

**‘ZAKAT AND WAQF BANK’ -
FOR SOCIAL DEVELOPMENT AND
IMPROVED MANAGEMENT OF ENDOWMENTS**

by

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INTRODUCTION:

The term 'Waqf' is used in Islam to describe certain property which is held and/or preserved for the confined benefit of any philanthropy use and disposition of it outside that specific objective is thus prohibited. The plural of the term is "Awqaf" and "wuquuf".

The concept of Waqf was developed by the Holy Prophet Hazrat Mohammad (SAW) and since then it has played a vital role in fulfilling the needs of Islamic civilization. As poverty is a major obstacle in several Islamic countries, this paper will explore the methods in which the concept of Waqf can be utilized to provide better services to Muslim communities and humanity at large. In our attempt to identify the impediments to the growth of Waqf and how the concept can be implemented in the modern economic system, this paper will discuss the development of Waqf and its implementation of it in Islamic civilization throughout centuries. It will also focus on the legal obstacles that limit its expansion.

DEVELOPMENT OF WAQF:

In the history of Islam, the first example of religious Waqf is the mosque of Quba' in Madinah, a city 400 kilometer north of Makkah. It was built upon the arrival of the Prophet Muhammad (SAW) in 622. Six months later, the building of the Quba' was followed by the mosque of the Prophet in the center of Madinah. Today, it still stands on the same lot with an extended and enlarged structure.

Another kind of Waqf that also developed during the time of the Holy Prophet (SAW) was Philanthropic Waqf, which aimed at supporting the poor segment of the society and all other activities which are of benefit to people at large such e.g. scientific research, education, health services, care of animals and environment, etc. Philanthropic Waqf was first initiated by the Prophet Muhammad (SAW) as well. Once, a man by the name Mukhairiq, in his will wrote that his seven orchards in Madinah shall be given after his death to Prophet Muhammad (SAW). In year four of the hijrah calendar, he died and Prophet (SAW) took hold of the orchards and made them a charitable Waqf for the benefit of the poor and needy.

This practice was followed by the companion of the Prophet (SAW) and his second successor Khalifah Umar (RDA). According to Abdullah bnu Umar (RDA), Umar (RDA) obtained a land lot in Khaibar and went to the Prophet (SAW) asking for His advice. He said: "O Prophet of the Almighty, I have obtained a land in Khaibar. I have never obtained a property more precious to me than this. What do you advise me? Prophet Mohammad (SAW) said: "If you want, you can bequeath it, and give it as a charity; provided that it should not be sold, bought, given as gift or inherited." He said, "then Umar gave it as charity for the poor, relatives, slaves, wayfarers, and guests. There is no harm for the person responsible for it to feed himself or a friend from it but for free."

Similarly, according to Usman (RDA), when Prophet (SAW) arrived in Madina and realized that the city had very little drinking water except the water of Bi'r Ruma (Ruma Well), He asked "Who will purchase Bi'r Ruma to equally share the water drawn there from with his fellow Muslims and shall be rewarded with a better well in the Garden (of Eden)?" It was said that this well belonged to a man from Bani Ghaffar, who used to sell a waterskin full for a dry measure of cereal. Prophet (SAW) asked him: "Do you want to sell it to me for a water source in Heaven?" The man answered: "That's the only source of income that my children and I have". When Usman (RDA) heard about this, he paid for it thirty five thousand Dirhams. Then he came to the Prophet (SAW) and said: "Can you make me the same offer?" He said, "Yes". "Then I offer it to the Muslims" he replied.

The importance of charitable activities is highlighted in several verses of the Holy Quran and also the Sunnah of Prophet Mohammad (SAW). These teachings, guidance also form the basis of legal aspects of the Waqf.

Allah (SWT) says in the Holy Quran

‘Those who spend their wealth (in Allah’s Cause) by night and day, in secret and in public, they shall have their reward with their Lord. On them shall be no fear, nor shall they grieve.’

(Sura: Al Imran, Verse: 274)

“By no means shall you attain Al Birr (piety, righteousness- here it means Allahs reward, i.e. Paradise), unless you spend (in Allah’s cause) of that which you love; and whatever of good you spend, Allah knows it well.”

(Sura: Al Imran, Verse: 92)

“Verily, those who give Sadaqat (i.e. Zakat and alms), men and women, and lend Allah a goodly loan, it shall be increased manifold (to their credit), and theirs shall be an honourable good reward (i.e. Paradise).”

(Sura: Al Hadid, Verse: 18)

“He who spends his wealth for increase in self purification, And who has (in mind) no favour from anyone to be paid back, Except to seek the Countenance of his Lord, the Most High. He surely will be pleased (when he will enter Paradise).”

(Sura: Al lail, Verse: 18 - 21)

“Those who spend (in Allah’s Cause) in prosperity and in adversity, who repress anger, and who pardon men; verily, Allah loves Al-Musinun (the good-doers)”

(Sura: Al Imran, Verse: 134)

“If you disclose your Sadaqat (alms giving), it is well; but if you conceal them to the poor, that is better for you. (Allah) will expiate you some of your sins. And Allah is Well-Acquainted with what you do.”
(Sura: Al Baqarah, Verse: 271)

In accordance with the saying of Prophet Momammad, (SAW): "Among acts and good deeds for which a believer is rewarded after death, a piece of knowledge he has taught and diffused, a virtuous son he has brought up, an inherited book of Quran he has left, a mosque or a wayfarer's house he has constructed, a river he has caused to stream or alms he has handed out of his riches while still healthy and alive, so that he benefits therefrom in afterlife".

