

SENATE OF PAKISTAN



REPORT OF THE SENATE STANDING COMMITTEE ON INTERIOR

ON

THE ISLAMABAD CAPITAL TERRITORY WAQF PROPERTIES
(AMENDMEN) BILL, 2021
INTRODUCED BY SENATOR MUSHTAQ AHMAD KHAN

PRESENTED BY

SENATOR MOHSIN AZIZ
CHAIRMAN SSC ON INTERIOR

SENATE SECRETARIAT

SUBJECT: REPORT OF THE ISLAMABAD CAPITAL TERRITORY WAQF PROPERTIES (AMENDMENT) BILL, 2021.

I. Senator Mohsin Aziz, Chairman Senate Standing Committee on Interior, have the honor to present report of the Committee on the Bill to amend the Islamabad Capital Territory Waqf Properties Act, 2020 [The Islamabad Capital Territory Waqf Properties (Amendment) Bill, 2021], introduced by Senator Mushtaq Ahmad Khan in the Senate on 15th November, 2021 whereupon, the Bill was referred to the Senate Standing Committee on Interior for consideration and report.

2. The composition of the Committee is as under: -

Senator Mohsin Aziz	Chairman
Senator Syed Yousuf Raza Gillani	Member
Senator Azam Nazeer Tarar	Member
Senator Samina Mumtaz Zehri	Member
Senator Moula Bux Chandio	Member
Senator Saifullah Abro	Member
Senator Rana Maqbool Ahmad	Member
Senator Faisal Saleem Rehman	Member
Senator Shahadat Awan	Member
Senator Fawzia Arshad	Member
Senator Syed Faisal Ali Subzwari	Member
Senator Sarfraz Ahmed Bugti	Member
Senator Dilawar Khan	Member
Senator Kamil Ali Agha	Member
Minister for Interior	Ex-Officio Member

3. The Committee considered the Bill in its meetings held on 18th May, 2022, 30th September, 2022, 8th December, 2022 and finally on 10th February, 2023. The summary of the discussion held on the Bill in each of the said dates is as under:-

18th May, 2022

The meeting was attended by the following:-

1. Senator Mohsin Aziz	Chairman
2. Senator Moula Bux Chandio	Member
3. Senator Saifullah Abro	Member
4. Senator Shahadat Awan	Member
5. Senator Fawzia Arshad	Member
6. Senator Sarfraz Bugti	Member
7. Senator Faisal Saleem Rehman	Member

The Bill was deferred by the Committee due to absence of the Mover.



30th September, 2022

The meeting was attended by the following:-

1. Senator Mohsin Aziz	Chairman
2. Senator Moula Bux Chandio	Member
3. Senator Faisal Saleem Rehman	Member
4. Senator Shahadat Awan	Member
5. Senator Fawzia Arshad	Member
6. Senator Dilawar Khan	Member
7. Senator Samina Mumtaz Zehri	Member
8. Senator Mushtaq Ahmed	Mover

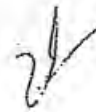
4. The Chairman drew attention of the Special Secretary towards the faulty and incorrect working papers submitted by the Ministry to the Committee. The Chair pointed out that the Bill as introduced in the Senate contains 10 clauses whereas the Bill which has been annexed by the Ministry with the working paper contains only 8 clauses which is very alarming. The Chair stated that this Bill is pending in the Committee for almost 10 months but still we are at point blank. The Chairman referred the earlier directions of the Committee concerning this Bill and stated that in the last meeting the Mover was directed to provide an Article written by Molana Taqi Usmani about the Waqf Properties Act. The Mover provided the copy to the Members. The Chairman enquired from the Special Secretary about the other directions of the Committee regarding seeking of opinion of the Council of Islamic Ideology and provision of comparative statement of provincial legislations in this regard. Special Secretary requested to defer the Bill and assured that he will have a meeting with the Mover along with the representatives of the CII and Ministry of Law and Justice and will finalize their opinion on the Bill.

