

# **CERTAIN LEGAL AND ADMINISTRATIVE MEASURES FOR THE REVIVAL AND BETTER MANAGEMENT OF AWQĀF<sup>\*</sup>**

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## **Abstract**

*Waqf is the most popular expression of Muslim philanthropy. Millions of awqāf were created during the past 1400 years. Many of these perished due to various reasons, but at least a million awqāf still exist today. The enormous potential possessed by these for the socio-economic regeneration of the ummah, particularly in the field of poverty alleviation, is waiting to be utilized and managed effectively. This paper identifies six of such problematic issues, which are presently confronting awqāf, and hampers their optimum utilizations. These issues are: (1) An urgent need of conducting a thorough survey of waqf properties in the whole of the Islamic world and also in the Muslim minority countries in order to know details of the number, valuations, incomes, objects, expenditures, etc. of every waqf property to devise an effective administrative policy. (2) The need of Muslim public participation in the present state controlled waqf administration pattern, which is proving to be counterproductive. (3) A need to have a second look at the abolition of family awqāf and to examine the desirability of their revival. (4) The urgent need of stopping the colossal wastage of waqf income on litigation and a suggested way out of this situation. (5) The present costly and protracted mode for the recovery of encroached waqf properties through litigation need to be replaced by a suggested administrative process, which is relatively much quicker and cost-free. (6) There is an urgent need to develop waqf properties, which are lying neglected. As development of awqāf is the key to the treasure trove of these properties that have now acquired economic potential beyond imagination. The paper concludes with recommendations of actions for revival and improved management of awqāf.*

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## **1. Introduction**

When Umar bin Khattab asked the Prophet (S.A.W) how could he make the pious use of his land in Khaybar, the Prophet (S.A.W) replied: Tie up (*habs*) the corpus (*asl*) and give away the fruits (*thamarat*). This reply suddenly changed the whole concept of charity by weaning it away from consumption of corpus as well as usufruct to perpetuation of corpus and appropriation of usufruct alone. It was something unknown to the world up to that time.

Its simplicity and perpetuity made *waqf* very popular. For the rest of 1300 years it remained the most popular expression of Muslim philanthropy. Millions of *awqāf* were created for every conceivable object. But with colonialism came misery to *awqāf*. Thousands were abolished or put to other uses and governed by alien rules. The post-colonial new nations were too busy with bigger issues of nation-building and had little time to attend to *waqf* management problems. Subsequently, some attention was given, but many issues are still lying unresolved.

This paper identifies certain problematic issues now confronting *awqāf* and ventures to suggest some remedial measures. *Awqāf* worth billions of dollars, possessing enormous potential for socio-economic regeneration of the *Ummah*, are waiting to be utilized and managed more effectively.

Issues raised in this paper do not cover diverse matters but present a narration of inter-connected matters aimed at reviving *waqf* and improving *waqf* management. Legal jargons are avoided to the best possible extent. Similarly, suggestions are broad-based to make them capable of being adapted in any country with minimal changes.

This paper briefly discusses the following six issues: survey of *waqf* properties, its importance and suggested legal structure; the need for the democratization of *waqf* administration; revival of family *awqāf*; how to avoid wastage of *waqf* funds on litigation; how to recover encroached *waqf* properties without going to court of law; and future directions in the development of *waqf* properties.

## **2. Survey of *Awqāf*: Importance and Structure**

### *2.1 Importance of survey*

A comprehensive survey of *waqf* properties is a pre-requisite for effective *waqf*

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

The first thing necessary is that the facts regarding them (*awqāf*) should be authoritatively ascertained ... when such investigation has been completed, the authorities will be in a position to devise appropriate legislative and executive measures to meet the situation.<sup>1</sup>

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

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

## 2.2 No survey conducted

Apart from India, a proper survey of *waqf* properties has yet to be conducted in every country of South Asia (Pakistan, Bangladesh, Sri Lanka, Maldives and Nepal); South-East Asia (Malaysia, Indonesia, Thailand, Singapore and Brunei),

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<sup>1</sup> Sir Abdur Rahim's foreword to P. R. Ganpathi Iyer's *Hindu and Muhammadan Endowments* (Madras, 1918).

West Asia and East, West, North and South Africa, not to mention Western countries where millions of Muslims reside and there must be a large number of *awqāf*.

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

### *2.3 Survey may reveal concealed waqf properties*

As an illustration, let us take India. In the early 1960's, the number of *awqāf* officially given by the Minister-in-charge of *awqāf* was 100,000.<sup>2</sup> However, by 2003 survey revealed the identity of more than 200,000 more *awqāf*, hiking the total figure to 332,000.<sup>3</sup> As the second survey is still not complete, the total is expected to exceed 375,000, and may even touch 400,000.

If we look at the figures of only two Indian States, Andhra Pradesh and Rajasthan during early 1960's, these are very revealing. In Andhra Pradesh for example, there were only 3,300 registered and 12,000 unregistered *waqf*

<sup>2</sup> Syed Khalid Rashid, *Waqf Administration in India: A socio-Legal Study*, (Vikas Publishers, New Delhi, 1978), p. 74.

<sup>3</sup> A strange discrepancy exists between whatever figure is given of the total number of *awqāf* (332,000) in India by the Central *Waqf* Council, New Delhi (a statutory body constituted by the government of India under the *Waqf* Act 1995 and prior to that under the *Wakf* Act 1954) given by its Secretary- Dr. Rizwanul Haque – and the figure (490,021) as given in its Report by the Prime Minister's High Level Committee – “Social, Economic and Educational Status of the Muslim Community in India”- (Cabinet Secretariat, Government of India, New Delhi, November, 2006, p. 220, Chapter II entitled “Leveraging Community Initiatives: The case of *Wakfs*”, pp. 217-235). In an interview with this author in early 2011, the Secretary of the Central *Waqf* Council insisted that the figure given by the Prime Minister's High Level Committee probably counted as separate individual *waqf* such several properties, which are dedicated to the same *waqf*. The Committee, however, maintains that the figure 490,021 is based on “information received ... from the State *Wakf* Boards in 2005-06” (p. 220). For Central *Waqf* Council figure, see Syed Khalid Rashid, “Islamic Financial Instruments for the Development of *Waqf* properties (with Special Reference to India)”, in Syed Khalid Rashid (ed.), *Protection, Maintenance and Development of Awqāf in India* (With Special Reference to Rajasthan), (Institute of Objective Studies, New Delhi, 2005), pp. 23-85. This discrepancy has not been ironed out as yet. Another point worth noting regarding the total number of *awqāf* in India is the fact that these figures do not include any *waqf al-alaulad* (family *waqf*). It is so because the definition of “*waqf*” for the purposes of the *Waqf* Act 1995 and before this the *Waqf* Act 1954 excludes family *awqāf*. As the Act provides survey of only such *awqāf* which are recognized as such under the Act it prompted *Waqf* Survey Commissioners of the States to exclude such *awqāf*, whose number must be sizeable in India.

properties;<sup>4</sup> that is a total of 15,300 in 1960. But within a few years after survey started in 1963, the total number of *awqāf* shot to 35,709.<sup>5</sup>

In Alwar district of Rajasthan during 1960's, only 73 *waqf* properties were known to exist. But soon after survey started this figure jumped to 1,965.<sup>6</sup> This must be the case in other States too; otherwise the total number would not have jumped from 100,000 to 332,000. In all probability, similar could be the situation in other countries too. The prospect of unearthing thousands of 'underground' *awqāf* is indeed exciting and worth undertaking. Developmental potential of these properties must be very high, because the identity of only such properties alone is generally concealed.

#### *2.4 Statutory provisions are a must for survey*

Law attaches great importance to disputes involving ownership of land. This is why such disputes are adjudicated in civil courts. But a serious problem arises out of the fact that civil litigation is extremely slow, costly and cumbersome. So if during the survey of *awqāf*, a dispute arises involving ownership of an alleged *waqf* property, the matter if referred to a civil court should be considered as gone for a very long period of time. The notorious Babri Mosque case in India was filed in 1948 and only on 30<sup>th</sup> September 2010 that the High Court gave its judgment. Now an appeal against this judgment is pending in the Supreme Court and no one knows when the judgment may come.<sup>7</sup>

<sup>4</sup> The figure was obtained by this author from the office of the Andhra Pradesh *Waqf* Board, Hyderabad in 1967. See mimeographed copy of the report of Andhra Pradesh *Waqf* Survey Commissioner – 1964-65.