In another hadith He said “Charity is obligatory everyday on every joint of a human being. If one helps a person in matters concerning his riding animal by helping him to ride on it or by lifting his luggage onto it, all these will be regarded as charity.” (Shahih Al Bukhari Vol 4, Hadith No 141)

Since Prophet Mohammad (SAW) instructed his Companions about bequest and its benefits, they continued to put their money and property in it; Parallel with the qualitative and quantitative growth of Waqf endowment, there was a growth in terms of administrative and financial structures of the bequest property. In the same way, there was a growth of the canonical and legislative regulations dealing with Waqf canons, its contentions, management, protection, solutions, as well as controlling and auditing its revenues and expenditure. Below we will discuss the important role the institution of Waqf has played throughout history in Islamic countries, its success and achievements and also attempt to analyze the impediments and challenges faced in course of time.

CONTINUED DEVELOPMENT OF WAQF AND IT'S ROLE IN MUSLIM COMMUNITIES:

After the end of the era of Khaliphas, the number of Waqf endowments continued to increase in response to the expanded and diversified needs of the Islamic societies. During the terms of Harun al-Rashid, Saladin, Suleiman, and the magnificent and great figures in Islamic history, contribution were made to the everyday welfare of the community. But they were not alone. It must be noted that though the great mosques of Islam carry only the famous names of their original donors, they stand as a testimony to the faith of the ordinary people who had supported them for centuries. Charity being one of the five fundamental principles of Islam brought countless thousands of anonymous shopkeepers, farmers and other ordinary citizens to make their small contributions as well. As such, whenever one travels in the Islamic world, from West Africa to the Philippines, wherever there is an established Muslim community, one finds Waqf. This practice made Waqf endowment a primary source of funding for social

services such as building and maintaining mosques, education, health and all the socially benefited institutions.

Mosque: It is noted that the most frequent use of Waqf revenue has been expenditure on mosques. Building a mosque was the first thing the Holy Prophet (SAW) did when he arrived to Madina and consequently, so did all the conquerors and the advocates of Islam whenever they brought their religion to a region. In fact, there are no mosques except the bequeathed ones; and a mosque is by definition bequeathed. Waqf endowment for mosques comprises the land lot, construction, furniture, annexes such as Quaranic schools, libraries, ablution facilities and sometimes housing for the Imam. It also comprises of Waqf whose returns are devoted to management and maintenance of the mosque, including wages for caretakers, the Muezzin and the Imam.

Education: Although religious education has usually been covered by Waqf on mosques, education in general has been the second largest user of Waqf revenues. Even government financing of education used to take the form of constructing a school and assigning certain properties as Waqf for its expenses. According to historical sources, Jerusalem had 64 schools at the beginning of the twentieth century, all of them which are Waqf and supported by Awqaf properties in Palestine, Turkey and Syria. Waqf financing of education usually covers libraries, books, salaries of teachers and other staff and stipends for students. Financing was not restricted to religious studies especially at the stage of the rise of Islam. In addition to freedom of education, this approach of financing helped creating a learned class which did not solely derive from the rich and ruling classes. Due to this independent source of financing, religious leaders and teachers have always been able to take social and political positions independent of that of the ruling class. At times, majority of Muslim scholars used to come from poor and slave segments of the society and very often strongly opposed the policies of the rulers.

Food and Shelter: The third major beneficiary sector of Waqf is the category of the poor, needy, orphans, persons in prisons, etc. As we will see below, different types of Awqaf were created in response to the diversified need of the society. Soup kitchens were one such endowment which used to serve food to the poor and the hungry. Al-Maqdisi, the famous Arab geographer, after a visit to Hebron and the Rawza of Ibrahim (AS) in A.D. 985 wrote, "In the sanctuary at Hebron, is a public guest house, with a cook, a baker and servants. These present a dish of lentils and olive oil to every poor pilgrim who arrives and even the rich if they desire it. Most men wrongly imagine that this dole is of the original Guest House of Ibrahim, but in fact the funds came from the endowments of a certain Companion of the Prophet (SAW) and many others. At the present day, in Islam there is no known charity that is better regulated than this one. Those who travel and are hungry may eat good food here, and thus the custom of Ibrahim (AS) is continued. For He, during his lifetime rejoiced in giving hospitality and after his death, Allah (SWT), has thus allowed the custom to be continued." Similarly, Ahmed Baba Tenbektı As-Soudani, one of the outstanding scholars of Mali, who visited a number of Islamic countries, relates that "the Muslim countries he visited

in the region West Africa were characterized by the abundance of food; so much so that you would not find hunger. People would leave what is left of their food and put in on a clean rug near the mosque. The hungry and needy would feed from it..”

Other Services for the Poor: Other types of Waqf endowments include health services which covers the construction of hospitals, spending on physicians, apprentices and patients. There is also Awqaf for helping people to go to Makkah for pilgrimage, for helping girls to get married, and for many other philanthropic purposes. In Marrakech, a city in Morocco, there was a house devoted to women in conflict with their husbands. They benefited from free room and board until they reconciled with their husbands. Other public services that Waqf endowment financed were the building of public baths, bridges, town walls, lightening of alleys, as well as dedicating land lots to be used as graveyards.

Thus, it is apparent that Waqf along with other endowments successfully filled the needs of social services in particular basic needs like food and education. It is also worth mentioning that the growth, expansion and variation that Islamic Waqf endowment witnessed were paralleled by a growth and expansion in jurisprudence, legal opinion, legislation and in the systems of documentation, archiving, exchange, investment and accounting. These aspects showed a high level of civilization and modernity in Islamic history. In addition to that, the bequest institution, with its religious, scientific, social and political dimensions, was a crucial foundation and lasting resource for Islamic civilizations.

