

In the name of Allah, the Most Compassionate, the Most Merciful

# **Understanding the Concept of Waqf**

**Compiled and Authored** 

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Acknowledgment, Appreciation, and Gratitude
To various Authors' reference Articles and Papers related to Waqf
"Any errors that remain are my sole responsibility"
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#### **FOREWORD**

Janaab Farid Tungekar, a keen student of matters relating to charity, and Auqaf have authored this monograph intending to educate the public at large, to attract and enable the real stakeholder in the process of freeing and maximizing the proceeds of a much-neglected instrument of social welfare.

He has painstakingly gone through various aspects following Sharia and the Indian Waqf Act as amended from time to time. It is imperative for the community to understand their rights and how the law and legal pronouncements facilitate achievements thereof. Public knowledge of issues, matters, and the Waqf law is necessary to free the community from the clutches of the dishonest.

The wholesale neglect and misuse of waqf properties have gone on no hold barred due to public ignorance about this wonderful means of ensuring economic and social betterment of the community standing at the lowest rung of the society.

I sincerely hope Tungekar Saheb's sincere efforts in demystifying WAQF shall help in the attainment of this laudable objective. My sincere prayers are for the success of his mission.

#### **Akramul Jabbar Khan IRS**

Retd Chief Commissioner of Income Tax

Pune. 27th December 2020



**Waqf Liaison Forum** (WLF) has been registered as a non-profit section-8 company. We have many professionals from management, judiciary, law, senior civil servants, ex-CEO of waqf,

academicians, town planning experts, architects, and of course young members of the community.

WLF endeavors to use our extensive network of experienced professionals to deliver tangible results in matters and issues related to Augaf, and create Wagf Awareness among society.

We strive to build long-term relationships, with concerned authorities, based on transparency, mutual trust, and respect.

We aim to encourage the development of Waqf properties for the socio-economic benefit of society, highlight shortcomings in the State Waqf Administration with unbiased censure, and offer acceptable solutions within the ambit of the law.

An individual or group should FOCUS on one Waqf property, in their location, which is mismanaged or is being misappropriated. Several such groups in each location should then earnestly strive to Protect, become Custodians and **Develop various Waqf properties** for the benefit of our community and society.

If this model of community participation is replicated all over the country, the results can be astonishingly greater than the expectation. The path may be difficult, and frustrating but it is not insurmountable. The result may take a couple of years, but the **effort has to be initiated now**.

There are many issues related to Auqaf that requires the community to actively participate and to introspect for the benefit of our community. Let me rephrase the famous words of the Late President Kennedy "Ask not what the community can do for you, ask what you can do for the community."

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"Waqf belongs to the Community, for the benefit of the Community and requires the active participation of the Community"

M Farid Tungekar

Any Muslim who is entitled to receive **any pecuniary or other benefits** from the Waqf and includes the Waqif and any descendent of the Waqif and the Mutawalli is defined as "**person interested in Waqf**"

The Waqf Act 1995-amended 2013 section 3-(k)

#### 1. Significance of Charity and Philanthropy in Islam

Islam is not just a religion of worship; it is a complete discipline that includes all aspects of sciences, including economics. Islam repeatedly encourages its followers to engage in all sorts of social and welfare-related activities actively. To this end, the Qur'an and Sunnah provide several injunctions motivating believers to participate in charitable and philanthropic practices voluntarily. One of the well-known solutions to balance human development and the economic system is charity.

Charity, in its higher sense, includes all help, not monetary alone, from those who are wealthy to those less provided. It is the act of virtue in Islam as mentioned in the Holy Qur'an in scores of chapters and verses like 2:177, 2:195, 2:215, 2:254, 2:261-276, 3:92, 3:134, etc.

The Qur'anic verse "You shall not attain righteousness until you spend out of what you love (in the way of Allah). Allah knows whatever you spend." (Surah 3:92) Translation Maududi.

# 2. Origin of Waqf

- a. <u>Divine intervention</u>: Allah ordered His Prophet Ebrahim (P.B.U.H) to build on earth a House of Prayer – Kaaba is the first Waqf by Divine intervention.
- b. <u>Human intervention</u>: In all probability, Allah reserved the honor of originating Waqf to His Beloved Prophet (P.B.U.H). The actual first Waqf is agreed to be the Masjid of Quba' which the Prophet (P.B.U.H) personally built with the Muslims upon his arrival to Madinah in 622 AD. The Prophet (P.B.U.H) had purchased the land and assembled the Masjid, implying its erection as an everlasting foundation for the Muslim's needs and a place for worship and other religious and social necessities.

#### 3. Definition and Meaning of Waqf

Although Waqf which is believed to be a form of perpetual philanthropy (Sadaqah e Jariyah), is not mentioned in the Holy Qur'an in this sense, it certainly has indirect roots and origin in the Holy Qur'an. The Qur'anic verse, "You shall not attain righteousness until you spend out of what you love (in the way of Allah). Allah knows whatever you spend" (Al-Qur'an Surah 3: 92) has been instrumental in inspiring the spirit of generosity endowment and charity among the companions of the Prophet (P.B.U.H). According to Al- Shafai, the first institution of Waqf came to be known with the advent of Islam, as in the period of ignorance, no similar kind of benevolent deed was in practice (Klien 1990: 52).

Waqf or Auqaf (plural) is translated as confinement, detention, holding, and prohibition (Ibn e Manzoor 2002). Legally they mean "to protect something, by preventing it from becoming the property of a third person." In juristic terms, Waqf is a special kind of philanthropic deed in perpetuity that is exercised in a non-perishable tangible property by designating the specific categories of beneficiaries to receive its usufructs or revenues. Importantly, Waqfs principles, objectives, and method of application make it unique from all other forms of charity, endowments, and alms.

It is not possible to translate the term 'Waqf' with a single English word because it conveys a myriad of meanings. Sometimes a Waqf is explained as a 'charitable trust,' which has a public dimension, and at other times it is translated as an 'endowment,' which resembles a 'will' or 'settlement' that has a single aspect (G.C. Kozlowski). Abu Hanifa defined it as "withholding property, according to the judgment of its owner, and providing charity from its revenues."

The meaning implied here is that the property remains in perpetuity under the ownership of its custodian and is not alienated in any way (Ibn Abedin, 1987). Shafi' defined it as "the keeping of money that may benefit from the remaining of its property confined as well as devoting of its profit for charitable purposes" (Khatib 1377 AH- 1958 A.D). Kahf (2003) points out, "Waqf as holding specific property, and preserving it for the confined benefit of philanthropy, and prohibiting any use or disposition of it outside its particular objective."

