A Framework for Analysis of Islamic Endowment (Waqf) Laws

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Abstract

A careful analysis of the Shariah-legal framework for Islamic endowments (awqaf) across the globe reveals that the Shariah law as well as the national laws of awqaf are rooted in several considerations. Preservation of the endowed assets seems to be the overriding consideration, which has been interpreted variously as preservation of the assets in their physical form as well as preservation of benefits for the intended beneficiaries. While the former manifests in the form of stipulations such as, prohibition of sale, gift, mortgage that might lead to transfer of ownership of the waqf assets, the latter requires prudent management of the assets, efficiency in their investment as also, their development. Development may actually lead to expansion of the benefits for the intended beneficiaries and may at times require a degree of dilution in the stipulations concerning preservation. We find that actual laws and regulations as they are put in place over time often involve a tug-of-war and a trade-off between concerns about preservation of assets in physical form and concerns about development. We undertake an analysis of laws of Islamic endowments (awqaf) as they have evolved over time in India to present a framework. Needless to say, this framework may also be employed for analysis of laws in other jurisdictions.

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A Framework for Analysis of Islamic Endowment (Waqf)
Laws\textsuperscript{1}

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1. Introduction

Laws governing Islamic endowments or awqaf display wide variations. In most countries the laws currently in operation demonstrate a high degree of influence of their colonial past. In these countries, Islamic law was superseded by secular law\textsuperscript{3}, and the endowments remained dormant for long periods. It is also interesting to see the varying degrees to which reform in the laws have been attempted across countries. For example, though Malaysia is far ahead of others in putting into practice Islamic law in the field of banking, insurance and financial markets, it lags way behind others in operationalizing a progressive law for its awqaf sector. Indonesia stands far ahead of others in enacting a law that reflects state-of-the-art thinking among scholars in the field and that may perhaps serve as a model for other countries. India, Pakistan and Bangladesh, on the other hand, share the same origin in the form of laws enacted during the undivided British India, but have brought in reforms in varying degrees since achieving their independence. A high degree of commonality therefore, exists in their laws.\textsuperscript{4}

Malaysia comprises of 13 states and federal territories. In Selangor and Malacca, the provisions of law on Islamic endowments (awqaf) are provided under the Enactment of Wakaf (State of Selangor) 1999 and the Enactment of Wakaf (state of Malacca) 2005 and the other states that do not have such enactment are governed by the states’ administration of Islamic law. The specific provisions of the Administration of the Religion of Islam (Federal Territories) Act 1993 relating to Islamic endowments\textsuperscript{5} as contained in Part VI of the Act have striking similarities with those in Chapter 3 of the Administration of Muslim Law Act, Singapore 1999 that deals with Islamic endowments. India, Pakistan and Bangladesh share a common history of being part of the undivided India ruled by the British

\textsuperscript{1} This paper has been presented at the 5th SC-OCIS Roundtable on “Harnessing Waqf into a Bankable Social Financing and Investment Asset Class”, Securities Commission Malaysia, Kuala Lumpur held on 22-23 March 2013
\textsuperscript{2} Senior Economist Islamic Research and Training Institute, IDB and Yayasan Tun Ismail Mohamed Berdafter (YTI) Chair Professor of Islamic Finance, Islamic Sciences University Malaysia.
\textsuperscript{3} Islamic law was replaced by British law in all countries with the exception of Indonesia, which was colonized by the Dutch.
\textsuperscript{4} See \textit{Islamic Social Finance Report} (2014), Chapter 4, Islamic Research and Training Institute, Jeddah, Saudi Arabia, which provides a comparative analysis of regulations for the awqaf sector in six countries in South and South East Asia.
\textsuperscript{5} The term “wakaf” is used for Islamic endowments in South East Asian countries including Malaysia. The corresponding term in South Asia, the Middle East and the North Africa is “wakf”, “waqf” and “habs” respectively. We use the more acceptable term “waqf” and its plural “awqaf” in this paper.
till the year 1947 and therefore, show striking similarities in their waqf laws as well. There have been major changes since however. India, similar to its neighbors, has a long history of waqf laws in various versions. The most recent piece of comprehensive regulation is the Waqf Act, 1995 followed by the Waqf Reform Act, 2013. Among all countries, it is perhaps the most recent piece of legislation. In Pakistan the Provisional Waqf Ordinances 1979 in its four provinces provide the regulatory framework for Islamic endowments. In Bangladesh the Waqf’s Ordinance 1962 primarily governs the process of waqf creation and administration. In Indonesia, waqf is regulated by the Act of Republic of Indonesia No.41 on Waqf, 2004. In the GCC and MENA region, laws governing Islamic endowments have also evolved over time. Islamic endowments continue to be under the full control of the Ministry of Islamic/ Religious Affairs, since the time these were transferred from the voluntary sector (managed by private trustees under the supervision of the qadi/judiciary) into the domain of the governments as a response to alleged corrupt practices and usurpation by the former. State control has been of lesser degree in the Sub-Saharan Africa. Countries like Nigeria and Sudan have been giving increasing attention to reforming their waqf infrastructure and providing an enabling regulatory environment for such endowments to be managed and developed.