During the Twentieth Century : However, the great change that happened to the Islamic world starting from the 19th century to the middle of the 20th century, namely the European invasion of most of the Islamic countries, was unprecedented in Muslim history. That invasion was not only cultural and economic but also military and political. All this resulted in a new situation whereby the colonial authorities started a policy in many parts of the Islamic world that aimed to combat and harass Islamic Waqfs and their strong institutions. The general atmosphere of underdevelopment and backwardness in the Muslim world also had an impact on the Awqaf property and consequently, the western system of education was introduced by colonial authorities, which was then supported by newly created economic opportunities. All these gave a strong blow to the traditional education which was financed by an already underdeveloped Awqaf. One of the colonial measures taken in Morocco was the transfer of the best Waqf lands to the French colonists. In fact, in 1928, 10,000 hectares of land was transferred, and lot of real estate properties were sold. In the same way, bequest buildings were occupied by the colonial administration. The French practice in Morocco was also rehearsed in Algeria, Tunisia, Syria and Lebanon. One important aspect of independent source of financing for education was that religious leaders and teachers have always been able to take social and political positions independent of that of the ruling class and at times opposed the policies of the rulers. Therefore, we see that during the occupation of Algeria by French troops in 1831, the colonial authority took control

of the Awqaf property in order to suppress religious leaders who fought against their occupation.

After the Colonial period: At the end of the colonial period and with the independence of most Islamic countries, came the establishment of national states and a new leadership took a different stand towards Awqaf which did not necessarily always have a positive impact. Governments in some countries inherited the practices of the colonial period in terms of institutions, laws, and policies. They continued following the same policy spontaneously and indifferently, consciously or unconsciously, but without any ill motive. Other governments continued the colonialist policy out of conviction. Among these policies included abolishing Islamic institutions that were already marginalized or weakened during the colonial period and this included the bequest institutions and property. In addition, the need for reform in many Muslim countries arose due to the fact that about half of the cultivable land in Algeria in mid nineteenth century was dedicated to Waqf. Similarly, in Tunis one third in 1883, in Turkey three fourth in 1928 and in Egypt one seventh in 1935 of arable land were endowed. Consequently, many Waqf properties in Syria, Egypt, Turkey, Tunis and Algeria were added to the public property of the government and were distributed through land reforms and other means and methods while governments in those countries took responsibilities to spend on mosques and religious schools. For instance the University of Al-Azhar was founded in Cairo at around 970 and was financed by Waqf revenues until the government of Muhammad Ali in Egypt took control over the Awqaf in 1812. For similar reasons many Muslim countries established a branch of the government for Awqaf and religious affairs. On the other hand some countries such as Lebanon, Turkey, Jordan and recently Algeria have tried to revive and develop the properties of Waqf. They enacted new laws of Awqaf which helped in recovering, preserving and developing the property of Awqaf and encouraged people to create new Waqf in these countries.

Impact of Change: It is apparent that the new independent states in the Islamic world adopted the policy of control over social life and ascribed all its functions and facilities to the government and its institutions, ranging from administrative and management issues, borders and security and all kinds of social services. What reinforced this trend was the emergence of totalitarian system, an experience introduced by the colonial rulers or due to the then spreading values of socialism and its influence on the Islamic world. This experience allowed the government to interfere in everything, do everything and own everything. Given their failure and inefficiency, these experiences and types of management, made the bequest sector continue receding. After stripping of the developmental and productive Waqf estates, in some countries the word Awqaf became a term which referred to mosques only. An impact of this new trend is evident from the experience in Bangladesh. In Bangladesh, until 1986 a total of 150,593 Waqf estates existed of which 123,006 were mosques (amongst country's total 131,641 mosques). This goes to show that the use of Waqf in other social or charitable activities is severely limited. This trend ultimately resulted in several

mosques being established in one neighborhood within the distance of couple of meters. While establishment of mosques through Waqf should continue and be encouraged it should also be remembered that there remains a long list of other approved charitable and social activities by Sharia. Thus the emergence of the totalitarian nature of the government shrank the role and responsibility that every Muslim bears in the development of social welfare, cultural activity and education on the ground that the government was in charge of all this, including budgets and prerogatives. As such, the failure of the Waqf endowment that started during the colonial period continued and has not been able to revive its prevailing glory subject to few exceptions.

Another important aspect with regard to Waqf endowment is that the success of Waqf is largely dependent on the appointment and efficiency of the Mutawalli. In some countries there is a tendency to have state control over the management and administration of Waqf properties whereas in some other countries it is still a privately managed institution. While, having state control ensures some sort of security over the mismanagement and corruption of Waqf, at times it is also affected by lack of resources, inefficiency and bureaucracy. This issue is discussed and elaborated in the following topic, Legal and Shariah aspects of Waqf.

LEGAL AND SHARIAH ASPECTS OF WAQF:

Ownership:

From a legal point of view, the ownership of Waqf property lies outside the person who created the Waqf. Most Muslim jurists agree that the right of ownership of Waqf belongs to Allah (SWT).

Perpetuity:

One of the unique characteristics and scope of the Islamic Waqf is the principle of perpetuity which means that once a property is dedicated as Waqf it remains so until the Day of Judgment, and no one can change it. In contrast with perpetuity some kinds of Waqf are also recognized as temporal. Hence we have two types of Waqf: perpetual and temporal. To ensure this nature of perpetuity, Waqf founders and the courts made extra precautions in documenting and preserving Waqf deeds. Courts in many cities and towns kept detailed records of Waqf properties as early as the 15th and 16th centuries. Many of these records are still maintained and historians can explore them in countries such as Istanbul, Cairo, Fez, Damascus, Jerusalem, Isfahan, etc.