The most notable and comprehensive of these definitions, to put it briefly, is "withholding property, not permitting it to be owned by any person and disposing of its benefits in a permissible manner."

#### 4. Laws Relating to Waqf

Various Laws are enacted related to Endowment, Charities, and Waqf. Some are listed below:

The Law Relating to Hindu and Muslim Religious Endowments, <u>the Religious Endowments Act</u> (ACT XX of 1863), and <u>Bengal and Madras Regulations</u> (XIX of 1810 and VII of 1817) was the first comprehensive Law that stipulated the salient features included in the latter Wagf Laws.

Definition under the Mussalman Waqf Validating Act, 1913-Section 2 of the Act defines Waqf as, "the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by Mussalman Law as religious, pious or charitable."

The Wakf Act, of 1954 defines Wakf as, "Wakf means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognized by Muslim Law as religious, pious, or charitable."

The Waqf Act 1995-Amended in India conceptualizes Waqf as 'the permanent dedication by any person, of any movable or immovable property for any purpose recognized by the Muslim Law as pious, religious or charitable and includes-

- i. A Waqf by the user but such Waqf shall not cease to be a Waqf by reason only of the user having ceased irrespective of the period of such cesser:
- ii. a Shamlat Patti, Shamlat Deh, Jumla Malkkan, or any other name entered in a revenue record;
- iii. grants: including mashrat-ul-khidmat for any purpose recognized by the Muslim Law as pious, religious, or charitable; and
- iv. a Waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim Law as pious, religious, or charitable, provided when the line of succession fails, the income of the Waqf shall be for education, development, welfare, and such other purposes as recognized by Muslim Law, and —waqif —means any person making such dedication;"

Waqf Act 1995 (Amended) sections 51-(1A) and 104A "Any sale, gift, exchange, mortgage or transfer of Waqf Property shall be void ab initio:" This section confirms perpetuity for Waqf Assets.

The Supreme Court, in its judgment, 1998-01 SCR398, has noted, quote" ......It may be stated that Waqf is a permanent dedication of property recognized by Muslim law as pious religious or charitable, and the property found as Waqf would always retain its character as Waqf. In other words, once a Waqf, always a Waqf" re-emplacing the perpetuity of Waqf.

The Waqf Act 1995 (Amended) generally laid down an administrative structure to ensure proper administration of the Waqf in the country. It is a robust Law, though there are some shortfalls. The reference to Waqf in the definition of the Bombay (Maharashtra) Waqf Act of 1950 has caused immense damage to Waqf properties and should be removed through amendment.

#### 5. Types of Waqf

Learned jurists of Islam identify three kinds of Waqf: charitable (public), family (private), and shared (public and private). Though there are more types of classifications depending on the school of thought (Hanafi, Shafi, Humballi, Jafferi, etc.); generally, Waqf is grouped as below:

a) Charitable or Khairy or Public Waqf or Waqf Aam: "means dedication in perpetuity of the capital and income of property for pious, religious or charitable purposes recognized by the Muslims law and the property so dedicated;"

In Medina, drinking water is used to sell at a high price. With the continuous inflow of migrants who fled their lands and towns to escape religious-based persecution, it became difficult for the poor to pay for water; the Prophet (P.B.U.H) called on people to buy the well and make it into a Waqf free to whoever takes water. Hazarat Othman ibn `Affan bought it, made it into a Waqf, and asked the Prophet (P.B.U.H), that his pitcher must also be considered free like any other person who gets water. Later, in the fourth year of the Hijrah calendar, the Prophet (P.B.U.H) took hold of the orchards that were willed to him by Mukhairiq and made the remainder of their output another charitable Waqf after paying for his household expenses (Kahf, 4). Thus, generous Waqf benefits are allocated to the public the support the poor and to promote social activities (Salarzehi, 182).

Hazarat 'Omar, asked the Prophet (P.B.U.H) what to do with a palm orchard he owned in the city of Khaibar. The Prophet (P.B.U.H) said: "Give it in charity (i.e., as an endowment) with its land and trees on the condition that the land and trees will neither be sold nor given as a present, nor bequeathed, but the fruits are to spent in charity." (Al-Bukhari)

- By the time when the Prophet (P.B.U.H) died in 632, several of his Companions made many other charitable Wagf.
- b) Family or Ahli Waqf or Private or Waqf Khas: "means dedication in perpetuity of the <u>capital of property</u> for pious, religious or <u>charitable purposes</u> recognized by the Muslims law, the <u>income of the property</u> being paid to persons or for purposes specified in the Waqf, and the property so dedicated;"

This kind of Waqf started shortly after the death of the Prophet (P.B.U.H), when Hazarat 'Omar ibn Al-Khattab (635-645), decided to document in writing his Waqf in Khaibar. He invited some of the Companions of the Prophet (P.B.U.H) to attest to this document. Jaber, another Companion, says that when the news broke out, every real estate owner made Waqf, with the condition that part of the usufructs of their Waqf was to distribute for their children and descendants, and another section for the poor. This kind of Waqf is called posterity or family Waqf. Therefore, unlike today's foundations in America that restrict religious or philanthropic purposes, Waqf in Islamic society may also be for one's own family and descendants (Kahf, 4).

Waqf Ahli or family Waqf is an institution that leads to public benefit ultimately. Thus, it leads to the growth of fixed assets that are productive and ensure the welfare of the future generations of the endower's children and those related to him. In this sense, a family Waqf is a form of investment that serves the objectives of economic development and welfare of future generations, and thus is a type of financial benevolence and charity. The Holy Prophet (P.B.U.H.) had stressed the importance of leaving one's inheritors well-provided. Al-Bukhari has recorded the hadith "surely, your

leaving your inheritors affluent is better than you're leaving them poor, asking from people stretching their palms." As the Auqaf created by Muslims necessarily involves a religious dimension, the endowers could also expect to gain from the prayers and gratitude of their descendants who were thus left well-provided for and needless of the aid of others.

c) Common or Mushtarak Waqf is a Waqf in which part of the benefits from the Waqf usufructs to family usage and the other to public usage.

The three categories of Waqf are classical ones referred to in jurist books. But it is necessary to add that it is not the only way that Auqaf can be classified. Of course, from the use of the Waqf property, it is crucial to know if any meaningful revenues are generated to meet the objective of the Waqf. In other words, we need to make a distinction between Waqf properties that produce usufruct that is consumed by the beneficiaries and Waqf properties that may create any other goods or services, but its net revenue is going to the benefit of its objective.