<sup>5</sup> The survey work in Andhra Pradesh started in 1963.

<sup>6</sup> See Report of The *Waqf* Survey Commissioner, Rajasthan, 1964, Jaipur, Rajasthan. Mimeographed copy obtained by the author from Jaipur in 1966.

<sup>7</sup> Babri mosque was built at Ayodhya in Northern India in 1528 CE by Mir Baqi, a courtier of the first Mughal Emperor Babur. Tulsidas, who wrote the epic *Ramcharitmanas* in 1578 in Ayodhya itself, never mentioned any Ram Temple and its demolition for the construction of Babri mosque. In the night of 22 December 1949, a few miscreants headed by one Abhey Ram Das entered the mosque "by breaking open the locks" as stated in the FIR (First Information Report) filed by a Hindu police constable who was on duty that night. On 16 January 1950, civil suit No. 2/1950 was filed in the court of District Judge, Faizabad by local Hindus of Ayodhya to restrain Muslims from removing the idol. It was the beginning of a protracted litigation which culminated in a judgment on 30 September 2010 where The Allahabad High Court ruled that the Ayodhya land be divided into three distinct parts. The first part goes to the Ram Lalla or Infant Lord Rama which is represented by the Hindu Maha Sabha specifically meant for the construction of the Ram temple. The second part goes to the Islamic Sunni *Waqf* Board while the remaining third part goes to Normohi Akhara, a Hindu religious denomination. See the Consolidated Judgement in OOS No. 1, 3, 4 & 5 of 1989. The appeal against this judgment was made to the Supreme Court of India in 2010 and is now pending there.

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

#### *2.5 Only someone vested with Judicial powers could effectively conduct survey*

To sit in judgment over such a loaded question whether a particular property is *waqf* involves judicial determination of the question of its ownership. It is to be remembered that once a property is declared as *waqf*, its ownership vests in Allah and anyone who calls himself as its owner will be permanently debarred from calling himself as such. To make such a declaration is a dedicate exercise and can be only undertaken by someone who is vested with judicial powers.

Such an officer could only be appointed by the Government, through official notification. Thus a *Waqf Survey Officer* (WSO) and as many of his Deputies or Assistants, with supporting staff, are to be appointed. Provisions about such appointments and related matters shall be there in a statue and rules made there under.<sup>8</sup> In countries following federal system, these provisions may be contained in the federal *waqf* law and subordinate rules, but in non-federal countries like Pakistan or Malaysia, plurality of *waqf* enactments will demand survey provisions to be inserted in all of them. In still other countries there may be some other legal situation, which needs to be compiled with.

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

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

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

## *2.6 What types of enquiries are to be made?*

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

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

- i) an endowment of title to some property from which any benefit, interest or profit may be derived;
- ii) an endowment of any interest in or profit from some property;
- iii) a ‘*waqf* by user’, and such *waqf* shall not cease to be a *waqf* by reason only of the user having ceased, irrespective of the period of such cesser;
- iv) grants or nazar customarily recognised as religious and charitable;
- v) a family *waqf* (*waqf al alaulad*), and

vi) *waqf al nuqud* (cash *waqf*)<sup>9</sup>

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

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

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

- i) Background of the *waqf* and the *waqif*;
- ii) Date of creation, if known;
- iii) Details of the object as mentioned in the deed, if any, or on the basis of evidence;
- iv) Detailed description of *waqf* property, its location and distance from the

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<sup>9</sup> The Rajasthan High Court in its judgment in the case of *Radha Krishna v. State of Rajasthan*, All-India Reporter, Rajasthan, page 1, took a narrow and literal view of the words “survey of *waqfs* existing in the State”, to mean that such *waqf* properties which had been converted to personal properties in the past have by definition “extinct” and are thus not covered by the Act. However, keeping in view the perpetual nature of a *waqf*, the Government of India decided to correct this erroneous judicial interpretation through the *Waqf* (Amendment) Act 1969. According to section 6 (1), it is only on the basis of ‘*waqf* list’ prepared by the *Waqf* Survey Commissioner, that a suit regarding the disputed nature of a property may be filed in a civil court. This clearly gives rise to a presumption that the *Waqf* Survey Commissioner is competent to include any property “existing” or “extinct” as *waqf* and include it in the ‘*waqf* list’. However, for the avoidance of confusion, the word “existing” in section 4(1) of the Act may be deleted.

- market, main road and railway station, its strategic location, etc.;
- v) Encumbrances or changes if any on the *waqf* property;
  - vi) The current mode of administration: whether devised by the *waqif*, *mutawalli* or court or custom and usage.
  - vii) Details about the *mutawalli*, his appointment, conditions, if any, attaching with his office, etc.

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

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

## *2.7 Whether only 'Existing' Awqāf should be surveyed or the 'Extinct' also*

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

This plea of the encroacher was upheld by the Rajasthan High Court in the well-

known case of *Radha Krishna v. State of Rajasthan*.<sup>10</sup> The court held that WSO had no authority to decide about such a *waqf* property, which became ‘extinct’ due to encroachment. WSO was to survey only ‘existing’ *waqf* properties. In this case, a *waqf* building was first mortgaged by its caretaker and then sold to the same person who held it on mortgage. The WSO found the building as *waqf* and the person who sold it was not its ‘owner’ but it’s *mutawalli* who sold it for no valid reason. The WSO therefore included this property in the ‘Waqf list’.

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

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

This verdict of the court is obviously wrong, because how could an unlawful sale of a *waqf* property make it ‘extinct’. A validly created *waqf* remains valid in perpetuity, notwithstanding its unlawful sale. Hence WSO was right in declaring the building as *waqf* and including it in the *waqf* list. This list may be challenged in a Civil Court, but this fact does not affect the right of WSO to include this property, which he found as *waqf*, to be included in the *waqf* List. The *Waqf* (Amendment) Act 1969 has corrected this defect and WSO may include now any property in the *waqf* list.<sup>11</sup>

<sup>10</sup> The word “owner” is used here to express the claim made by the person who was holding an alleged *waqf* property. Being a non-Muslim, the “owner” claimed to be outside the jurisdiction of the *Waqf* Survey Commissioner. The Rajasthan High Court upheld the plea of the so-called “owner” and held: “If a person who is a non-Muslim... is in possession of a certain property, his right, title and interest cannot be put in jeopardy simply because that property is included in the list published under sub-section 2 of section 5 (of the *Waqf* Act 1954)” [see AIR 1967 Raj 1 at 8].

<sup>11</sup> Section 6 (1) of the *Waqf* Act 1995 (and also the 1954 Act which was repealed by the 1995 Act), inserted by the 1969 amendment provides: “If any question arises whether a particular property specified as *waqf* property in the list of *waqfs* is *waqf* property or not or whether a *waqf* specified in

This mischief was caused by the use of the word ‘existing’ in section 4(1) of the *Waqf Act 1954* and even now in the *Waqf Act 1995* of India.<sup>12</sup> This word creates an impression that there are ‘extinct’ *awqāf* also. Thus, any law enacted for the purpose of survey of *awqāf* should avoid using the word ‘existing’ along with *waqf*. Mere use of the word ‘*waqf*’ should be taken as enough; no need to use the prefix ‘existing’.

The issue raised by the High Court that a non-Muslim ‘encroacher’ is beyond the reach of WSO is simply not correct. A *waqf* property illegally held by a Muslim or non-Muslim will remain an encroached property. To assume that law exempts a non- Muslim from being challenged by the WSO simply because he is holding an ‘extinct’ *waqf* property is untenable. Religion of the encroacher is irrelevant.

#### *2.8 Rights of a person who was not made a party to the survey proceedings*

The inclusion in the *Waqf List* of a property in which a person has some interest but to whom no ‘notice’ was given by the WSO during survey proceedings, can challenge such inclusion even after the expiry of one year which otherwise makes the *waqf* list final. The Rajasthan High Court in its judgment in the case of *Radha Krishna v State of Rajasthan*,<sup>13</sup> emphasized the importance of notice to such persons. Madras High Court supports this view (see, case no W.P 1142/66 decided on 7.4.1969).<sup>14</sup> It was held that publication of *Waqf* list was hardly a substitute for

such list is a Shia *waqf* or Sunni *waqf*, the Board or the *mutawalli* of the *waqf* or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final.”