Perpetuity has three conditions of which the first is that the property must be suitable for perpetuity either by its nature, by its legal status, or by its accounting treatment. Land is the only property that is perpetual by its nature. The second

condition relates to the will of the Waqf founder that requires an explicit or implicit expression of will on the part of the founder. This condition was not fully elaborated in the classical Fiqh. In fact, the Maliki School has the only group of jurists who explicitly accept temporality in Waqf by virtue of the will of the founder except Waqf for a mosque. It must also be noted that the perpetuity in Waqf remains the rule and temporality the exception. Hence we go along with the majority of jurists who consider Waqf as essentially perpetual, and we believe that temporality in Waqf requires an explicit expression of the founder's will. The third condition for perpetuity is that the objective of Waqf must be perpetual. Here also, jurists talk about non-existence of the assigned beneficiary at the beginning, in the middle, or at the end of a Waqf and they treat these cases in ways that finally fall under either annulling the Waqf that has a non-existent objective or transforming it into the general objective of supporting the poor and needy on the assumption that there is always need for such an objective.

The principle of perpetuity is protected in Shariah by a series of rulings some of which relate to the prohibition of disposition of the Waqf asset through sale and other contracts and some relates to the transfer of Waqf revenues from one objective to another, should the assigned objective cease to exist, so that the property remains in the domain of Waqf.

However, little attention is given to the importance of temporality in Waqf. In this regard, we must notice that all jurists, with no exception, approve of temporality of Waqf if it comes from the nature of certain assets made into Waqf. Regardless of the justification given in different schools of jurists, Waqf of buildings, trees, horses, books, swords, slaves, etc. is accepted. They did not consider this Waqf as non-perpetual on the claim that this is a Waqf for the lifetime of the asset itself, i.e., in such kinds of property, perpetuity is given a non-perpetual meaning.

Ironically what is ignored is that no property can be guaranteed to be perpetual in nature, not even real or immovable property as these may also be subject to demolition, destruction due to natural calamity. Therefore, it can be argued that all Waqf will only last till the property and/or its value exists. The Malikis accept temporal Waqf by the will of the founder. They also accept the Waqf of usufructs, which may very often be temporal too. This issue requires to be addressed by the Fiqh so that there remains no confusion or ambiguity among Muslims.

Permanence:

Since Waqf is a voluntary act of benevolence, conditions specified by the founder (Waqif) must be fulfilled to their expressed intention as long as they do not contradict or violate any of the Shariah rulings. This implies that revenues of Waqf should exclusively be used for the objective stipulated by the Waqif and this may not be changed by management or supervisory courts as long as the objective is compatible with Shariah on one hand and is still feasible on the other hand. If a Waqf purpose becomes infeasible, the revenue of this Waqf should be spent on closest purpose available and if not shall go to the poor and needy.

Waqf of Usufruct and Financial Rights:

Waqf of usufruct is known in the Maliki School while the other schools of jurists do not consider it. Contemporary life has many forms of usufructs that can be made into Waqf such as driving a car on a toll way, providing free rides in bus, trains for poor, disabled etc. These kinds of Waqf need to be recognized by the contemporary Fiqh as well as by the laws of Awqaf in the Muslim countries and communities. Most laws of Awqaf, including those in Algeria, Jordan, Sudan, and India do not make any reference to the Waqf of usufruct.

Financial rights are also not usually recognized in Waqf by jurists and laws. However, modern life has many kinds of these rights; some of them were known in the past but were not of much financial value. For instance, although authorship rights are non-transferable the right to publish and financially exploit the product of an author has become an important business in our days. The same was not known in the past. On the other hand new types of financial rights have developed e.g. goodwill, trademark etc. Also in most Muslim countries and communities, under the existing Fiqh and laws of Awqaf, one cannot, make a Waqf of subscription of an educational magazine for a university library. While such act is considered as a donation and covered by civil laws in all these countries the laws of Awqaf has not been extended to such grants or properties.

Property:

Since the beginning of Waqf the conception of property has expanded. While initially Waqf was made only with real or immoveable property new concepts of financial rights has developed and property today includes several tangible and intangible items which of immense economic value. Important types of property include real property (land), personal property (other physical possessions), and intellectual property (rights over artistic creations, inventions, etc.). Similarly, patents, trademarks, goodwill and other rights related to the product of talents are also an important new dimension in contemporary life.

These rights are not dealt with in our classical Fiqh, so is the Waqf of objects that have a repetitive character such as newspapers, magazines, and other periodicals. Similarly are the products of film companies, educational software programs, and many other intangible properties are yet to be dealt with. All such rights and properties must be covered in the Awqaf principle.

Public and Private Waqf:

Based on the nature of the Waqf objectives, it is divided into Public and Private. Public Waqf is that which serves an objective of interest to the whole society (e.g. mosques, schools, orphanages, scientific research, the poor and needy, travelers, etc.) whereas Private Waqf names specific persons, usually family

members, as partial or full beneficiaries (e.g. the most common type of this Waqf is Waqf for the descendants of the founder) and is called family or posterity Waqf. It was created when the companions of the Prophet (SAW) started making Awqaf following the footsteps of the second Khalifa, Umar Bin Al-Khattab, and they added clauses in their Waqf documents to the effect that the first or major beneficiary of the Waqf should be the descendants of the founder. In several Muslim countries, private Waqf came under heavy attack from some disciples of western orientalist who criticized this type of Waqf in the late 1800s. At times such Waqf never came in the benefit for the poor or the ordinary as the number of members in the Waqif's family or intended beneficiaries continued to rise or its management was corrupt. Several Muslim countries enacted laws that liquidate existing private Waqf and prevented establishing new ones as it happened in both Egypt and Syria. Lebanon limited the private Waqf to two generations only, after which a private Waqf is subjected to liquidation to the benefit of the poor and needy.