5. In view of the above, the agenda item was deferred with the direction that Special Secretary MOI shall have a meeting with Senator Mushtaq Ahmed along with the representatives of CII and M/O Law and Justice. Moreover, the comparative statement of provincial legislation on this subject shall also be prepared and provided to the Committee.

8th December, 2022

The meeting was attended by the following:-

1. Senator Mohsin Aziz	Chairman
2. Senator Moula Bux Chandio	Member
3. Senator Rana Maqbool Ahmed	Member
4. Senator Faisal Saleem Rehman	Member
5. Senator Kamil Ali Agha	Member
6. Senator Dilawar Khan	Member
7. Senator Mushtaq Ahmed Khan	Mover



6. The Mover stated that he had a meeting with the Special Secretary MOI, Director General (Research) of Council of Islamic Ideology, Deputy Secretary (FATF) and officials of FATF Secretariat to scrutinize the Bill. The Mover said that we had agreed on two points during his meeting with the Ministry but the instant working paper reflects that the Ministry has opposed the Bill as whole and the accepted provision have not been mentioned in the working paper.

7. Special Secretary said that ICT Waqf Properties Act, 2020 was passed by the Parliament as requirement of FATF due to the reason that one of the observations of FATF was to need to regulate the charitable income of shrines. He informed the Committee although Pakistan is out of grey list of FATF but still one monitoring is pending and if we made amendment in the Law at this stage that may have repercussion. He was of the view that keeping in view the financial position of the country we should not give FATF any opportunity to raise any further objection.

8. The Mover said that he had provided article of Mufti Taqqi Usmani in the last meeting of the Committee. He was of the view that Waqf and Waqf properties have a religious history and Founder of Pakistan was one of the great proponents of Waqf properties. The instant legislation is against the definition of Waqf provided in Fiqh. The Mover was of the view that we have to follow our own constitution and not to surrender our legislating authority.

9. The Chairman asked the Mover to go clause by clause of the Bill in order to have clarity and understanding. Clause by Clause consideration of the Bill is as under:

- Clause-2


The Mover stated that through clause 2 of the Bill he has proposed to omit Explanations 4, 5 and 6 of paragraph (n) of section 2 of the Act. He briefed that through Explanation 4 the income from boxes placed at shrines and offerings, subscriptions or articles of any kind, description or use presented to a shrine or to any person at the premises of a shrine have been declared to be Waqf property. The Mover said that Waqf property according to Islam is the property which a person dedicates for a specific purpose which cannot be sold. If income from a Waqf property is also declared as Waqf property then it cannot be utilized or consumed or sold. He was of the view that income from Waqf property can be audited but it cannot be declared as Waqf property. Special Secretary MOI said that if a box is placed at a shrine then its income should be consumed for the welfare of that shrine but we have seen that the income from boxes placed at shrines is utilized by the custodian or In-charge of shrine at his own sweet will. Special Secretary said we agreed