<sup>12</sup> The word “existing” is mentioned twice in section 4 of the *Waqf Act 1954* (and also in the repealed Act of 1954), once in the sub-section (1) and then in sub-section (3). The use of this word is unnecessary. As *Waqf* is perpetual in nature and the circumstances in which it might become extinct are well-known, it becomes a question of evidence and proof. Transfer of title into the name of some unauthorized person cannot amount to the ‘extinction’ of *waqf* character of a property. Such a property should remain open to enquiry as to its character and nature.

<sup>13</sup> The importance of ‘notice’ to be given to such a person who has some interest in a *waqf* property was emphasized by the Madras High Court in an unreported case WP 1142/66 decided on 7.4.1969 and also by the Supreme Court of India in its judgement in *Abdul Karim v. Municipal Committee, Raipur*, (1967) 2 SCJ 299 at 303. Thus, giving notice to such persons who may not be party to survey proceedings before the *Waqf* Commissioner, appears necessary otherwise, the concerned party’s right to challenge the *Waqf* list will remain intact.

<sup>14</sup> The Punjab High Court took a wrong view in the case of *Panchayat Deh v. Punjab Waqf Board*, All-India Reporter 1969, 344, that a *waqf* by user like a graveyard, comes to an end once it is no more used as such. It held that a Muslim graveyard in Punjab from where all the Muslim either migrated to Pakistan or perished in the anti-Muslim carnage in post-partition 1947 India, cease to be a graveyard as no more burial take place there. Thus, the occupation of the graveyard by non-Muslims cannot be

notice because nobody was expected to look into the Government Gazette everyday at the risk of losing his property rights.

### *2.9 Waqf by-user is unaffected by Cesser*

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

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

Once the Punjab High Court in India took the wrong view that a *waqf*-by-user may cease to be *waqf* by virtue of long cesser of use.<sup>15</sup> However, the Supreme Court corrected this wrong by holding that a *waqf*-by-user does not come to an end whether it is used or not.<sup>16</sup> Because of these two cases, the definition of *waqf* contained in Section 3(r)(i) clearly provides:

[*Waqf* includes] ‘a *waqf* by user, but such *waqf* shall not cease to be a *waqf* by reason only of the user having ceased, irrespective of the period of such cesser’.

termed as encroachment on a *Waqf* land. This judgment exposed thousands of Muslim graveyards in Punjab and other parts of India to illegal occupation.

<sup>15</sup> The Supreme Court of India, disagreeing with the view taken by the Punjab High Court in *Panchayat Deh's case*, held in *Mohd. Labbai v. Mohd Hanifa*, All-India Reporter 1979, Supreme Court, 1569 that a *waqf* by-user gives birth to a *waqf* proper with perpetual existence. Any break or stoppage in the usage of this *waqf* does not affect its *waqf* character.

<sup>16</sup> The definition of *waqf* contained in the *Waqf* Act 1995 was elaborated slightly to make it clear that a *waqf*-by-user does not lose its *waqf* character by virtue of it being no more used as such. Now section 3(r)(i) of the *Waqf* Act 1995 clearly states that a *waqf*-by-user “shall not cease to be a *waqf* by reason only of the user having ceased, irrespective of the period of such cesser.”

## 2.10 What should be the forum to challenge waqf list?

An important legal question, which arises after the completion of survey and inclusion of a property as *waqf* in the *waqf* list, whether such an inclusion may be challenged. If yes, where? To allow this matter to be brought to a Civil Court may open the Pandora Box of costly and prolonged legal battle.

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

An Endowment Tribunal may be the answer. A Tribunal is a judicial body but, unlike a court of law, is not obliged to follow the same procedural law and rules of evidence, which bring delay and escalate cost. Tribunals are therefore fast and inexpensive.

The Government may constitute such Tribunals by inserting provisions in the existing *Waqf* Act, if there is one, or in a specially enacted law. These Tribunals are for the adjudication of any dispute relating to a *waqf* property or any question arising during the survey. Any person aggrieved by an order made by *Waqf* Survey Officer (WSO) may file an application, within the time prescribed for this purpose, for the determination of any dispute or question regarding a *waqf* property.

The Tribunals shall be deemed to be a Civil Court with the same powers. It shall be presided by a Muslim member of the Judiciary holding the rank of a senior judge either of District or High Court level.

The Tribunals shall follow the brief procedure as prescribed over for it by the Government in consultation with the judiciary. Its decision shall be binding and final, and shall have the force of a judicial decree.

No appeal shall lie against any decision or order of Tribunal. However, wherever it is regarded advisable, the High Court may be allowed to review the decision of the Tribunal for the purpose of satisfying itself as to the correctness and legality of the decision.

The Tribunal shall normally take not more than 90 days in determining the merits of a case.

No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to a *waqf*, which is required to be adjudicated by the Tribunal.

#### *2.11 'Waqf List: Whether changes could be made*

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

The question whether the Government or any *waqf* administration body that may exist in a country, may effect changes in the *Waqf* List is very important. None should be allowed to do so, because *Waqf* list represents the final outcome of a field work and consists of factual information collected after judicial scrutiny. Neither the Government nor anyone might have such a solid proof that might override WSO's findings. However, in exceptional cases WSO may be recalled for joint deliberations and consultations to agree on any change.

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

#### *2.12 Helping hand of NGO's, Public and Muslim Organizations*

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

#### *2.13 State must bear the cost of survey*

The total cost of survey of *awqāf* and the publication of *Waqf* List must be borne by the State, as part of State obligation and a matter of public benefit. In India Section 8 of the *Waqf* Act 1995 requires all the *mutawallis* of nearly every

*waqf* to bear the cost of survey.<sup>17</sup> It is an unfortunate provision and need to be deleted.

### 3. Democratization of *Waqf* Administration

By ‘democratization’ is meant Muslim public participation in *waqf* administration in contrast to total or predominantly State control. It is an issue of *waqf* administration today. Governmental control is not liked by the people in an essentially private sector matter. Muslims want to have some say in this matter. Doing so may bring dynamism, greater vigilance and control on *waqf* matters. What may be the format and extent of public involvement may differ from country to country, but what is important is that it should be meaningful, not a mere window dressing exercise.

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

Example may be given of the formula that exists in India under the *Waqf* Act 1995.<sup>18</sup> Out of the 13 maximum members in the State *Waqf* Board, 5 are nominated

<sup>17</sup> Section 8(1) of the *Waqf* Act 1995 provides: “The total cost of making a survey including cost of publication of the list or list of *waqfs* under this Chapter shall be borne by all the *mutawallis* of the *waqfs* the net annual income whereof exceeds five hundred rupees in proportion to the net annual income accruing in the State to such *waqfs*, such proportion being assessed by the Survey Commissioner.”

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

<sup>18</sup> Section 14 of the *Waqf* Act 1995 of India is a very long section the full text of which may be seen online at <http://www.indiankanoon.org/doc/712582/>. Here is given only such part of section 14, which gives the idea of proportion of the nominated and elected membership of the *Waqf* Board.

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

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

by the government and 8 are elected by electoral colleges. The details are as follows:

One and not more than two members are to be elected from each of the following 4 electoral colleges consisting of:

- i) Muslim members of Parliament from the State
- ii) Muslim members of the State Legislature
- iii) Muslim members of the Bar Council of the State, and
- iv) *Mutawallis* of *awqāf* having annual income of Rs. 100,000 (US\$2000.00) and above.