These changes were to some extent rightly justified due to huge amount of corruption that dominated handling Awqaf all over the Muslim world. However, it should be noted that there is no reason for any distinction between private and public Awqaf when it comes to corruption. The solution is not in eliminating such a benevolent institution but in redesigning its approaches of management, which we will discuss later. The private Waqf in fact serves an important social objective as well as economic growth. Moreover, it is known in Islamic Fiqh that any Waqf whose beneficiaries cease to exist turns into a Waqf for the poor and needy as this is considered a primary objective of the institution of Awqaf itself.

There also have been reports of misusing the concept of Family Waqf by donating the property for the benefit of any preferred member of the family and thereby deprive the true successors of ones property. Then again, such complains can be dealt by the Court, on application of the deprived members, if necessary provisions are introduced in the statute.

Management of Waqf:

Mutawalli: In principle, the Waqf founder (Waqif) determines the type of management of his Waqf. He appoints a Waqf manager, usually called 'Mutawalli' whose responsibility is to administer the Waqf property to the best interest of the beneficiaries. The first duty of Mutawalli is to preserve the property and then to maximize the revenues of the beneficiaries. The Waqf document usually mentions how the Mutawalli should be compensated for his services and if nothing is mentioned he can either volunteer the work or seek assignment of compensation from the Court.

Government Interference in Management: A careful study of the history of Islamic Awqaf points that Waqf is certainly not an invitation to the authority of the government to dominate its benevolent activities. In the opposite, from its beginning, Awqaf was a clear representation of creating an independent sector

related to philanthropies that is kept away from both the profit-motivated individuals and the authority-dominated action of the government. This is noted in the practice of the Khaliphates when 'Umar Bin Al-Khattab (RDA). During his reign as a Khalifa, he wrote the document of his famous Waqf, which is considered the main source of Fiqh on Waqf. He appointed himself as a manager, and after him a person from his family, not his successor in khilafa. The other Waqf which was done at the time of the Prophet (SAW) by 'Usman (RDA), the Waqf of the well of "Ruma" which supplied drinking water at Madina was not also put under the command of the government. Both of these Awqaf were managed virtually by the community without any government interference.

The Ottoman Awqaf law was the first step of government intervention but because it did not transfer all Awqaf management to the hands of government nor did it eliminate the private Awqaf. During the first half of the twentieth century Awqaf laws were issued in almost all Muslim countries and several communities. These laws established a branch of government, called "Ministry of Awqaf" or Department of Awqaf" to manage Awqaf properties the same way other branches of the public sector are managed. Hence, instead of having a strong private sector, independent of both the profit-making motivation of individuals and the power of the government, Awqaf came under the shadow of a corrupt and inefficient public sector

Everybody knows that government is a bad manager of economic enterprises; it is also the worst manager of benevolent projects. An example of the extent of the failure of government mismanagement and intervention is evident from the loss of Awqaf properties in Bangladesh. The huge amount of Waqf estates (150,593 estates) in the 64 districts of Bangladesh is regulated by a Department of Waqf which only has only 24 branch offices and a total manpower of 99 staffs. In September 2005, it was reported in a Parliamentary Standing Committee meeting of the Ministry of Religious Affairs that over 700,000 acres of land, out of 905,497 acres, owned by Waqf estates have been grabbed by land grabbers. Similarly situation has been experienced in India where the current structure for the management of estimated 300,000 registered Awqafs includes the presence of Waqf Boards in each state managed by a Central Waqf Board. Unfortunately, most of these properties are also under illegal occupation. Sometimes the occupiers include none other than the central and state governments and institutions like golf club, stadiums etc.

KEY FACTORS IMPEDING THE DEVELOPMENT OF WAQF:

As seen above, the spirit of Islamic charity has played a vital role in the socio economic development and fulfillment of basic needs like food, shelter, health services and education of all Muslim communities for centuries. However, with the change of social and economic structure, national laws and government interference, the success of these charitable institutions have declined. Based on our above discussion, below we will try to highlight the key factors that have been

an obstacle in the enhancement of Waqf endowments and thereafter proposals to overcome these hindrances.

1. **Increase Participation:** Earlier we noted that the success of Islamic charitable activities has always depended on mass participation of ordinary Muslims. While the donation made by the wealthy has established mosques, hospitals, libraries, schools and similar other institutions, the ongoing success of these institutions for centuries has only been possible due to the small continued donations made by immense number of ordinary people enlightened in the spirit of Islamic charity. With the immense increase of population in this century the amount of real property has not increased. This has excluded a huge portion of the Muslim population from the opportunity to participate in Waqf endowment as for a long time the perception has been that Waqf are created only with real property and usually mosques. As a result those who are not in possession of real property failed to participate in Waqf endowment.
2. **Improper Utilization:** Charitable endowments are made under different heads in Islam. Of this the biggest two sectors have been Zakat and Waqf. While Zakat being the mandatory obligation of all Muslims, the expected effectiveness so far, has not been achieved in most Islamic nations due to inefficient collection, distribution and distribution in unproductive usage. If not worse, similar has been the experience regarding Waqf in most Muslim communities.
3. **Management Reform:** The appointment of Mutawalli, thereby management of Waqf is one of the most important factors that relate to the success of a Waqf estate. It must be noted that the failure of government Waqf Board or Department whatever name it is called, is not just a bureaucratic failure. Much of a responsibility lies on the Mutawalli in charge of the Waqf. The immense amount of Waqf land that been grabbed, particularly in countries like Bangladesh, India is not merely due to government mistakes but also due to the inefficiency, or at times dishonesty of the Mutawalli himself. Such encroachments could have been easily avoided or challenged at Court by seeking eviction if the Mutawalli had been active and took appropriate measures seeking legal protection.

