



THE ISLAMIC LAW OF WAQF: PROSPECTS AND OBSTACLES

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The Waqf Act, 1995 defines 'Waqf' as the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by Muslim Law as religious, pious, or charitable.¹

Any person professing Islam who has devoted his property in the name of God is called Waqf. The donation may be made for an altruistic aspiration under religious beliefs and emotions and the elevation of the society. Thereby the possession of the devoted property is detracted from the individual forming the Waqf and transferred to God.

Waqf assumes a significant role in the Islamic community. It has been the primary source for numerous philanthropic activities that have contributed to society. Although it has been disparaged as a simple donation, Waqf has successfully generated economic sustainability, reducing impoverishment in India and the world through time. Customarily, the formulation of a Waqf is indoctrinated in Islamic tradition and is contained in all walks of life. The revenue earned through Waqf is commonly used to fund mosques, housings, and schools. Apart from this, it is also used to fulfil essential needs such as medication for ailing individuals, financing the neighbourhood etc.²

This paper seeks to explore the relevance of the Waqf and understand its formation and operations in detail. The article aims to probe the judgements around the Waqf and its socio-political implications. Finally, this paper seeks to examine the religious dynamics of the Waqf and its significance as a tool of

¹ The Waqf Act, 1995
legislative.gov.in/sites/default/files/A1995-43.pdf.

² Solanki, Madhubala. Concept of Waqf Under Muslim Law. 21 March 2019,

www.lawctopus.com/academike/concept-waqf-muslim-law/

welfare for the marginalized in a society marred by Hindutva extremism.

Essentially, the concept of Waqf revolves around the reformation of a good human being who has transpired himself in his connections to society. Hence, the function of Waqf goes beyond the provision of essential services to that person but also in constituting relations and affiliations with others. Apart from this, Waqf offers a perpetual form for philanthropy by preserving the Waqf institutions, protecting Waqf funds and its members, investing its funds, distributing its profit according to the conditions of endowment and the needs of the community, and finally promoting professional behaviour and ethical values.³

Broadly, there exist two major types of Waqfs: The Public Waqf and The Private Waqf. Public Waqf is created for religious or charitable purposes, whereas Private Waqf is made for the settler's family and descendants.⁴

³ Baqutayan, Shadiya Mohammed S., and Anini Suzana Ariffin. "Waqf between the Past and the Present." *Mediterranean Journal of Social Sciences*, archive.sciendo.com/MJSS/mjss.2018.9.issue-4/mjss-2018-0124/mjss-2018-0124.pdf.

India has a vast waqf framework under its Ministry of Minorities Affairs but with significant autonomy to Waqf boards established at the local and state levels. The State Waqf Boards (SWBs) are constituted by the corresponding local and state administrations on account of sections 13 & 14 of 'The Waqf Act, 1995'.⁵ These boards work towards the administration, governance, and preservation of the waqf properties by comprising provincial councils.

The Central Waqf Council, constituted in 1964 by the Government of India under 'The Waqf Act, 1954', recommends the Government on issues related to the operations of the State Waqf Boards (SWB's) and their suitable management in this nation. 'The Waqf Act (1995)' postulates a detailed account of the capacity and the functions of the State Waqf Boards in Section 32. It also provides the responsibilities and undertakings regarding the Waqif relating to authorisation, declarations, and compliance with the

⁴ Asthana, Subodh. *Concept and Explanation of Waqf Under Muslim Law*. 18 June 2019, blog.ipleaders.in/concept-waqf-muslim-law/amp/.

⁵ The Waqf Act, 1995 legislative.gov.in/sites/default/files/A1995-43.pdf

Board. These provisions are compulsorily operated to preserve the registration, disclosure, compliance with directives of the Board. These provisions were primarily put in place to make sure the preservation of the dedicated property happens efficiently.⁶

However, this is rarely the case. Section 6(1) of 'The Waqf Act, 1995' essentially deals with the notion of litigation. Major disputes like whether a property is specified as a Waqf property, or a Shia or Sunni Waqf arise over time.⁷ These lawsuits are generally filed within the Waqf Tribunal. This cycle of litigation and lawsuits is both tedious and costly. The State Waqf Boards are often not financially able to bear the costs of a viable mechanism to fight these cases. It has become a significant obstacle in the progress of Waqf properties.

