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Understanding Waqf, Its Role and Practice: A Revisit

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Abstract

Waqf is an ongoing public service that utilised a private wealth to establish institutions for public benefits. Therefore, a full grasp of the concept of waqf helps to understand its practice in societal welfare and sustainable development. In view of that, the study conducted library research and survey primary and secondary sources to highlight the basic concepts and principles of waqf and its role in Muslim societies. The study findings proved that waqf has the ability and great potential to finance common welfare. However, the theoretical discussion of waqf in this study includes a number of areas including literal meaning, validation, and conditions of waqf. In addition, it also discusses various other kinds of waqf. This chapter sheds light on the importance of waqf, its overview, objectives, importance, and management substantiated by a few practice examples of waqf.

Keywords: Waqf, waqf-management, sustainable development.

1.1 Introduction

Waqf¹ offers a model of a charitable society that appears to be all-inclusive in human life across civilizations and religions. It has been eminent in the provision of charity since the advent of Islam and endowed as an institution that generated perpetual income to assist certain beneficiaries just like conventional endowment and welfare foundation. Hence, waqf is one of the earliest models of an endowment, which offers all essentials including religious, social, economic and educational needs. The beneficiaries of waqf may comprise of individuals' and organizations such as hospitals, religious institutions, schools, colleges, and universities².

In the perspective of economics, waqf is an on-going public service that utilizes a private wealth to establish institutions for public benefits. Therefore, *waqf* is a private institution or a trust, which provides assistance to the government in public services. Though in Islam, the state has the responsibility of common welfare. However, Islam also permits the third sector, including a *waqf* institution to facilitate the state in the prosperity and

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public welfare. Hence, *waqf* itself is a unique source of assistance for a society that may cater to all activities of life from birth to death at zero cost³.

In Islamic law, the *waqf* institution permits an individual or organization to donate his/her assets in the way of Allah, for the well-being of mankind. A *waqf* is devoted to Allah for a welfare purpose specified by *waqif* (donor). As a result, *waqf* becomes public property along with the characteristic of perpetuity, that means cannot be sold, mortgaged and inherited.⁴

As a welfare institution, a well-modernised *waqf* system implies a significant reduction in government expenditures and an appropriate mechanism for sustainable development⁵. *Waqf* as a noble sector contributes significantly to the common welfare. Hence, the importance of the *waqf* institution is primitive in Islam. From the beginning, it has been benefiting a significant segment of society and contributing to a number of public expenses⁶. Throughout Islamic history, *waqf* played a tremendous role in overall societal wellbeing and financial development of welfare institutions. It directs charities to eternal and continuous benefits and facilitates all non-active participants of the society in economic activity⁷.

Therefore, it is essential to understand the theory and concept of *waqf* before dilating on its practice. For the reason that a full grasp of the concept of *waqf* helps to understand its practice in societal welfare. In view of that, the study conducted library research and survey primary and secondary sources to highlight the basic concepts and principles of *waqf* and its role in sustainable development.

1.1.1 Literal Meaning of Waqf

The *waqf* (pl. *Awaqāf*) is an Arabic word which means stop, restrain and hold. Normally, it is translated as "detention" *f ūwuq*. For example, in “*waqf*” and is mostly used as ⁸الحبس ‘*arāfah*’ the pilgrims restrain and hold themselves within the valley of ‘*arāfah*’ for ‘*ibādah*’.

الوقف التحبب والتسبيل بمعنى واحد ، وهو لغت: الحبس عن التصرف ، يقال وقفت كذا اى
حسبه --- ومنه الموقف لحبس الناس فيه للحساب، ثم اشتهر الطلاق كلمة الوقت على اسم
المفعول وهو الموقوف ويعبر عن الوقف بالحبس، ويقال في المغرب: وزير الاحباس

Translation: *Waqf*, *al-taḥbīs*, and *al-tasbīl* have similar meanings, it means literally “to hold” or “restrain” from using. For example, it is said, “I stopped something that is withheld it”. Also derived from the word is “time or place to hold, detain people in it for accountability”. It is also used as a past participle ‘*mawqūf*’ for a suspended divorce, which is made time-bound, and is explained by ‘to hold thru detention’. In Morocco, a *waqf* minister is called the minister of *al-ahbās*.⁹

Based on the above discussion, waqf has various meanings, though the core and essence of the word remain the same in all usages.

1.1.2 *Waqf in Fiqh*

In Islamic jurisprudence, four different Sunni schools of thoughts interpreted waqf differently. In Ḥanafī School of thought, initially, Imām Abū Ḥanīfah defined waqf as follow:

حبس العين على ملك الواقف والتصدق بالمنفعة

Translation: The detention of a specific thing in the ownership of the founder, or its creator and, devoting or dedicating of its usufruct in charity.¹⁰

It means the owner will remain *waqif*, and waqf income or usufruct can be utilised for charity purposes, for instance, to help the needy or other good deeds including lending or accommodating in the manner of ‘*ariyah*’ (loan).¹¹ However, later, two famous students of Imām Abū Ḥanīfah, Imām Abū Yūsuf, and Imām Muḥammad defined waqf as.

