Zakat Foundation of India (Registered Trust)

ज़कात फ़ाऊण्डेशन ऑफ़ इण्डिया (रजि० ट्रस्ट)

زکوۃ فائونڈیشن آف انڈیا (رجسٹرڈ ٹرسٹ)

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ZFI/ND/Waqfwatch/288-40/2011-12 19 June 2011

Mohtaram Janab Salman Khurshid Sahab,

Thank you for your letter dated 13 June 2011 regarding the Waqf (Amendment) Bill, 2011. Our response thereto is as follows:

1. JPC on Waqfs

(a) The JPC on Waqfs consisted of a large number of members of the Lok Sabha and Rajya Sabha. You will agree that these two august houses have the highest and most sacrosanct democratic representative value in India unparalleled by any other body or individual. The JPC examined various aspects of the Waqfs for two years and finalized its Report in 2008. They gave hearings for representations. They went around the country. Then they gave their well considered report on what all must be incorporated in the Waqf Amendment Bill.

(b) But, dear Sir, you say that "In our democratic system no single body of persons can claim monopoly of wisdom and that, I add respectfully, includes the Sachar Committee and the Joint Parliamentary Committee". We wish it is a slip of your pen. We are sure that you fully subscribe to the view that the Parliament is superior to the executive, be it the minister or officers of the Ministry of Minorities Affairs or, for that matter, the Ministry of Law. The minimum courtesy that Parliament expects from the executive is that when a bill is moved in the House, the minister should at least present his ministry's case explaining why a set of recommendations made by the JPC was not incorporated in the bill. But the record shows that, in case of Waqf Bill 2010, this was not done. Also, your ministry's 'Statement of Objects & Reasons' annexed with the Waqf Bill 2010 is silent on why a large number of recommendations made by the JPC were not included in the bill.

2. Prime Minister's High Level Committee (Sachar Committee)

Needless to add, most of the recommendations made by the Sachar Committee in its Report submitted to the Prime Minister in November 2006 find due and, at places, verbatim reflection in the JPC Report. You would appreciate that the Prime Minister had appointed his High Level Committee to write a report on social, economic and educational status of the Muslim community of India. This was later popularly known as Sachar Committee. The Committee was headed by a former chief justice, it had acclaimed sociologist, economist, educationist, management expert, planner as members. It was supported by thirty national level consultants. For eighteen months it collected information from the people of India, hundreds of institutions, survey organizations, governments, state waqf boards, central waqf council, mutawallis, civil society, etc. It toured across the country, carried out serious discussions and also organized roundtable conferences. It considered dozens of well-researched written representations. The record of the Sachar Committee's proceedings was submitted to your ministry. Another set is available in Nehru Memorial Library at Delhi's Teen Murti House. Yours is the nodal ministry deputed to monitor the implementation of the recommendations made by the Sachar Committee. Your ministry's website has given pride of place to the Sachar Report and its implementation.

3. 'JPC & Sachar Committee cannot monopolize wisdom'

(a) However, in your letter dated 13 June 2011 that we are responding to now, you seem to have brushed aside the Sachar Committee, bracketing it with JPC on Waqfs, saying that both these committees "cannot claim monopoly of wisdom".

(b) May we ask you, dear Sir - in the entire context of drafting the Waqf Bill 2010 – you are weighing the wisdom of the JPC & PM's HLC (Sachar Committee) against whose? As mandated – one by the Parliament and the other by the Prime Minister – these two committees did such a comprehensive exercise for Waqf preservation as has not been done by any other task force or individual on behalf of the government.

(c) Are you weighing the wisdom of these committees against the wisdom of the Ministries of Minority Affairs & Law? Is it on this basis that you have brushed aside the relevance of the JPC on Waqfs and the PM's HLC (Sachar Committee)? Are you sure that this stand taken by you against the sanctity and utility of these two committees is really endorsed by the Government of India, as well as by the Congress Party and the UPA ?

4. Don't JPC and Select Committee deserve similar respect ?

We are happy that you are attaching value to the Rajya Sabha Select Committee to whom the Waqf Bill 2010 has been referred. Yet, for the Joint Parliamentary Committee on Waqfs (having members from both Lok Sabha and Rajya Sabha) you say that it 'cannot monopolize all wisdom'. Does this not smack of a contradiction in your approach? We shall be happy to be enlightened as to how you resolve this dichotomy of your views.

5. Role of Central Waqf Council and Law Ministry

Reportedly, a detailed discussion on point-wise and section-wise incorporation of the recommendations of the JPC on Waqfs and PM's HLC (Sachar Committee) in the proposed Waqf Bill 2010 was never done in a *full* meeting of the Central Waqf Council. However, as per your ministry's record, if the Council did unanimously take a view against the recommendations of the JPC on Waqfs and the PM's HLC (Sachar Committee) we would request that a copy of the minutes of the meeting concerned may be provided to us. Also, we would like to know if such unanimous negative views of the Council were presented before the union cabinet that had earlier approved the Sachar recommendations. Additionally, please give us copy of the views of the Ministry of Law. This is indeed pertinent as we, the members of Muslim community and other well wishers of the Waqfs too have, on our part, obtained authentic legal opinion on relevant issues.