A careful analysis of the Shariah-legal framework for Islamic endowments across the globe reveals that the Shariah law as well as the national laws of awqaf are rooted in several considerations. Preservation of the endowed assets seems to be the overriding consideration, which has been interpreted variously as preservation of the assets in their physical form as well as preservation of benefits for the intended beneficiaries. While the former manifests in the form of stipulations such as, prohibition of sale, gift, mortgage that might lead to transfer of ownership of the waqf assets, the latter requires prudent management of the assets, efficiency in their investment as also, their development. Development may actually lead to expansion of the benefits for the intended beneficiaries and may at times require a degree of dilution in the stipulations concerning preservation.

In the subsequent section we present a framework for analysis of actual laws and regulations as they are put in place over time. We demonstrate that these have often involved a tug-of-war and a trade-off between concerns about preservation of assets in physical form and concerns about development. We undertake an analysis of laws of Islamic endowments (awqaf) as they have evolved over time in India to present the framework. Based on the analysis we argue that further reforms in the laws are required to facilitate new endowment creation and revival of the existing endowments.

2. Understanding the Regulatory Trajectory

In order to get a proper appreciation of the way the laws have evolved over time, we present the concept of Society’s objective function for laws-regulations-rules-policies. We hypothesize that the objective function for laws-regulations-rules-policies pertaining to Islamic endowments is determined largely by the Islamic scholars who happen to lead the Muslim masses in matters of religion. In a democratic set-up the laws simply seek to

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6 This is also the case with Zanjibar in Tanzania that was under British occupation.

catch-up with and capture the objective function over time. We hypothesize that given the large-scale encroachment of awqaf assets by rulers, the scholars’ and society’s primary objective has been the preservation of assets. However, over a period of time one may witness a shift in the objective function from (i) preservation of assets to (ii) preservation of benefits for the intended beneficiaries and vice versa. For instance, such a shift in the objective function is believed to have taken place as one finds an increasing discussion of the concepts of ibdal and istibdal in the scholarly domain. Arguably, this may occur in the face of an increasing realization that the objective function may need to be modified to (iii) sustained enhancement in benefits for the intended beneficiaries. This would also ensure the fulfillment of (i) and (ii).

Society’s objective function may be presented in a two dimensional space as Regulatory Efficiency Frontier (REF) with the two dimensions being preservation and development. Creation of an enabling legal-regulatory-policy environment would involve a search for laws of the following types:

1. Laws that enhance both preservation and development: a movement towards the Regulatory Efficiency Frontier
2. Laws that enhance preservation without adversely affecting development (a vertical move upwards)
3. Laws that enhance development without adversely affecting preservation (a horizontal move to the right)

Chart 1: Regulatory Efficiency Frontier

Search for efficiency should involve movement of the 1-2-3 types. Society will optimize efficiency gains at the Regulatory Efficiency Frontier (see chart 1). Any further change would mean enacting laws that ensure greater preservation only at the cost of development and vice versa: a movement along the Regulatory Efficiency Frontier (trade-offs between concerns of preservation and concerns about development). A shift in
objective function itself (relative importance attached to concerns about preservation and development) would mean a change in the shape of the REF.

3. Islamic Endowments (Awqaf) in India

The following facts for Indian awqaf sector provide the basis for developing the framework. The size of assets under Islamic endowments in India is huge. As estimated by the Report on Social, Economic and Educational Status of the Muslim Community of India (2006)\(^8\), there were more than 490,000 registered Islamic endowments. The total area under endowed land assets estimated at 600,000 acres; 80% are in rural India and remaining are in major cities. The book value of these assets is estimated at USD 1 billion (over half-century old); and market value is estimated at USD 20 billion. At the same time, the income on endowed assets is meagre, estimated annual income is USD 27 million or 2.7 percent on book value.

