

Journal of Islamic Thought and Civilization (JITC)

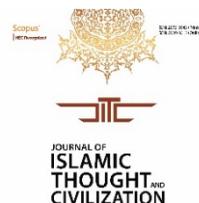
Volume 12 Issue 1, Spring 2022

ISSN(P): 2075-0943 ISSN(E): 2520-0313

Homepage: <https://journals.umt.edu.pk/index.php/JITC>



Article QR



- Title:** Waqf Properties Act 2020 and the Constitution of Pakistan: A Critical Study
- Author (s):** Hafiz Hassan Madni
- Affiliation (s):** Institute of Islamic Studies, University of the Punjab, Lahore, Pakistan
- DOI:** <https://doi.org/10.32350/jitc.121.20>
- History:** Received: March 17, 2022, Revised: April 21, 2022, Accepted: April 29, 2022, Available Online: June 25, 2022
- Citation:** Madni, Hafiz Hassan. "Waqf Properties Act 2020 and the Constitution of Pakistan: A Critical Study." *Journal of Islamic Thought and Civilization* 12, no. 1 (2022): 320–330. <https://doi.org/10.32350/jitc.121.20>
- Copyright:** © The Authors
- Licensing:**  This article is open access and is distributed under the terms of Creative Commons Attribution 4.0 International License
- Conflict of Interest:** Author(s) declared no conflict of interest



A publication of

Department of Islamic Thought and Civilization, School of Social Sciences and Humanities
University of Management and Technology, Lahore, Pakistan

Waqf Properties Act 2020 and the Constitution of Pakistan

A Critical Study

Hassan Madni*

Institute of Islamic Studies, University of the Punjab, Lahore, Pakistan

Occasionally some laws are enacted without proper deliberation and comprehensive understanding of the issue in focus. The same can be said about The *Waqf Property Act 2020* which was passed in Islamabad and all the provinces of Pakistan in September 2020 in which some new laws were made and some previous laws were amended. The Rules regarding *Awqāf Act* were disseminated across all the provinces and advertised on national media. Having explained the rules of the Act, some guardians of the *Waqf* properties were also issued notices. However, the *Waqf Property Act* has received a social backlash from *ulamas*, the political fraternity & the public. It is said that the Act is not only against the Islamic law but is also against the Constitution of Pakistan. Keeping this scenario in view the aim of this paper was set to discuss the violation of the Constitution that has occurred in the enactment of this law. For this purpose the original text of the *Waqf Property Act 2020* along with certified references have been analyzed so that the gaps in the focused law are fully identified. The findings of the study can provide a good insight to the law makers as well as common readers.

Keywords: *Waqf*, Constitution of Pakistan, Fundamental Rights, Religious Minorities, *Sharī'ah*

Status of Laws in contradiction with Fundamental Rights

In the constitution of Pakistan, fundamental rights hold a lot of significance. No law in Pakistan can be passed if it is in contradiction with fundamental rights. In Constitution of Pakistan, clear directions have been issued to High Courts and Supreme Court for taking a stand against any violation of the fundamental rights. In this way, Constitution of Pakistan highlights the significance of the fundamental rights in this way.

Article 8: (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void...

(5) The rights conferred by this Chapter shall not be suspended except as expressly provided by the Constitution.¹

In the above articles, on the one hand, where the constitution has entrusted courts with the protection of fundamental rights, there, on the other hand, the constitution has stopped legislative assemblies to influence the essence of the fundamental rights through other laws. Thus, it's clear that until and unless in the constitution there is any condition present regarding fundamental rights, legislative assemblies through any other law cannot influence the fundamental rights in the constitution. To bring about any change in the fundamental rights, it is necessary that legislative assemblies catch up to constitutional requirements of making any amendment in the constitution. *Waqf Property Act 2020* is a subordinate law that is not in alignment with fundamental rights in the constitution of Pakistan on several grounds.

2. Legislation based on Religious Discrimination

1. The Articles 2 of the Universal Declaration of Human Rights says: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth

*Correspondence concerning this article should be addressed to Hassan Madni, Institute of Islamic Studies, University of the Punjab, Lahore, Pakistan at drhhasan@live.com.

