

Waqf legislation: Community welfare or stereotype officialdom ?

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The Waqf Bill 2010 is again before the union Ministry of Minority Affairs under the Rajya Sabha mandate that, in the light of the Select Committee recommendations, it should be amended and placed afresh before the Parliament. According to the internal reports, the Minorities Affairs Ministry, having done its job, has since forwarded the revised draft Bill to the Ministry of Law. Now again the future of half a million Waqf properties belonging to sixteen crore Indian Muslims is languishing in the files of half a dozen bureaucrats of these two ministries: *back to square one*. The ideal situation would be that the Government, instead of secretly guarding what all it is going to do with the Waqf properties, brings it in the open before the community and its well wishers, country wide debate be held on each item of the amended draft of the Bill and then the revised Bill is presented to the Parliament.

Invite and value Muslim opinion on Waqf Bill

Currently, both of these ministries are presided over by the same Minister. Therefore, there should be complete consistency in the approach of both the ministries as per the broad UPA policy towards the Muslims. The Minister needs to invest a lot of quality time on the Waqf Bill. He needs to have first hand information of the recommendations of JPC, Sachar Committee and the Select Committee about the various aspects of Awqaf. He must make himself personally aware of how the bureaucracy has been reacting to each of them and the strength or weakness of the justifications, if at all given, for

these reactions. After he has satisfied himself with such groundwork, he should post the duly documented information on the website of the Ministry of Minority Affairs. Thereafter it should be notified that any comments thereupon should be emailed on a given address within a period of six weeks. Such feedback should be carefully reviewed by the Ministry. A second comparative chart should be prepared showing what were the comments & suggestions made by the Muslim community and their well-wishers, how the Ministry reacts towards these and what are the justifications behind such reactions. The Minister is expected to once again carefully analyze these and take a final view thereupon. This document too should be posted on the website of the Ministry. Only then the amended Bill should be taken forward to be re-tabled in the Parliament.

14 JPC/Sachar recommendations still not considered

The UPA is about to conclude its second innings. This is the time when the Government should go a step forward to restore to the deprived community it's due. It must conspicuously appear that the Government is not leaving any stone unturned in order to preserve the Waqf endowments against ruin and ensure their consolidation and development. An impression should not go round that the community is struggling to retrieve and protect it's Awqaf but, for that, the Government lacks credibility in their eyes. Here it must be borne in mind that in our secular constitutional system the management of Awqaf is not the State's prioritized responsibility. Rather, the Waqf law was enacted as the State wanted to proactively help Muslims by making the management of their religious endowments effective and duly enriched in order to better serve the purpose of community welfare. The management of

Gurudwaras and Churches and similar endowments of other religious minorities are effectively out of the Government control. However, the Waqf properties are ultimately under the Government command whereas these too could have been declared as an internal matter of the Muslim community requiring no Government intervention. But, the Waqf properties are so large in number that these better be managed through a national law. Nonetheless, it's never acceptable that any provision of the Waqf law goes against the interests and wishes of Muslims. Therefore, shrouding the proposed amendments in secrecy tantamounts to undue intrusion in the internal affairs of Muslims. Twenty recommendations of the JPC on Waqfs and Justice Sachar Committee were not included in the Waqf Bill 2010. Hence, the Rajya Sabha referred the Bill to the Select Committee which submitted its report in December 2011. However, fourteen recommendations made by the JPC and Justice Sachar Committee remained uncommented even in the Select Committee's Report. The story goes that due to lack of time and ready expertise with the members, counter-comments to the objections raised by the officers of the Ministries of Minority Affairs and Law could not be prepared in time.

13-Member Rajya Sabha Select Committee versus 30-Member JPC

Also, the Select Committee comprised only 13 Rajya Sabha members while the JPC had 30 members both from Lok Sabha and Rajya Sabha. Reason defies the Government's attitude: give some consideration to the recommendations made by the Select Committee but mosly ignore the recommendations made by the JPC without giving any reasons. Doesn't this amount to Breach of Parliament's Privilege and Contempt.

No need to rush up with half-baked Bill

There is no need to somehow rush up the re-tabling of the amended Bill. The JPC Report was submitted in 2008 and Justice Sachar Committee Report in 2006. Four to six years have elapsed. If it takes a few months more heavens will not fall. On the other hand, if the amended Waqf Bill also goes against the Muslim interests, the community would consider this mistake as intentional and would find it difficult to politically forgive the ruling combine. However, if the proposed draft of the amended Bill is openly brought before the Muslim community, and the community and its well-wishers get an opportunity to discuss its contents and the revised draft duly accommodates the community's points of view and after that the amended Waqf Bill is re-tabled, then the community will treat the Government as its impartial well-wisher. Due to lack of space here, only a couple of crucial issues are being highlighted regarding the Bill. For details, the readers may please access www.wakfwatch.in.