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

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

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

This power-sharing is at the State level and it is very difficult for a member to know about the happenings at the grass-root level. Muslim public involvement should be at the level of village, tahsil and district. The Village *Waqf* Committee

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- i. Muslim Members of Parliament from State or as the case may be, the Union Territory of Delhi,
  - ii. Muslim Members of the State Legislature,
  - iii. Muslim Members of the Bar Council of the State, and
  - iv. *Mutawallis* of the *waqfs* having an annual income of one lakh and above;
  - c) One and not more than two members to be nominated by the State Government, representing eminent Muslim organizations;
  - d) One and not more than two members to be nominated by the State Government, each from recognized scholars in Islamic Theology;
  - e) An Officer of the State Government not below the rank of Deputy Secretary.
- Section 14(3) further provides:
- “...Where the State Government is satisfied ... that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (6) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.
- Section 14(7) empowers members of Board present at a meeting to elect one from amongst themselves as chairperson.

shall consist of 10 members elected from a group of 10 Villages, Tahsil *Waqf* Committee consisting of 20 members elected among the members of the Villages Committees within a Tahsil and District *Waqf* Committee consisting of 30 members elected among the members of the Tahsil Committees within the district. This mode of election will be quicker, economical and peaceful. The members of all these Committees shall act on voluntary basis without being paid any allowance or remuneration. Their duty will include keeping an eye on *waqf* matters within their jurisdiction and informing the next higher Committee about every relevant thing.

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

#### **4. Family *Awqāf* Deserve A Better Deal**

##### *4.1 Legal validity of family waqf*

In Islamic Law, the sanctity and legal validity of a family *waqf* is well recognized and established. It is so because this *waqf* finds indirect support from the Qur'ān and Ḥadīth. For example, in Surah Al-Baqarah (2) āyat 177 and 215 Allah praises those who help their "kinsfolk", "parents and near Kindred". Similar praise is reserved in Surah Al-Nahl (16) āyat 90 for those who show "Liberality to Kith and Kin". Similar is the attitude of the Prophet (S.A.W.). Chapter 368 of Volume 2 of Sahih Muslim consists of 11 ahādīth, all of which narrate the excellence of giving to one's own family, that is, wife, husband, children, parents and other relatives. In one of the ahādīth, the Prophet (S.A.W.) is reported to have said: "The most excellent dinar is one that a person spends on his family. A large number of family *awqāf* were created by the companions of the Prophet (S.A.W.). It is reported in *Fath al-Qadir*, Vol.2, p.844 (Lucknow, 1875)<sup>19</sup> on the authority of Ibn al-Humam that Abu Bakr Siddiq made *waqf* of his house for his children. Sa'ad bin Abi Wiqas made *waqf* of his house in Medina and Egypt for the benefit of his children. Umar bin A'as made *waqf* of his house for his children. As mentioned in *Fath al-Qadir*, similar *awqāf* were created by Umar, Usman, Ali, Abdullah bin Zubair and Abdullah bin Umru and Arqam in whose house the Prophet (S.A.W.)

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<sup>19</sup> *Fath al-Qadir*, Vol. 2, p. 844 (Nawal Kishore Press, Lucknow, 1875). See also, *Aini Sharah Hidayah*, Vol. 2, 1993 (Nawal Kishore Press, Lucknow, 1876) and Shibli Naomani, *Maqalat-e-Shibli*, Vol. 1, pp. 93-94 (Darul Musannefin, Azamgarh, 1930) (Urdu). All these *awqāf* were in existence at the time when *Fath al-Qadir* was written, that is, around 850 AH, some 800 years from the time of their creation.

resided for some time.

The popular English adage that ‘charity begins at home’ is an empty slogan. In English law, charity never begins at home. Because a private trust in favour of one’s own children, spouse and relations, is regarded as non-charitable purpose trust, which is subjected to various taxes like Income Tax, Estate Duty, Wealth Tax, etc., and as compared with charitable trusts, suffers at least three disadvantages. In Islamic law, on the other hand, no distinction is maintained between various types of *waqf* whether religious, charitable or family of which all have same legal incidents and implications in matters of legal validity.

#### *4.2 Effect of colonial onslaught on family waqf*

After the colonization of Muslim countries, the colonial powers started transplanting Western legal concepts and rules in the Muslim countries. What survived was Muslim Personal Law dealing with personal matters, including *waqf*. Even though family *waqf* was not being liked by the British colonists, yet on political considerations these *awqāf* were left un-touched. However, what the British Crown could not do, the English judiciary did. In 1894, the Privy Council, in its notorious judgment in Abul Fata Mohameds’ Case,<sup>20</sup> held that family *waqf* (*waqf al alaulad*) was void. The reasoning of the judgment was based on the English notion of charity and the concept of non-charitable trust in favour of children and other relatives.

Nearly the same reasoning which English judiciary used in invalidating family *waqf* became, later on, the rationale behind the abolition of such *awqāf* in Egypt, Syria, Libya, Tunisia and UAE. It may be argued that probably what encouraged these countries was the abolition of *awqāf* by Turkish Government in 1926. That however, was not aimed at *awqāf* alone but was part of the wholesale Westernization of Turkish laws. This was not the case in Egypt and other countries, which based their abolition of family *awqāf* on account of certain alleged defects, including that it affected national economy.

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<sup>20</sup> (1894) 22 I.A. 76. The reasoning of the Privy Council against family *waqf* in *Abul Fata Mohamad Ishak v. Rusomoy Dhur Chowdry* decided in 1894 and reported in 22<sup>nd</sup> volume of Indian Appeals, page 76 ff (on appeal from India – SLR 22 Cal. 619) was that such a *waqf* in devoid of any public benefit is essentially for the benefit of family members of the *waqif* (settlor). It is the same reasoning, which is given against the charitable nature of an English private trust. The judges of the Privy Council completely ignored the fact that the concept of charity in Islamic law is far broader than the corresponding concept in English Law. Yet they applied the English concept of charity to judge the validity of the Islamic concept of charity.

In countries, like India, Pakistan, Bangladesh, Myanmar, Malaysia, Indonesia, Sri Lanka and Singapore, so also in Kenya, South Africa, etc., though family *waqf* is still allowed yet these are subjected to the same disqualifications with which, under English common law, private trusts suffer.

The hostility towards family *awqāf*, which started during the colonial rule, still manifests itself in the attitude of indifference maintained in the above-mentioned countries. These *awqāf* are not supervised like other *awqāf*. Lack of supervision is a sure recipe to breed corruption and malversation, which are taking these *awqāf* towards a slow but sure death.

#### *4.3 Position in Malaysia*

Here, it may not be out of place to mention in the passing, a peculiar restriction imposed on the creation of family *waqf* (called *waqf khas*) in Malaysia. In 10 out of 13 States and Federal Territories *waqf* laws in Malaysia, a *waqf khas* (family *waqf*) is regarded null and void unless the Sultan of the State, and in case of Federal Territories, the Sultan of Malaysia, has expressly sanctioned and validated this creation.

The requirement of seeking Sultan's permission for creating a family *waqf* is a restriction, which finds no support either in Islamic law or Islamic history. This is not the case while creating other types of *waqf*. Which amounts to an admission of the fact that the State does not like the free creation of family *awqāf* in Malaysia. Probably, the Johore State's *Waqf* Prohibition Enactment of 1911 (which was repealed only in 1978)<sup>21</sup> that imposed a blanket prohibition on the creation of family *waqf*, is still haunting the governments of these nine States and the Federal Territories from its grave.

With the establishment of Sharī'ah Courts in Malaysia, *waqf* disputes, including disputes relating to family *waqf*, are to be referred to these courts and not Civil Courts as was the case earlier up to 1988. Look at the attitude of the High Court of Terengganu (in Malaysia) in a judgment given in 1970:

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<sup>21</sup> Johore Wakaf Prohibition Enactment 1911 placed a statutory prohibition on the creation of family *waqf* in the State of Johore. It was probably aimed to appease the British Government, which at that time was facing a lot of agitation in India against Privy Council's decision in *Abul Fata*'s case.

... on the authority of the Privy Council's decision (in Abu Fata Mohamed's Case) we are bound to hold that the family *waqf* was void, notwithstanding the Mufti's ruling to the contrary. This embarrassing situation can only be set right by legislation, as has been done in India and other places.<sup>22</sup>

As the family *waqf* created by the Royal family in this case consisted of land worth RM150 million, the State Government went ahead and passed the *Waqf Validating Enactment 1972*, Terengganu (No.10 of 1972).<sup>23</sup> This was a local Act of a State hence legally Privy council's verdict in Abul Fata's case disallowing family *waqf* was still considered binding in others States in line with the doctrine of precedent of Common law, whereby the Civil Courts considered themselves bound by the Privy Council's ruling against family *waqf*. Now, fortunately, Sharī'ah Courts, which assumed jurisdiction on *waqf* since 1988 Constitutional amendment, are not legally bound by the Privy Council's judgment, as the doctrine of judicial precedent is not recognized in Islamic law. However, the court cannot over-ride the other statutory restriction of Sultan's permission.