This distinction is significant as the Investment Waqf should be then subject to efficiency and managerial criteria, similar to a corporation, which is different from the requirements of Waqf properties that generate usufruct for their consumption. Therefore, in each of the above three categories, we should distinguish between Investment Waqf and Usufructuary Waqf, and once a Waqf is an Investment Waqf, it can be for religious purposes, for charity, and family members, present and future (Khaf,4).

The message in the above paragraph is "Waqf properties should be developed for the socioeconomic development of the community in particular and the society at large."

# 6. Categories of Waqf from the perspective of its purpose:

- a) Waqf Ahli: the proceeds of Waqf are for the Waqf founder's children and their offspring. However, these beneficiaries cannot sell or dispose of the property subject matter of Waqf.
- b) <u>Waqf Khayri</u>: the proceeds of Waqf are for charity and philanthropy. Examples of beneficiaries include the poor and the needy.
- c) <u>Waqf al-Sabil</u>: a Waqf whose beneficiaries are the general public. It is very similar to Waqf Khayri, though Waqf al-Sabil is usually used to establish and construct the public utility (masjids, water supplies, graveyards, schools, etc.)
- d) Waqf al-Awaridh: the yield of Waqf is held in reserve so that at times of emergency or unexpected events that negatively influence the livelihood and well-being of a community of people. For example, Waqf may be used to pay medication expenses and education of underprivileged children, and may also be used to finance the maintenance of the utilities of a village or neighborhood.

## 7. Categories of Waqf from the perspective of its output nature:

- a) <u>Waqf-Istithmari</u>: The Waqf assets are for investment. Such assets are managed to produce income for constructing and reconstructing Waqf properties.
- b) <u>Waqf-Mubashar</u>: The Waqf assets are used to generate services for the benefit of some charity recipients or other beneficiaries. Examples of such assets include schools, utilities, etc.

It is also possible to have an amalgamation of a combination of Waqf objectives, like Waqf Khayri, Waqf al-Sabil, Waqf-Ahli, Waqf-Istithmari, etc., where the usufruct is distributed amongst various goals of Waqf.

#### 8. The requirement for a Waqf

A Waqf must fulfill four requirements;

- Waqif, the person who is the donor or the founder, must have attained the age of baligh (adulthood) and be of sound mind and act voluntarily to Waqf the asset.
  - Waqf by Non-Muslims: The dedicator must profess Islam, i.e., believes in the principles of Islam', he need not be a Muslim by religion. The Madras and Nagpur High Courts have held that a non-Muslim can also create a valid Waqf, provided the object of the Waqf is not against the principles of Islam. Patna High Court has also held that a non-Muslim may constitute a valid Waqf. However, a non-Muslim Waqf may create only a public Waqf; a non-Muslim cannot create any private Waqf.
- 2) Mauquf: The Waqif must wholly own the property or capital, and the property must be free from any encumbrances.
  - Right to make Waqf: A person having the capacity but no right cannot constitute a valid Waqf. At the time when Waqf is endowed, Waqif, the dedicator, should have a legal right to transfer the ownership of the property.
  - Amount of property: a person can dedicate his entire estate, but in the case of the testamentary Waqf, not more than one-third of the property.
- 3) Mauquf'alaih: beneficiaries could be family members, descendants, the poor and the public (ummah) and
- 4) Sighahijab and qabul, offer and acceptance of Waqf.

Waqf Act 1995 (Amended) Section 3 (s) —"Waqf deed means any deed or instrument by which a Waqf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have varied;"

Waqf Act 1995 (Amended) Section 25-(2) "In exercising the powers of giving directions under sub-section (1) in respect of any Waqf, the **Board shall act in conformity** with the directions by the Waqif in the deed of the Waqf, the purpose of Waqf and such usage and customs of the Waqf as are sanctioned by the school of Muslim law to which the Waqf belongs."

Waqf Act 1995 (Amended) Section 32-(1) "Provided that in exercising its powers under this Act in respect of any Waqf, the **Board shall act in conformity** with the directions of the Waqif, the purposes of the Waqf and any usage or custom of the Waqf sanctioned by the school of Muslim law to which the Waqf belongs."

In any Waqf, the Waqf Deed (Waqfnama) is the supreme document and overrides any action or other documents. The Government Waqf Board is obligated to adhere to and implement the Waqf Deed.

## 9. Purpose of Waqf

Hazarat Umar ibn al-Khattab (R.A) wrote the terms of his trust relating to his most valuable land in Khaibar in a document and gave witness to that effect during his reign. The text reads that "it [the property] should neither be sold nor made the subject of gift or inheritance. It was a charity (sadaqah) for the poor, relatives, manumission (release from slavery), wonderers, and guests, and for the way of Allah, there be no sin for the administrator to eat from it in moderation or feed friend, but not to accumulate from there." It is considered the first formal and explicit Waqf Deed created and written by the second Caliph of Islam (635-645). There are numerous examples of the companions of our Prophet (P.B.U.H), who created similar charitable institutes for religious purposes, public needs, and family protection.

Even after the demise of our Prophet (P.B.U.H), there was a surge in the creation of similar institutes. Such actions of Muslims were called permanent charity (Sadaqah Jariyah). Based on these events, the jurists of Islam founded the theory of Waqf or Habs.

Waqf has historically played an instrumental role in the development of given societies and in providing the means of sustenance to the socially backward and downtrodden Muslim and non-Muslim masses.

Muslim economists and scholars have acknowledged that Waqf is an integral and vital part of the Islamic socioeconomic system. Hence, it is essential to rectify the dominant prevailing perception that Waqf properties are meant only for religious purposes. Waqf institutions should emulate, wherever possible, the approach taken by the Foundations in western societies, to improve their operations and increase their endowment resources. Waqf institutions should also consider widening the scope of their activities to include all other programs that have positive impacts on the livelihood of society but do not go against the Shari'ah.

Education plays an essential role in improving the socioeconomic status of a society. According to the human capital theory, education or training raises the knowledge and skills of the workers, making them more productive and hence increasing the worker's ability to command a higher income. It will, subsequently, lead to higher lifetime earnings (Becker, 1994).

One of the missions of Waqf is to uplift the socio-economic status of society through education programs. It is achievable through Waqf scholarships towards enhancing professional knowledge and skills and thus contributing to an enhanced rate of employment in the economy.

Waqf is a potential source of financing and a mechanism for wealth distribution where funds are diverted from consumption to productive assets that provide revenue. The revenue can be used transparently by all stakeholders including for the provision of social services, such as education, hospitals, and public facilities, such as roads, masjids, and bridges, caring for the orphans, the poor, the needy, the widows, the disabled, the old, etc.