6. Separate Cadre of Officers for Waqfs

(a) Regarding CEOs of state waqf boards the Sachar Committee has observed as follows:

> 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**.
>
> 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.

(b) This vital Sachar recommendation regarding creating a separate cadre of officers to be appointed as CEOs and other important positions in the state waqf boards and the central waqf council has seemingly not found favour with the Ministry of Minority Affairs. We, from the Zakat Foundation of India (ZFI), have been investigating this issue under RTI Act. The Ministry had refused to provide us the reason for not forwarding this vital Sachar recommendation for approval by the union cabinet. Under orders of the Central Information Commission we inspected the file of the Ministry and found that Deputy Secretary Virendra Singh had recorded his short, easily controvertible view against the proposition that was perceived by him as 'not feasible'. There is no record with the Ministry reflecting any discussion that ever took place on this topic at any level thereafter (in case the ministry's record shows otherwise kindly provide us a copy thereof). Thus, right up to the cabinet this pivotal Sachar recommendation suffered default.

(b) We, at ZFI, have deeply researched the issue in the light of constitutional provisions and have found that not only Sri Virendra Singh's view deserves outright rejection, but also that

the Sachar proposal is constitutionally sound. On this vital issue we shall be happy to write to you separately in detail in case you would be interested in giving a serious thought thereto.

(c) We had also asked your ministry, through RTI Act, that if it was not accepting the proposal to create a separate cadre (say, Indian Waqf Service) what alternative methodology had it decided to ensure that senior Muslim officers (it is a statutory requirement) are always available to be posted as CEOs etc of state waqf boards and central waqf council? Your ministry had responded in 2009 (three years after Sachar Report was submitted) that the it was 'seized of the matter'. So, respected Sir, in case during the last five years your ministry has been able to find an alternate methodology to ensure that Muslim officers of the required seniority are always available to be posted as state waqf board CEOs etc please let us have a copy of the ministry's decision.

7. ZFI's 21-points booklet

For your ready reference, we are once again enclosing the booklet prepared by Zakat Foundation of India giving a 50-page detailed point wise and section wise comparative chart of the recommendations of the JPC on Waqfs and the PM's HLC (Sachar Committee). This has already been sent to each member of the Rajya Sabha Select Committee on Waqfs. We would request you to prepare your detailed point-wise and section-wise views on why your Ministry wishes to over-rule these vital recommendations of the JPC on Waqfs and the PM's HLC (Sachar Committee) and elucidate as to how these go, to use your own terminology, "beyond the entitlement of the minority rights" which, in our humble view, your ministry is mandated to frown upon.

8. Definition of 'Community'

(a) We also wish to draw your attention to the proposed amendment in Section 3, clause (r) of the Waqf Act 1995. There is a mistake. Instead of 'Waqif', the word 'Waqf' is written. The Waqf Bill 2010 intends to correct the mistake. For the words "wakf" means any person making such dedication', the words "Waqif" means any person making such dedication' are proposed to be substituted. However, a proviso is proposed to be newly added that has no relevance with the subject matter of section 3(r). It reads "subject to the condition that when the line of succession fails, the income of the waqf shall be spent for education, development and welfare of the community'.

(b) However, the word 'community' is defined neither in the Waqf Act 1995 nor in the Waqf Bill 2010. This unnecessarily opens a pandora's box for future litigation leaving scope for controversial judicial pronouncements. Thus, in our well considered view, if at all the proviso is retained the word 'community' should be replaced by 'Muslim community of India'.

9. Friday Sermons

You have written that the Imams' talking about the Waqf Bill 2010 as part of Friday sermons has 'worrying implications'. We wish to draw your attention to the fact that for the last fourteen centuries all over the world the purpose of Friday sermons is to educate the Muslims

on the issues of community uplift. We are thus at a loss to understand how a discussion on Waqfs – which too is an important aspect of Islam – can have 'serious implications'.

10. Four principles

You have also raised the issue of universal principles, legislative compatibility, constitutional competence and article 14 test. We are sure that the members of parliament and the former chief justice have kept these aspects in mind. Yet, if there is anything specific in any JPC or Sachar recommendation that militates against any of the above mentioned four factors kindly do let us know in detail.

11. Your letter to AIMPLB President

We have gone through your letter dated 27 April 2011 addressed to Hzt Maulana Mohd. Rabey Hasan Nadwi, President, All India Muslim Personal Law Board. There, you have flagged three issues, namely (a) Alienation of Waqf properties, (b) Should the Waqf endowments be limited to Muslims alone, and (c) Registration of Waqf properties. However, the 21 issues raised by us are in addition to these three. None of the issues brought out by us on the anvil finds a mention in your letter to the AIMPLB President. We have also noted that a Jamiatul Ulema-e-Hind delegation recently called on the Prime Minister and lodged its protest on non-incorporation of the recommendations of the JPC on Waqfs and the PM's HLC (Sachar Committee) in the Waqf Bill 2010.

12. We look forward to meet you

We would be very happy to examine your comprehensive response to this letter before we sit and discuss the matter with you. We are sure this systematic procedure would serve a useful purpose in the interests of Waqfs within our constitutional framework.

With warm regards

Yours *sincerely*,

(Dr Syed Zafar Mahmood)
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