

Proceedings of the Panel Discussion on Wakf Amendment Act, 2013

on October 08, 2013 organised by IOS at IICC, New Delhi

As many as 12 suggestions were made by the experts who assembled to deliberate on Wakf Amendment Act-2013 at a discussion organised by the Institute of Objective Studies (IOS) at the India Islamic Cultural Centre, New Delhi on October 08, 2013. There was a commonplace among the speakers that the Act has made much headway as far as the management of Wakf properties is concerned. Mr. K. Rehman Khan, Union Minister for Minority Affairs, could not make it to the panel discussion on account of his indisposition. He, however, asked the Chairman of IOS, Dr. Mohammad Manzoor Alam to brief him on the outcome of the deliberations, so that correction measure could be taken to make the Act more purposeful and conforming to the spirit of Islamic Shariah.

In his presidential address, the former judge of the Gujarat High Court, Mr. Justice Abdus Sattar Qureshi hailed the Amendment Act as very positive, especially the insertions of Section 104A and 104B in the principal Act. It may be recalled that while Section 104A prohibits sale, gift, exchange, mortgage or transfer of waqf property, Section 104B stipulates restoration of waqf properties in occupation of government agencies to the Waqf Board. He called for protecting waqf properties worth Rs. 130 thousand crores in the country and stressed the need for finding out committed people who could save the waqf property from encroachment and misuse. He lamented that today the Muslim community is pitted against itself and the enactment of the amended law has afforded us an opportunity to put the waqf property to the use of umma. Ways must be found to save the waqf property and make better use of it. Emphasizing the need for creating awareness among the umma, he said a situation is bound to emerge in which the younger generation will take over from us. He pointed out that in the process of saving the property, cases may drag on in courts, but they must be pursued to seek justice. He praised the Indian legislation as the best in the world but regretted that its implementation was very poor. He struck a note of caution that hurdles are put up at every level, but we have to remain vigilant or else the progeny would not forgive us.

Initiating the discussion Prof. Afzal Wani of the School of Law and Legal Studies, G.G.S. Indraprastha University explained that the very idea of waqf was visualized by the second Caliph, Hazrat Umar, who aroused the consciousness of society by stating that the waqf property was not meant for profit-making, but for nourishing society. He said the waqf should be managed in accordance with the Shariah without the least interference from the government. Dr. Zafar Mahmood, Chairman, Inter-faith Coalition for Peace remarked that the IOS had done an outstanding job in the field of waqf by undertaking comprehensive research. This facilitated the experts in Islamic jurisprudence, ulema and the leaders of the Muslim community to gather for useful suggestions. He was also all praise for the work by the Haryana Waqf Board. He emphatically said he was on the side of waqfs noting that about 70 percent of the recommendations made by the joint select committee, have been accepted and incorporated into the waqf amendment Act. Referring to the calculation of loss due to misuse of wakf properties made by the Sachar Committee, he said that it ran into billions of rupees. He suggested that the wakf premises be defined as per the recommendations of the Sachar Committee. He dwelt at length on the definition of encroachment on wakf property, alteration in its nature, acquisition and removal of encroachment on it, besides mutation of property. He wanted the government to ensure that the wakf properties occupied by the central government and the state governments are vacated by them and restored to wakf boards in compliance with the letter written by the then Prime Minister, Mr. Indira Gandhi to the Chief Ministers as far back as 1976. Point-wise contents of the letter dated March 26, 1976:

- State governments must ensure that wakfs are properly maintained and administered by the State Wakf Boards in terms of the Wakf Act of 1965.
- 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 Board 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 three concrete suggestions for quick settlement of such cases:
 - (i) Where feasible the Wakf properties should be vacated and handed over to the Wakf Board concerned.
 - (ii) Where costly buildings have been put up on the land and their vacation is not feasible, the state government 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 in 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 on relinquishment.

- I understand that 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. A periodic review should be undertaken and a monthly report sent to me and to the Minister of Wakfs.
- Most wakf properties are leased out on very nominal rent which can not 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 trust 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 suggestions of the Centre, the states of Andhra Pradesh, Kerala, Karnataka and Tamil Nadu have already agreed to exempt public wakf properties from respective Rent Control Act.
- Please look into the possibility of making a similar exemption in your state.