The determination of the objective and purpose of the Waqf depends on the intention of its founder; the most important of them is the spiritual reward and humanitarian missions, i.e., charity (Sadaqah Jariyah) such as assisting the poor and the needy and the protection of heirs and their descendants from poverty and hardship.

Economists and economic scholars have long recognized the value and contribution of public, private, and third sectors in the economy. From the Islamic financial perspective, Waqf is a vital instrument that is present in this third sector. Waqf plays a very significant role in uplifting the socio-economic status of the society, while in western culture; foundations play a massive role in promoting the economic growth of western countries.

Today, most people perceive Waqf only as a religious act in giving away lands for the development of masjids, religious schools, orphanages, and cemeteries. Not many see Waqf as a powerful financial instrument for developing productive properties that will further enhance the wealth of the Muslims and, ultimately, improve the socio-economic condition of the society. The concept of Waqf in Shariah is regarded as an empirical embodiment of philanthropic and charitable deeds.

According to UNDP multidimensional poverty index, almost 1.5 billion people in 91 developing countries live in poverty with deprivations in health, education, and living standards. Waqf (Islamic Endowment) is considered a competent Islamic institution to reduce poverty and improve human well-being in societies. Waqf institutions are expected to prioritize social and development objectives alongside financial objectives.

As stated earlier, the contribution of Waqf is very significant towards the socioeconomic development of a country. After the demise of the Prophet (P.B.U.H.), Waqf became very common. There were Waqfs for masjids, universities, schools, hospitals, orphanages, houses and food for the poor, the blind, battered/abused women, soup kitchens, wells, aqueducts, fountains, public baths, watchtowers, bridges, cemeteries, salaries, pensions, guest houses, libraries, books and animal welfare (Ali, 2009).

Waqf seeks to achieve two kinds of objectives, one is spiritually related (Sadaqah Jariyah) and the second is the benefit to society. The second objective demands efficient and effective management and professional investment strategies. In short, a well-structured Waqf system can have a profound and lasting impact on a country's economic, social, and financial landscape.

# 10. Waqf reference in the Constitution of India

The Constitution of India has recognized the institution of "Waqf' as a concept covering "Trusts and Trustees" and "Charities and Charitable Institutions, charitable and religious endowments and religious institutions which are incorporated in entries 10 and 28, respectively of List III (Concurrent List) of the Seventh Schedule to the Constitution. Thus, both the Central and State Governments may make laws relating to Waqf.

#### 11. Central Waqf Council

The Central Government constituted the Central Waqf Council under Section 9 of the Waqf Act, 1995, which has twenty members from a cross-section of eminent persons. The Council is headed by a chairperson, who is the Union Minister in charge of Auqaf. There are State/UT Waqf Boards for managing and administering respective Auqaf under each state.

Even State and Central Government organizations and institutions are holding possession of some of the Waqf properties. (See Section 104-B). In this dismal scenario, a large number of registered Waqfs, which were meant to uplift the poor and needy Muslims, have not achieved their purpose. The State Waqf Boards' decisions are challenged and not implemented, and several cases are pending either in Waqf Tribunals or in other Courts.

As a result, Mansha-e-Wakif is getting ignored, and encroachers, which include squatters, private business people, and vested interests, are holding possession of the Waqf properties.

Under Section (4) [The State Government or, as the case may be, the Board, shall furnish information to the Council on the performance of Waqf Boards in the State, particularly on their financial performance, survey, maintenance of waqf deeds, revenue records, encroachment of waqf properties, annual reports and audit reports in the manner and time as may be specified by the Council and it may suo motu call for information on specific issues from the Board, if it is satisfied that there was prima facie evidence of irregularity or violation of the provisions of this Act and if the Council is satisfied that such irregularity or violation of the Act is established, it may issue a such directive, as considered appropriate, which shall be complied with by the concerned Board under intimation to the concerned State Government.]

#### 12. The function of the State Waqf Board

The State Government has constituted the office of State Waqf Administration, State Waqf Board, and a permanent position of CEO (Chief Executive Officer) with the delegation of powers specified in the Waqf Act 1995 Amended.

The general superintendence of all Auqaf in the State is vested in the State Waqf Board. The Waqf Board has to ensure all Auqaf are properly maintained, controlled, and administered and the income is duly applied to the objects and purpose for which such Auqaf were created or intended. (Section-32)

The State Wakf Boards, have been at the center of numerous controversies, involving corruption, land encroachment, and misappropriation of funds.

Most Auqaf in the country is mismanaged and misappropriated despite an overall representative structure in place. Unfortunately, in some States, there is no permanent CEO, and the Waqf Board fails to meet regularly to discharge its responsibility.

The composition of the Board under Section 14 is not democratically elected except for the representation from the Mutawalli quota. Most of the members that constitute the Board are nominated and are under political patronage, and as such are unable to meet regularly and execute decisions or pass resolutions in a specific time frame. Within the existing Waqf Act, one of the solutions is to <u>increase the number of legal advisers</u> on the Board.

The State Government has also constituted a judicial Tribunal, under Section 83, which has the power to decide all matters related to Waqf. No appeal shall lie against the decision of the Tribunal except the High Court has authority over the order or judgment of the Tribunal, if approached by the aggrieved person.

#### 13. Management of Waqf Assets

The lack of governance on Waqf assets has caused people to have minimal trust in Waqf institutions. The inefficiency in the administration and management of Waqf institutions are the main factors that have hindered the potential growth of Waqf. Many Waqfs may not be efficiently developed and may remain idle. Consequently, these Waqfs may not be able to assist in uplifting the socio-economic condition of the society.

The number and value of Waqf assets have been growing very significantly in recent years due to the increasing understanding of Auqaf; hence, proper governance of these assets is crucial. The development of Auqaf is the key to the treasure trove of these properties that have now acquired economic potential beyond imagination. The survey revealed that their number is 490,000 (Government of India, Sachar Committee's Report, 2006, p. 220)

Centuries ago, Ausaf's significance as a financial instrument to uplift the socio-economic condition was well established; it has yet to demonstrate the same level of relevance in today's world. Waqf institutions face many challenges, such as, among others, lack of financing, efficient management teams, legal consultation, etc. Thus, to solve their financing problems, contemporary Muslim scholars should go back and revive their traditional modes of financing as well as innovate new methods of funding the development of Waqf properties and enhance Waqf management radically.

Scholars argue, "The institution of Waqf in India is most misunderstood and Waqf properties mismanaged." Furthermore, they claim that what reflects the glaring malpractices of Waqf management in the country is the fact that most of the Waqf properties are either severely subject to the encroachment of influential individuals, or into a state of dilapidation. About,

almost seventy percent of Indian Waqf properties have been infringed upon while the rest are subject to the pathetic mismanagement of administration. Also, in most cases, the Mutawalli who are supposed to be the custodians of these Waqf properties do trickily extend their appropriateness to them.

