that the Waqf properties cannot be included in the definition of ‘Public Premises’.</p> <p>(ii) We have noted that the MoMA has supported the Haryana legislative enactment for Presidential assent.</p> <p>(iii) MoMA should kindly let us have a copy of the letter written for this purpose by MoMA to the Ministry of Home Affairs.</p> <p>(iv) MoMA should also kindly let us know whether and on which date the President has given her assent to the Haryana enactment ? Is there any other relevant development in the matter ?</p> <p>(v) We have noted that the Ministry of Law earlier opined that since Wakf properties are not owned by the Govt., they cannot be included in the definition of ‘public premises’. We have also noted the MoMA’s remark that “the</p>
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		<p>treated like encroachment on government land. The Public Permisses (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.</p>				<p>matter is again re-opened”.</p> <p>(vi) MoMA would kindly let us know as to where the matter rests now.</p> <p>(vii) Has the MoMA written to the remaining states informing them of this recommendation of Sachar Committee, the Govt of India’s views in the matter and asking the states to initiate similar enactments ? If so, a copy of the MoMA letter to the states may kindly be provided to us.</p> <p>(viii) The provision, suggested by Sachar Committee, that the arrears of rent, at market rates, shall be recovered as arrears of land revenue, should be incorporated in the Wakf Amendmnet Bill, 2010.</p>
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12. Part exemption from Land Acquisition Act

1	2	3	4	5	6	7
				<i>Section 91</i>	MoMA overrode the	MoMA must incorporate

				<p>The Committee considered Section 91 which deals with Proceedings under the Land Acquisition Act, 1894 in the light of the suggestions received. After some discussion the Committee decided that the following two new Sub Sections may be added:—</p> <p>“(5) Nothing contained in section 18 and 28A of the Land Acquisition Act, 1894 with respect to limitation shall apply to the acquisition of Wakf properties.</p> <p>(6) 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 shall apply to acquisition of Wakf</p>	<p>JPC and did not incorporate these provisions in the Waqf Amendment Bill 2010.</p>	<p>these provisions in the Waqf Amendment Bill 2010</p>
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properties”.

13. Other legal structures to empower Waqfs

1	2	3	4	5	6	7
		The character of Wakf properties is quite different from privately held properties. The ownership of Wakf properties is vested in	As regards provisions in the Rent Control Act , the Ministry of Law has been of the view that since Wakf properties are not owned by the Govt., they	Page 22: <i>The Committee recommends that all the state governments may exempt the Wakf properties in</i>		MoMA should kindly let us have copies of the (A) Letter of the Ministry of Law through which it gave its opinion

	<p>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, do 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.</p> <p>Some of such enactments are: Rent Control Act, Land Reforms Act Agricultural Land Ceilings Act</p>	<p>cannot be included in the definition of ‘public premises’. The matter is again re-opened.</p> <p>As regards making suitable provisions in the various State Acts to strengthen the functioning of wakfs, the recommendation is too general and does not specify the proposed amendments that have been visualized to strengthen the functioning of wakfs. The Central Waqf Council has been asked to constitute a committee to examine the various Acts and suggest suitable amendments.</p> <p>(b) Ministry of Minority Affairs Same as in (a) above.</p> <p>(c) As indicated in (a) above.</p>	<p><i>the respective states from the Rent Control Acts of each state concerned. For this purpose, the state governments may make necessary amendments in the Rent Control Acts.</i></p>		<p>that Waqf properties cannot be included in the definition of ‘Public Premises’.</p> <p>(B) Letter through which MoMA asked the Central Wakf Council to form a committee to examine the various Acts and</p> <p>(C) The response received from CWC in this regard.</p>
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		Urban Land Ceiling Act Registration of Properties Act Tenancy Act Stamp Duty Act Court Fee Act Income-tax Act Private Forest Vesting & Assignments Act				
72	Chapter - 11 Para-4.2 Page-231	<p>Extension of Time for Recovery from Adverse Possession:</p> <p>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 :</p> <p>..... However, since 1947, most state Wakf Boards were either not properly constituted or were not sufficiently equipped to</p>	<p>(a) Ministry of Minority Affairs</p> <p>Section 107 of the Wakf Act provides that nothing contained in the Limitation Act, 1963 will be applicable to any suit for possession of any interesting such property. The apprehensions of the HLC and the resultant recommendation, therefore, seem to be misplaced. A reference has been sent to the Ministry of Law in this regard.</p> <p>(b) Ministry of Minority Affairs</p> <p>Same as in (a) above.</p> <p>(c) Section 107 of the Wakf Act provides that nothing contained in the Limitation Act, 1963 will be applicable to any suit for possession of any interesting such property.</p>			<p>MoMA should kindly let us have copies of:</p> <p>(a) The MoMA's letter written for this purpose to the Ministry of Law; and</p> <p>(b) The Law Ministry's response thereto.</p>

