

Waqf Record Management in India

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(Dr. Amir Afaq Ahmad Faizi)

Preface

Islam strongly subscribes to endorsing socio-economic and welfare-friendly practices, and promotes all sorts of philanthropic and charitable activities. The concept of *Waqf* (endowment) in the *Shariah* is an empirical embodiment of this very proposition. *Waqf* is the permanent dedication by a person professing Islam, of movable or immovable property for any purpose recognised by the Islamic Law as pious, religious or charitable, the sole aim to appease Almighty Allah. In the Islamic system of waqf, an arrangement for using the usufruct for the socio economic upliftment of the community and upholding and managing the property in an intergenerational administrative set up like trusts.

Indian *Waqf* properties are among the largest *Awqaf* in the world, thus having a greater potential. However, may be due to the prevailing excessive political uncertainty and ambiguous fate of such a philanthropic institution, outcome of the *Awqaf* resources is not being recognised.

Due to lack of systematic documentation, *Waqf* records are not properly maintained and their preservations are not convincing enough as it is not done scientifically or in the legal way. There are cases found where survey records do not match with the preserved record. State control of *Waqf* management is an important issue that needs serious attention. People's participation in *Waqf* administration will help in bringing transparency, accountability and efficiency. According to the Sachar Committee Report, the *Awqaf* administration and management in India is in disorder with evidences of their misuse crumbling down slowly towards a sure death due to the extensive mismanagement, ill-administration, misuse,

encroachments, apathy and disuse of the *Awqaf* properties in the whole of the country.

At this juncture, application of IT has become important in managing the national *Waqf* data to result in the organizational efficiency and transparency. As a step towards this, the computerisation of Waqf records and development of WAMSI and its website brings us a hope for future management of Waqf records in the country, though the present status is not very much apparent. The WAMSI website is not properly maintained so far in all the states. The more recent approach by using GIS (geographical information system) is an innovative way to help managing the *Awqaf* more efficiently to bring transparency, more efficient and encroachment-free *Waqf* administration and management in the country. Employment of a new practical approach is very important. Bringing in more efficient and competent professionals as well as providing training to the existing staffs will result in a more efficient administration and better management of the *Waqf* properties.

The present study reveals that the status of property record management in *Awqaf* is not in further dedicated research to investigate and discover the list of different types of *Awqaf* and their nominated beneficiaries are important to result in evolving a robust strategy for distribution of revenues effectively. Need of specifically consolidated research on the socio-economic aspects of *Awqaf* in the country is vital to identifying the research gaps and focus on the development of *Waqf* administration and bring an impact in the country.

The present volume looks into the *Waqf* property record management in India in detail with proper documentation and analysis of all the records available, highlighting the present status of its administration and management and how it can be brought into a more efficient, effective and sustainable system and methodology. This will contribute as a source of *Waqf* documentation and research reports that may guide to future researchers, administrators and managers.

GLOSSARY

Waqf

The Waqf Act, 1995 under Section 3 [r] defined the term "Waqf" as the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

- **Waqf by 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:
- **Shamlat Patti, Shamlat Deh, Jumla Malkkan** or by any other name entered in a revenue record;
- **Grants:** including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and
- **Waqf-alal-aulad** to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law.

Plural is Awqaf

Waqif: Donor of the Waqf property

Board: means a Board of Waqf established under sub-section (1), or as the case may be, under sub-section (2) of section 13 and shall include a common Waqf Board established under section 106 of the Waqf Act;

Chief Executive ***Officer:*** means the Chief Executive Officer appointed under sub-section (1) of section 23 of the Waqf Act.

Executive Officer: means the Executive Officer appointed by the Board under sub-section (1) of section 38 of the Waqf Act;

Member : means a member of the Board and includes the Chairperson;

Mutawalli : Under Section 3 clause (I) mutawalli is defined as any persons appointed either verbally or under any deed or instrument by which a waqf has been created or by a competent authority to be the mutawalli of a waqf by virtue of any custom or who is a naib-mutawalli, Khadim, Mujawar, Sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and, save as otherwise provided in this Act, any person, or committee or Corporation for the time being managing or administering any waqf property as such.

Beneficiary: Section 3 clause (a) defines beneficiary as a person or object for whose benefit a waqf is created and includes religious, pious and charitable objects and any other object of Public utility sanctioned by the Muslim Law. Benefit does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli;

Shia Waqf: means a Waqf governed by Shia law;

Sunni Waqf : means a Waqf governed by Sunni law;

Survey Commissioner : means the Survey Commissioner of Waqf appointed under sub-section (1) of section 4 and includes any Additional or Assistant Survey Commissioner of Auqaf under sub-section (2) of section 4;

Tribunal : in relation to any area, means the Tribunal constituted under sub- section (1) of section 83, having jurisdiction in relation to that area;

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 been varied;

Waqf Fund : means a Waqf fund formed under sub-section (1) of section 77. C

Survey of Awqaf: Chapter II of the Act containing sections 4 to 8 provides for the survey of the waqf properties by a special officer called Commissioner of waqfs. He is charged with the duty to submit his report, after making inquiry, in respect of waqfs existing at the date of commencement of this Act in the State or any part thereof, to the State Government. The Commissioner shall furnish information regarding the number of waqfs in the State showing Shia Waqfs and Sunni Waqfs separately, the nature and objects of each waqf, the gross-income of the waqf property, the amount of land revenue, cesses, rates and taxes payable, the expenses incurred and the remuneration of the mutawalli of each waqf and such other particulars as may be prescribed (Section 4, sub-section 3 clauses [a] to [f]). While making such inquiries the Commissioner has the same powers as are vested in a Civil court under the Code of Civil Procedure for the purposes of summoning and examining any witness, compelling discovery and production of any documents or public records from any court or Office, issuing Commissions for the examination of any witnesses or accounts, and making local investigation (Section 4 clause 4). On receipt of the report from the Commissioner of waqfs, the State Government shall forward the copy of the same to the Waqf Board. The Waqf Board shall examine the report and should publish the same in the Official Gazette (Section 5). If any dispute arises with regard to the very nature of waqf or whether a waqf specified in such list is a Shia Waqf or Sunni Waqf, the Board or the mutawalli of the waqf or any person interested therein may institute a suit in a Tribunal whose decision shall be final (Section 6). The Act further provides that the total cost of making survey including the cost of publication of the list or lists of waqfs under this Chapter shall be borne by all the mutawallis of the waqfs whose net income exceeds rupees five hundred annually. Such cost is recoverable as arrears of land revenue (Section 8).

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Chapter 1

***Waqf* and its Historical Development in India**

The *Waqf* is the religious endowment for the Muslim. It owns land and other properties that have been given to it by the state and private individuals, and it manages these properties. It ensures the commitment of providing economic security to the property owners in return of social services done. The term '*Waqf*' has been derived from the Arabic word 'Waqufa', which means 'to detain or hold or tie up'. It has its origin in the early history of Islam. Khalifa Omar once acquired a piece of land in Khaybar and asked the Prophet Muhammad SAW as how best to make the most pious use of it can be made. The Prophet replied, "Tie up the progeny and devote the usufruct to the welfare of human beings, and it is not to be sold or made to be the subject of gift or inheritance, devote its produce to your children, your kindred and the poor and in the way of Allah". So, from this we can say that *Waqf* is the permanent dedication by a person professing Islam, of movable or immovable property for any purpose recognised by the Islamic Law as pious, religious or charitable.

The *Waqf* has originated from shari'a, or religious law of Islam¹. Islam is divided into two prominent school of thought, viz. Sunni and Shiite. Sunnis usually follow one of the four schools of jurisprudence². Different regions of world differ in their approaches depending upon the dominance of the particular school of thoughts. The jurisdiction of Sudan or Africa

¹ For details please refer to Mumtaz Qader Mirza N. Safdar Vs. Advocate General, AIR (33), 1946 Oudh 244 at p.245

² Efforts have been made to accommodate the differences among the various schools. Thus, legal forms have been written to satisfy the requirements of all of them. In addition, Muslims can apparently designate as governing law in agreements, including waqf-ndma (the creating instrument), the rules of one school or another. More recently, Arab states have freely accepted principles from schools predominant in other countries and incorporated them in statutes. See Herbert J. Liebesny, The Law Of The Near And Middle East 22 (1975). See Also Choucricardahi, Conflict Of Laws, In 1 Law In The Middle East, supra note 3, at 334, 341-42. But see Fyzee, supra note 3, at 87 (noting that, in India, a "court is not entitled on the score of social justice to adopt a rule taken from another school of Islamic law.").

west of Egypt³, Saudi Arabia⁴, part of Central Asia⁵, or within a band stretching from Egypt and East Africa through parts of the Persian Gulf area and on to southern Asia, all are not necessarily bound to follow the same approaches of Islamic *Waqf*. Additionally, school of Shiite tradition in Iran and Iraq has their own coherent system of law.

The genesis of these robust Islamic institutions can be found way back in the era of Prophet Mohammed_{SAW}. Once, he directed one of his caliphs, Omar ibn al-Khattab to declare his property undisputed. The envisaged objective was to get used this property used as charity forever. The philanthropic foundation of *Waqf* was laid then only. Since centuries, endowment of waqf has been done with the intended objective of charity. In Turkey, three-quarters of the land and buildings were endowed as waqf properties already when Ottoman Empire suspended and the waqf institutions got prominence. Though, in holy Qur'an, *Waqf* is not directly quoted. The concept of *Waqf-ahli*, or *Waqf-dhurri* (family *Waqf*) came into force over time and served a worthy purpose.

Superficially the basic nature of waqf resembles to that of the trust. The property is normally transferred to the Mutawalli by waqf so like the trust where the transfer made to trustee by the settler. Ideally, as trust *Waqf* instrument appoint Mutawalli and name its successor. If not, then the successor would be selected by the *waqif* or the supervisory judge, of the *Waqf*. The Mutawalli is the backbone of the waqf institutions otherwise the whole concept would be forfeited. The procedure by and large being followed everywhere in the Islamic world. On the other hand, Shiite jurists have upheld the validity of the waqf under these circumstances, but have considered the beneficiaries to have become the Mutawallis. Mutawalli has given power of administrating the *Waqf* properties. But, not entitled to sell out

³ The predominant school here is the Malilite, which is also followed by certain adherents in Kuwait, Bahrain, Oman, and in the eastern Saudi Arabian provinces. It is apparently characterized by a pragmatic orientation. See FYZEE, *supra* note 3, at 34. See also Joseph Schacht, *The Schools of Law and Later Developments of Jurisprudence*, in 1 *Law In The Middle East*, *supra* note 3, at 58, 69.

⁴ The Hanbalite School prevails in Saudi Arabia as well as in Qatar. It is generally regarded as the most fundamentalist school. See Fyzee, *supra* note 3, at 35. See also Liebesny, *supra* note 11, at 21.

⁵ The dominant school is the Hanafite. It has been described as the most liberal school. See FYZEE, *supra* note 3, at 33-34.

the properties until and unless allowed by the court of law or *Waqf*'s endowment authorities. Even if sold, the property has to be replaced with like-kind property.

In the Islamic system of waqf, an arrangement for intergenerational administration is set up like trusts, where restriction of law of inheritance is bypassed from the perspective of wealth management and distribution amongst the family. The testator is required to dedicate certain percentage of wealth to various heirs and distant relatives followed by the Islamic inheritance law. Usually, one third of the estate is left with the heirs to control and that is fixed not to be increased or decreased without consent of one another. Consequently, the descendant is not left with enough to meet the requirement of his immediate family, the rule of waqf allows them only this.

The institution of waqf has got vivid legality in the second century AH while its development started in the First century AH only.

Henry Cattan in his book entitled, "Law in the Middle East", mentioned that "*the institution of Waqf has developed with Islam and there is no evidence that such a complex system of appropriating usufruct as a life-interest to varying and successive classes of beneficiaries existed prior to Islam. Although the separation of ownership from the usufruct was not a new legal concept, the settlement of usufruct or property on successive generations in perpetuity for an immediate or ultimate charitable purpose, is an institution developed by the jurists during the first three centuries of Islam*". Henry Cattan further explains that "*the close resemblance between "Trust" and "Waqf" naturally leads to an enquiry as to whether the English Trust was derived from the Islamic Waqf*". The English trust and its uses may have evolved after being inspired from Islamic system of *Awqaf*. Basis the fact, that the concept of trust had come in thirteen century while *Waqf*'s concept had been originated in eighth and nine centuries only. The existing *Awqaf* system today has got its root from more than one thousand years ago.

1.1 Early Principles of Waqf⁶

Joseph Schacht articulates in his paper, "Early Doctrines of *Waqf*" that:

⁶ Material drawn from "Waqf Laws and Administration of India" by S. Athar Hussain and S. Khalid

“The origin of the institution of waqf cannot be traced to any single source. It is, as Heffening and Santillana have seen, the result of combinations of several factors and various elements which were intimately fused during the formative period of Mahammadan Law”

Mudanwana of Sahnun (d.240) from Malik (d. 179), of Ibn Qasim (d.191) has reconcile description of waqf institutions. Few other early authorities of Madinah ; the Kitab *Ahkam-al- Waqf* by Hilal (d.245) carry reasonable information on the perspective of Abu Hanifa (d.150), of Abdu Yusuf (d.182) and other beginners of this field. The Kitab al-Siyar-el-Kabir of Shaibani (d. 189) and Kitab-al umm of Shaffi (d.204) is the third and fourth source respectively for the information on Waqf's doctrine.

The famous Mohammedan jurists seem to differ in their opinion with plethora of description provided from varied school of thoughts. Different school of thought majorly believes reversibility of *Waqf* property to the *Waqif*, presents various arguments for beneficiaries and nature of waqf and compares it with *Habs*, *Sadaqah* or *Ma'uquf*. Keeping in account that the detail analysis of different school of thoughts will just overburden the present discussion, The Hanafi school of thought has been taken into account. The major highlights of Hanafi school of thought are presented hereunder:

- a) Dedication of property requires first possession of waqf and that is pre-requisite;
- b) Both movable or immovable property can be endowed as waqf, the mandatory clause is to be tangible;
- c) No set pattern is there to declare a property as “*Waqf*” except to be declared by the owner. It may be declared in oral or written form;
- d) The possession transfers of *Waqf* to the *Mutawalli* (the Manager of the *Waqf* property) is not a mandatory clause of its validity. Only declaration by the owner is sufficient;
- e) The endowment of waqf must be irrevocable, unconditional and permanent;
- f) Having permanency in nature, subject matter of Waqf property is dedicated forever and vested in Allah, the Almighty;
- g) The intended objective of *Waqf*'s endowment must be charity, religious purposes and for gaining favor of Allah not the world;
- h) The fundamental condition of *Waqf*'s sustenance is charity that forms the basis of its legal justification;

Towards the end of 6th century, *Waqf* system started as an institution to support marginalized and poorer sections of the society. Waqf institutions have known to be a defining character of

Islamic civilization. Above all, it has been a source of cross-civilization emulation. It is quite visible that in the regions such as Western Europe, the un-incorporated trusts have emerged with the influence from *Waqf*'s institutions. As, these institutions came into existence in 13th century i.e. nearly a half millennium after waqf system struck roots in the Islamic Middle East countries (Gaudiosi, 1988; Kuran, 2001).

Any donated *Waqf* try to meet a number of religious and cultural expectations with the fact that the rich must support the poor as a duty to Almighty Allah. Merely possessing of wealth didn't give a right to be respected whereas spending of it did (Kozlowski, 1995). Material benefits were not the only advantage to be obtained from the administration of a *Waqf* estate; equally important was the social status and influence attached to the position (Baer, 1997).

There is no valid reason for *Waqf* institution for not performing at par now. However, it has the potential and proven track record of performance since ages. The feature of adaptation facilities has got attached with the waqf system since 21st century, earlier they were devoid of it. The waqf institution is a legal entity now and has right to sue and be sued, that is commendable. Unlike previous era, when there were just managers who stood alone for defence before the court of law (Kuran, 2001).

There is the need of the hour to move beyond the discussion of early stages of endowment and to evaluate the conditions of such properties for the benefits of subsequent generations. The decline of *Waqf* over the last couple of centuries is largely due to its inability to evolve with the pace of changing social, political and cultural circumstances. Particularly, in the age of paradigm shift of agricultural economy to a more modern, industrial and contract based economy (Morgan, 2001), merely, surviving of *Waqf* institution in 20th century cannot be correlated to an excellent economic development indicator (Shatzmiller, 2001).

1.2 Islamic Perspective

Islamic law does not grant the right to inherit property of his patron, even if the latter died without heirs. Alternatively, only *Waqf* system was derived and accepted for doing this (Baer, 1997). Through such agreements the settler ensures that families of persons who served him are not left out. Thus, they remain associated generations after generations with the property. The law of waqf was used for a variety of purposes viz. avoidance of confiscation of property by rulers, tax avoidance, control over an heir's excesses and currying favour with the religious leadership and through them to the masses. These were undeclared and non-religious purposes for which the law of waqf was used by its founders. The case of

52 Confiscation may be highlighted as an example, it was so common at that time that those rulers who did not use this policy were pointed out harshly by the eleventh-century historians (Gaudiosi, 1988).

The 'Mutawalli' is bound to follow founder's stipulations to the letter as per the Islamic law. The system seems to be lacking flexibility to keep abreast with the ever changing economic conditions (Kuran, 2001). As described by the Muslim jurists (Gaudiosi, 1988), the primary duties of the trustee include preservation of waqf income, distribution of income to the appropriate beneficiaries, hiring and firing of subordinates and resolution of disputes.

A Jewish traveller of the 1640s recollects his memory of staying with his companions at a waqf endowment during his journey from Egypt to Istanbul, opened for the travellers from every faith (Kuran, 2001). The *Waqf* used to be treated with such nobility and piousness that required Muslims to fulfil their religion for being a witness to court. For instance, those who didn't attend Friday prayer are not eligible and considered unreliable to become a witness pertaining to waqf affairs. Precisely, since establishing a Waqf was considered a pious act, it served to cultivate a favourable reputation (Kuran, 2001).

1.3 Types of *Waqf*

The waqf system is broadly classified into the following categories based on their origin and subsequent uses.

- **Waqf by 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;
- **Shamlat Patti, Shamlat Deh, Jumla Malikan** or by any other name entered in a revenue record;
- **Grants:** including Mashrat-ul-Khidmat for any purpose recognized by the Muslim law as pious, religious or charitable; and
- **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 spent for education, development, welfare and such other purposes as recognized by Muslim law.

In the earlier times, various public goods were provided by the private sources that are being arranged by government these days. For example- one of the major sources of

providing public goods from 750 C.E. or even earlier In the pre-modern Middle East used to be the *Awqaf*. In English also, it was popularly known as an *Islamic trust* or a '*pious foundation*'. The provision of such services was not only restricted to religious purposes. This may be established with an example of building a light-house on the Romanian coast under the *waqf* system, (Kuran, 2001).

The *Waqf* had been a trajectory that did not look good in terms of providing public goods. There was also the issue of nationalization attached to it. Towards the 19th century, the rigidity of *waqf* system allowed the modernizing states of the Middle East to nationalize vast properties of *Awqaf*. Based on the assumption that the system is grossly inadequate in terms of arranging requisite public goods provisions (Kuran, 2001). For instance, in Gaza Strip, the *Waqf* administration was briefly looked after in the 1950's. One of the major decisions impacting the *Waqf* system had been taken by the Egyptian president, Nasser. It was to formalize the administrative relationship between the local *Waqf* committee and the general administration under the Egyptian governor (Dumper, 1993).

In some cases, it became essential to take approval of matters concerning activities from the appropriate authorities. The *Waqf* administration started acting as an autonomous body from general administration with regard to appointments, internal administration, use of *masjid* land, other religious buildings and any construction work from small repairs to major building projects. The categorization of expenditure related to administration could be done in two groups i.e.

- One that goes under the regular recurring cost like salaries of its Imam, Muazzins, administrative staffs of *Masjid* etc, and
- Other for development, expansion, maintenance and construction of *Masajid* and other properties (Dumper, 1993).

1.4 *Waqf* Success Stories

The performances of some *Awqaf* in India are noticeable, which may be seen from two aspects: a) in terms of revenue and b) in terms of social service.

In terms of revenue, names of the the best performing *Awqaf* in India may include Haji Attar Hussain *Waqf*, Bengaluru in Karnataka; Kaduvayil Muslim Jamaath in Kerala; Anowaruddin *Waqf* Estate, Guwahati in Assam; *Waqf* Jaidad Anjuman Islam Jabalpur in Madhya Pradesh; *Waqf* Takiya Chand Shah Jodhpur in Rajasthan; Khwajah Bakhtiyar Kaki, Fatehpuri in Delhi; Dargah Hazrath Syed Shah Baba Shah Musafir, Panchakki, Aurangabad,

Dargah Hazrath Turabul Haq Rh; Parbani, Dargah Hazrath Syed Alauddin, Raunapara, Jalna in Maharastra.

Likewise in terms of social service, Contribution of Hzt. Halima Maternity and General Hospital, Malerkotla in Punjab may be mentioned: Punjab Waqf Board directly manages it on “No Profit No Loss” basis with eight Doctors (MBBS, MD/MS) are working in the Hospital with their sub-ordinate staffs; hospital is equipped with the latest medical equipment.

MEWAT ENGINEERING COLLEGE (MEC), NUH, HARYANA, INDIA-



Mewat Engineering College is established by Haryana Waqf Board. This is constituted by the Government of Haryana under Section 13 (1) of the Waqf Act, 1995. It is approved by All India Council for Technical Education, New Delhi. Moreover, the institute is affiliated to Maharshi Dayanand University, Rohtak and also recognized by the Directorate of Technical Education, Haryana. The college is located at Nuh on Nuh-Taoru road at a distance of 2 kms from the district headquarter, about 48 km from Gurgaon and 80 km from Delhi. Total area of the college premises is about 28 acre that is located at the backdrop of Aravallis. Class rooms, laboratories, workshops and tutorial rooms have been furnished with modern equipment. It has a modern and spacious library having more than 35000 books and facilities of providing set of books to each student at a time. Though, it is a Muslim minority institution under Waqf, but welcomes students from all communities so as any other minority institutions of the country. MEC is equipped with the latest apparatus including professionally trained and qualified teaching staffs appointed by Haryana Waqf Board. The institute has a strength of total 32 teaching staffs combining of professors, associate professor, assistant professors and guest lecturers . The college offers five major courses viz., B. Tech (Mechanical Engineering), B. Tech (Civil Engineering), B. Tech (Electronics and communication), B. Tech (Electrical & Electronics), B. Tech (Computer Science). College has separate faculty/Department for each course. The institution is under the direct control of

Haryana Waqf Board through a ‘governing body’. Additionally, it is assisted by an advisory committee, to be constituted in due course of time, and would provide guidance to the academic management of the Mewat Engineering College in order to fulfilment of its objectives.

JDT ISLAM, CALICUT, KERALA, INDIA



JDT Islam is an umbrella institution that started on Waqf property and is managed and utilized for many purposes like education, healthcare services and for social security of orphans. It is the first ISO 9001:2000 certified orphanage in India known as ‘JDT Islam Orphanage’ which is a charitable, cosmopolitan educational institution. It is established in the year 1922, recognized and aided by both ‘government of Kerala’ and the ‘government of India’ and managed by a registered committee. The JDT orphanage committee is running 24 institutions in various fields and the alumni are placed at different places across the globe. Although, the institute is dealing with all sections of the society including those who are economically well and socially established cadre. But, its main target group is orphans, especially those who are socially and economically backward. These children (orphans) are provided with all kinds of support ranging from education, health, accommodation, financial aid to all other basic needs. JDT is ISO certified and it is one of the best orphanages in Calicut. It has a huge campus consisting of colleges, schools and skill development centres; moreover it has an IQRA hospital and IQRA Psychiatric centre located nearby JDT campus for education. JDT Islam is one of the biggest Waqf institutions that offer education in different subjects and in vocational studies, besides having one hospital and one psychiatric centre of its own.

Cheraman Juma Masjid, Trissur, Kerala



This historical and heritage site has been kept in grade 1 category by Government of India Model Regulations. The masjid build in 629 A.D is a unique place in the history of India. Being the first ever established masjid located in Methala, Kodungalloor. King Cheraman Perumal of Kodungallor converted to Islam, and renamed as Thajuddeen. Its designing and construction is based on Hindu art and architecture having a temple. The construction has a historical museum and a guest house at Beemapalli (Trivandram - District). This mosque is famous for the Chandanak Kudam Festival on the eve of death anniversary of Bheema Beevi, a devoted pilgrim who came to Kerala from Mecca.

Ottapalam Juma Masjid, Palakkad District, Kerala



The masjid contains the mortal remains of Uthman Auliya, a revered man in Muslim community and located at a distance of 1 km from Palakkad. That is famous for Friday prayer and a grand procession for annual festival in January-February bringing ceremoniously various articles such as rice, coconut etc. to the mosque followed by a grand feast for the poor.

Mamburam Masjid, Malappuram, Kerala: That is another famous Masjid, in Kerala and a major Pilgrimage centre and has the mausoleum of famous Thangals (respected members of the Muslim community).

The Jama'at Mosque, Kerala

The Jama'at mosque has got historical importance for Kerala's Muslims and it is famous for the annual Nercha festival that is celebrated for four days in the month of April. Beside the masjid, there is a mausoleum of the Malappuram Shaheeds whose brave exploits have been immortalised in Mappilla Ballads.

Malik Deenar Great Juma' Masjid Committee

Kasaragod adopted Islam at the time of Prophet Muhammad SAW. Sahabas (companion of the Prophet Muhammad SAW) has visited several places to spread messages of Islam on behalf of Prophet and also got to the coasts of Kerala and built masjid. Masjid were developed as their centres for Islamic propagation and teaching. The history of evolving Islam in Kerala dated back when king Cheraman Perumal went Makkah and adopted Islam from the prophet SAW. After that, along with a group of preachers under the leadership of Malik bin Deenar_{RA}, he started his journey back to Kerala. In between the journey, he fell ill at Salala but directed his co-travellers to continue with the journey back home. Upon reaching to Kerala, they were given a red carpet welcome and facilitated by then rulers for their intended objective of Islamic preaching across Kerala.

The emissary of Malik bin Deenar visited Kodungallur, Kollam, Cherupattanam, Ezhimala and Kasaragod and established masjids to these places. Malik Deenar Juma Masjid at Thalangara (nearby Chandragiri River), is situated 3 kilometers south from Kasaragod town and half km away from Kasaragod railway station. The splendid structure was built in Hijra 22 by Malik bin Deenar that has attracted charm and pleasure of everybody who has visited the place. This has got remarkable significance in the history of Kasaragod. Many of the great scholars served as Quazis here including Malik bin Habeeb maph who had served as first Quazi of the masjid and guided people on religious affairs with full enthusiasm. Since the earlier times, the Quazis and Mahallu Mutawallis have advised people on clear-cut jurisdictions and solutions for the religious topics, thereof creating an Islamic atmosphere in the region. Still the tradition of has been maintained with full enthusiasm. In the later period, when discussion was held to expand the Masjid for the sake of assembling more devotees, the voices of opposition raised by the Masjid committee to preserve its old form and genuineness.

The committee's endeavours towards the up-liftment of educational and cultural backwardness of the community are praiseworthy at the meantime. The committee has set up such institutions where religious and material knowledge are being imparted to compete the pace of fast growing world. One of the foremost objectives of establishing such institutions is to prepare preachers to spread principles and teachings of Islam across the globe. An example of this extra ordinary contribution is Malik Deenar Islamic Academy that is named after the Sahaba Malik bin Deenar_{RA}. That contributed tremendously by teaching free of cost nearly 300 students from inside and outside Kerala to the society and community (Board).

The Waqf Estate of the **Anowaruddin Waqf Estate**, Guwahati maintains Anowarpur Masjid in Assam. In Madhya Pradesh, the Waqf Jaidad **Anjuman Islam, Jabalpur** runs the Primary School, High Secondary School and Girls College etc. Other names of best performing in terms of the social service aspects are: **orphanage run by the Bakhtiyar Kaki**, Fatehpuri in Delhi; Dargah Haji Abdul Rahman alias Sailana Baba, Pimpalgaon Sarai, Chikhli, Buldhana in Maharashtra; and Mazar Shariffs, Masajid, Madrasah, Dargah, Urs/Mela etc. and Muslim Girls Hostels, Medical Dispensaries etc. in West Bengal.

The names of the oldest existing *Waqf* properties in India may be mentioned as ; Imam Bada Begum Waqf in Bihar (Shia); Haji Rattan Bathinda and Dargah Imam Nasir, Jalandhar in Punjab; EC-798, Bais Hazari Waqf Estate, dedicated by Shah Alam, Emperor in West Bengal; Cheraman Malik Dinaar Mosque, Kodugallur in Kerala; Haji Elahi Bakhsh Waqf Estate, Ghulam Rahman Waqf Estate and Haji Qasimuddin Mullah Waqf Estate in Meghalaya; Late Ohidur Rahman Waqf Estate in Assam; Akbari Masjid in Rajasthan; 01/1994 Qabarstan (Burial ground), and Keikhu Mayai Leikai in Manipur.

1.5 A brief history of establishment of Muslim *Waqf* in India

The rare book, "Insha-i-Mahru" written by Aynul Mulk Multani describes initial description of waqf in India. The sample letter is also attached with the book that used to be the letter of official correspondence; also describes the social, economic and political life of that period. Letter number sixteen classified *Waqfs* of Multan as under:

- a) those created by 'Salateen-e-Maaziah' i.e. 'earlier kings'; and
- b) those created by 'Danishmandan e Mashaikh wa Um'ara', i.e., men of Wisdom, Saints and nobles⁷. The author of the book indicates that Sultan Muizuddin Sam, one of the Ghaurid Sultans, dedicated two villages in favor of Jama Masjid of Multan (1185-95 AD) and handed over its administration to the Shaikh-al-Islam.

1.5a Awqaf under Medieval Period

⁷S.K. Rashid, *Waqf Law and Administration in India*, p.14. Material drawn from *Waqfs* in U.P.: A Socio-historic Perspective, by Ateeque Khan, published in "Islamic Culture" Quarterly, January 1990, pp.39-60.

The mandatory clause of rules adopted in the 8th and 9th centuries requires a Muslim to be the founder of waqf. If a waqf is established, it had to be registered with the Islamic court in turn (Kuran, 2001).

It is considered that the oldest traces of waqf in India can be traced back to the last years of the twelfth century. It was when one of the Ghurid Sultans named Muhammad Ibn-Sam, established a waqf in his name. But, The grave of Miran Mulhim in Badaun and of Khawja Majd al-Din and others in Bilgram, the dargah of Lal Pir in Azmat Tola at Gopaman, the Qabristan (graveyard) on the Bilsa Road in Badayun, the Ganj-i-Shahidan of Asiwan in Unao are some of the waqf the existence of which can be found during the Pre-Ghurid period.

It can be said that waqf flourished during the Delhi Sultanate era when establishment of many other waqfs was recorded. The Delhi Sultanate era witnessed large-scale construction of public places like masajid, khanquah, mazaraat (tombs), madrasahs and graveyards etc. The purpose of such Awqaf was philanthropic and they were developed for benefitting the subsequent generations. The holy dargah of Hazrat Sayyid Shah Ibrahim Mashhadi at Jaleasar was one of the earliest of that link. Another of these was the waqf endowed for the maintenance of the tomb of Sultan Qutb Uddin of which Ibn Batuta the famous Arab traveller was appointed as the trustee by Sultan Muhammad bin Tughlaq. A description by Ibn Battuta explains the tendency of Sultan towards the waqf's institutions. It also describes that the administration of the waqf is managed by the Mutawallis only during the Sultanate period.

The Iltutmish era also landmarks in the history of Awqaf in India. During his period the magnificent 'Shamsi Masjid' was built at Badayun under supervision of Rukn-al-Din Firuz, the governor of Badayun and son of the sultan. The Tareekh-e-Firauz Shahi documents details of establishment, maintenance and repair of Awqaf during Delhi Sultanate. During the Iltutmish era not only existing Awqaf were preserved but the sultan constructed several tombs, water-reservoirs, canals, roads, sarai, cities and educational institutions. He was also intended to build an Idgah at Badayun.

In 1526 the Delhi Sultans was taken over by the Mughals, the traditions were continued resulting in establishment of many new Awqaf. 'Farangi Mahal' at Lucknow by Mughal empor Akbar, The Taj Mahal by Shah Jahan for which nearly 30 villages and a Parganah, were endowed and the Husainabad Endowment was done for "Husainabad Mubarak" Masjid

that was built in 1838 by Mohammad Ali Shah (the Third), are some of the major waqf done afterwards by other rulers.

“It is a custom among kings, while they are on throne, to appropriate villages and lands to religious men in order to provide means for the maintenance and repair of their tombs”(Tarikh-i-Firuz Shahi by Shams Siraj `Afif),

Apart from preaching sufi sheikhs played crucial role in dynasties. It is found that almost every ruler established Awqaf to support a sheikh and his shrine. There are two major documents of Lodhi's period that inscribes the same. The first document Parwanah of Masnad-i-Ali Mahmud Khan Lodhi issued to Bandagi Miyan Shaykh Chaylda mentions grant of two villages in the Parganah of Nidra in 899AH for Wajh-i-Milk. The second document viz. Farman of Sultan Ibrahim Lodhi issued in 927AH describes that 300 bigahs of uncultivated land of village Gonda were granted to Hasan, son of Barkhurdar Husayn.

Other than Muslim sheikhs other religious clergy did also received grants and support from the rulers like the Christian churches in the Balkans were supported by the Ottomans and Hindu priests in the sub-continent received support from the Mughal rulers. The term waqf was also used even though referring to a non-Muslim institution. Hindus picked up the terminology and used it to describe their own endowments (Kozlowski, 1985: 22-25).

Administration of waqfs:- No separate department for the controlling and administering of Awqaf was found to be established during Delhi Sultanate or the Mughal Period. The Sadr us Sudur, was found to be responsible for the Awqaf at provincial level to the sadrs (sadr-e-sabah and sadr-e-sarkar). However collection of revenues from the properties under these waqfs was not in the hands of these sadrs. Such collections were the exclusive right of the Diwan. Kadis were the local administrators and was appointed in every parganas. The inspection of the waqf accounts that were kept by the village mullas (muezzins) was among the major responsibilities of these Kadis. It was the trustees who were responsible for looking after the affairs of each waqf. This is still so today. As long as the trustees remained within the Islamic law, they were not interfered with by the administrative machinery (Ibn Battuta appointed 460 persons to take care of the tombs completely upon his own initiative). Moreover, the sultans respected the legally appointed trustees. When Sultan Aladdin (1296-1316) restored a large number of waqfs, which were neglected, and in ruins, he sought out and restored the trustees who had been expelled previously. But if the inspections revealed that a trustee was corrupt, the Sultan replaced him. The Waqfs were subject to a highly

centralised system of inspection. But they were left free in their normal day-to-day functioning.

The royal endowments of the Mamluks, Ottomans and Safavis attracted the attention of a number of historians. They significantly understood the policies and practices of those *sultans* and *badshahs*. Contrary to that, only a few documents (Waqf-namahs) of act of endowment could survive from the Mughal period. Many reasons might be accounted for this: firstly, the climate of South Asia is not friendly to paper due to which the documents (Waqf-namahs) in paper form were not able to survive long; secondly, the gustatory habits of the termite, commonly known as white ant, could destroy the whole documents in the libraries; and thirdly, the encroachments of Awqaf's assets by the contemporary generations for their own use might lead to the international loss of valuable documentation and many more (Kozlowski, 1995).

Throughout in the era of modern history time, few famous Muslim families have served as the traditional administrators of important public Awqaf in various Muslims cities (Baer, 1997). Endowments which anchored a mosque, madrasah, shrine or *caravan-sarai* in the populated regions might become the loci for periodic fairs, which eventually led to full scale urbanization. Individual Mamluk sultans placed a big part of their wealth in Awqaf. Very often, the incomes were directed to Madrasas built by the sultans or their immediate kins (Kozlowski, 1995).

1.5b Awqaf during British Period

The first system to regulate property ownership by the colonial state, was in the 'Permanent Settlement of Bengal'. Zamindars ('land-holders') were defined as the owners of landed property in this system. Previously, they were just entitled to collect agrarian revenues on behalf of the contemporary ruler only. The Act, represented the colonial views of 'indigenous' institutions of property and European notions. "The tendency to privatise land revealed a fundamental deception of the colonial state: the lack of a clear separation between the judiciary and colonial economy, which had been a principle of state since the Permanent Settlement in the 18th century (Washbrook, 1981: 714). Waqf provided a rubric for addressing issues of land through personal law".

Further Eric Lewis Beverley in his paper published as Property, Authority And Personal Law: Waqf In Colonial South Asia emphasizes on centrality of property relations of the colonial

politics during late 19th and early 20th centuries. In the British India the land control was based on the prevailing customs, such as Punjab (Kozlowski, 1985: 34–6, 42, 151).

In Punjab the implementation of ‘customary law’ by the colonial power often faced resistance. The ‘customary law’ had uniform construct presented as ‘Sharia Law’ (Gilmartin, 1988).

“Ali and Tyabji wrote, respectively, from the capital cities of Bengal and Bombay Presidency, regions under formal colonial rule since long before Punjab. Practice and ‘custom’ were not legally admissible sources for court decisions on Muslim personal law in Calcutta or Bombay to nearly the same extent as in the Punjab”.

Punjab demanded an alternative legal source for Ali and Tyabji, for control over property, hence making Waqf a controversial political issue. The reinterpretation of community personal law made Muslim Endowment Properties vulnerable to the land market. Property relations were reconfigured and designed in line with Colonial Capitalist Nature by the legal institution. ‘The Permanent Settlement envisioned a society whose prosperity was underpinned by a free market in all commodities, including and especially land.’ The effect of colonial efforts for liberation of lands under states was gradual, little evidence of land market emerging was observed during the period (Washbrook, 1981: 655). “Alternative land policies to the Permanent Settlement that the colonial state instituted in regions it subsequently conquered actually suggest a trend towards greater degrees of state control over property (Tomlinson, 1993: 44)”.

The Privy Council had ordained in 1894 that Islamic foundations were to be considered religious and charitable institutions, and that they should be public and not remain in private hands. The Mussalman Waqf Validating Act restored private ownership of waqf but the Act was not retroactive and the Council could still consider those endowments created before 1913 to be invalid (Malik, 1990).

Due to complex and religious nature of waqf, British judges found it difficult to manage with their own efforts. Down the line, the policy of private lands subject to the governmental taxation was incepted. The enactment of zamindari act put a sort of negative implications on the future of waqf properties also, as they were already possessed explicitly by the individuals responsible to protect and cultivate them. Later on, with increasing cases of embezzlements

and reports of misappropriations of the Waqf corpus, the potential beneficiaries were left with no option but to approach the English courts for the recovery of their beneficial rights. As a result, due to the similar sorts of cases coming too frequently into the courts, the colonial power introduced new legislation regulating the Waqf properties. In 1863, the religious endowment act brought a new change in order; this act entitles trustees for the superintendence and supervision of all Waqf properties (Cozowaski, 1985). Furthermore, in the late nineteenth century, due to the high emphasis of British courts on land privatisation, they found it necessary to implement the Islamic law of inheritance among the Muslims in the country in letter and spirit, and any obstacle hindering this process was to be finally removed. From the perspectives of this policy, the concept of Waqf Alal Awlad appeared to them as one of the major impediments in the way of private ownership of land, and henceforth was discarded by the Privy Council in 1894 (Diwan, 1992).

Finally, the growing agitation and reactionary sentiments among the Muslim community impelled the court to reconsider its decision and at last, this culminated into the introduction of the Muslim Waqf validating act of 1913. From the perspective of this new law, Muslims were once again allowed and entitled to create family Waqf without any kind of legal obstacle in the process (Rashid and Husain, 1979). Virtually, in the whole sub-continent region, this was the first ever introduced legal act that underlays the fold and scope of all kinds of philanthropic and charitable deeds. This law specifies certain characteristics to be trustees of a Waqf by the Waqif. Even to officially register the waqf with government authorities was not a condition (Khan and Ahmad, 1998).

The act passed in 1913, entitles nominated Mutawalis for management and administration of Waqf. This law even not left the scope of collecting official data about the functioning and efficiency of the waqf system. In 1920, the Charitable and Religious Trust Act was introduced to supersede the previous Act of 1913.

1.5c Awqaf in Post independence India

After the independence of India the new born democracy required to manage a balance between new administrative policies and socio-cultural diversity of the nation. The first seven years 1947-1954 of the new governance is considered as the most crucial period for the waqfs of the divided India. On one hand trustees of several waqfs migrated to Pakistan leaving these waqfs without trustees and beneficiaries, while on the other hand reverse migration resulted

in illegal occupation of the waqf properties. Exploitation of waqf properties for personal advantages rose to its peak benefitting from the chaotic circumstances of that time.

Several Muslim organizations evolved during the period with the concern to preserve the waqf notably Anjuman Himayat-e-Islam and Jamiat al-Ulema-al-Hind. These organizations presented a detailed report to Jawaharlal Nehru, the then Prime Minister of India. He was convinced with the importance of an immediate response on the issue and as a result Central Waqf Act, 1954 (India) came into being.

Several authors considered it the best thing that ever happened to waqfs in India. After Delhi Sultanat and Mughal periods it was the first time when an all India law dealing with Waqf came into existence (Rashid, 1997: 10). This act gave Waqf a central administrative framework and became a landmark decision in the history of Indian waqf administration. In this act precise obligations were laid upon the trustees and Mutawallis. Violation of these obligations had penal consequences along with certain authorities and powers. State governments were granted supervisory authorities and responsibilities over the board and central government reserved the right to policy making in this regards. Irrespective of denominations all charitable and religious endowments came under one roof. The government thereby is held responsible for management and security of every endowment. This act made it mandatory for all the endowments to be registered with the official books of endowments. A director is held responsible in every state government for efficient administration of the department. The directors of endowments had to safeguard the endowed property and to ensure their functioning as per their original status. Further, the Waqf Amendment Act of 1964 consequently removed the lacunas that may have been existed in the previous act and subsequently became a very sound legislation (Rashid and Husain, 1979: 41). Except the states of Jammu, Kashmir, Bihar, Uttar Pradesh, West Bengal and Gujarat the Central Waqf Act was applicable for the whole of India. The aforesaid states have their own local waqf acts.