Today mutawallis consider Waqf as their kingdom; at least they forget that they are only <u>caretakers</u>, <u>managers</u>, <u>and custodians of Waqf properties</u>. Their roles and responsibilities under the Waqf Act 1995 (Amended) are defined. Failure to adhere to their roles and responsibilities and their illegal activities such as alienation of Waqf properties <u>can result in fines and jail terms</u> under the various provisions of the Waqf Act 1995 (Amended) such as:

Under Section 52A-(1) of Waqf Act 1995 (Amended): "Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a Waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years."

Note the word "Whoever" in Section 52A-(1) includes everyone in the chain such as the seller, purchaser, registrar, revenue official, signed witnesses to document, advocates who drafted and represented sellers/purchasers, and every other person associated concerning the alienation of Waqf properties. It is a compelling section of the Law to protect Waqf properties. However, with the amendment of 2013, section 104A overrides the sanction of the Board.

Under Section 56-(1) of Waqf Act 1995 (Amended): "Provided that a lease for any period up to thirty years may be made for commercial activities, education or health purposes, with the approval of the State Government, for such period and purposes as may be specified in the rules made by the Central Government."

Under Section 61-2(b) of Waqf Act 1995 (Amended): "a mutawalli furnishes any statement, return or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular, he shall be <u>punishable with imprisonment for a term which may extend to six months and also with fine</u> which may extend to fifteen thousand rupees."

Under Section 64 of Waqf Act 1995 (Amended): "Removal of mutawalli. - (1) notwithstanding anything contained in any other law or the deed of Waqf, the Board may remove a mutawalli from his office if such mutawalli-

- (a) has been convicted more than once of an offense punishable under section 61; or
- (b) has been convicted of any offense of criminal breach of trust or any other offense involving moral turpitude, and such conviction has not been reversed, and he has not been granted full pardon concerning such offense; or
- (c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or
- (d) is an undischarged insolvent; or
- (e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or
- (f) is employed as a paid legal practitioner on behalf of, or against, the Waqf; or
- (g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by subsection (2) of section 46; or

- (h) is interested, directly or indirectly, in a subsisting lease in respect of any Waqf property, or any contract made with, or any work being done for, the Waqf or is in arrears in respect of any sum due by him to such Waqf; or
- (i) continuously neglect his duties or commits any misfeasance, malfeasance misapplication of funds, or breach of trust with the Waqf or respect of any money or other Waqf property; or
- (j) willfully and persistently disobeys the lawful orders made by the Central Government, State Government, or Board under any provision of this Act or rule or order made thereunder;
- (k) Misappropriates or fraudulently deals with the property of the Waqf."

Section 107. Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any Waqf or for possession of any interest in such property.

Section 108A. The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act.

Waqf institutions have a lot to do to improve their operations, especially in the Administration and Management of Waqf, the Accounting, and Governance of Waqf. Waqf, with proper governing, guidance, management, information, and knowledge (both in terms of legal and Shari'ah), can alleviate poverty.

The majority of Muslim scholars think that the Waqf is both lawful and recommended based on general and specific evidence. As for widespread evidence, they consider it an act of charity. It can support a more equitable redistribution of wealth to eventually allow for the creation of sustainable and perpetual benefits not only for the Muslim community but also for the entire society.

#### 14. A person interested in a Waqf

Every Muslim is the recipient, guardian, and executor of Allah's will on earth; Ihsan (social responsibility) constitutes the highest form of Ibada (worship). Muslim responsibilities are allencompassing and individual responsibility is the cornerstone of the Muslim faith.

The Waqf Act 1995 (Amended) is robust legislation that can be used by a "person interested in a Waqf" to bring a radical change of transparency, accountability, and professionalism in the governance of Waqf.

The Waqf Act 1995 (Amended) under section 3-(k) "Any person interested in a Waqf means any; a person who is entitled to receive any pecuniary or other benefits from the Waqf and includes-

- i. Any person who has a right to [offer prayer] or to perform any religious rite in a masjid, idgah, imambara, dargah [khanqah, peerkhana, and karbala] maqbara, graveyard, or any other religious institution connected with the Waqf or to participate in any religious or charitable institution under the Waqf;
- ii. the Waqif and any descendant of the Waqif and the mutawalli;

Under Section-70 of the Waqf Act 1995 (amended): "Inquiry relating to the administration of Waqf. - Any person interested in a Waqf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the Waqf. If the Board is satisfied that there are reasonable grounds for believing that the affairs of the Waqf are being mismanaged, it shall take such action thereon as it thinks fit."

Under Section-71. Manner of holding the inquiry. - (1) The Board may, either on an application received under section [70] or on its own motion, - (a) hold an inquiry in such manner as may be

prescribed, or (b) authorised any person on this behalf to hold an inquiry into any matter relating to a Waqf and take such action as it thinks fit. (2) For the purposes of an inquiry under this section, the Board or any person authorised by it on this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents.

Under Section 83-(2) of the Waqf Act 1995 (amended): "Any mutawalli, person interested in a Waqf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the Waqf."

Section 101- Survey Commissioner, Board, Officers, and Staff of Waqf Board and Mutawallis are deemed to be PUBLIC SERVANTS.

It is part of a Muslim's faith to uphold the truth and to say things that bring about benefit to others. In matters of Waqf speak, act against injustice and misuse through legal channels available to "person interested in a Waqf." It is your moral duty to create mass awareness to open the gates to the hidden treasures of Waqf.

"Indeed, Allah will not change the condition of people until they change what is in them." (Al-Quran Surah 13:11) Translation Maududi

"O ye who believe! stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do." (Al-Quran Surah 4:135) Translated by Yusuf Ali.

#### 15. Procedure regarding the removal of Mutawalli under Section 64

- The Chief Executive Officer shall issue a notice to hold an inquiry against the mutawalli against whom action for dismissal under section 64 of the Act.
- The Board shall conduct a summary inquiry under rule 48.
- Upon the conduct of the inquiry, under sub-rule (2), and upon the order of suspension of the mutawalli by the Board under sub-section (5) of section 64 of the Act. The Chief Executive Officer shall issue a notice of suspension to the concerned mutawalli calling upon him to explain why such an order of suspension not be released to him.