		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.	The apprehensions of the HLC and the resultant recommendation, therefore, seem to be misplaced. A reference has been sent to the Ministry of Law in this regard.			
74	Chapter - 11 Para-4.2 Page-233	Thika Act: 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.	(a) Ministry of Minority Affairs Relates to West Bengal. <u>May be examined in consultation with the Govt of West Bengal.</u> (b) Ministry of Minority Affairs Same as in (a) above. (c) Relates to West Bengal. May be examined			MoMA should kindly let us have copies of: (a) The MoMA's letter written for this purpose to the Government of West Bengal; and (b) The Government of West

			in consultation with the Govt of West Bengal. <u>A reference has been sent to the Government of West Bengal.</u>			Bengal's response thereto.
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<p>14. Waqf Act to have overriding effect</p>						
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1	2	3	4	5	6	7
				(i) New Section 108 A The Committee considered a suggestion proposing that the Wakf Act should have over riding	This proposal of JPC too was shot down by the MoMA	The MoMA should kindly provide us copies of the Ministry's record showing the reasons in detail explaining why it disregarded the recommendation of the

				<p>powers over the State Revenue Laws. The Committee felt that such a provision would clarify the position and decided that the following new Section 108A may be added after Section 108:</p> <p>“Sec. 108-A : Notwithstanding anything contained in any other Act or enactment, the Wakf Act would prevail over all the other local revenue laws.”</p>		<p>JPC.</p> <p>The proposed provision must be incorporated in the Waqf Amendment Bill, 2010.</p>
				<p>(ii) <i>The following new section may be added at the appropriate place:</i></p> <p><i>‘The provisions of this Act and of the rules and order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument’”</i> <i>having effect by</i></p>	<p>This proposal of JPC too was shot down by the MoMA</p>	<p>The MoMA should kindly provide us copies of the Ministry’s record showing the reasons in detail explaining why it disregarded the recommendation of the JPC.</p>

				<i>virtue of any such law.'</i>		
<p>15. Alienation of Waqf property without Board sanction to be void</p>						
				<p>27. 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 exchange or mortgage of any immovable property which is waqf property, shall be</p>		<p>It seems fine.</p>

				<p>void unless such exchange or mortgage is effected with the prior sanction of the Board:</p> <p>Provided that no mosque, dargah, khanqah, graveyard or imambara shall be exchanged or mortgaged except in accordance with any law for the time being in force.</p> <p>(IA) Any sale, gift or total 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:</p> <p>Provided further that —</p>		
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				<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) there shall be no alternative land being available which shall be considered as more or less suitable for that purpose; and</p> <p>(d) 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</p>		
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				waqf.”.		
<p>16. Removal of avoidable judicial dichotomy</p>						
1	2	3	4	5	6	7
68	Chapter - 11 Para-4.2 Page-230	Amendment of Wakf Act Section (6) subsection (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 cannot be put in jeopardy merely because the property is included in the list of Wakfs. Such a person is not required to file a	<p>(a) Ministry of Minority Affairs Ministry of Law is being consulted.</p> <p>(b) Ministry of Minority Affairs Same as in (a) above.</p> <p>(c) Ministry of Law is being consulted.</p>			MoMA should kindly let us have authenticated copies of the correspondence made so far, in this matter, between the MoMA and the Ministry of Law.