#### 4.4 Need of a fresh look

One of the justifications given by those opposing family *waqf* is the ever-increasing fragmentation of usufruct among the ever-increasing number of beneficiaries, so that with the passage of time, the quantum of each share is reduced to insignificance. Those orientalists who opposed the Islamic law of inheritance gave the same reasoning in their support. But the experience of 1400 years shows no adverse effect of this fragmentation. In case of family *waqf* also, those beneficiaries who may be well off may like to abdicate in favour of those who need more help. Moreover, benefit coming from a family *waqf* might not be the sole source of income of a beneficiary. So the inadequacy or adequacy of benefit becomes irrelevant.

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<sup>22</sup> Judge Suffian of the Terengganu High Court held in *Tengku Mariam bt. Tengku Sri Wa Raja v Commissioner for Religious Affairs*, Terengganu, [1969] 1 *Malaya Law Journal*, page 110 that: "... The *waqf* here was essentially for the benefit of Tengku Chik's family and that the gifts to charity was illusory and that on the authority of the Privy Council decisions cited to us the learned Judge was bound and we are bound to hold that the *waqf* was therefore void, notwithstanding the Mufti's ruling to the contrary. This embarrassing situation can only be set right by legislation, as has been done in India and other places" (at 8).

<sup>23</sup> The Terengganu State enacted the Islamic *Waqf Validating Enactment 1972*, recognizing the validity of family *awqāf*. However, it is to be noted that it is not a federal legislation and applies only in Terengganu State alone.

It might be argued that once the creation of family *waqf* is freely allowed, there will be sudden jump in their number, immobilizing too much of available land, thereby affecting national economy.<sup>24</sup> However, this appears to be a mere apprehension. If we look at countries which never imposed any restriction on the creation of a *waqf*, including family *waqf*, the number of *awqāf* is not very high. In India, for example, for a Muslim population of 155 million, we have just 332,000 *awqāf*, and majority of these are mosques and graveyards, created over nearly 800 years.

Countries, which abolished family *awqāf* never, conducted any academic research or field-study to prove the un-desirability of such *awqāf*. If their perpetuity character was offending, it was understandable that their life-span was reduced, but then if these were totally abolished, one would like to know why. The abolition cannot be based on *ijtihād*, because it cannot over-ride favorable policy declarations in the Qur’ān, ḥadīth and *ijmā‘* of giving to one’s Kith and Kin. The abolition is reflective of Western thinking on charity. West regards *waqf* as Dead Hand (mortmain), a handicap to the natural growth and development of a healthy economy. The approval of perpetual charitable trusts is however conveniently ignored – a case of double standards indeed.

It was once said by a modernist Muslim, criticizing family *waqf*, that:

When a father provides a certain income for his children and descendants, the impulse to seek education and the initiative to improve their lot gradually decrease. Charitable aid often keep people away from industry, and lethargy breeds degeneration ... it can by no means be said that the institution of *waqf* as a whole has been an unmixed blessing to the community.<sup>25</sup>

<sup>24</sup> This view was expressed by Daniel Latifi, a Bombay based progressive Lawyer, who appears unmindful of the fact that due to imposition of various direct taxes on family *waqf*, it is not economically a good idea in India to create one. There is hardly any evidence that new family *awqāf* are now being created. Daniel Latifi, “Law of Family *waqf*: Need for Reconsideration,” in Tahir Mahmood (ed.), *Islamic Law in Modern India*, (Tripathi, Bombay, 1973), pp.229-30.

Moreover, in the wake of 1950 law reform legislation in India, lands belonging to family *awqāf* which were tilled by tenants, were given away to tenants. The beneficiaries were given nominal compensation by the government and that was the end of such *awqāf*. As a majority of family *awqāf* were comprised of agricultural lands tilled by tenants, hence a majority of these perished. For details, see Syed Khalid Rashid, *Waqf Administration in India*, (Vikas Publishers, Delhi, 1978), pp. 129-134.

<sup>25</sup> This criticism was levelled by Asaf Ali Asghar Fyze, in his book *Outlines of Muhammadan Law*, 3<sup>rd</sup> ed. (Oxford University Press, 1964), pp. 266-67.

The same criticism may, however, also be leveled against a charitable English trust. By guaranteeing a definite benefit coming the way of beneficiaries in a charitable trust, these beneficiaries are kept away from industry.

In a family *waqf* it may only be rare to find that the benefit reserved for a beneficiary may be sufficient for all of his needs. Thus, he has to work to make a decent living. The assumption that family *waqf* benefits make every beneficiary affluent and thus lethargic is simply not correct.

There is a need to undertake a field study to ascertain the problems which family *awqāf* are facing or faced in the past, the validity of the criticisms made against them, the opinion of the Muslim scholars and the public, to ascertain the nature of the problems, in order to search for appropriate solutions.

If perpetual tying up of property is their problem, or fragmentation of income as a result of distributing it among ever increasing number of beneficiaries, then reducing its life span to, say, 30 years may be the solution, not abolition. The *waqif* is mainly concerned with the welfare of his immediate descendants and relatives. During the reduced life span of such *waqf*, the beneficiaries will have enough time to establish themselves assisted with *waqf* income. Knowing the fact that the benefit coming their way is only for a limited period, they may not become addicted to any ‘indecent’ expectations.

This is an ad hoc suggestion, which should not be taken as an acceptance of any particular criticism against family *waqf*, which may only be confirmed through field study.

It needs to be added by way of clarification that family *awqāf* should be exempted from direct taxes and should be brought under the supervision of the *waqf* supervisory body. Their downgraded status, under the influence of English law of trust, must be upgraded. All benefits presently enjoyed by charitable *waqf* should be extended to family *waqf* also, as in Islamic law, there is no distinction between the two status-wise.

## **5. How to Avoid Wastage of Waqf Income on Litigation**

### **5.1 Waqf Tribunals: A possible solution**

Disputes invariably arise in all human activities, including *waqf* administration.

Generally these are adjudicated through litigation in civil courts. The number of such cases varies from country to country but it is generally very high, particularly in South Asian countries like India, Pakistan and Bangladesh. It is a matter of concern to find that a large amount of money is being wasted on litigation. The money could have been used for some better objects.

In countries having Sharī‘ah courts, there is no need to establish any alternative judicial body, as these courts are neither as costly, slow nor technical as civil courts. Therefore there is no need of any alternative body in these countries. However, if the jurisdiction of the Sharī‘ah Court does not extend to non-Muslims who happen to be involved in a *waqf* dispute, two options would be available:

- i) The court which has jurisdiction over non-Muslims will adjudicate this dispute; or
- ii) To establish *Waqf* Tribunals to adjudicate.

In India, *Waqf* Tribunals to try such cases have been established under the *Waqf* Act 1995.<sup>26</sup> Initially the idea of Tribunals was proposed in my doctoral thesis approved in 1971 and the importance of establishing such Tribunals.<sup>27</sup> In Sri Lanka, provisions relating to *Waqf* Tribunal were inserted in the relevant *waqf* law through a 1982 amendment. In no other country there is a provision for such a Tribunal.<sup>28</sup>

## *5.2 Establishment and powers of Waqf Tribunals*

Any country wishing to establish *Waqf* Tribunals need to legislate laws regarding their powers, jurisdiction and establishment.

<sup>26</sup> Section 83 of the *Waqf* Act 1955 deals with *Waqf* Tribunals. It is a very lengthy section and hence only sub section 1 (out of 9 sub-sections) is given here:

83(1). “The State Government shall by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or any other matter relating to a *waqf* or *waqf* property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals”.

<sup>27</sup> The title of my PhD thesis in Law was: “A Socio-Legal Study of *Waqf* Administration in India”, approved by the Aligarh Muslim University in 1971. It was the first PhD in Islamic Law awarded by the University. An abridged version of this thesis was published under the title *Waqf Administration in India*, (Vikas Publisher, Delhi, 1978).