#### 16. Approval of Scheme

Under Section 69 of the Waqf Act 1995, the Waqf Board has exclusive rights to frame and approve the <u>Scheme for the Management and Administration</u> of Waqf institutions, either on its initiative or on the application of at least five "persons interested in a Waqf". The WB after giving reasonable opportunity and after consultation with the mutawalli or others may replace the mutawalli and in case of hereditary mutawalli, must provide for the appointment of the person next in a hereditary succession of the mutawalli so removed. The WB also has the power under this section to cancel or modify the Scheme. Any Order so passed shall be published and can be challenged by an aggrieved party in the Tribunal, within 60 days. The Tribunal may confirm, reverse, or modify the order, provided further that the Tribunal shall have no power to stay the operation of the order.

Any Scheme Order by the Waqf Board for the Management and Administration of Waqf Institution must comply with Waqf Act-1995 Section 25-2 and Section 32-1 if a Waqfnama exists. These two Sections reiterate the importance of the contents of the Waqfnama. Neither the Waqf Board nor the CEO nor the Tribunal,

nor the Government can go against the contents and direction of the Wagfnama.

Under Section 27, the Board may, by a general or special order in writing, delegate to any other member/officer including the CEO of the Board specific powers and duties under this Act.

However, the Waqf Board cannot give powers and functions of the Board mentioned under clauses (c), (d), (g), and (j) of sub-section (2) of section 32 and section 110. Section 32-d refers to settling schemes of management for a Waqf. This power only rests with the Waqf Board.

#### 17. Government Survey of Wagf Land

Every ten years, the state government, through a notification in the Official Gazette appoints for the State a Survey Commissioner of Auqaf and as many Additional or Assistant Survey Commissioners of Auqaf as may be necessary for doing a survey of Auqaf in the State.

All Additional and Assistant Survey Commissioners of Auqaf shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Auqaf.

There are many Auqaf not registered with Waqf Board; furthermore, those that are registered have missing or incorrect information relating to Revenue data. It is the moral responsibility of a "person interested in a Waqf" to bring to the notice and actively involve the local Waqf Administrators in ensuring the correct implementation of the Waqf survey.

It is important to note that the Revenue Data (7/12 Extracts) should have only the name of Waqf institute and should not have names of mutawalli or names of encroachers. It is the first step towards the removal of encroachers of Waqf properties. Further action will be required through the office of the Collector of the

region, by the directive of the State Waqf Board under Section 52 and Section 54 of Waqf Act-1995 Amended.

If any question arises whether a particular property specified as Waqf property in the list of Auqaf is Waqf property or not or whether a Waqf specified in the such file is a Shia Waqf or Sunni Waqf, the Board or the mutawalli of the Waqf institution or [any person aggrieved] may institute a suit in a Tribunal, for the decision of the question and the decision of the Tribunal in respect of such matter shall be final.

The statute of limitation to approach the Tribunal is one year from the date of the publication of the list of Auqaf, however, in most instances, it is condoned.

Finally, concerned authorities of the WAMSI portal, described in part 20 of this document should upload the Data from the survey. "Person interested in a Waqf" is obligated to ensure it is done.

# 18. Removal of encroachment from Waqf property

Section 54 of the Waqf Act, 1995, as amended by the Waqf (Amendment) Act, 2013, makes provision for the removal of encroachment from Waqf properties. However, the regulation is not stringent enough to effectively deal with encroachment and illegal occupation of Waqf properties.

The matter regarding the feasibility of bringing a new Stand-alone Legislation on the lines of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, was taken up with the Ministry of Law & Justice, who advised that there is no legal or Constitutional objection in bringing such Legislation.

Thus, the Ministry of Minority Affairs formulated "The Waqf Properties (Eviction of Unauthorized Occupants) Bill, 2014" and introduced it in Rajya Sabha. The Bill was referred to the Standing

Committee on Social Justice and Empowerment for examination and report. The Bill is pending Legislation in the parliament.

The proposed bill would stop the alienation of the Waqf properties and would ensure the removal of encroachments from waqf properties. The income generated through these properties would be utilized for the benefit of the downtrodden, the poor, and the needy people of the community. Awareness programs for support at all representative levels need to be initiated.

# 19. Government Programs for the Development of Waqf

a) Shahari Waqf Sampatti Vikas Yojana (Former Scheme for Grants-in-aid to Waqf Development of Urban Waqf Properties): - The Scheme for the Development of Urban Waqf Properties was launched by the Council in 1974-75 with the Grant-in-Aid of the Government of India to augment the resources of the Waqf Institutions and for better realization of the objectives of the Waqif appreciating the response the scheme is containing. Under this scheme, the Council has been providing loan assistance through the respective State Waqf Boards for taking up economically, and commercially viable buildings on Waqf land, such as commercial arcades, Marriage halls, Hospitals, Cold Storage, etc. The Ministry of Minority Affairs, Government of India, has been providing annual Grant-in-Aid for these specific purposes.

Under the 'Pradhan Mantri Jan Vikas Karykram' (PMJVK), the government also provides 100 percent financial assistance in case of use of Waqf Properties, for building schools, hospitals, medical colleges, skill centers, and other such establishments of public use.

<u>Educational Scheme:</u> - Coaching Muslim Students for competitive examinations for jobs based at the graduation level in consultation with Jamia Millia Islamia, New Delhi,

- Jamia Hamdard, New Delhi, and Aligarh Muslim University (AMU), Aligarh.
- b) Quami Waqf Board Taraqqiati Scheme (QWBTS) formerly Scheme of Computerization of Records & Strengthening of State Waqf Boards: On the recommendation of the Joint Parliamentary Committee on Waqf, the Ministry of Minority Affairs, Govt., launched a Central Sector Scheme of "Computerization of the Records o Waqf Boards". In India, in December 2009, and after the evaluation of the Scheme, it further continued during the 2017-18 to 2019-20 financial years. Now the Scheme is renamed as "Quami Waqf Board Taraqqiati Scheme (QWBTS)." The Central Waqf Council, New Delhi, has been made the Nodal Agency for the implementation of the Scheme. Details are available on the Central Waqf Council site www.centralwaqfcouncil.gov.in
- c) National Waqf Development Corporation Ltd. (NAWADCO) As per estimation by the Sachar Committee Report, 2006, there is about 4.9 lakh registered Waqf properties comprising about six lakh acres of land. The approximate market value of these properties is Rs. 1.20 lakh crore.

NAWADCO was established with an authorized capital of Rs.500 crore and paid-up share capital of Rs.100 crore and was incorporated on 31.12.2013 under the Companies Act 1956 by the Central Government of India, under the aegis of the Ministry of Minority Affairs, New Delhi, and formally launched on 29th January 2014.