to change the language of Explanation 4 to address the concern of the Mover but we have to wait for the FATF review. Senator Kamil Ali Agha endorsed the point of the Mover. He said he had experience to work as Chairman of Religious Affairs Committee of Data Darbar Lahore. He stated that tender is awarded every year to a contractor who gives his bid for the offerings of the shrine. He stated that incomes of shrines goes to Ouqaf department which utilize it for payment of salaries however, the income of a shrine should be consumed in the establishments affiliated with that shrine like many hospitals have been established in the name of Data Darbar. The income from shrine can be utilized for welfare activities so it cannot be termed as Waqf property as if we declare it as Waqf property then it cannot be consumed for the purpose other than the Waqf. Special Secretary stated that FATF asked that if shrine income is not tracked it can be used for the terrorist activities by some religious extremism group like TTP. Special Secretary said it is further elaborated in the Act that for what purposes income from shrines can be consumed so the issues of the Mover has already been addressed under the Law. Senator Kamil Ali Agha stated that some shrines are under the administrative control of Ouqaf department whereas some shrines are not but the real problem at the shrines is not the utilization of the income rather it is that there are so many so called administrators of shrines having no legal authority which misuse the incomes of the shrines. Senator Dilawar Khan stated that it is unfortunate that we do not convey the real position to FATF. We should take FATF team to visit the shrines to know the actual situation. The Mover said that if Explanation 4 is omitted accordingly then he will not press omission Explanations 5 and 6. Senator Kamil Ali Agha stated that there is no apprehension that TTP can use the income from shrines as they do not recognize such shrines. The real problem is the so called MUJAWARS and MATWALIS of shrines who operates as gangsters and utilize the incomes from shrines for their own purposes. The Chair deferred further consideration of Clause 2 of the Bill with the observation that if Explanation 4 is amended or its wording can be improved to the satisfaction of the Mover then the Mover will not press amendment in Explanations 5 and 6. The Chair directed Special Secretary to revisit clause 2 of the Bill as to what extent Explanation 4 can be amended.

Clause 3

The Mover requested the Committee to defer consideration of Clause 3 for the time being which was deferred on request of the Mover.

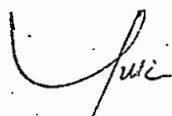
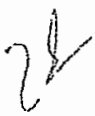


Clause 4

The Mover briefed that through sub-section (2) of section 8 of the Act, a restriction has been imposed on holding of services or ceremonies except with the permission of the Chief Administrator and in accordance with the directions to be issued by him from time to time. The Mover was of the view that only religious programs are arranged in the Masajid and shrines so permission of a civil servant for holding of religious ceremonies is illogical. The Special Secretary stated that it is very much logical as if a political party takes permission of the State before holding a procession or gathering then such ceremonies should also be held with prior permission so that the State can make necessary arrangements for the security of the participants and other arrangements. He said that if a gathering or ceremony is to be held at a public place then State's permission is required for that. He referred that if during Muharram or during Eid Milad-Un-Nabi the permission of the State is sought then why not for the services and ceremonies in the shrines and Masajids to eliminate the apprehensions of law and order situation. He stated that as already discussed in the Committee that there are many claimants of a shrine or a Masjid so its regulation is required. Chief Commissioner stated that if a gathering is not in knowledge of the State or local administration then how can it be determined that any violation has been made during the ceremony. He was of the view that before holding of a gathering a report is obtained from local administration that if any school or road has to be blocked or a diversion has to be placed due to the ceremony so prior permission is must for such ceremonies. The Chair endorsed the point of view of the Chief Commissioner ICT. Senator Kamil Ali Agha stated that such ceremonies has nuisance value but unfortunately these people are so much powerful than no one dares to ask them so it needs to be regulated and its strict implementation is required and violators needs to be punished. The Mover stated that the point is that FATF has asked the Government to control the Masajid and shrines. The Chair said that the view point of ICT administration is valid as such activities needs to be regulated. Chair said that next time this clause will be put to the vote and then decision of the Committee will be obtained on this clause.

Clause 5

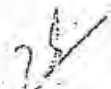
The Mover stated that through section 14 of the Act a bar has been imposed that no court including District Court or a High Court and any other forum established under any law shall issue an injunctive order without hearing the Government at the first instance. The Mover was of the view that it is a form of draconian law as the aggrieved party has been

given no forum except Supreme Court so it needs to be reviewed as it is in violation of Article 199 of the Constitution. The Special Secretary stated that there is no violation of Article 199 in this provision. Chair read out section 14 of the Act and stated that there is only mention that injunctive order cannot be issued without hearing the Government so what is the harm in it. Special Secretary stated that the Waqf properties are usually very costly properties as we see at Lahore and other cities so if any Qabza group occupies any Waqf property or make any illegal possession and the Administrator has to take over the same and if the Qabza group takes stay order then what would be the remedy. The Mover was of the view that there are Qabza of properties of many departments like Railways then why provision is made only for Waqf properties. Senator Kamil Ali Agha was of the view that it is very much logical where the matter pertains to Government property then stay should not be given without hearing the State. The Chair said that the view point of ICT administration is valid so next time this clause will be put to the vote and then decision of the Committee will be obtained on this clause.