حبس العين على حكم ملك الله تعالى على وجه تعود منفعتها الى العباد

Translation: Original property’s ownership transfers to Allah and its usufruct or income is devoted to the specified welfare purposes.¹²

Based on the above discussion, in Ḥanafī School waqf property ownership goes back to Allah and only the yield or income can be utilised for specified purposes declared by *waqif*. The Malikī jurists describe waqf as:

وهو (الوقف) جعل منفعة مملوك ولو بأجرة او غلته لمستحق بصيغة مدة ما يراه المحبس

Translation: Waqf is (someone devotes his) property’s income or usufruct for a particular duration, the time duration will be decided by *waqif*.¹³

Certainly, in Mālikī School of thought only the income or usufruct is devoted for the duration of waqf property existence; while, waqf ownership will be retained with the founder (*waqif*), even though, the founder is no longer entitled to use the waqf property.¹⁴ On the other hand, Shāfi’ī and Ḥānblī have taken the strong view that waqf refers to the “*tying up of the substance of a property and the devoting of its usufruct for the benefit of mankind, in such a manner that ownership of it belongs to Allah*”.¹⁵ Ibn Qudāmah define waqf as

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Translation: "Tying up the substance of a property and the devoting of its usufruct for the benefit of mankind".¹⁶

More precisely, this Ḥānbalī definition originates from *ḥādīth* when Holy Prophet Muhammad ﷺ said to Ḥaẓrat 'Umar RA

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Translation: Preserve the original and devote usufruct.¹⁷

In brief, the designation of waqf is similar in all the *Sunni* madhhab; Ḥanafī, Mālikī, Shāfi'ī, and Ḥnābalī. While the interpretation of the essentials of waqf may differ to some extent. However, regardless of the disparity in term of waqf definitions, the basic legal meaning and fundamental concept of waqf is agreed all over the Muslim world as

"The dedication of property either in expressed terms or by implication, for any charitable or religious object, or to secure any benefit to human beings".¹⁸

Accordingly, waqf is created for welfare purposes, which may be religious, social and economic well-being. Waqf 'retains' a property in perpetuity, which means it cannot be sold, demoted and inherited, to anyone or otherwise disposed of. In *sharī'ah*, the institution of waqf permits a person to offer his/her property to Allah for all times and is used for the beneficial purpose specified by the *waqif* such as education, mosques, or helping the needy.¹⁹

1.1.3 Origin of Waqf

The concept of waqf appeared in the Islamic context despite the fact that there is not a clear specific reference to it in the *Qur'ān*. Legitimately, the concept of waqf in the *sharī'ah* is only confined by evidence of waqf presence during the Holy Prophet Muhammad ﷺ period and of his approval of it.²⁰

When Ḥaẓrat 'Umar RA came to the Holy Prophet Muhammad ﷺ and intent to endow some of his property from Khaybar, a garden of date-palms named "*thamgh*" 'Umar said, "O' Allah's Messenger! I have a piece of land that I prize highly and I want to give it to charity." Prophet Muhammad ﷺ replied.

تَصَدَّقْ بِأَصْلِهِ، لَا يُبَاعُ وَلَا يُوهَبُ وَلَا يُورَثُ، وَلَكِنْ يُنْفَقُ ثَمَرُهُ

Translation: Give it to charity (i.e., as an endowment) with its land and trees on the condition that the land and trees will neither be sold nor given as a present nor inherited. But the fruits are to be spent in charity.²¹

So, "Ḥaẓrat Umar RA gave it in charity, and it was for Allah's cause, the emancipation of slaves, for the poor, for guests, for travelers, and for kinsmen. The person acting as its

administrator could eat from it reasonably and fairly, and could let a friend of his eat it, provided he had no intention of becoming wealthy by its means”.²²

In spite of that, many other Islamic jurists considered the first waqf in Islam was by the Prophet Muhammad ﷺ the mosque of Madīnah, famous as al-Masjīd al-Nabawī. Prophet Muhammad ﷺ bought a piece of land and constructed a mosque in Madīnah in first *Hijrah*. This land belonged to two orphans from Banī Najjār, Sahal, and Suhīl. Prophet Muhammad ﷺ desired to purchase it. But, both orphans said:

*“By Allah! We will demand its price from none but Allah”*²³

They refused to take any money for this land. But, Hazrat Abū Bakr RA paid its price. It seems that it was the Abū Bakr, who purchased and endowed this land instead of the Prophet Muhammad ﷺ himself. Moreover, few other scholars consider the mosque of Quba’ as first religious waqf by Prophet Muhammad ﷺ at arrival in Madīnah.²⁴

On the other hand, Ibn Hajar al-‘Asqalānī quoted that in Islam first waqf was endowed of Mukhayriq a Jewish from Madīnah, when he bequeathed to his seven orchards to the prophet Muhammad ﷺ upon his death in the *Ghazwa Uhud* in third *Hijrah*. Afterward, Prophet Muhammad ﷺ endowed all these seven gardens. There is also another important reference when the verse of the *Qur’an* was revealed.

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ

Translation: You will not attain piety until you spend what you love.
(Surah Āli ‘Imrān, 3:92)

Hazrat Abū Talhah RA came to the Prophet Muhammad ﷺ and said O’ Prophet Muhammad ﷺ the most beloved property to me is a garden of *Bairuḥa*. It is valuable fertile land and beloved to me. I prize it above all my wealth. “I give to Allah and His Messenger hopes for Allah’s reward in the Hereafter. So, use it as Allah orders you to use it” Prophet Muhammad ﷺ replied

“Brave! Abū Talhah distributes it amongst your relatives”.²⁵

From the above discussion, it may be concluded that there is a difference of opinions among the Islamic scholars regarding the first waqf in Islam. In short, there are mainly two main opinions, i.e. whether the Prophet Muhammad ﷺ or Hazrat ‘Umar RA was endowed first waqf institution. However, the first legal (documented) waqf is considered the waqf of Hazrat ‘Umar RA.²⁶

Based on divine scripture, Islam provides various key economic related concepts including waqf, with moral and ethical values addressing humanity, sympathy,

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forgiveness, generosity, and charity. These economic concepts are mainly from the primary sources of authorities in Islam, specifically, *Qur'ān* and *Sunnah*.

