

# All Provisions of New Waqf Law will be Shariat Compliant

By Salman Khurshid

Several persons including members of eminent Muslim organizations have been active in public fora on the proposed amendments to the Waqf Act 1995. Whilst this show of interest is to be welcomed there is cause for concern in that many issues being raised are either unwarranted or premature. Curiously some claims being made in the name of JPC do not find support from its Report. The Bill is being examined by the Select Committee of Rajya Sabha and one assumes that all persons who feel the need to suggest changes have appeared before the Committee. It is only fair that we await the Report before taking conclusive positions in opposition. Furthermore the Ministry remains available for receiving inputs even now. Threats of protest should at least await a dialogue. Amongst the points raised it is not always clear which ones are sought to be raised on grounds of Shariat principles and which ones on preferred management models. We have stated clearly that all provisions will be Shariat compliant and for that the Muslim Personal Law Board's opinion will hold ground.

Four points have been raised in particular:

*1. It is wrong to restrict the declaration of Waqf to Muslims as the amendment purports to do.*

The concern seems to be that this might lead to ancient grants by Hindu rajas being questioned. This is far from being true. Since a waqf is dedication of property to Allah, it is common sense that it can be done only by someone who believes in Allah. However, a non-Muslim may give property to an existing waqf and it will then become part of that waqf. Alternatively property given to Muslims for religious and charitable purposes would have to be used as such and therefore become waqf by user. There is not even a remote cause for concern. But of course the Select Committee will take a final call.

*2. Failure to fulfill compulsory registration of waqf causing it to be ousted from the jurisdiction of Waqf Tribunal means it loses its waqf status. Registration is also assumed to be registration with the Land Registry.*

Once again the assumptions are fallacious. The registration requirement is for the purpose of the Waqf Register kept with the Waqf Board. How else will the Board have a complete list which now will be available on the web?

We must not forget that with or without compulsory registration with the Waqf Board the land revenue record has to show that a particular property is waqf property by appropriate mutation. When the owner of property declares the waqf he transfers title to Allah and the Mutawalli's name has to be mutated as the person in control/possession. All this must not be confused with requirements of Land Revenue Law (again a State subject) and the manner in which courts require evidence in deciding title be it of a person or of waqf. Be that as it may there is no question of departure from the principle of "once a waqf, always a waqf". If a waqf is not on the Board's register it can still claim all rights in a civil court. Furthermore registration is not the only way to get onto the register; the waqf survey or decision of the Tribunal at the initiative of the Board would also place the waqf on the register. So neither does the alarmist argument of waqfs sought to be destroyed

work nor the imagined inconvenience that it would cause to poor mutawallis convince. The JPC too had merely sought exemption for Waqfs by User, which by their nature need authentic record of their existence to discourage mala fide challenges.

*3. It is wrong to prohibit sale of waqf property.*

This has been proposed to address the concern expressed by the JPC that waqf property is being diverted on a large scale. Islamic law permits sale in very rare circumstances of necessity. But does that include opportunity for good business? Surely not. If this can be practically and suitably circumscribed I am sure the Committee will want to respect the aspiration. Of course the facts as we know them about how Boards have parted with waqf property are distressing.

*4. The Bill does not ensure that the Rent Act, Public Premises Act, etc do not apply to waqf property. Further that the declaration of waqf should automatically lead to mutation in the favour of waqf.*

This seems to be a serious misunderstanding about the constitutional mandate and legislative competence. Rent Control is a State subject and Centre cannot legislate in that area. However, on our advise eight State governments have exempted waqfs from Rent Control. The Public Premises Act is a Central Act but is administered by the States. Parliament would have to change the definition of "public premises" in that Act. Along with waqfs religious and charitable institutions of Christians, Hindus, Parsis etc will also have to be included in the definition. I am not sure if that will pass muster in a court of law. But again the Committee should examine it and seek the Law Ministry's opinion.

Other than these major issues many inconsequential issues have been raised in passing apparently because the text of the Bill has not been read carefully or the corrigendum has escaped attention. Thus in the former category there is a complaint that the Survey has been made optional. To the contrary the survey will now be done after ten years against twenty years in the past. In the latter category come remarks that waqf is mentioned as wakf but if the corrections were seen this concern would be dispelled.

An effort has also been made to raise the proposed Waqf Development Agency as part of the present debate. But that is independent of the Bill and merely proposed three years ago as part of the revamp of NMDFC. Although the consultants preparing that proposal have been told to make the Agency Shariat compliant if it provides greater comfort the Agency can be given an independent structure and entity.

Finally it would not be out of place to recognise the fact that competitive politics amongst Muslim organizations has much to do with these voices. Some people are worried that they cannot bash the Congress any longer because of UPA's record on welfare whilst others are jostling for our attention and perhaps more. There would inevitably be some vested interests that feel threatened. We have an open mind and await the Committee Report with interest. We remain open to dialogue at all times but only expect that while we will show deference to the views of scholars we cannot concede to anyone monopoly for protecting the rights of Muslims or correctly applying Islamic law. A long overdue overhaul of Waqf management should not be sacrificed for competition amongst eminent bodies for space in community politics. I have already written to the President of the Muslim Personal Law Board and received a warm response. What is the argument left?