It is an apex institution working for the protection and development of Waqf properties for the socio-economic and educational empowerment of Muslims in India. NAWADCO's principal objectives are: -

- To act as a specialized nodal agency for the financial and developmental institutions to develop Waqf properties as India has the most significant Waqf properties in the world.
- To provide consultancy, i.e., managerial, financial, and engineering to the Waqf Boards/ Waqf Institutions and Mutawalli for increasing the productivity of Waqf properties.
- 3) To arrange financial assistance based on the Islamic Shari'ah Principle for the development of viable Waqf properties transparently and professionally to ensure the enhancement of their income for the benefit of the Muslim community based on Islamic principles of Shari'ah.
- 4) Guide to Waqf Boards/ Waqf Institutions and Mutawalli for the management and utilization of surplus income based on Shari'ah principles.

The existing assets of Auqaf in India represent a massive amount of social wealth that can be developed to produce a lot of social services, mainly, with the increase in their capital value as a result of the economic and demographic changes. Auqaf can play an essential role as a third sector in the development of our economies.

# 20. WAQF MANAGEMENT SYSTEM OF INDIA (WAMSI)

An Online System for Searching Waqf Properties in a specific area and their status. Many Waqf properties are not in this system; further, the data is incorrect. The government is also carrying out GIS mapping of all Waqf properties in the country, for its better management and use for the welfare of the community.

The Online system is at State and Central levels. The data for Auqaf, in many cases, do not match. A lot of information is either missing or inaccurate. Inventory in WAMSI needs to be updated.

#### 21. Innovative Development Model for Wagf Land

According to Muhammad Tahir (2005), in Joint Venture (JV), the Waqf institution plays the role of a landowner and enters into a partnership with a financer or development company. The developer, however, should seek project funding, therefore, saving the Waqf land from being used as security for a loan. The manner of JV between the Waqf institution and the development company can be is either through **Mudarabah** or **Musharakah**.

**Mudarabah** is a partnership in which the investor and the fund manager agree that the former provides capital, the latter manages it (by doing trading), and the profit is shared according to a predetermined ratio. The partnership terminated once the money was returned.

**Musharakah** is a partnership, whether through contract or coownership. Contractual Partnership refers to a contractual relationship between two or more persons who have willingly agreed to an agreement for joint investment and sharing of profits and risks. In co-ownership, two or more persons are caused to share one piece of property.

However, there are several other modes of financing for developing Waqf land where it is a matter of need, as in the case of revivification. The institution of Waqf possibly has no capital and, therefore, may seek 100 percent financing while in the case of investment when the institution acts as a financier, it may need financing partners in return for a small share in the completed project.

JV has become a new initiative to rejuvenate, revive, and develop Waqf through contemporary Islamic financing (Shamsiah, 2010). The benefits of a Joint Venture among others are; -

i. It creates more significant economic potential/benefits for the ummah.

- ii. It is unlocking the real value of Waqf, where after revivification, the property will have real economic value that suits the property markets instead of being abandoned and dilapidated.
- iii. Revive the spirit and awareness of Waqf, where the Waqf property will gain more intention and assistance to be developing to its true potential.
- iv. It creates a proactive effort to match Waqf's intention with the usage of land.
- v. It creates people's Waqf through the issuance of Waqf certificates for mass participation. These Waqfs shares are used as capital in a Joint Venture agreement with other investors or financial institutions.

The successful JV contemporary mode of finance could increase the involvement of private investors and suitable financial institutions. The land must be ready to be developed and not have any issues or problems that hinder it from development.

Developing Waqf properties is an obligation in ensuring Waqf institutions prosper and be a catalyst to Muslim's economic progression. Waqf property development must meet two **primary objectives**, i.e., Tahbis al-Asl, which controls and **preserve assets** that are under Waqf from being lost or damaged, and Tasbil al-Thamarah, which **delivers benefit** from Waqf assets.

Islam has developed the Waqf institution based on rules stipulated by Shari'ah (Islamic laws) and catalyzed its growth until it appears to be the source of the financial development of Muslims and the root of success for the Islamic Social Security System. A Joint Venture is an alternative option for a long-term Lease or development under the sections stated below.

Under Section 32-(4) "Where the Board is satisfied that any Waqf land, which is a Waqf property, [has the potential for development as an educational institution, shopping center, market, housing or

residential flats and the like] market, housing flats and the like, it may serve upon the mutawalli of the concerned Waaf a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works, specified in the notice. (5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may,[]take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from Wagf funds or from the finances which may be raised on the security of the properties of the Waaf concerned, and control and manage the properties till such time as all expenses incurred by the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate changes incurred on the property are recovered from the income derived from the property: Provided that the Board shall compensate annually the mutawalli of the concerned Waaf to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board. (6) After all expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to the mutawalli of the concerned Waaf.

# 22. Zakat and Charity (Sadaqah)

The resource is Allah's 'blessing,' and seeking it correctly, is considered an act of worship in Islam. The Qur'an has explicit guidelines about the ways of resource creation and the rights to resources. Islam provides a broad foundation for the distribution of income and resources to avoid its accumulation to a great

extent. What is prohibited in resource creation is also indicated in the Qur'an.

Resources in Islam are not used in a 'static' sense as it is not an end in itself but utilized as a means of reaping the benefits of it by creating higher values through investment. The distribution of wealth is a vital issue to make it more dynamic, prejudice-free, and entrepreneurial. Thus, the <u>resources should be earned, invested, and spent in the correct avenues</u> or as per the spirit of Islam, which implies that the reward is distributed to the individual, his family, and society as a whole.

Sadaqah is different from Zakat in the sense that Zakat is compulsory, and Sadaqah is voluntary. Al-Qur'an refers to giving Zakat in many verses, in contrast, the recipients of Waqf funds (Charity) are stated as Sadaqah as long as the purpose is for the betterment of society and does not contradict the Shari'ah.

Zakat is the right of 'needy' persons in Muslim society; therefore, Senturk (2007) stressed that Zakat is an exclusive right the "poor" person possesses in the wealth of the "wealthy."

"Alms are for the poor and the needy, and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to Truth); for those in bondage and in debt; in the cause of Allah; and for the wayfarer: (thus is it) ordained by Allah, and Allah is full of knowledge and wisdom." (Al-Qur'an Surah 9.60) Translation Yusuf Ali

Some jurists reference the "Alms" in this Surah as "Zakat". The verse classifies the recipients of Alms (Charity) into eight classes which are as follows:

i) the poor; (ii) the needy; (iii) administrators of Charity; (iv) those who turn to Islam recently or are going to; (v) prisoners captured in the war; (vi) debtors (vii) soldiers who fought for the state or scholars who study in religion; (vii) travelers.