Eliminating the highly controversial issue of cash waqf at one time this act made the Muslim Waqf's fully valid in India. Further family waqf (waqf alal aulad) are also permitted provided the property is used for purposes that is considered pious as per Muslim laws. Under Section 66-C of this act creation of waqf by other than Muslims were also provisioned. Centralization of the waqf system starts with the Section 4, which states that the state governments were to appoint a Commissioner who would carry out surveys of Waqf. The surveys were to contain

standard information. Moreover, every trustee, Mutawalli, has been obliged by the law to report and register his waqf with the State Waqf Board. Any change in the particulars of the waqf or its Mutawalli was also to be reported to the Board. Failure to do so was made penal.

The Survey so initiated by the waqf act 1954 recorded and presented the size of Indian waqf. Illegal usurped waqf properties also came to light (Rashid, 1997). The central act did also provisioned assumption of direct management by the board for a period or periods not exceeding 5 years in following circumstances

- 1 Unfilled vacancy at the office of Mutawalli due to Non availability of suitable person as per the terms of the waqf deed;
- 2 Disputed rights of the person to act as Mutawalli
- 3 Abused of powers and failure of duties by the Mutawalli or the managing committee.

Further the right to permit istibdal is reserved for the board under this Act. Occurrence of istibdal without permission of the board, binds the person in possession of such property to deliver it back to the Board within 30 days. Appeal to the District Court anyhow by the person can be done in the case of an order to return such property by the board is issued.

Removal of a trustee requires three-fourth of support of board members in any case. The statements of the accounts of the waqf must be furnished by the trustee, Mutawalli before first day of May every year. These statements are audited by the auditors appointed by board. Section 33 of the Central Act holds Mutawalli responsible for any losses to waqf due to negligence, carelessness etc. Further Mutawalli of every waqf is bound to pay six percent of Waqf's net annual income as per section 46 of this act. Waqf's with net annual income not exceeding 100 rupees from payment of contribution are anyhow exempted from payment of 6% to board.

1.5d Functions and powers of the Waqf Board under this Act

The Board must:

- Give directions to the Mutawalli for the administration of the Awqaf.
- Determine in what way the surplus of a waqf for which there is no waqf deed, is to be utilised.

- Inspect the waqf properties, accounts etc.
- Keep information about the origins, income, object and the beneficiaries of every waqf
- Ensure that the income of the waqf is spent in accordance with the original purpose
- Give directions for the administration of the waqf
- Settle schemes of management for a waqf
- Scrutinise and approve the budgets submitted by the mutawallis
- Audit the accounts
- Appoint and remove the mutawallis if there is a vacancy or when the right of any person to act as a mutawalli is disputed
- Take measures for the recovery of lost properties of any waqf
- Institute and defend suits in court of law relating to waqfs
- Sanction leases of property for more than three years or permit Istibdal exchange properties according to the provisions of the Muslim law.
- Administer the waqf fund
- Call for statistics from the waqfs
- Cause surveys of the waqf properties
- Collect information about a certain property and to decide whether it is waqf property or not. The Board's decision, unless revoked by a Civil Court, is final

- Do all such acts as may be necessary for the due control, maintenance and administration of waqf.

In December 1960 the Interstate Waqf Conference discussed on the lacking funds in at waqf board for furthering their aims and objectives. Following suggestions were made to overcome the problem:

- Those Mutawallis who have not paid their contributions should be removed
- Waqf surveys should be conducted
- The accumulated income of the waqf properties vested in the custodians should be transferred to the Boards
- Funds under direct management of waqf boards should be invested
- Interest unclaimed by the waqf on religious grounds could be transferred to the boards for utilisation on charitable purposes
- Money belonging to the waqf should be kept in public accounts if it exceeds Rs.500

The Amendment Act of 1964 removed all the lacunas of the 1954 Act, Rashid claims. Precisely

- Establishment of separate board is proposed in this amendment if Shi'ite waqfs exceed 15% of the total number of waqfs in a state to avoid clash under different Islamic sects.

- Utilisation of his surplus funds by mutawalli came under control of the Board. Earlier the Board had no authority to issue orders to a mutawalli in this regards.
- The difficulty to sale if found necessary is facilitated under this amendment. Earlier courts had to be approached in this regards.

The Waqf Act 1954, that was once deemed and claimed to be the best thing happening to the Indian Waqf, had to be amended several times in 1959, 1964, 1969, 1984 and finally in 1995 with an objective to bring efficiency and transparency in the institution. Anyhow it can be concluded that still the waqf machinery is not performing well.

“Audit of accounts is the only reliable means for a Waqf Board to know whether mutawallis are fulfilling the objects of waqf according to the founders’ wishes ... if this fundamental duty is not discharged by the Waqf Boards, ... they hardly justify their existence” (Rashid, JIMMA: 57).

Corruption, sectarianism, misappropriation of funds, administratively inefficiency, financially weakness etc are some of the major concerns where waqf framework comes into discussion. For addressing these issues Central Waqf Advisory Council was established in 1961. This council was granted statutory status by the Government of India. This agency was intended to advice the Government on waqf affairs and to take steps for the betterment of the community etc. One percent of the waqf board’s annual income was allotted for the functioning of the Council, further some government grants

and interest income was also utilized. But this body failed to fulfil its mission and led Rashid to conclude;

“But when all is said and done the Council has generally failed to come up to expectations” (Rashid, JIMMA: 59).

In recent years, the legality and validity of Waqf management practices in different countries and states have been fiercely challenged by Shariah scholars. In this regard, the Indian central Waqf management board, which has in its possession one of the greatest numbers of Waqf properties in the World, has attracted a surge of harsh criticism for not being in compliance with the Shariah guidelines of Waqf management. Scholars of various areas and fields have, over the years, raised their voices and concerns against the flawed laws and faulty policies of the successive governments towards the Waqf management in the country. Owing to all these, of late, the deed of Waqf that is recognized in Shariah as a highly appreciable and virtuous act has lost its practical spirit and social appeal in India.

1.5e *Waqf* Act, 1995⁸

The *Waqf* means an endowment exclusively for the purposes of piousness, religion or charity under the Islamic law to appease the Almighty Allah, which is normally managed by the ‘Mutawalli’ (administrator). The

⁸ See Appendix - I

Awqaf Act, 1954 and the *Waqf* Act, 1995 deal with the public *Waqf* as well as the *Waqf* Alal-Aulad to benefit the family for which the property is dedicated as pious, religious or charitable as per the Muslim law. The *Waqf* Act, 1995 deals with the non-religious aspects of *Awqaf*. It establishes a *Waqf* Council at the central level to advise the government on policy relating to *Awqaf*. The Act also establishes State Board for each state for supervising the functioning of *Awqaf*. Such as survey of *Waqf* properties in the state to ensure permitted use of the *Waqf* incomes. These Boards are given the powers to appoint/remove Mutawallis, take care on the *Waqf* properties encroachments, develop *Waqf* properties and manage the finances of *Awqaf*. This Act also offers tribunals to pass judgment on *Waqf* disputes. According to the section 3(r) of the *Awqaf* Act, 1995 *Awqaf* is defined as the permanent dedication of any movable or immovable property for any purpose which, as per the Muslim law, is totally meant for the piety, religion and charity by a Muslim or follower of Islam. The definition is also similar to that found in the Section 2(1) of the Musalman Validating Act, 1913, Section 2(e) of the Musalman Validating Act, 1923 and Section 3(1) of *Waqf* Act, 1954, where the term *Waqf* is defined as a property given or endowed by any person of any religion other than Islam for the support of the masajid (mosques), idgahs, imam-badas or maqbaras as well as the graveyard of persons professing Islam and properties for Musafir Khana (guest house) for the benefit of the Muslims. The parliament incorporated the provisions of amendment *Waqf* Act 1954 by introducing section 66(c) of

the Amendment Act 1964, which later became section 104 of the *Waqf* Act 1995.

There are certain elements of *Waqf* as defined in the in the limb of section (r) such as the dedication of property for which the dedication and its subject to be permanent, the dedicator or settler to be a Muslim, the object of dedication to be religious, pious or charitable as per the Muslim law, sustainability of *Waqf* to be maintained, *Waqf* property not to be given by *wasiat* and alienation of *Waqf* property to be invalid. The word *Waqf* literally means dedication, i.e., dedication of property for the purpose of religion, piety or charity as per the Muslim law. A valid dedication extinguishes any kind of ownership of the settler; if the settler retains any control over the property, the dedication becomes invalid.

Imam Abu Hanifa's opinion is that the property of dedication vests on the Mutawalli (who may be a settler or *Waqf* himself or anybody nominated by him), while according to Imam Mohammed it is vested in God metaphorically. The dedicated property is vested in beneficiary under the Shia School of Thought. However, in general, the opinions of Abu Yousuf and Mohammed are accepted. In this country, as per the Mohammedan Law, the courts recognise the vesting of ownership in God (as observed by Mahmood Justice Jawahar V/s Akbar Hussein ILR 7 All 176 (FB). As one makes up his mind to devote one's property for religious purpose and declares the intention by some specific act as delivery etc., the property

immediately becomes an endowment (*Waqf*) which deprives one from any kind of ownership of the property, as it has become a divine property. Hence the property right extinguishes when a property becomes property of God to benefit the community.

However, there is no particular mode of property dedication to become *Waqf*, this may be in writing or expressed orally or implied or inferred through conduct. *Waqf* may be endowed for the poor/ benefit of the poor, for the meritorious purpose, for a Mosque (a room), as Sadka or charity (land)(during one's life and after death) or for the Imam (house). It is important that the subject of declaration must be permanent to become a valid *Waqf*. There is no temporary *Waqf* as it is valid for a limited period of time. A charity is perpetually for the purpose for the poor. It is also important to note that the Shia School of Thought does not recognise a *Waqf* by a mere declaration; there must be a delivery of possession of the property. Subject to a satisfactory lease or mortgage, there can be a valid *Waqf* of a property, though an unsatisfactory mortgage can be a matter for declaring a valid *Waqf*. To make a property dedication as *Waqf*, the dedicator or settler must belong to the Muslim community. The dedication must be with the object of religious, pious or charity recognised by the Muslim Law. However, as held in *Amir Singh V/s bedridden* AIR 1940 Lahore 199, it is not necessarily important for a person to profess Islam in creating a *Waqf*.

As held in *Chhedi Lal Mishra v. Civil Judge, Lucknow*⁹ by the Supreme Court, sustainability of *Waqf* is to be maintained that 'the creation of the *Waqf* may be questioned if it is shown that the *waqif* had no intention to create *awqaf* but had done so to avoid a liability'.

As held in *Aligarh Muslim University v. Syed Mohammad Sayeed Chishti & Ors.*¹⁰, 'the court observed that the *Waqf* property could not be given by *wasiat*' as the Muslim law does not recognise any right of inheritance or rule of hereditary succession to the office of *Mutawalli*¹¹.

As held in *P. Radhakrishnan and others v. Andhra Pradesh Waqf Board*¹², alienation of *Waqf* property by the vendor must be invalid as any *Waqf* would not confer any ownership on the service holder. It cannot not be alienated otherwise it will not be valid.

1.6 The *Waqf* and Sachhar Committee Report, 2006

With the intent of understanding the socio-economic and educational status of Indian Muslims a High Level committee was constituted under the Chairmanship of Justice (Retired) Rajinder Sachhar by the then Prime Minister of India Manmohan Singh. The committee submitted its 403 pages report on having recommendation on *Waqf* as well with other recommendation. It was recommended to create a new All India Cadre of officers, to manage the affairs of State *Waqf* Boards and Central *Waqf* Council. Further, 4 decisions were taken concerning *waqf* considering the recommendations of the report as follows :

⁹(2007) 4 SCC 632

¹⁰AIR 2007 (NOC) 2493 (Raj.)

¹¹S.A Kader, *The Law of Awqaf*, 2nd Edn. p. 38, Eastern Law House

¹²MANU/AP/0657/2007

- Muslim Waqfs should be encouraged to utilize their assets for providing hostel facilities at reasonable costs for students both boys and girls on waqf properties.
- The Waqf institutions and masajid committees should be facilitated and used as intermediaries between government policy programs and their beneficiaries within the Muslim community.
- Waqf properties can provide partnership opportunities for partnerships between the government, the community and the private sector to deal with the problems faced by Muslim communities.
- The Waqf Act 1995 may be amended to prevent interferences like UP government over ruling the Waqf Board orders which ultra vires the Waqf Act.
- Provision of a technical advisory body for development of Waqf properties both at the state and national levels.
- Appointment of at least two women each in the Central Wakf Council and each state Waqf Board.
- Composition of the Central Waqf Council (CWC)
- State Waqf Boards selection for the chairmen and members of the state Waqf Board should be from a list of eminent persons in each state for the interest of Waqf Board. For example, a retired high court judge, the former vice chancellors, and those who have established Muslim educational institutions of repute should be considered for appointment in the Waqf Board.
- Group-A Officers for Waqfs: There is strong case to create a new cadre of officers to manage the affairs of State Waqf Boards and Central Waqf Council.
- It is recommended that all the Awqaf are compulsorily brought under the scheme of 'financial audit'.
- A National Waqf Development Corporation may be constituted by the central Government with a revolving corpus fund of Rs 500 crores for financial and technical help for development of Waqf properties with a view to enhance Waqf resources.
- Ajmer Dargah Act needs to be amended: Waqf Act 1954 was amended in 1995. Now some more amendments are being suggested in this Report. However, Dargah Khwaja Saheb Ajmer Act 1955 has never been amended while the problems there

are same as in the case of all other Waqfs in the rest of India. Hence it is necessary to introduce comprehensive changes in Dargah Khwaja Saheb Ajmer Act also.

- Legal and Administrative Remedies - Removal of Avoidable Judicial Dichotomy like 'the special rule of limitation laid down in the proviso to sub-section (1) of Section 6 is not applicable to non-Muslims. Such interpretation is detrimental to the interests of Waqf and may well tend to encourage encroachments. Section 6 may therefore be amended to avoid the confusion and the amendment should be given retrospective effect from the date of notification of the property as Waqf. In section 6(1) of the Waqf Act 1995 after the expression "or any person interested therein" the following words may be added "irrespective of his / her / its religion".
- Increase the maximum period of lease of Waqf properties from 3 to 30 years where the property is used by registered charitable societies or trusts for building and/or running educational or health care institutions, or for other social and economic developmental purposes consistent with the objects of the Waqf (if any specified) and as permissible under Islamic law.
- The definition of 'Encroacher' needs to be inserted in Section 3 to help in the proceedings under Section 54, for removal of unauthorised occupants of Waqf property.
- Recommendation of an amendment exempting the Waqf properties from the purview of the RCA within the Waqf Act. This can be done by introducing an overriding provision in the Waqf Act.
- Therefore, the period of limitation should be extended till 2035 with retrospective effect.
- It would only be proper if their lists of large number of Waqf properties under the control of the Archeological Survey of India (ASI) are annually reviewed and their condition is assessed in a joint meeting of senior officers of the ASI with the representatives of the Central Waqf Council.
- Waqf Rules: Even after a lapse of thirteen years since the Waqf Act 1995 was enacted, a large number of states have not framed the Waqf Rules; this is one of the main reasons for non-implementation of the provisions of the Waqf Act and perpetuation of corruption and lack of accountability. Refresher training courses are

to be offered regularly so that the staff of the State Waqf Boards are adequately trained. This work could be supervised by the Central Waqf Council.

- The Committee suggests that the encroachment issues should be dealt with in the Waqf Act 1995 in such a way that the state Waqf Boards become effective and are empowered to properly deal with the removal of encroachment of Waqf properties. It would therefore be appropriate to amend Section 83 (4) of the Waqf Act to specify that the Waqf Tribunal will be manned by full time presiding officer appointed exclusively for Waqf purposes.
- All Waqfs as notified in the Gazette should be treated as public premises. Waqfs are meant for a large section of the public. Some activities of Waqfs such as running schools, orphanages, monthly financial assistance to the needy, are philanthropic and secular in nature. Any encroachment on these properties should be treated like encroachment on government land. The Public Premises (Eviction of Unauthorized Occupation) Act, 1971 should be applied to remove encroachment from Waqf properties and arrears of rent, at market rates, should be recovered as arrears of land revenue.
- While the exemption of Waqf properties from some enactments would serve the greater philanthropic purpose of Waqf properties, appropriate though minor amendments in the following Acts would strengthen the functioning of the Waqfs without in any way hurting their general public objective. Government may like to take necessary action after consulting Waqf Boards and enlightened public opinion.

(Refer: <http://www.minorityaffairs.gov.in/sites/default/files/Sachar%20Committee%20Recommendations-English.pdf>)

The 4 decisions taken by the government

1. The Ministry of Culture will hold an annual meeting with the Central Waqf Council (CWC) to review the list of waqfs, which are under the Archeological Survey of India (ASI).
2. A suitable agency will be set up for providing financial assistance for the development of waqf properties to enable waqfs to generate surpluses for the welfare of the poor.
- 3.

- a. A Bill to amend the Waqf Act will be introduced in Parliament after receiving the recommendations of the Joint Parliamentary Committee (JPC) on Waqfs.
 - b. Model Waqf rules will be framed and forwarded to States/UTs which have not framed such rules.
4. States will be requested to consider amendments to their Rent Control Act (RCA) to exempt Waqf properties from its purview.

Discussion on the report

The final report of the Sachhar Committee revealed that the legal Waqf administrative framework is far from its practical implementation while a most of it is still restricted to papers only. The Sachhar Committee, found that in most cases the relevant data could not be found from the concerned offices or, if found, they were out-dated in many states (SCR, 2006: 238-42). This result was very much in contrast with the strong thrust of the Waqf Act 1995 for frequent surveys of the Awqaf and collection of information by the concerned Waqf Boards. The official figure of Waqf properties in the country is more than six hundred thousand acres with their total book value estimating to sixty billion Indian Rupees. It is interesting to note here that the book value of the Waqf properties represents the value of each property estimated fifty years ago and there is no exact data available on the current value of these properties. As per the Sachhar Committee Report (SCR) 2006, the total Waqf properties in the country cover approximately 4.9 lakh registered Waqf properties (the majority of them being in West Bengal-148,200 and Uttar Pradesh-122,839) with a meagre rate of return of 2.7% per annum amounting to an income of 1.63 billion rupees, out of which 7% of this income is to be reduced (6% for the working expenses of the respective Waqf Boards and 1% for the expenses of Central Waqf Council (Wani, 2005, Rashid, 2007).

Though the main purpose of the Central Waqf Council is to inform and advise the Government on the functioning of the Waqf Boards and their relevant issues, the report finds it to be very ironical that the working expenses are made by the revenues of Waqf rather than it being borne by the Government exchequer. The SCR further reports that the current estimated market value of all the Waqf properties in the country may roughly be more than 1.2 trillion Indian Rupees, which can at least generate a return of 10% per annum that approximately amounts to 120 billion Indian Rupees (SCR, 2006:240).

The Committee also claims that the state of Awqaf has not witnessed a sincere political determination of the Government to improve its crumbling administration of Awqaf in the country during the last many decades. Besides individuals involving in encroachments in many states of huge

Waqf properties, state governments are also involved in such immoral activities. Encroachments of Waqf properties by individuals and governments may be an absolute usurpation of property with no rents or other payments of any sort. The occupant pays only a nominal rent which has not been revised for decades (SCR, 2006). There are numerous evidences where the state governments are using Waqf properties for decades but they either fail to pay the rents for them to Awqaf or are unwilling to pay the same to the concerned Waqf Boards in huge amounts (SCR, 2006). For example, as reported by the Committee, Delhi State Government has illegally occupied more than 300 Waqf properties in the state.

Usual unconcerned and irresponsible attitude of the State and Central Governments and of their agencies towards the development and protection of Awqaf has also contributed negative inferences on realising the optimum potentials of Waqf institution. As a consequence of such irregularities, the SCR 2006 strongly recommended numerous amendments into the clauses of the existing Waqf Act 1995 resulting in The Waqf (Amendment) Bill, 2010 as passed in the Lower House of the Parliament on May 7, 2010 but remained pending in the Upper House (Mujeeb, June 2011). The SCR accentuate as on reinforcing Waqf boards and Waqf council to incorporate various experts for proper maintenance of accounts, managing Waqf affairs and incorporating legislative amendments to the Waqf Act, 1995. The Joint Parliamentary Committee also made a number of recommendations on amendments to the Waqf Act (3rd & 9th JPC reports, 2008). The Waqf (Amendment) Bill, 2010 tries to incorporate some of these recommendations from the SCR and JPCR.

However, most of the leading Muslim organizations such as All India Muslim Personal law Board etc consider the Bill as a threat for the protection and safety of unregistered Waqf Properties in the country, which contradicts the report by the government officials that the Bill will prevent corruption in Waqf boards and protect Waqf properties (Akbar, 2010).

Though the Sachhar Committee and the Joint Parliamentary Committee recommended for greater powers to the Waqf boards to evict encroachers, the Waqf (Amendment) Bill, 2010 does not incorporate these recommendations. The Bill says that the states should conduct surveys of Waqf properties at their own costs but fail to clarify such a mandatory provision in a central act as there is necessity of approving the expenditures by the individual state assembly.

The Committee has found an actual low income earned from Awqaf against its potential of high earning from Awqaf. The report further highlights some of the issues with Awqaf such as poor maintenance of Waqf properties, non-availability of Waqf records and encroachments of Waqf properties. Beside other things, in highlighting the extensive failure and corruptions in the existing

Waqf management in the country, the Report identified the paradoxical figure of 38 % Indian Muslims in absolute or relative poverty against the nearly 600,000 acres of Waqf lands that have been existing for more than one century (SCR, 2006: 156).

It is evident that the Sachhar Committee Report reflects that the administration and management of Awqaf in the country are in a complete state of disorder where the cases of their misuse are prevalent in almost all the states. As a result, the Institution of Awqaf, which is a socio-economic and religious-cum-charitable institution in the country, is crumbling down slowly towards a sure death due to the extensive mismanagement, ill-administration, misuse, encroachments and disuse of the Awqaf properties in the whole of the country.

1.7 Comparison of the *Waqf Act, 1995* and *the Waqf (Amendment) Act, 2013*

The following Table shows the compositions of the *Waqf Act, 1995* and *The Waqf (Amendment) Act, 2013*.

Comparison of *Waqf* Boards in the *Waqf Act, 1995* and *The Waqf (Amendment)*

*Act, 2013*¹³

<i>Waqf Act, 1995</i>	<i>Waqf (Amendment) Act, 2013</i>
1-2 members each from electoral colleges consisting of muslim MPs, muslim MLAs, muslim members of bar councils, mutawallis	As in the Act, members to be elected from electoral college of each category, MPs and MLAs to hold office on ex-officio basis
1-2 nominees from eminent muslim	1 muslim nominee with experience in town planning, business management, finance or revenue,

¹³See also Appendix - II

organisations	social work, agriculture and development activities
1-2 nominees who are Islamic scholars	1 muslim nominee who is an Islamic scholar.
1 state govt officer of deputy secy level or above	1 muslim state govt officer at the level of Joint Secretary to the state govt or above
There is no mention of women representative to be included among the members	At least two of the members must be women.

Source: The Waqf Act, 1995 and The (Amendment) Act, 2013

1.8 The *Waqf* (Amendment) Act, 2013¹⁴

The extensive encroachment, misuse, mismanagement and usurpation of *Waqf* properties in India as well as the absence of development of *Waqf* in the prime urban areas has caused a heavy opportunity cost as the significant income that could be generated out of these *Waqf* assets for the welfare of the community is foregone or misappropriated. Looking into such negative impacts and even after different efforts such as the Select Committee of the Rajya Sabha (1996) monitoring the working of *Waqf* boards in the states, the Sachhar Committee Report (2006) advocating strict measures against *Waqf* encroachments and the similar problems and the Joint Parliamentary Committee (2008) presenting important suggestions, the Union Ministry of Minorities Affairs directing the state *Waqf* boards for the

¹⁴It may be noted that the above rules have been formulated by the Ministry of Minority Affairs as prescribed by the Bill. Arguably, these need to be revisited.

survey and computerisation of *Waqf* records, the *Waqf* administration has not witnessed any improvement or progress.

However, emergence of the *Waqf* (Amendment) Act, 2013 may bring a positive impact in the *Awqaf* management of the country. *The Waqf Amendment Act 2013*, which aims at making properties under the *Waqf* Board, is regarded as more practical act commercially. It also aims at strengthening the *Waqf* institutions and restructuring their functioning. The Act further encourages the government to maintain the record of the *Waqf* properties. It extends the lease period to 30 years in maximum. With a four lakh registered *Waqf* properties across the nation, more income could be generated out of the *Waqf* properties. Thus, the *Act* is likely to ensure right commercial function of *Waqf* property to generate better return of revenue. This can bring socio-economic development to the whole Muslim community in the country.

Some of the important amendments of the bill are as follows.

1. This Act addresses the necessity of maintaining the basic records management of the *Waqf* properties in the states, which should come into practice within an appropriate time-frame.
2. The Tribunal is authorised with powers of assessing damages through unauthorised occupation of *Waqf* property, to penalize the unauthorised occupants and to recover the damages. Adding physical punishment to the list of penalties, the Act prescribes jail terms for encroachment or unauthorized possession of *Waqf* property making it a cognisable and non-bailable offence which could lead to upto two year of rigorous imprisonment.
3. The Act lays obligation on the state governments to set up State *Waqf* Boards to function effectively.
4. It also incorporates the steps for better accountability to the boards by ensuring a legal responsibility for the information to flow from the State *Waqf* Boards and State Governments to the Central *Waqf* Council.
5. The amended Act provides more stringent provisions to reclaim property parcels alienated over the years.
6. The Act prohibits sale, gift, exchange, mortgage or transfer of *Waqf* property *ab initio*. However, as an exception to this rule, acquisition of *Waqf* properties is valid for a public purpose under the Land Acquisition Act, 1894 or any other

decree relating to acquisition of land made in consultation with the Board: the purpose of acquisition is exclusively for a public purpose, the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991; when there is no availability of alternative land more or less suitable for that purpose; and the recompense must be at the current market value or a suitable land with sound solatium representing the acquired property so as to defend the interest and objective of the *Waqf* effectively.

7. The Act says that a board will require the consent of at least two-thirds of its members to sanction lease. It further mentions that the lease period may be up to 30 years for commercial activities, education or health purposes, while the lease of agricultural land has a maximum period of 3 years.
8. It permits to restore the *Waqf* properties under the occupation of government agencies to the Mutawalli or *Waqf* Board or to compel rental payment at market rate.
9. The Act provides provision to include professionals and scholars in the Board a Muslim CEO so as to manage the administration of the state effectively. The Act gives the composition of the Central *Waqf* Council with four persons of national eminence to advise the Central and State governments and the State *Waqf* Boards. The Act also gives the provision to create a Board of Adjudication for any dispute arising out of its directive to be referred to the high-level Board of Adjudication.
10. It allows the elimination of corrupt members after no-confidence motion. It further reiterates that if a public servant fails in his lawful duty to prevent or remove encroachment of *Waqf* properties, he/she shall be punishable with fine on conviction.
11. It authorizes CWC to seek the annual report and audit report and to issue decree to the State *Waqf* Boards on financial deliveries, survey, maintenance of *Waqf* deeds, revenue records and encroachment of *Waqf* properties.
12. The Act further underlines, for the wider interests of the community, educational facilities and welfare provision to form the keystone of the reform without the precedence of commercial interests *per se* over them.
13. The Act gives provisions for the survey and digitization of records, compulsory registration within a year of enactment and every ten years

thereafter, to create a centralised and web-enabled database for the use of stakeholders, to improve transparency and efficiencies and to keep vested interests at bay.

14. The Act lays the principal thrust to ensure transparency in administering and managing the *Waqf* properties even at the time of applying the new law.
15. The *Draft Leasing Rules (2014)* includes the minimum lease rental at 5% of market value, increase of at least 5% every year, competitive bidding for price discovery, security with 2 year rental if the lease period is more than 10 years, no permission for sub-lease, no clause for automatic renewal of lease and strict condition in agreement for probable default by the lessee.

1.9 Encroachment

The issue of encroachment has to be understood with a social perspective differentiating it from occupation. There are portions of *Waqf* and other public and private land which are occupied by poor people, which needs to be differentiated from institutional occupation. There were instances of unauthorized occupation of gazette *Waqf* properties by the governments and their agencies, which were reported to the Sachhar Committee by various State *Waqf* Boards during the period of 2005 and 2006. There has been repeated public agitation against encroachment by the state of *Waqf* properties and in many instances it has helped the private parties to encroach the *Waqf* property (Example: Jorbagh in Delhi). Despite the intervention of the courts, no action has been taken yet by the Government to free the property from encroachment. Encroachment of *Waqf* property is a serious problem and one of the major offences in the state itself.

The squatters, coming into repeated conflicts and compromises with coercive authorities, occupy land simply to survive. They do not challenge the regime; they only pose practical problems to it where as the institutions pose a greater threat as they are backed by the access to various other services which poor people cannot afford. Besides the squatters, there have been definite and effective attempts by the members of public and land mafia to encroach upon *Waqf* properties, especially the graveyards, discussed religious structure etc.; and the mutawallis have often conceived it in the land mafia and squatters have illegally settled the *Waqf* land which is reflected from the tables as follows.

Case I: Encroachment on *Waqf* properties in Madhya Pradesh

To vacant the *Waqf* Properties from various types of encroachers, the Madhya Pradesh State *Waqf* Board has driven a special mission. In this regard, 4129 cases have been registered under section 54 so far. 1042 out of total registered cases have been disposed off and in 389 cases, to remove the encroachment from the relating *Waqf* properties, the SDMs have been requested to take action to implement the order of the CEO of the Board under section 55 of *Waqf* Act, 1995 for eviction.

Case II: Encroachment and Illegal Sale in Bihar (Karimi, 2014)

To check the incidents of encroachments of *Waqf* lands, the Government of India as suitable amended Section 54 of the Act, 1995. If Chief Executive

Officer is satisfied that the property is *Waqf* property then he may make an application to the Bihar *Waqf* Tribunal for Grant of order of eviction for removing the encroachment and deliver possession of the property to the Mutawalli of the *Waqf*. After receipt of the application the Tribunal, for reason to be recorded therein, make an order of eviction and cause a copy of the order to be affixed on some conspicuous part of the property and if the encroacher refuses or fails to comply with the order, the Chief Executive Officer or any other officer duly authorized by him may evict that person and take possession of the property. At present 166 cases of encroachment/alienation has come into the notice of the Board in which actions have been taken as provided in the *Waqf* Act, 1995 and the Bihar *Waqf* Rules, 2002 to get vacated the encroachment from the *Waqf* Property with the help of district administration. In this connection, the Principal Secretary of the Minority Welfare Department, Government of Bihar has taken up this matter with the district administration and has instructed the district magistrate of all the districts to take up this matter on priority basis. (Karimi, 2014). Now under the *Waqf* (Amendment) Act, 2013, this provision will certainly improve the position.

It is disappointing to note that most of the drives against the removal of encroachment of a *Waqf* property have yielded little result. The law enforcement agencies have little will to pursue the encroachment removal either due to overburdened with their assigned duties or they are deterred by the political influence or otherwise financial consideration.

1.10 Transparency

Transparency in decision making, implementation of policy and evaluation of impact is important element that safeguards the interest of the *Waqf* estates and the community. The present arrangement of the *Waqf* management is such that it hides more than it reveals. The *Waqf* Boards are filled with persons picked up purely on political consideration and the community and the community has to say in the selection or nomination process. Benefit of the state holders' participation, the boards and their organs work as over regulated Government agencies. The situation of RTI is also very disappointing. PIOs have been named but the work is taken up as a routine matter and the instance of avoidance is larger than compliance.

Trust is crucial for an organization to be an effectiveness institution. However, being trustworthy to one self alone does not guarantee one the capability of building trust in the organization. This trust is missing in the case of *Awqaf* and their associated institutions. People are not very upright when it comes to establishing *Waqf* or joining the workforce. Even in the government setup, the *Waqf* postings are brightly looked upon. Bad management or mismanagement corrodes away the built up of trust causing endless rise of potential enemies. According to Galford and Drapeau, 2003, inconsistent messages from top management, inconsistent standards, a willingness to tolerate incompetent bad behaviour, dishonest feedback, a failure to trust others to do good work, a tendency to ignore painful or

politically charged situations, consistent corporate underperformance, and rumours are among the most common enemies of trust.

1.11 Financial Status of State *Waqf* Board

In one of the cases of records, the receipts of the Madhya Pradesh *Awqaf* Department come from several sources such as the cash-boxes in shrines (about 50% of the annual income), income from nazranah (about 15%), income from attached businesses (about 5%), income from rented shops/houses (about 15%) and income from rented agricultural land (about 10%).

These receipts are general tendencies, which vary from year to year.

The Andhra Pradesh *Waqf* Board collects *Waqf* funds mainly from the income of the *Waqf* institutions at the rate of 7%, the *Waqf* institutions under the Direct Management of the *Waqf* Board as Haq-e-Intezam at the rate of 25% and from the income of the complexes constructed by the Board under Direct Management collection at 75%. The Board also collects from issuance of Marriage Certificates, Divorce Certificates, Shiyazats etc., under Quazat (collecting an amount of Rs.50 to 200 on each of such cases). Under a unique scheme called 'Grant-in-Aid' introduced in the state for the first time, the Government gives benefits to the Masajid, Dargahs, Graveyards and other *Waqf* institutions. This helps in meeting the expenditure beyond the income. In this line, then the government (during the time of data collection) gives a Grant-in-Aid of Rs.56.25 Lakhs for the

maintenance, development and protection of Masajid, Dargahs and other *Waqf* institutions (vide G.O.Ms.No.145, dated: 08-11-95 and Rs.100-00 Lakhs vide G.O.Ms.No.148, dt.14-11-95 and Rs.200-00 Lakhs under G.O.Ms.No.21, dt.22-2-97) (www.aponline.gov.in).

1.12 Objective of the Study

The first primary objective of the study was to get the status of record keeping of property records in India, the human resources involved in it and the use of technology for *Waqf* record management.

The second objective is to account on the administration and management aspects of the *Waqf* properties of the nation.

The third objective is to document on the management of *Waqf* management in the country so as to serve it as the source of information on *Waqf*.

1.13 Methodology

The status, progress and management and execution of *Waqf* administration in the Indian mainland is studied in this report. The study is based on both the primary and secondary data collected from the relevant offices, individuals, waqf personnel and others related directly or indirectly to *Waqf* and its management. Primary data were collected by personal interviews in structured and informal set up of the personnel involved directly or indirectly in *Waqf* property record management or *Waqf* management. Most of the data collected was through questionnaires and formats that were designed for the purpose. Interaction and discussion with the *Waqf* officials and others concerned were very important part of the study. Field visits in the *Waqf* or other relevant offices were also done to help us in further understanding of the issue. The secondary sources including official data

from the *Waqf* boards, published books, journals and other sources of literature and data has also been used.

1.14 Outcome of the Study

The study will give us a perspective on the historical development of *Waqf* in India, an account on the *Waqf* principles, practices and its legal evaluation and a status on the whole *Waqf* property management and administration of the country. This report also gives us an account on the Central *Waqf* Board and State *Waqf* Boards, the financial institution of the *Waqf* administration, and the aspects on the human resources of *Waqf* boards. This study also tries to look into the prospects and advantages of modern technologies in managing the *Waqf* properties more efficiently and transparently. The report concludes with the recommendations and strategies that may be taken up for a better *Waqf* management in the future. The report, as a whole, will present us as a good source of information and account on the data records and administration of the *Waqf* properties in the country.

1.15 Conclusion

The earlier civilizations may have influenced Islamic charitable endowment, as such endowments have remarkably older history than that of Islam. However, ancient Mesopotamia, Greece, Rome as well as the pre-Islamic Arabs were certainly aware of charitable endowments. The degree of influencing each other means either Islam has got influenced by these ancient institutions or they have been produced from genius of Islam, are still the unresolved questions. However, Roman origins have been rejected, primarily the Byzantines, but also Mesopotamian, Sassanid, Jewish and Buddhist influences had been widely accepted. It is very obvious; Muslims were urged strongly to dedicate assets for charitable purposes and knew how to do this from early civilizations which was dominated by the similar extinct of doing charity.

The ability of Islam to adopt good deeds from other civilizations is appreciable that has actually got its origin from the tradition of Prophet Mohammad (pbuh):

“Abu Huraira (May Allah be pleased with him) reported Allah’s messenger (pbuh) as saying: a word of wisdom is the lost property of a believer, he can take it wherever he finds it, because he is more entitled to it”.¹⁵

The rich legacy, culture and history of the Islamic voluntary sector institutions including *Waqf* has to be highlighted. The in-depth study for the revival of Islamic Institutions is needed to be done for meeting the rising expectations keeping in mind five fundamental historical facts:

- the ideal Islamic system of early Islamic period
- the rich legacy of Islamic Civilization
- The vital areas of Muslim world had been declined because of successive stages of colonization that effected the role of Ijtihad (i.e. fresh thinking)
- In Muslim societies, basic Islamic values and institutions at the grass-root levels is to be preserved
- re-emergence of most of the Muslim states and institutions in recent era

The momentum of Islamic socio- economic ethics and their creative values of new ideas, technology and institutions were badly affected by the centuries of colonization and cultural domination of vital areas of the Muslim world. Also, the process of colonization greatly contributed in the de-Islamization of the contemporary Muslim societies and the fall out of Islamic socioeconomic institutions. The inference may be done even without going deep into the detail analysis of all the above five historical factors mentioned. However, Muslims should also take the ownership of losing their Islamic momentum over time.

The basic economic behaviour of Islamic values for instance payment of Zakat, establishment of Awqaf, granting benevolent loans without interest, implementation of the Islamic law of inheritance to ensure equitable distribution of wealth, internalization of socioeconomic values arising out of the Qur’ānic verses emphasizing God’s sovereignty over all resources, and many other popular phrases relating to socioeconomic issues have guided the succeeding Muslim generations in general and the grass-root Muslim societies at particular since ages. The sustainable development of Islamic socioeconomic institutions in the 21st century requires serious and deep internalization of Islamic values amongst the Muslim societies.

¹⁵Sunan al-Tirmidhi, (1992), bab 19, hadith 2687

Law and administrative rules, however, cannot cure all the ills. A clever and dishonest person may find one or other means to evade laws and rules. This is a problem, which is seriously afflicting the *Waqf* administration in India. "The plundering hands of the non-God fearing Mutawallis" is referred to in a recent report¹⁶. It has now become a big problem everywhere and for which, unfortunately, there is no simple solution. Honesty, integrity and trustworthiness are the attributes that take time to be infused. These are needed in a *Waqf* administrator, who is holding an office of trust. Everyone connected with *Waqf* should therefore be reminded of the religious dimension of his responsibilities and duties. Moral and ethical education should be made part of the continuing education and training of *Waqf* administrators. With the efforts now being made and measures to be taken shortly, this may make Awqaf once again a major instrument for the Muslim social welfare and progress in the country¹⁷.

¹⁶See, 9th Report of Joint Parliamentary Committee on Waqf, (Rajya Sabha Secretariat, New Delhi, Oct 2008). This report was submitted by the committee chaired by K. Rahman Khan, M.P and Dy .Chairman, Rajya Sabha. The Report is full of instances where human failures lie at the bottom of mismanagement of awqaf in India.

¹⁷Rashid, Syed Khalid, 2011. "Certain Legal and Administrative Measures for the Revival and Better Management of Awqaf", Islamic Economic Studies, Vol. 19, No. 1, pp. 1 - 40", 2011.

Chapter 2

Management of Waqf Human Resources

Awqaf is a trust (*amanah*) which should be made accountable for its stakeholders who mainly consist of at-least three parties: (1) *waqif*, (2) *nadzir* and (3) public (Sulaiman, Adnan, & Nor, 2009). However, when one discusses about accountability from Islamic perspectives, it does not only cover about relationship between human beings, but it goes beyond that.

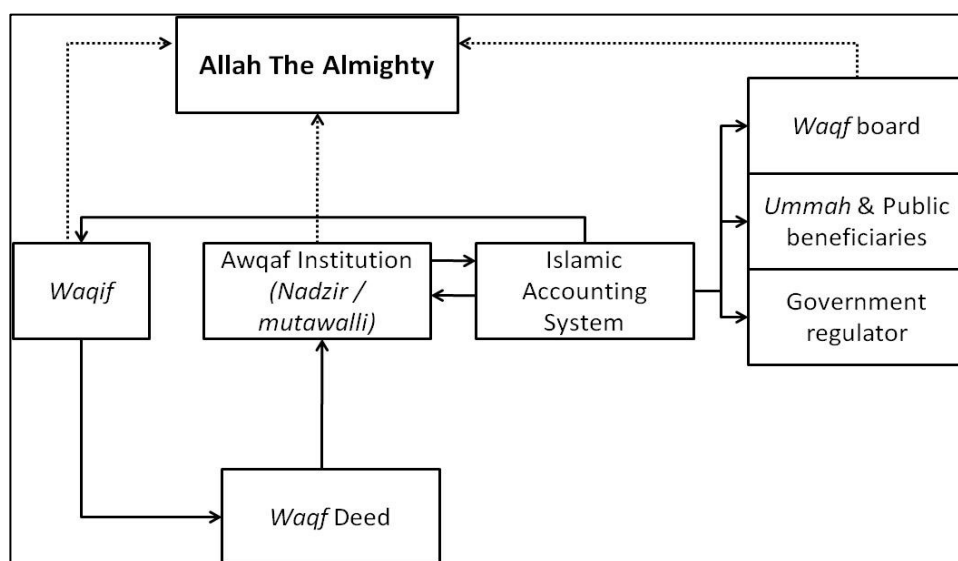
2.1 *Awqaf* and Accountability

Accountability in Islamic sense can be observed from two standpoints: an individual's accountability to Allah, the Almighty and an individual's accountability to other human beings. This concept is also known by "*dual accountability*" (Hameed, 2000). The main accountability is certain as in Islam every individual is considered as Allah's vicegerent (*khalifah*) in this world. Thus, any resources granted to him are regarded as *amanah* which is needed to be accounted for whereas the secondary accountability is given by contract made between individuals. Good accountability will result in other individuals' pleasure which later will lead to Allah's pleasure in the hereafter. In contrast, bad accountability may be instigated by businesses which undertake sinful activities. This may lead to individual's sin which may lead him to hell (Hameed, 2000).