The Islamic endowments in India are characterized by massive encroachment by state agencies and corporate houses, raising serious concerns of preservation. Indeed historians assert that aggressive encroachment by state began after 1857 mutiny against the British raj. According to one estimate, quoted in the above report, currently in Delhi alone, over 30 percent of about 2000 waqf properties are illegally occupied by government agencies. Further, media reports on specific high profile cases have kept the concerns about preservation in the front burner. For example, in 2002 an orphanage land valued at about USD 24 million was sold for USD 3.4 million for construction of residence of India’s richest man that is currently valued at around USD 1 billion.\(^9\)

Studies have also reported excellent returns on properties post-development. Therefore, it is rightly believed that the potential and significance of development is huge. A study by Prof Dr Syed Khalid Rashid published by Institute of Objective Studies\(^10\) and quoted in the report mentioned above estimated the average return on investment of 20 percent post-development.

3.1. Waqf Laws in India

India has witnessed multiple enactments of waqf laws beginning the year 1810. The more recent enactments have been the Wakf Act 1954, Wakf Amendment Act 1984, Wakf Act, 1995 and now the Wakf Amendment Act 2013. A research study undertaken by Hasanuddin Ahmad and Ahmadullah Khan in 1995 for the Islamic Research and Training Institute (IRTI)

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\(^{8}\) Social, Economic and Educational Status of the Muslim Community of India: A Report, Prime Minister’s High Level Committee


provides the complete history of waqf laws in India starting from the Nineteenth Century. However, we restrict our scope of analysis to the post-independence India where the promulgation of any law was largely an outcome of democratic process and not imposed by the British rule on Indian Muslims. The first comprehensive legislation for waqf in independent India was the Waqf Act, 1954. However, this Act failed to address the concerns relating to awqaf and therefore, a Waqf Enquiry Committee was constituted by the government in 1969 comprising public representative. The Committee held nation-wide deliberations and made wide-ranging recommendations. This led to the passage of the Waqf (Ammendment) Act 1984. However, for a variety of reasons, this Act remained dormant. The Waqf Act (1995) is the first comprehensive piece of law that defined the rules of the game. The operation of the law however, continued to attract criticism and it was largely perceived to be ineffective in preserving the waqf assets. This led to further calls for reform. The Waqf Reform Bill (2010) was formulated after extensive consultations but could take the shape of Waqf Amendment Act (2013) only three years later. Below we focus on provisions of the Waqf Act (1995) and the Waqf Amendment Act (2013) and highlight how the changes that have taken place over time with respect to the infrastructure for waqf administration address the concerns about preservation and development.

3.2. Waqf Infrastructure

India has a huge waqf infrastructure under its Ministry of Minorities Affairs but with significant autonomy to waqf boards constituted at the provincial or state levels. The State Waqf Boards (SWBs) are established by the respective provincial or state governments in view of the provisions of section 13 & 14 of the Wafk Act, 1995. These work towards management, regulation and protection of the waqf properties by constituting local committees. Presently there are thirty waqf boards across the country. The Central Waqf Council is a statutory body established in 1964 by the Government of India under Wafk Act, 1954 (now a sub section the Wafk Act, 1995) for the purpose of advising it on matters pertaining to working of the State Waqf Boards and proper administration of the awqaf in the country.

The following chart presents the various components of the waqf related infrastructure in India. We move on to explore how changes in laws over time affecting them have been governed by concerns about preservation and development.

3.2.1. Central Waqf Council

Section 9-12 of the Wafk Act (1995) provided for the creation and functions of the CWC as below:

- To advise the Government of India on matters concerning the working of Waqf Boards and the due administration of Awqaf in the country
- To undertake development of waqf assets to ensure preservation

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11 See Hasanuddin Ahmad and Ahmadullah Khan (1995), *Strategies to Develop Waqf Administration in India*, Islamic Research and Training Institute, Jeddah, Saudi Arabia
3.2.2. Central Waqf Council

Section 9-12 of the Wakf Act (1995) provided for the creation and functions of the CWC as below:

- To advise the Government of India on matters concerning the working of Waqf Boards and the due administration of Awqaf in the country
- To undertake development of waqf assets to ensure preservation

These provisions were clearly governed by a need to ensure physical preservation of endowed assets (movement of type 2 towards REF). The Act asserted that the endowed assets need to be developed if they are to be preserved. Else, these assets would be physically dilapidated to an extent that they would cease to provide any benefits. Thus, the focus was on maintenance of the assets so that benefits continue to flow out and not on development of the assets so that benefits may be enhanced. The law at this stage provided very little that could lead to large-scale development of the endowed assets.