1.1.3.1 In *Qur'ān*

The concept of waqf is connected with a *tawhidic* approach that reflects the Oneness of Allah. Allah has created human beings as His vicegerent to nurture and adore His bounties in the universe as prescribed in the *Qur'ān*

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ
(Surah al-Dhāriyāt, 51:56)

Translation: And I (Allah) created not the jinn and mankind except that they should worship me (alone)

It is essential for a human being to serve and worship Allah Almighty alone. For that reason, this core philosophy should be embraced by all human beings in achieving the spirit of *taqwā*²⁷ by accepting Allah as the creator and custodians of the whole universe. As mentioned in the *Qur'ān* in numerous ways:

أَلَمْ تَعْلَمْ أَنَّ اللَّهَ لَهُ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ وَمَا لَكُمْ مِنْ دُونِ اللَّهِ مِنْ وَلِيٍّ وَلَا نَصِيرٍ
(Surah al-Baqarah, 2:107)

Translation: Knowest thou not that to Allah belongeth the dominion of the heavens and the earth? And besides Him, ye have neither patron nor helper.

وَلِلَّهِ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَإِلَى اللَّهِ تُرْجَعُ الْأُمُورُ
(Surah Āli 'Imrān, 2:107)

Translation: To Allah belongs all that is in the heavens and on earth: To Him do all questions go back (for decision).

آمِنُوا بِاللَّهِ وَرَسُولِهِ وَأَنْفِقُوا مِمَّا جَعَلَكُمْ مُسْتَخْلِفِينَ فِيهِ فَالَّذِينَ آمَنُوا مِنْكُمْ وَأَنْفَقُوا لَهُمْ أَجْرٌ كَبِيرٌ

(Surah al-Ḥadīd, 2:107)

Translation: Believe in Allah and His messenger, and spend (in charity) out of the (substance) whereof He has made you heirs. For, those of you who believe and spend (in charity), - for them is a great reward.

The human being as a waqf donor in this limited sense of the word forgoes his right of ownership on the condition that his property serves some charitable purposes. In any case, human beings are only in the position of trustees, humans are responsible for distributing their wealth to people in need.²⁸ For this reason, the circulation of wealth is necessary by the use of some social support mechanisms including *sadaqāh* (charity), *ḡākah* (alms) and waqf, to ensure equilibrium between the rich and the poor so that wealth is not just confined to the hands of only the rich.²⁹

In fact, Muslims believe that life on earth is a test and trial. In the hereafter, all our actions will be judged and rewarded accordingly. The trial aims to measure good deeds and how well people deal with the income and wealth that has been put at their disposal.³⁰ Thus, waqf provides one of the ways to achieve this. In addition, the concept of waqf is very closely connected with the element of *taqarrub* or *qurbāh* which means seeking nearness to Allah. The establishment of philanthropic waqf has been accepted as a kind of means for *qurbāh*.³¹ In this manner, an act is performed voluntarily for the benefit of mankind with sincerity and consciousness of contributing one's own property to charitable purposes recognised by *sharī'ah*. The *waqif* (dedicator) will obtain *thawāb*, a religious reward in accordance with the degree of the virtue of the good act. The *thawāb* serves as one of the inspiring factors, which encourages the waqf donors to do this pious act.

1.1.3.2 In *Ḥadīth*

The following *ḥadīth* has influenced many philanthropists when considering dedicating his or her property as a waqf. The Prophet Muhammad ﷺ said that³²

إذا مات الإنسان انقطع عنه عمله إلا من ثلاثة أشياء: صدقة جارية ، أو علم ينتفع به ، أو ولد صالح يدعو له

Translation: When a man dies, his deeds come to an end, except charity with enduring benefits, his knowledge which benefits others and his virtuous son who prays for him.³³

Based on the interpretation of the majority of jurists, waqf falls into a charitable act which is categorised as an enduring charity.³⁴ As compared to other charities, it ensures to provide a perpetual reward to the donor. The virtuous act of the waqf will reveal a *tawhidic* personality which results in him achieving precious rewards from Allah.³⁵ The *ḥadīth* mentioned is, indeed, one of the fundamental epistemological foundations embraced by Muslims.³⁶

In fact, the first and foremost foundation is, of course, the *Qur'ān* which lays down many verses relating to the benefits and rewards that a *waqif* may receive from his or her good deeds.

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مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ أَنْبَتَتْ سَبْعَ سَنَابِلٍ فِي كُلِّ سَنَابِلَةٍ مِئَةٌ مِنْهُ حَبَّةٌ
وَاللَّهُ يُضَاعِفُ لِمَنْ يَشَاءُ وَاللَّهُ وَاسِعٌ عَلِيمٌ

(Surah al-Baqarah, 2:261)

Translation: The parable of those who spend their substance in the way of Allah is that of a grain of corn: it groweth seven ears, and each ear hath a hundred grains. Allah giveth manifold increase to whom He pleaseth: And Allah careth for all and He knoweth all things.

لَنْ تَتَّالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

(Surah Āli

‘Imrān, 3:92)

Translation: By no means shall ye attain righteousness unless ye give (freely) of that which ye love; and whatever ye give, of a truth Allah knoweth it well.

قُلْ لِعِبَادِيَ الَّذِينَ آمَنُوا يُعِيمُوا الصَّلَاةَ وَيُنْفِقُوا مِمَّا رَزَقْنَاهُمْ سِرًّا وَعَلَانِيَةً مِنْ قَبْلِ أَنْ يَأْتِيَ
يَوْمٌ لَا يَنْبَغُ فِيهِ وَلَا خِلَالٌ

(Surah Ibrāhim, 14:13)

Translation: Speak to my servants who have believed, that they may establish regular prayers, and spend (in charity) out of the sustenance we have given them, secretly and openly, before the coming of a Day in which there will be neither mutual bargaining nor befriending.