Both types of accountability are exceptionally suitable to *Awqaf*. This is important as the nature and attribute of *Awqaf* giving is purely voluntary based on religious motivation. Appropriate accountability will surely promote the institution of *Awqaf* to the public. For any *Awqaf* initiative, Allah the Almighty becomes the primary *accountee*. This aligns with definition of *Awqaf* stated by Sabiq (2008). He defines *Awqaf* as holding certain property and dedicating its benefits in Allah's way. Additionally, since *Awqaf* property is used for public benefits, consequently *Awqaf*'s manager (*nadzir*) should be accountable to stakeholders such as *waqif*, *Awqaf* board, *Awqaf* employee, regulator, beneficiaries, and community in large (Ihsan & Hameed, 2007).

To model those accountability concepts, Hisham (2006) figures the *Awqaf* accountability model where the highest accountability is to be performed to Allah the Almighty (See Figure 2.1).

Figure 2.1 **The *Awqaf* Accountability Model**



Source: Hisham (2006)

Awqaf institution, *waqif*, regulators, and public should fulfil this accountability to Him. Additionally, this accountability should be reflected through fulfilment of Allah's commands and avoidance of His prohibitions. Some ways to accomplish these are by achieving objectives with regard to reliability, effectiveness and efficiency of operation, compliance with *waqif* conditions, compliance with applicable laws, and reporting to interested parties. Moreover, accountability of *Awqaf* organization can also be attained by bringing together elements of good corporate governance practices and accountability standards (Dafterdar 2007).

2.2 *Awqaf* Asset Management

Management of *Awqaf* can be observed by types of *Awqaf* assets available to be managed. This is because different types of assets need different ways to be managed. Bakar (2007) classifies *Awqaf* assets into three categories: (1) income generating assets (movable¹⁸

¹⁸Examples of movable assets are such as land, buildings, wells, trees, etc. All schools of thought agree on that definition (Rahman, 2007).

and immovable¹⁹), (2) non-income generating assets (movable and immovable), and (3) intellectual property or intangible assets. Another classification of *Awqaf* assets was made by Kahf (2007). In his study, the author has discussed a number of *Awqaf* assets by looking at the period when those assets exist. In the history of Islam, *Awqaf* assets were classified into three groups: (1) religious *Awqaf*, such as masjid of Quba, (2) philanthropic *Awqaf*, such as well bought by Uthman_{RA}. so that people can drink from it for free, and (3) posterity or family *Awqaf*, such as *Awqaf* made by some real estate owner in Khaybar who put the condition that fruits and revenues of their *Awqaf* must be first given to their own children and descendants and only the surplus, if any, should be given to the poor (monzer.kahf.com). While in the contemporary period, Kahf (2007) classifies the *Awqaf* assets using three categories²⁰:

1. Period of usage: perpetual and temporary *Awqaf*
2. Benefits of asset: *Awqaf* of usufructs and financial rights
3. Users of assets: Public and private *Awqaf*

Using the above classifications of *Awqaf* assets, *Awqaf* in form of monetary assets in general can be invested in financial investments, such as Islamic capital market instruments and in supporting microfinance sector (as suggested by Ahmed (2007)); or in real sector investments. Rahman (2007) considers some strategies to manage cash *Awqaf* by spreading the funds among several investments with different risk and return characteristics. Afterward the funds are needed to be properly allocated in order to produce investment returns while reducing portfolio's exposures to losses. Higher the risk of fund investment, the higher profit potential the investment may generate. Classification of investment targets based on their risks is presented as follows:

1. Cash-equivalents Investment: This is the lowest-risk investment targets that the *Awqaf* institutions may consider. Examples of this type of investment are cash, commercial deposits in Islamic banks, and Islamic money market instruments.
2. Income Investment: This type of investment possesses more risk as well as more return potential as compared to the first one. The *Awqaf* institution may consider this instrument when it wishes to invest for medium period (within 3-5 years). Example of this instrument includes *sukuk*, Islamic REIT, Islamic fixed-income mutual funds.

¹⁹Examples of immovable assets are such as cash and stock portfolios. Some schools of thoughts have different opinions in defining the types of immovable assets (Rahman, 2007).

²⁰For more detail explanations of these types of *awqaf*, see Kahf (2007).

3. Growth Investment: This is a long-term, most risky, and most potential-profitable type of investment. Example of this investment such as stocks issued by *shariah*-compliant companies, Islamic equity mutual funds, and Islamic index mutual funds.

It should be noted that the *Awqaf* institution does not always be required to invest the *Awqaf* funds by itself (under its own investment management). The institution can also invest the funds through Islamic financial institutions such as Islamic banks, *takaful*²¹, or investment management firms which manage Islamic mutual funds. In some countries, such as Kuwait, *Awqaf* funds are used to promote establishments of some Kuwait's as well as foreign Islamic banks (Al-Ibrahim, 2007).

In addition, the *Awqaf* institution can utilize its cash *awqaf* to build real-estate properties either in form of economic assets which can be managed in order to generate financial benefits, such as apartments, malls, hotels; or in form of social/philanthropic assets such as masajid, madrasahs (schools), Shifa-khana (hospitals), etc. The management of this investment is the same with the management of immovable *Awqaf* assets. Shall the *awqaf* institution does not have enough funds yet to build those assets; Rahman (2007) suggests it to develop joint venture with investors or to issue *sukuk* (using contracts of *musharakah* or *ijarah wa iqtinaa*)²². Moreover, Bakar (2007) recommends the institution to involve built-operate-transfer contract with reliable real-estate developers to have the assets built. If the *Awqaf* institution already has the assets but it does not have enough money to fund the assets' operation, Bakar (2007) has proposed, it to do lease and lease back mechanism (*ijaratan*). By incorporating these Islamic financial products with *awqaf*, the potencies of *awqaf* to create maximum benefits can be easier to be achieved.

2.3 *Awqaf* Distribution Management

²¹Kahf (2007) suggests two *awqaf* model of general and family *takaful*. By using the scheme He offered, the surplus of fund investments can be partly managed as *awqaf* which latter can be invested again to finance the claims or to be used for public benefits.

²²Using *sukuk* financing, the *awqaf* institution can develop the *awqaf* property, lease the property once finished and share/pay the revenues with the investors. In the same time, the *awqaf* institution can buy back the shares from the *sukuk* investors. Thus, at the maturity of the *sukuk*, the *awqaf* assets will solely be the rights of the *awqaf* institution (in worldly term). For more discussion on how *sukuk* can be implemented for financing *awqaf* property, see Bakar (2007), Kahf (2007) and Rahman (2007).

The best *Awqaf* are those whose benefits can be distributed to larger number of beneficiaries. In order to achieve effective and efficient distribution of *Awqaf* benefits, the *Awqaf* institutions shall properly identify parties who are eligible and in need to receive such benefits. According to AAOIFI's *shariah* standard No. 33 concerning *Waqf*, *Awqaf* benefits can be distributed for any purpose, even it may not for a charitable one, as long as the benefits are not to be made for *shariah*-banned purpose. The benefits are also permissible to be distributed to non-Muslims, provided that the cause to be served does not involve a sin. In addition, it is also permissible by the AAOIFI's *shariah* standard to make *Awqaf* for the benefit of the rich.

Administratively, Desai (2006) noted that for anything to become *Awqaf*, they must be stated clearly by the *waqif* at commencement of the endowment. For example, the *waqif* may say "I make this *Waqf* for such purpose" or "I give this *Waqf* for such group of people", etc²³. This condition makes the distribution of *Awqaf* benefits becomes challenging task. This is because there may be various intentions created by the *waqif*. According to Karim (2007), experiences of Majelis Ulama Islam Singapore (MUIS) in distributing its *Awqaf* benefits to overseas for specific intentions is one of the most challenging tasks. The MUIS is currently carried out the disbursement functions with help from several agents in order to make it more effective and efficient.

In addition, though the *Awqaf* beneficiaries are generally stated up front, AAOIFI's *shariah* standard states that they need not to be present at the time of declaring the *Awqaf*. However, when the beneficiaries of the *Awqaf* are no longer existent, the benefits of the *Awqaf* should go to other charity purpose. If from the beginning, *waqif* has stated that the *Awqaf* are to be made for specific masjid(s), any income generated from the *Awqaf* has to be spent on the masjid's own interest. But, if there is still an excess amount of income which has not been spent, it is permissible to transfer such amount to other masjid that do not have enough income to cover its expenses, or the cost of its maintenance and renovation.

After all, although *Awqaf* is considered as not-for-profit in nature, it also needed to be highlighted that *Awqaf* is also not-for-loss one (Dafterdar 2007). Not only that, the *Awqaf* institution as *nadzir* has to manage the assets in accordance to the *shariah* rules.

²³(See Imdad al-Fatawa (2:605) by Syeikh Mawlana Ashraf 'Ali Thanwi and published by Maktaba Darul Uloom Karachi for detail)

Simultaneously, *nadzir* needs to accomplish his accountability to the *waqif* by executing his wishes. *Awqaf* institution, likewise, is also expected to ensure that *Awqaf* will contribute to the betterment of Muslim society (Ihsan & Hameed, 2007). This is because *Awqaf* institution is deemed to be an economic enterprise on the one hand and social-religious enterprise on the other hand (Cajee, 2007).

To achieve all those objectives, professional and sound management on *Awqaf* assets are direly needed. Regrettably, many *Awqaf* assets in some Muslim countries are abused and left to be run down during times of economic and political decline. *Awqaf* operation by some Governments in some Muslim countries have made the *Awqaf* assets been added to Government properties through confiscation or nationalization. This condition becomes more unfavourable when lack of peaceful coexistence occur between Islamic activists and Governments of those countries. To overcome these problems, *Awqaf* assets are needed to be managed by professionals, non-governmental institutions which have proper vision, updated education, sophisticated *Awqaf* management tools, proper check and balances, and proper government supervision and regulation (Rahman 2007). Additionally, Kahf (2007) adds that in order to reform *Awqaf* management, the *Awqaf* institution needs to escalate its management competitiveness, adopt and practice good “corporate” governance as well as be supervised by a specialized authority. All of these are needed in order to perform accountability to Allah as well as the *Awqaf* beneficiaries which can be ascertained through clear and transparent reporting. The report will also explain how compliant the *Awqaf* institution is to the *shariah* rules in managing its *Awqaf* assets. Those objectives can only be achieved through Islamic accounting which has its own specific characteristics (Ihsan & Hameed, 2007).

2.4 Accounting for *Awqaf*

Accounting in the *Awqaf* sector has been regarded as something of a “black hole”. This is because available financial reports for the sector lack uniformity and still has a long way from being comprehensive. Many *Awqaf* organizations fail to produce financial reports at all. This limits the accountability of these *Awqaf* organizations to their stakeholders (Dafterdar 2007).

Few prior studies have been conducted in accounting for *Awqaf* sectors in order to become solutions for the above problems, such as those performed by Abdul Rahman et al. (1999), Marsoof (2004), Abubakar (2005), Rokyah (2004), Ihsan & Hameed (2007), and Sari (2010). Among those previous studies, some discuss about availability of accounting system

in *Awqaf* institutions in some Selected Islamic Religious Council (SIRC) in Malaysia, such as those which were conducted by Abdul Rahman et al., (1999), Rokyah (2004), and Hisham (2006). The three studies show that there was improvement in term of financial reporting from year to year. However, there was a common problem in *Awqaf* accounting implemented in those institutions: unavailability of standardized financial report. This condition may obstruct the stakeholders of *Awqaf* sector to determine how well *Awqaf* organizations fulfil their contributors to financiers, to those who benefit from their programs, and to the general public.

Thus, to overcome this situation, Hisham (2006) has suggested some accounting standard for *Awqaf* institution based on Statement of Recommended Practice (SORP) 2005 which recommends accounting standards for charity organization in United Kingdom. Furthermore, Dafterdar (2007) adds that the accounting standards need to cover how *Awqaf* organizations (*nadzir*) should act to be transparent and accountable in their program operations, asset and resource management, financial management and fundraising. He also suggests some areas of *Awqaf* accounting which needs guidance. The areas include fund accounting, recognition of revenue, depreciation and maintenance, capital grants, and the use of reserves and funds. Not only that, other specific areas which also need guidance include the clarity and content of financial and annual reports.

Following the above suggestions, Ihsan & Hameed (2007) develop *Awqaf* accounting standard by referring to SORP 2005. From their study, it can be concluded that most fundamental accounting concepts such as going concern, accrual basis, relevance, reliability, comparability and understand-ability can be used in preparing *Awqaf* financial report as these concepts do not violate the *shariah* principles. In addition, the study suggests that the *nadzir* needs to produce annual report which at least consists of statement of financial activities (report the source and usage of *Awqaf* funds), balance sheet, and statement of cash flows. Another point which is highlighted by Ihsan & Hameed (2007) is that the *nadzir* has to classify the *Awqaf* fund in term of *Awqaf-aam* and *Awqaf-khas*.

Additionally, Sari (2010) continues the study by focusing on the development of *Awqaf* accounting standard for *Awqaf* institutions in Indonesia. She performed some literature review and conducted some interviews with Indonesian *Awqaf* Board as well as few *Awqaf* institutions in the country. In her study, she recommends some technical journals on *Awqaf* funding and *Awqaf* management as well as the three financial reports as recommended by

Ihsan & Hameed (2007). Through these two last studies, the *Awqaf* institution as *nadzir* is hoped to be more trusted and accountable in administering the *amanah* from the *waqif*.

2.5 Measuring Performance of *Awqaf* Institutions

Accountability, management and reporting of *Awqaf* institutions can be observed more easily through the use of performance analysis, although it should be differed with those which are used to measure business organizations. While performance of business organizations are commonly measured through their bottom-line which is profits or losses, performance of not-for-profit organizations, such as *Awqaf* institutions are more challenges to be measured. This is because goals of non-profit organizations are usually more complex and often intangible as compared to for-profit ones (<http://iiw.info/>).

According to Anthony & Young (2002), performance measurement of any organization is conducted to fulfil at least two objectives: (1) to measure efficiency (which shows the association between organization's inputs and outputs), and (2) to measure effectiveness (which shows the relationship between outputs achieved and the organization's objectives). While in for-profit organization net incomes are commonly used to measures for both of these two purposes, in non-profit organization, no such monetary measures exist. This is because, in the organization, revenues do not approximate true output as they may vary for-profit organization. Moreover, Dafterdar (2007) suggests that performance measurement for *Awqaf* sector is conducted to ensure that expected outputs and outcomes of *Awqaf* are achieved in accordance with the conditions of the *waqif*. Thus, the performance measurements indicators should be linked with those outputs and outcomes.

Considering the above principles, some indicators that can be used to measure the performance of *Awqaf* institution is presented in Table 2.1 below:

Table 2.1 Recommended Performance Measurement Indicators for *Awqaf* Institutions

Indicator	Rationale for Selecting Indicator
<i>Input:</i>	
Expenditure (may be broken out by program or activity). Stated in current	Measure of resource used to provide benefits of <i>awqaf</i>

currency.	
Outputs:	
• Amount of <i>Awqaf</i> funds raised • Amount of <i>Awqaf</i> assets (other than cash) donated by <i>waqif</i> • Number of <i>Awqaf</i> used in productive manners (such as in form of economic assets) • Range of <i>Awqaf</i> benefits distribution • Number of <i>Awqaf</i> asset visits per month • Availability of identification of beneficiaries authorized to be served by <i>Awqaf</i> assets/services • Number of beneficiaries admitted to the <i>Awqaf</i> distribution program • Amount of monetary return generated by investment of cash <i>Awqaf</i>. • Amount of rental income generated from rental of <i>Awqaf</i> assets.	Widely reported measures that have been adjusted to indicate the <i>Awqaf</i> institution output.
Outcomes:	
• Percentage of poverty reduction in target population • Percentage of low-education reduction in target population • Percentage of profits gained from utilization of <i>Awqaf</i> assets channeled to provide service from Muslim community	Widely reported measures that have been adjusted to provide indicators for the accomplishment of <i>Awqaf</i> institution program.
Efficiency:	
• Program efficiency ratio:	This can be used as indication to identify how much money generated by <i>Awqaf</i> assets is being spent to

$\frac{\text{Program expenses}}{\text{Total expenses}}$	achieve <i>Waqf's</i> objective rather than administer it. (Sulaiman, Adnan, & Nor, 2009) quoted from Sorensen and Kyle (2007) stated that this ratio should be at least 65%. The benchmark is set to avoid too high operational expenses that may hoard the <i>Awqaf</i> funds.
Operating expense efficiency ratio: $\frac{\text{Operating expenses}}{\text{Total expenses}}$	<i>Awqaf</i> institution needs funds to run its day-to-day activities, such as for salary expense as well as other administrative expenses.
Indicator	Rationale for Selecting Indicator
Margin of rental activities $\frac{\text{Rental revenue} - \text{rental expenses}}{\text{Rental revenue}}$	As majority of productive <i>Awqaf</i> assets (such as office complex, apartment, soccer fields) are dedicated for leasing, thus this ratio will be valuable to see how efficient an <i>Awqaf</i> institution manage its <i>Awqaf</i> property. Rental expense for this ratio is obtained from expenses disbursed to maintain or rehabilitate the <i>Awqaf</i> asset. These two expenses are needed to ensure that once an asset is acquired, it has to be able to create value. This is because one of the objective of <i>Awqaf</i> is asset creation, not only asset management.
Return on Investment $\frac{\text{Investment Income}}{\text{Average Investment}}$	This ratio can be used to ensure that <i>Awqaf</i> institution as <i>nadzir</i> has invested the <i>Awqaf</i> funds to obtain adequate return to make certain that it is long term, financially viable entity that can realize its mission well into the future. This ratio is also used as an indicator to ensure the economic prosperity as one of the objective of <i>Awqaf</i> as mentioned by Rahman (2007). However, it should be noted that the funds has to be invested in <i>shariah</i>-compliant instruments

	such as Islamic stocks, <i>sukuk</i> , and/or Islamic mutual funds ²⁴ .
Fundraising efficiency ratio: $\frac{\text{Total Fundraising Expenses}}{\text{Total Fund Raised}}$	This ratio can indicate whether the <i>Awqaf</i> institutions have been efficient in embarking on fundraising activities to generate adequate targeted fund. According to Sorensen and Kyle (2007) in Sulaiman, Adnan, and Nor (2009), this ratio should not be more than 35%.
Distribution efficiency ratio: $\frac{\text{Distributed Benefit}}{\text{Investment Income}}$	This ratio informs whether the <i>Awqaf</i> funds have efficiently distributed its generated income to eligible beneficiaries. Higher the ratio, better the efficiency.

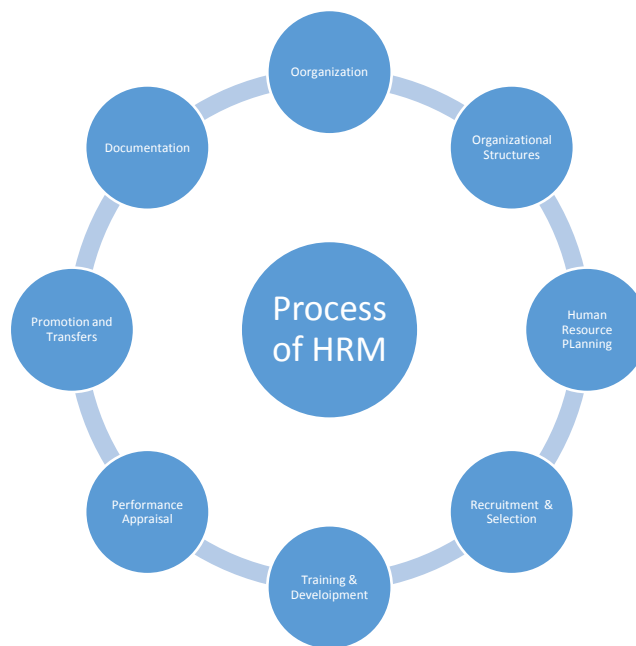
Source: Anthony & Young (2003), Ihsan and Hameed (2007), Dafterdar (2007), Kahf (2007), Horngren (2009), Sulaiman, Adnan, and Nor (2009)

²⁴Criteria of an investment instrument to be called as *shariah*-compliant ones are different across countries. In Indonesia, to be included as *shariah*-compliant, the instruments have to obtain legal approval from the Shariah Supervisory Board prior to their launching to public. Specifically for the Islamic stocks, the issuers must be companies which major operating activities are not conflict with Islamic principles; their debt to asset ratio must be lesser than 45%; their non-halal income to total income ratio must be lesser than 10%.

2.6 Status of Human Resources at *Waqf* Boards

The Human Resource Management (HRM) process is an ongoing procedure that tries to keep the organization supplied with the right people in the right positions when they are

Figure 2.2 Process of HRM



needed. The *Waqf* Boards in India have also adopted staffing and Human Resources process for their board. Though all the *Waqf* Boards cannot apply the entire seven basic activities of Human Resources, they have put their efforts in this regard. They have to take in future for strengthening their human resource activities. The HRM process includes seven basic activities:

1. **Organization:**

a) **The Central *Waqf* Council:** The Central *Waqf* Council established the present composition is the State *Waqf* Boards in every Indian state with Central *Waqf* Council acting in as apex advisory body. *Waqf* Board is an organization established in every State/UT for the management of the *Waqf* properties in that state/UT. The State Government appoints Chief Executive Officer in consultation with the Board and the Board is empowered by the Act to appoint such number of officers and other

employees as may be necessary for performance of its functions in consultation with the State Government. The term of office of the members under the Act of 1954 is five years.

b) The *Waqf* Board of the States: The *Waqf* Act 1995 section 13(3) says: ‘The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued’. The composition of the body has been described in section 14(1) of the Act, which shall consist of Muslim representative of Parliament and state legislature, Bar Council of the state, Mutawallis of *Awqaf* having annual income more than 1 lakh, one Muslim of professional experience and one Muslim official to be nominated by the state government, there shall be at least two women members.

2. Organizational Structure

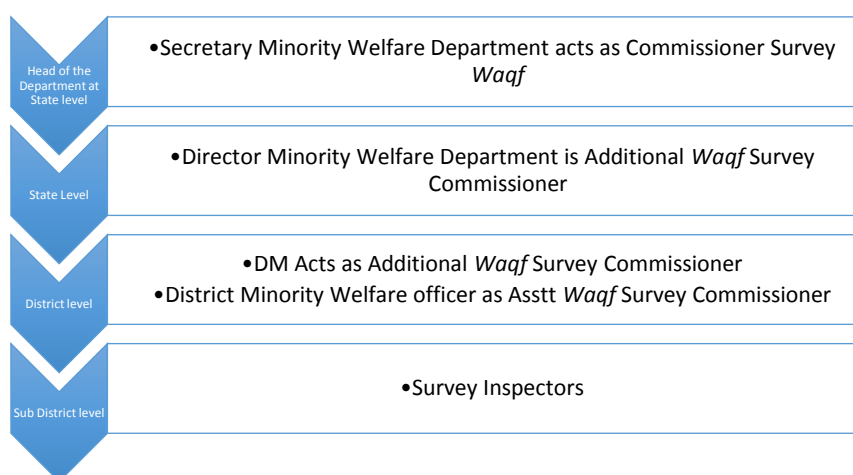
In most of the states there is a single *Waqf* board under a state department (the department varies in nomenclature like Minority welfare department, minority and *Waqf* department etc. In Bihar and UP there are two *Waqf* boards one for Shia and one for Sunni as per *Waqf* Act 1995 (section 13 (2) of The *Waqf* Act 1995 says: Notwithstanding anything contained in sub-section (1), if the Shia *Awqaf* in any state constitute in number more than fifteen percent of all the *Awqaf* in the state or if the income of the properties of the Shia *Awqaf* in the state constitute more than fifteen percent of the total income of the properties of all the *Awqaf* in the state, the state government may, by notification in the Official Gazette, establish a Board of *Awqaf* each for Sunni *Awqaf* and for Shia *Awqaf* under such names as may be specified in the notification”. Besides these bodies additional institutions are also setup by some of the states for specific purpose related to *Awqaf*, like in Uttar Pradesh there is a *Waqf Development Corporation* for the development of some of the *Waqf* properties.

There is a provision under The *Waqf* Act 1995 section 4 (1), the state government may notify *Survey Commissioner for Awqaf*²⁵, the UP Government had

²⁵(Section 4 (1) of Waqf Act 1995: “The state Government may, by notification in the official Gazzette, appoint for the state a Survey Commissioner of Auqaf and as many Additional or Assistant Survey Commissioner of Auqaf as may be necessary for the purpose of making a survey of Auqaf in the state.”)

created a department as ‘*Waqf* Commissioner Office’ way back in 1976-77 by a government order 22(1)-76 as per *Waqf* Act 1960. The organizational structure of the *Waqf* Commissionerate is shown in the figure 2.3.

Figure 2.3 Organizational Structures of the *Waqf* Commissioner



The Council consists of Chairperson, who is the Union Minister In-charge of *Awqaf* and such other members not exceeding 20 in numbers appointed by Government of India.

The Secretary is the Chief Executive of the Council. For example Tamil Nadu *Waqf* Board and Kerala *Waqf* Board adopted organization structures as shown in the figures 2.4 and 2.5 respectively.

Figure 2.4 Organizational Structure of Tamil Nadu *Waqf* Board

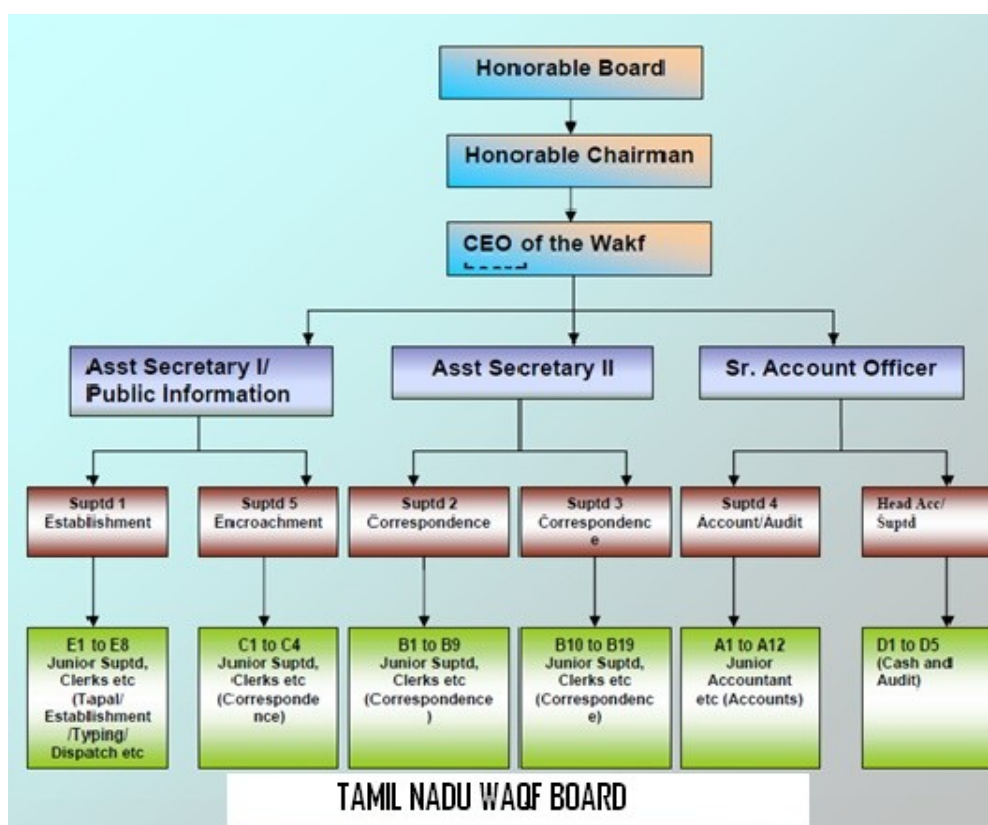
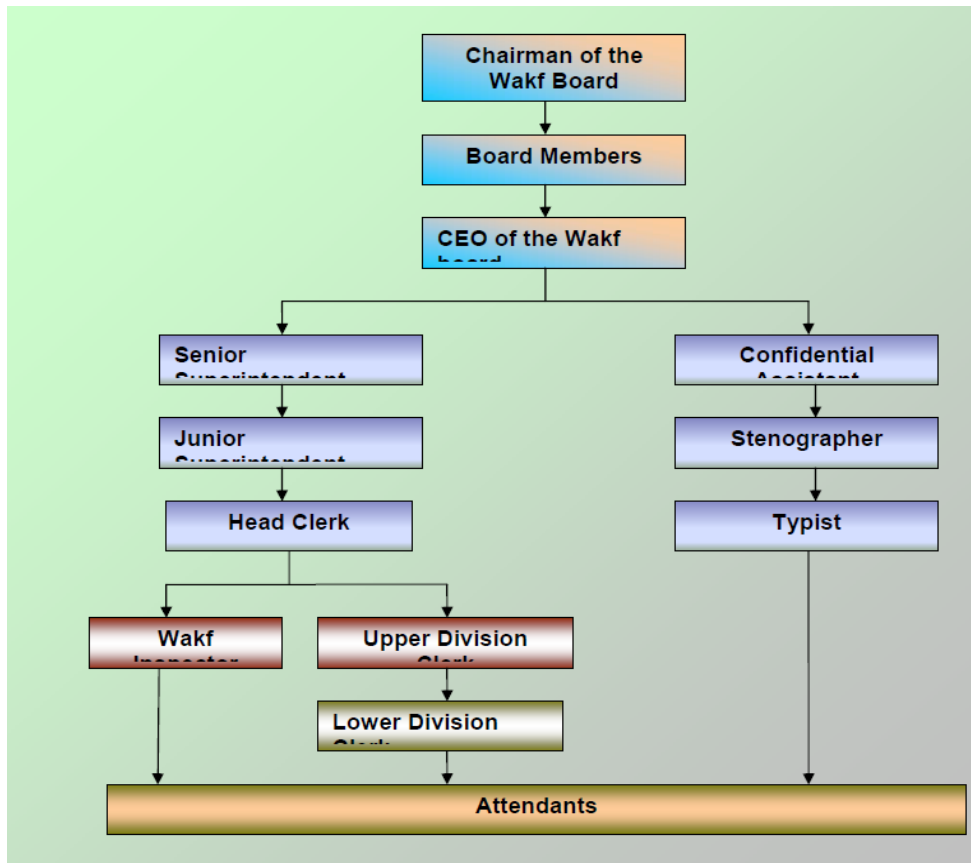


Figure 2.5 Organizational Structure of Kerala *Waqf* Board



In the Sections and its Functions of West Bengal, there are 12 Sections in the Office of the Board of *Awqaf* to deal with various works of the Office. A brief statement of the functions of each section is outlined below:

- **Board Section:** To maintain proceedings of the Board and Sub-Committees and policy matters & its execution.
- **Establishment Section:** To maintain administrative works of office, employee and Govt. correspondence.
- **Cash Section:** To disburse payment and maintain its records & registers and to maintain cash books and ledgers, pay salaries and official records & registers.
- **Law Section:** To deal with legal affairs and maintain its records and registers.
- **Accounts & Demand Section:** To collect *Waqf* contribution (revenue), assessment of accounts & audit inspection of *Waqf* Estates and maintain its records and registers.

- **E.C. & Misc. Section:** To appoint Mutawalli, mutation of *Waqf* properties and amendment of *Waqf* register and litigation in the matter of the *Waqf* Estates.
- **Misc. E.C. Section:** To register properties as *Waqf* and maintain its records and registers.
- **Development & Anti-Encroachment Section:** To develop *Waqf* properties and take action for removal of encroachment and recovery of *Waqf* properties and maintain its records and registers.
- **Reference Section:** To keep and maintain *Waqf* records and supplying & racking files and maintain its records and registers.
- **Receiving & Dispatch Section:** To receive and deliver the letters with acknowledgment and maintain its records and registers.
- **Direct Management Section:** To deal with the *Waqf* Estates placed U/S 65 of the *Waqf* Act' 1995 and maintain its records and registers.
- **RTI Section :** To deal with the applications seeking information under RTI Act, 2005

3. **Human resource planning** It is right people in the right place in the right time.

Chief Executive Officer (CEO): 'There shall be a full-time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the state government.'²⁶. The position of CEO is very important and pivotal in management of *Waqf* property and its records. Section 25, 26, 29 and 30 of the Act defines the duties and powers of the CEO which includes the supervisory, quasi-judicial, financial and executive powers. Hence, the role and position of CEO becomes very important. But, in most of the states, the state government has not given much importance in filling the post with appropriate officer or creating an appropriate system of appointment/ posting and tenure for the post.

Table 2.2 CEO's of State *Waqf* Boards

SLN	State	Name of CEO <i>Waqf</i> Boards	Services
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²⁶ Section 23 (1) of The *Waqf* Act 1995 as Amended by the *Waqf* (Amendment) Act, 2013: There shall be a full-time Chief Executive Officer of the Board who shall be a muslim and shall be appointed by the state government, by notification in the official gazette, from a panel of two names suggested by the board and who shall not be below the rank of Deputy secretary to the State Government and in case of non-availability of a Muslim officer of equivalent rank may be appointed on deputation.

1	Sunni <i>Waqf</i> Board, Bihar	Imteyaz Ahmad Karimi,	Bihar Administrative Service
2	Shia <i>Waqf</i> Board, Bihar	Rasheed Ahmad	Bihar Administrative Service
3	Karnataka	Ibrahim Adoor.B	Karnataka Administrative Service
4	Punjab	Sh. Zulfiqar Ali,	
5	West Bengal	Humayun Biswas,	WBSC
6	Kerala	B.Mohammed Jamal,	Direct recruitment
7	Meghalaya	NA	
8	Assam	Syed Rafique Ali	ACS (Retd.)
9	Madhya Pradesh	S.U. Saiyed,	Deputy Collector of SAS
10	Rajasthan	Dr. Sajhar Ahmad	NA
11	Manipur	NA	
12	Delhi	NA	
13	Maharashtra	Mr. Sayyed Aejaaz Hussain	Judicial service

4. Recruitment

It is concerned with developing a pool of job candidates in line with the human resource plan. Candidates are usually found out through newspaper and professional journal advertisements, employment agencies, word of mouth, and visits to college and university campuses. *Selection* involves using application forms, resumes, interviews, employment and skills tests, and reference checks to evaluate and screen job candidates for the managers who will ultimately select and hire a candidate.

Except in Kerala where there was a direct recruitment at other place there is neither such provision nor a system of recruitment. In most of the places including Delhi, Uttar Pradesh Sunni *Waqf* Board & Shia *Waqf* Board the CEOs average tenure is of less than six months. In Bihar there is an officer deputed especially in Sunni *Waqf* Board but having additional charges like-wise in Shia *Waqf* Board it is in additional charge of Deputy Secretary of Minority Welfare Department. We find that that Kerala *Waqf* Board is doing well in all respect; one of the reasons may be the CEO, its procedural appointment, its tenure, salary and perks besides the legal academic and experience background for the post. UP *Waqf* Boards are failing in many ways, in protecting, managing and developing the Awqaf may attribute to unavailability of a competent CEO through an established procedure, norms and tenures. Karnataka was also doing well under its CEO who was taking interest and got the time to implement the plans. One of the finding of the study is that lack of a detail procedure of tenure and incentives in perks etc are leading to short tenure or

unavailability of competent and efficient officer of Deputy Secretary Level of State Administrative services. Therefore, in the appointment procedure, norms, tenure, salaries and perks of CEO must be laid.

Besides CEO the Boards require a group of competent person to assist CEO in execution of the mandate of the Board²⁷. Every State Boards has its own structure of the organizational organogram, but four sections are almost common in every board, one is record section, two the legal section, three finance and audit and fourth establishment or general administration sections. Like-wise the number of officers and staffs also varies as per requirement. There are three issues related to the personnel management, i) what is the requirement, how much is sanctioned post and the status of vacancies, ii) What are the rule and process of recruitment and the iii) The status of capacity building of the staffs?

i). First question regarding requirement, the team observed that none of the states went for a work assessment for personnel requirement. The state has sanctioned some posts on the basis of the sections and the job to be done by the Board. Some appointments and deputation were made against the sanctioned posts. Each of the Table 2.3 and the Figure 2.5 shows the sanctioned post and vacancies against it.

Table 2.3 Sanctioned Posts and Vacancies in State Boards

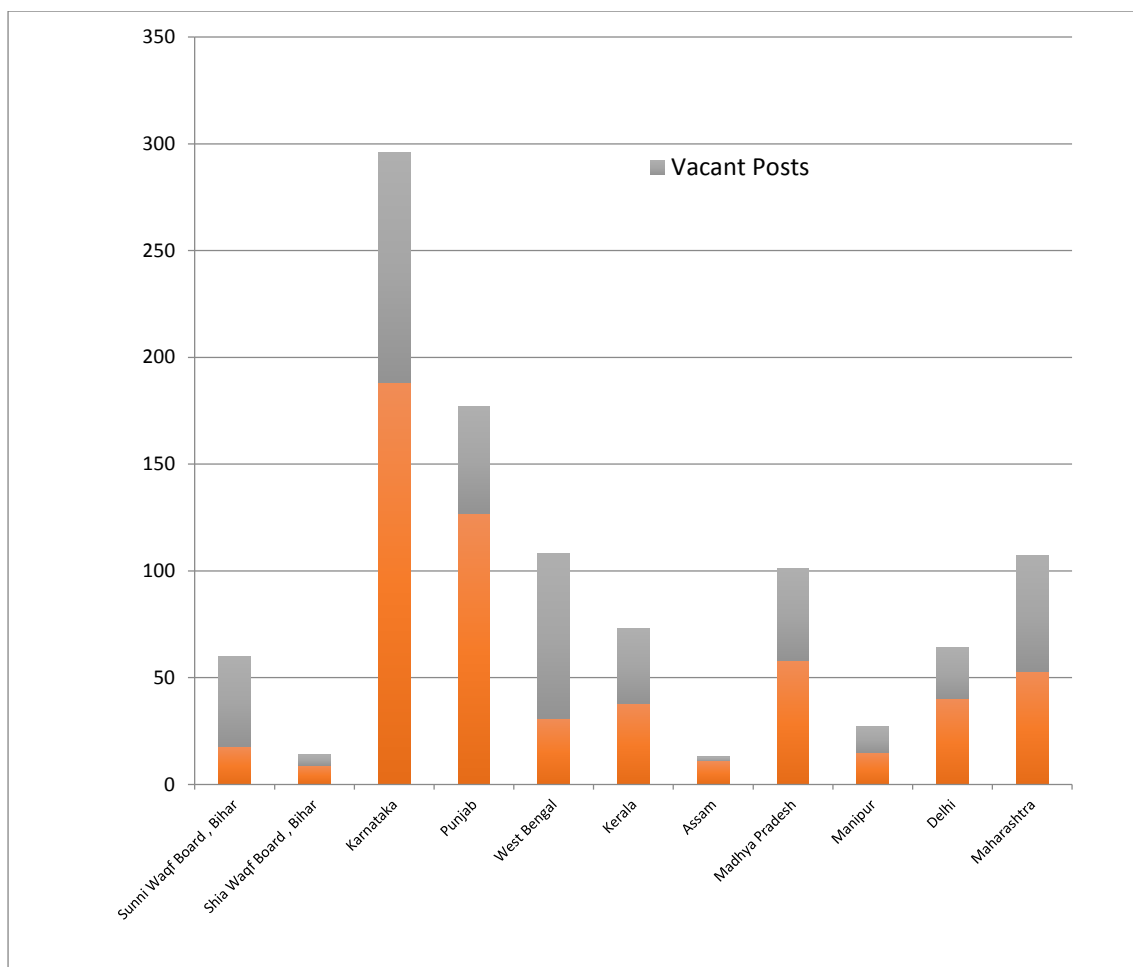
²⁷Section 24 of The *Waqf* Act 1995 :Officers and other employees of the Board :(1) The Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under this Act, details thereof shall be determine by the Board in consultation with, the State Government.

Sl.No	State	Sanctioned Posts	No. of Working Persons	Vacant Posts
1	Sunni <i>Waqf</i> Board , Bihar	60	18	42
2	Shia <i>Waqf</i> Board , Bihar	14	9	5
3	Karnataka	296	188	108
4	Punjab	177	127	50
5	West Bengal	108	31	77
6	Kerala	83	38	35
7	Meghalaya	NA	NA	NA
8	Assam	14	11	2
9	Madhya Pradesh	101	58	43
10	Rajasthan	NA		
11	Manipur	04	15	12
12	Delhi	64	40	24
13	Maharashtra	106	53	54

Table 2.4 Qualifications for Various posts in the State *Waqf* Boards

S No.	State	Requirement
1	Bihar(Sunni)	Engineering Cell comprising of Executive Engineer assisted by two engineers and two Drafts man, two assistants, one peon with infrastructure Revenue technical cell
2	Bihar(Shia)	Engineer, Draftsman, Assistant, Peon, Law Officer, <i>Waqf</i> Development Officer with all Infrastructure Revenue Technical Cell

Figure 2.5 Sanctioned Posts and Vacancies in State Boards



Issues of human resources

The present composition is the State *Waqf* Boards in every Indian state with Central *Waqf* Council acting in as an apex advisory body. *Waqf* Board is an organization established in every State/UT for the management of the *Waqf* properties in that state/UT. The State Government appoints Chief Executive Officer in consultation with the Board and the Board is empowered by the Act to appoint such number of officers and other employees as may be necessary for performance of its functions in consultation with the State Government. The term of office of the members under the Act of 1954 is five years.