¹*Constitution of Pakistan 1973*. Amended 2015. <http://www.commonlii.org/pk/legis/const/1973/3.html>

or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

2. The Article 6 of the Declaration on Rights & Duties of States says, “Every State has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms, without distinction as to race, sex, language, or religion.”

This text was derived from the latter part of the article 21 of the Panamanian draft. The reference to human rights and fundamental freedoms is inspired by the Article 1. 3, Article 13, paragraph 1. b, Article 55 c, and Article 70 c, of the Charter of the United Nations and by the Universal Declaration of Human Rights. It seems apparent from the above mentioned International Laws that the fundamental duty of a state is to protect fundamental human rights. Also, it is also the responsibility of a state not to discriminate in these four matters. Race, b) Language, c) Gender d) Religion

3. Regarding the implementation of International Laws, all the religions have been given similar status in the Constitution of Pakistan. In compliance with the Islamic Ideology, it is stated under the Article 20 of the Constitution that is subjected to law, public order and morality:

(a) Every citizen shall have the right to profess, practice and propagate his religion.

(b) Every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.²

4. Article 21 of the Constitution is of the view, “No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

2.1. Analysis

The above-mentioned Articles show that any law that is discriminatory to any religion in some way should be revised. If it is not revised, it violates national and international law. In Pakistan, every religion has its own endowment. For instance, in ancient populated cities of Pakistan likewise Lahore and Karachi, there are many central worship places of the Christians. Besides, the vast stretches of lands for Hindus and Sikhs in Sindh and Kartarpur fall into the category of *Waqf* Property for religious purposes. Legally, religious equality is necessary. However, implemented Islamabad *Waqf* Property Act 2020 and the rest of *Waqf* Acts while using the terminologies of “*Waqf* and *Waqif*” denote that this legislation is merely confined and bound to the Islamic Institutions in Pakistan. The Section 2 of the Act, explaining the definition of the Act, also elaborates that this is merely limited to the Muslim Endowments.

Sec. 2: n) “*Waqf property*” means property of any kind permanently dedicated by a person professing Islam for any purpose recognized by Islam as religious, pious or charitable.³

Sec. 2: Explanation 3. Property of any kind acquired with the sale proceeds, or in exchange of or from the income arising out of *waqf* property, or from subscription raised for any purpose recognized by Islam as religious, pious or charitable, shall be deemed to be *waqf* property.

Sec. 2: Explanation 5. Property permanently dedicated for the purposes of a Mosque, Takia, Khankah, Dargah or other shrines shall be deemed to be a *waqf* property.

²*Constitution of Islamic Republic of Pakistan, 1973*, <http://www.commonlii.org/pk/legis/const/1973/3.html>.

³This definition of *Waqf* in English is totally different from the Arabic one.

حيس عين المال وتسبيل منفعتہ؛ طلباً للأجر من الله تعالى (موسوعة الفقه الإسلامي از محمد تويجری: ۳، ۱۸۳)

Withholding real wealth in order to get reward from Allah and giving its profit in charity.

While giving his critique on the Act, Mufti Muneeb ur Rehman is of the view, “It is mentioned in the Article 2 that Chief Administrator of a *Waqf* Property will be Muslim which indicates that this Act is limited to the Muslim Endowments. Furthermore, this Act will neither be applied to the Non-Muslims’ Endowments nor they will be subjected to the restrictions required by this Act.”⁴

Explicitly, it is also mandatory for the Chief Administrator and the Deputy Administrator to be a Muslim according to the Punjab Awqāf Act 2020 and the Section 4 of Sindh *Waqf* Act also consider this condition necessary. The terminologies used in the effective Section 2 of the Act also explain that this Act merely limits to the Muslims’ Religious Institutions and their income. The reasons for this strict legislation is to bring the Muslims’ Religious Institutions under the government control. In this regard, the government restrictions on the allocated resources for the promotion of Islam have been tightened.”