In the context of higher education financing, this study shows the way in which tawhidic³⁷ epistemology, morality, and ethics have encouraged waqf founders to participate in and dedicate their property as waqf. Sultāns, emperors, rulers and governors, businessmen and laymen have set examples of enriching and sustaining universities and higher education in the past and at present.³⁸

1.2 The Classification of Waqf

Essentially, the classification of waqf is made on the basis of the purpose of its creation and that of its beneficiaries who shall benefit from waqf income or usufructs. Generally, there are three major kinds of waqf: 1) *Waqf Khayrī* (charitable waqf) and 2) *Waqf Ahlī* (family waqf) 3) *Waqf Mushtarak* (Quasi-public waqf)

1.2.1 *Waqf Khayrī* (Charitable Waqf)

It is created for charitable purposes covering religious, social and economic benefits.³⁹ It can be defined as “a dedication of a property in perpetuity for unstipulated purposes and with no restriction imposed on the use of the property endowed and the income generated therein as well as the beneficiaries who shall enjoy the benefits (usufructs) of the property endowed, it is also known as waqf ‘am”.⁴⁰ In contrast, *waqf khayrī* with stipulated purposes of its creation and specification of its beneficiaries to enjoy the usufruct of waqf is classified as *waqf khāṣ*. The common beneficiaries of waqf *khāṣ* include charitable and religious establishments such as orphanages, old houses, religious schools, and mosques”.⁴¹ This type of waqf can be found in the early Islamic era and is still widely practiced in the present day as well.⁴²

1.2.2 *Waqf Ahlī (Family Waqf)*

This waqf is exclusively established for the benefit of family members such as the founder himself, his descendants and other named beneficiaries including freed slaves. Accordingly, the waqf income or usufruct will be diverted for charitable purposes without any restriction upon the extinction of the founder’s descendants and named beneficiaries.⁴³ The establishment of such type of waqf is common, particularly during the imperial Ottoman period.⁴⁴ Mainly, it was inspired by a Qur’anic injunction to give priority to family members in relation to charitable provisions as mentioned:

وَأْتِ ذَا الْقُرْبَىٰ حَقَّهُ وَالْمَسْكِينِ وَابْنَ السَّبِيلِ وَلَا تُبَذِّرْ تَبْذِيرًا

And render to the kindred their due rights, as (also) to those in want, and to the wayfarer...

(Surah al-Isrā’, 17:26)

وَاعْبُدُوا اللَّهَ وَلَا تُشْرِكُوا بِهِ شَيْئًا وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَالْجَارِ ذِي الْقُرْبَىٰ وَالْجَارِ الْجُنُبِ وَالصَّاحِبِ بِالْجَنبِ وَابْنَ السَّبِيلِ وَمَا مَلَكَتْ أَيْمَانُكُمْ إِنَّ اللَّهَ لَا يُحِبُّ مَنْ كَانَ مُخْتَالًا فَخُورًا

(Surah al-Nisā, 4:36)

Translation: and “Serve Allah, and join not any partners with Him; and do good- to parents, kinsfolk, orphans, those in need, neighbours who are near, neighbours who are strangers, the companion by your side, the wayfarer (ye meet), and what your right hands possess.”

Conversely, it is commonly believed the common practice of *waqf ahlī* has two main purposes.

1) To preserve the family properties intact

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It is believed that usually it is created to keep the real properties of family intact, to ensure the right of beneficiaries for the period of the objects, and to control the spread of usufruct rights for next generations.⁴⁵ In the same manner, in Muslim countries where there are notions of political and economic upheaval frequently, waqf *ahlī* was seen as a mechanism to ensure important real properties of a family as “legally endowed property cannot be confiscated either to collect debts or to satisfy the whims of power”.⁴⁶

2) To limit fragmentations of real property

It is also seen that in Muslim countries *waqf ahlī* is used to limit the disintegration and fragmentation of real properties by inheritance laws of *sharī'ah*.⁴⁷

1.2.3 *Waqf Mushtarak (Quasi-Public Waqf)*

The third type of waqf is a combination of first two kinds of waqf and is known as *waqf mushtarak*, “it is created to satisfy both the founder’s family as well as charitable and public purposes”. It may be described as quasi-public waqf. To large extent, it is practiced in Egypt with the first share of waqf income to be directed to the founder’s preferred mosque, educational institute and for specific religious services such as the reading of the *Qur’ān*, whereas, the second share is for public welfare.⁴⁸

1.3 **The Validity of Waqf**

Islamic scholars from all schools of law are agreed in that a *waqf* is created upon the existence of four different tenets; a *waqif* (founder), a *ṣighah* (a declaration), *mawqūf ‘alayh* (beneficiary) and a *mawqūf*⁴⁹ (declared asset to be converted into a waqf).

1.3.1 *Waqif*

The *waqif* (founder) may be an individual or a group of individuals, and an organisation. Essentially, a *waqif* must be *mukallif* (legally and mentally fit) as the *waqif* requires to determine the objective of the waqf, allocate beneficiaries, and the management of waqf. Further, a *waqif* has a right to impose any restriction or requirement on it.⁵⁰

1.3.2 *Ṣighah*

It is a legal declaration that specifies the various aspects of a waqf made by the *waqif* relating to the internal structure of the Waqf (i.e. choice of assets, beneficiaries, and management).⁵¹ It may be declared either verbally or in writing. In case of waqf buildings, one will *have* to provide physical details, its utilisation and its maintenance for future references⁵² while it may also contain information of the private life of *waqif* such as their children, the wife (or wives) and their freed slaves if mentioned as beneficiaries of waqf.⁵³

1.3.3 *Mawqūf ‘alayh*

It is dependent on the type of waqf and discretions of *waqif*, the beneficiary of waqf much be alive and legitimate. There are two possibilities in *waqf Khayrī* (common waqf) if it belongs to waqf ‘am, for that reason, the beneficiaries will be unrestricted, ranging from needy to poor, from a religious school to mosque, even though a university and higher education institution can also be included. In *waqf khas* (specific waqf), only mentioned beneficiaries could enjoy the benefits of the waqf property. More closely, in waqf *ahlī*, mentioned family members and free slave of the *waqif* would enjoy the benefits of waqf assets.⁵⁴ According to the Ḥanafī School, the validity of waqf requires ‘eternal beneficiaries’. Similarly, Malīkī School specifies that corpus of the waqf *ahlī* may revert to its founder if he has passed away then to his heirs if there are no other beneficiaries.⁵⁵