Tackle acute shortage of Muslim bureaucrats: Constitute Indian Waqf Service

The JPC on Waqfs and the Sachar Committee both noted in their reports that generally senior Muslim officers are not posted as Chief Executive Officers in the 28 State Waqf Boards of the country - because Muslims comprise less than 2.5% of the bureaucrats of the country despite their national population being 13.4% as per Census. Therefore, non-bureaucrats - having no defined level in the Government hierarchy - are most often appointed as CEOs; and, consequently, their existence is contemptuously brushed aside by the bureaucracy. In some rare cases an officer is given

additional charge as CEO of Waqf Board. In either case, the Waqf administration remains under perpetual sufferance. Therefore, two recommendations were made. Firstly, the Waqf Board CEO should be of bureaucratic rank not below the Director to the State Government. Partly accepting this recommendation, the Government wrote in the Waqf Bill 2010 that the CEO shall be at least of the rank of Deputy Secretary to the State Government. And, if an officer of such rank is not available among the Muslim bureaucrats in the State Government, still the CEO must be at least of the level of Under Secretary to the State Government. Even through this watered down implementation of the vital recommendation, at last, Muslims do stand to gain something rather than nothing.

But, another significant issue relating to this matter is that when Muslims comprise even less than 2.5% of the officers of the country, then how is it possible to garner dozens of Muslims to be posted as provincial Waqf CEOs - every third year or so? Therefore, the Sachar Committee made the second important recommendation: There should be a separate cadre of Waqf officers (may be named as Indian Waqf Service). However, a Deputy Secretary of the union Ministry of Minority Affairs, Sri Virendra Singh, did not like this and - with a stroke of his pen on the Ministry's file - brushed aside this well-researched proposal in 2007. Nobody senior to him raised a question. This led to the community's country-wide agitation; details can be googled. However, the current chairman and members of the National Commission for Minorities provided a healing touch and came to the community's rescue. The Commission resolved and wrote to the Ministry of Minority Affairs and to the Prime Minister that a separate cadre of officers must be established for the management of Waqf

affairs. The Ministry of Minority Affairs has once again raised some apprehensions which are being addressed by the Commission. These letters and related documentation can be accessed at www.zakatindia.org under the icon: Waqf.

Prescribe minimum rank of Secretary, CWC

In the Waqf Act there is no mention of necessary qualifications for the post of Secretary to the Central Waqf Council and his essential level in the bureaucracy of the Government of India. That is the reason why he does not carry necessary clout in the Government circles and this surely harms the interests of Waqfs. In order to plug this lacuna, the Sachar Committee recommended that an officer of the rank of at least Joint Secretary to the Government of India should be appointed as Secretary, CWC. The union cabinet approved this proposal. Nonetheless, no statutory steps have so far been taken to implement it. In response to a RTI query, the Ministry of Minority Affairs simply stated that the procedure to appoint the Secretary, CWC is prescribed in the Central Waqf Council Rules, 1998. However, what all one finds written there [Rule 7(1)] is that the Minister can appoint any Muslim as Secretary, whomsoever he chooses. That is the reason why the Sachar Committee recommended that the CWC Secretary must be an officer at least of the rank of Joint Secretary to the Government of India. This significant recommendation is still awaiting implementation.

Waqfs under ASI control

Under the Ancient Monuments and Archeological Sites and Remains Act 1958, the Archeological Survey of India has the power to declare any monument, site or building older than 100 years, to be of national importance. The Waqf properties

are not exempt from this law. At the same time, it is the ASI's statutory responsibility to provide protection and maintenance to the properties that are so taken under its control and custody. The Waqf properties which are not adequately protected and maintained by the ASI must be released back [Section 17(b)]. The Sachar Committee had recommended that the ASI and the CWC should hold joint meetings every three months to review the situation. This proposal was accepted by the Government of India. The minutes of the ASI-CWC meetings are available at www.wakfwatch.org and www.zakatindia.org. The bill requires the grist. The Central Waqf Council will have to collect information from the State Waqf Boards about the status of all those Waqf properties which are under the ASI control. There are a large number of properties which are not being properly protected and maintained by the ASI, and as a result they are easily slipping away under encroachment. The CWC should give a list of such properties to the ASI during each meeting and impress upon it the vitality of their release from ASI control. Then, in compliance of the respective Waqf deeds, these properties should be managed and taken care of under the supervision of the respective State Wakf Boards.

We, the well - wishers of the Awqaf - too need to undertake some soul-searching. Are we doing our bit ? Let's rise to a higher, spiritual orbit of our existence and mull over Rumi's poser: Does any potter ever make a pitcher only for the sake of the pitcher, and not for water ?

*Hech koozah-gar kunad koozah shitaab ?
Bahre 'aine koozah, nay bar boo-e aab ?*