<sup>28</sup> Sections 9 D, E, F, G, and H of the (Sri Lanka) Muslim Mosques and Charitable Trusts or *Waqfs* Act, 51 of 1956 (as amended by Act No. 21 of 1962 and Act No. 33 of 1982), provides for the establishment of *Waqf* Tribunals, their establishment, powers and functioning.

a) *Establishment*

- i. The State may establish as many *Waqf* Tribunals as required by notification in the official gazette.
- ii. Every Tribunal shall consist of one Judge of the status of not below the rank of a District Judge, having knowledge of *waqf* laws, and should be a Muslim

b) *Powers*

- i) The Tribunal shall be deemed to be of the status of a civil court and shall have the same powers as exercised by civil courts, while trying a case or executing a decree or order.

In India, section 83(8) of the *Waqf* Act, 1995<sup>29</sup> does not allow *Waqf* Tribunal to execute their decisions, for which they need the help of the civil court. It is odd to confer on the *Waqf* Tribunal the status of a civil court and then to deny it the power to execute its decision.

- ii) The Tribunal shall follow its own procedure and rules made for it by the government, and not the procedure followed by the civil courts.
- iii) The Tribunal's decision shall be final and binding on the parties and shall have the force of a decision made by a civil court.
- iv) The Tribunal shall have power to execute its decision or order.
- v) No appeal shall lie against any decision or order, whether interim or otherwise, of the Tribunal.

Provided that the High Court may, on the application of the aggrieved party call and examine the records relating to the dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such order as it may think fit This provision is necessary because review power is generally exercised by the High Court, in cases of this type where no appeal is allowed. It may also be in the interest of Tribunal. The realization that its decision is liable to be reviewed by the High Court will make it more responsible and careful in its determinations.

- vi) The Tribunal shall hold its proceedings as expeditiously as possible and

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<sup>29</sup> Section 83(8) of the *Waqf* Act 1995 of India provides:

"The execution of any decision of the Tribunal shall be made by the Civil Court to which such decision should be sent for execution in accordance with the provisions of the Code of Civil Procedure 1908.

- shall give its decision in writing and furnish a copy to each of the parties.
- vii) The Tribunal shall have power to grant interlocutory injunctions to meet emergent needs of the parties.

c) *Jurisdiction*

No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or matter relating to any *waqf*, *waqf* property or other matter which is required by or under the *Waqf Act* to be determined by the Tribunal.

*5.3 A 'Circuit Waqf Tribunal'*

A problem which *mutawallis* or persons involved in a *waqf* dispute generally face is the necessity to travel long distances to come to the place where the *Waqf* Tribunal is based. This naturally involves expenditure of time and money. In case of *mutawallis* this money comes out of the *Waqf* fund itself. It may be advisable, therefore, to make these as Circuit Tribunals, required to make regular periodic visits to the various areas within their jurisdiction according to a well-advertised schedule. In a situation where a party needs to see the Tribunal urgently, it may visit it where it might be at that moment.

*5.4 ADR to encourage out-of-Court settlement*

In the contemporary word, Alternative Dispute Resolution (ADR) has become very popular. ADR encourages parties to Negotiate, Mediate, Arbitrate, or put their dispute for Expert Determination, etc., in order to settle their dispute without filing a lawsuit. Many of the *waqf* disputes are of petty nature which parties may settle without going to Tribunal. However, in serious matters involving ownership of *waqf* property, ADR mode of resolution might not be appropriate and a decision of the Tribunal would be necessary. If parties have already come to the Tribunal, which considers that the dispute in its nature is referable to an appropriate ADR process, it may ask the parties to do so. If it results into compromise, then the Tribunal may issue a decree in terms of the settlement agreement, but where no compromise could be reached, the Tribunal my start its proceedings.

It is to be noted that where the judge of the Tribunal suggests to the parties to use one of the ADR processes, under no circumstances should he volunteer to act as Mediator, Arbitrator, etc., because if no compromise is reached, he could no more act as Judge of the Tribunal to avoid accusations of bias or partiality. It is presumed that during the course of mediation, etc., the judge must have formed a

liking or disliking in favour of one or against the other party, and hence there is likelihood of this like or dislike to be reflected in his judgment.

In the *Waqf* Act there should be a provision stating clearly that the parties to a *waqf* dispute are encouraged to use any of the ADR processes to reach a settlement. If they wish to give their settlement agreement the status of a judicial decree for easy enforcement, they may register the agreement in the Tribunal, which, after examining the legality and propriety of the agreement, may issue the decree. As no appeal lies against the decision of a Tribunal, hence once it is registered, the settlement agreement would become final and binding on both the parties.

## **6. Recovery of Encroached *Waqf* Properties Through Administrative Action, Not Litigation**

Encroachment on *waqf* properties is a very serious problem everywhere, targeting valuable properties, which are located strategically in posh areas or commercial centres. Legal action is the only way to evict these encroachers. And this is the problem. In a country, there might be a very large number of such cases. It becomes a real problem to file so many lawsuits involving lot of expenditure, not only of money but time and energy. With their limited resources, it becomes an impossible proposition for *waqf* administrators to do so. Hence the need to find an alternative to litigation becomes a pressing need.

In Pakistan, the *Waqf* Ordinance 1979 of all the four Provinces provides that the Administrator of *Waqf*, who is a government appointed officer of fairly high rank, may summarily evict an encroacher.<sup>30</sup> The evicted person may prefer an appeal to the Chief Administrator, whose decision shall be final. The evicted would be given reasonable opportunity of being heard and prove his case. This provision is the quickest mode of eviction I know of.

In India, the officer-in-charge of *waqf* administration in a State is not being given the power to evict an encroacher by its own order. Section 54(4) of the *Waqf* Act 1995, enables an encroacher to file a suit in the *Waqf* Tribunal against the eviction order. The decision of the Tribunal is treated as final and no appeal lies against it.

<sup>30</sup> Section 8 in the Baluchistan, N.W.F.P and Sind *Waqf* Properties Ordinance 1979 and section 7 of Punjab Ord. are similar in wordings and provide:

“If any person is in occupation of, or enters upon, or is using any immovable *waqf* property to the occupation or use of which, he is not entitled ... after being given a reasonable opportunity of showing cause against the action proposed to be taken, be summarily evicted by the Administrator with the use of such force as may be necessary....”

Now, before action has started in the Tribunal or when proceedings before the Tribunal are in progress or where no application has been made to the Tribunal, the officer-in-charge of *waqf* may apply to the Sub-Divisional Magistrate for evicting the encroacher. And he by making order will evict the encroacher. An appeal against his order will lie to the Tribunal, and whose decision will over-ride any other order.

The problem with Pakistan model is the absence of any judicial review of an essentially administrative action, which is something so emphasized upon in Administrative Law. The Chief Administrator, to whom an appeal against the order passed by the Administrator goes, cannot be above accusation of bias. After all, the Administrator, who naturally would like to uphold the order of the officer working directly under him. So, if finality is attached with the order of the Chief Administrator, the requirement of judicial review is not fulfilled.

In India, on the other hand, the failure to provide the officer-in-charge of *waqf* any power to issue eviction order adds one more step to be taken in this process that is, requesting the Sub-Divisional Magistrate to issue eviction order.

#### *6.1 Model legal provisions for recovery*

Keeping the merits and demerits of these two models, it is possible to design a new model. Any country wishing to enact a Law relating to eviction of the encroachers may find the following suggested provisions useful:

- i) The officer in-charge of *waqf* should be given power to issue eviction order on the encroacher of a *waqf* property. This may be specified in the *Waqf* Act itself, so also other details as given in the following paras:
- ii) Where the *waqf* officer is of the opinion that any person is in unauthorized occupation of a *waqf* property, he may issue a notice to such a person to show cause why he should not be evicted from this property.
  - a) If the *waqf* officer is not satisfied with the explanation given by the person, he may make an order of eviction.
  - b) If the person refuses or fails to comply with the orders, within the time specified in the order, the *waqf* officer shall evict that person, using such force as may be necessary.
- iii) The order passed by the *waqf* officer shall be final if no appeal is made against it to the Tribunal or the Tribunal rejects it. The decision of the

Tribunal shall be final.