Dr. Ragheb Naeemi, a famous religious scholar points out the discrimination of this Act in this way,

If a person establishes a private (personal) Madrassa (Religious School) and does not endow its property, which is considered *Waqf*, under religious, pious and charitable institution, then whether every institution established out of charity (likewise Education, Medical or Welfare trust) will also get registered with the Department of Awqāf? Definitely, its answer will be No. Otherwise, the *Akhuwat* University, the Trust School and Shaukat Khanam Hospital etc., should also be registered with the Department of Awqāf because they are also based on Religious, Charity and Pious objectives.”⁵

It means that this Act is implemented on pure traditional religious institutions apart from other Muslims’ Awqāf and that makes it discriminatory. Furthermore, a legislation has been passed under Section 17⁶ that the Muslims’ Endowments can also be used for social welfare, roads, sewerage, gas, electricity and unemployed, Poor, Sick and aged people. The Government can sell all these endowments and use for the development and social welfare.

Apparently, all Non-Muslims are also included in all these cases which is contrary to the Article 21 of the Constitution of Pakistan that says that the income of a religion cannot be utilized for another religion. In this regard, this Act is against the fundamental rights. The Article 21 of the Constitution is of the view: “No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.”⁷

3. Restriction on the Establishment of Collective Institutions and Freedom of Speech

Section 8 in Islamabad *Waqf* Act 2020 states:

Explanation: (1) For the purpose of this section, control and management shall include control over the performance and management of religious, spiritual, cultural and other services and ceremonies or *rasoomat* at or in a *waqf* property. (2) No person shall perform services or ceremonies referred to in sub-section (1) except with the prior permission of the chief administrator and in accordance with such direction as may be given by him.

Therefore, the appointed Chief Administrator of Awqāf, by the Chief Commissioner of Islamabad, can issue instructions to stop any kind of speech or lecture. Besides, any kind of speech could be banned for the sake of government or political interests.

According to the chapter 2 of the Constitution of Pakistan, this is contrary to the political right of every citizen to speak for their rights as Article 17 mentions, “Every citizen shall have the right to form

⁴Mufti Muneeb ur Rahman, “Islamabad *Waqf* Act 2020,” *Daily Dunya News*, 10 October 2020.

⁵Dr Ragheb Naeemi, “Changes in Awqāf Ordinance,” *Monthly Arfat*, Lahore. January 2021.

⁶Text of Section 17 is mentioned in coming discussion.

⁷*Constitution of Islamic Republic of Pakistan, 1973.*

associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.”⁸

The Universal Declaration of Human Rights (1948) also assures this right to every citizen. “Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association.”⁹

Besides, freedom of speech and propagation of individual views are also a part of Fundamental Rights, as it is obvious in the Article 19 of the Constitution, saying,

Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.¹⁰

Similarly, it’s elaborated in the Article 19 of the UDHR (1948) in these words: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹¹

Precisely, the Article 19 of the Constitution not only guarantees individual and collective freedom of expression but also protects the glory of Islam. The Act is sacrilegious as it has limited the glory of Islam. Besides, the government can ban any kind of speech under the pretext of political speech. Moreover, government can also get delivered written and self-made speeches.

Furthermore, the Article 20 (a) allows everyone without any discrimination and distinction to act upon his religion and preach it. In contradiction to this, the Islamabad *Waqf* Act 2020 in general and Section 8 (2) in particular prohibits and opens the door for the restrictions on preaching and propagation of religion. Besides, the Article 20 (b) of the Constitution allows every religious leadership to establish and manage religious institutions. Opposing, the Sections 8 (a) and 13 snatch this fundamental right by handing it over to the government appointed Chief Minister, which is clear the violation of the Constitution. In addition, this section is also against the Islamic law which has been explained in other research articles.

Justice Taqi Usmani is of the view,

Articles 6, 7, 9, 21, 22, 23 including 26 and 27 require that *Waqf* Property has to be registered permanently. Besides, it is also necessary to provide the information of all the registered or non-registered endowments which government may need from time to time. Moreover, the above articles of the Act also authorize the government to ban particular religious activities and propagation of provocative material in religious sermons. Consequently, such steps would violate constitutional right of freedom of expression on the condition that it is a violation of the Holy Qur’ān and Sunnah. According to the Article 26 and 27, the implementation of inhuman punishment of 5 years Jail and 25 million rupees fine would increase its sensitivity.¹²