As per the earlier practice and perception that the matter related to Awqaf can be dealt only by Muslim having good religious knowledge is now discarded, because Awqaf management need qualified professionals having expertise in handling new technologies in record management practices and legal knowledge with the religious spirit. Several institutions are now growing political in nature that truly needs to be reformed so that the

society can get benefits through it rather than any individual or a particular group of people only (Agrawal, 2003).

Table 2.6 Summary of the Detailed lists of Posts at State *Waqf* Boards

S.No	State	No of Sanctioned posts	No of working persons	Vacant
1	Bihar (Sunni)	60	18	42
2	Bihar (Shia)	15	9	6
3	Karnataka	296	189	107
4	Punjab	167	127	40
5	West Bengal	96	31	65
6	Kerala	68	55	13 (-2)
7	Meghalaya			
8	Assam	14	11	3
9	Madhya Pradesh	100	58	42
10	Rajasthan			
11	Manipur	5	5 (+10)	0
12	Delhi			
	Total	821	503 (+10)	318 (-2)

Both the connotations are now mandatory to be challenged, and it is really a high time that the *Waqf* management should be clearly understood in the light of a simple amalgamation of properties which are meant for public benefits and *Waqf* Boards are required to look after them.

A look at the Organogram (Appendix V & VI) of various State Boards will shed light on the number of staff recruited on deputation and contractual basis and their performances likewise. The Table 2.6 gives a summary on the same (The details of this summary may be referred to Appendix V). Table 2.7 gives the details of Contractual and Deputation Posts at State *Waqf* Boards (Appendix VI gives the Number of Staff working with the State *Waqf* Boards).

Table 2.7 Contractual and Deputation Posts at State *Waqf* Boards

Sl.No	State	Contractual	Deputation
1	Bihar(Sunni)	01	00
2	Bihar(Shia)	01	00
3	Karnataka	106	05
4	Punjab	05	00
5	West Bengal	32	04
6	Kerala	25	00
7	Meghalaya	NA	NA
8	Assam	01	Nil
9	Madhya Pradesh	06	01
10	Rajasthan	NA	NA
11	Manipur	10	Nil
12	Delhi	10	0
13	Maharashtra	4	1
	Total	201	11

ii) The rule and process of recruitment: No rule or procedure for the recruitment has been found except in Kerala. Karnataka has recently formulated a rule for the recruitment and possibly near future expecting the acceptance of enhancing the sanctioned posts. Table 3.8 gives the Service Rules in use at State *Waqf* Boards.

Table 2.8 Service Rules in use at State *Waqf* Boards

Sl. No.	State	Service rules framed or in use for the staff members (Y/N)	Date of implementation of the service rules
1	Sunni <i>Waqf</i> Board, Bihar	Yes	In 2009
2	Shia <i>Waqf</i> Board, Bihar	---	
3	Karnataka	Under Process	
4	Punjab	No	-
5	West Bengal	---	
6	Kerala	Yes	8-7-2003
7	Meghalaya	---	---
8	Assam	Yes	25-11-2004
9	Madhya Pradesh	No	
10	Rajasthan	Under Process	

11	Manipur	NA	NA
12	Delhi	Yes	NA
13	Maharashtra	NA	NA

iii) Status of the capacity building, training and development are given in the section 5 below.

5. Training and development

The aim of both the Training and Development is to increase employees' abilities to contribute to organizational effectiveness. Training is desired to improve skills in the present job; development programs are designed to prepare the employees for promotion. It has been found that no technical trainings had been held at the State *Waqf* Boards except in a few states.

Socialization (orientation) is designed to help the selected individuals fit smoothly into the organization. Newcomers are introduced to their colleagues, acquainted with their responsibilities, and informed about the organization's culture, policies, and expectations regarding employee behavior.

The Capacity Building: Training was organized by the Central *Waqf* Council at Bhopal.

6. Performance appraisal

Performance appraisal compares an individual's job performance to standards or objectives developed for the individual's position. Low performance may prompt corrective action, such as additional training, a demotion, or separation, while high performance may merit a reward, such as appraise, bonus, or promotion. Although an employee's immediate supervisor performs the appraisal, the HRM department is responsible for working with upper management to establish the policies that guide all performance appraisals.

The Waqf boards do not have any performance appraisal system. No assessment is being conducted and HR process is yet to be defined.

7. Promotions, transfers, demotions and separations

Promotions, transfers, demotions and separations reflect an employee's value to the organization. High performers may be promoted or transferred to help them develop their

skills, while low performers may be demoted, transferred to less important positions, or even separated. Any of these options will, in turn, affect human resource planning.

8. Documentation and Technology

People in top positions must often pay the price for a flawed strategy or a series of bad decisions (Heifetz & Linsky, 2003). There were no defined standard operating procedures at the national level for archiving or record keeping in general. The state *Waqf* boards were doing the things as they feel were best. The old documents pertaining to these properties were deteriorating day by day and therefore their digital archiving is very much needed (National Informatics Centre, 2009). The Ministry of Minority Affairs took the record management on priority with the states as the Awqaf is a state subject. National Informatics Centre was roped in and a detailed Project Report was prepared. People are conscious that planning is a public good that can have both positive and negative impacts on them and irrespective of general perception, a well structured and thoroughly validated program if designed must be implemented (Hall, 1992).

As per the *Waqf* Act of 1954, it has become mandatory for the waqf boards to preserve the records and all relevant deeds on paper. For this purpose, the boards have constituted various sections and one of them is Record Section. The major functionality of this section includes keeping the different type of files in order and in the number it is circulated to and from a particular section to other. Some states have working machinery at district level like Haryana, while other states have no machinery at district level, like the state of West Bengal, making such tasks more tedious.

The major emphasis has been on hardware and set up of facility. The Human resources had been neglected in most of the cases. The Information technology setup is also not very convincing although there is a grant from central government for set up the infrastructure is yet to cope up with the modern day demand. Cultural change is increasingly seen as a means for improving the efficiency and effectiveness with which the business of governments is conducted (Metcalf & Richards, 1993), yet we see that the *Waqf* boards have been relying on traditional systems and are never known for their efficiency. It is essential to note that organizational response doesn't have to start at the top. Leaders need to recognize and support instances where spontaneous organizing and compassionate action occurs at the lower levels (Dutton, Frost, Worline, Lilius, & Jason, 2003).

9. Language of record and its knowledge with human resource

Land use changes from predominantly agricultural and forest use towards predominantly urban types of land use such as housing, commerce, industry etc. This resulted in the emergence of informal land transactions and well developed strategy to occupy public land (Wehrmann, 2008).

The main languages used in the State *Waqf* Boards are Urdu, English and Hindi. Most of the members of the staff know the working language in the State *Waqf* Boards except in a few instances.

The bureaucratic character of the new Administrator of Awqaf has made the concept clear and prominent that he need not have any special theological or religious knowledge, but he should be knowledgeable enough in terms of Islamic affair, so that he can wisely deal the Islamic matters. He only required such qualifications “as may be prescribed by Government” and had to be Muslim as well (Malik, 1990). The *Waqf* Board, which is usually administering the Awqaf of the state, is knowingly kept in the dark by Mutawallis about their income, justification of expenditure and their appointment itself. Also, due to absence of spiritual and traditional compulsion, the real beneficiaries, especially the tenants of *Waqf* properties play hide and seek through the courts in order to defy payment of rent according to the market rate (Jafri, 1997). Some states have working machinery at district level like Haryana, while other states have no machinery at district level, like the state of West Bengal, making such tasks more tedious.

Conclusion

There were perceptions that only Muslim scholars can manage the affairs of *Awqaf*. *But, now* the present scenario has a paradigm shift and a new perception gained validity that a qualified technocrats, management professional or legal experts handle the system better. Many scholars of the community have also come to emphasize that the institution are now growing more secular in nature. Institutions came into being as consequences of actions of humans and allow specific individuals and groups to reap advantages from altered social circumstances rather than allowing societies as a whole to capture efficiency gains (Agrawal, 2003).

Land use changes from predominantly agricultural and forest use towards predominantly urban types of land use such as housing, commerce, industry etc. This resulted in the emergence of informal land transactions and well developed strategy to occupy public land (Wehrmann, 2008).

Both the connotations need to be challenged, and it is high time that the *Waqf* management had to be understood in the light of a simple amalgamation of properties which are meant for public good and *Waqf* Boards to look after them.

The bureaucratic character of the new Administrator of *Awqaf* was evident by the fact that he was not required to have any special theological or religious knowledge, although this was clearly necessary in order to deal adequately with Islamic affairs. He only required such qualifications "as may be prescribed by Government" and had to be Muslim as well (Malik, 1990). The *Waqf* Board, which is usually administering the *Awqaf* of the state is generally kept in dark by the Mutawallis about their income, justification of expenditure and their appointment itself. Also, due to absence of spiritual and traditional compulsion, the real beneficiaries, especially the tenants of *Waqf* properties play hide and seek through the courts in order to defy payment of rent according to the market rate (Jafri, 1997).

Chapter 3

Waqf Records Management

3.1 *Waqf* Management – a discussion

Waqf is the most popular expression of Muslim philanthropy which has become popular in almost every part of the globe and has been adopted by other civilizations in the form of endowment and trust. Millions of Muslim philanthropic *Awqaf* were created during the past 1400 years. Many of these perished due to various reasons, but at least a million *Awqaf* still exists today. The enormous potential possessed by these for the socio-economic regeneration of the ummah, particularly in the field of poverty alleviation, is waiting to be utilized and managed effectively. In this section we are going to analyse how the Indian *Waqf* records management system has evolved in due course of time. The *Waqf* Act (1995) is mostly silent on the subject of record keeping. Except in the section 68 where it talks about ‘*Duty of the Mutawalli or committee to deliver possession of records*’ it states the transfer of *possession of the records, accounts and all properties of the Waqf (including cash) to the successor Mutawalli or the successor committee, within one month from the date specified in the order.*

When we look at the recent amendments in the *Waqf* Act (2013), the following points need to be highlighted.

- The first amendment and a very important one for a very large number of common men and women is correction of name from *Wakf* to *Waqf*.
- As for a long pending demand of *Waqf* boards that revenue authorities need to stop the transaction of the *Waqf* properties, the act provides that the revenue authorities shall include a list of all *Awqaf* and will take into consideration such a list while deciding on the mutation of the land records.
- It emphasized to clearly record the documents in matters relating to the *Waqf*, *which is evident from* the fact that in the 8th and 9th centuries, the act of establishment of *Waqf* had to be registered with the Islamic court. Conducts and customs also state that such muslims who do not fulfil the requirements of their religion, for instance, those who do not attend Friday prayers, were considered unreliable witness in court. Precisely because establishing a *Waqf* was considered a pious act, it served to cultivate a favorable reputation (Kuran, 2001).

- The *Waqf* records are either kept with the *Mutawalli* or they are stored centrally in some archives, libraries, revenue offices, offices of *Awqaf* and other government offices dealing with them. The importance of *Waqf-namahs* can be understood by the information they provide. In a description that frequently continues for many pages, the waqfiya occasionally relates how the property was acquired and states the name of its previous owner. It offers a physical description of the property, very carefully delineates the boundaries of the property, and mentions the adjoining property and often its owner. Such a detailed physical description of a masjid, palace, hospital or school, together with a notation of the recent repairs, can be of enormous value to the art historian or archaeologist. In the case of buildings, the document sometimes lists the number of rooms and purpose of each, and in the case of land it states the basic crop, the quality of the soil, and on occasion enumerates the buildings, trees, animals, annual yields and taxes (Crecelius, 1971). Such detail accounts not only make the description easy to understand eliminating the scope of mystification but it also allows making the records clear and accurate.
- Ibn Battuta, in its description of the Delhi Sultanate, mentions about the administration of *Waqf* by Mutawallis (Ahmed & Khan, 1998). As with the world and in India till the advent of Mughal rule, *Awqaf* were looked after by the Qazi's, who were appointed by the government and were supposed to carry out the work as per the Islamic laws. Subsequently with the establishment of British rule, the administration gradually came under the government control. The Privy Council had ordained in 1894 that Islamic foundations were to be considered religious and charitable institutions, and that they should be public and not remain in private hands. There was a very strong resentment resulting in the The Musalman *Waqf* Validating Act passed in 1913, restoring back the private ownership of *Waqf*.
- The record keeping gained its importance particularly in the 19th century, when the Middle Eastern states began to nationalize vast properties belonging to *Awqaf* (Kuran, 2001). In 1953, when a law was enacted in Egypt transferring the administration of all khayri *Awqaf* to the Ministry of *Awqaf*, except those whose nazirs were their founders, the Ministry reserved the right to decline management of *Awqaf* dedicated to a private charitable purpose (e.g., a family guest house, the poor of the founder's family) (Baer, 1997).

- The Nationalizing of *Waqf* and its resources was not limited to the Middle Eastern countries which had a Muslim rule for governance purpose. It also started gaining momentum in Asia Pacific. In India, State *Waqf* boards were created under The *Waqf* Act of 1954. In our neighboring country, Pakistan, during the 1960's, it was seen the nationalization and Awqaf department gaining control of institutions (Gaudiosi, 1988).
- With the new quasi-government setup in place for the *Waqf* management, the records were the key to the vital resources. The states formed *Waqf* Boards with a structure involving bureaucrats, clergy and civil society persons. The individual Awqaf had to register with it. The registration process generally involved the submission of ownership documents after which a general notice is issued inviting objections, if any. Subsequently they are considered and entered into the *Waqf* register.

The bureaucratic character of the new *Waqf* Administrator was coming from the background which had not dealt with such compositions. The composition of the *Waqf* boards, which had to be at the centre of the state's *Waqf* affairs, consisted of scholars, civil servants, imams and persons from society. Apart from persons coming from bureaucracy, staffs in *Waqf* practically had no experience of record management. The staff recruited was usually clerical staff whose work was limited to book keeping. In the new setup, the staffs were not required to have any special theological or religious knowledge although this was clearly necessary in order to deal adequately with Islamic affairs. He only required such qualifications "as may be prescribed by Government" and had to be a Muslim as well (Malik, 1990).

This linkage between the government and the property has been recognized for long (by Adam Smith in the Wealth of Nations); and it implies that property and politics are necessarily connected (Carruthers & Ariovich, 2004) and this cannot be said with more veracity than in the case of *Waqf*. The earliest written record is traced to be of 921 AD, which is inscribed on a sheet of stone mentioning the terms and conditions. The importance of written records cannot be undermined due to the fact that they not only form the basis of *Waqf* but also provide vital importance about the concerned property and the Waqif.

Speaking from the technical point of view, a *Waqf* record is considered a complex one. There is a long list of documents which is taken as a legal document for establishing a *Waqf*. Deeds, wills, statements, Hiba, land records, survey records, gazette notifications etc. are all

permissible proof of *Waqf*. Since many of *Awqaf* are about a century old, these records exist as texts written by ink on paper. Paper and ink, both were subject to natural decay, forces of nature and creatures of all sizes. Time is not the only obstacle in keeping these records intact. Internal and external factors also affect their condition. These records are usually kept at storages in government buildings which do not have a maintenance history of keeping them well. The case of Punjab *Waqf* Board can be taken as an example, where microfilms of the revenue records, the gazette notifications of the Government of India and other records had been moderately destroyed once in the fire at their headquarters.

Documents which are usually accepted to establish the right of Ownership by the *Waqf* Boards include *Waqf* Deeds, *Waqf* Registration Forms, Mutation Records, Revenue Records, Municipal Records, Gazette Publications, Survey Commissioner Records, Layout/Area Maps and Land Possession Certificate, etc. Based on this, each state has its own document requirements which may include some of these documents such as Revenue Receipt, Filled in Registration Form, Copy of Khatiyani, Title Deed, Report of Concerned Estate Officer posted in the field, Jamabandi attested by patwari, Form No. 12 (Survey Report) of Estate Officer, Aks-shajra, Building Tax Receipt, Copy of Registry, Copy of Khasra, Record of Rights (Jamabandi), Chitta (Field Index), Mutation Order, Application in prescribed format, Non-Encumbrance certificate, Land Revenue Paying Certificate, Hiba Nama, Revenue Record, Affidavit, Rent Detail, Land Valuation, *Waqf* Deed etc.

When we talk about any property in the contemporary world, then there has to be an owner. Owner A owns property P if and only if:

- 1) A has the right to use P;
- 2) A may exclude others from using P;
- 3) A may transfer rights defined by rules 1 and 2 to others by consent. (Carruthers & Ariovich, 2004).

In case of *Waqf* property, there is a unique case of ownership in which the owner is the Almighty Allah and the user having some restricted rights is the Mutawalli or the manager of the board. Therefore, the right to sell or transfer is not included, as the owner of the property to the trustee i.e., Mutawalli or the board or the manager. The Mutawalli or the manager acts like the trustee as per the wish of the waqif and it is in the larger interest of the public good.

Property rights matter for their effects on the economic inequality and economic performance, and they unfold at the intersection of law, the state, politics, and the economy (Carruthers & Ariovich, 2004). Unless the rights are clear, the value of the property can never be truly achieved. With the passage of time it became clearer that the traditional system of record keeping needs improvement. The basic concepts remain the same but the system needs to be modernized by the way of introduction to ICT (Information and Communication Technologies). The archiving of such voluminous records was getting tough while their retrieval, time and again, was making things worse. The most surprising fact that emerging was the mismatch between the records and the ground realities. There were records for which no properties existed and there were *Waqf* for which no record existed.

The records, as mentioned above, are prone to forces of nature apart from their own natural decay process, and thus their digital archiving has now become essential. What we mention here are simple paper documents, typed, printed or handwritten. These records have been the best kept secret of *Waqf*, and in the age of information transparency, much have been kept away from general public for want of nothing.

Few major difficulties for public bodies and their managers are deeply embedded in the historical roots of public institutions, whereas other large scale problems stem from the present day national, social and political conditions (Eliassen & Kooiman, 1993). When we see *Waqf* in the light of a public institution, we can find every sign of decay popping out from every corner. Yes, there are examples of good performances, but that is not the trend. These old systems have not evolved in general, particularly not in case of record management of *Waqf*. There are two ends to the record of the registered *Waqf* property: *Waqf* boards hold the one end of this long rope while the Mutawalli or the *Waqf* management committees hold the other end. The original records are either with the *Waqf* board or in some cases with the Mutawalli/committee. The *Waqf* boards conventionally relied on the traditional system of record keeping involving paper files, registers and record keepers. The boards usually lack resources due to various reasons such as the shortage of funds, improper human resources and support structure to maintain such vast resources. But over a period of time it later became more complex with new ordinances and laws coming into effect regarding land administration involving multiple governmental agencies and gradual loss of records due to natural decays.

The system of presumptive land titles in India made the matter more complex, as multiple stakeholders emerged when it was decided to get the records straighten. During the

Ottoman period, endowment (*Waqf*) properties were part of a cadastral survey and were registered in the same manner as the other lands. Eventually, the State developed a special office for endowments (*Awqaf*) for registration, control and the clarification of titles. Where title to endowment (*Waqf*) properties could not be established, the State would take over the land in question (UN - HABITAT, 2005). After the passing of the *Waqf* Act of 1954, it became mandatory for the *Waqf* to be registered. The Record Keeping System of the *Waqf* records by the state *Waqf* Boards may be manual as in Bihar (Shia and Sunni), Karnataka, West Bengal and Rajasthan; computerized as in Punjab, Meghalaya, Assam and Delhi; or both as in Kerala.

3.2 Survey of *Waqf*

3.2.1 Problems and Issues

This section identifies six of problematic issues, which are presently confronted by *Awqaf*, and hampers their optimum utilization. These issues are:

(1) An urgent need of conducting a thorough survey of *Waqf* properties in the whole of the Islamic world and also in the Muslim minority countries in order to know details of the number, valuations, incomes, objects, expenditures, etc. of every *Waqf* property to devise an effective administrative policy.

(2) The need of Muslim public participation in the present state controlled *Waqf* administration pattern, which is proving to be counterproductive.

(3) A need to have a second look at the abolition of family *Awqaf* and to examine the desirability of their revival.

(4) An urgent need of stopping the colossal wastage of *Waqf* income on litigation and a suggested way out of this situation

(5) The prevailing costly and protracted mode for the recovery of encroached *Waqf* properties through litigation are needed to be replaced by a suggested administrative process, which should be relatively quicker and cost-free

(6) There is an urgent need to develop *Waqf* properties which are lying neglected, as the development of *Awqaf* is the key to the treasure trove of these properties that have now acquired economic potential beyond imagination.

3.2.2 Importance of survey

A comprehensive survey of *Waqf* properties is a pre-requisite for effective *Waqf* management. How could a *Waqf* administrator effectively manage *Waqf* under his charge without knowing their exact number, nature, location, value, income, objects, administrative structure and other details? Only on the basis of the information supplied by a comprehensive survey that a viable *Waqf* land development policy may be formulated. Emphasizing the importance of survey of *Waqf*, Sir Abdur Rahim, the well-known author of a book on *Islamic Jurisprudence* and a Judge of the Madras High Court in India, said in 1918:

“The first thing necessary is that the facts regarding them (*Waqf*) should be authoritatively ascertained ... when such investigation has been completed, the authorities will be in a position to devise appropriate legislative and executive measures to meet the situation”²⁸.

Details of *Waqf* properties, which only survey could provide, may become handy in policy formulations regarding the selection of such *Waqf* whose objects are generally charitable and is distinct from those which are reserved for specific objects; and any deviation may create legal problems. It is therefore, advisable to give priority to the development of those *Waqf* first whose income may be legally utilized for any socio-economic up-liftment programme. This, however, does not mean that other *Waqf* are not worthy of being developed. Their turn will also come, but after dealing with the matter on priority, as financing is very limited.

Sometimes registration of *Waqf* is confused with survey. These are two different things. Registration is based on the information provided by the *Mutawallis* (managers) to officers who have no authority to enter into an enquiry as to the correctness or otherwise of the information furnished. Registration is therefore a mechanical thing where details supplied are recorded without any question being asked. On the other hand, survey starts with questioning, enquiry and investigation. Nothing is accepted at its face value. The fact that, unlike registration, the officer conducting survey is endowed with judicial powers, which makes his enquiry and findings much more reliable.

3.2.3 No survey conducted

²⁸Sir Abdur Rahim's foreword to P. R. Ganpathi Iyer's *Hindu and Muhammadan Endowments* (Madras, 1918).

Apart from India, a proper survey of *Waqf* properties has yet to be conducted in every country of South Asia (Pakistan, Bangladesh, Sri Lanka, Maldives and Nepal) South-East Asia (Malaysia, Indonesia, Thailand, Singapore and Brunei), West Asia and East, West, North and South Africa, and not to mention Western countries, where millions of Muslims reside and there must be a large number of *Awqaf*.

Presently, reliance is placed on land records, registration records or voluntary declarations by *Waqifs* (settlers) or *Mutawallis*, or the self-evident nature of the property, like a mosque or graveyard, etc. Naturally, figures collected through such sources cannot be accurate, and they represent only mere estimations.

3.2.4 Survey may reveal missing *Waqf* properties

As an illustration, let us take India. In the early 1960's, the number of *Waqf* officially given by the Minister-in-charge of *Waqf* was 100,000²⁹. However, by 2003, survey revealed the identity of more than 200,000 additional *Awqaf*, increasing the total figure to 332,000³⁰. As the second survey is still not complete, the total is expected to exceed 375,000, and may even touch 400,000.

²⁹Syed Khalid Rashid, *Waqf Administration in India: A socio-Legal Study*, (Vikas Publishers, New Delhi, 1978), p. 74.

³⁰A strange discrepancy exists between whatever figure is given of the total number of *waqf*(332,000) in India by the Central *Waqf* Council, New Delhi (a statutory body constituted by the government of India under the *Waqf* Act 1995 and prior to that under the *Waqf* Act 1954) given by its Secretary- Dr. Rizwanul Haque – and the figure (490,021) as given in its Report by the Prime Minister's High Level Committee – "Social, Economic and Educational Status of the Muslim Community in India"- (Cabinet Secretariat, Government of India, New Delhi, November, 2006, p. 220, Chapter II entitled "Leveraging Community Initiatives: The case of *Awqaf*", pp. 217-235). In an interview with this author in early 2011, the Secretary of the Central *Waqf* Council insisted that the figure given by the Prime Minister's High Level Committee probably counted as separate individual *waqf* such several properties, which are dedicated to the same *waqf*. The Committee, however, maintains that the figure 490,021 is based on "information received ... from the State *Waqf* Boards in 2005-06" (p. 220). For Central *Waqf* Council figure, see Syed Khalid Rashid, "Islamic Financial Instruments for the Development of *Waqf* properties (with Special Reference to India)", in Syed Khalid Rashid (ed.), *Protection, Maintenance and Development of Waqf in India* (With Special Reference to Rajasthan), (Institute of Objective Studies, New Delhi, 2005), pp. 23-85. This discrepancy has not been ironed out as yet. Another point worth noting regarding the total number of *waqf* in India is the fact that these figures do not include any *waqf al-alaulad* (family *waqf*). It is so because the definition of "*waqf*" for the purposes of the *Waqf* Act 1995 and before this the *Waqf* Act 1954 excludes family *waqf*. As the Act provides survey of only such *waqf* which are recognized as such under the Act it prompted *Waqf* Survey Commissioners of the States to exclude such *waqf*, whose number must be sizeable in India.

If we look at the figures of only two Indian States, Andhra Pradesh and Rajasthan during the early 1960's, these are very revealing. In Andhra Pradesh, for example, there were only 3,300 registered and 12,000 unregistered *Waqf* properties³¹; that is a total of 15,300 in 1960. But within a few years after the survey began in 1963, the total number of *Waqf* was found to be 35,709³².

In the Alwar district of Rajasthan, during the 1960's, only 73 *Waqf* properties were known to exist. But soon after survey had started, this figure jumped to 1,965³³. This must be the case in other states too; otherwise the total number would not have jumped from 100,000 to 332,000. In all the probability, similar could be the situation in other countries too. The prospect of unearthing thousands of 'missing' *Awqaf* is indeed exciting and worth undertaking. Developmental potential of these properties must be very high because the identity of only such properties alone is generally concealed.

3.3 Statutory provisions: A must for survey

Law impounds a great importance to the disputes involving ownership of land. This is why such disputes are adjudicated in civil courts. But a serious problem arises out of the fact that civil litigation is extremely slow, costly and cumbersome. So during the survey of *Waqf*, if a dispute arises involving ownership of an alleged *Waqf* property, the matter if referred to a civil court should be considered as gone for a very long period of time. The infamous Babri Masjid case in India was filed in 1948 and only on 30th September 2010 that the High Court gave its judgment. Now an appeal against this judgment is pending in the Supreme Court and no one knows when the judgment may come³⁴.

³¹ The figure was obtained by this author from the office of the Andhra Pradesh *Waqf* Board, Hyderabad in 1967. See mimeographed copy of the report of Andhra Pradesh *Waqf* Survey Commissioner – 1964-65.

³² The survey work in Andhra Pradesh started in 1963.

³³ See Report of The *Waqf* Survey Commissioner, Rajasthan, 1964, Jaipur, Rajasthan. Mimeographed copy obtained by the author from Jaipur in 1966.

³⁴ Babri mosque was built at Ayodhya in Northern India in 1528 CE by Mir Baqi, a courtier of the first Mughal Emperor Babur. Tulsidas, who wrote the epic *Ramcharimanis* in 1578 in Ayodhya itself, never mentioned any Ram Temple and its demolition for the construction of Babri mosque. In the night of 22 December 1949, a few miscreants headed by one Abhey Ram Das entered the mosque "by breaking open the locks" as stated in the FIR (First Information Report) filed by a Hindu police constable who was on duty that night. On 16 January 1950, civil suit No. 2/1950 was filed in the court of District Judge, Faizabad by local Hindus of Ayodhya to restrain Muslims from removing the idol. It was the beginning of a protracted litigation which culminated in a judgment on 30 September 2010 where The Allahabad High Court ruled that the Ayodhya land be divided into three distinct parts. The

So, *Waqf* disputes arising during survey if not be referred to civil courts , then who is going to settle them? Anyone who, as an alternative, is chosen to discharge this function must be endowed with equivalent powers as a civil court but it should not be bound to follow the same lengthy procedure. As only a statute may do this, it becomes a necessity to have statutory provisions. Details of these judicial powers should be clearly stated, including the competence of the person exercising these powers. Whether or not, an appeal may be made against the decisions of this alternative judicial authority, specified in the statute along with other things, it is a matter of great concern and are needed to be addressed immediately.

3.3.1 Only someone vested with Judicial powers could effectively conduct survey

To sit in judgment over such a laden question whether a particular property is *Waqf* or not, involves judicial determination of the question of its ownership. It is to be remembered that if a property is once declared as *Waqf*, then its ownership vests in Allah; and anyone who calls himself as its owner will be permanently debarred from calling himself as such. To make such a declaration is a delicate exercise and can be only undertaken by someone who is vested with judicial powers.

Such an officer could only be appointed by the Government, through official notification. Thus, a *Waqf* Survey Officer (WSO) and as many of his Deputies or Assistants, with supporting staff, are to be appointed. Provisions about such appointments and related matters shall be there in a statute and rules made there under³⁵. In the countries following the federal system, these provisions may be contained in the federal *Waqf* law and subordinate rules, but in non-federal countries like Pakistan or Malaysia, plurality of *Waqf* enactments will demand survey provisions to be inserted in all of them. Still in other countries, there may be some other legal situation, which needs to be compiled with.

first part goes to the Ram Lalla or Infant Lord Rama which is represented by the Hindu Maha Sabha specifically meant for the construction of the Ram temple. The second part goes to the Islamic Sunni *Waqf* Board while the remaining third part goes to Normohi Akhara, a Hindu religious denomination. See the Consolidated Judgement in OOS No. 1, 3, 4 & 5 of 1989. The appeal against this judgment was made to the Supreme Court of India in 2010 and is now pending there.

³⁵For example, sections 4 to 8 in Chapter II of the Waqf Act 1995 of India contain provisions relating to “Survey of *Awqaf*”. Section 4(i) says: “The State Government may by notification in the Official Gazette, appoint for the State a survey Commissioner of *Awqaf* and as many Additional or Assistant Survey Commissioner of *Awqaf* as may be necessary for the purpose of making a survey of *Awqaf* existing in the State at the date of the commencement of this Act.” Similar provisions were there in the *Waqf* Act 1954 also.

The *Waqf* Survey Officer (WSO) shall have the same powers as that of a Civil Court to empower him to make judicial determination. Among other things, he should be empowered to deal with matters like:

- i. Disputed ownership of an alleged *Waqf* property;
- ii. Nature of a *Waqf*: Sunni or Shia, public or private, etc.;
- iii. Compelling a person to appear as a witness;
- iv. To requisition a record from a court or office;
- v. To appoint commissions for recording evidence of a person who is unable to come personally;
- vi. To order 'discovery' of any document or record;
- vii. To conduct personal inspection of a disputed site;
- viii. To issue restraining orders;
- ix. To hold a person in contempt of court for defying any of his orders;
- x. To appoint a Receiver of a *Waqf* property which is under investigation;
- xi. To issue interlocutory injunctions and orders, and
- xii. To deal with such other matters which are specified in the Rules made under the Act.

3.3.2 Types of enquiries to be made

A thing, which is necessary to be spelled out first in a statute dealing with survey, is a comprehensive definition of '*Waqf*'; because many a time this is what lies at the bottom of a dispute. Moreover, in law, definitions are being given prime importance for obvious reasons. Where there are several *Waqf* enactments in a country like Pakistan and Malaysia, the definition should be uniform to avoid confusion. The following may be taken as a working definition of *Waqf*.

“*Waqf* is a perpetual dedication of a property for any object recognized by the Islamic law as religious, pious and charitable and it includes:

- 1) an endowment of title to some property from which any benefit, interest or profit may be derived;
- 2) an endowment of any interest in or profit from some property;
- 3) a '*Waqf* by user', and such *Waqf* shall not cease to be a *Waqf* by reason only of the user having ceased, irrespective of the period of such cesser;
- 4) grants or nazar customarily recognised as religious and charitable;
- 5) a family *Waqf* (*Waqf alal-aulad*), and

6) *Waqf al nuqud* (cash *Waqf*)”³⁶.

The WSO should make the very detailed enquiries about a property alleged or known to be *Waqf*. The scope of his enquiries should be spelled out, as much as possible, in the statute itself or in the rules made there under. Details may differ from country to country, but broadly the scope of the enquiries to be made by WSO should consist of investigations into:

- i. the income and expenditure, verified by spot visits;
- ii. illegal occupation of a *Waqf* property, verified by local witnesses, spot inspection, etc.;
- iii. the gross income as compared with net income;
- iv. payment of taxes, land revenue, levies etc;
- v. expenditure on litigation and the defendant, *Mutawalli* personally or the *Waqf*;
- vi. the object of *Waqf* and extent of its fulfilment;
- vii. matter considered relevant by the WSO.

Since all the details of the enquiries that are made by WSO cannot possibly be contained in the Act, the remaining ones may be contained in the rules framed under the Act. No comprehensive listing of these details is possible, because these rules may differ from one country to another. But a good sampling of these detailed enquiries may be as follows:

- i. Background of the *Waqf* and the *Waqif*;
- ii. Date of creation, if known;
- iii. Details of the object as mentioned in the deed, if any, or on the basis of evidence;
- iv. Detailed description of *Waqf* property, its location and distance from the market, main road and railway station, its strategic location, etc.;
- v. Encumbrances or changes if any on the *Waqf* property;
- vi. The current mode of administration: whether devised by the *Waqif*, *Mutawalli* or court or custom and usage.

³⁶The Rajasthan High Court in its judgment in the case of *Radha Krishna v. State of Rajasthan*, All-India Reporter, Rajasthan, page 1, took a narrow and literal view of the words “survey of *Awqaf* existing in the State”, to mean that such *waqf* properties which had been converted to personal properties in the past have by definition “extinct” and are thus not covered by the Act. However, keeping in view the perpetual nature of a *waqf*, the Government of India decided to correct this erroneous judicial interpretation through the *Waqf* (Amendment) Act 1969. According to section 6 (1), it is only on the basis of ‘*waqf* list’ prepared by the *Waqf* Survey Commissioner, that a suit regarding the disputed nature of a property may be filed in a civil court. This clearly gives rise to a presumption that the *Waqf* Survey Commissioner is competent to include any property “existing” or “extinct” as *waqf* and include it in the ‘*waqf* list’. However, for the avoidance of confusion, the word “existing” in section 4(1) of the Act may be deleted.

- vii. Details about the *Mutawalli*, his appointment, conditions, if any, related with his office etc.

Sometimes, the field-staff conducting survey might not be knowledgeable enough and are needed to be instructed and educated on how to determine the nature of a property as *Waqf*. For this, the WSO may issue the following instructions (given here only as sampling):

- a) The presence of some graves on a plot of land, whose owner raised no objection against such public burials even when he knew about it, makes the plot *Waqf* as a public graveyard;
- b) Trees standing on a *Waqf* land and income derived out of these shall form a part of the income of *Waqf*;
- c) The ruins of a *Waqf* building or any structure in whatever dilapidated condition it might be, should be counted as *Waqf*;
- d) Income from some shops outside a *Waqf* building but attached to it, or income derived from the water pumped out of a well in a Masjid should be treated as income belonging to the *Waqf*;
- e) Income of a *Waqf* includes;
 - i. Produce of the garden which is on a *Waqf* land
 - ii. Any offerings made on special occasions
 - iii. Nazar presented at the dargahs (tombs of famous Muslim saints)
 - iv. Books in the library of a Masjid, dargah or any other *Waqf* property shall be presumed to be *Waqf* unless otherwise proved.

3.3.3 Whether only the ‘Existing’ *Waqf* should be surveyed or should it include the ‘Extinct’ also

Here by ‘extinct’, it is meant such a *Waqf* which is alleged to have lost its *Waqf* character because of encroachment, converting it into the ‘personal’ property of the encroacher, particularly when he is a non-Muslim, and objects over WSO’s competence to make enquiry into his ‘personal’ property.

This plea of the encroacher was upheld by the Rajasthan High Court in the well-known case of *Radha Krishna v. State of Rajasthan*³⁷. The court held that WSO had no

³⁷The word “owner” is used here to express the claim made by the person who was holding an alleged *waqf* property. Being a non-Muslim, the “owner” claimed to be outside the jurisdiction of the *Waqf* Survey Commissioner. The Rajasthan High Court upheld the plea of the so-called “owner” and held: “If a person who is a non-Muslim... is in possession of a certain property, his right, title and interest

authority to decide about such a *Waqf* property, which became ‘extinct’ due to encroachment. WSO was to survey only the ‘existing’ *Waqf* properties. In this case, a *Waqf* building was first mortgaged by its caretaker and then it is sold to the same person who held it on mortgage. The WSO found the building as *Waqf* and the person who sold it was not its ‘owner’ but its *Mutawalli* who sold it for no valid reason. The WSO therefore included this property in the ‘*Waqf* list’.

The ‘owner’ of the building challenged the competence of the WSO to include his property in the *Waqf* list. He requested the WSO to refer the matter to the Civil Court. This request was rejected by the WSO who pointed out his own status as a Civil Court and hence declared his competence for he did. The ‘owner’ then filed a writ petition in the Rajasthan High Court challenging the action of WSO. The court upheld the challenge and observed:

“He (WSO) has obviously no jurisdiction either to decide any question relating to the title of the petitioner (the owner) or to eject him without going to a competent civil court. (The WSO is invested with the powers of a civil court) to enable him to make proper survey of existing *Waqf* properties and not of those which have already become extinct. If a person is a non-Muslim in possession of a certain property, his right title and interest cannot be put in jeopardy simply because that property is included in the list published under (law)”.

This verdict of the court is obviously wrong, because how could an unlawful sale of a *Waqf* property make it ‘extinct’. A validly created *Waqf* remains valid in perpetuity, not withstanding its unlawful sale. Hence, WSO was right in declaring the building as *Waqf* and including it in the *Waqf* list. This list may be challenged in a Civil Court, but this fact does not affect the right of WSO to include this property, which he found as *Waqf* and to be included in the *Waqf* List. The *Waqf* (Amendment) Act 1969 has rectified this defect and WSO may include now any property in the *Waqf* list³⁸.

cannot be put in jeopardy simply because that property is included in the list published under sub-section 2 of section 5 (of the *Waqf* Act 1954)” [see AIR 1967 Raj 1 at 8].

³⁸Section 6 (1) of the *Waqf* Act 1995 (and also the 1954 Act which was repealed by the 1995 Act), inserted by the 1969 amendment provides: “If any question arises whether a particular property specified as *waqf* property in the list of *Awqafis* *waqf* property or not or whether a *waqf* specified in such list is a Shia *waqf* or Sunni *waqf*, the Board or the *mutawalli* of the *waqf* or any person interested therein 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.”

This mischief was caused by the use of the word ‘existing’ in section 4(1) of the *Waqf* Act 1954 and even now in the *Waqf* Act 1995 of India³⁹. This word creates an impression that there are ‘extinct’ *Waqf* also. Thus, any law enacted for the purpose of survey of *Waqf* should avoid using the word ‘existing’ along with *Waqf*. Mere use of the word ‘*Waqf*’ should be taken as enough; there is no need to use the prefix ‘existing’.

The issue raised by the High Court that a non-Muslim ‘encroacher’ is beyond the reach of WSO may have some implications. A *Waqf* property illegally held by a Muslim or non-Muslim will remain an encroached property. To assume that law exempts a non-Muslim from being challenged by the WSO simply because he is holding an ‘extinct’ *Waqf* property looks untenable. Religion of the encroacher is irrelevant.

3.3.4 Rights of a person who was not made a party to the survey proceedings

The inclusion in the *Waqf* List of a property, in which a person has some interest but to whom no ‘notice’ was given by the WSO during the survey proceedings, can challenge such inclusion even after the expiry of one year which otherwise makes the *Waqf* list final. The Rajasthan High Court in its judgment in the case of *Radha Krishna vs State of Rajasthan*⁴⁰ emphasized the importance of notice to such persons. Madras High Court supports this view (see, case no W.P 1142/66 decided on 7.4.1969)⁴¹. It was held that

³⁹The word “existing” is mentioned twice in section 4 of the *Waqf* Act 1954 (and also in the repealed Act of 1954), once in the sub-section (1) and then in sub-section (3). The use of this word is unnecessary. As *Waqf* is perpetual in nature and the circumstances in which it might become extinct are well-known, it becomes a question of evidence and proof. Transfer of title into the name of some unauthorized person cannot amount to the ‘extinction’ of *waqf* character of a property. Such a property should remain open to enquiry as to its character and nature.

⁴⁰The importance of ‘notice’ to be given to such a person who has some interest in a *waqf* property was emphasized by the Madras High Court in an unreported case WP 1142/66 decided on 7.4.1969 and also by the Supreme Court of India in its judgement in *Abdul Karim vs. Municipal Committee, Raipur*, (1967) 2 SCJ 299 at 303. Thus, giving notice to such persons who may not be party to survey proceedings before the *Waqf* Commissioner, appears necessary otherwise, the concerned party’s right to challenge the *Waqf* list will remain intact.

⁴¹The Punjab High Court took a wrong view in the case of *Panchayat Deh v. Punjab Waqf Board*, All-India Reporter 1969, 344, that a *waqf* by user like a graveyard, comes to an end once it is no more used as such. It held that a Muslim graveyard in Punjab from where all the Muslim either migrated to Pakistan or perished in the anti-Muslim carnage in post-partition 1947 India, cease to be a graveyard as no more burial take place there. Thus, the occupation of the graveyard by non-Muslims cannot be termed as encroachment on a *Waqf* land. This judgment exposed thousands of Muslim graveyards in Punjab and other parts of India to illegal occupation.

publication of *Waqf* list was hardly a substitute for notice because nobody was expected to look into the Government Gazette everyday at the risk of losing his property rights.

3.3.5 *Waqf* by-user is unaffected by Cesser

In cases where there is no direct evidence of dedication of a property as *Waqf*, reliance is to be placed on its 'long user' to infer its *Waqf* nature. Since a *Waqf*-by-user is based on presumption, which in its nature is rebuttable, hence at the time of inclusion of a property in the *Waqf* list, it may be challenged and its *Waqf* nature may be disproved. However, once it is declared as *Waqf* on being proved to be so, there is no presumption attaching with this property anymore.