Clause 6.

The Mover stated that through section 17 of the Act sale process of Waqf property has been provided. In paragraphs (e), (f) and (g) of section 17 certain purposes have been given where the sale proceed of Waqf property can be consumed. The Mover was of the view that according to Fatwas and Islamic injunctions, Waqf property can only be utilized for the purpose mentioned in the Waqf by the donor so this provision is against the Islam. The Mover was of the view that Waqf property cannot be sold in any manner so how administrator can dispose of any Waqf property. The Chair said if any unethical purpose has been provided in this section then the objection could be raised. The Special Secretary MOI drew attention of the Committee towards sub-section (3) of section 17 which provides that for carrying out the purposes mentioned in sub-section (1) and (2), the Chief Commissioner ICT shall seek permission from the Federal Government. He was of the view that sole authority or power has not been vested with the Chief Commissioner whereas in order to ensure transparency and fairness the decision of the Federal Government i.e. the Federal Cabinet is compulsory. The Chair was of the view that usage of sale proceed of the Waqf property has been given in sub-section (1) of section 17 which are very noble purposes. Senator Kamil Ali Agha was of the view that there is no discussion that Waqf property cannot be used for any other purpose except the purposes donor has specified. However, the income from Waqf property can be utilized



for welfare purposes. The Special Secretary MOI was of the view that there are certain circumstances where the Waqf property had to be sold like the Waqf property if demolished or damaged or becomes useless then it can be sold. In view of the provision mentioned in sub-section (3), the members were of the view that a very reasonable check has been provided in this section i.e. the permission from the Federal Government so there seems no objection in this section. The objection of the Mover was of the specification of the certain areas where sale proceed of Waqf property can be consumed. He was of the view that no other purpose can be specified except the donor has mentioned in the Waqf. The Chair was of the view that when permission of the Federal Government is condition precedent then there should not be any objection. The Chair said that the view point of ICT administration is valid so next time this clause will be put to the vote and then decision of the Committee will be obtained on this clause.

Clause 7

The Mover briefed that the words "directions prohibiting such person from indulging in party politics through sermons or lectures" mentioned in sub-section (2) of section 21 of the Act requires to be explained. The Mover was of the view that word party politics is vague term which needs further elaboration, however, the Special Secretary MOI is of the view that party politics under the garb of religious sermons should not be allowed. The Chief Commissioner ICT was of the view that the use of loud speaker for political motives is not to be allowed. The Chair said that next time this clause will be put to the vote and then decision of the Committee will be obtained on this clause.

Clause 8

The Mover was of the view that bar of jurisdiction has been imposed through section 24 of the Act which is against the fundamental rights. Special Secretary MOI stated that Bar of jurisdiction is included in most of the laws for public good so there should not be any objection on this provision. Draftsman M/O Law stated that this provision is not against the scheme of law and there is nothing un-constitutional as it is a normal practice to include such provisions in the laws. The Chair said that next time this clause will be put to the vote and then decision of the Committee will be obtained on this clause.

Clause 9

Special Secretary said that it is a special law so it will have overriding effect over the general laws as it is the scheme of special laws. However, after perusal of the law, it transpired that there is no such provision in the Act with the heading overriding effect so

this clause needs to be omitted from the Bill being infructuous. The Committee directed to re-check the same.

Clause 10

There was a typographical mistake in the Bill as in the Bill in clause 10, omission of section 27 has been sought whereas the Mover clarified that he actually intended to omit section 26 i.e. the Administrative sanctions.