4. Constitutional Right to Defend against Crime

In Islamabad *Waqf* Act 2020, different articles influence this fundamental right. For instance

4.1. The Chief Administrator Decision cannot be Heard in any other Court

⁸<https://pakistanconstitutionlaw.com/article-17-freedom-of-association>

⁹<https://ruralindiaonline.org/en/library/resource/universal-declaration-of-human-rights/>

¹⁰*Constitution of Islamic Republic of Pakistan, 1973.*

¹¹http://nations-united.org/Universal_Declaration_Of_Human_Rights/Articles_Human_Rights/Articles_19_Human_Rights_Universal_Declaration_Nations_United_Nineteen.htm#:~:text=Adopted%20and%20proclaimed%20by%20General%20Assembly%20resolution%20217,freedom%20to%20hold%20opinions%20without%20interference%20and%20to

¹²Justice Taqi Usmani, “New *Waqf* Act is against the Sharī’ah and Constitution,” Monthly *al-Burhan*, Lahore. May 2021.

The section 24 of the Act explicitly talks about it in these words:

24. Bar of Jurisdiction: No civil or revenue court or any other authority, shall have jurisdiction...

a) To question the legality of anything done under this Act by or at the instance of the Chief Administrator.

It means that the verdict of Chief Administrator couldn't be challenged in any other national court. Justice Taqi Usmani is of the view, "This Article is absolutely opposite to the Constitution, which does not allow such steps that would be above the law."¹³

4.2. This Act is above all other Laws and Judicial Verdicts

The section 25 of the Act is of the view that this Act would be above all other laws and judicial judgments:

25. Overriding effect. Every order made and every action taken under this Act shall have effect notwithstanding anything inconsistent therewith contained in any document, degree or order of any court, deed, enactment or any instrument having effect by virtue of any such enactment other than this Act.

4.3. Confining the Petition Rights of Citizens

The section 13 of the Act explains,

13. Petition to High Court: (1) Any person claiming any interest in any *waqf* property in respect of which a notification has been issued under section 8, within thirty days of the publication of such notification in the official Gazette, may file a petition in the High Court for a declaration:

- a) that the property is not *waqf* property; or
- b) that the property is *waqf* property within the limits stated in the petition.

Here, this section not only confines the petition circle of the Apex Court but also annexes the restriction of 30 days after the publishing in the official Gazette. Besides, less people could get access to the official Gazette. In this way, they have implemented more and more restrictions on the right of petition which is clearly against the requirements of Justice.

4.5. Prohibition of Issuing Restraining Orders of High Court

The Act limits the High Court right to appeal in this regard:

14. The High Court shall not, pending disposal of a petition filed under section 13 issue a temporary injunction or an order restraining the chief administrator from taking over or assuming the administration, control, management and maintenance of property in respect of which a notification has been issued under section 8.

It means that it is mandatory for Apex Court to inform Chief Administrator Awqaf while taking judicial steps regarding *Waqf*. Besides, the permanent and ordinary restraining orders of High Court are also prohibited.

4.6. The Verdict of Chief Administrator is Final

The Article 2 of the Section 12 of the Act bestows the supreme power.

¹³Justice Taqi Usmani, "New *Waqf* Act is against the Sharī'ah and Constitution," Monthly *al-Burhan*, Lahore. May 2021.

12. (2) If there is no appeal preferred against an order of eviction made under section 10 or an order of termination of lease or resumption of tenancy made under section 11, the eviction, termination of lease or resumption of tenancy, as the case may be, shall attain finality, and when there an appeal has been preferred, the decision of the chief administrator in appeal shall be considered final.

4.7. Distrust to the Apex Court of the Country

The section 15 of the Act shows distrust to the Supreme Court:

15. Decision of the High Court shall be final: If no appeal is preferred within thirty days, the decision of the High Court, or when there is an appeal, the decision in appeal shall be final.