Various facets of the Waqf Administration proceedings need re-examination and alterations from the context of Shariah and existing laws. 'The Waqf Act, 1995' has authorised the

respective State Governments to constitute Waqf Boards. However, numerous State Governments have either been unsuccessful in establishing the Board or have not operated in the full potential of the Board that makes them non-operative. Additionally, the State Government has been nonchalant in assigning a full-time CEO. Since a CEO plays a pivotal role in the functioning of a Waqf and carries out the instructions of the Board, his vacancy breaks down the entire modus operandi.⁸

A Sachar Committee Report has declared around 5 lac registered Waqfs in India, covering six lac acres. Besides agricultural, commercial, and residential properties, Waqf properties include mosques, dargahs and Sufi brotherhood spaces such as khanqahs. The Sachar Committee has also approximated that the Waqf assets across India can produce annual returns of Rs. 12000 Crore. However, it only manages to bring in around 163 Crores.⁹

Many political parties across India view Waqf as an opportunity to garner

⁶ Obaidullah, mohammed. "A framework for analysis of Islamic Endowment (Waqf) Laws"

⁷ The Waqf Act, 1995
legislative.gov.in/sites/default/files/A1995-43.pdf

⁸ Rasool Tabasum "Waqf Administration in India: Issues and Challenges of State Waqf Boards"

⁹ Rasool Tabasum "Waqf Administration in India: Issues and Challenges of State Waqf Boards"

support from the public. The elected politicians

have often favoured political loyalties over constitutional responsibilities. One example of this was from Delhi in 2015, when the funds of the Delhi Waqf boards were used for minority appeasement. The Aam Aadmi Party had deprived the Delhi Waqf Boards of all its functions and relocated its authority to the Revenue Secretary. Similarly, in 2016, an MLA from the Aam Aadmi Party, appointed as the chairman of the Waqf, had been implicated of corruption and procedural irregularities. Considering this, the Board had to be dissolved. The case got transferred to the CBI for investigation.¹⁰ There have been several similar cases across the country that have undermined and crippled the prospects of Waqf. It has made Muslims of this country apathetic towards its establishment.

Another major issue that has debilitated and weakened the progress of Waqf is encroachment. As per the ninth report of the Joint Parliamentary Committee, around 70 to 80 per cent of the

Waqf properties have been unlawfully occupied. There are various reasons for this. The Sachar Committee had ascertained two significant rationales for this encroachment.

One is the complete take-over of the property without any formal pay-outs for rent. The second is where the occupying party only pays a nominal rent that has not increased over the years. An unfortunate aspect of the matter is the nefarious role played by the state mechanisms that are, in fact, supposed to be the guardians of these properties.¹¹

In North India, especially in the states of Punjab, Delhi and Haryana, the conditions of the Waqf properties are despicable due to the massive encroachment. After the Partition in 1947, India saw an anomalous diaspora of Muslims to Pakistan, abandoning colossal properties, including Waqfs. These Waqfs came under the guardians' authority, who allocated them to the incoming refugees based on occupancy in the aftermath. Subsequently, the Waqf Boards were

¹⁰ Reporter Staff, "Waqf Board Funds Used for Minority Appeasement Politics." The Hindu. The Hindu, 1 may 2019. [www.thehindu.com/news/cities/delhi/waqf-board-](http://www.thehindu.com/news/cities/delhi/waqf-board-funds-used-for-minority-appeasements-politics/article27006348.ece)

[funds-used-for-minority-appeasements-politics/article27006348.ece.](http://www.thehindu.com/news/cities/delhi/waqf-board-funds-used-for-minority-appeasements-politics/article27006348.ece)

¹¹ Rasool Tabasum "Waqf Administration in India: Issues and Challenges of State Waqf Boards"

instituted in 1954, and after an inspection, the authorities discovered that most Waqf properties were under unlawful possession. To recover these properties, the Government enacted the 'Public Waqfs (Extension of Limitation) Act, 1959', making the filing of suits time barred. Since litigation is costly and over time, the endowed property gets depleted, Indian Muslims have been pressing for the expansion of the 'Public Premises (Eviction of Unauthorised Occupation) Act, 1958 to Waqf assets, but the work remains incomplete even today.

In India, even individuals outside the Muslim community can constitute a Waqf property, but it would be considered void if done with an immoral intention to subvert the law. As per a judgement in the Patna High Court, a lawful Waqf can be authorised by a non-Muslim. However, a Public Waqf could only establish that waqf; thus, a non-Muslim does not have the power to constitute a Private Waqf. 'Karnataka Board of Waqfs v. Mohd. Nazeer Ahmad (1982)' established that a Waqf should have a religious purpose

and should only be used for the Muslim society, and if it is non-religious, the goodwill must be only for the poor.¹² The Madras and Nagpur High Courts have similarly held that a non-Muslim can also create a lawful waqf given that the intention of the waqf so constituted is not against the doctrine of Islam.