1.3.4 *Mawqūf*

The property to be converted into a waqf is called *mawqūf*, which much be a real estate property or anything which has some characteristic of perpetuity. It might be in the form of moveable including livestock, agriculture products, and tools. Generally, waqf properties are immovable such as land, buildings, or any other kind of real assets.⁵⁶ Muslim jurists believe that original *mawqūf* or principal of waqf asset shall be preserved intact. In other words, the value of the asset will not diminish with the passage of time.⁵⁷ The difference of opinion among the Islamic jurists of different schools occurs over the question of the legality of movables assets which diminish in value with the passage of time, for instance, cash and its equivalents. In this regard, on 26-30 April 2009, the International Islamic Fiqh of OIC passed three resolutions.⁵⁸

1. Waqf shall comprise the permanent and temporary, the divided and the common, accommodations, utilities, money, real estates, and movable items.
2. The *sharī‘ah* compliant and legal money are permissible to be endowed, corporate shares, investments, services, deeds, and, ethical (intellectual) rights.
3. The specific rulings are required to adhere accordingly when endowing corporate shares, services, deeds, moral rights, utilities, etc.⁵⁹

The rulings are regarded as innovative and appropriate, as the Muslim community has evolved, it will become more complex. Especially, the flexibility of the rulings may possibly lead to an increase in waqf creation all over the world.⁶⁰ In addition, because of a wider range of waqf creation from Muslim to non-Muslims. Therefore, in Muslim communities, non-Muslims may also participate in waqf creation in their own communities for a noble cause. However, it is subjected to the *sharī‘ah* law of waqf.⁶¹

1.4 **Conditions in Waqf**

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In *sharī'ah*, an endowed property is subject to three main conditions, irrevocability, perpetuity and inalienability. These conditions make waqf unique in comparison to other charities.⁶²

1.4.1 *Irrevocability*

Once a *waqif* declares an asset as a waqf, it is irrevocable. With waqf declarations, the ownership of the asset is transferred to Allah Almighty. The *waqif* and his/her descendants cannot reverse or change the status.⁶³ Even though, on the attribute of irrevocability, Islamic scholars have a consensus they had a difference of opinion with regards to final ownership of waqf property. Islamic scholars of Ḥanafī and Shāfi'ī schools believed that final ownership of a waqf property is completely transferred to Allah Almighty, hence waqf is completely irrevocable. On the other hand, the Mālikī School of the law allows reverting to the owner the waqf in case the benefit of the waqf is no longer applied to the purpose for which the waqf is created.⁶⁴ Ḥanbalī jurists believed that ownership of waqf depends on its type. In the case of waqf property is devoted to public utilities and mosque, the ownership is moved to Allah Almighty, while, if the beneficiaries are specified the ownership is transferred to the beneficiaries.⁶⁵ In this regard, Mohsin mentioned that the purpose of designing this control on a *waqf* property is to make sure the property endures to benefit the beneficiaries and the *waqif* endures to acquire rewards from Allah Almighty.⁶⁶

1.4.2 *Perpetuity*

In *sharī'ah*, the waqf dedication requires perpetuity, once the asset is endowed as a waqf, it will remain everlasting to ensure regular benefits to beneficiaries. In fiqh, all schools of thought insist on the perpetuity of dedication of waqf asset except the Mālikī.⁶⁷ Because of that, the Mālikī jurists consider “a waqf as a gift of a usufruct of a corpus, binding on the founder so long as the corpus exists, but with the ownership of the asset remaining with the founder”.⁶⁸ Typically, the Mālikī jurists advocate that waqf “shall not necessarily be in perpetuity. Although some scholars refute that perpetuity contributes to the rigidity and inefficiency of waqf”⁶⁹, “it does constitute the main difference between waqf with other forms of charity in Islam, as well as to inheritance in Islam.”⁷⁰ In the case of inheritance, the ownership of the property remains intact, while in waqf the ownership of the property is relinquished or it implies the relinquishment and permanence of the stipulation of the Waqf founder”.⁷¹

1.4.3 *Inalienability*

The inalienability attribute of a waqf is subject to the earlier condition that when a *waqif* has created the ownership of waqf assets it is absolutely transferred to Allah Almighty. As a result, the waqf assets cannot be sold, gifted, mortgaged or inherited. However, Ḥanafī jurists permit the *ibdāl* or *istibdāl* (sale and exchange) arrangements for a waqf property as sources of diversifying in the waqf property management and sustainable

development.⁷² In a nutshell, the Mālikī School restricts that only a maximum of one-third of the inheritable property can go to waqf.⁷³ A similar limit has been imposed by the Ḥanafī School which is specified in waqf jurisprudence; al-*Khaṣṣāf*.⁷⁴ Ḥanbalī and Shāfi‘ī schools do not impose any limit on the quantity or the purpose of waqf. It can be seen that the limit and restriction on waqf could hypothetically be utilised to prompt a preference for transferring of inheritable assets; hence, it ensures benefit to legal heirs.⁷⁵

1.5 The Objectives of Waqf

In *sharī‘ah*, every waqf creation has two main objectives: individual and society.⁷⁶ It discourses the important spirit of Islamic teaching about charitable deeds.