5. Analysis

The aforementioned Articles of the Islamabad *Waqf* Act 2020 violate the fundamental rights mentioned in the Constitution of Pakistan. These Articles are mentioned below for which every citizen has the right to consult national courts. The contradictions within the Act with respect to the Constitution of Pakistan have been highlighted in the lines below:

Article 10 (1) No person who is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.¹⁴

1. Under section 24 of the Act, the people's right to access to Civil and Financial or any other Institution is usurped. Moreover, the Chief administrator of Awqaf has been declared above accountability by giving him unlimited authority. Furthermore, the unconditional sovereignty of a single person has been established. In this regard, this section is against the Article 10 (1) of the Constitution.
2. Besides, the Act has limited and even abolished the right of consulting the High Courts, which is not only interference in the fundamental rights but is also a violation of the Constitution as well as it is obvious in the Article 199 of the Constitution.¹⁵

Similarly, Supreme Court of Pakistan has the authority of self-Notice as Article 184 described it.

(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers, that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved have the power to make an order of the nature mentioned in the said Article.

1. The section 25 of the *Waqf* Act has declared all those judicial verdicts, documents and laws etc. that are against the Act will be null and void. It also violates Article 6 of the Constitution.

(1) Any person who abrogates or attempts or conspires to abrogate, subverts or attempts or conspires to subvert the Constitution by use of force or show of force or by other unconstitutional means shall be guilty of high treason.

1. Besides, the authority of the Supreme Court has also been challenged by this Act. Article 187 of the Constitution is of the view, 1) Supreme Court shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it including an order for the purpose of securing the attendance of any person or the discovery or production of any document.

¹⁴*Constitution of Islamic Republic of Pakistan, 1973.*

¹⁵*Ibid.*

2. In section 13 of the Act, the citizens' request for the right of settlement is limited to merely two points which is against the above Article of the Constitution.

3. According to the section 14 of the Act, District and High Courts cannot even issue temporary restraining orders without informing Chief Administrator Awqaf which is also against the Constitution. The Article 37 (d) is of the view that state will ensure inexpensive and expeditious justice.

4. In section 15, the authority of the Supreme and High Courts has also been limited by abolishing the right to appeal against decisions of Chief Administrator. It is against these two Articles of the Constitution.

Articles 189 of the Constitution is of the view, "Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan."

Article 201 of the Constitution is of the view, "Subject to Article 189, any decision of a High Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all courts subordinate to it."

The section 15 and 24 are supposed to distrust to National Judicial Courts and National Judicial System (Supreme and High Courts), wherein fundamental rights are protected in the Supreme and High Courts. In addition, experienced Judges analyze the decisions of the subordinate authorities.

5. The above law authority of the Act in section 25 is also against the Article 189 and 201 of the Constitution, wherein the decisions of the Supreme and High Courts will be binding on all subordinate courts. Moreover, if the phrase "Any Court" in the section 25 of the Act is read carefully, it implies that all the decisions of the Act will be above all the courts including Supreme Court.

6. As it has been mentioned before that the Act is against the soul of defense system of the Article 10 (1) by interfering in the fundamental right of fair justice. Moreover, this Act is also against the Article 10 of the Constitution which declares, "All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court."

The above analysis shows that the Act is against the right of defense and prevailing judicial system of the country by intervening and challenging their authority instead of going along with them. The above articles of the Act are signs of distrust to prevailing judicial system and procedural law.

Furthermore, a number of ulama and politicians are of the view that this Act has been enacted in haste; that is why, there are flaws and errors in it. Apparently, it's not an appropriate view point because great master mind and intellectuals of the law were supervising the Act. In the result, a parallel judicial system likewise military courts were launched confidentially. On the other hand, after the struggle of a years, a national judicial system was restored by abolishing military courts. Apparently, it seems that the discrimination of the Act is due to the force and behest of Financial Action Task Force (FATF) because Pakistan was supposed to fulfil the FATF requirements if it wants way out of Grey List. The Article 6 of the Act is of the view that:

"Prosecution should be made according to the International Standards by making a strict case against those who are caught."