According to Benthall, the category 'poor' includes "orphans and foundlings, widows and divorcees, prisoners and their families, unemployed and homeless people, students who cannot afford to marry, disaster victims, and those in need of free medicines or dignified funerals." The qualification of the poor may vary depending on circumstances; therefore, the list is not exhaustive.

The Qur'an does not expand in terms of detail as to who the recipients of Zakat are, and therefore the responsibility of fulfilling this task fell upon the shoulders of Muslim jurists. Further information in respect of Zakat is contained in six canonical collections, affirmed by the Muslim community, and is known as Hadith.

"It is no virtue. That you turn your faces towards the east or the west, but virtue is that one should sincerely believe in Allah and the Last Day and the Angels and the Book and the Prophets and, out of His love, spend of one's choice wealth for relatives and orphans, for the needy and the wayfarer, for beggars and the ransom of slaves, and establish the Salat and pay the Zakat. And the virtuous are those who keep their pledges when they make them and show fortitude in hardships and adversity and the struggle between the Truth and falsehood; such are the truthful people and such are the pious." (Al-Qur'an Surah 2:177) Translation Maududi.

"The people ask, "What should we spend?" Tell them, "Whatever you spend, spend for your parents, your relatives, orphans, the needy, and the wayfarer; and whatever good you do, Allah has knowledge of it." (Al-Qur'an Surah 2:215) Translation Maududi.

The Holy Prophet (P.B.U.H) himself had directed Abu Talhah (R.A.) to assign the Mauquf (Waqf property) to his close family. When the verse "You shall not attain righteousness until you spend out of what you love (in the way of Allah), Allah knows whatever you spend." (Al-Qur'an Surah 3:92) Translation Maududi. The act also

sourced upon a hadith of the Prophet (P.B.U.H) that "When a man dies, his acts come to an end, but three, recurring charity (Sadaqah Jariyah), or knowledge that benefits people, or pious son (daughter) who prays for him."

All over the world, this verse is still **recited in the Khutbah** during Friday prayers, "Surely Allah enjoins justice, kindness and the doing of good to kith and kin, and forbids all that is shameful, evil and oppressive. He urges you so that you may be mindful." (Al-Qur'an Surah 16:90) Translation Maududi.

Salman ibn Amir (R.A.) reports that the Prophet (P.B.U.H) said: "Sadaqah, when given to the poor and needy, surely brings the reward reserved for such charity, but, when given to a kinsman (relatives), it brings a twofold reward – one for the charitable giving and the other for having fulfilled the rights imposed by kinship." [Musnad Ahmad, Nasai & Tirmidhi]

Qur'an permits part of "Alms" to those employed to collect [Alms], and, similarly, it is permissible, in my opinion, if part of the usufruct from Waqf is set aside for administrators and Kinsman.

In 1927 Nizam of Hyderabad, obviously after consulting with Shari'ah Jurist, passed a Farman quote: "In the conditional services of MAASH the 1/3rd to the servant, 1/3rd to his fulfillment of conditions and 1/3rd to his legal Heirs or Family Heirs, etc. Except for this in the SANAD, there is no order or direction against it. However, in the future, likewise, table and calculation have been imposed, including the religious service also."

From the above, the Farman is related to Mashrat-ul-Khidmat (Inam Lands) and it's thus concluded that if the <u>Waqfnama does not explicitly prohibit</u>, then the <u>usufruct is distributed</u> in three equal parts, namely Administrators of the Waqf institution, the objective of Waqf, and the Kinsman (Family and Relatives).

QURBANI, the ritual sacrifice of a permissible animal during the Eid ul-Adha period at the end of the Hajj, is regarded as the most preferred Sadaqah (or charity). The charity of the Qurbani is one of the most embracing charities and draws in the whole community: for when the meat is distributed a third goes to oneself, a third to the needy, and a third to relatives and friends.

Narrated Abu Hurairah: the Messenger of Allah (\*\*) said: "Whoever is asked about some knowledge that he knows, then he conceals it, he will be bridled with the bridle of fire." Reference: Jami` at-Tirmidhi 2649, Book 41, Hadith 5, English translation Vol. 5, Book 39, Hadith 2649

Conclusion: The principle and theology of Waqf is an act that Islam appreciably encourages. Resources (Waqf) must be used to generate wealth, and there must be a fair and just distribution of wealth, as mentioned above. There must be equal justice for society as a whole regardless of race, religion, or social status. The mutawalli does not own the assets, resources, and wealth of the people. Allah SWT, who is the owner of the wealth of the people, places this said wealth in the hands of the mutawalli who must then use it responsibly by harnessing it for the well-being, benefit, and prosperity of the society.

The Prophet Muhammad (PBUH) declared during the farewell pilgrimage: "Oh people! Behold, your Creator is certainly One Being. Surely, your father is one person. No Arab is superior to a non-Arab, nor is a non-Arab to an Arab, or a person of fair skin color to a person of dark skin color, or vice versa, except by attaining consciousness of Allah..."

The Qur'an acknowledges that Allah designed human beings to be different from one another, principally by living in distinct social groupings such as different "ethnic groups and tribes" and at the same time emphasizing that all human beings are descended

"from one male and one female" (Qur'an 49:13), implying that, despite their divinely ordained differences, human beings are all part of one family or one big neighborhood before Allah. The very same Qur'anic verse which speaks of these differences as part of the divine plan is quite clear that they are not to be a source of division but rather are to serve as the very media through which human beings "come to know one another," and thereby come together as one meta-community of service to the One Allah (Qur'an 21:92) and one another (Kollar & Shafiq, 2014, p. 306). In addition, the Qur'an honors all the children of Adam (Qur'an 17:70) and affirms human dignity regardless of people's religious, social, racial, and cultural affiliations.

In a well-known verse that implies a deep connection between affirming the oneness of Allah and meeting the needs of others, the Qur'an commands that the neighbor  $(al-j\bar{a}r)$  be treated with the same care as one's closest relations:

"Serve Allah, and join not any partners with Him, and do good – to parents, kinsfolk, orphans, those in need, neighbors who are near, neighbors who are strangers, the companion by your side, the wayfarer (ye meet), and what your right hands possess: For Allah loveth not the arrogant, the vainglorious;" (Al-Quran 4:36)

Qur'anic and Prophetic practice instructs Muslims to do good (Ihsan) to their neighbor who is near and distant, and charity is an excellent way to do good to both Muslim and non-Muslim neighbors.

"And from among you, there must be a party who invite people to all that is good and enjoin the doing of all that is right and forbid the doing of all that is wrong. It is they who will attain true success." (Surah 3:104). Translation Maududi

Let us endeavor and make Waqf a means to contribute to the prosperity of our Nation.

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