An example of *Waqf*-by-user is a room or covered area built adjacent to a masjid not necessarily to accommodate additional worshippers but who started praying there without any objection being raised by the owner and which is being continued for a long time, then the room or covered area will become *Waqf*-by-user. The user must be of an unequivocal nature which may lead only to an inference of dedication. What needs to be established is the conduct of the owner of property in not raising any objection, even while knowing that his property is being used in a particular manner.

Once the Punjab High Court of India took a view that a *Waqf*-by-user may cease to be *Waqf* by virtue of long cesser of use⁴². However, the Supreme Court corrected this by holding that a *Waqf*-by-user does not come to an end whether it is used or not⁴³. Because of these two cases, the definition of *Waqf* contained in Section 3(r)(i) clearly provides:

[*Waqf* includes] 'a *Waqf* by 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'.

3.3.6 What should be the forum to challenge *Waqf* list

⁴²The Supreme Court of India, disagreeing with the view taken by the Punjab High Court in *Panchayat Deh's case*, held in *Mohd. Labbai v. Mohd Hanifa*, All-India Reporter 1979, Supreme Court, 1569 that a *waqf* by-user gives birth to a *waqf* proper with perpetual existence. Any break or stoppage in the usage of this *waqf* does not affect its *waqf* character.

⁴³The definition of *waqf* contained in the *Waqf* Act 1995 was elaborated slightly to make it clear that a *waqf*-by-user does not lose its *waqf* character by virtue of it being no more used as such. Now section 3(r)(i) of the *Waqf* Act 1995 clearly states that a *waqf*-by-user "shall not cease to be a *waqf* by reason only of the user having ceased, irrespective of the period of such cesser."

An important legal question, which arises after the completion of survey and inclusion of a property as *Waqf* in the *Waqf* list, is whether such an inclusion can be challenged or not. If yes, where it should be? Allowing this matter to be brought to a Civil Court may open the Pandora's Box of costly and prolonged legal battle.

In countries having Sharī'ah Courts, which are relatively faster and economic, the matter may be brought to them. However, where the plaintiff is a non-Muslim and is not covered by the Sharī'ah Court's jurisdiction, he naturally will have to be allowed to go to the Civil Court, or preferably to some other forum specially created for this purpose and designed to avoid the negative elements of civil litigation.

An Endowment Tribunal may be the answer. A Tribunal is a judicial body; but unlike a court of law, it is not obliged to follow the same procedural law and rules of evidence, which may bring delay and escalate cost. Tribunals are therefore fast and inexpensive. The Government may constitute such Tribunals by inserting provisions in the existing *Waqf* Act, if there is one, or in a specially enacted law. These Tribunals are for the adjudication of any dispute relating to a *Waqf* property or any question arising during the survey. Any person aggrieved by an order made by *Waqf* Survey Officer (WSO) may file an application, within the time prescribed for this purpose, for the determination of any dispute or question regarding a *Waqf* property.

The Tribunals shall be deemed to be a Civil Court with the same powers. It shall be presided by a Muslim member of the Judiciary, holding the rank of a senior judge either of the District or High Court level. The Tribunals shall follow the brief procedure as prescribed for it by the Government in consultation with the judiciary. Its decision shall be binding and final, and it shall have the force of a judicial decree.

No appeal shall lie against any decision or order of Tribunal. However, wherever it is regarded advisable or not, the High Court may be allowed to review the decision of the Tribunal for the purpose of satisfying itself as to the correctness and legality of the decision. The Tribunal shall normally take not more than 90 days in determining the merits of a case. No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to a *Waqf*, which is required to be adjudicated by the Tribunal.

3.3.7 *Waqf* List: Whether changes could be made

After the completion of survey, the WSO should submit the *Waqf* list to the Government for publication in the official Gazette.

The question whether the Government or any *Waqf* administration body that may exist in a country may affect changes in the *Waqf* List is very important. None should be allowed

to do so, because *Waqf* list represents the final outcome of a field work, and it consists of factual information collected after judicial scrutiny. Neither the Government nor anyone might have such a solid proof that might over-ride WSO's findings. However, in exceptional cases, WSO may be recalled for joint deliberations and consultations to agree on any change.

Submission of *Waqf* List is usually at the end of the survey work. However, periodic submission of partial reports may be allowed if it suits WSO's convenience. It may even be better for the officers examining the report as they will get more time to do this work.

3.3.8 Helping hand of NGO's, Public and Muslim Organizations

The survey of *Waqf* should be given wide publicity through newspapers, TV and radio announcements, highlighting the importance of the helping hand of public, NGO and Muslim organizations. They will bring in the notice of such information to the WSO, which they alone may be possessing. Generally they may reveal the identity of concealed *Waqf* and facts, which an outsider might never get. What the public involvement may achieve or have the ability to achieve is very clear through the happenings in Egypt, Tunisia etc.

3.3.9 State must bear the cost of survey

The total cost of survey of *Waqf* and the publication of *Waqf* List must be borne by the State, as a part of State obligation and a matter of public benefit. In India, Section 8 of the *Waqf* Act 1995 requires all the *Mutawallis* of nearly every *Waqf* to bear the cost of survey⁴⁴. It is an unfortunate provision and needs to be deleted.

3.4 Democratization of *Waqf* Administration

Muslim public participation in *Waqf* administration in contrast to the total or predominantly state control is a process towards 'democratization of *Waqf* Administration' as it is an issue of *Waqf* administration today. State control is not liked by the people in an essentially private sector. Muslims want to have some say in this matter. Doing so may bring transparency, accountability, greater vigilance and control on *Waqf* matters. What may be the format and

⁴⁴Section 8(1) of the *Waqf* Act 1995 provides: "The total cost of making a survey including cost of publication of the list or list of *Awqaf* under this Chapter shall be borne by all the *mutawallis* of the *Awqaf* the net annual income whereof exceeds five hundred rupees in proportion to the net annual income accruing in the State to such *Awqaf*, such proportion being assessed by the Survey Commissioner."

Section 8 (3) further provides: "Any sum due from a *mutawalli* under sub- section (1) may, on a certificate issued by the State Government, be recovered from the property comprised in the *Waqf* in the same manner as an arrear of land revenue."

extent of public involvement may differ from country to country; but what is important is that it should be meaningful instead of being a mere window dressing exercise.

The take-over of the direct control of *Waqf* management, changing the rules of the game. It was used as justification for colonial powers to do the same. A pattern of governmental control came into being which unfortunately continues even now. Direct control on *Waqf* is so alluring and power addicting that it becomes difficult to give it up. It has to be realized by the Government that power-sharing is in its own interest. It may save it from the many accusations and criticisms. However, it may also be not in the best interest of *Waqf* administration that it is totally handed over either to the public or to the *Mutawallis*. A sort of administrative power-sharing between the government, public, beneficiaries and *Mutawallis* may be an ideal co-mixture.

Example may be given of the formula that exists in India under the *Waqf* Act 1995⁴⁵. Out of the 13 maximum members in the State *Waqf* Board, 5 are nominated by the government and 8 are elected by electoral colleges. The details are as follows; one and not

⁴⁵Section 14 of the *Waqf* Act 1995 of India is a very long section the full text of which may be seen online at <http://www.indiankanoon.org/doc/712582/>. Here is given only such part of section 14, which gives the idea of proportion of the nominated and elected membership of the *Waqf* Board.

“The Board for a State and the Union Territory of Delhi shall consist of –

a) A Chairperson

b) One and not more than two members, as the State Government may think fit to be elected from each of the electoral colleges consisting of –

i. Muslim Members of Parliament from State or as the case may be, the Union Territory of Delhi,

ii. Muslim Members of the State Legislature,

iii. Muslim Members of the Bar Council of the State, and

iv. *Mutawallis* of the *Awqaf* having an annual income of one lakh and above;

c) One and not more than two members to be nominated by the State Government, representing eminent Muslim organizations;

d) One and not more than two members to be nominated by the State Government, each from recognized scholars in Islamic Theology;

e) An Officer of the State Government not below the rank of Deputy Secretary.

Section 14(3) further provides:

“...Where the State Government is satisfied ... that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (6) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.

Section 14(7) empowers members of Board present at a meeting to elect one from amongst themselves as chairperson.

more than two members are to be elected from each of the following 4 electoral colleges consisting of:

- i. Muslim Members of Parliament from State or as the case may be, the Union Territory of Delhi,
- ii. Muslim Members of the State Legislature,
- iii. Muslim Members of the Bar Council of the State, and
- iv. *Mutawallis* of the *Awqaf* having an annual income of one lakh and above.

Two to four members to be nominated by the State Government from the following categories of persons:

- i. Eminent Muslim organizations
- ii. Recognized Scholars in Muslim theology

Another member to be nominated by the State Government is an officer of the same Government who is not below the rank of Deputy Secretary.

This power-sharing is at the state level and it is very difficult for a member to know about the happenings at the grass-root level. Muslim public involvement should be at the level of village, tahsil and district also. The Village *Waqf* Committee shall consist of 10 members elected from a group of 10 Villages, Tahsil *Waqf* Committee consisting of 20 members elected among the members of the Villages Committees within a Tahsil and District *Waqf* Committee consisting of 30 members elected among the members of the Tahsil Committees within the district. This mode of election will be quicker, economical and peaceful. The members of all these Committees shall act on voluntary basis without being paid any allowance or remuneration. Their duty will include keeping an eye on *Waqf* matters within their jurisdiction and informing the next higher committee about every relevant thing.

At the state level, the percentage of the elected and nominated members is a matter of mutual understanding. 60:40 appears to be a good ratio between the selected and state nominated members of the State Board.

For Surveys, if once the primary structure is in place, the exercise involving collection of data regarding every *Waqf* in the state has to be initiated. This is a massive exercise as it involves mobilization of vast resources on the ground. The data are to be collected in a metadata folder with pre specified fields. The required information covers a wide ranging of subjects, such as its information about its inception, details of gazette notifications, details of

Waqif, details of how the *Waqf* is being managed, details of Mutawalli and most importantly the status of *Waqf* in terms of encroachment, litigation etc. Available data on survey reveals that no survey has been done yet in the states such as Bihar and Delhi while it was in progress in Karnataka at the time of the data collection for this study. Survey has been done in the states such as Punjab in 1963, West Bengal (2008-2010), Assam (1999-2012), Madhya Pradesh (1958, 1989) and Manipur (1992-1993). Table 4.1 shows the number of properties, areas and total income from them for each state given. A total of Rs. 16290 lakhs is received from the total area of 572052 acre land and 490021 properties.

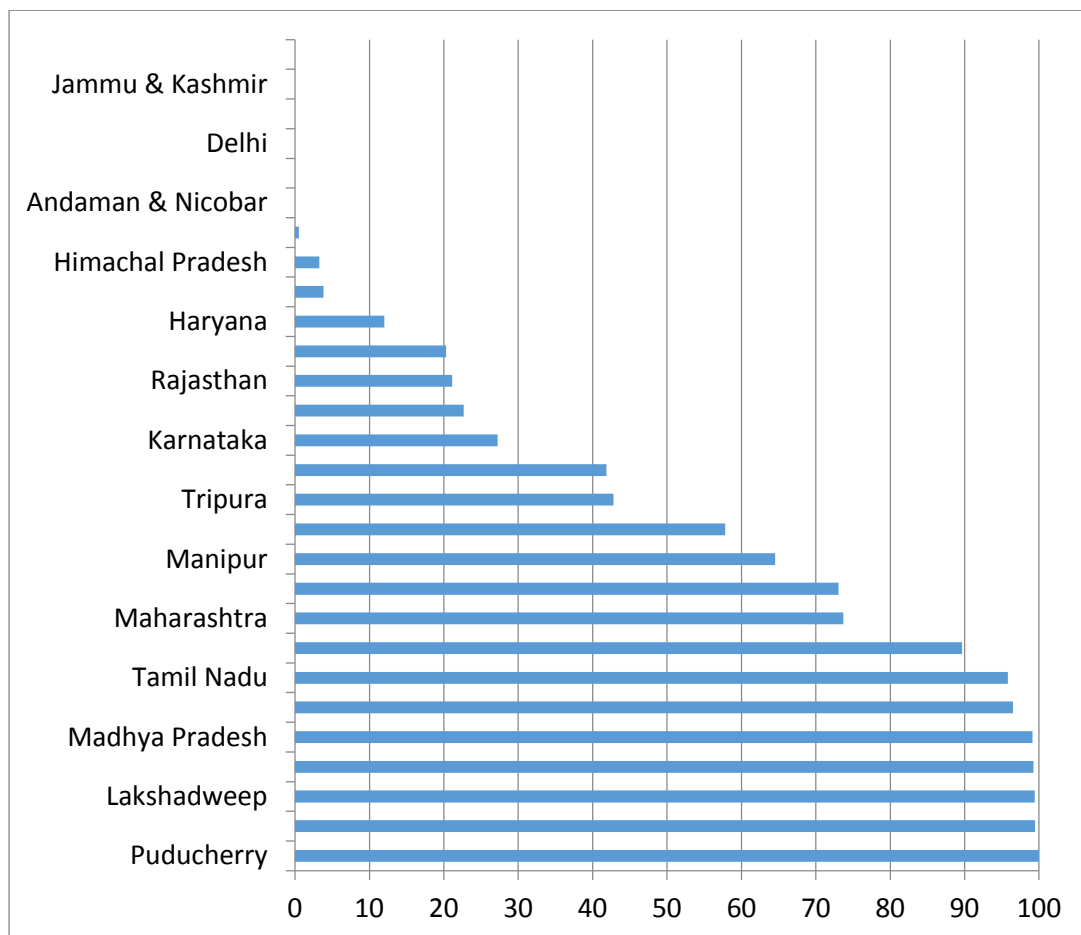
Table 3.1 Number of Properties and Income of Properties

Sl. No.	States	Area (acre)	No of Properties	Total Current income of all the properties in Lakhs
	West Bengal	59090	148200	457
	Uttar Pradesh	15000	122839	1214
	Kerala	22410	36500	803
	Andhra Pradesh	145512	35703	388
	Karnataka	18033	28731	1288
	Maharashtra	92207	23566	443
	Gujarat	8792	22485	381
	Rajasthan	153180	19543	8314
	Madhya Pradesh		15000	
	Haryana	20895	11929	500
	Punjab	1778	11243	596
	Tamil Nadu	34388	7057	1385
	Bihar		2459	33
	Uttaranchal		2032	268
	Delhi	152	1977	67
	Pondicherry	425	589	118

	Assam	190	168	35
	Total	572052	490021	16290

The following Figure 4.1 shows the status of *Waqf* record data as managed by the WAMSI-DMS System. The Percentages of Records as per records in WAMSI-DMS System (As on Feb 2014) is being displayed in the figure. This figure shows that the states of Madhya Pradesh, Chattisgarh, Lakshwadeep, Kerela and puducherry are the top among other states in the WAMSI-DMS System, followed by the states such as Assam, Maharashtra, Uttarakhand, Manipur, Bihar, Tripura and Meghalaya. States like Karnataka, Odissa, Rajasthan, West Bengal, Haryana, Uttar Pradesh, and Himachal Pradesh are below the above states while Punjab, Jammu & Kashmir, Gujarat, Delhi, Chandigarh, Andaman and Nicobar, Andhra Pradesh still need to start the WAMSI-DMS System of *Waqf* record system.

Figure 3.1 Percentages of Records as Records in WAMSI-DMS System (As on Feb 2014)



Even where the information is complete or close to completion, the access to such information is very limited. The information, unless and until it is in public domain, serves a very little purpose, especially the beneficiary.

When the information is comprehensively compiled, it becomes necessary that the same is cross checked with the revenue records. This is another mammoth task as the government machinery at this level is usually over burdened with works, and matters relating to *Waqf* are very low on their priority list.

Conclusion

The issues raised in this section are the ones, which are of much contemporary relevance. Their degree of importance may differ among the countries, but all are equally important in their own right. Survey of *Waqf* properties to prepare a data-bank of *Waqf* in every country is such a necessity that needs no emphasis. Full data of *Waqf* is a pre-requisite of effective management; for this it is must to do survey in all the countries where it has not yet been done.

Similarly, development of *Waqf* properties needs adoption of a new strategy, which takes into account the un-realistic and extremely slow rate that the development work is being done today. A new realistic target is to be set that takes into account the large number of properties to be developed and the need of searching new sources of financing this initiative. Financing issue will be a challenging task, but so also is the problem.

The outright abolition of the family *Waqf*, without first undertaking a serious study of their alleged demerits and negative effects on the economy and individual's ability of self-reliance, calls for the re-opening of this matter. IRTI/IDB may commission such a study on an international level to reassess the viability and desirability of family *Waqf* in the background of goading contained in the Quran and Hadith to give to one's own kith and kin.

State control of *Waqf* management is another issue, which calls for a serious study. Right now in the midst of demands for democratization, its relevance cannot be denied. People's participation in *Waqf* administration is needed to bring transparency, accountability and efficiency. Bringing to an end, the encroachment on *Waqf* properties through

administrative action but without ignoring the due process in case of those so evicted tackles a problem, which is international in character. The available course of action through litigation is self-defeating. Similarly, litigation and its excessive cost have become a big drain on *Waqf* income. The alternative in the form of *Waqf* tribunals may bring a big improvement. So is also the case in the introduction of ADR processes (Negotiation, Mediation, Arbitration, etc.) in settling small-time disputes in *Waqf* matters.

Law and administrative rules, however, cannot cure all the ills. A clever and dishonest person may find one or other means to evade the laws and rules. This is a problem, which is seriously afflicting *Waqf* administration in India. “The plundering hands of the *Mutawallis* who are not God-fearing” is referred to in a recent report⁴⁶. It has now become a big problem everywhere and for which, unfortunately, there is no short cut solution. Attributes like honesty, integrity and trustworthiness take time to be infused. But these are needed in a *Waqf* administrator, who is holding an office of trust. Everyone connected with *Waqf* should therefore be reminded of the religious dimension of his responsibilities and duties. Moral and ethical education should be made part of continuing education and training of *Waqf* administrators. With continuous efforts and measures now being made shortly, *Waqf* may be once again a major instrument for the Muslim social welfare and progress.

Let me conclude by urging the Islamic Development Bank to accord an independent status to ‘*Waqf*’ instead of treating it as an appendix to ‘Islamic economics’. At the time when this was initially done, *Waqf* studies were indeed not mature enough of being given an independent status. But now when the IDB itself has recognized the importance of *Waqf* by establishing the *Waqf* Properties Investment Fund and the World *Waqf* Foundation, and the attention now being given to *Waqf* matters in various countries, *Waqf* should no more be kept within the ‘guardianship’ of Islamic economics. It now qualifies to be given an independent status. A *Waqf* Studies Section needs to be created within IRTI.

⁴⁶See, 9th Report of Joint Parliamentary Committee on *Waqf*, (Rajya Sabha Secretariat, New Delhi, Oct 2008). This report was submitted by the committee chaired by K. Rahman Khan, M.P and Dy .Chairman, Rajya Sabha. The Report is full of instances where human failures lie at the bottom of mismanagement of *waqfin* India.

Chapter 4

Technology in Record Management

As described previously, “*Waqf* is the permanent dedication by a person professing Islam, of movable or immovable properties for any purpose recognized by the Islamic law as pious, religious or charitable”. *Awqaf* are the national resources which are meant to be used for the development of the institutions and to raise funds for various welfare activities. In a large number of cases, *Waqf* properties are observed to be inefficiently managed and often faces the threat of encroachment, litigation, alienation and sometimes sold-out. Cases of blatant corruption abound and selling of land for buildings, hotels, malls or factories for a pittance or handing out for meagre rents to satiate commercial interests has become quite common these days. Most of the states in the country have not completed the basic survey of *Waqf* properties due to which there are lots of problems regarding the management of *Waqf* properties. Development in the management of *Waqf* Properties is almost nil due to which the *Waqf* Properties cannot generate the right and substantial income for the welfare schemes of the community. There are also cases of large scale encroachment of *Waqf* Properties.

Seeing this lack of development of the *Waqf* properties, the Government of India approved the recommendation made by the Joint Parliamentary Committee to computerise the records of State *Waqf* Boards. To improve the *Waqf* management System in India, an e-Governance initiative called the “*Waqf* Management System of India (WAMSI) project has been started under the aegis of the Minority Affairs, Government of India. This initiative allows an online system for searching *Waqf* properties in an area and getting information on their status. Therefore, "Computerization of records of the State *Waqf* Boards" was a scheme launched by the Ministry of Minority Affairs, Government of India to streamline record keeping, introduce transparency, and to computerize the various functions & processes of the *Waqf* Boards and to develop a single web-based centralized software application. This Scheme provides: Central financial assistance to the State *Waqf* Boards for setting-up of ICT Infrastructure, Technical Manpower for initial hand-holding period for Managing & Operating the ICT Infrastructure and Software Applications, Training and Knowledge Transfer to the State *Waqf* Boards Staff for Managing & Operating the ICT and Infrastructure

and Software Applications and Data Management Life Cycle during and at the end of hand-holding period, and general maintenance assistance during the Hand-holding period.

The broad objectives of computerizing the records of the State *Waqf* Boards are given in a summarised forms as follows:

- *Waqf* Properties Registration Management
- Annual Returns Filing of assessable *Waqf* Properties Management
- Transparency in Leasing of *Waqf* properties under Direct Management of *Waqf* Board
- Litigations (Internal as well as External Hon'ble Courts) Tracking Management
- *Waqf* Properties Ownership establishing Documents Archiving & Retrieval Management
- GIS of *Waqf* Properties using GPS Field Survey along with Photographs of *Waqf* Properties
- Funds Management to Masajid, Durgah, Qabristan, Imams, Muazzins, Widows, Girls Marriages, Scholarships, Schools, Hospitals, Dispensaries, Musafirkhana, Skill Development Centres, etc.
- Loans Management for Development of Urban *Waqf* Properties.

4.1 *Waqf* Management System of India (WAMSI) – an online system

The most common problem with a *Waqf* property is that, since no one owns it and everyone has a share in it, people find it easy to encroach these properties. Under such circumstances, creating a system to manage the huge amount of *Waqf* properties in the country is very vital. A report by the select committee on the *Waqf* (Amendment) Bill, 2010 also recommended a survey of *Waqf* within a specific period in which the survey data is properly reflected in the land records by the revenue authorities. It also recommended the prohibition on the sale and gift of *Waqf* properties and to put up stringent penal provisions to prevent encroachments and to streamline the process of removal of encroachments.

In this regard, the *Waqf* Management System of India (WAMSI) has been launched for managing *Waqf* properties during their lifecycle from their creation till the end. “*Waqf* Management System of India (WAMSI) is an integrated on-line work flow based Information System for the management of *Waqf* Properties under the control of various State/ UT *Waqf* Boards”. The management of properties include registration of properties, keeping track of

annual income, welfare measures taken by utilizing the revenue, managing the leasing of these properties and tracking litigations on these properties. Every citizen can access any information on *Waqf* properties through the webpage 'www.wamsi.nic.in'. Anyone can visit the website and look up where *Waqf* properties are located and how they are managed. Under this system, the State *Waqf* Board in each state is assigned to register the properties in the state and upload the details on the WAMSI system, for which the board is given financial support.

In today's world of the 21st century, it demands efficient management systems and proper technological applications in every sphere of life, and the same is very much required for the *Waqf* management too in the country. The *Waqf* institution is now equipped with the adaptation facilities it lacked traditionally and most significantly, it now enjoys juristic personality, which means that it can sue and be sued as a legal entity. Traditionally, it was the manager who had been standing before the courts as an individual plaintiff or defendant. (Kuran, 2001). With the new developments in communication technologies, it is tempted to believe that speed is information (Borri, 2013). It is evident that the technological advancement has been extremely useful in every sphere of life including *Waqf*. The land administration is now heavily relying on the Geo-spatial technologies, but in the case of *Waqf*, we see it as almost non-existent as not a single state has yet gone for electronic mapping which makes the record management in an easier process. Looking into this in the midst of the advent of modern technologies supplemented by the mounting pressure of the civil society over the mismanagement of *Waqf* properties, particularly the opaque manner of record keeping, the Government of India decided to move towards the Modernization of the *Waqf* Records. The 9th report of the Joint Parliamentary Committee on *Waqf* submitted to the Parliament in the year 2008 had recommended for the computerization of records at State *Waqf* Boards and under the provision of central assistance for which made an initial sanction of Rs 10 Crores in 2009-10.

Information should be transmitted in small units over a period of time, which reduces chances of rejection by avoiding threat of large scale change to the recipient's attitude and ideas (Ganguly, 1983). The government, in the case of *Waqf*, had no option, as it was already losing track of the *Waqf* estates that it had to go in for massive computerization program. The objective of this Management Program was to provide professional assistance to the state governments in managing the records. People generate as well as require information at an

ever growing pace, and trying to respond to it in an efficient and economical manner will be an outstanding task. The sheer volume of *Waqf* records and the involvement of various stakeholders based at multiple geographical positions do not make the things easier. It is also important to observe that the huge amount of electronic data being created is under the ambit of laws for them to be validated by the beneficiaries and the government alike.

The government accepts the fact that the *Waqf* properties are widely spread across the country which requires proper development plan; even the basic survey of *Waqf* properties have not been done in most of the states (Ministry of Minority Affairs, 2013). To reach a more efficient management system and development related to *Waqf* across the country, the *Waqf* Management System of India (WAMSI) has been rolled out by the National Informatics Centre since 2010. The WAMSI software has different modules catering to multiple needs of the users. The workflow of the program was structured on a comprehensive approach towards effective *Waqf* management. The first step involved the registration of properties and the process of making new entries electronically. The details included the property location, its dimensions, nature and usage, gazette notification details, survey details, the estimated market value etc. The registration also had details about the waqif, the present mutawalli and the management committee details. One of the most important components of the registration module was the status of the property which had to be identified as encroached under litigation etc. The reason for being important is that this would require a physical inspection of the property to ascertain its exact status; and seeing the number of *Waqf* properties, it was a huge task.

Organizations and governments have a tendency to make structures within and outside the domain of work. These structures are made to streamline the processes, bring accountability and help them control to the extent possible. The *Waqf* boards have a system of check and balance in place where the Mutawallis, the de-facto owner and manager of the *Waqf* are to file annual returns stating details about the incomes, expenditures and contribution details. The same are verified by the auditor and the CEO of the *Waqf* Board. The *Waqf* Board also provides loan to *Waqf* properties and accordingly a module has been introduced for an effective management of such information. The *Waqf* Boards also provide funds for managements of Mosques, Durgah, Kabristan, Imams, Muazzins, Widows etc. and the same has also been included in the software.

The another aspect on which a lot of public out cry was made is of the anomolitis in the leasing of the *Waqf* property. A computerized module will help in streamlining the leasing process and make things clear for analysis. The another major component where a lot of energies are diverted is the litigations. The paper file system has its own shortcomings due to the number of cases being too high relating to *Waqf* property, the module has such been designed to hold and manage information regarding the date of hearing, the court where it is being heard, the lawyer dealing with it, the payment made and the status of the case.

The provision for archiving of the old records available and a system for their retrieval has also been made. The GIS component includes recording of the satellite coordinates, boundaries and photographs etc. The thought behind such massive exercises was to ensure proper survey and cross checking of *Waqf* data from the various computer data bases maintained at the state level, such as by the Revenue Departments etc. It also envisioned to improve office efficiency and preparation of accurate reports timely on various administrative matters by creating a centralized and web-enabled data base for use by various stake holders.

The objective for the first phase included proper survey and cross checking of *Waqf* data from the various computer databases maintained at the state level, such as Revenue and Municipalities while creation of the centralized and web-enabled databases was for use by various stakeholders. Every state was to set up a Central Computing Facility (CCF) on the guidelines of the e-Readiness for WAMSI. State level coordination committees were formed for effective implementation of the scheme. The activities mentioned in the guidelines were to be carried out by the State *Waqf* Boards before the actual deployment of the WAMSI application. The activities involved the marking and cleaning up the designated space where the CCF was to be established. The place had to undergo civil and electrical makeover along with the networking cables at required places, to make it suitable for setting up the central computing facility. The boards had then to place tenders for furniture, computers, UPS, scanners and other peripheral devices. The purchase order had to be issued after proper evaluation. A 2 Mbps broadband internet connectivity had to be provided.

Once the setup was to be in place the impetus had to be shifted on manpower. An Assistant Developer along with one Data Entry Operator had to be hired who had to assist and train the staff of the respective State *Waqf* Board on the basics of Computers. These technical resource persons also had to supervise the digitization of the records ensuring that the data entry and digitization of records were being done as per the NIC specifications.

The next step includes the capacity building of the existing *Waqf* board staff by the hired technical manpower on the aspects of basic computer operations. The responsibilities of the hired manpower as listed in the document of the e-Readiness State *Waqf* Boards for *Waqf* Management System of India are as follows:

- a) Carry out the management of the Computer Hardware and Software installed at the State *Waqf* Boards and take regular backup of the digitized work online/offline
- b) Ensure that the Internet connectivity and WAMSI application is always up and running at the respective State *Waqf* Board location. In case of any trouble, informing the respective vendor/agency providing the respective service or product about the same
- c) Coordinate at state level with the Central Project Management Unit, New Delhi (PMU) and provide all the details, updates and progress reports in the formats asked by the PMU within the timeline punctually
- d) Assist the digitization agency in the data entry of the *Waqf* records as per the requirement of WAMSI Application/ Document Management System
- e) Train the nominated State *Waqf* Board staff on the basics of computers and how to use WAMSI Application from time to time as per the delivery schedules of the various modules of WAMSI Application
- f) Troubleshooting of the LAN
- g) Liaison with the Internet Service Provider (ISP)
- h) Assist SWBs in finalizing the AMC of ICT infrastructure after the warranty period is over
- i) Prepare the weekly and monthly progress/status report and send to the PMU
- j) Removal of viruses
- k) Coordination with the maintenance agencies and providing first line of maintenance
- l) Net browsing to address the subject specific queries of the users
- m) Project training to the user officials.

In 2014, the WAMSI system introduced an innovative way of tracking encroachments on *Waqfs* by introducing the GIS (geographical information system) feature to map the property on the earth's surface by fixing the co-ordinates of the vertices of *Waqf* properties. By fixing the layout of the property in the database through satellite imagery, a comparison can be done of historical images to ascertain any new construction or encroachments over the period of

time. It can then be used to take administrative action to restore the property by the state *Waqf* board concerned. GIS mapping is at an early stage, but both registration and mapping can happen simultaneously. However, the more challenging element can be gathering of the data on the ground of the vertices of the property, though it can be realised all over the country since they have demonstrated the proof of concept. The WAMSI project involves two main activities:

1. Digitization work, which include:
 - a. Pre-digitization work
 - b. Scanning Work
 - c. WAMSI-Bulk Data Up-dation utility
 - d. WAMSI-Document Management System
2. Data entry in WAMSI online system

1. Digitization work

- a. **Pre Digitization Work:** This exercise forms the basis of a clear and organized record keeping. It requires the collection of all the relevant *Waqf* property documents concerning the *Waqf* property in a single physical file. The folder will also be having a metadata sheet with filled in information making the secondary work easier. The Metadata sheet will form the front cover for every institution. This work is to be carried out by the staff of the State *Waqf* Boards along with the support from technical manpower.
- b. **Scanning Work:** The scanning work has to be initiated when the pre digitization work is completed. In case of *Waqf* Boards having a lesser number of properties, this work can be done by the Data Entry Operator under the supervision of the Assistant Developer. In case of Boards with large number of properties, the work has to be done by the NICSI empanelled scanning agency.
- c. **WAMSI-BDU – Bulk Data Updation:** It has been designed to capture the metadata fields of *Waqf* properties and upload the related scanned documents. NICSI has empanelled agencies, which will do this task along with the scanning of the *Waqf* documents. In case of lesser number of *Waqf* properties, the work can be done in house.

- d. **WAMSI-DMS – Document Management System:** This is an offline software that is needed to be installed on computer machine along with WAMSI. The document management system is meant for storing all the scanned documents along with the search function.

2. Data entry in WAMSI online system

The system has four functional modules, namely Registration, Leasing, Return and Litigation. The technical manpower has been assigned the task for making the entries in the online system. The Assistant Developer has also been given additional responsibility of the verification of the entered data on a regular sampling basis.

The Technical Human Resource available to the *Waqf* Boards Infrastructure is equally ordinary. It needs to be understood if we are dealing with a system which has almost similar work to the land administration department of the Government. The government has the machinery down to the lowest level whereas the *Waqf* boards are restrained due to the limited staff availability. Even the available staff have their own constraints when it comes to the practical administration. In case of the technical staff, most of the staff is contractual and hence their capacity building is very limited for obvious reasons. The Government has been regularly updating the progress made in the *Waqf* Records Computerization Project; but the figures of the status as on March 31, 2013 could not present a good picture at all (**Annexure 8.1**).

The pre-digitization work of collecting relevant information about the *Waqf* properties and preparing the metadata folder are still drawing around 30% and correspondingly the digitization work is still less than 20%. Some states have progressed well such as Assam, Lakshadweep along with Madhya Pradesh and Puducherry having the exception of completing the digitization work. Rest of the states are yet to cope up in terms of technology and efforts.

The *Waqf* Management Software of India (WAMSI) developed by NIC, which now forms the basis of a modern day record keeping, has been designed not only to keep the property records and their details in digital form but also to have various other features that will support allied processes. A Joint Parliamentary Committee (JPC) on *Waqf* in its 9th

Report recommended the computerization of the records of State/UT *Waqf* Boards. In order to ensure transparent management of all the *Waqf* Properties and computerize the core functions of all State/UT *Waqf* Boards (SWBs), Government of India has launched the “Scheme of Computerization of Records of State/UT *Waqf* Boards” in December 2009. In this scheme, financial assistance from the Central Government is given to the State *Waqf* Boards for setting up of ICT Infrastructure, deployment of Technical Manpower for initial hand-holding period for managing and operating the ICT Infrastructure and Software Applications, and for imparting training and knowledge transfer to the staff of the SWBs.

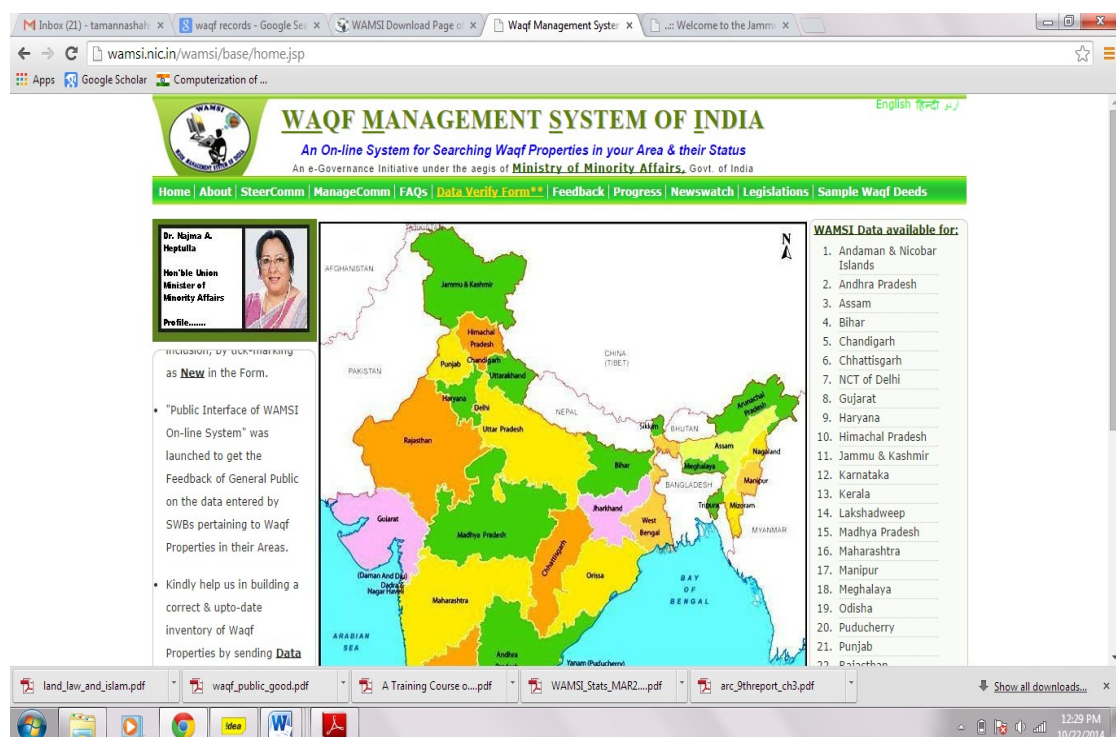
The first phase of the scheme stipulates the compliance to annual return filing of each assessable *Waqf* Property and implementation of the work flows for leasing processes and tracking litigations, and the digital archiving of legally admissible documents relating to *Waqf* Properties that establishes the Ownership Right as *Waqf* to the SWBs. The National Informatics Centre, New Delhi is tied up as the key technology associate for the designing, development, implementation and maintenance of the Software Systems (WAMSI), which should be done in close consultation with the Ministry of Minority Affairs, Government of India. The phase-I of the project is aimed to achieve the following objectives:

- To maintain up-to-date correct inventories for *Waqf* Properties
- To facilitate cross checking of *Waqf* Property Records with other databases maintained at the State/UT level, especially those of Revenue Records and Civic Bodies
- To track the revenue generated from the individual *Waqf* Properties by ensuring timely reminders for submission of Annual Returns by *Waqf* Properties’ Managers
- To transparently manage the leasing process of *Waqf* Properties and to monitor the pending payments from lessees thereof
- To track the litigations on *Waqf* Properties by ensuring timely pleading in the Hon’ble Courts
- To digitally preserve the documents establishing the *Waqf* Properties Ownership Rights
- To facilitate easy retrieval of documents when required in case of litigations in the Hon’ble Courts.

Beside the known benefits as mentioned in the objectives above, there are other inherent benefits including streamlining of record keeping at the State/UT *Waqf* Boards,

enhanced transparency in the existing system of *Waqf* Management etc. and electronic access of valuable documents related to *Waqf* Properties which will reduce unnecessary handling of fragile documents and contribute to their long-term preservation. This project is a milestone in the *Waqf* management in the country that leads the development of *Waqf* Properties to increase in revenues; such revenues can then be used for an all-round development. The most important gain will be the potential real time monitoring for each *Waqf* Property in the country to safeguard the *Waqf* Properties from encroachment and alienation.

Figure 4.1 The WAMSI Portal



4.2 Technology Features

The WAMSI On-line System for SWBs consists of the following modules:

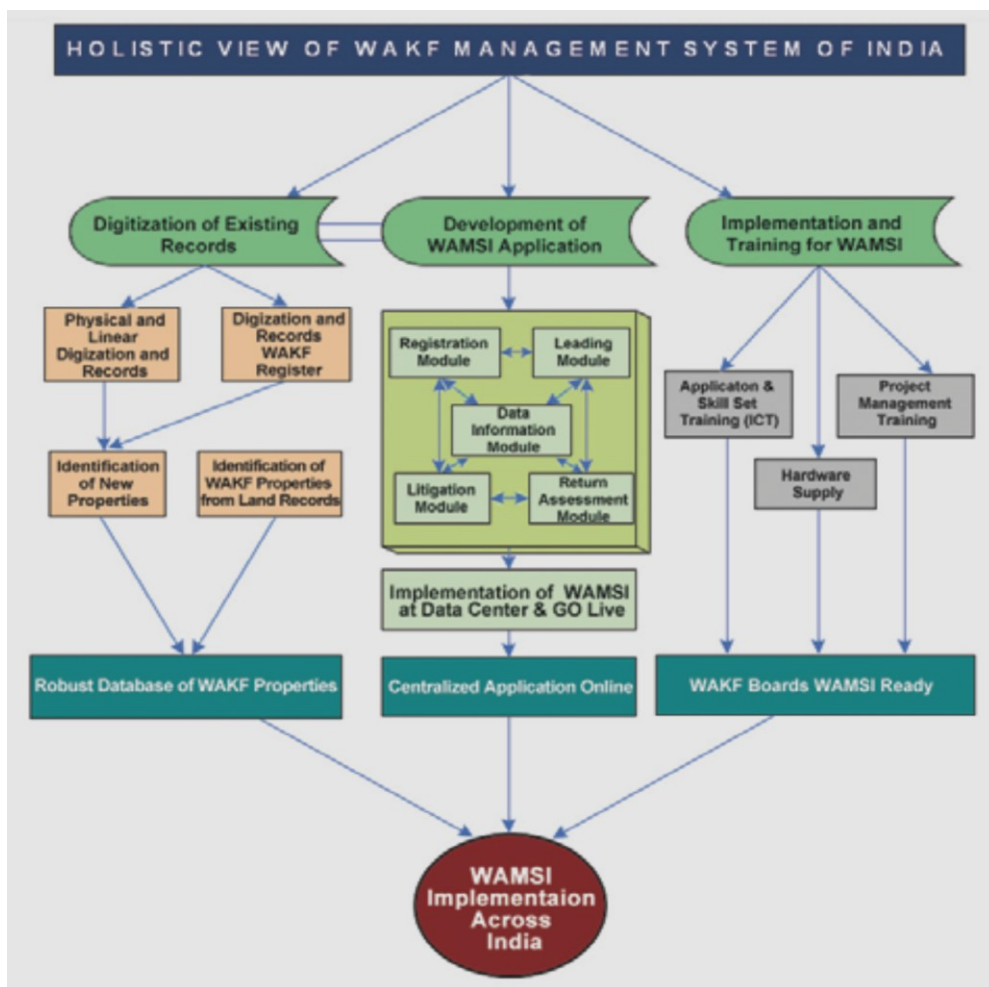
- WAMSI Registration Module
- WAMSI Annual Return Filing Module
- WAMSI Leasing Module
- WAMSI Litigations Tracking Module

4.3a Technologies involved (Software)

- Red Hat Enterprise Linux 5 (Operating System)

- b) Apache Tomcat 5.5 (Web Server)
- c) Postgre SQL 8.2 (RDBMS Database)
- d) JDK 1.5 (Programming Language)
- e) J2EE 1.4 (JSP, JSTL)
- f) Oracle JDeveloper 10.1.3 (IDE)
- g) Strut 1.1 (Framework)
- h) SVN 5 (Collaboration and Versioning)
- i) Services of Google Map APIs

Figure 4.2 *Waqf* Management System of India



Source: http://informatics.nic.in/uploads/pdfs/39901709_wamsi.pdf

4.3b Technologies involved (Hardware)

- 1) WAMSI On-line System is deployed at NIC-National Data Centre.