2. Prohibition on Religious Education and Promotion of Official Religion

The section 28 of the Islamabad *Waqf* Act 2020 is of the view that:

28. Power to make rules: (1) Subject to approval by the Federal Government, the Chief Commissioner, ICT shall frame rules for the purpose of carrying into effect the provision of this Act. i) prescribe the syllabus and curricula for the proper education and training of Imams and khatibs and of other employees of the Awqāf institutions in ICT; j) prescribe and regulate the standards of syllabus and curricula of

institutions providing Islamic religious education, by whatever name called, and, where considered necessary in the public interest, the scrutiny of the accounts of such institution.¹⁶

While analyzing the section 28 of the Act, Justice Taqi Usmani says, that, The laws enacted by the Chief Administrator are subject to proper scrutiny by experts in the Holy Qur'ān and *Sunnah* and Constitution and Human Rights; so that, the mistakes in the existing Bill shouldn't be repeated in these laws.¹⁷

The section 21 of the Islamabad *Waqf* Act 2020 provides *Waqf* Chief Administrator unlimited authority. Moreover, the Article (1) of the section 21 ascribes that The chief administrator may require any *waqf* manager to furnish him with any return statement, statistics or other information regarding such *Waqf* Property, or a copy of any document relating to such property. Besides, subordinate officers will comply such order or direction without any delay.¹⁸

(2) The chief administrator may issue to *waqf* manager, the administration where has not been taken over or assumed by the chief administrator under section 8, such instructions or directions for the proper administration, control, management and maintenance of such *waqf* property as he may deem necessary including directions prohibiting delivery of sermons, *khutbas* or lectures which may contain any matter prejudicial to the sovereignty and integrity of Pakistan or calculated to arouse feelings of hatred or disaffection amongst various religious sects or groups in the country and directions prohibiting such person from indulging in party politics through sermons or lectures, and the *waqf* manager shall comply with such instructions and directions.

6. Discussion and Conclusion

Giving Islamic Education to the Muslims is not only their right but a national duty according to Article 31 of the Constitution as well. The Article 31 of the Constitution states,

31. (1) Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Qur'ān and *Sunnah*.

(2) The State shall endeavor for the religious accomplishment of the Muslims of Pakistan by executing the following tasks:

(a) to make the teaching of the Holy Qur'ān and Islamiyat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Qur'ān; (b) to promote unity and the observance of the Islamic moral standards; and (c) to secure the proper organization of zakat 1 [ushr,] *awqāf* and mosques.

Besides, this fundamental right is also ascribed in the Article 22 of the Constitution.

(3) Subject to law,

(a) No religious community or denomination shall be prevented from providing religious instructions to the pupils of that community or denomination in any educational institution maintained wholly by that community or denomination.

Awfully, the government has already failed in this duty by entrusting religious education to the people. Interestingly, it was tradition of the British Colony which is being promoted by the government. However, it is the first and fundamental legal and Constitutional responsibility of the government. Apart from that,

¹⁶https://na.gov.pk/uploads/documents/1598354469_547.pdf

¹⁷Justice Taqi Usmani, "New *Waqf* Act is against the Sharī'ah and Constitution," Monthly *al-Burhan*, Lahore. May 2021.

¹⁸Ibid.

the verses of the Holy Qur'ān related to Jihad, prohibition of Interest (*Riba*) and vulgarity, details of revealed commandments and golden era of *Khilafat e Rashida* (Righteous Caliphs) and Muslim Caliphs' are being constantly reduced in the official books and Islamic Curriculum due to international pressure. Apparently, according to the Article 62 of the Constitution, all members of the National and Provincial Assemblies need to have sufficient knowledge of Islamic *Sharīah*. That is considered a basic qualification for being a part of legislature in Pakistan. Unfortunately, the condition of Pakistani ministers and Cabinet members is that they cannot recite *Suarh Ikhlās* correctly. Even, the top officials of Pakistan are unable to properly pronounce a popular term like, "*Khatam un Nabiyeen*." The training of the teachers and strict supervision of the students' curricula by such rulers in purely *Waqf* Institutions and legislation for serious measures will raise many doubts.

Furthermore, it is fundamental right of every school of thought to teach its ideology and commandments which is also guaranteed by Article 22 (3) of the Constitution. In this regard, the dual role is being achieved by abolishing the role and curriculum of the federation of Madrassas. The section 25 and 28 (j) impose restrictions on the curriculum and federation of Madrassas and that is against fundamental rights. Consequently, modifying religious education curricula and imposing constitutional restriction in the name of teachers' training is also against fundamental rights.