Some commentators have argued that Waqf estates from its very beginning have been successfully managed by privately appointed Mutawallis. However, the fact remains that while the Waqif himself can appoint a highly capable individual to manage the Waqf during or after his lifetime, he cannot ensure the continued appointment of efficient Mutawallis for generations to come. The success of management lies in several qualities of a Mutawalli which must include Tawqā, honesty, sound business knowledge, efficiency, management capability and

vision. At times it becomes difficult to ensure that all Mutawallis appointed for generations after generation possess the said qualities. An honest person may not necessarily be good at financial management but may still be able to continue the Waqf estate with certain level of success. But once a dishonest person takes charge he will eventually destroy the Waqf estate by his greed. In February 2005, Indian Muslim's leading English newspaper, The Milli Gazette while reporting the corruption of a local bully who gained charge as a Mutawalli of a 16th Century Mosque, Masjid-e-Qila at Deoband, remarked '*What do you do when a local bully becomes the Mutawalli ...?*' Unfortunately, this has been the story a lot of Waqf estates in the sub continent and some other Islamic nations. What can the beneficiary of a Wafq estate do under the current system when such incidents become inevitable? This does not necessarily mean that we should abolish the appointment of private Mutawallis by the Waqif. It must continue because besides the fact that this is one of the core principal noted in the Fiqh of Waqf it also reduces burden on government management. Infact at times this can achieve better success through efficient and expert management. In this regard we note that there are certain Awqaf which has lasted for centuries under private management and have successfully provided services to people of a community while it also continued to expand in course of time. For example, in Bangladesh a renowned Waqf estate is Hamdard Laboratories which produces medicines from natural sources like herbs, medicinal plants and minerals. Starting about 100 years ago it has initiated projects like science city, college, university, science laboratory and hospital in Bangladesh and has acquired 300 acres of land for cultivation, conservation of rare and valuable medicinal plants. Similarly Anjuman-e-Mofidl Islam is another Waqf which provides services like hospitals, ambulance and even burial for the unidentified deads. These institutions have been providing services to the community for long under a successful private management. Similar success has been achieved with a lot Waqf estates.

Some commentators have argued that it is evident from existing or surviving Awqaf documents that founders tended to always nominate a manager for their Awqaf from their own vicinity or that of the property itself. Once we decide to respect the conditions of founders and avoid the government intervention, it can be established, that the intention of founders has always been in the direction of appointing local managers rather than the central government or its local branch. Hence, in fulfillment of the will of founders, and in respect of the distinctive nature, the non-profit sector of Awqaf, and in recognition of the tremendous failure of governments in managing economic and benevolent enterprises, the Awqaf management should be run by local people who relate to the beneficiaries of Awqaf as well as to the community in which Awqaf properties represent an infrastructure capital for social work and social interests. However this does not solve the issue of with regard to the inefficiency and dishonesty of a Mutawalli.

The failure of Waqf due to corruption, mismanagement and government intervention has led to several reform attempts in the management of Awqaf in some Muslim countries. Unfortunately, all these reforms could not touch the real problem; hence, solutions suggested were only cosmetics and represent mere change of hands, a kind of intergeneration struggle, rather than a change in the concept of management.

SUGGESTIONS:

In respect of the aforesaid impediments that have existed for decades we make the following suggestions.

- (i) It is noted no specific limitation is prescribed or restriction imposed in the Holy Quran with regard to Waqf endowment. The core guideline is based on the Sunnah of Prophet (SAW) which sets the basic conditions. Understandably, the most knowledgeable Prophet (SAW) has set the basic principles and left the other aspects open for development to adjust the needs of time. Therefore, rules with regard to Waqf, its investment, extent of property, operation and in particular its management, which we have already seen to be the major impediment in its development, are matters open for analysis, amendment and its scope may be widened. In the twentieth century there have been initiatives on the national level to amend, create laws relating to Waqf by governments of most Muslim countries. These developments have been isolated, aimed to impose state control on management issues and do not cover the new aspects of the economy and social conditions of 20th century. A draft legislation, common for all OIC member countries has to be developed which shall address certain features that have been left out and meet certain challenges on Waqf that are faced more or less in all nations.
- (ii) To emphasize and ensure the participation of all segments of the Muslim society and not just the wealthy Muslims, we have to promote a way through which every interested Muslim shall be able to participate, contribute with whatever means he has to offer, even with the simplest amount. In this regard the introduction of Zakat and Waqf Certificate has been proposed later in this paper.
- (iii) Given the importance of the collective effect of the two heads of charitable acts this paper proposes on the development of a Bank that will combine the 2 major Islamic endowments, Zakat and Waqf and thereby gather the scattered endowments to create a common fund to maximize its utilization.

- (iv) Based on our earlier discussion several legal aspects that may need urgent review are as follows:
 - (a) Features like perpetuity, temporality has to be re-evaluated by the Fiqh taking into account the new economic concepts and financial rights.
 - (b) The definition of property has widened in this century with the rise of the concepts of new types of property, i.e. copyright, intellectual property right, trademark, goodwill etc.
 - (c) Similarly, the scope of beneficiary activity has widened as a number of new services have become vital in modern life.
 - (d) Another important aspect for legal development is to ensure the restoration of lost Waqf property, in particular real or immovable property (e.g about 700,000 acres of land only in Bangladesh) and ensure proper protection, stop encroachments and include provision to evict unlawful occupation.
 - (e) Legal provisions have to be made to ensure that Family Waqf provision is not left open for misuse, or used to deprive genuine and deserving successors. If any such attempt is made the successors may make an application for rejection to the Court. Also it has to be noted that the number of a Waqif's successors will usually continue to increase and fulfilling the need for generations after generations will ultimately mean that the poor and the deserving candidates of a society may never gain any benefit from a particular Family Waqf.
- (v) Today, artificial legal personalities. i.e companies, commercial enterprises, corporations enjoy the benefits of a legal personality and often own of immense amount of wealth. Therefore, participation in national and social responsibilities of these corporations should be made mandatory, e.g. mandatory participation in Waqf endowment should be incorporated. Such provisions may also be extended for wealthy politicians and professionals. Professionals should be subject to mandatory Waqf services. For example for participation of expert doctors at Waqf hospitals for the benefit of the poor for a particular time should be mandatory. Similarly lawyers, teachers, engineers can be asked to provide services to Waqf institutes of respective qualifications.
- (vi) Turn Waqf as a supporting element for the government's national development plan for poverty eradication and social services through co-ordination. Currently, development projects for socio-economic benefits or social services are conducted by the government and non-government organizations and have at times been initiated without any co-ordination. While the importance of the government's responsibility cannot be ignored and should continue, the importance of coordination between projects initiated by private endowment of Waqf and government development plan is urgent. For instance, in Bangladesh at several unions (local governments at village level) schools and