In an individual perspective, it is an altruistic act to please (*taqarrub*) Allah Almighty by endowing his/her assets for a waqf as a charitable deed. The act determines the level of gratitude for the bounties enjoyed and acknowledgment of the blessings of Allah Almighty. In Islamic teachings, waqf acts as a reminder to endeavour towards the forgiveness accorded in the hereafter as it may well be possible the process of wealth creation and accumulation trap a person in its demands. Beliefs of seeking the pleasure of Allah Almighty, forgiveness and reward in the hereafter are reflected in historical inscriptions and waqf documents.⁷⁷

In a societal perspective, the waqf creation exhibits the help an individual extends to the community by facilitating it in basic necessities, for instance; food, shelter, clothes, health, and education. The other forms of charities for the provision of these basic necessities are scarce. Similarly, these charities have mostly predefined beneficiaries such as the beneficiaries of *zakāt* are explicitly stated in the *Qur’ān*. The holy book says *zakāt* can be *only* be consumed by eight different beneficiaries. The central spirit of waqf inspires people to sincerely exercise their responsibilities towards the public as specified in the *Qur’ān*, make sure the basic necessities of the needy citizens and society are provided in a guaranteed manner. Furthermore, this act of benevolence and endowing waqf asset to public encourages individuals to think for future generations.⁷⁸

1.6 The Role of Waqf

The role of waqf in socio-economic development is very important. It has performed a great role to support social, cultural, religious and economic activities in the Muslim community. Waqf has been considered as a vehicle for sustainable development to support Muslim civilization and far better than normal forms of charities.⁷⁹

1.6.1 Socio-Economic Development

The flexibility in waqf permits a wider range of beneficiaries to enjoy its benefits is enjoyed to a great extent, a fact which is distinct from other types of charities. For

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instance, the seventeenth-century ruler of the Ottoman Empire established a public foundation called *al-Haramayn* for the inhabitants of Madīnah and Makkah. It was a perpetual charity that provided security and all welfare services to the inhabitant of both cities as mentioned “It was the largest public foundation in Algiers controlling 1,748 properties in and around Algiers. The foundation controlled two categories of *awqāf*. The first included assets endowed to benefit the poor of the holy cities, either exclusively or jointly with either the Great Mosque of Algiers or the waqf al-’Andalus. The second comprised other *awqāf*. The waqf was administered in accordance with the Ḥanafī School despite the fact that the majority of the population in Algiers were loyal to Mālikī. Waqf *al-Haramayn* was also present in other cities of Istanbul, Cairo, and Damascus, reflecting the strong religious recommendations on pilgrimage, the *Hajj*.⁸⁰ Therefore, the vital role of waqf in Muslim societies has been discovered by various studies on waqf institutions.⁸¹

1.6.2 *Social Welfare Activities*

Waqf has contributed well to the social welfare of society through the provision of public goods and services, such as hospitals, orphanages, schools, libraries, roads, and bridges.⁸² In Jerusalem, a public kitchen was operated entirely with the revenues of waqf that fed up nearly up to four hundred of ‘the poor and pious, the weak and the needy’.⁸³

Moreover, the wife of Caliph *Harun al-Rashid* contracted a road from Baghdad to Makkah, especially for Hajj pilgrims. Besides the road, some basic necessities were also provided for wayfarers such as water, food, and accommodations.⁸⁴

In the sixteenth century Ottoman Empire, the institution of waqf became more significant in providing social welfare services with the inclusion of cash waqf. In this era, cash waqf acted on behalf of ‘middle fund’ in providing social security and mutual aid to the members of the fund to relieve members in natural disasters, supply food, provide clothes, afford religious costs, help an unemployed person, and bear costs of funeral services. Further, cash waqf also provided financial support to students, orphans, poor, needy and widows. In general welfare, it was used to provide healthcare facilities and maintain district and village roads.⁸⁵

1.6.3 *Sustainable Development*

Being the third sector, waqf contribution to the economy can be recognised by its role in reducing government burden through financing public welfare services. The function can be performed well by the wealthy section of society to finance and support social services through the institution of waqf. In view of that, the government will have lesser budget deficits and borrowing for public finance. It will lead to a reduction in public expenditure and interest rate, which eventually creates a conducive environment for private investment and economic development.⁸⁶ Hence, waqf helps the growth of the economy as it happened in the Ottoman Empire where it was utilised in the economy to finance public goods including education.⁸⁷ It is abundantly clear that the waqf institution has been a major participant in Muslim countries in reducing the burden of government and

increasing the role of civil society.⁸⁸ In this regard, the exemplary waqf organisation has been created in Indonesia by the *Yayasan Dompot Dhuafa Republika*. It is an independent non-profit organisation funded by numerous public community groups to disburse income among those who are in need. The organisation managed the fund with honesty in various forms of productive investments including *mudharabah* investments, equity participation, and small and medium-sized industry. The waqf income proceeds are utilised to support the many socio-community activities such as poverty alleviation, health, education, and research activities.⁸⁹ Likewise, the pooled cash waqf is utilised in Bangladesh, not only to finance *madrassahs* and universities but also shopping complexes and commercial centres.⁹⁰

Evidence has shown that waqf also plays a significant role in strengthening a nation's economic growth, and cultivating sustainability.⁹¹ For example, during the Ottoman period, the establishment of waqf by the imperial power in Damascus can probably be situated somewhere between social welfare and economic strengthening.⁹² The social services supplied to constituencies during the period of *Khāshkī khurm Sultān* were, in fact, extending his patronage as well as consolidating the Ottoman government's political authority. Furthermore, an endowment or simply a gift to a modern university, which is commonly acknowledged by attaching or inscribing names to the structure of the property endowed, may affirm the donors' special prominence, immortalising their reputation in the institution.⁹³

At the outset, waqf substantially benefited the whole Muslim community in strengthening religious practices, welfare services, and imparting free knowledge with the advancement of art and science. Holy Prophet Muhammad ﷺ built the mosque al-Masjīd al-Nabawī upon his arrival in Madīnah. It was an institution, centered on religious practices, education, culture, and admin activities.⁹⁴

1.6.4 Educational Institution Development

From that point in time, endowing waqf has been a common practice in Muslim communities. Initially, religious schools and education centers were established within the vicinity of the mosques to acquire benefits of waqf. Over time, libraries and students lodging facilities were also added. Some of the waqf institutions later evolved and developed into higher educational institutions like colleges and universities. The University of al-Qarawiyyin in Morocco is believed to be the first university of this kind and the greatest example of the involvement of waqf in the development of the higher educational institution.⁹⁵ Similarly, in Egypt, the well-known Al-Azhar University is one of the best examples which has been using waqf to finance educational activities.⁹⁶