- 2) WAMSI Public Interface Online System aims to search *Waqf* Properties and their present status anytime by any one. The Software and Hardware specifications are similar to the WAMSI Online System.
- 3) WAMSI Off-line DMS System for SWBs consist of:
 - a) WAMSI DMS System
 - b) WAMSI BDU Utility

WAMSI DMS System and WAMSI BDU Utility are deployed at individual SWB locations on PC/Server Environment in compliance with the requirement of SWBs i.e., not to use Internet for *Waqf* Ownership Digital Documents delivery although technology supports this aspect.

4.4 Location of *Waqf* Property

Location of each immovable *Waqf* property is identified on the basis of Census 2011 Geographical Location Codes designed by MDDS Committee for the said purpose headed by the Registrar General of India. GPS Coordinates of immovable *Waqf* properties are used to help SWBs to locate their *Waqf* properties layouts and find out encroachments, if any, over the period of time using Google Maps/Earth APIs through different permutation and combination of parameters tightly integrated within the Application.

4.5 Implementation, Achievements and Awards

As on May 31, 2014, WAMSI Project has been implemented in 28 SWBs across the country. In spite of various hurdles, the project is going on smoothly and leveraged with the continuous training and motivation of SWBs officials/staff by the Members of PMU (WAMSI)-cum-Development Team stationed at the NIC-HQ, New Delhi. The registration of *Waqf* properties in WAMSI On-line System has crossed the figure of 2,92,301 as on May 31, 2014 since its first release on November 15, 2010. The contributions to SWBs have multiplied manifolds due to tracking of annual returns submission in SWBs. Madhya Pradesh and Assam SWBs has proved as an exemplar in this case. Digitization of Ownership Documents has been completed in Eleven SWBs namely Madhya Pradesh, Assam, Puducherry, Manipur, Lakshadweep, Bihar (Shia), Uttarakhand, Chattisgarh, Maharashtra, Kerala and Tamil Nadu.

Since the inception of the WAMSI project in the country, some achievements have been made so far. Till time of data collection for this current study, progress has been made by entering about three lakh (2,92,301) data entries on immovable properties in the system so

far, which have been done through the online web application <http://Waqf.gov.in/wamsi/> from the respective State/UT *Waqf* Board interfaces with their own role-based credentials. Secondly, the public interface, www.wamsi.nic.in, which is powered by online web application running for the State/UT *Waqf* Boards, has been created for searching the *Waqf* properties in India where anyone could see the current status, location on map and annual returns, litigation and leasing details of the property in consideration. Thirdly, Open Source Technologies such as Java Programming Language, Postgre SQL Database etc. have been intensively employed for the project. And fourthly, use of GPS coordinates has been started to draw layouts of the *Waqf* properties on satellite imageries with advanced search parameters like encroached and/or litigated *Waqf* Properties in a particular district/city/town/village. WAMSI Project has received Skotch Digital Inclusion Award 2012 for being among Top-100 ICT Projects in India during the year 2012.

(http://informatics.nic.in/uploads/pdfs/39901709_wamsi.pdf)

4.6. Case Study of Kerala Land Development Bank (KSLDB)

The Kerala Land Development Bank (KSLDB) may be taken as an example to demonstrate how WAMSI may function in a state. In the case of Kerala land bank, inventorisation of public lands occurs in the forms of textual and spatial data management. Surveillance and protection of public lands are functioned through Junda placing, Public Land Protection Force and a Toll Free Number for reporting to the government on land encroachment. Income generation from public lands are maintained through BOT and Lease Alert System. The *modus operandi* of land governance society of Kerala may be described as: surveying only the government lands and publishing the details in the website www.kslb.kerala.gov.in along with the Geo-referenced sketches as per section 4 of the Survey & Boundaries Act, 1961 and computerisation of all the textual data in a village with a cut-off date and introduce online transfer of registry.

4.7 Data from various States

There are various evidences showing how WAMSI is functioning in the different states of the country. Some examples may be evident from the different data collected from various sources (as shown in the Appendices XIV – XXV), which reveal more detailed information on various headings such as Technology in Record Management, Use of NIC Software, NIC Training for Record Management, Availability of IT, NIC Technical and Operational Support, Number of Computerized Records, Electronic mapping of *Waqf* Properties, Persons Incharge of IT Department, Technical Training Sessions in past five years, Updation of *Waqf* Websites, Sanctioned Posts for the IT Department and Survey of *Waqf* Properties.

Conclusion

Application of IT is the key to modernization of organizational efficiency and transparency. It saves both the time and cost in real terms. Therefore, computerisation of *Waqf* records is very much essential in the first case. However, in case of the *Waqf* boards, *Waqf* departments and *Awqaf*, the status of computerization is not very encouraging. Less than 15 states have moved to the computerised record keeping, while the rest are still working the old fashioned way of manual system of record keeping. Such a slow progress with computerisation of *Waqf* records may, to some extent, be attributed to the lack of the determination and will rather than the limited financial and human resource capital. Either there is no defined post related to computer as such or the post has been lying vacant for the reasons best known to them.

It has also been found in many cases in the state *Waqf* boards that the records are being looked after by cashiers, typists and dispatch clerks. Technically, the staffs are neither trained nor capable of handling the documents of this nature, though over the given time and the prevailing circumstances, they too have developed some skills. Thus, the make shift arrangements and temporary solutions have done more harm than benefit in terms of paving the way for an efficient record keeping system. The most important bulk that makes the record keeping difficult tasks are the gazette notifications; since regular surveys are not being done, it becomes essential to keep the records intact.

Survey of *Waqf* properties have been the weakest link in the chain of progress. A complete and exhaustive survey of *Waqf* will form the basis of any management scheme. It is obvious that we need to know what we have to manage; without knowing what we have, both the planning and implementation will fail as it happened in the past. Simple entry in the record does not suffice as the stakes have now risen due to the ever increasing demand of the property. The records need to be crystal clear supported by the relevant documents. For such records to exist, the survey forms the basis of such an exercise. Following the survey, proper notifications and registration are to be carried out to remove any possibility of alterations or amendments to the records or the property.

Besides the exercise to streamline records for computerization, GIS base *Waqf* record management has to be brought as soon as possible in all the State *Waqf* Boards to inculcate transparency, security and efficiency in the *Waqf* management system of the country. The GIS based *Waqf* management should be user friendly so that it can be easily handled by public. “The Technology is there to serve the men, not the reverse” (Bennis & Thomas, 2003). This needs to be understood in the present context that a simple workable system in a gradual process is required. The government needs look into the whole system of *Waqf* management and administration minutely and systematically with proper planning and methods to improve it as the whole system cannot be turned around in one go.

The WAMSI system introduced by NIC in 2010 serves as an innovative method to check encroachments on *Waqfs* with the help of GIS (geographical information system) application that allows mapping of the land or property by fixing the co-ordinates of the vertices of *Waqf* properties. Though WAMSI system has not been able to popularize for a wide public use and utility, with WAMSI in the growing pace, it is believed that most of the *Waqf* properties will be managed well and to be used for the purpose for which they were intended and created. The WAMSI system will work as a deterrent for encroachers as the information is available in the public domain. This system may be an example to many countries as this could also be helpful to other interested countries such as Afghanistan, Yemen, Kuwait, Egypt, Armenia, Malaysia and Pakistan among others where the Islamic concept of *Waqf* is prevalent.

(<http://www.livemint.com/Specials/P2qzspRSiqeDRewVXSouZO/Using-GIS-mapping-to-manage-Wakf-property.html>)

Chapter 5

Conclusion

The rich legacy of philanthropic institutions of *Waqf* has some historical facts like the ideal Islamic system of early Islamic period, in Muslim societies, basic Islamic values and institutions at the grass-root levels is to be preserved. The basic economic behaviour of Islamic values for instance payment of Zakat, establishment of Awqaf, granting benevolent loans without interest, implementation of the Islamic law of inheritance to ensure equitable distribution of wealth, internalization of socioeconomic values arising out of the Qur'ānic verses emphasizing God's sovereignty over all resources. The Muslim community of India saw a ray of hope of regaining sovereignty of Awqaf a religious institution through its religious organisations and leaders in the 1950s and 60s. These leaders were enthusiastic to manage and get best use of its usufruct with the expectation according to the *Shariah*. However, in contrary to their aspirations, it always remain a grey area contrary to its expectation due to the various reasons. *Waqf* documentation has been found not properly recorded and the preservation of the same is in a very bad shape. The preservation is done neither in the scientific nor in the legal way. There are also discrepancies found in the survey records that do not match with the preserved record many times as in case of Andhra Pradesh. In the past, a number of steps have been taken up by the state governments in this regard. For instance, Uttar Pradesh

government had appointed survey commissioners and Assistant Commissioner of *Waqf* survey for compiling the data. As mention in the *Waqf* Act 2013 also, the Bihar government has made the Revenue Department responsible for the maintenance of *Waqf* record but in vain. In spite of such initiatives, the status of *Waqf* records is abysmally poor; the progress is very slow and not satisfactory. The Mutawallis, who are in fact not in the *Waqf* board and generally are not trained for the purpose, are responsible for the maintenance of records that adds more to this irony.

It has been realised that application of modern information technology with the use GIS (Geographical Information System) is indispensable in managing the *Waqf* data across the country and also to bring to its modernization of organizational efficiency and transparency in terms of costs and time. For this reason, computerisation of all the *Waqf* records and other available data is fundamental in the very first instance. However, in the recent years, a major breakthrough of the Central *Waqf* Department is the development of WAMSI and its website. This is for the computerisation and digitization of *Waqf* records for its subsequent preservation in the long term. However, in case of the *Waqf* boards, *Waqf* departments and *Awqaf*, the status of computerization is found to be below par primarily due to the lack of the determination and will rather than the limited financial and human resource. The software used for this purpose is not found up to the mark. Moreover, the data entered in WAMSI is found to be misappropriating in many cases. The proper maintenance of WAMSI website is not in place yet. More recently, GIS feature has been introduced to map the property on the earth's surface by fixing the co-ordinates of the vertices of *Waqf* properties, which is an innovative way of tracking encroachments on *Awqaf*. Thus, there is an urgency of employing computerisation of *Waqf* records to the fullest as well as making it the user friendly GIS application based *Waqf* management system to bring transparency, more efficient and encroachment-free *Waqf* administration and management in all the states of the country. Though there remains a more challenging element in accumulating the data on the ground of the vertices of the property yet it can be realised all over the country since they have demonstrated the proof of concept. Suitable professional with experience in the relevant field must be inducted to expedite the process and make up for the loss i.e. slow progress in the work till date.

As an example for a better WAMSI application, the Kerala Land Development Bank (KSLDB) demonstrates how efficiently WAMSI is functioning in the state. One of the cases of Kerala land bank is highlighted where inventorisation of public lands occurs in the forms of spatial and textual data management, surveillance and protection of public lands are functioned through Junda placing, Public Land protection Force and using a Toll Free Number for reporting to the government on land encroachment and income generation from public lands are maintained through BOT and Lease Alert System. This GIS based WAMSI website for maintenance of data is a welcome move in the right and may be replicated for *Waqf*'s purposes in other states too.

There is also a great need of bringing a change and reformation in the existing system of administration and management of the *Waqf* properties and assets so as to result in an effective and productive system of *Awqaf* administration, for which a detailed and thorough survey of *Waqf* properties in every country is very much essential to prepare a data-bank of *Awqaf*. The preparation of a complete database of *Awqaf* is a requirement for managing *Awqaf* effectively and proactively for which survey in every nation, especially to those where the survey has not been done is very much mandatory (Rashid, 2011). Introduction of a new practical approach and strategy, which takes into account the existing un-realistic and slow rate of developmental work, is a vital requisite of the hour in envisioning the development of *Waqf* properties. Employment of suitable professionals and training of the existing staffs are important to transform the existing system into a more efficient administration and management of the *Waqf* properties. A new rational goal with realistic objectives that take into account the large number of properties to be developed and the need of searching new sources of financing this initiative should be designed.

Last but not the least, the current research identifies that there is a lack of specifically consolidated research on the socio-economic aspects of *Awqaf* in India. While all the previous researches either deal with the legal aspects of *Awqaf* or are meant to address the *Fiqhi* dimensions of the institution, there is an urgency in identifying the research gaps properly under careful consideration of the present need and future progress in *Awqaf* management in the country and to focus continuously on the development of *Waqf* administration in India. This will also

mark an impact and will be a source of inspiration for the other countries to uplift *Waqf* system, wherever it is valid and enforced.

Chapter 6

Way Forward: Recommendations and Strategies

6.1 Recommendations

The significance of Indian *Awqaf* for the Muslims in the country can be gauged from the observations made by the then Chairman of the Joint Parliamentary Committee (JPC) on *Waqf*, as he is quoted to have observed in his report that “the Government would not need any additional fund, if only the *Waqf* properties are used effectively for the welfare of the Muslims in India” (Faizee, 2010). Nonetheless, the reports of Sachhar Committee, JPC and some other Independent agencies unfortunately assert that the optimum potential of the Indian *Awqaf* has not been achieved for decades. Notably, since the advent of the British power in the country till date, numerous *Waqf* Acts, Amendment Bills, official recommendations and invaluable suggestions from Governmental and non-Governmental agencies have been made, introduced and experienced; but all of them proved futile in terms of bringing any notable change in the institution of *Awqaf* on the practical grounds. Instead, on contrary to this, the cases of encroachments, illegal occupations and frequent misappropriations of *Awqaf* have increased many folds over the years; in addition to this, the *Waqf* properties in several instances have been severely subjected to misuse, disuse, dilapidation, destruction and unproductive uses as well.

The current pitiable condition of *Awqaf* in India demands an overall shift in the perspectives, attitudes and outlook of the concerned officials towards the institution. Moreover, there is a constant call for a much-needed change in the methodologies, strategies, planning and policies of the concerned *Waqf* Boards with regard to *Waqf* management of the country.

In this respect, the first thing that needs to be strongly asserted is that *Awqaf*, by all means, represent a religious institution instead of just being a value-free charitable trust and hence are overtly required to be managed in the light of *Shariah* guidelines. In fact, this assertion is bound to draw a distinctive line between the ways and methods of managing a secular charity-deed and those of a religiously bound one. In the wake of having acknowledged this distinction of *Awqaf* over all

other forms of endowments, it is almost evident that this institution ultimately needs, as its administrators, a cadre of religiously-motivated officials having the background of proven piety along with being well versed in the law of *Shariah* in general and in *Fiqh* of *Awqaf* in particular. To this end, firstly it is highly recommended that the reigns of this religious institution is gradually handed over to the leading Muslim seminaries in the country while the Government must restrict its role to just superintending the process and maintaining the law and order in disputed cases only. For the time being if this is not possible at once, it is at least pivotal for the *Awqaf* Ministry that prior to embarking upon any sort of new experiments on *Awqaf*, it must take the eminent Islamic Organisations of the country such as All India Muslim Personal Law Board etc. into full confidence and seek their consultations time and again in the related affairs.

In addition to it, the current study demonstrates that, at present *Awqaf* in India is facing? dire challenges in three major dimensions. These include (1) inefficient utilisation of productive properties by the concerned officials, (2) menace of gradual encroachments by individuals and state governments on abandoned properties and (3) lengthy and expensive process of litigation on adversely occupied properties. In fact, to combat all these fatal problems of Indian *Awqaf* in an efficient manner, there is an urgent need to develop some decisive and well-planned strategies to meet all these major challenges sooner than later. As far as the effective utilisation of productive properties is concerned, it may be done in several possible ways.

The first task in this regard should be undertaken in the form of repairing and refurbishing the properties that are productive but are presently generating just a nominal-revenue due to being too old and wearily dilapidated. For this purpose, funds may be raised by issuing *Ijara* or *Istismar* Sukuk etc. against these properties. Financing options may also be explored through signing Mudarabah contracts on these properties with high net worth Muslim and non-Muslim tycoons in the country. Moreover, there are also possible scopes for the *Waqf* Boards to arrange financing in collaboration with some foreign sources such as World *Waqf* Foundation, a branch of Islamic Development Bank, Jeddah established specially for the purpose of facilitating international *Waqf* development endeavours. In an exceptional situation, funds may be raised from conventional resources too, as it has

been permitted by some modern *Shariah* Jurists on the premises of *Maslaha* (public interest) to have recourse to these institutions as a last resort for *Waqf* development (Uyuni, 2011: 145-47).

Moreover, as far the problem of gradual encroachment goes, it is crucial to note firstly that at present there are hundreds of thousand *Waqf* properties lying in the state of disuse and abandonment throughout the country and evidently these properties are most vulnerable to encroachments and susceptible to embezzlements. Hence, it is highly advisable to the related officials that these sorts of *Waqf* properties must be at least urgently encircled with wire-netting to stop any further misappropriation of the land from now on.

In addition, there are also thousands of barren lands of *Waqf* in the country sides and villages for which immediate attentions are required for their cultivation either directly by *Mutawalis* or by some contracted peasants on *MuĐÉR'ah* basis (predetermined crop-sharing ratio).

Moreover, in some cases, *Waqf* properties fall in such an area or locality that there seems a very dim prospect of economically efficient revenue generation even if huge amount of money is invested on them. In the similar kind of circumstances, while treating these cases as exceptional, it may be wise to effect either property swap options on them or to sell them off to buy relatively smaller but productive properties in exchange. This is, in fact, conditionally permitted by Imam Ahmad bin Humbal and some other jurists, as they are of the view that, in exceptional cases, this sort of options may be used for the protection and productivity of *Awqaf* in long term basis (Ibn-e Qudamah, 1997: 220-224).

Furthermore, the last major problem of *Waqf* in India (that relates to already adversely occupied *Waqf* properties) may be easily remedied, if the Government shows just a slight sensitivity and sincerity to this effect by declaring the *Waqf* properties as "Public Premises", as, according to the Public Premises Act 1958, it is a very easy process to evacuate the declared Public Premises from illegal occupations immediately within the matter of days (Rashid, 2005). Undoubtedly, this would be an enormous help to the institution of *Awqaf* for two reasons; firstly, by this a hefty sum of *Waqf* revenues would be saved from the cumbersome

expenses of unsolicited litigation process and secondly, it would improve the prospects of a better *Waqf* management in the country.

Apart from all theses, all the State appointed *Mutawalis* should also be strictly subjected to the *Shariah*-prescribed qualification criteria. To this effect, as the majority of the Jurists views that one of the major criteria required in a *Mutawali* is the attribution of *Adalah* (proven sincerity in the matter of faith); a *Mutawali* must fulfil this criterion prior to the consideration for appointment (Mahdi, 2010: 149-52). Furthermore, with an objective to bring innovation and sophistication in the methods of *Waqf* management, it may be suggested to the *Waqf* Board Authorities to introduce a master level degree program in *Waqf* Management with association with the leading Muslim universities of the country. At the grass-roots level, leading Islamic seminaries and Madrasas of the country should also involve in playing a more active role in generating the awareness of *Awqaf*'s significance in the masses in general and in conducting frequent training camps for *Mutawalis* in particular. All *Mutawalis* must be equipped with the basic essential knowledge of *Fiqh* of *Awqaf* and they must be directed to abide by the stipulations of the *Waqif* in management of the properties and in distribution of the revenues amongst the beneficiaries.

Additionally, with an eye on bringing creativity in the affairs of *Awqaf* and to generate a fresh interest in the maintenance, protection and creation of new *Awqaf* in the country, it is recommendable to the *Awqaf* ministry to consider establishing a good number of regional, district-wise and town-level small post-offices like *Waqf* management centres, solely meant to supervise the activities of *Mutawalis* and to disseminate the *Waqf* related information among the masses. For this purpose, selected graduates of Madrasas may be chosen on merit basis to be provided with one year *Waqf* management training and be employed with these Regional *Waqf* offices. This is definitely bound to serve various purposes all together such as (1) concerned *Mutawalis* would have an easy access to understand the basic *Fiqh* of *Awqaf* and have an all time available recourse to get their *Waqf*-related *Shariah* issues clarified without much hazard, (2) prospective *Waqifs* would regain their lost confidence in the viability of *Awqaf* and have a better prospect of communicating their wills and related issues with the concerned *Ulama-cum-Waqf* officers, (3) local potential beneficiaries would find it easy to come to the *Waqf*

offices and apply for the welfare benefits and they may also get their grievances registered, if any and (4) this would generate a good number of employment opportunities for the eligible Muslim youths and help them to come into streamline in the country etc.

6.2 Strategies for Empowerment through Endowments (*Waqf*)⁴⁷

6.2.1 Recognise potential in the revival of the endowment (*Waqf*) concept

Rather than viewing the endowment (*Waqf*) as a historic or virtually extinct model, its revival offers the potential benefits of an inclusive, non-elitist and religiously and socio-culturally authenticated economic institution. This resurgence arises out of the assumption that the endowment (*Waqf*) is 'a practice that has succeeded for centuries providing a good case for modelling new redistribution institutions for the coming century' (Baskan, 2002:23). Others suggest that the public (*Waqf khairi*) as well as the family endowment (*Waqf ahli*) should be up for the "reconsideration by the jurists, economists and social scientists of the contemporary world of Islam". The Organisation of Islamic Conference, for instance, is promoting the 'pioneering role of the Islamic Awqaf System in enriching Islamic civilization and their effective contribution to the establishing of economic and social institutions of society'. The distinctive contribution made by the endowment (*Waqf*) to the educational and health fields as well as in eradicating poverty is highlighted.

There are two obvious implications of this renewed focus on the endowment (*Waqf*). First, existing endowments (*awqaf*) could be better managed and used for enhancing security of tenure and the urban poor. Second, future endowments (*awqaf*) could help resource redistribution and strengthen civil society. Given the apparent support for the idea of the endowment (*Waqf*) at the local, national and international level among the Islamic communities, the endowment (*Waqf*) does not need to operate at the margins of socio-economic and philanthropic activity but rather it should be mainstreamed within the state legal and economic systems. There are several Islamic institutions, such as the Organisation of Islamic Conference

⁴⁷ United Nations Human Settlements Programme (UN-HABITAT), 2005

(OIC) and its subsidiaries, as well as the other international development institutions which could play a vital role in ensuring the development role of the endowment (*Waqf*).

6.2.2 Facilitate the development of a modern endowment (*Waqf*) model

The current reappraisal of the role of the endowment (*Waqf*) offers opportunities to learn from the mistakes of the past and to construct a modern legal and administrative framework. As some have argued, there is no reason why a new modern responsive doctrine of endowment (*Waqf*) cannot emerge from personal reasoning recognised by the classical Islamic jurisprudence (*ijtihad*), which is a confluence of foundational Islamic principles and modern management techniques. Since the endowment (*Waqf*) is not a Qur'anic creation, it is more easily subjected to the creative interpretation and change, just as the states have done in the past to suit their interests. This contention is being debated amongst the scholars and the classical rules relating to the endowment (*Waqf*) are under review.

It might be a good opportunity to facilitate the development of indigenous models based on modern benchmarks which could respond to contemporary challenges. For example, Their and Chopra (2002:27), writing in the context of Afghanistan, noted:

“The idea of an independent village-based foundation like a *Waqf* (an endowment for religious institutions which governs and manages separately from civil authorities) may be worth investigation. A small resource base for projects and individual or group loans to communities, along micro-financing lines, could generate greater local initiative”.

6.2.3 Promote Islamic philanthropy through endowments (*Awqaf*)

The eclipse of the endowment (*Waqf*) has left a vacuum in the arena of public services, which has not been filled. Students, health patients, homeless, travellers, poor and needy people and prisoners are only among the category of vulnerable people who have lost the cover of the *Waqf*. It has made the Muslim societies further dependent on uncertain foreign donation, which is widely resisted both in terms of its inherent instability and in terms of unwanted foreign intervention. A recent study by the Aga Khan Foundation on Pakistan finds that

giving by the Pakistanis is four times the amount of foreign aid that Pakistan receives. However, the muzzling of endowments (awqaf) has thwarted the philanthropic capability and aspiration of the Muslim communities.

The call for harnessing the indigenous philanthropic traditions is to tap into the considerable 'social capital' which has survived through the institution of charity (zakat). The endowment (*Waqf*) is an embodiment of the principles of self-sufficiency, egalitarianism and learning that mark the Muslim societies. Although, for the Muslims, there is an annual obligatory charity obligation (zakat), the endowment (*Waqf*) serves as an additional and appropriate mechanism for affecting other philanthropic objectives. In fact, the charitable obligation (zakat) can be used to finance and strengthen *Waqf* institutions. Similarly, cash endowment (*Waqf*) provides much needed credit and other financial services.

The State has been unable to serve all of the public purposes undertaken historically by the endowment (*Waqf*). Apart from the capacity, the ability of the centralized state to deliver speedy aid and humanitarian support to vulnerable groups is questionable. The endowment (*Waqf*) has served as a bulwark for civil society and it has the potential to play that role. It has been argued that since the social traditions such as those relating to charitable endowments (awqaf) are deep rooted in the Muslim consciousness, 'the potency of these ethical affinities becomes more evident in times of crises, when official institutions prove inadequate'.

6.2.4 Modernise the administration of endowments (Awqaf)

The increasing popularity of the endowment (*Waqf*) does not necessarily imply a nostalgic return to the traditional model. Modernisation of the endowment (*Waqf*) into a transparent and responsive institution that can compete with the western charitable institutions and improve access to land (Hamza, 2002) can be, and is being, envisaged. The endowment (*Waqf*) should be seen as a civil society institution providing public space, thereby capable of promoting democratisation and good governance. Salih (1999:77) notes that 'one of the operational tasks needed to facilitate the development of awqaf is related to the challenge of adapting modern management techniques to the prevailing economic relations among the

societies where *Waqf* exists'. Clearly, the endowment (*Waqf*) management structures can, and in the recent times have, made the institution more efficient, transparent and responsive. There is also a potential that the *Waqf* can be used to facilitate microfinance and other initiatives (see accompanying paper on Islamic Microfinance).

Given the number of Muslim and non-Muslim countries where the endowment (*Waqf*) is used, there is ample scope for sharing of good practices and their experiences. International Islamic institutions such as the OIC, civil society in general and international agencies have a key role in providing a forum for sharing the experiences and the development of norms relating to efficient management. The example of Kuwait could be considered a best practice. In addition to its own efficient *Waqf* administrative process, it has embarked on providing the technical cooperation and exchange of experience with other Islamic countries, academic centres and international organizations, and on coordinating activities to develop foreign *Waqf* investments in collaboration with other partners. Professional management of the *Waqf* can have significant benefits for society at large.

6.2.5 Revive unproductive state endowments (Awqaf) or misused lands

In most cases, the nationalisation of endowments (Awqaf) merely transfers the responsibility from the private endowment (*Waqf*) managers to the state. Contrary to promises of better use of endowments (Awqaf), it is a widely held view that 'reforms' of endowments (Awqaf), that have taken them within the public sphere of government, have squandered valuable material and human resources. However, more research is needed as to how those lands are being currently managed. There are at least two perceived problems in relation to reviving endowments (Awqaf): the first being the means of financing that revival and the second being the creation of appropriate information systems to enhance transparency.

Moreover, there is a lack of funds for regenerating the productivity of the endowed lands and a lack of ways to publicly finance the development of endowment (*Waqf*) properties, while offering the owners a market determined return. This is not a simple matter given that interest rates are prohibited under Islamic law, (see accompanying position paper on Islamic Credit and

Microfinance). Some argue that the solution is for endowments (*Awqaf*) to be re-privatised by returning their 'assets to private management by creating *Waqf* boards of trustees independent of the Ministry and transferring to them control of *Waqf* assets ... [accompanied by] measures to ensure transparent and accountable management of such funds'. The traditional endowment (*Waqf*) model contains within it the methods by which the endowment can finance or refinance itself. These include creating a new (*Waqf*) endowment to add to the old one and using the mechanism of a long lease with a large advance lump sum and a nominal rent (*hikr/hukr*).

If endowed lands are to remain within the public sphere, the integration of information regarding the state endowment (*Waqf*) lands is necessary if they are to be transparently managed and factored into the general development. In some instances, the only information available is the historical endowment (*Waqf*) records which date back to the Ottoman period. The importance of these records should not be underestimated in the contemporary disputes such as the Arab-Israeli conflict, even though in some countries these records have been partially incorporated into the land information systems. In other Muslim countries, endowment (*Waqf*) properties have to be registered under specific legislation, as is the case with the Indian 1995 *Waqf* Act, in order to be recognised. Perhaps, the Ottoman practice of surveying and registering endowment (*Waqf*) land could serve as an inspiration for the modern Muslim states.

The revival of the *awqaf* could, in the end, depend on the commitment of stakeholders through recognition of the benefits of freeing up the dead capital held in the endowments (*awqaf*). Coming across the shortage of land for distribution, derelict land could be redistributed to landless poor such as squatters as a new state endowment (*Waqf*) in the public interest. Certainly, Islamic endowments (*awqaf*) should not be ignored in debates about land regularisation and security of tenure as they often comprise of extensive tracts of land.

The search for efficiency-enhancing laws, regulations, rules and policies must continue. We must not shy away from considering and experimenting with new innovations in *Waqf* financing. We may make a beginning in a limited way and test the waters. Or else, are we going to allow the *Awqaf* properties to remain as

they are without being of any value or providing benefits to any one? We, as a society, remain accountable to Allah SWT and certainly our posterity if we continue with the same stagnant and defeatist mind-set. A good example of such mind-set is the concern about inclusion on non-Muslims among beneficiaries of Awqaf.

Further, the modes to address our concerns (preservation or development) must be correctly identified. For example, extreme concern for preservation has led to seeking parental state protection without recognizing its adverse impact on the institutionalization of voluntarism. Indeed, state protection is sought to curb private corruptions while state apathy, corruption and interference discourages voluntary acts. *Waqf* was always meant to be in the voluntary sector and not in the government sector. We must do everything to revert to the original position through efficient laws.

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December, 2011.

Appendix – I

Registered No. DL-(N)04/0007/2003-13



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EXTRAORDINARY

Part II – Section 1

PART II – Section 1

Published by Authority

PUBLISHED BY AUTHORITY

NEW DELHI, MONDAY, SEPTEMBER 23, 2013/ ASVINA 1, 1935

No. 37] NEW DELHI, MONDAY, SEPTEMBER 23, 2013/ ASVINA 1, 1935 (SAKA)

NEW DELHI, MONDAY, SEPTEMBER 23, 2013/ ASVINA 1, 1935 (SAKA)

Separate paging is given to this Part in order that it may be filed as a separate compilation.

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Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 23rd September, 2013/Asvina 1, 1935

(Saka)

The following Act of Parliament received the assent of the

President on the 20th September, 2013, and is hereby published for general information:—

THE WAKF (AMENDMENT) ACT, 2013

No. 27 OF 2013

[20th September, 2013.]

An Act to amend the Wakf Act, 1995.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as

follows:—

1. (1) This Act may be called the Wakf (Amendment) Act, 2013.

Short title
and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification

in the Official Gazette, appoint.

43 of 1995. 2. In the long title to the Wakf Act, 1995 (hereinafter referred to as the principal Act), for the word “Wakfs”, the word “Auqaf” shall be substituted. Amendmen
t of long
title.
3. In section 1 of the principal Act, in sub-section (1), for the word “Wakf”, the word “Waqf” shall be substituted. Amendmen
t of
section 1.

Substitution
of
references
to certain
expressions
by certain
other
expressions.

4. Throughout the principal Act, for the words “wakf”, “wakfs” and “wakif”, wherever they occur, the words “waqf”, “auqaf” and “waqif” shall, respectively, be substituted, and such other consequential amendments as the rules of grammar may require shall also be made.

5. In section 3 of the principal Act,—

Amendmen
t of
section 3.

(i) after clause (e), the following clause shall be inserted,
namely:—

Amendment of section 4.

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hority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board;’;

(ii) for clause (g), the following clause shall be substituted, namely:—

‘(g) “list of auqaf” means the list of auqaf published under sub-section (2) of section 5 or contained in the register of auqaf maintained under section 37;’;

(iii) in clause (j), after the proviso, the following provisos shall be inserted, namely:—

“Provided further that the mutawalli shall be a citizen of India and shall fulfil such other qualifications as may be prescribed:

Provided also that in case a waqf has specified any qualifications, such qualifications may be provided in the rules as may be made by the State Government;”;

(iv) in clause (k), in sub-clause (j), for the words “worship” and “khangah”, the words “offer prayer” and “khanqah, peerkhana and karbala” shall, respectively, be substituted;

(v) for clause (r), the following clause shall be substituted, namely:—

‘(r) “waqf” means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

(i) a waqf by 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 by any other name entered in a revenue record;

(iii) “grants”, including mashrat-ul-khidmat for any purpose recognised 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 recognised by

M as pious, religious or charitable, provided when the line
u of succession fails, the income of the waqf shall be spent
s for education, development, welfare and such other
l purposes as recognised by Muslim law,

i and “waqif” means any person making such dedication;’.

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6. In section 4 of the principal Act,—

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(a) in sub-section (1), for the words “wakfs existing in the State
at the date of the commencement of this Act”, the words “auqaf in
the State” shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013, in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:

Provided that where no Survey Commissioner of Waqf has been appointed, a Survey Commissioner for auqaf shall be appointed within three months from the date of such commencement.”;

(c) in sub-section (6),—

(i) in the proviso, for the words “twenty years”, the words “ten years” shall be substituted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.”.

7. In section 5 of the principal Act,—

(a) in sub-section (2), for the words “publish in the Official Gazette”, the words “forward it back to the Government within a period of six months for publication in the Official Gazette” shall be substituted;

(b) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) The revenue authorities shall—

(i) include the list of auqaf referred to in sub-section (2), while updating the land records; and

(ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land

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8. In section 6 of the principal Act, in sub-section (1),—

(a) for the words “any person interested therein”, the words “any person aggrieved” shall be substituted;

(b) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.”;

(c) the *Explanation* shall be

omitted. 9. In section 7 of the

principal Act,—

(a) in sub-section (1),—

(i) for the words “any question”, the words “any question or dispute” shall be substituted;

(ii) for the words “or any person interested”, the words and figure “or any person aggrieved by the publication of the list of auqaf under section 5” shall be substituted;

Amendmen
t of section

5.

Amendmen
t of section

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Amendmen
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7.

(b) after sub-section (5), the following sub-section shall be inserted, namely:—

“(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.”.

Substitution
of new
section for
section 8.

State
Government
to bear cost
of survey.

Amendmen
t of
section 9.

10. For section 8 of the principal Act, the following section shall be substituted, namely:—

“8. The total cost of making a survey including the cost of publication of the list or lists of auqaf under this Chapter shall be borne by the State Government.”.

11. In section 9 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) The Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Waqf Council, for the purpose of advising the Central Government, the State Governments and the Boards on matters concerning the working of Boards and the due administration of auqaf.

(1A) The Council referred to in sub-section (1) shall issue directives to the Boards, on such issues and in such manner, as provided under sub-sections (4) and (5).”;

(b) in sub-section (2), in clause (b),—

(i) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) four persons of national eminence, one each from the fields of administration or management, financial

m and medicine;”;

a (i) after sub-clause (viii), the following proviso shall be
n inserted, namely:—

a “Provided that at least two of the members appointed
g under sub-clauses (i) to (viii) shall be women.”;

e (c) after sub-section (3), the following sub-sections shall be
m inserted, namely:—

e
n “(4) The State Government or, as the case may be, the
t 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,
e revenue records, encroachment of waqf properties, annual
n reports and audit reports in the manner and time as may be
g specified by the Council and it may *suo motu* call for
i information on specific issues from the Board, if it is
n satisfied that there was *prima facie* evidence of irregularity or
e violation of the provisions of this Act and if the Council is
e satisfied that such irregularity or violation of the Act is
r established, it may issue such directive, as considered
i appropriate, which shall be complied with by the concerned
n Board under intimation to the concerned State Government.

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(5) Any dispute arising out of a directive issued by the Council under sub-section (4) shall be referred to a Board of Adjudication to be constituted by the Central Government, to be presided over by a retired Judge of the Supreme Court or a retired Chief Justice of a High Court and the fees and travelling and other allowances payable to the Presiding Officer shall be such as may be specified by that Government.”.

Amendment
of section
13.

12. In section 13 of the principal Act,—

(a) after sub-section (1), the following proviso shall be inserted, namely:—

“Provided that in case where a Board of Waqf has not been established, as required under this sub-section, a Board of Waqf shall, without prejudice to the provisions of this Act or any other law for the time being in force, be established within six months from the date of commencement of the Wakf (Amendment) Act, 2013.”;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Where a Board of Waqf is established under sub-section (2) of section 13, in the case of Shia waqf, the Members shall belong to the Shia Muslim and in the case of Sunni waqf, the Members shall belong to the Sunni Muslim.”.

13. In section 14 of the

principal Act,— (1) in sub-section (1),—

(i) for the words “the Union territory of Delhi”, wherever they occur, the words “the National Capital Territory of Delhi” shall be substituted;

(ii) in clause (b),—

(a) for sub-clause (iii), the following sub-clause shall be substituted, namely:—

“(iii) Muslim members of the Bar Council of the concerned State or Union territory:

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e is no Muslim member of the Bar Council of a State or a Union territory, the State Government or the Union territory administration, as the case may be, may nominate any senior Muslim advocate from that State or the Union territory, and”;

(b) after sub-clause (iv), the following *Explanations* shall be inserted, namely:—

“*Explanation I.*— For the removal of doubts, it is hereby declared that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.

Amendment
of section
14.

Explanation II.—For the removal of doubts it is hereby declared that in case a Muslim member ceases to be a Member of Parliament from the State or National Capital Territory of Delhi as referred to in sub-clause (i) of clause (b) or ceases to be a Member of the State Legislative Assembly as required under sub-clause (ii) of clause (b), such member shall be deemed to have vacated the office of the member of the Board for the State or National Capital Territory of Delhi, as the case may be, from the date from which such member ceased to be a Member of Parliament from the State

or National Capital Territory of Delhi, or a Member of the State Legislative Assembly, as the case may be;”;

(iii) for clauses (c) to (e), the following clauses shall be substituted, namely:—

“(c) one person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government;

(d) one person each from amongst Muslims, to be nominated by the State Government from recognised scholars in Shia and Sunni Islamic Theology;

(e) one person from amongst Muslims, to be nominated by the State Government from amongst the officers of the State Government not below the rank of Joint Secretary to the State Government;”;

(f) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) No Minister of the Central Government or, as the case may be, a State Government, shall be elected or nominated as a member of the Board:

Provided that in case of a Union territory, the Board shall consist of not less than five and not more than seven members to be appointed by the Central Government from categories specified under sub-clauses (i) to (iv) of clause (b) or clauses (c) to (e) in sub-section (1):

Provided further that at least two Members appointed on the Board shall be women:

Provided also that in every case where the system of mutawalli exists, there shall be one mutawalli as the member of the Board.”;

(iii) sub-section (5) shall be

omitted. (iv) sub-section (7)

shall be omitted.

Amendment
of section
15.

Amendment
of section
16.

Insertion
of new
section
20A.

Removal of
Chairperson
by vote of
no
confidence.

14. I) he has been held guilty of encroachment on any waqf
n section property;”.

15 of the 16. After section 20 of the principal Act, the following section shall
principal be inserted,namely:–

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“20A. Without prejudice to the provisions of section 20, the
Chairperson of a Board may be removed by vote of no confidence in
the following manner, namely:–

(a) no resolution expressing a vote of confidence or no
confidence in any person elected as Chairperson of a Board
shall be moved except in the manner prescribed and twelve
months have not elapsed after the date of his election as a
Chairperson and be removed except with the prior permission
of the State Government;

(b) notice for no confidence shall be addressed to the
State Government stating clearly the grounds on which such
motion is proposed to be moved and shall be signed by at
least half the total members of the Board;

15. In

section

16 of the

principal

Act, after

clause

(d), the

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shall be

inserted,

namely:–

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(c) at least three members of the Board signing the notice of no confidence shall personally present to the State Government, the notice together with an affidavit signed by them to the effect that the signatures on no confidence motion are genuine and have been made by the signatories after hearing or reading the contents of the notice;

(d) on receipt of the notice of no confidence, as provided hereinabove, the State Government shall fix such time, date and place as may be considered suitable for holding a meeting for the purpose of the proposed no confidence motion:

Provided that at least fifteen days notice shall be given for such a meeting;

(e) notice for meeting under clause (d) shall also provide that in the event of no confidence motion being duly carried on or, election of the new Chairperson, as the case may be, shall also be held in the same meeting;

(f) the State Government shall also nominate a Gazetted Officer (other than an officer of the department which is concerned with the supervision and administration of the Board) to act as presiding officer of the meeting in which the resolution for no confidence shall be considered;

(g) the quorum for such a meeting of the Board shall be one-half of the total number of members of the Board;

(h) the resolution for no confidence shall be deemed to be carried out, if passed by a simple majority of the members present;

(i) if a resolution for no confidence is carried out, the Chairperson shall cease to hold office forthwith and shall be succeeded by his successor who shall be elected by another resolution in the same meeting;

(j) election of the new Chairperson shall be conducted under clause (i), in the meeting under the chairmanship of the said presiding officer referred to in clause (f), in the following manner, namely:—

(A) Chairperson shall be elected from amongst the elected members of the Board;

(B) nomination of candidates shall be proposed and seconded in the meeting itself and election after withdrawal, if any, shall be held by method of secret ballot;

(C) election shall be held by simple majority of the members present in the meeting and in case of equality of votes, the matter shall be decided by drawing of lots; and

(D) proceedings of the meeting shall be signed by the presiding officer;

(k) new Chairperson elected under clause (h) shall hold the office only up to the remainder of the term of the Chairperson removed by the resolution of no confidence; and

(l) if the motion for passing the resolution of no confidence fails for want of quorum or lack of requisite majority at the meeting, no subsequent meeting for considering the motion of no confidence shall be held within six months of the date of the previous meeting.”.