madrasas have been established by Waqf endowments where within a short period government has also established primary or secondary schools. As such the number of students at some of these local schools are few and the facilities and often inadequate. As a result, the pass rate of students from these schools at secondary level is at times nil. If the majority of the private endowment fund in any nation can be gathered in a common fund and then the selection of projects are made in consultation and/or coordination with government development plan more effective results from Waqf will be achieved.

- (vii) Interestingly, one should note that Awqaf represents, in the Islamic legal system, an early version of the concept of corporation that was invented throughout the last three centuries and matured in the third quarter of the nineteenth century. In a way, economic corporations are no more than funds utilized to generate profit for their owners whereby Awqaf properties are funds utilized for the benefit of its beneficiaries. While maintaining this historical aspect of Awqaf and to relate it with this century's business trend this paper proposes the establishment of such a financial institution i.e. Zakat and Waqf Bank, that will combine the efficiency and business knowledge in one hand and be subject to government supervision like any other existing financial institution.

ZAKAT AND WAQF BANK

Bank is one of the most successful and effective financial institution which is subject to strict regulatory and audit requirements. As such it can be the answer to the long list of impediments and barriers discussed earlier with regard to Waqf and in particular the management crisis.

In the above circumstances, to deal with the given impediments and to give effect to above mentioned suggestions this paper proposes the creation of a specialized bank, namely '*Zakat and Waqf Bank*' (hereinafter referred to as the 'Bank'). The Bank shall be dedicated to and deal only with the long mismanaged charitable funds, combine the scattered donations of the two biggest heads of Islamic endowments, generate a common fund, create motivation and introduce new scopes for charitable act, increase awareness among the Muslims to enhance endowments, create opportunity for participation of people of all level, provide efficient and improved management of endowment funds and make selective investments to maximize the socio-economic benefit.

How Zakat and Waqf Bank will operate: The Bank will operate as any other Islamic banks and shall be subject to existing Islamic banking regulations of the country. However, its main focus will be promoting and combining the huge charitable endowments generated under the two heads, Zakat and Waqf in all Islamic countries and/or Muslim communities and thus create a common fund.

The Bank will then use this fund to make investments in Shariah compliant projects.

The main function of the Bank will be that donors will make a deposit stating the name and particulars of intended beneficiary and the beneficiary will be issued with a certificate (Waqf Certificate) against which the he shall be entitled for a quarterly or yearly benefit/profit. This idea of Waqf Certificate is not completely new. Similar proposal had been made by Dr. M. A. Mannan of Social Investment Bank Limited, Bangladesh and has also been implemented. However, there remains ample scope to enhance and extend its activities and thus this paper, in particular, proposes the introduction of a common and combined fund for Zakat and Waqf, issuance of separate certificates for Zakat and Waqf recipients and most importantly create a specialized Bank only to deal with this two wide endowment sectors.

Several Aspects of Waqf Certificate: Waqf Certificate will give a Waqif, the opportunity to make a Waqf with cash money, even if he is not in possession of some real or immovable property. This will create opportunity for Muslims of all level to participate and Waqf will not be limited as an endowment that only a wealthy person in possession of real property can create. The value of such a Waqf Certificate can be as low as USD \$1. Waqf Certificates of higher amounts may also be issued and payment may be made at a time or by monthly installment from the Waqif's bank account.

The Waqf Certificate shall include the name of the Waqif, or the name of the person whom the purchaser of the certificate wishes to be listed as the donor (e.g Waqif's deceased parents, family members) or at his option, may keep the name of the Waqif unidentified in the spirit of secret endowments as encouraged in Islam.

The name of the beneficiary may be specified by the Waqif and if such beneficiary is any person or specific institution it may have to open an account with the Bank to collect its benefits. This will also enable other interested donors to make additional Waqf for the existing Waqf. For instance, if a local Mosque created under an existing Waqf is in need of additional fund for its operation, extension or running, it may on its own apply to the Bank for a beneficiary account or get an account by the donation of a new Waqif. The Mosque may also display its beneficiary account number at its premises requesting additional fund for maintenance and any donor interested to make a new Waqf in favour of the Mosque may simply purchase Waqf Certificates in favour of the mosque, stating the Mosque's beneficiary id/account number. This will be particularly helpful for Awqaf that are in need of fund for its operation or management.

Where a Waqf Certificate is comparatively of a smaller amount, or where the Waqif does not have any preferred beneficiary he may select a beneficiary or just specify a category from a list of ongoing or upcoming socio-economic

development projects of the Bank. Alternatively he may leave it for the Bank to decide.

Another aspect of this Bank will be that those who will be putting money in the Zakat and Waqf fund will not be the direct beneficiaries of their investment as the beneficiary will always be a third party, i.e the Zakat and Waqf recipient. As such the main focus in selection of the investment projects by the Bank will be the benefit and social need of such investment and not just profit.