Up to the present time, the institution of Waqf has significantly funded strengthening religious practices, imparting free education, and spurring a culture of arts and science. For example, many religious schools and HEIs in Malaysia, Bangladesh, and Pakistan are financed significantly by waqf resources.⁹⁷ In the Malaysian perspective, waqf

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has also contributed to strengthening Islamic education significantly through the establishment of *madrassahs* (religious schools) and *maahad tahfiz*⁹⁸ (schools for memorising the *Qur'ān*). The contribution of waqf to higher education is largely claimed to have influenced the creation of some of the greatest educational institutions, such as Merton College at Oxford University.⁹⁹

1.7 The Management of Waqf

Waqf institution is a purely civil institution. It has proved itself as a private organisation which is 'organisationally and financially independent from state apparatuses'.¹⁰⁰

In the *sharī'ah* perspective, the Waqf founder (*waqif*) describes the type of its management. A *waqif* may appoint himself/herself as an administrator or another person or organisation as a manager or a trustee which is known as *mutawallī*.¹⁰¹

Primarily, a *mutawallī* is in charge of managing and administering waqf property in the best interests of the *waqif* and beneficiaries. Furthermore, he is responsible to preserve the waqf property and develop it to maximise the benefits of the property in accordance with the generally expected returns and values of Islam.¹⁰²

In Islamic jurisprudence, the Ḥanafī and Shāfi'ī jurists made a provision to allow the founder himself/herself or his/her family member to be the *actual* administrator.¹⁰³ In this regard, historical evidence shows that the appointment of an administrator or *mutawallī* connected to the founder led to good results and good management.¹⁰⁴ On the other hand, the Mālikī jurists did not allow the *waqif* or his/her family to be as the administrator (*mutawallī*) of a waqf. The *mutawallī* appointment would be mentioned as part of the terms and conditions of waqf and should be documented (*waqfiyya*) for the reference of future since waqf is an eternal agreement. Typically, a waqf document mentions: who is *mutawallī*, how the *mutawallī* is compensated for his efforts. If in case, the document does not mention any compensation for the *mutawallī*; the *mutawallī* will either volunteer for the work or appeal for compensation in court.¹⁰⁵ The institution of waqf received importance within societies and contributed significantly to its religious, social and economic growth. Islamic fiqh has entrusted to the judiciary and Islamic courts the important role to supervise and resolve conflicts regarding waqf, mainly in the area of jurisprudential, administrative and fiscal issues.¹⁰⁶

The vestment of powers to supervise and manage waqf in the judiciary is aimed at strengthening the waqf institution and realisation of the conditions of the *waqif*, who make dedications to further sustain the development of waqf. When a waqf institution shift from individual management to a collective institutionalised management, the conditions become even more important for the sake of improving its viability and protecting it from manipulation. During the Ottoman Empire, waqf reached its peak of development and Islamic courts supervised and managed all public waqf properties and individuals were left to manage their *waqf ahli*. Towards the end of the Ottoman Empire,

the trusteeship power of all waqf was shifted from Islamic courts and private individuals to a centralised administration, directly under the supervision of the Ministry of *Awqāf*.¹⁰⁷

The above step, centralisation of waqf administration, has attracted great attention from scholars who have studied its various aspects over the years and concluded that the centralisation or nationalisation of the waqf administration led to a lot of mismanagement and distraction of waqf properties.¹⁰⁸ The process of nationalisation through centralisation policy continued even after the end of the Ottoman Empire and its process continued even under European colonisation, which took place almost throughout the Muslim world. Over the last few decades, the waqf institution has undergone a revival under a centralised authority in the public sector despite its harms as experienced in Ottoman Empire. Existing involvement of the public sector in the revival of waqf has exceeded beyond the historical supervisory role of appointing and removing the trustee and resolving disputes and confiscation of waqf assets. Mainly, public sector association with waqf institution emphasises reorganisation, modernisation, and development of waqf.¹⁰⁹

The Muslim world has realised and modified some of the waqf laws in accordance with newer fiscal instruments to increase the flexibility¹¹⁰ of waqf institution such as it has allowed the concept of *ibdāl* (sale) and *istibdāl* (exchange) of waqf assets to tackle uneconomic and scattered unproductive waqf assets. The nationalisation of waqf was undertaken to improve the administrative system of waqf and save it being mismanaged by individuals'.¹¹¹ By and large, massive administrative machinery, human resources, and financial resources were made available by states to ensure sustainable waqf development, which could not be made possible by individuals or private entities. These positive steps will help the waqf institution perform the same role in the provision of public goods and services which it performed with exemplary success in the past.¹¹²

1.8 Conclusion

This chapter comprehended waqf institution has all essentials features and characteristics to sustainable development. In a situation, increasing deficits and the huge financial burden on governments. Waqf may assist in the public goods that will not only benefit the present generation but future generations as well. Traditionally, waqf played a tremendous role in the sustainable development of societies. Waqf resources are relatively unrestricted which can be expanded and increased without constraints as compared to public funding, which is mostly prescribed and regulated by funding bodies and authorities. Further, it may also create diversification in management strategies that may provide a margin of excellence, and constitute the element of vitality which separates one institution from another and offers financial and fiscal autonomy. An efficient waqf system directs charities to eternal and continuous benefits and recognises them as a religious and economic obligation. Thus, it is essential that the aims of the waqf institution should align with the objectives of the Islamic and legal laws of the country. The main objective of waqf practice is common welfare, which is primarily the

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responsibility of government. However, waqf institutions may help the government as the third sector. Therefore, it is the responsibility of the governments to assist waqf institutions by creating greater awareness and understanding about it and introducing legislation for a feasible environment so that it may support sustainable development in society.