Amendment
of section
23.

17. In section 23 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) There shall be a full-time Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, by notification in the Official Gazette, from a panel of two names suggested by the Board and who shall not be below the rank of Deputy Secretary to the State Government, and in case of non-availability of a Muslim officer of that rank, a Muslim officer of equivalent rank may be appointed on deputation.”.

Substitution
of new
section for
section 27.

18. For section 27 of the principal Act, the following section shall be substituted, namely:—

“27. The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the Chief Executive Officer or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary, except the powers and functions of the Board mentioned under clauses (c), (d), (g) and (j) of sub-section (2) of section 32 and section 110.”.

Delegation
of powers
by Board.

Substitution
of new
section for
section 28.

19. For section 28 of the principal Act, the following section shall be substituted, namely:—

“28. Subject to the provisions of this Act and the rules made thereunder, the District Magistrate or in his absence an Additional District Magistrate or Sub-Divisional Magistrate of a District in the State shall be responsible for implementation of the decisions of the Board which may be conveyed through the Chief Executive Officer and the Board may, wherever considers necessary, seek directions from the Tribunal for the implementation of its decisions.”.

Power of
District
Magistrate,
Additional
District
Magistrate
or Sub-
Divisional
Magistrate to
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the Board.

Amendment
of section
29.

20. Section 29 of the principal Act shall be numbered as sub-section (1) thereof, and—

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of such fees as may be leviable under any law for the time being in force”, the words “subject to such conditions as may be prescribed” shall be substituted;

(b) after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:—

“(2) The mutawalli or any other person having the custody of any document related to waqf properties shall produce the same, within the prescribed period, before the Chief Executive Officer on being called upon to do so in writing.

(3) Subject to such conditions as may be prescribed, an agency of the Government or any other organisation shall supply, within ten working days, copies of the records, registers of properties or other documents relating to waqf properties or claimed to be waqf properties, to the Chief Executive Officer on a written request to this effect from him:

Provided that before taking any course of action as mentioned in sub-sections (2) and (3), the Chief Executive Officer shall obtain approval of the Board.”.

21. In section 31 of the principal Act, the following shall be inserted at the end, namely:—

“or a Member of Union territory Legislature or a Member of a State Legislature if so declared under a law made by the appropriate State Legislature”.

22. In section 32 of the principal Act,—(1) in sub-section (2),—

(a) for clause (j), the following clause, shall be substituted, namely:—

“(j) to sanction lease of any immovable property of a waqf in accordance with the provisions of this Act and the rules made thereunder:

Provided that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction:

Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.”;

(b) after clause (n), the following clause shall be inserted, namely:—

“(na) to determine or cause to be determined, in such manner as may be specified by the Board, market rent of the waqf land or building;”;

(11) in sub-section (4), for the words “offers a feasible potential for development as a shopping centre”, the words “has the potential for development as an educational institution, shopping centre, market, housing or residential flats and the like” shall be substituted;

(111) in sub-section (5), the words “with the prior approval of the Government,” shall be omitted.

23. In section 33 of the principal Act, in sub-section (1),—

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elf or any other person authorised by him in writing in this behalf” shall be omitted.

Amendment
of section
31.

24. In section 36 of the principal Act, in sub-section (2), in the proviso, for the words “made by the wakf”, the words “made by the waqf” shall be substituted.

25. Section 37 of the principal Act shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:—

Amendment
of section
32.

“(2) The Board shall forward the details of the properties entered in the register of auqaf to the concerned land record office having jurisdiction of the waqf property.

(3) On receipt of the details as mentioned in sub-section (2), the land record office shall, according to established procedure, either make necessary entries in the land record or communicate, within a period of six months from the date of registration of waqf property under section 36, its objections to the Board.”.

Amendment
of section
33.

Amendment
of section
36.

Amendment
of section
37.

26. In section 44 of the principal Act,—

Amendment
of section
44.

(a) in sub-section (2), for the words “ninety days”, the words “thirty days” shall be substituted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

Amendment
of section
46.

“(3) In case the Board considers any item in the budget being contrary to the objects of the waqf and the provisions of this Act, it may give such direction for addition or deletion of such item as it may deem fit.”.

27. In section 46 of the principal Act, in sub-section (2), for the figure, letters and words “1st day of May”, at both the places where they occur, the figure, letters and words “1st day of July” shall be substituted.

Amendment
of section
47.

28. In section 47 of the principal Act,—

(i) in sub-section (1),—

(i) in clause (a), for the words “ten thousand rupees”, the words “fifty thousand rupees” shall be substituted;

(ii) in clause (b), for the words “ten thousand rupees”, the words “fifty thousand rupees” shall be substituted;

(iii) in clause (c), after the words “the State Government may,”, the words “under intimation to the Board,” shall be inserted;

Amendment
of section
51.

(i) in sub-section (3), in the first proviso, for the words “more than ten thousand rupees but less than fifteen thousand rupees”, the words “more than fifty thousand rupees” shall be substituted.

29. In section 51 of the principal Act,—

(i) for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the Board:

Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such

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ore the date of commencement of the Wakf (Amendment) Act, 2013.

(1A) Any sale, gift, exchange, mortgage or transfer of waqf property shall be void *ab initio*:

Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:

Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 or any other law relating to acquisition of land if such acquisition is made in consultation with the Board: 1 of 1894.

Provided also that—

(a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991;

42 of
1951.

(b) the purpose for which the land is being acquired shall be undisputedly for a public purpose;

(c) no alternative land is available which shall be considered as more or less suitable for that purpose; and

(d) to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or a suitable land with reasonable solatium in lieu of the acquired property.”;

(ii) sub-sections (2), (3), (4) and (5) shall be omitted.

30. In section 52 of the principal Act, in sub-section (1), after the words and figures “provisions of section 51”, the words and figures “or section 56” shall be inserted.

31. After section 52 of the principal Act, the following section shall be inserted, namely:—

“52A. (1) 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:

Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time being in force, be vested in the Board without any

compensation therefor.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 any offence punishable under this section shall be cognizable and

non-bailable.

(3) No court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.

(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.”.

(a) in sub-section (3), for the words “he may, by an order, require the encroacher to remove”, the words “he may, make an application to the Tribunal for grant of order of eviction for removing” shall be substituted;

(b) for sub-section (4), the following sub-sections shall be substituted, namely:—

“(4) The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property:

Amendment
of section
52.

Insertion
of new
section
52A.

Provided that the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer.

Penalty for
alienation of
waqf

(5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property.”.

property
without
sanction of
Board.

Amendment
of section
54.

Amendment
of section
55.

33. In section 55 of the principal Act,—

(a) for the word, brackets and figure “sub-section (3)”, the word, brackets and figure “sub-section (4)” shall be substituted;

(b) for the words “apply to the Sub-Divisional Magistrate”, the words “refer the order of the Tribunal to the Executive Magistrate” shall be substituted.

Insertion
of new
section
55A.

34. After section 55 of the principal Act, the following section shall be inserted, namely:—

Disposal of
property
left on
waqf
property by
unauthorise
d
occupants.

“55A. (1) Where any person has been evicted from any waqf property under sub-section (4) of section 54, the Chief Executive Officer may, after giving fourteen days’ notice to the person from whom possession of the waqf property has been taken and after publishing the notice in at least one newspaper having circulation in the locality and after proclaiming the contents of the notice by placing it on conspicuous part of the waqf property, remove or cause to be removed or dispose of by public auction any property remaining on such premises.

(2) Where any property is sold under sub-section (1), the sale proceeds shall, after deducting the expenses relating to removal, sale and such other expenses, the amount, if any, due to the State Government or a local authority or a corporate authority on account of arrears of rent, damages or costs, be paid to such person, as may appear to the Chief Executive Officer to be entitled to the same:

Amendment
of section
56.

Provided that where the Chief Executive Officer is unable to decide as to the person to whom the balance of the amount is payable or as to the appointment of the same, he may refer such dispute to the Tribunal and the decision of the Tribunal thereon shall be final.”.

35. In section 56 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “A lease or sub-lease for any period exceeding three years”, the words “A lease for any period exceeding thirty years” shall be substituted;

rted at the end, namely:—

“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:

Provided further that lease of any immovable waqf property, which is an agricultural land, for a period exceeding three years shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect:

Provided also that before making lease of any waqf property, the Board shall publish the details of lease and invite bids in at least one leading national and regional news papers.”;

(b) in sub-section (2), for the words “A lease or sub-lease for any period exceeding one year and not exceeding three years”, the words “A lease for a period of one year but not exceeding thirty years” shall be substituted;

(c) in sub-section (3),—

(i) the words “or sub-lease”, at both the places where they occur, shall be omitted;

(i) the following proviso shall be inserted at the end, namely:—

“Provided that the Board shall immediately intimate the State Government regarding a lease for any period exceeding three years of any waqf property and thereafter it may become effective after the expiry of forty-five days from the date on which the Board intimates the State Government.”;

(d) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.

Amendment
of section
61.

36. In section 61 of the principal Act, in sub-section (1), for the words “eightthousand rupees”, the words, brackets and letters “ten thousand rupees for non-compliance of clauses (a) to (d) and in case of non-compliance of clauses (e) to (h), he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to ten thousand rupees” shall be substituted.

37. In section 65 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) Notwithstanding anything contained in sub-section (1), the Board shall take over the administration of a waqf, if the waqf Board has evidence before it to prove that management of the waqf has contravened the provisions of this Act.”.

38.
In
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ipal Act,—

(i) in sub-section (2), for the words “Magistrate of the first class” and “Magistrate”, the words “District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent” shall be substituted;

Amendment
of section
65.

(ii) in sub-sections (3), (4), (5) and sub-section (6), for the words “the Magistrate” the words “any Magistrate” shall be substituted.

Amendment
of section
68.

39. In section 69 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where the Board is satisfied after an enquiry, whether on its own motion or on the application of not less than five persons interested in any waqf, to frame a scheme for the proper administration of the waqf, it may, by an order, frame such scheme for the administration of the waqf, after giving reasonable opportunity and after consultation with the mutawalli or others in the prescribed manner.”.

Amendment
of section
69.

40. In section 71 of the principal Act, in sub-section (1), for the figures “73”, the figures “70” shall be substituted.

Amendment
of section
71.

41. In section 72 of the principal Act, in sub-section (1), in *Explanation I*, in clause (iii),—

Amendment
of section
72.

(i) after the words “following purposes”, the words “in respect of lands directly under cultivation by the mutawalli for the benefit of the waqf” shall be inserted;

Amendment of section 85.

Amendment
of section
77.

Amendment
of section
81.

Amendment
of section
83.

for the words "ten per cent.", the words

"twenty per cent." shall be substituted;

(iii) after the proviso, the following proviso shall be inserted,
namely:—

"Provided further that no such deduction shall be permitted in respect
of waqf land given on lease, by whatever name called, whether *batai* or
share

cropping or any other name."

42. In section 77 of the principal Act, in sub-section (4), after clause (f),
the following

clause shall be inserted,
namely:—

"(g) payment of maintenance to Muslim women as ordered by a court of
competent jurisdiction under the provisions of the Muslim Women
(Protection of

Rights on Divorce) Act, 1986."

25 of
1986.

43. In section 81 of the principal Act, after the words "as it thinks
fit", the followings shall be inserted at the end, namely:—

"and a copy of the said auditor's report, along with orders shall
be forwarded by the State Government to the Council within a
period of thirty days of laying of such report before each House of
the State Legislature where it consists of two Houses or where such
Legislatures consist of one House, before that House."

44. In section 83 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be
substituted, namely:—

"(1) The State Government shall, by notification in the
Official Gazette, constitute as many Tribunals as it may think
fit, for the determination of any dispute, question or other
matter relating to a waqf or waqf property, eviction of a tenant
or determination of rights and obligations of the lessor and the
lessee of such property, under this Act and define the local
limits and jurisdiction of such Tribunals;"

(b) for sub-section (4), the following sub-sections shall be
substituted, namely:—

"(4) Every Tribunal shall consist of—

(a) one person, who shall be a member of the State
Judicial Service holding a rank, not below that of a
District, Sessions or Civil Judge, Class I, who shall be the

C an officer from the State Civil Services equivalent in rank to
h that of the Additional District Magistrate, Member;

a (c) one person having knowledge of Muslim law and
i jurisprudence, Member;

r and the appointment of every such person shall be made either
m by name or by designation.

a (44) The terms and conditions of appointment including the
n salaries and allowances payable to the Chairman and other
; members other than persons appointed as *ex officio* members shall
(be such as may be prescribed.”.

b) 45. In section 85 of the principal Act, for the words “civil court”, the
words “civilcourt, revenue court and any other authority” shall be
substituted.

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46. In section 86 of the principal Act, in clause (b), after the words "a previous mutawalli", the words "or by any other person" shall be inserted.

Amendment
of section
86.

47. Section 87 of the principal Act shall be omitted.

Omission
of section
87.

48. In section 90 of the principal Act, in sub-section (3), for the words "one month", the words "six months" shall be substituted.

Amendment
of section
90.

49. In section 91 of the principal Act, in sub-section (1), for the words "it appears to the collector before an award is made that any property", the words "and before an award is made, in case the property" shall be substituted.

Amendment
of section
91.

50. In section 97 of the principal Act, the following proviso shall be inserted at the end, namely:—

"Provided that the State Government shall not issue any direction being contrary to any waqf deed or any usage; practice or custom of the waqf."

53. After section 104 of the principal Act, the following section shall be inserted, namely:—

51. In section 99 of the principal Act,—

(a) in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that the power of the State Government under this section shall not be exercised unless there is a *prima facie* evidence of financial irregularity, misconduct or violation of the provisions of this Act.";

"
104A
(1)

(b) in sub-section (3), for clause (a), the following clause shall be substituted, namely:—

Notwithstanding anything contained in this Act or

"(a) extend the period of supersession by another six months with reasons to be recorded in writing and, the period of continuous supersession shall not exceed more than a year; or".

52. In section 102 of the principal Act, in sub-section (2), for the words "after consulting the State Governments", the words "after consulting the Council and the State Governments" shall be substituted.

any other law for the time being in force or any waqf deed, no person shall sell, gift, exchange, mortgage or transfer any movable or immovable property which is a waqf property to any other person.

Amendment
of section
97.

(2) Any sale, gift, exchange, mortgage or transfer of property referred to in sub-section (1) shall be void *ab initio*.”.

Amendment
of section
99.

Amendmen
t of
section
102.

Insertion
of new
section
104A.

Prohibition of
sale, gift,
exchange,
mortgage or
transfer of
waqf
property.

54. After section 104A of the principal Act, the following section shall be inserted,namely:—

Insertion
of new
section
104B.

“104B. (1) If any waqf property has been occupied by the Government agencies it shall be returned to the Board or the mutawalli within a period of six months from the date of the order of the Tribunal.

Restoration
of waqf
properties in
occupation
of
Government
agencies to
waqf Board.

Amendme
nt of
section
106.

(2) The Government agency may, if the property is required for a public purpose, make an application for determination of the rent, or as the case may be, the compensation, by the Tribunal at the prevailing market value.”.

Insertion
of new
section
108A.

55. In section 106 of the principal Act, in sub-section (1), for the words “after consultation with the Government”, the words “after consultation with the Council and the Government” shall be substituted.

Act to
have
overriding
effect.

56. After section 108 of the principal Act, the following section shall be inserted, namely:—

“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 in any instrument having effect by virtue of any law other than this Act.”.

Amendme
nt of
section
109.

57. In section 109 of the principal Act, in sub-section (2),—

(a) for clause (1), the following clauses shall be substituted, namely:—

“(1) the qualifications required to be fulfilled by a person to be appointed as a mutawalli under clause (1) of section 3;

(ia) other particulars which the report of the Survey Commissioner may contain under clause (1) of sub-section (3) of section 4;”;

(b) in clause (vi), for the word “under”, the words, brackets and figure “under sub-section (1) of ” shall be substituted;

(c) after clause (vi), the following clauses shall be inserted, namely:—

“(via) the period within which the mutawalli or any other person may produce documents related to waqf properties under sub-section (2) of section 31;

(vib) the conditions under which an agency of the Government or any other organisation may supply copies of records, registers and other documents under sub-section (3) of section 31;”;

Appendix – II

WAKF (AMENDMENT) BILL 2010

VITAL CONCERNS OF MUSLIM COMMUNITY

Compiled and presented on 12 May 2011 by Zakat Foundation of India, New Delhi
Website: www.zakatindia.org Email: info@zakatindia.org

Sachar Committee's Recommendations				JPC on Wakf (Recommendations)	Ministry of Minority Affairs' proposal incorporated in Wakf Amendment Bill 2010 that was not recommended	Zakat Foundation of India (ZFI)'s Comments/RTI Query made to the MoM A (MoMA stands for Ministry of Minority Affairs)
Sachar Committee's Recommendation no.	Chapter, Para and Page no. of the Sachar Committee's	Text of the Sachar Committee's Recommendation (Pertaining to Wakfs)	(a) Summarised (b) Comments of the Ministry of Minority Affairs (c) Conclusion arrived (at the inter-ministerial meeting that later found its way to the	(THIRD REPORT OF JOINT PARLIAMENTARY COMMITTEE ON AMENDMENTS TO THE WAKF ACT, 1995 PRESENTED TO THE RAJYA SABHA ON 04 MARCH 2008 AND LAID ON THE TABLE OF THE LOK SABHA ON THE 4TH MARCH, 2008)		
1	2	3	4	5	6	7
1. Preventing undue bureaucratic intervention in Waqf work						
	Chapter-11 Para-3.2 Page-225	The Minorities Department of U.P. Government has unauthorizedly passed orders overruling the quasi-judicial orders given	(a) Ministry of Minority Affairs Amendments to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report	Section 97 Section 97 deals with direction by State Government. The Committee decided that the following proviso may be added at the end of Section: "Provided that		The proviso proposed to be added to Sec 97 needs to be rephrased as follows: "Provided that while issuing any directions under this Section, the State

		over ruling the Wakf Board order is available with the Committee. Such action is ultra vires the Wakf Act. The Wakf Act 1995 may be amended to prevent	Same as in (a) above. (c) Conclusion arrived (at the inter-ministerial meeting that later found its way to the Cabinet Note) Amendments to Wakf Act are being	this Section, the State Government shall not interfere with the provisions of any Wakf deed or any usage, practice or custom of the Wakf."		usage, practice or custom of the Wakf nor shall issue any direction that violates any provision of this Act."
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2. Survey of Waqf Properties

1	2	3	4	5	6	7
				Compulsory appointment of Survey Commissioners of Waqfs In Sub-section (1) of Section 4, the words "The State Government may, by notification in the Official Gazette..." be substituted by the words "The State Government shall	MoMA over-ruled the JPC and has not incorporated this important recommendation of the JPC into the Waqf	The amendment recommended by JPC must be incorporated in the Waqf Bill 2010.
				Survey to	MoMA	This

				include cases since Independence : Provided further that such second or subsequent survey shall include all such Wakfs and Wakf	over-ruled the JPC and did not incorporate this vital recommendation of the JPC in the Waqf	recommendation of JPC must be incorporated in the Waqf Amendment Bill, 2010.
				Deemed Mutation Once a Survey Commissioner notifies the Wakf property, the same shall be treated as 'Deemed Mutation', for the purposes of revenue records and	MoMA again over-ruled the JPC and did not incorporate this vital recommendation of the JPC in the Waqf	This important recommendation of JPC must be incorporated in the Waqf Amendment Bill, 2010.
3. Constitution of Central Waqf Council						
1	2	3	4	5	6	7
62	Chapter-11	(i) Independent	(a) Ministry of Minority Affairs	This matter was not touched upon	MoMA	(i) Independent President of CWC

	Para-4.1 Page- 229	President of CWC A Union Minister occupies the position as the ex-officio President of the Central Wakf Council. Given his preoccupations, often the Council is not able to prepare and take timely action on matters of urgency. It is, therefore, proposed that a full time President should be appointed from	Amendment to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report. (b) Ministry of Minority Affairs Same as in (a) above (c) Conclusion arrived (at the at inter-ministerial meeting that later found its way to the Cabinet Note) Amendment to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report.	JPC Report.	ignored this vital recommendation of Sachar Committee without giving any reasons.	Needs to be incorporated in the Bill
62	Chapter-11 Para-4.1 Page-	(ii) CWC Secretary to be of the level of	(a) Ministry of Minority Affairs	This matter was not touched upon in the	(ii) CWC Secretary to be of the level of	(ii) CWC Secretary to be of the level of Joint

		Joint Secretary to Govt of India The Secretary of the Central Wakf Council should be an officer of the rank of at least Joint Secretary to Government of India so that meaningful and effective communication and interaction with government authorities is facilitated. In order to be effective, this officer must have a good knowledge of Wakf matters, Muslim	Amendments to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report. (b) Ministry of Minority Affairs Same as in (a) above (c) Conclusion arrived (at the at inter-ministerial meeting that later found its way to the Cabinet Note) Amendments to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report.		of Joint Secretary to Govt of India CWC Secretary has to be naturally much senior to the CEOs of the state governments. Also, his being senior enough in central government hierarchy	Need to be incorporated in the Bill.
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4. Constitution of State Wakf Boards

1	2	3	4	5	6	7
63	Chapter-	(i) Chairman	(a) Ministry of Minority		(i) ZFI has noted	(i)(a) Without assigning any

	11 Para-4.1 Page- 229	Members of the State Wakf Boards can be selected from a list of eminent persons in each state. For example, a retired high court judge, the former service chancellors, and those who have established Muslim educational institutions of repute should be considered for appointment in the Wakf Board. The other members of the Wakf Boards can be nominated from a list of Muslim professionals drawn from various professions such as the architects, doctors, lawyers, chartered	Affairs Amendment to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report]. (b) Ministry of Minority Affairs Same as in (a) above (c) Conclusion arrived (at the at inter-ministerial meeting that later found its way to the Cabinet Note) Amendment to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report.		that, as per the Wakf Amendment Bill 2011, one of the following shall be elected as a Member of the State Wakf Board: “Muslim members enrolled with the Bar Council of the concerned State or Union territory: Provided that in case there is no Muslim member of the Bar Council of a State, the State Government may nominate any reputed person from that State having knowledge or experience of law.”	reason, MoMA has ignored the Sachar Committee’s recommendation, that the Chairman of SWB should be a retired High Court Judge or a former service-chancellor or one who has established educational institutions. The end result is that this important positions shall continue to be an object of politicking without much regard for the Waqf interests. This omission by MoMA needs to be rectified. (i)(b) The portion in red colour leaves the scope that a person from any community can be appointed. Therefore, the Wakf Amendment Bill needs to be amended to include the word ‘Muslim’ before the word
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					(iii) The following existing provision regarding composition of the Waqf Board is proposed by the MoMA to be deleted: “Oneandnotmore than two members tobenominatedby the State Government representing eminent Muslim organisations.”	be the Member of Waqf Board under this category. (iii) The existing provision need to be retained, even if the number of Members of the Waqf Board goes up by one. (iv) The Amendment Bill needs to (a) define ‘Electoral College’ and (b)
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					'Electoral College' has not been defined nor is it told who will constitute it and procedure thereof.	
5. Status of CEO & Creation of Indian Waqf Service						
1	2	3	4	5	6	7

		(ii) <u>C.E.O.</u> The Act does not provide any qualification for a person to be appointed by the state Government as Chief Executive Officer of the Board. It has been found that in cases where the Chief Executive Officer is not high ranking in the hierarchy of state bureaucracy the interests of the Wakf Board often suffer. It is, therefore, necessary that the Chief Executive Officer must be full time and	(a) Ministry of Minority Affairs Amendment to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report]. (b) Ministry of Minority Affairs Same as in (a) above (c) Conclusion arrived (at the inter-ministerial meeting that later found its way to the Cabinet Note) Amendment to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report.	There shall be a Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government from a panel of two names suggested by the Board and he shall not be below the rank of a Director of the State Government, by notification in the Official Gazette".	There shall be a full-time Chief Executive Officer who shall <u>not be below</u> the rank of Deputy Secretary to the State Government. In case such Muslim officer is not available in the State, an officer not below the rank of Under Secretary to the State Government may be appointed."	Indian Wakf Service must be created as so thoughtfully suggested by Sachar Committee. (See next entry in this chart). However, the Bill should provide that for the period before the newly created Indian Wakf Service is fully in place, the CEO should not be below the rank of Director to the State Government. Thi stopic continues on next page
64	Chapter-	Group-A Officers for	(a) Ministry of Minority		MoMA did not give	MoMA should please let us have

11 Para-4.1 Page-230	Wakfs: There is strong case to create a new cadre of officers to manage the affairs of State Wakf Boards and Central Wakf Council. It is estimated that upto 200 Group-A officers are needed to service the Wakfs affairs across India. The government may, therefore, consider creating a new cadre of officers to be recruited by the UPSC so that they can deal with the specific affairs of the Wakfs efficiently. Such officers, however, should have the knowledge of	Affairs This is not recommended. (b) Ministry of Minority Affairs Same as in (a) above (c) The creation of a new cadre of officers to manage the affairs of State Wakf Boards and Central Wakf Council is not recommended.	The JPC Report did not touch upon this matter.	any reason why this recommendation of Sachar Committee was not forwarded for acceptance by the Cabinet. Under orders of the Central Information Commission, the MoMA's file on the subject was inspected by Zakat Foundation of India. It shows that at any level senior to Deputy Secretary this matter was not discussed at all. Its fate went by default. The endorsement of what came from the lowest bureaucratic level was done at	put up by Ministry to the Union Cabinet on the basis of which the Cabinet took a decision to not accept this particular recommendation of the Sachar Committee. (Please note that this request of ours is not covered by the statutory exemption clause regarding 'Cabinet Papers' because, we are now asking for those papers which were considered by the Cabinet before taking the decision that was done long ago. For this purpose, Proviso to Section 8(1)(i) is reproduced here for ready reference : Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over.) The matter must be reopened and reviewed at appropriate levels.
6. Development of Waqf Properties					

1	2	3	4	5	6	7
60	Chapter-11 Para-4.1 Page-229	It appears to be essential to provide a technical advisory committee for development of Wakf properties both at the state and national levels. This body may comprise representatives of the State Wakf Boards, area experts from institutions such as School of Planning and Architecture, National Institute	(a) Ministry of Minority Affairs Setting up of National Wakf Development Corporation (NWDC) is under consideration in which experts would be represented. (b) Ministry of Minority Affairs Same as in (a) above (c) Conclusion arrived (at the inter-ministerial meeting that later			MoMA should kindly let us have copies of all the documents and papers that reflect the progress made by the Government during the last four years regarding the action taken for setting up the National Wakf Development Corporation.
66	Chapter-11 Para-4.1 Page-230	National & State Wakf Development Corporations: A National Wakf Development Corporation may be constituted by the central	(a) Ministry of Minority Affairs Setting up of National Wakf Development Corporation is under consideration. (b) Ministry of Minority Affairs	NEW CHAPTER TITLED "DEVELOPMENT AND PROMOTION" The Committee discussed about the necessity of provisions for Development of Wakf properties and		MoMA should let us have authenticated copies of all the documents and papers that reflect the progress made by the Government since the submission of the

		added to the corpus from the community and NGOs. The CMD of this corporation should be well versed in Muslim religious practices and be proficient in Urdu. The corporation may continue providing financial and technical help for development of Wakf properties with a view to enhance Wakf resources. Similar corporations should be established in all the states.		Promotion may be added at the appropriate place in the Act:— “Development and Promotion <i>—The Central Government shall establish, as soon as possible, a National Wakf Properties Development Board, for the development of the Wakf properties in the Country.</i> <i>—The Central Government shall, as soon as possible, establish a National Board for promotion of education among Muslims and utilize the surplus funds of the Wakf institutions in the Country generated through the development of</i>		Wakf Development Corporation; and (ii) The establishment of similar corporations in all the states.
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				<i>ANationalWakf Development Corporationmaybe constitutedbythe Central Government with a</i>		
7.EnhancedLeasePeriod						
1	2	3	4	5	6	7
69	Chapter- 11 Para-4.2 Page- 231	Enhanced Lease Period: Increasethe maximum period of lease of Wakf properties	(a)MinistryofMinority Affairs This <u>willbe</u> <u>considered</u> afterthe JPCreportis received	<i>Thefollowingnew sectionmaybe addedatthe appropriateplace 'While rentingout</i>	Forthewords “threeyears”,the words“thirty years”shallbe substituted;	(A) The MoMA should kindly provide us copies of the Ministry’s record showing the reasons

		registered charitable societies or trusts for building and/or running educational or health care institutions, or for other social and economic developmental purposes consistent with the objects of the Wakf (if any specified) and as permissible under Islamic law.	(b) Ministry of Minority Affairs Same as in (a) above. (c) This will be considered after the JPC report is received and a view is taken on the amendment of the Act.	<i>shall be determined.'</i>	lease or sub-lease for any period exceeding three years and up to ten years may be made for commercial activities for period and purposes which may be specified in the rules to be made by the Central Government: Provided further that a lease or sub-lease exceeding ten years and up to thirty years may be made for education and health and for specific periods as	disregarded the recommendation of the JPC. (B) The following very significant portion of the Sachar Committee Report has been omitted while drafting the Bill: "where the property is used by registered charitable societies or trusts for building and/or running educational or health care institutions, or for other social and economic developmental purposes consistent with the objects of the Wakf (if any specified) and as permissible under Islamic law." (C) Also, for drafting the Lease Rules, the Government should appoint a Committee of experts from the Muslim community.
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					or sub-lease for any period exceeding one year and exchange or mortgage of any waqf property and thereafter it may become effective after the expiry of forty-five days from the date on which the Board intimates the State Government.	government and it would be effective only after 45 days after such intimation takes the Wakf management backward and unnecessary centralization diluting the Wakf Board's powers and making the top heavy. This will also unnecessarily delay every lease of more than a year. Hence the proposed
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8. Tackling the Encroachment of Waqf properties-Eight steps

(a) Definition of 'Encroacher' (b) Magisterial powers to CEO (c) Waqf properties to be treated as 'Public Premises'
(d) CEO to have powers of eviction (e) Punishment to encroachers (f) Penalty for public servants for not removing encroachment
(g) 'Person interested' to include an occupant of Waqf property (h) Define 'Waqf premises'.

1	2	3	4	5	6	7
70	Chapter-	DEFINITIONS	(a) Ministry of Minority	Section 3		Definition of 'Encroacher'

11	Para-4.2 Page-231	(A)'Encroacher': The definition of 'Encroacher' need to be inserted in Section 3. This definition should say that 'Encroacher' means "any person occupying the Wakf premises without the authority of law and includes a person whose tenancy, lease or license has expired or has been terminated by the Board, or who has altered the property leased out or occupied by him without the prior written permission of the Wakf Board concerned". The inclusion of this definition help the Wakf Boards in removing encroachments.	Affairs Amendmentsto Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report. (b) Ministry of Minority Affairs Same as in (a) above. (c) Amendmentsto Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report].	Following new definitions may be added: (u) Encroacher—“Encroacher” means any person occupying Wakf property without the authority of law and includes a person whose tenancy, lease or license has expired or has been terminated by the Board. Section 54 Section-54 deals with removal of Encroachment from Wakf Property. The committee felt that the present provisions of the Section are not sufficient and the CE need to be strengthened for removal of encroachments. The Committee after considering various	In the Bill, the following definition of “ENCROACHER” has been proposed by MoMA: 5. In section 3 of the principal Act,— (i) after clause (e), the following clause shall be inserted, namely:— “(ee) “encroacher” means any person occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or license has expired or has been terminated by the Board;” We would like to have copies of the correspondence, papers, documents, charts etc on the basis of which the following portion of the definition of the “Encroacher”, proposed by Sachar Committee was not included by MoMA in the proposed Bill. or who has altered the property leased out to or occupied by him without the prior written permission of the Wakf Board concerned.
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				“encroachment” used in the above provisions shall be deemed to include the property whose lease, licence or the grant period has expired or terminated by the Board and the word; “encroacher” shall also include the lessee, licensee or the grantee whose period of lease, licence or grant has expired or		
				Magisterial powers for CEO The following new Sub-Sections may be added after Sub-Section (4):— “(5) For the purposes of this Section, the Chief Executive Officer shall have powers of Collector or Assistant Collector by the State Government to issue and enforce a		As recommended by the JPC, these new powers must be given to the CEO. MoMA should incorporate these in the Waqf Amendment Bill 2010.

				ofejectment.” Waqfstobe treatedasPublic Premises “(6)TheCentralor StateGovernment asthecasemaybe, bynotificationin theOfficialGazette shalldeclareallor anyWakf institutions registeredwiththe WakfBoard, otherthan Wakf al-al-aulad,to be publicpremises. CEOtohave powerofeviction “(7)1ftheChief ExecutiveOfficer, aftermakingsuch inquiryashe deemsexpedient inthe circumstancesof thecase,issatisfied thatanypersons		As proposed by the JPC, this provision for declaration of Waqf properties as “public premises” must be incorporated in the Waqf Amendment Bill 2010. As proposed by the JPC, this provision for empowering the CEO with powers to evict an encroacher must be
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				eviction of such persons forthwith and, thereupon, if such persons refuse or fail to comply with the said order of eviction, he may evict them from the premises and take possession thereof under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.		
				Punishment to Encroachers <i>New Section 54A</i> The Committee felt that there are no provisions for providing punishment to encroachers. The Committee accordingly decided that the following new Section 54A may be added after		Section 54A: The MoMA has not incorporated the insertion of new section 54A. This must be incorporated.

				building, space or other property which is Wakf property, and which has been registered as such under this Act, shall be punishable with rigorous imprisonment for a term which may extend to two years, or with fine which may extend to five lakhs rupees, or with both. (2) Any offence punishable under this section shall be cognizable. (3) No court shall take cognizance of any offence punishable under this section except on complaint made by the Board or by an officer of the Board duly authorized by it in this behalf. (4) No court		
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				sections shall, when realised, be credited to the Wakf Fund.		
				Penalty for Public Servants for not removing encroachment: Section 55 Provided that whosoever being a public servant fails in his lawful duty to prevent or remove an encroachment shall on conviction be punishable with a fine which may	Section 55 The MoMA overruled the JPC and did not incorporate this important amendment in the Bill.	This has been incorporated. See section 7, new subsection 6, proviso.
		(B) Person Interested: Secondly, a person occupying the Wakf premises should be included in the				Definition of 'Person Interested', as recommended by Sachar Committee, should include: "a
		(C) 'Wakf Premises': The "Wakf premises" should be defined to		(v) Wakf premises – "Wakf premises" means any mosque, Graveyard		MoMA has totally ignored this proposal of Sachar Committee and

		Takiya, Eidgah, Imambara, Dargah, Khanqah, Maqbara, Anjuman and land appurtenant or belonging to them, the property dedicated for their maintenance, the property purchased from their income, the land, garden, well, baoli, school, hospital and other institutions dedicated as Wakf and the passages used leading to the Wakf premises".		Khanqah, Maqbara and land belonging to them, the property attached to them, the property dedicated for their maintenance, the property purchased from their income, the land, garden, well, baoli, school, hospital and other institutions dedicated as Wakf and will include the path and passages being used and leading to the "Wakf		Premises' as recommended by Sachar Committee and JPC must be included in the Bill. (The recommended definition may end with "and the passages used leading thereto".)
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9. Enabling the Waqf Act to override the Rent Control Acts of the states

[Recommendations of Sachar Committee and JPC as well as Cabinet directions have been neglected by

1	2	3	4	5	6	7
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71	Chapter-11 Para-4.2 Page-231	Rent Control Act: Often the Rent Control Act (RCA) provides protection to the tenants in such a way that the owners lose incentive to develop and maintain properties. Wakf properties are in the purview of RCAs in most of the states. Thus the application of the RCA to Wakfs is damaging the noble interests of Wakfs and hurting the entitlements of the beneficiaries. Therefore an	(a) Ministry of Urban Development The Rent Control Act is a State subject and as such the State governments have the exclusive power / jurisdiction to legislate on this subject. (b) Ministry of Minority Affairs The recommendation could be forwarded by the Ministry of Urban Development to state / UTs for appropriate action. (c) Conclusion arrived (at the at	<i>The Committee recommends that all the state governments may exempt the Wakf properties in the respective states from the Rent Control Act of each state concerned. For this purpose, the state governments may make necessary amendments in the Rent Control Acts.</i>		(A) By not incorporating this important amendment in the Bill, the MoMA has overruled the following: The JPC The Sachar Committee The Union Cabinet. We would like to have copies of the documents and correspondence recording and forming the basis of such overruling by MoMA. Also, the direction given by the Cabinet for amending the Waqf Act to override the provisions of the Rent Act of the states must now be carried out. (B) MoMA will kindly let us
10.						
1	2	3	4	5	6	7
76	Chapter-11	The	(a) Ministry of Minority Affairs	Sec 84: Time	MoMA over-rules	(i) As recommended

Para-4.2 Page- 233-234	following issues should be dealt with in the Wakf Act 1995 in such a way that the state Wakf Boards become effective and are empowered to properly deal with the removal of encroachment of Wakf properties. Additionally it has been observed that the Wakf Tribunals as notified in the Wakf Act have been found to be not as effective as they were envisaged to be (Section 83 and 84). The primary reason is that the members of the state judicial service	As far as proposal for amendment of the Wakf Act is concerned, the position has been explained against recommendation no. 59. [(a) Ministry of Minority Affairs Amendments to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report. (b) Ministry of minority Affairs Same as in (a) above. (c) Amendments to Wakf Act are being considered and a view will be taken once the JPC on Wakf submits its report.]	Limitation for Tribunal's decision Section 84 The JPC discussed Section 84, and decided that the following new Sub-Section may be added to the Section 84: "Applications so made to the Tribunal shall be decided upon by the Tribunal within one year from the date of filing of such applications."	Sachar Committee (Sec 83) and JPC (Sec 84)	Sachar Committee, Tribunal should have power of awarding interim relief. Sec 83: (ii) As recommended by Sachar Committee, it should be provided that the chairperson and members will have full time appointment in the Tribunal and will not have, as a part of their public duty, any other charge. Sec 84: (iii) The limitation clause suggested by JPC in Section 84 of the Wakf Act needs to be incorporated in the Bill.
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		unauthoriz ed construction/ illegal occupation/ misuser createsits ownresultant problems. Additionally the WakfBoardis deprived of the legitimateuseof and profits accruing from theproperty.It would thereforebe appropriate to amend Section 83 (4) of theWakfActto specifythatthe Wakf				
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11. EnablingLegalProvisions

1	2	3	4	5	6	7
		4.3 INCLUDE WAKFS IN THE DEFINITION	TheMinistry ofLaw has	Page21:		(i) MoMAshouldkindlyletus

		PUBLIC PREMISES Wakf deserves to get benefited in two ways: firstly, some enactments that are found in various laws need to be amended to facilitate the functioning of Wakfs and, secondly there are a few other Acts that offer empowerment in such a way that Wakf Boards can take advantage of by getting legally empowered. The state level examples for both the above types are given below: - Public Premises (Eviction of Unauthorized Occupants) Act	been of the view that since Wakf properties are not owned by the Govt., they cannot be included in the definition of 'public premises'. The matter is again re-opened. As regards, inclusion of Wakfs in the definition of 'public premises' Karnataka and Rajasthan have already made the necessary amendments. The Karnataka enactment has been challenged in the High Court and the matter is sub-judice. Besides, the Haryana legislature has passed an enactment	<i>All the State governments may bring the Wakf properties under the purview of State Public Premises (Eviction of Unauthorized Occupants) Acts, for the purpose of removal of encroachment.</i>		have the copies of the correspondence done by it with the Ministry of whereby the latter has expressed its opinion that the Wakf properties cannot be included in the definition of 'Public Premises'. (ii) We have noted that the MoMA has supported the Haryana legislative enactment for Presidential assent. (iii) MoMA should kindly let us have a copy of the letter written for this purpose by MoMA to the Ministry of Home Affairs. (iv) MoMA should also kindly let us know whether and on which date the
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		treated like encroachment on government land. The Public Permisses (Eviction of Unauthorized Occupation) Act,1971 should be applied to remove encroachment from Wakf properties and arrears of rent, at market rates, should be recovered as arrears of land revenue.				matter is again re-opened". (vi) MoMA would kindly let us know as to where the matter rests now. (vii) Has the MoMA written to the remaining states informing them of this recommendation of Sachar Committee, the Govt of India's views in the matter and asking the states to initiate similar enactments ? If so, a copy of the MoMA letter to the states may kindly be provided to us.
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12. Part exemption from Land Acquisition Act

1	2	3	4	5	6	7
				Section 91	MoMA overrode the	MoMA must

				The Committee considered Section 91 which deals with Proceedings under the Land Acquisition Act, 1894 in the light of the suggestions received. After some discussion the Committee decided that the following two new Sub Sections may be added:— “(5) Nothing contained in section 18 and 28A of the Land Acquisition Act, 1894 with respect to limitations shall apply to the acquisition of Wakf properties. (6) Nothing contained in section 30 of the Land Acquisition Act 1894 regarding apportionment of compensation between the Board and the lessee or any person claiming any right, title or interest in any	JPC and did not incorporate these provisions in the Waqf Amendment Bill 2010.	these provisions in the Waqf Amendment Bill 2010
--	--	--	--	--	--	---

				properties”.		
13. Other legal structures to empower Waqfs						
1	2	3	4	5	6	7
		The character of Wakf properties is quite different from privately held	As regards provisions in the <u>Rent Control Act</u> , the Ministry of Law has been	Page 22: <i>The Committee recommends that all the state governments may exempt the Wakf</i>		MoMA should kindly let us have copies of the (A) Letter of the Ministry of Law

		God, understood in mundanesense as an artificial juridical person. And, the usufruct invariably belongsto the downtrodden,the poor andthe needy. Yet,the stateand central legislation, do not usuallytake cognizance ofsuch difference. Whilethe exemptionof Wakf propertiesfrom some enactmentswould servethe greater philanthropic purpose of Wakfproperties, appropriate though minor amendments in the following Acts would strengthenthe functioning of the	cannotbeincluded inthe definitionof 'public premises'.The matteris againre-opened. As regards making suitableprovisionsin the variousStateActs to strengthenthe functioning of wakfs,the recommendationis too general and does not specifythe proposed amendments that have been visualizedto strengthenthe functioning ofwakfs. TheCentral WaqfCouncilhas been askedto constitutea committeeto examinethe variousActs and suggest suitableamendments. (b)MinistryofMinority	<i>therespectivestates fromtheRent ControlActsof eachstate concerned.Forthis purpose,the state governments may make necessary amendments in the RentControlActs.</i>		that Waqf properties cannot be included in the definition of 'PublicPremises'. (B) Letterthrough whichMoMA askedthe CentralWakfCouncilto form acommittee to examine the variousActsand (C)Theresponsereceivedfrom CWCinthisregard.
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		UrbanLandCeilingAct Registration of PropertiesAct TenancyAct StampDutyAct CourtFeeAct				
72	Chapter-11 Para-4.2 Page-231	Extension of Time for Recovery from Adverse Possession: The Public Wakf (Extension) of Limitation Act, 1959 facilitated the recovery of properties forming part of public Wakfs by way of suits. Under the said Act the time for filing suits for recovery of Wakf properties against adverse possession was extended till 31st December 1970. Various states	(a) Ministry of Minority Affairs Section 107 of the Wakf Act provides that nothing contained in the Limitation Act, 1963 will be applicable to any suit for possession of any interesting such property. The apprehensions of the HLC and the resultant recommendation, therefore, seem to be misplaced. A reference has been sent to the			MoMA should kindly let us have copies of: (a) The MoMA's letter written for this purpose to the Ministry of Law; and (b) The Law Ministry's response thereto.

		utilise or take advantage of the periods of extension of limitation. Although the administration and supervision of public works is the statutory obligation of the State, often for very long periods there has existed a virtual vacuum or absence of Wakf administration. Consequently, a	The apprehensions of the HLC and the resultant recommendation, therefore, seem to be misplaced. A reference has been sent to the Ministry of Law in this regard.			
74	Chapter-11 Para-4.2 Page-233	Thika Act: The Committee is of the firm view that law should not be used for acquiring Wakf properties and recommends that to ensure this on	(a) Ministry of Minority Affairs Relate to West Bengal. Maybe examined in consultation with the Govt of West Bengal. (b) Ministry of Minority Affairs			MoMA should kindly let us have copies of: (a) The MoMA's letter written for this purpose to the Government of West Bengal; and

			in consultation with the Govt of West Bengal. A reference has been sent to the Government of West			Bengal's response thereto.
14. Waqf Act to have overriding effect						
1	2	3	4	5	6	7
				(i) New Section 108 A The Committee considered a suggestion proposing that th	This proposal of JPC too was shot down by the MoMA	The MoMA should kindly provide us copies of the Ministry's record showing the reasons in detail explaining why it

				powers over the State Revenue Laws. The Committee felt that such a provision would clarify the position and decided that the following new Section 108A may be added after Section 108: “Sec. 108-A: Notwithstanding anything contained in any other Act or enactment, the Wakf Act would prevail over all the other local revenue laws.”		JPC · The proposed provision must be incorporated in the Waqf Amendment Bill, 2010 ·
				(ii) <i>The following new section may be added at the appropriate place :</i> <i>‘The provisions of this Act and of the rules and order made thereunder shall have effect notwithstanding anything inconsistent therewith contained</i>	This proposal of JPC too was shot down by the MoMA	The MoMA should kindly provide us copies of the Ministry’s record showing the reasons in detail explaining why it disregarded the recommendation of the JPC.