- iv) The order passed by the *waqf* officer shall not be questioned in any original suit and no injunction shall be granted by any court against it.
- v) If the evicted encroacher reoccupies the same *waqf* property from which he has been evicted, he should be punished with imprisonment of a specified period and/or a fine of a specified amount.
- vi) No court shall admit a case relating to the eviction of an encroacher from a *waqf* property, or issue an interlocutory injunction prohibiting such eviction, except as provided in the *Waqf Act*.

The involvement of *Waqf* Tribunal in the above suggested model of is necessary to make sure of the judicial review of administrative action without which the legality of action would remain doubtful. Any other model which places its reliance on legal action alone does not deserve consideration.

## **7. Development of *Waqf* Properties Revisited**

Development of *awqāf* is the key to that treasure trove which our ancestors have left behind in the form of numerous *awqāf*, which have now acquired economic potential beyond imagination, thanks to urbanization and a jump in property valuation and rentals.

The average rate of return on investments made in developing *waqf* properties came to a minimum of 20-25%. Which means whatever has been invested in developing *awqāf* may be recouped within 4-5 years. It is simply fantastic and worth serious attention.

In centuries past, there was probably not much of a need to boost *waqf* income through development to help the needy. *Zakat*, *bayt al māl* and many generous persons were around to take care of the have-nots in the society. Probably this is why we do not find in any description of *mutawalli*'s duties any mention of 'development'. The emphasis which is found is on the proper upkeep of *waqf* property and ensuring collection and distribution of revenue among beneficiaries.

Development came into focus when, as a result of colonialism, the system of *zakat* and *bayt al māl* were disrupted and the number of affluent Muslims was drastically reduced. And this situation is still continuing in a majority of countries. Enhancement of the income of existing *awqāf* has thus become a viable source to generate funds to meet the cost of social welfare schemes among Muslims.

What development of *awqāf* could achieve is astonishing. In India for example, 100 *waqf* properties developed at a total cost of Rs.124 million increased their income from a total of Rs.2.5 million to Rs 47.626 million, an increase of nearly 1900%.<sup>31</sup> Fantastic. Such phenomenal jumps in income are possible. Only sky is the limit in *waqf* development (see Appendix for detailed figures of increase in income after development of *waqf* properties in ten states in India).

Assuming that there are at least one million *waqf* properties in the world, and majority of these are mosques, graveyards, dargahs, etc, which have either no economic potential or very little, followed by *awqāf* which are for specific objects, only about 10% are for general charitable purposes which are worth developing, so their enhanced income may be used for social welfare schemes without any legal hindrances.

The 10% of one million means 100,000 *awqāf* are worth developing. Now, against this number, if we count how many *awqāf* have been developed during the last 25 years, it comes to an insignificant figure. For instance, in India, during the last 36 years, only 75 major and 71 minor *waqf* properties were developed.<sup>32</sup> The size of the properties is very small because the amount available for financing these projects is very small. The number of properties sponsored by the *Awqāf* Properties Investment Fund of IDB was 8 during 2002-03 and 7 during 2009 and in 2010 it became 5.<sup>33</sup> World *Waqt* Foundation could have lent a helping hand, but the fact that it has not brought out its Annual Report since 2004 speaks for itself about its present ‘inactive’ status, for no apparent reason.<sup>34</sup>

There is no news of any worth-mentioning *waqf* development project elsewhere except Malaysia where during the last three years around 20 major and 70 minor projects have been completed.<sup>35</sup> Even though the figures for the total number of

<sup>31</sup> Syed Khalid Rashid, “Islamic Financial Investments for the Development of Waqf Properties: With Special Reference to India”, in Syed Khalid Rashid (ed.), *Protection, Maintenance and Development of Awqāf in India*, (Institute of Objective Studies, New Delhi, 2005), pp. 61-63, cited in *Social, Economic and Educational Status of the Muslim Community in India: A Report*, (Prime Minister’s High Level Committee, Government of India, New Delhi, November 2006), pp. 217-236.

<sup>32</sup> The developments of these properties were financed by the Central *Waqf* Council, New Delhi with the help of ad hoc grants from the Government of India amounting to a meagre sum of about US\$250,000 per year. <http://centralWaqfcouncil.org> accessed on 28.5.2011.

<sup>33</sup> IDB Annual Reports of 2002-3, 2009 and APIF Annual Report 2010.

<sup>34</sup> Information collected from WWF office in June, 2011.

<sup>35</sup> Information gathered from JAWHAR, Putrajaya, Malaysia, March, 2011.

*waqf* properties developed throughout the world are not available, yet on the basis of scanty information available, it is not difficult to see that the number is pretty small. At this rate a few centuries may be needed before finishing the development of 100,000 properties, which calls for the adoption of a fresh strategy for this purpose.

### 7.1 Need of change in strategy

The question to be answered here are: Who will formulate the new strategy and what would it be? As an eminent international organization that is respected everywhere, IRTI and IDB may play an important role in designing a new strategy for *waqf* development. IDB enjoys the backing of not only the OIC countries but other countries also, both in the East and West. It may convince everyone the importance of development of *awqāf* for the socio-economic empowerment of the downtrodden. If a country so likes, it may provide funds on the basis of long-term loan, which may be paid off with the income of the developed *awqāf*.

Similarly, it may not be difficult for IDB to convince other Islamic banks and conventional banks with Islamic banking windows, the urgency and importance of providing funds for *waqf* development. It is also a safe investment, need to be told.

A global target of 150 *awqāf* per year may be set, requiring financing in the range of US\$ 2-3 billion. Countries may be requested to jointly undertake with IDB feasibility studies of the economic potential of *waqf* properties so as to draw a priority list for purposes of undertaking development work.

There is a need of impressing upon the Islamic governments to revive the noble tradition of creating State *awqāf*. I am of the view that a *waqf* created by the head of a state (*irsad*) is a *waqf* in every sense, notwithstanding the fact that the ownership of the land being made *waqf* does not vest in the king personally but in bait al- mal .A little thought about the concept of ownership in Islam will clarify this point. According to the Qur'ān, the ownership of everything on this earth and in the whole of universe belongs to ALLAH, who has given to man the trusteeship of these things. In common parlance, we call this trusteeship as 'ownership'. When a person or a king is being given this trusteeship, he becomes the 'owner' of the thing he holds as a trustee. Like a common man, when a king makes *waqf* of a thing he holds (or owns), a valid *waqf* comes into being, which has all the attributes, which a *waqf* carries. Thus an *irsad* which is also known as *al rizaq al ihbasiyah*, is as valid a *waqf* as any other *waqf*, notwithstanding the fact that it is created by a king or head of a state of the land belonging to the state . (see

Muhammad Afifi (1991), *Al-Awqāf wa'l Hayat al-Iqtisadiyah fi Misr fil-Asra al-Uthmani*, (al-Hayat al Nisriyah al-Ammah li'l Kitab) p . 18, cited by Abdul Azim Islahi , A study of Muslim Economic Thought in the 11th AH / 17th CE Century,(Islamic Economics Research Centre, King Abdul Aziz University , Jeddah , Saudi Arabia , 1429 (2008), p. 58. The *Waqf* statues in India, Pakistan and Bangladesh expressly include 'grants' made by any one as *waqf* or to an existing *waqf*, within the definition of *waqf*. There are grants made by Hindu rajas of lands to be used as Muslim graveyards or in favour of dargahs.

During the last three years (2008-2010), the Government of Malaysia spent RM 258.607 million in developing 20 major *awqāf* consisting of 5 hotels, 2 orphanages, one shelter for deserted women, 3 commercial complexes, one school, and 5 infrastructural projects. The money spent on these projects is treated as grants, not loans. Another RM 21.1 million<sup>36</sup> was spent on the construction of 45 *Waqf* bazaars (consisting of 203 shops) in 10 different States. These bazaars have been built on *Waqf* lands adjacent to mosques. The 203 shops are only those completed up to 7th Feb 2011. Some more shops are still under construction.

The importance and implications of *Waqf* development are generally not fully understood by the general public or even the governments. A *Waqf* Development Unit specially created in IDB may co-ordinate all the work connected with development, including public & government enlightenment campaigns, talks & conferences, etc., particularly among IDB member countries.