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⁴⁴ A substantial *waqf ahli* was created by the governor of the Ottoman Egypt, Muhammad Bey Abū Dhahab in 1774 to support his named beneficiaries, himself, his slaves (upon his death) and the blind residents of al-Azhar mosques and its neighbouring mosques in al-Qāhīra (upon the death of his slaves). His deeds also stipulated that the revenues shall be spent on the poor and the needy among the Muslims 'if this is not possible' Singer, Amy. *Charity in Islamic Societies*. (London, Cambridge University Press, 2008; Shaham, Ron. "Masters, Their Freed Slaves, and the Waqf in Egypt (Eighteenth-Twentieth Centuries)." *Journal of the Economic and Social History of the Orient* 43, no. 2 (2000): 162-88.

⁴⁵ Powers, David S. "The Maliki Family Endowment: Legal Norms and Social Practices." *International Journal of Middle East Studies* 25, no. 03 (1993): 379-406.

⁴⁶ Doumani, Beshara. "Endowing Family: Waqf, Property Devolution, and Gender in Greater Syria, 1800 to 1860." *Comparative studies in society and history* 40, no. 01 (1998): 3-41.

⁴⁷ According to the Islamic inheritance laws, the spouse as well as the daughters can legally inherit, although the son's share is twice that of the daughter. The son can inherit all his parents' properties, whilst any number of daughters can only inherit two-thirds, with the rest going to the nearest agnates of the deceased Doumani, Beshara. (1998) Op. cit.

⁴⁸ Crecelius, Daniel. "The Organization of Waqf Documents in Cairo." *International Journal of Middle East Studies* 2, no. 3 (1971): 266-77. Sait, Siraj, and Hilary Lim. *Land, Law and Islam: Property and Human Rights in the Muslim World*. Vol. 1: (New York, UN-HABITAT, 2006), 149

⁴⁹ Sabran, O. *Management of Wakaf Assets (Pengurusan Harta Wakaf)*. First ed. (Skudai: Universiti Teknologi Malaysia, 2005) 92; Sait, Siraj, and Hilary Lim. *Land, Law and Islam: Property and Human Rights in the Muslim World*, (New York, UN-HABITAT, 2006), 147

⁵⁰ Al-ṭarābālsī, Ibrāhīm bin Mūsā bin Ahī Bakr, *Al-as'āfi aḥkām al-awqāf* (Miṣr, Maktabah Hindīyyah, 1902), 9; Abū al-barkāt aḥmad bin Muḥammad al-dardīr, "*Al-Sharaḥ Al-Saghūr*" (Miṣr, Dārūl al-ma'rīf, 1974) 4:97; Muḥammad bīn al-'bbās Ahmīd bīn Hamzah bīn Shahab al-dīn al-ramlī '*Nihāya al-mahtāj Sharḥ al-Minhāj*' (Bayrūt; Dār Iḥyā al-ṭrath al 'arabi, n.d), 5:356

⁵¹ Deguilhem, R. The waqf in the city. In: Jayyusi, S.K. et al. eds. *The City in the Islamic World*. Vol. 2. (Leiden, the Netherlands: Koninklijke Brill LV, 2008), 1494

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⁵⁶ Abū al-Ḥaṣan 'lī bīn Muḥammad bin ḥabīb al-māwrī 'Al-Hāwī al-kabīr' (Bayrūt; Dār kūtab al'līmyyah, 1993); Imām abū abdullāh muḥammad bin Ismāil '*Al-būkhārī m' fataḥ al-bāri*' (Lāhor, dar Nashar lil-kūtab al-Islamiyya, 5:342 ḥadīth -2764, n.d); Zafar Ahmīd, '*alā'sunan*' (karātashi, Idarātul al Qur'ān wa 'lum al-islamyyia, 2014) 13:106

⁵⁷ Çizakça, M. *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present*, (Istanbul, Boğaziçi University Press, 2000), 30

⁵⁸ The resolutions were arrived at the 19th Session held in Ash-Shariqah Emirate (UAE). The session was conducted on 1-5 Jumadil Awwal, 1430H (26-30 April 2009).

⁵⁹ Endowed shares need to be kept and only the revenues are to be used. Trustee has no right to dispose the shares unless for reasons approved by authorised authority. In the case of dissolution, the endowed shares may be exchanged for other assets, which are subject to the conditions set by the endower. If the endowment involves cash money for buying shares, deeds and the like, the shares and deeds shall not be regarded as endowment but the cash money, unless stipulated by the endower. Endowment of moral rights comes to an end with the lapse of the legal term for them.

⁶⁰ The resolutions were arrived at the 19th Session held in Ash-Shariqah Emirate (UAE). The session was conducted on 1-5 Jumadil Awwal, 1430H (26-30 April 2009).

- ⁶¹ Mūfiq al-dīn Abū Muḥammad Abd Allah bin Aḥmad bin Muḥammad bin Qadāmah al-muqaddasi, *Al-Mūghanī*, (al-Riyād, , Dār 'līm Kūṭab,1997) 8:184 ; Abū Bakr Aḥmad Ibn- Umar Ibn Muhair al-ṣhaibānī al-Ḥaṣṣāf, *Ahkām al-Awqāf*, (Bayrūt: Dār al-Kutub al-'limiyyah, 1999); Al-ṭarābalsī, Ibrāhīm bin Mūsā bin Ahī Bakr, *Al-as 'āfī ahkām al-awqāf* (Miṣr, Maktabah Hindīyyah, 1902), 9
- ⁶² Mohamad Akram b. Laldin, Mek Wok b. Mahmud, and Mohd. Fuad b. Sawari. "The *Sharī'ah* Objectives in the Execution of Waqf (Maqasid Syariah Dalam Pelaksanaan Waqaf)." *Jurnal Pengurusan Jawhar 2*, no. 2 (2008): 1-24.
- ⁶³ *ibid*
- ⁶⁴ Layish, Aharon. "The Mālikī Family Waqf According to Wills and Waqfiyyāt." *Bulletin of the School of Oriental and African Studies* 46, no. 01 (1983): 1-32.
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