10. The Mover requested that in the next meeting the representatives of the Council of Islamic Ideology may also be invited. The Chair stated that already the meeting of the Mover has been arranged with the representatives of the CII so if the Committee feels any confusion in any clause of the Bill then clarification will be obtained from the Council. The Mover was of the view that opinion of council may be obtained on definition of Waqf property and whether any natural or artificial person can be declared as Waqf or not.

10th February, 2023

The meeting was attended by the following:-

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|-------------------------------|----------|
| 1. Senator Mohsin Aziz | Chairman |
| 2. Senator Dilawar Khan | Member |
| 3. Senator Saifullah Abro | Member |
| 4. Senator Fawzia Arshad | Member |
| 5. Senator Mushtaq Ahmed Khan | Mover |

11. The Committee gone through the working paper submitted by the Auqaf Directorate, Islamabad. Government of Pakistan duly endorsed by the Ministry of Interior whereby the Bill has been opposed by the Government. The Chief Commissioner, Islamabad and the Additional Secretary, MOI opposed the Bill with the stance that the Bill in its present form may have certain repercussion in the background of FATF.

12. The Chairman pointed out that last time the representatives of the Ministry of Interior were partially agreed on some of the provisions of the Bill but this time they have flatly opposed it.

13. The Chairman stated that as decided in the last meeting, the Bill is put to the vote of the Committee. The Committee recommended that Bill as introduced in the Senate may be passed by the Senate.

(MUHAMMAD AZAM)
Secretary Committee

(SENATOR MOHSIN AZIZ)
Chairman Committee

[AS INTRODUCED IN THE SENATE]

A

BILL

further to amend the Islamabad Capital Territory Waqf Properties Act, 2020

WHEREAS it is expedient and substantial to bring meaningful and significant amendments in the Islamabad Capital Territory Waqf Properties Act, 2020 (XXIX of 2020), for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement. - (1) This Act may be called the Islamabad Capital Territory Waqf Properties (Amendment) Act, 2021.

(2) It shall come into force at once.

2. Amendment of section 2, Act XXIX of 2020. - In the Islamabad Capital Territory Waqf Properties Act, 2020 (XXIX of 2020), hereinafter referred to as the said Act, in section 2, in paragraph (n), "Explanation 4" "Explanation 5" and "Explanation 6" shall be omitted.

3. Amendment of section 6, Act XXIX of 2020. - In the said Act, in section 6, in sub-section (1), after the words "Waqf Property" the phrase "other than the income, contributions and property dedicated for a mosque or shrine" shall be inserted.

4. Amendment of section 8, Act XXIX of 2020. - In the said Act, in section 8, sub-section (2) shall be omitted.

5. Amendment of section 14, Act XXIX of 2020. - In the said Act, in section 14, the words "or a High Court" shall be omitted.

6. Amendment of section 17, Act XXIX of 2020. - In the said Act, in section 17, in sub-section (1),-

(i) In clause (d), for a semi colon and the word "; or" occurring at the end a full stop "." shall be substituted; and

(ii) clauses (e), (f) and (g) shall be omitted.

7. **Amendment of section 21, Act XXIX of 2020.** – In the said Act, in section 21, in sub-section (2), the phrase “and directions prohibiting such person from indulging in party politics through sermons or lectures” shall be omitted.

8. **Omission of section 24, Act XXIX of 2020.** – In the said Act, section 24 shall be omitted.

9. **Omission of section 25, Act XXIX of 2020.** – In the said Act, section 25 shall be omitted.

10. **Omission of section 27, Act XXIX of 2020.** – In the said Act, section 27 shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Islamabad Capital Territory Waqf Properties Act, 2020 provides for the proper management, supervision and administration of Waqf properties in the territorial limits of the Islamabad Capital Territory. Certain amendments in various sections of the said Act are proposed to bring meaningful and substantial changes in the provisions of the Act and make the management and administration more proper and efficient.

This Bill has been developed to achieve the aforesaid objectives.

**SENATOR MUSHTAQ AHMED
MEMBER-IN-CHARGE**