## *7.2 Cash Waqf & Waqf Certificates may raise funds & ensure public participation in waqf development*

In the present environment where Islamic banking has made interest-free investments possible, cash *waqf* has emerged as a dependable source for financing *waqf* development projects. Lump sum dedication of cash or small contributions from a large number of contributors to a common pool of *waqf* fund may easily become a development fund.

In Malaysia, for example, Maybank Islamic Bhd. (Malaysian Bank Islamic) in

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<sup>36</sup> These data have been personally collected from the office of JAWHAR (Dept. of *Waqf*, Haj & Zakat, Govt. of Malaysia), March, 2011.

collaboration with Yayasan Waqf Malaysia (*Waqf* Foundation of Malaysia, which is a government constituted body for looking after and undertaking *waqf* development in the country), launched in July, 2010 a deposit scheme that allows the Maybank account holders to make cash *waqf* contributors to a common pool which is also used for the development of *waqf* properties. As Maybank is the country's biggest bank with 380 branches and assets exceeding RM 40 billion, it is hoped that the scheme would be a big success.

In Singapore, the 175,000 Muslim employees were asked by the Islamic Religious Council of Singapore (MUIS) to allow deduction of certain amount from their salaries to raise a mosque building fund. The Central Provident Fund (CPF) collects the contributions as agent. During 2010 it collected S \$ 6 million.<sup>37</sup>

Through such schemes of small contributions, a common man on the street, who has no means to create a *waqf* of any substance, may derive satisfaction through his participation in such big *waqf* development projects. Allowing creation of *awqāf* or developing the existing ones through such pooling of small contributions is a sure way of reviving public interest in *waqf*.

All the stakeholders in *waqf* development may popularize cash *waqf* & *waqf* certificates. Government may grant tax exemption in countries where income tax is levied.

The *Awqāf* Properties Investment Fund (APIF) of the Islamic Development Bank may enter into collaboration with Islamic banks to jointly finance development of *waqf* properties, particularly in countries where Islamic banks do not exist , like India , Thailand , Sri Lanka , etc. Such collaboration will ensure availability of large amounts to fund to finance numerous *waqf* development schemes.

Early establishment of the *Awqāf* Development Bank under the auspices of the APIF will also greatly facilitate development of *awqāf*.

APIF may also utilize *sukūk* for raising funds needed for *waqf* development .The successful use of *sukūk* shows that very huge amounts may be raised through this Islamic financial instrument.

APIF needs to have a large staff to plan, supervise and execute a large number

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<sup>37</sup> Data about Malaysia & Singapore are personally collected by the author from respective offices.

of developmental plans, in the range of at least 20 – 25 *waqf* properties per year. Anything less than this would be meaningless in the context of thousands of *waqf* properties waiting to be developed.

### 7.3 Waqf development as a statutory requirement

It is advisable to make development compulsory for the person who may be managing a *waqf* property which is worth developing. If the *waqf* authority in a country finds that nothing has been done to develop the property even after giving notice to the person concerned, then the authority itself may assume this responsibility, or where it lacks financial resources to do so, it may delegate this work to a party which is so capable, usually an Islamic bank willing to take up this work as a business venture. Once the fund invested in the development has been fully recouped with some profit margin, the developed *waqf* property would be returned to the *mutawalli*.

To the best of my knowledge the (Indian) *Waqf* Act 1995 is the only *waqf* enactment which carries provisions regarding mandatory duty to develop a *waqf* property which is worth developing.

Section 32 (4) of the *Waqf* Act 1995 provides that where the *Waqf* Board finds that a *waqf* offers a feasible potential for development, it may serve on the *mutawalli* a notice of at least 60 days to convey his decision about his willingness to execute such development.

In case of failure the Board may, with prior approval of the government, take over property, develop it and retain it along with its income till the amount invested in its development together with some profit is not recouped. An amount as provided in the Act is paid to the *mutawalli* during all this period. After full recovery of invested amount the property should be handed back to the *mutawalli*. It is a useful provision, which may be adopted by any country after suitable adjustment to meet any local need.

The advantage of making development of *waqf* statutorily mandatory is to highlight the importance and need of development. In India no *waqf* board could ever take advantage of the provision because of their extremely poor financial condition. In addition, there is no Islamic banking or finance available in India. On a smaller scale, cooperative schemes, which exist, are not capable of financing big development projects.

A lesson worth learning is that in development of *waqf* what we need today is a proactive policy. Instead of waiting for an applicant to seek fund for the

development, the concerned body dealing with *waqf* should itself identify the property and if necessary take it over to develop. Only then some result may be produced. Presently, a majority of *mutawallis* are not interested in development because of its demands on their time and energy. The secretary of the Central *Waqf* Council of India admits that:

With some 300,000 *waqf* properties in India, the development of a 100 or so (*awqāf*) is not of much significance. However, *the problem is ... the lack of zeal on the part of the waqf institutions to undertake such projects.*<sup>38</sup>

## **8. Conclusion**

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

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

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

State control of *waqf* management is another issue, which calls for a serious study. Right now in the midst of demands for democratization, its relevance cannot be denied. People's participation in *waqf* administration is needed to bring transparency, accountability and efficiency. Bringing to an end the encroachment on *waqf* properties through administrative action but without ignoring the due

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<sup>38</sup> Mohammad Riznul Haque, "Waqf Experience in India", in Syed Khalid Rashid (ed.), *Awqāf Experiences in South Asia*, (Institute of Objective Studies, New Delhi, 2002), pp. 132-140.

process in case of those so evicted tackles a problem, which is international in character. The available course of action through litigation is self-defeating. Similarly, litigation and its excessive cost have become a big drain on *waqf* income. The alternative in the form of *waqf* tribunals may bring a big improvement. So also the introduction of ADR processes (Negotiation, Mediation, Arbitration, etc.) in settling small – time disputes in *waqf* matters.

Law and administrative rules, however, cannot cure all the ills. A clever and dishonest person may find one or other means to evade laws and rules. This is a problem, which is seriously afflicting *waqf* administration in India. "The plundering hands of the non-God fearing *mutawallis*" is referred to in a recent report.<sup>39</sup> It has now become a big problem everywhere and for which, unfortunately, there is no short – cut solution. Such attributes like honesty, integrity and trustworthiness are attributes, which take time to be infused. But these are needed in a *waqf* administrator, who is holding an office of trust. Everyone connected with *waqf* should therefore be reminded of the religious dimension of his responsibilities and duties. Moral and ethical education should be made part of continuing education and training of *waqf* administrators. With efforts now being made and measures to be taken shortly may make *awqāf* once again a major instrument for Muslim social welfare and progress.

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

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<sup>39</sup> See, 9th Report of Joint Parliamentary Committee on *Waqf*, (Rajya Sabha Secretariat, New Delhi, Oct 2008). This report was submitted by the committee chaired by K. Rahman Khan, M.P and Dy Chairman, Rajya Sabha. The Report is full of instances where human failures lie at the bottom of mismanagement of *awqāf* in India.

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## APPENDIX

### ***Waqf Properties in India*** **Return to Investment for Development**

State	Loan given (Rs. in Lakhs) (Rs in '00,000)	Annual Return before Development (Rs. in '000)	Annual Return after Development (Rs. in '000)	Increase in Return after Development %
Kerala	49.8	96	877.7	814
Bihar	23.8	5.8	459	7,814
Karnataka	633.7	1,087.8	12,001	1,003
Maharashtra	41	9.7	590	5,988
Andhra Pradesh	58.7	30.7	1,160	3,681
Rajasthan	3.2	--	106	--
Madhya Pradesh	75.4	85	2,512	2,855
Tamil Nadu	191.4	720.3	3,747	420
Orissa	188.1	60.4	4,232	6,907
Punjab	17.6	--	666	--
INDIA	1,241.6	2,086	25,760.7	1,135

Source: *Report on the Social, Economic and Educational Conditions of Muslims in India*. (Sachar Committee Report), Government of India, 2006, p. 220.

Data: Syed Khalid Rashid (ed.), *Protection, Maintenance and Development of Awqāf in India (With Special Reference to Rajasthan)*, (Institute of Objective Studies, New Delhi, 2005, pp. 74-75). This book is cited in Sachar Committee Report and the above table was prepared with the help of data given in my book.