The Waqf properties are individually overseen and supervised by a Mutawalli, the administrator of a Waqf. A Mutawalli is not the possessor of the endowed property; he is just a supervisor whose duty is to make sure that the rights affiliated to that property are indeed being appropriated for a legitimate cause. A mutawalli is usually chosen by a Waqif, who possesses that property and authorises a Waqf.¹³

The Waqf Boards across India are currently under a lot of constraints. As per Section 72 of 'The Waqf Act 1995', Waqf boards only earn about 7% contributions annually from the Mutawallis, whose yearly earnings are more than Rs. 5000. These offerings are trivial as a lot of Waqf properties are not in a profitable state.¹⁴

¹² Karnataka High Court. Karnataka State Board of Waqf v. Mohammed Nazir Ahmed and Anr. (4 march 1982)

¹³ Solanki, Madhubala. Concept of Waqf Under Muslim Law. 21 March 2019,

www.lawctopus.com/academike/concept-waqf-muslim-law/

¹⁴ The Waqf Act, 1995

legislative.gov.in/sites/default/files/A1995-43.pdf

Due to this, numerous Waqf boards are often not able to pay salaries to their staff. The litigations, corruption and political involvements only add to the misery of the Waqf boards, which make the development of Waqf properties unattainable. Though some state governments have started offering allowances to the respective Waqf boards, it is high time every state initiates this process for the Waqf for the welfare of the people.

Significantly, after the Indian Independence, it was anticipated by the Muslim population that the supervisory and managerial duties of the Waqf would be entrusted upon the Islamic institutions so that they could oversee it as per the orthodox and deep-rooted jurisprudence of the Waqf. However, that never transpired. Under the provision of 'The Waqf Act, 1954', the Government of India took a driver's seat in managing and administering the Waqf. Thus, the door of undue political intervention, manipulation and corruption in this religious practice was deliberately left wide open. Though in light of the escalating voices of the Muslim community, the Government decided to

amend the Waqf legislation and supposedly democratised the selection means of the custodians. However, all this was inconsequential as in the process; Waqf related Shariah guidelines were buried.¹⁵

Waqf is fundamentally meant for preserving the interests of the destitute and impoverished segments of the society broadly and specifically of the Muslims. Given this goal, it is crucial to administer the Waqf assets under the Shariah guidelines to accomplish the genuine objective to expand in an ideal manner. Owing to all this, 'The Waqf Amendment Act' was established and made significant alterations concerning the authority and functions of the State Waqf Boards. Section 32, which dealt with the 'government approval' requirement, was abated, making way for the State Waqf Boards to evolve and progress according to their needs. Apart from this, the Amendment also imposed stringent punishment over financial penalties for a Mutawalli. In cases of non-compliance with laws, it was about their functions and commitments towards conservancy and progression of the equipped properties.

¹⁵ Nadvi, Mohammed Abdullah. "Significance of Waqf Properties: An Indian Perspective" Muslim Mirror, 2 June 2013, muslimmirror.com/eng/

significance-of-waqf-properties-an-indian-perspective/.

For Waqf to remain relevant in the foreseeable future, it needs to rectify and restore itself. Historically, Waqf has devoted itself to the prosperity of individuals in numerous segments of growth, like economy, education, and other services. Regardless, in the present era, the position of Waqf has deteriorated considerably. The state of the negligence of Waqf in India can be conceived by the fact that despite of having 6,00,000 acres of Waqf property, for over a century, close to 30% of Indian Muslims delve into absolute poverty. For the ideal functioning of a Waqf, the Government must make some amends. A critical argument in Waqf is the need for clarity and affirmation in the way the property and assets are administered. Due to the government's misguided policies on Waqf and the illegitimate allotment of its fundamental benefits to the worthy sections of the society, there exists a significant discrepancy between the potentiality of the current Waqf and its pragmatic impacts on the country. One instance of this is in states like West Bengal and Uttar Pradesh, which own the greatest number of Waqfs in the country. Still, either due to poor administration or

misappropriation, they carry the scar of having the highest poverty rate among the Muslim community.

With transparency, stability, long-term planning and guidance, the prospects for a Waqf are tremendous, and the more we delay this, the more Waqf becomes vulnerable to progress. It is also imperative to establish transparency in how the Waqf money is utilised. It will ensure clarity in donations and will help in the development of the nation.¹⁶

Presently, unrestrained malfunctions and rampant corruption is prevalent in the Waqf administration of the nation. It has supplemented the agony and hardships of the impoverished Muslims, as they are denied social and economic benefits from this establishment. Additionally, as poverty is recognised as a substantial barrier in the way of a Muslim's welfare and success, the inherent role and relevance of Waqf have become much more critical in the elevation of the Muslim community culturally and economically.

In a communally polarised country of a Hindu majority, the system of Waqf

¹⁶ Baqutayan, Shadiya Mohammed S., and Anini Suzana Ariffin. "Waqf between the Past and the Present." *Mediterranean Journal of Social Sciences*,

archieve.sciendo.com/MJSS/mjss.2018.9.issue-4/mjss-2018-0124/mjss-2018-0124.pdf.

may be a symbol of acknowledgement of Muslim sensibilities' much like the Hindu temple trusts. Its relevance lies most in the fact that a Waqf, though motivated by religious sensibilities, is ultimately a wagon for welfare and upliftment, especially of those poor and marginalised Muslims that face double oppression because of their religious, social, and economic background. Further, the fact that a non-Muslim can be a part of Waqf leads to the secularisation of a religious, charitable system.



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