	<p>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 subsection (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".</p>				

17. Waqf Accounts

1	2	3	4	5	6	7
65	Chapter - 11 Para-4.1 Page-230	<p>Maintenance of Accounts:</p> <p>Scheme of Financial Audit</p> <p>It is recommended that all the Wakfs are compulsorily brought under the '<u>Scheme of Financial Audit</u>'.</p>	<p>(a) Ministry of Minority Affairs</p> <p>The accounts of Wakfs are already being audited by auditors appointed by the Wakf Boards.</p> <p>(b) Ministry of Minority Affairs</p> <p>Same as in (a) above</p> <p>(c) The recommendation of the JPC on the existing audit system of Wakfs may be sought.</p>			MoMA should let us have authenticated copies of the state wise record that was available in the Ministry at the time when the information as per column 4 of this chart was prepared.

18. Waqf properties under Archaeological Survey of India (ASI)

73	Chapter - 11 Para-4.2 Page-232	The Ancient Monuments and Archeological Sites and Remains (AMASR) Act, 1958 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 monument. Given the present state of large number of Wakf properties under the control of the	<p>(a) Ministry of Culture Periodical meetings may be held between the ASI and the Wakf Boards only for the review of the list of properties which are coming under Wakf Boards. ASI will maintain properties which are protected as nationally important monuments in accordance with the archaeological principles, subject to availability of budget provisions.</p> <p>(b) Ministry of Minority Affairs There seems to be no</p>			<p>MoMA should kindly let us have copies of letters written by the MoMA communicating this decision of the Government of India to</p> <p>(i) The Ministry of Culture, (ii) The Central Wakf Council, and (iii) The Archaeological Survey of India</p> <p>asking them to hold review meetings as recommended by the Sachar Committee.</p>
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		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.	harm if the review meeting agreed to by the Ministry of Culture could also assess the conditions of important wakf properties in the country under ASI. (c) Ministry of Culture will hold a meeting every year with the Central Wakf Council (CWC) to review the list of such properties with ASI which are wakfs.			
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19. Waqf Rules

1	2	3	4	5	6	7
75	Chapter - 11 Para-4.2 Page-233	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	(a) Ministry of Minority Affairs 18 States / UTs viz. Assam, Bihar, Gujarat, Karnataka, Kerala, M. P., Orissa, Tamil Nadu, West Bengal, A & N, Delhi, Lakshadweep, Pondicherry, Goa, Jharkhand, Manipur, Tripura, and Daman & Diu have so far framed the Wakf rules. Matter is being pursued with the remaining States / UTs. The suggestion on training could be accepted.			MoMA should kindly let us have copies of: (a) The Wakf Rules framed in 18 states, namely: Assam, Bihar, Gujarat, Karnataka, Kerala, M. P., Orissa, Tamil Nadu, West Bengal, A & N, Delhi, Lakshadweep, Pondicherry, Goa, Jharkhand, Manipur, Tripura, and Daman & Diu. (b) The model wakf rules framed by MoMA. (c) The MoMA's letter issued to the State Wakf Boards asking them

		Wakf Boards are adequately trained. This work could be supervised by the Central Wakf Council.	(b) Ministry of Minority Affairs Same as in (a) above. (c) The suggestion on training could be accepted and the Wakf boards advised accordingly. Model Wakf rules will be framed and forwarded to the State / UTs.			to institutionalize Refresher Training Courses for the Wakf staff. (d) The MoMA's letter issued to the Central Wakf Council asking it to supervise such training programs.
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20. Ajmer Dargah Act

1	2	3	4	5	6	7
67	Chapter - 11 Para-4.1 Page-230	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	(a) Ministry of Minority Affairs No specific amendment has been suggested. (b) Ministry of Minority Affairs Same as in (a) above. (c) No specific amendment has been suggested. But the suggestion as such would be considered.			MoMA should kindly let us have a status report on the progress made in the matter made in the light of the Ministry's consideration.

		Saheb Ajmer Act also.				
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