Additional Functions of the Bank: The Bank which will also act as a Mutawalli for Waqf projects initiated and maintained by itself, and may also be appointed as Mutawalli by any Waqif for his privately initiated Waqf, subject to fulfillment of certain conditions. Depending of the value and importance of the property and subject to its own review the Bank may accept such application.

Also, where on application of the beneficiaries, the Court or the relevant regulatory body feels that the existing Mutawalli or the board of trustees or committee of Mutawallis in charge of any particular Waqf, has mismanaged the Waqf estate or the extent of the property is so vast that it is deemed necessary to be managed by a more efficient management, to maximize the return and benefits of the Waqf, it may order removal of the private Mutawalli and appoint the Bank to manage it.

As such, some statutory development has to be made to extend the responsibility and jurisdiction of the Bank in Waqf related issues. This however, shall not mean that the Bank will act as a regulatory body of the Waqf states or shall replace the existing government department or board's functions. While the existing government board may continue its functions to inspect the activities and management of the existing estates the Bank shall provide services as a Mutawalli agent for private Waqf estates where necessary.

Where the Bank shall be appointed as a Mutawalli either by the Waqif himself or on application of any other party, the Bank shall be entitled to charge a certain fees or a percentage of the income generated from the Waqf estate as its management fee. However, Waqfs endowments which are smaller in size or functions only in local capacity, e.g. local mosque, library, schools etc. will remain outside the ambit of the Bank to act as a Mutawalli. However, these Awaqf shall have the opportunity to be benefited by Waqf Certificates.

Ensure Public Confidence: Since the investors of the Bank will make the contributions not for self interest but for the benefit of third parties the key driving factor for such investment will be trust. To ensure the trust factor several issues has to be addressed. While the Bank will automatically be subject to compliance of national laws i.e. company law, banking law, Islamic banking law, central bank regulations, the Bank's activities, declaration of dividend and operation may further be monitored by a National Committee, acceptable to the nation. Such committee

may comprise Ulemas, Shariah experts, finance and securities specialists and representatives of civil society and/or members of the parliament.

Highlights of 'Zakat and Waqf' Bank:

- (i) It will create opportunity for Muslims of all level, wealthy or poor, to participate in Waqf endowments.
- (ii) The court shall be able to remove any Mutawalli who has mismanaged Waqf property and/or if expert financial management is deemed necessary due to the complexity or value of property and appoint the Bank to act as Mutawalli. Similar provision may be extended to the beneficiaries of a Waqf, if they fear mismanagement.
- (iii) This scheme will free valuable Waqf estates from the hands of dishonest or inefficient Mutawallis and also from the bureaucratic mismanagement.
- (iv) Waqf Certificate based on cash donation is a Sharia compliant way of creating Waqf. Its use can be traced during the Ottoman era as well as Egypt.
- (v) This scheme will ensure organized and need based project/investment selection. Development projects and investments will be selected on basis of priority, its need in a locality and in coordination with government development plan. The Bank will become a development partner for the government in selecting projects so far as reasonably practicable, while its independent nature shall continue.
- (vi) The activities and financial dealings of the Bank will be subject to scrutiny by national and financial regulations of the central Bank while its project selection, implementation and declaration of benefit will be subject to review by National Committee. This will ensure fair dealings, efficiency and increase trust amongst its donors.
- (vii) While other commercial banks sustain on advertisements of its products and services, this Bank will only rely on the spirit of Islamic endowments among Muslims and in this process will create and increase awareness on the importance and Islamic spirit of charities.
- (viii) A combined fund will enable the Islamic world to fight and overcome the shackles of poverty through a collective effort.

CONCLUSION:

Contrary to popular beliefs and impressions, the message of Islam has never been limited to Muslims only; rather, it has been bestowed to Mankind for the benefit of humanity. Thus the concept and application of Waqf and its benefits are aimed at the betterment of society as a whole irrespective of its religious beliefs and practices. Waqf emphasizes that the fulfillment of Islamic obligation is not only in the rituals of prayers and fasting; but more importantly, to help create a just world.

This is profoundly emphasized in the examples set by the beloved Prophet Mohammad (SAW). So much so, that amongst the numerous characteristics and roles that the Prophet Mohammad (SAW) is revered and loved for, his acts of piety through his devotion and endeavors for the poor and needy has been acknowledged by both Muslims and non-Muslims throughout centuries. If there ever was a humanitarian amongst humanitarians who sacrificed his life for the sake of others, it would undoubtedly be Prophet Mohammad (SAW).

Unfortunately, the image of Islam and Muslims presently is not one that is reflective of the Prophet Mohammad (SAW) endeavors toward the poor and needy or the Islamic obligation to create a just world. Islam has been epitomized as a religion that has been spread by the sword and thus, is a religion defined by terrorism and violence. In recent history, it has been regarded as a religion that maintains exclusiveness and is naïve in its approach to non-Muslims. Today over a billion Muslims are identified as terrorists, not peace builders, for the action of several thousand Muslims who chose the path of violence. Therefore, it is essential for Muslims to work towards rectifying this tarnished image.

With globalization at its pivotal point and issues like aids, hunger, climate change, global warming, human rights, animal rights threatening the peaceful existence of human race, we see the emergence of western civil organizations like Amnesty International, Greenpeace, World Wildlife Organization, etc. creating awareness and trying to face global challenges. Muslims have yet to be identified as a global partner that is associated with peace building and the improvement of humanity as a whole; thus, Zakat and Waqf Bank would not only be an opportunity for Islam to rectify its recent reputation, but more importantly, it can use the knowledge within the Holy Quran to once again reassert the true ideologies of Islam and Prophet Mohammad (SAW) and to enhance and establish peace and justice for the benefit of humanity.

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