Besides, according to the aforementioned Article 31 of the Constitution, it is the basic and fundamental duty of the State to protect Islamic Way of life by organizing and promoting the Mosques and Endowments. It is not duty of the State to erect such obstacles that creates hurdles in smoothly running the system of mosques and endowments. There should not be any such legislation that eliminate the religious Status of the latter and make them allocated for general purpose instead of religious purpose.

While analyzing the Article 21 of the *Waqf* Act, Mufti Muneeb ur Rehman says: "An Officer (*Waqf* Chief Administrator) is given the authority to decide by himself whether any sermon, speech or a lecture is against the sovereignty and integrity of the State. Besides, he has the authority to declare it whether it is based on religious and sectional sectarianism and give the impression of partisan politics. Consequently, he will have weapon that will be used whenever and however he wants to use because he is not responsible to anyone for it."¹⁹

Here is a suggestion. There should be a commission comprising of scholars and highly educated experts. The *Waqf* Officer should lodge a complaint to that commission and present evidence along with it. After having proper deliberations over the complaint, the commission should announce its decision. There are some comprehensive teachings in the Holy Qur'ān, Hadith and Islamic Jurisprudence that might mislead a common person without any proper guideline. Moreover, Mufti Muneeb ur Rehman is of the view while analyzing the legislation in the name of checking sources of income. As it is ascribed in the Article 9 of the Act under the Provision of Miscellaneous Information: According to the Article 9 of the Act, *Waqif* (Donor) or *Waqf* Manager will inform the Reporting Authority and declare their sources according to the procedure described under the Article 7 of the Anti-Money Laundering Act 2010.²⁰ On account of this Article, he expresses his fear that it would be difficult to give donation to any religious institutions. Besides, all the anchorages that are usually praised by PM will be closed. Conceivably, this Law may become a means that will target whomever and whenever they want by implementing pick and choose formula.²¹

Moreover, Chaudhry Khalid Mehmood, former Session Judge, is of the view that:

According to Amended Anti-Money Laundering Act 2020, the government has been given access to all *Waqf* Property. Besides, the scrutiny of national *Waqf* Property has come under the purview of International Institutions including FATF. Interestingly, the most important point in this Act is that the *Waqf* Manager would be bound to provide all the information of *Waqf* Institutions to the competent authorities to improve international co-operation.

¹⁹Mufti Muneeb ur Rahman, "Islamabad *Waqf* Act 2020," *Daily Dunya News*, 10 October 2020.

²⁰Ibid.

²¹Ibid.

Thus, profits of *Waqf* Properties, Scholarships, their sources of income, allocation of expenses and residence of staff etc. are also included in Anti-Money Laundering Act 2010. Consequently, the registration of *Waqf* properties, deadline and the burden of heavy fines in the result of delay may lead to the abolition of these welfare institutions.”²²

In a nutshell, the above mentioned details elaborate that there are many issues in the Islamabad *Waqf* Act 2020 that are against the fundamental rights ensured in the Constitution of Pakistan which are guaranteed in the UN Charter of Human Rights 1948 as well. Apparently, these laws not only promote religious discrimination but also lead to distrust in the national judicial system by issuing parallel judicial system. Obviously, in addition to the restrictions on religious and ideological education, the freedom of expression is also being compromised on the discretion of the government in this Act. Thus, Supreme Court of Pakistan should either take a suo motu notice against the Act as it is against the *Shari‘ah* the Constitution of Pakistan or any law-abiding citizen should approach the Court.

Bibliography

Constitution of Islamic Republic of Pakistan, 1973.

Mahmood, Khalid. “Punjab Waqf Amlak.” *Wifaq News*, April 10, 2021

Muneeb ur Rahman, Mufti. “Islamabad Waqf Act 2020.” *Daily Dunya News*, 10 October 2020.

Naeemi, Dr Ragheb. “Changes in Awqāf Ordinance.” *Monthly Arfat*, Lahore. January 2021.

Usmani, Justice Taqi “New Waqf Act is against the Shari‘ah and Constitution.” *Monthly al-Burhan*, Lahore. May 2021.

²²Khalid Mahmood, “Punjab Waqf Amlak,” *Wifaq News*, April 10, 2021