Former Vice-Chancellor of the Aligarh Muslim University, M. Naseem Ahmad, referred to the slackness of the government in respect of the matters relating to waqfs. He said the prevailing atmosphere is hostile and it is difficult to administer waqfs. To buttress his point, he said certain mosques in Haryana have been encroached upon and encroachers are running schools there. Some of the waqf properties are being looked after by Shiromani Gurdwara Prabandhak Committee in Haryana and Punjab. Mr. Rizwanul Haque, former Secretary, Central Wakf Council, commended the Wakf Amendment Act, 2013 by saying it has gone beyond the Sachar Committee recommendations. He especially referred to the provision of penal action in the Act. Emphasizing the need for amendment in the composition of the Central Wakf Council, he said the inadequacies in the presentation of the data be removed. He admired the skill and commitment of Mr. K. Rehman Khan.

Mrs. Rana Siddiqui, advocate, pointed out that certain discrepancies in the use of words in Section 4 of the Act. She said that with the amendment in Section 14 of the principal Act, Section 13 has become redundant. Former judge of the Madhya Pradesh High Court, Justice Fakhruddin Ahmed observed that the overriding powers given to the tribunals should be debated. It opened scope for challenge in a court of law, he said. Former Chief Justice of India, Mr. Justice A.M. Ahmadi said there are a large number of properties, but some of them are managed properly and the rest are being mis-managed. Underlining the importance of implementation of the provisions in the legislation, he said the bottlenecks to it be removed. Prof. Z.M. Khan, Member of the Central Wakf Council and Secretary-General of the IOS was of the view that unless the beneficiaries of the wakfs are brought into light, the very purpose of the Act will be defeated. Calling for democratization of wakfs, he said a connect with the beneficiaries be established. He said the sociology of the wakfs demands that the beneficiaries be made aware. He cited the case of several countries, like Sudan, Kuwait, etc. where waqf properties are being successfully managed as per Shariah law adding that pieces of land are big revenue earners. Pointing out certain discrepancies in the amendment Act, he said waqf property is nobody's property. Therefore, it should be treated as pious and respected, he remarked. Prof. Refaqt Ali Khan, former Dean of Social Science, Jamia Millia Islamia, (JMI) associated himself with the views expressed by other speakers. Dr. Iqbal Husain of the Department of Law, JMI, spoke at length on the rights conferred by the Act. Categorising them as political, religious and divine rights, he said that better administration of wakfs and the protection of property is the need of the hour. He made special mention of the amendments in Section 51 and 83. He pleaded for the provision of inclusion of a member well-versed in the Muslim law. Mr. Mushtaq Ahmad, senior Supreme Court advocate, called for making district magistrates, additional district magistrates and sub-divisional magistrates, accountable for non-implementation of the Act. He also laid stress on the need for acting upon the Act and finding ways to take full advantage of its provisions. He wanted to know why waqfs are not being created. Instead, he said that trusts are being created for fear of unnecessary supervision of the wakf board. He made an impassioned plea for allowing those also who are willing to create waqfs but do not want the supervision of the wakf board.

In his concluding remarks, Chairman of the IOS, Dr. Mohammad Manzoor Alam, said that by ensuring the enactment of the waqf law, Mr. K. Rehman Khan, kept his promise he made at an interactive meeting organised by the IOS on November 14, 2012. Sounding an optimistic note, he said it is not an end and that such programmes will continue to be organised in future also. Efforts will be made to frame rules, regulations and bye-laws. These will be submitted to the Union Minister for Minority Affairs. Salient features of these rules will be debated in order to make them more effective. Another meeting will be organised in the near future for the purpose.

Earlier, Mr. Raju Mansukhani made a presentation of the provisions of the principal Act, amended Act and the suggestions received from IOS, Administrator, Haryana Wakf Board, All India Muslim Personal Law Board, Mr. Khwaja Abdul Muntaqim, Mr. Mujeeb and Mr. Yusuf Hatim Muchala, advocate.