				<i>virtue of any such law.'</i>		
15. Alienation of Waqf property without Board sanction to be void						
				27. In section 51 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:— "(1) Notwithstanding anything contained in the waqf deed, any exchange or mortgage of any immovable property which is waqf property, shall be		It seems fine.

				void unless such exchange or mortgage is effected with the prior sanction of the Board: Provided that no mosque, dargah, khanqah, graveyard or imambara shall be exchanged or mortgaged except in accordance with any law for the time being in force. (1A) Any sale, gift or total transfer of waqf property shall be void <i>abinitio</i>: Provided that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 or any other law relating to acquisition of land: Provided further that—		
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				(a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991; (b) the purpose for which the land is being acquired shall be undisputedly for a public purpose; (c) there shall be no alternative land being available which shall be considered as more or less suitable for that purpose; and (d) the compensation shall be the prevailing market value plus the solatium and an equally suitable land in lieu of the acquired property to safeguard adequately the interest and objective of the		
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				waqf.”.		
16. Removal of avoidable judicial dichotomy						
1	2	3	4	5	6	7
68	Chapter-11 Para-4.2 Page-230	Amendment of Wakf Act Section(6) sub-section (1): The Supreme Court in Board of Muslim Wakf, Rajasthan vs Radha Kishan and Others stated that where a non-Muslim is in possession of a certain property this	(a) Ministry of Minority Affairs Ministry of Law is being consulted. (b) Ministry of Minority Affairs Same as in (a) above. (c) Ministry of Law is being consulted.			MoMA should kindly let us have authenticated copies of the correspondence made so far, in this matter, between the MoMA and the Ministry of Law.

		suit(within aperiodof one year) for declaration of his title, asrequiredintheWakf Act.Thatistosay,the special rule of limitation laid down in the proviso to sub-section(1)ofSection6 isnotapplicabletonon-Muslims. Such interpretation is detrimental to the interests of Wakf and may well tend to encourage encroachments. Section 6 maythereforebe amendedto avoidthe				

17.

WaqfAccounts

1	2	3	4	5	6	7
65	Chapter-11 Para-4.1 Page-230	Maintenance of Accounts : Scheme of Financial Audit It is recommended that all the Wakfs are compulsorily brought under the 'Scheme of	(a) Ministry of Minority Affairs The accounts of Wakfs are already being audited by auditors appointed by the Wakf Boards. (b) Ministry of Minority Affairs Same as in (a) above			MoMA should let us have authenticated copies of the state wise record that was available in the Ministry at the time when the information as per column 4 of this chart was prepared.

18. Waqf properties under Archaeological Survey of India (ASI)

73	Chapter-11 Para-4.2 Page-232	The Ancient Monuments and Archeological Sites and Remains (AMASR) Act, 1958 has often been at cross purposes with the Wakf Act. Very often the former has an over-riding effect. There are innumerable cases where the Wakf property, despite being a place of worship and of	(a) Ministry of Culture Periodical meetings may be held between the ASI and the Wakf Board only for the review of the list of properties which are coming under Wakf Boards. ASI will maintain properties which are protected as			MoMA should kindly let us have copies of letters written by the MoMA communicating this decision of the Government of India to (i) The Ministry of Culture, (ii) The Central Wakf Council, and (iii) The Archaeological Survey of India
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		Archeological Survey of India (ASI), it would only be proper if their lists are annually reviewed and their condition is assessed in a joint meeting of senior officers of the ASI with the representatives of the Central Wakf Council. The minutes should be	harm if the review meeting agreed to by the Ministry of Culture could also assess the condition of important wakf properties in the country under ASI. (c) Ministry of Culture will hold a meeting every year with the Central			
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19.

1	2	3	4	5	6	7
75	Chapter-11 Para-4.2 Page-233	Wakf Rules: Even after a lapse of eleven years since the Wakf Act 1995 was enacted, a large number of states have not framed the Wakf Rules; this is one of the main reasons for non-	(a) Ministry of Minority Affairs 18 States / UTs viz. Assam, Bihar, Gujarat, Karnataka, Kerala, M.P., Orissa, Tamil Nadu, West Bengal, A & N, Delhi, Lakshadweep, Pondicherry, Goa, Jharkhand, Manipur, Tripura, and			MoMA should kindly let us have copies of: (a) The Wakf Rules framed in 18 states, namely: Assam, Bihar, Gujarat, Karnataka, Kerala, M. P., Orissa, Tamil Nadu, West Bengal, A & N, Delhi, Lakshadweep, Pondicherry, Goa, Jharkhand, Manipur, Tripura,

		Wakf Boards are adequately trained. This work could be supervised by the Central Wakf Council.	(b) Ministry of Minority Affairs Same as in (a) above. (c) The suggestion on training could be accepted and the Wakf boards advised accordingly. Model Wakf rule will be framed and forwarded to Refreshers Training Courses for the Wakf staff. (d) The MoMA's letter issued to the Central Wakf Council asking it to supervise such training			
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20. Ajmer Dargah Act

1	2	3	4	5	6	7
67	Chapter-11 Para-4.1 Page-230	Ajmer Dargah Act needs to be amended: Wakf Act 1954 was amended in 1995. Now some more amendments are being suggested in this Report. However, Dargah Khwaja Saheb Ajmer Act 1955 has	(a) Ministry of Minority Affairs No specific amendment has been suggested. (b) Ministry of Minority Affairs Same as in (a) above. (c) No specific amendment has been suggested. But the suggestion			MoMA should kindly let us have a status report on the progress made in the matter made in the light of the Ministry's consideration.

		SahebAjmerActa Iso.				
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Appendix – III

Karnatak CEO since 2009

Mr. Mohammed Salahuddin, KAS. (I/c)	16-06-2009	06-07-2009
Mr. Ibrahim Adoor. B, KAS	07-07-2009	23-05-2010
Shri.MirzaAkbarulla, Kas	24-05-2010	10-10-2011
AnnesSiraj	10-10-11	28-02-2012
MujibullahZaffari	01-03-12	30-11-2012
Ibrahim Adoor B KAS	28-12-12	25-09-2013

Maharashtra CEO

Sr. No.	Name of Chief Executive Officer	Period
1.	Mujtutaba Mustafa Khan	24-06-2002 to 30-07-2003
2.	MusaddiqueYaseen Patel	31-07-2003 to 02-11-2006
3.	Abdul RaufShaikh	03-11-2006 to 11-05-2008
4.	S.S. Gunjal (Additional Charge)	12-05-2008 to 15-08-2008
5.	S. S. Ali Quadri	16-08-2008 to 15-08-2010
6.	S. N. M. Kadri (Additional Charge)	18-08-2010 to 22-03-2011
7.	Aziz Ahmed (Additional Charge)	22-03-2011 to 23-05-2011
8.	N. D. Pathan	23-05-2011 to 04-07-2013
9.	Syed Moinuddin Ahmed Hussain (Additional Charge)	05-07-2013 to 01-11-2013
10.	SayyedAejaz Husain	01-11-2013 to _____

List of C.E.O. Madhya Pradesh Waqf Board

S.no	Name and Designation	C.E.O./Acting C.E.O.	From	To
1	Mr. Nisar Ahmed (SAS)	C.E.O.	23.07.1997	03.01.1998
2	Mr. Mohammed Ahmad Khan (Asstt. Secretary)	Acting C.E.O.	04.01.1998	05.10.1998
2	Mr. H.U. Khan (SAS)	C.E.O.	06.10.1998	28.10.1999
4	Mr. Mohammed Ahmad Khan (Asstt. Secretary)	Acting C.E.O.	29.10.1999	28.03.2000
5	Mr M.K. Khan (SAS)	C.E.O.	29.03.2000	11.10.2001
6	Mr Mohammed Ahmad Khan (Asstt. Secretary)	Acting C.E.O.	12.10.2001	29.01.2004
7	Mr. O.F. Khatani (SAS)	C.E.O.	30.01.2004	14.11.2005
8	Mr A.W. Qureshi (Deputy Director)	C.E.O.	14.11.2005	18.10.2006
9	Mr. M.A. Khan (Asstt. Secretary)	Acting C.E.O.	19.10.2006	26.10.2006
10	Mr M.A. Khan (Asstt. Secretary)	Acting C.E.O.	27.10.2006.	14.11.2006
11	Mrs. Nusrat Mehdi (Asstt. prof.)	C.E.O.	15.11.2006	30.04.2007
12	Dr.S.M.H. Zaidi (Asstts Surgeon (Veterinary))	C.E.O.	30.04.2007	25.03.2008
13	Mr A.W. Qureshi (Asst Commissioner)	C.E.O.	25.03.2008	30.09.2008
14	Dr.S.M.H. Zaidi (Asstts Surgeon (Veterinary))	C.E.O.	30.09.2008	28.04.2010
15	Mr. Daood Ahmed Khan (Deputy Director)	C.E.O.	29.04.2010	12.10.2010
16	Mr. Niyaz Ahmed Khan (SAS) (Joint Collector)	C.E.O.	12.10.2010	29.11.2010
17	Mr. Amir Bux (SAS)(Deputy Collector)	C.E.O.	29.11.2010	30.09.2011
18	Mr S.U. Saiyed (SAS)	C.E.O.	18.10.2011	25.07.2013 (*)
19	Mr. Daood Ahmed Khan (Deputy Director)	C.E.O.	22.07.2013	01.02.2014
20	Mr. Nisar Ahmed (I.A.S.)	C.E.O.	01.02.2014	Till Date

Appendix – IV
SAMPLE WAQF DEEDS

Wakf of Public Purpose
(FI-SABI-LILLAH)

MODEL SPECIMENS

Wakf for Public Purposes

This Grant made theday of20..... between
.....(name of the grantor) of etc., (hereinafter called the grantor) of the one part and
..... (names of the Trustees) of etc., (hereinafter called the Trustees) of the other part.]

Whereas the grantor is the absolute owner of the immovable property mentioned in Schedule A hereto free from encumbrances, and of the cash securities and share in Joint Stock Companies as mentioned in Schedule B hereto.

And whereas it is desired to assure the property hereinafter conveyed as a mosque for the benefit of the Mohammadan community and for the use of the said community in the city of in the manner hereinafter appearing.

Now this deed witnesseth that the grantor freely and voluntarily, as beneficial owner, hereby grants unto the Trustees the property particularly described in Schedules A and B hereto (hereinafter called the Trust estate). To hold the same unto the Trustees upon Trust to permit the immovable property mentioned in Schedule A hereto to be used for all and any of the purposes following, that is to say:—

1. To be used as a mosque for saying divine prayers by the Mohammadan community without any distinction as to belonging to any particular sect or school of thought.
2. To be used as a school or schools for the education of children and adults only of the Mohammadan poor or labouring classes in accordance with the tenets of the Mohammadan faith.
3. As residence for a teacher or teachers of the school or schools.
4. As a library for the Mohammadan community.
5. For any meetings or other subjects, ends or purposes having in view the spiritual, intellectual, moral or social wants of the Mohammadan community as the Trustees in their absolute discretion think fit.
6. ⁽²⁾And it is hereby declared that the Trustees shall have the following powers in addition to the powers and authorities hereinbefore contained:—
 - (a) The Trustees shall not be entitled to sell, mortgage or charge the immovable properties or any part thereof, as described in Schedule A hereto, for any purpose whatsoever.
 - (b) They shall be entitled to sell, call in or convert into cash the property described in Schedule B hereto and invest the sale proceeds thereof on such investment and securities as they think fit.
 - (c) They shall pay all rates and taxes or other outgoings properly chargeable to the Trust estate and apply the surplus income for the purposes hereinbefore mentioned.
 - (d) They shall manage the Trust estate in such a manner as a prudent man manages his own affairs and they shall not be liable or responsible for any damages or loss unless caused by their wilful default or neglect.
7. If any of the Trustee dies or refuses to act or is declared insolvent or otherwise becomes unfit to hold the office of the Trustee, a new Trustee shall be appointed in his place by the Anjuman Islamia of the City of.....by whom the power of appointing a new Trustee or new Trustees of this Deed shall be exercisable.

In Witness whereof the parties hereto have affixed their respective signatures in the presence of witnesses.

(The Schedule A above referred to containing description of the immovable property made wakf).

(The Schedule B above referred to containing description of the movables).

Family Settlement by way of Wakf
(WAKF-ALAL-AULAD)

MODEL SPECIMENS

Family Settlement by way of Wakf
(Wakf-alal-aulad)

This deed of Family Settlement by way of Wakf is made the..... day of.....20.....by..... (name of the settlor) of etc., hereinafter called the settlor.

Whereas the settlor is the owner of immovable property hereby assured in possession free from encumbrances and described in the First Schedule hereto and also of the shares in Joint Stock Companies, Securities and other movable property as shown in Second Schedule hereto.

And Whereas the settlor is desirous of making a family settlement by way of Wakf of his properties in the manner hereinafter appearing.

Now this Deed witnesseth that in consideration of the premises the settlor freely and voluntarily makes family settlement by way of Wakf of his properties movable and immovable as described in the First and Second Schedules hereto and declares as follows:—

1. That the aforesaid properties shall be and are hereby declared Wakf for the maintenance and support of the settlor, his family, children or descendants and in case of extinction of his line of heirs, for the benefit of the poor of the city of..... belonging to Mussalman faith.
2. That the settlor hereby appoints and constitutes himself as sole Mutwalli of the said Wakf during his natural life and is entitled to the rents and profits of the Wakf properties and to the exclusive management thereof.
3. That after the death of settlor, his eldest son shall be the sole Mutwalli of Wakfs hereby created.
4. That the Mutwali for the time being shall be entitled to appoint his successor in that office after his death out of the settlor's male lineal descendants and failing it out of the other relations of the settler as he thinks fit.
5. (a) That the Mutwalli for the time being after the settlor's death shall manage the Wakf properties to the best of his ability as a prudent man would manage his own affairs.
(b) Shall pay all rates and taxes and outgoings properly chargeable on the Wakf estate and shall divide the residue of the income between the Settlor's descendants according to their shares under the Mohammedan Law.
(c) That the Mutwalli shall not be entitled or authorised to sell or mortgage, charge or dispose of in any other manner any of the immovable properties hereby made Wakf, but he may call in, convert into cash the movable property as shown in the Second Schedule hereto and invest it into such securities as he deems fit.
6. None of the descendents of the settlor shall have any right or interest in the Wakf save or except as is mentioned herein, nor any one of them shall be entitled to dispose of, or charge in any manner their share of income and profits as hereinafter declared.
7. That on the extinction of the line of demands of the settlor, the Mutawalli for the time being shall use the surplus income and profits of the Wakf property for the

sole use and benefit of the Mohammedan poor of the city of in such manner as he shall think fit.

In witness I, the settlor have hereunto affixed my signatures in the presence of witnesses.

The First Schedule referred to containing description of immovable property.

The Second Schedule referred to containing description of movable property.

Appendix–V: Detailed lists of Posts at State *Waqf* Boards

Sl. No.	State	No. of Staff Working with the Board					
		Permanent	Sanctioned	Contractual	Deputed		Vacant Posts
					Original grade and designation	Deputation grade and designation	
1	Bihar(Sunni)	16	60	2	-	-	42
2	Bihar(Shia)	9	14	1			6
3	Karnataka	76	296	106	05		108
4	Punjab	177	-	5	-	-	50
5	West Bengal	34	100				66
6	Kerala	38	83	25	-	-	35 (including one leave vacancy)
7	Meghalaya						
8	Assam	11	14	1	Nil	Nil	2
9	Madhya Pradesh	51	101	06	01 (Original Grade is SAS and designation is	Deputation Grade is Deputy Collector and	43

					deputy Collector)	Designation is CEO	
10	Rajasthan						
11	Manipur	0	4	10	0	0	12
12	Delhi	0	64	10	NA	NA	NA
13	Maharashtra	52	106	4	NA	NA	54

Appendix – VI: Number of Staff working with the State *Waqf* Boards

State	Designation	No. of Sanctioned posts	No. of working persons	Mode of appointment
Bihar (Sunni)	Assistant Developer	1	1	Contractual
	Data Entry Operator	1	1	Contractual
Bihar (Shia)	Assistant Developer	1	1	Contractual
	Data Entry Operator	1	1	Contractual
Karnataka	System's Maintenance Executive		1	Outsource
	Asst. Developer	1	1	Contract
	Data Entry Operator	3	3	Contract
Punjab	In-charge computer	1	1	Through Advertisement
	Computer Operator	1	1	Promoted from Clerk
	Computer Instructor	1	1	On the basis of application
West Bengal	Assistant Developer	1	1	Contractual
	Data Entry Operator	1	1	Contractual

	System Analysts	1	0	Posting
Kerala	Assistant Developer	1	1	Waqf Board + NIC
	Data Entry Operator	3	3	WaqfBoard+NIC
Meghalaya	Assistant Developer	Nil	1	Contractual
	Data Entry Operator	Nil	1	Contractual
Madhya Pradesh	Computer Operator	3	3	Board/State Govt.
	Assistant Developer	1	1	Deployed by the MoMA
	DEO-I	1	1	Deployed by the MoMA
	DEO-II	1	1	Deployed by the MoMA
	DEO	1	1	Deployed by the MoMA
Manipur	Assistant Developer	1	1	DPC

Appendix – VII: Appendix 6.3 Date of Last Selection of Committee Head at State *Waqf* Boards

Sl.No.	State	Date of Last Selection Committee Held
1	Bihar(Sunni)	Not Available
2	Bihar(Shia)	
3	Karnataka	1986
4	Punjab	1-8-2003
5	West Bengal	---
6	Kerala	19-12-2005
7	Meghalaya	--

8	Assam	--
9	Madhya Pradesh	--
10	Rajasthan	
11	Manipur	16.6.2012
12	Delhi	2006
13	Maharashtra	Not held

**Appendix – VIII: Appendix 6.4 List of posts for which last selection committee was held at State
Waqf Boards**

Sl.No.	State	List of posts for which last selection committee was held
1	Bihar(Sunni)	For the post of Computer Operator
2	Bihar(Shia)	
3	Karnataka	FDAs/ SDAs and Auditor
4	Punjab	-
5	West Bengal	
6	Kerala	L. D. Clerk and Wakf Inspector
7	Meghalaya	---
8	Assam	---
9	Madhya Pradesh	---
10	Rajasthan	
11	Manipur	Promoted LDC to UDC
12	Delhi	NA
13	Maharashtra	NA

Appendix – IX: Appendix 6.5 Name and Designation of Members of the Selection Committee at State *Waqf* Boards

Sl.No.	State	Name and Designation of Members of the Selection Committee
1	Bihar(Sunni)	Presently it is not notified
2	Bihar(Shia)	-
3	Karnataka	-
4	Punjab	-
5	West Bengal	-
6	Kerala	No permanent selection committee
7	Meghalaya	-----
8	Assam	1. Abdul Khaleque, 2. NazninFaruque 3. NakiburZaman 4. Anamul Hoque,5. Hafiz Bashir Ahmed, 6. ZakirHussain, 7. Syeda H. M. Rahman 8. MaulanaNekbor Ali, 9. Syed NasiruddinUllah, all are members of the Assam Board of Wakfs.
9	Madhya Pradesh	----
10	Rajasthan	
11	Manipur	--
12	Delhi	Members, Central Government
13	Maharashtra	NA

Appendix–X: Appendix 6.6 Performance Audits at State *Waqf* Boards

Sl.No.	State	Any Performance Audit been conducted (Y/N)
1	Bihar(Sunni)	No
2	Bihar(Shia)	--

3	Karnataka	Yes
4	Punjab	Yes
5	West Bengal	--
6	Kerala	Yes
7	Meghalaya	
8	Assam	Yes
9	Madhya Pradesh	No
10	Rajasthan	
11	Manipur	Yes
12	Delhi	No
13	Maharashtra	No

Appendix-XI: Appendix 6.7 Name and Designation of Members of Technical Persons at State Waqf Boards

Sl.No	State	Name & Designation of Technical Person	Qualifications
1	Bihar(Sunni)	Md.RauphAlam, Assistant Developer	MCA
2	Bihar(Shia)	TabrezKarim, Assistant Developer	B.E. In Computer Science
3	Karnataka	NA	
4	Punjab	Sh. Naushad Ahmed Farooqi, Incharge, Computer Cell	M.Phil, Msc, PGDCAP, Post B.Sc. Diploma in Industrial Electronics
5	West Bengal	NA	
6	Kerala	In CCF Masood PM, Assistant Developer	MCA
7	Meghalaya	NA	NA
8	Assam	ShamimAkhtar Al-Aman, Assistant Developer	MCA
9	Madhya Pradesh	AkmalYazdani, Nodal Officer	M.A+DCA
10	Rajasthan	NA	

11	Manipur	Md.AbdulMajid, Assistant Developer	Ms (IT)
12	Delhi	NA	
13	Maharashtra	BaigIftaqarullah, Nodal Officer	NA

Appendix-XII: Appendix 6.8 Responsible Persons for Record Keeping at State *Waqf* Boards

Sl. No.	State	Name and Designation of the person responsible for record keeping at State Level	Name and Designation of the person responsible for record keeping at District Level
1	Bihar(Sunni)	Md. Aslam, Assistant-cum – Cashier	Not Applicable
2	Bihar(Shia)	Syed Ali Husain Fatmi- Assistant Mr. S. KhursheedHussain-Typist Mr. S. ShahidRaza- Despatch Clerk	-
3	Karnataka	Shri. B. Mohd. Khasim, FDA	Wakf Officer of the concerned district
4	Punjab	Sh. Mohd. ZakirHussain, Section Officer, Wakf Section Shr. Laiq Ahmed, Clerk, Record Section	-
5	West Bengal	Employees engaged in through EC Section-05 & Record Section-03 as deputed time to time	No Machinery
6	Kerala	Senior Superintendent, Kerala State Wakf Board, Ernakulam	Divisional Officers at Kannur, Kozhikode, Manjeri, Thiruvananthapuram
7	Meghalaya	-	Director Social Welfare, Meghalaya, Shillong
8	Assam	Tachiluddin Ahmed, Superintendent, Assam Board of Wakfs	--
9	Madhya	CEO of the State Waqf Board	District Waqf Committees

	Pradesh		
10	Rajasthan	Asif Iqbal	--
11	Manipur		Md. Abdul Majid
12	Delhi	Record Keeper	Section Officer
13	Maharashtra	NA	

Appendix-XIII: Appendix 6.9 Number of Desktop Computers/Laptops/Printers at State *Waqf* Boards

Sl. No.	State	No. of working Desktop Computers	No. of Working Laptops	No. of Working Printers	Wi-Fi Availability
1	Bihar	5	Nil	1	No
2	Bihar	5	Nil	1	No
3	Karnataka	2	1	2	----
4	Punjab	12	Nil	10	Yes
5	West Bengal	4	1	1	No
6	Kerala	1	-	1	No
7	Meghalaya				
8	Assam	6	-	2	No
9	Madhya Pradesh	5	1	4	Yes
10	Rajasthan		1		Yes
11	Manipur	5	-	3	No
12	Delhi	0	1	0	NA
13	Maharashtra	1	0	2	Yes

Appendix-XIV: Appendix 8.1 Technology in Record Management

Sl.No.	State	Is there any software being used for record management			
		Yes/No	Details of S/W	Developer	Since when in use

1	Bihar(Sunni)	Yes	Waqf Management System of India (WAMSI)	Project Management Unit (Waqf), NIC	October 2011
2	Bihar(Shia)	Yes	WAMSI	Project Management Unit (Waqf), NIC	November 2011
3	Karnataka	Yes	WAMSI	NIC, New Delhi	November 2010
4	Punjab	No			
5	West Bengal	Yes	Open Source DSpace& WAMSI	NIC	June 2011
6	Kerala	Yes	WAMSI	Aabasoft, Vismaya,	
7	Meghalaya				
8	Assam	Yes	WAMSI & WAMSI- DMS	NIC-PMU (Waqf) Team	September 2010
9	Madhya Pradesh	Yes	WAMSI	NIC	2010
10	Rajasthan	Yes	WAMSI	NIC	December 2012
11	Manipur	Yes	Wamsi	NIC	11-04-2011
12	Delhi	Yes	WAMSI	NIC	December 2012
13	Maharashtra	Yes	Local Software, WAMSI & WAMSI DMS	Maharashtra State Board of `Wakfs, Aurangabad(local Software) & WAMSI (NIC-PMU)	27-01-2009

Appendix-XV: Appendix 8.2 Use of NIC Software

Sl.No.	State	Is the NIC Software being in use or was used in past
--------	-------	--

		Yes/No	When was it installed	No. of Computers in which the Software is installed	Minimum Hardware and Software requirement for the S/W	No. of trained persons to operate the Software
1	Bihar(Sunni)	Yes	December 2011	2	MS-Window XP (or Windows)7 Operating System on exclusive PC Java 1.6.0, Apache Ant 1.8.0, Apache Tomcat 5.5.28, Postgre SQL 8.2	2
2	Bihar(Shia)	Yes	November 2011	3		2
3	Karnataka	Yes	2010	1	Software-XP, 500GB HDD, 1.8 Ghz, 2 GB Ram	4
4	Punjab	Yes	April 2011	1	Dual Core PC with Window &	5
5	West Bengal	Yes	February 2013	1		2
6	Kerala	Yes	January 2012	1	Pentium233-MHz processor,128 MB RAM, 120 GB Hard Disk Capacity, Ms Windows XP OS Java 1.6, Apache Ant1.8, Apache Tomcat 5.5, PostgresSQL 8.2	4
7	Meghalaya					
8	Assam	Yes	September 2010	3	MS-Windows 7, Java 1.6.0, Apache Tomcat 5.5.28, PostgresSQL 8.2, Intel Quad Core. Ram: 2GB, HDD: 500 GB, 17" LCD	2

					Monitor	
9	Madhya Pradesh	Yes	2010	5	Available in the ministeries website www.wakf.gov.in	05
10	Rajasthan	No				
11	Manipur	Yes	15-04-2011	2	Pentium 233-MHz Processor or faster (300 MHz is recommended)	1
12	Delhi	No				
13	Maharashtra	Yes	24-11-2010	5	Available in the ministeries website www.wakf.gov.in	3

Appendix-XVI: Appendix 8.3 NIC Training for Record Management

Sl.No.	State	Has NIC Conducted training program for record management			
		Yes/No	Where was the training held	Tools used for training	Any hands provided on training on the S/W
1	Bihar(Sunni)	Yes	Bihar State Sunni Wakf Board, Patna	Telephonic Training	----
2	Bihar(Shia)	Yes	Bihar State Shia Wakf Board, Patna	Telephonic Training	----
3	Karnataka	Yes	Telephonic on campus	Telephonic	Yes
4	Punjab	Yes			
5	West Bengal	Yes	Does not arise	Does not arise	---
6	Kerala	Yes	NIC Project Management Unit	-----	Yes
7	Meghalaya				
8	Assam	No			

9	Madhya Pradesh	Yes	At Wakf Board Campus (CCF Room)	Telephone/Mobile	--
10	Rajasthan	Yes	NIC		
11	Manipur	Yes	At the office of the Wakf board	NIC	No
12	Delhi	Yes	NIC Office	--	No
13	Maharashtra	Yes	At office of Maharashtra State Board of Wakfs ,Aurangabad	Telephonic/Mobile	Yes

Appendix-XVII: Appendix 8.4 Availability of IT

Sl . No.	State	Information Technology Infrastructure Available										
		No. of working Deskto	No. of Working	No. of Working Printe	Internet Connection	Officer Network	Wi-Fi Avail	Shared Internet Connec	Telephone line Avail	Web Ser	Email ID of employ	Functional Website

		p Compu ters	Lapt ops	rs	Details	kin g	ility (Y/ N)	tion (Y/N)	ability (Y/N)	ver	ees	(Y/N)
1	Bihar(S unni)	5	Nil	1	BSNL Broad Band	LA N	No	Shared by LAN	Yes	---	Mailtorauph@gmail.com , zebaahmad@rediffmail.com	Yes
2	Bihar(S hia)	5	Nil	1	BSNL Broad Band	LA N	No	Shared by LAN	Yes	---	Tabrezkarim@rediffmail.com , tabrezkarim1@gmail.com	Yes
3	Karnata ka	2	1	2	----	----	----	Shared Internet Connec tion	Yes	---	--	---
4	Punjab	12	Nil	10	BSNL and Airtels Broadb and	LA N	Yes	Shared Internet Connec tion	Yes	Yes	Ceo.pwb@gmail.com , alo.pwb@gmail.com , edo.pwb@gmail.com , Jugnu28@rediffmail.com , Momeen.pwb@gmail.com, farooqi.pwb@gmail.com , 	

											n.mohd99@gmail.com farooqifiza@yahoo.co mlaiq.pwb@gmail.com mMichael5907@gmail.com kuranita@yahoo.com	
5	West Bengal	4	1	1	Broadband and Connection	LAN	No	Yes	Yes	No	boardofwakfswb@gmail.com , ceoboardofwakfswb@gmail.com	Yes
6	Kerala	1	-	1	BSNL Super BBG combo	CISCO Catalyst	No	Yes	Yes	No	Not Provided	Yes
7	Meghalaya											
8	Assam	6	-	2	Broad Band	LAN	No	Yes	Yes	No	No	No
9	Madhya Pradesh	5	1	4	2799 Plan	LAN	Yes	Yes	Yes	--	ceomp@wakf.gov.in , mpwaqfboardbhopal@gmail.com , akmalyazdani2007@gmail.com	Yes

											mail.com	
10	Rajasthan		1		Yes	Yes	Yes	Yes	Yes	Yes		Yes
11	Manipur	5	-	3	Broad Band Connection	LAN	No	Yes	Yes	No	majidci@gmail.com	No
12	Delhi	--	1	--	NA	NA	Yes	Yes	Yes	Yes	Delhiw akfboard.org	Yes
13	Maharashtra	1	0	2	BSNL Broad Band	LAN	Yes	Shared Internet Connection	Yes	--	Mudassir8921@gmail.com , mohdsohail.a@gmail.com	

Appendix-XVIII: Appendix 8.5 NIC Technical and Operational Support

SL.No.	State	Do the NIC technical and operational support		
		Yes/No	How often the support or service is provided	Response time to time to NIC
1	Bihar(Sunni)	Yes	When Necessary	Within Same day
2	Bihar(Shia)	Yes	When Necessary	Within Same day
3	Karnataka	Yes	As per requirement	Instant
4	Punjab	Yes	As and when needed	Up to Satisfactory
5	West Bengal	Yes	When require over phone or by e-mail	As and when required
6	Kerala	Yes	Time of installation	Within 24 hrs

7	Meghalaya			
8	Assam	Yes	Whenever Required	Immediate over telephone
9	Madhya Pradesh	Yes	4-5 times	Average
10	Rajasthan			
11	Manipur	Yes	Monthly	No time (When ever required)
12	Delhi	No		Cant Help
13	Maharashtra	Yes	Whenever Required	Within same day

Appendix-XIX: Appendix 8.6 Number of Computerized Records

Sl.No.	State	No. of Records Computerized
1	Bihar(Sunni)	2390 Wakf Records (3218 Immovable/18 Movable Properties Records)
2	Bihar(Shia)	219 Wakf Estate
3	Karnataka	22,445 Institutions/20003 properties
4	Punjab	Under Progress
5	West Bengal	Waqf Estates registered-1455, Immovable properties-15601, Scanned Document-30
6	Kerala	1790
7	Meghalaya	
8	Assam	179
9	Madhya Pradesh	18400
10	Rajasthan	2000
11	Manipur	500
12	Delhi	2000
13	Maharashtra	6844

Appendix-XX: Appendix 8.7 Electronic mapping of Waqf Properties

Sl.	State	Has Electronic Mapping of Wakf Properties been done
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No.		(Yes/No)
1	Bihar(Sunni)	No
2	Bihar(Shia)	No
3	Karnataka	No
4	Punjab	No
5	West Bengal	No
6	Kerala	No
7	Meghalaya	
8	Assam	No
9	Madhya Pradesh	No
10	Rajasthan	
11	Manipur	No
12	Delhi	No
13	Maharashtra	No

Appendix-XXI: Appendix 8.8 Persons Incharge of IT Department

Sl. No.	State	Name and Designation of person heading the Technical Department
1	Bihar(Sunni)	Md. RauphAlam (Assistant Developer)
2	Bihar(Shia)	TabrezKarim (Assistant Developer)
3	Karnataka	Shri Sameer (System's Maintenance Executive)
4	Punjab	Sh. Naushad Ahmed Faroozi, Incharge, Computer Cell
5	West Bengal	
6	Kerala	Masood PM, (Assistant Developer)
7	Meghalaya	
8	Assam	ShamimAkhtar Al-Aman (Assistant Developer)
9	Madhya Pradesh	AkmalYazdani, Nodal Officer

10	Rajasthan	No technical Resource on work
11	Manipur	Md. Abdul Majid (Assistant Developer)
12	Delhi	NA
13	Maharashtra	Baig Ifteqarullah Nodal Officer

Appendix-XXII: Appendix 8.9 Technical Training Sessions in past five years

Sl. No	State	Any Technical Training Session been Conducted in past five years (if Yes, Details)						Cost Incurred
		Yes/No	When	Duration	Module	No. of Participants	Training Institute	
1	Bihar(Sunni)	Yes	Sept. 2011, February 2012, March 2012	Approx. 30-40 minute	Wakf Registrati on Module, Annual Return Module, Litigation Module	1	Project Manageme nt Unit (WAKF) NIC ,N. Delhi	Cant say
2	Bihar(Shia)	Yes	Novembe r 2011, April 2012	Approx 20-30 minute	Wakf Registrati on Module, Annual Return Module	1	Project Manageme nt Unit (WAKF) NIC ,N. Delhi	Cant say
3	Karnataka	No						
4	Punjab	No						
5	West Bengal	No						
6	Kerala	No						
7	Meghalaya							
8	Assam	No						
9	Madhya Pradesh	No						

10	Rajasthan	No						
11	Manipur	No						
12	Delhi	No						
13	Maharashtra	No						

Appendix-XXIII: Appendix 8.10 Updation of Waqf Websites

Sl. No.	State	Name and Designation of persons responsible for updating the website	Are Wakf Details Available on the Website (Yes/ No)	How Frequently the Website is being updated	Will Outsourcing of technical work possible and help in speeding up the work (Yes/No)
1	Bihar(Sunni)	Project Management Unit	No	Within 24 hrs	Yes
2	Bihar(Shia)	Project Management Unit	No	Within 24 hrs	Yes
3	Karnataka	Shri Sameer Khan, System Maintenance Executive	Yes	As and when required	No
4	Punjab	Sh. Naushad Ahmed Farooqi, Incharge Computer Cell	Yes	As and when required	Yes
5	West Bengal	Account Officer	No	As and when required	Yes
6	Kerala	MuhammedAssif K.A, LD Clerk	No	According to the changes	No
7	Meghalaya				
8	Assam	Not yet launched	No	NA	No
9	Madhya Pradesh	AkmalYazdani, Nodal Officer and ICT in-charge	No	Weekly	No
10	Rajasthan	Mr.MahfoozMohd.			
11	Manipur	Md. Abdul Majid, Assisstant Developer	No	N.A.	Yes

12	Delhi	Mr.MahfoozMohd.	NA	NA	NA
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Appendix-XXIV: Appendix 8.11 Sanctioned Posts for the IT Department

S l. N o.	State	Designation	No. of Sancti oned posts	No. of perso n work ing	Mode of appointment	If on deputat ion	Edu. Qualification	Salary Structure
	Bihar (Sunni)	Assistant Developer Data Entry Operator	1 1	1 1	Contractual Contractual		MCA Graduate & DCA	17,500/- 12,500/-
	Bihar (Shia)	Assistant Developer Data Entry Operator	1 1	1 1	Contractual Contractual		B.E. in Computer Science Graduate	17,500/- 12,500/-
	Karnataka	System's Maintenance Executive Asst. Developer Data Entry Operator	 01 03	 1 01 03	 Outsource Contract Contract		Dip. In hardware & networking BE (ECE)	 12000/- 20000/- 15000/-
	Punjab	In-charge computer Computer Operator Computer Instructor	01 01 01	01 01 01	Through Advertisement Promoted from Clerk On the basis of application		M.Phil, M.Sc, PGDCAP Post B.Sc Diploma in Industrial Electronics B.A B.Sc, DCS, DTP, APGDIT	5910- 20200 10300- 34800 5910- 20200
	West	Assistant	01	01	Contractual		B.Tech in	12000

	Bengal	Developer Data Entry Operator System Analysts	01 01	01 0	Contractual Posting		Information Tech. B.Com (hons) B.ScHons in computer science/M.C.A. /B.Tech	6000 PB-3
	Kerala	Assistant Developer Data Entry Operator	01 03	01 03	Wakf Board + NIC WakfBoard+NIC		MCA Degree+Computer Knowledge	20000/- 12500/-
	Meghalaya	Assistant Developer Data Entry Operator	Nil Nil	01 01	Contractual Contractual		MCA BCA	20000/- PM 15000/- PM
	Assam	Assistant Developer Data Entry Operator	Nil Nil	01 01				
	Madhya Pradesh	Computer Operator Assistant Developer DEO-I DEO-II DEO	03 01 01 01 01	03 01 01 01 01	Board/State Govt. Deployed by the MoMA Deployed by the MoMA Deployed by the MoMA Deployed by the MoMA		Graduate + DCA+M.A. BE Graduate+MDS T PG+DCA Graduate+DCA +DTP	5000,8050 17500 12500 12500 12500
	Rajasthan							
	Manipur	Assistant Developer	1	1	DPC	NA	MS (IT)	13,700/-

	Delhi	NA	NA	NA	NA	NA	NA	NA
	Maharashtra	Assistant Developer Data Entry Operator	01 03	01 03	On Contractual Basis On Contractual Basis	-	MCA MCA, B.Sc,	20,000 15,000

Appendix-XXV: Appendix 8.12 Survey of Waqf Properties

S. No	State	Survey of existing properties	When was the survey initiated?	When was the survey completed
1	Bihar (Shia)	No		
2	Bihar (Sunni)	No		
3	Karnataka	Under Progress	2001	Under Progress
4	Punjab	Yes	1963	
5	West Bengal	Yes	2008	2010
6	Kerala	NA		
7	Meghalaya			
8	Assam	Yes	1999, 2012	February 2008, In progress
9	Madhya Pradesh	Yes	1958	1989
11	Manipur	Yes	1992	1993

(Abdullah, 2015) (Khaleel & Abdullah, 2016)