The Waqf Amendment Act (2013) sought to strengthen the role of the CWC as a central and key pillar in waqf administration. Among other things, it sought to address the concerns about physical preservation of endowed assets (movement of type 2 towards REF) by:

- empowering the CWC to issue directive to the State Waqf Boards (SWBs) on their financial performance, survey, maintenance of waqf deeds, revenue records, and encroachment of wakf properties seeking annual report and audit report, and
- providing for any dispute arising out of its directive to be referred to a high-level Board of Adjudication
3.2.3. State Waqf Boards

The idea of federalism or the State Waqf Boards (SWBs) being the foremost actors in waqf administration in India was introduced quite early. However, it was the Wakf Act (1995) that provided an elaborate list of power and functions of the SWBs (Section 32) as well as the duties obligations for the trustee-manager or mutawalli relating to registration, disclosure, compliance with directives of the Board etc. (Section 50). These provisions were essentially governed by the concern to ensure and enhance preservation of the endowed assets (movement of type 2 towards REF).

Section 32.2 describes the powers and functions of the SWBs as follows:

1. to maintain a record containing information relating to the origin, income, object and beneficiaries of every waqf;
2. to ensure that the income and other property of awqaf are applied to the objects and for the purposes for which such awqaf were intended or created;
3. to give directions for the administration of awqaf;
4. to settle schemes of management for a waqf, provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;
5. to direct (i) the utilization of the surplus income of a waqf consistent with the objects of waqf; (ii) in what manner the income of a waqf, the objects of which are not evident from any written instrument, shall be utilized; (iii) in any case where any object of waqf has ceased to exist or has become incapable of achievement, that so much of the income of the Waqf as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim Community;
6. to scrutinize and approve the budgets submitted by mutawallis and to arrange for auditing of account of awqaf;
7. to appoint and remove mutawallis in accordance with the provisions of this Act;
8. to take measures for the recovery of lost properties of any waqf;
9. to institute and defend suits and proceedings relating to awqaf;
10. to sanction any transfer of immovable property of a waqf by way of sale, gift, mortgage, exchange or lease, in accordance with the provisions of this Act;
11. to administer the Waqf Fund;
12. to call for such returns, statistics, accounts and other information from the mutawallis with respect to the waqf property as the Board may, from time to time, require;
13. to inspect, or cause inspection of, waqf properties, accounts, records or deeds and documents relating thereto;
14. to investigate and determine the nature and extent of waqf and waqf property, and to cause, whenever necessary, a survey of such waqf property;
15. generally do all such acts as may be necessary for the control, maintenance and administration of awqaf.

Interestingly, this law also provided for proactive intervention for development of an asset with prior government approval (Section 32.4). The development related concerns were obviously becoming more significant in shaping the regulatory framework (movement of type 3 towards REF).

Section 32.4 stipulates, where the Board is satisfied that any endowed asset offers a feasible potential for development, it may ask the mutawalli to develop it. Else, it may, with the prior approval of the Government, take over the asset, develop it with its own funds, control and manage the same till the original investment as well as the financing cost is recovered (Section 32.5); subsequent to which the developed asset shall be handed over to mutawalli of the concerned Waqf. (Section 32.6)

The Waqf Amendment Act (2013) made major changes with respect to the power and functions of the SWBs. It did away with the “government approval” requirement in Section 32.5 thus paving the way for SWBs to undertake development faster and more easily. It also provided for additional physical punishment over and above financial penalties for the mutawalli in case of non-compliance with provisions of the law concerning its duties and responsibilities vis-à-vis preservation and development of the endowed assets (movement of type 1 towards REF). (Section 61)

It also sought to strengthen the preservation of endowed assets (movement of type 2 towards REF) by providing for:

- Establishment of Boards in states where non-existent (Section 13)
- Prohibition of sale, gift, exchange, mortgage or transfer of waqf property ab initio. The only exception to above is the possibility of acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 or any other law relating to acquisition of land if such acquisition is made in consultation with the Board, provided also that (a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991; (b) the purpose for which the land is being acquired shall be undisputedly for a public purpose; (c) no alternative land is available which shall be considered as more or less suitable for that purpose; and (d) to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or a suitable land with reasonable solatium in lieu of the acquired property. (Section 51)
- Restoration of waqf properties in occupation of government agencies to the mutawalli or Waqf Board; or payment of rental at market rates (Section 51)
- Inclusion of professionals and scholars in Board; Muslim CEO to effectively deal with administrative machinery in the state (Section 20)
- Removal of corrupt members through no-confidence motion (Section 20A)
- Survey and digitization of records; compulsory registration within one year of enactment and every ten years thereafter (Section 6)
- Punishment for alienation of waqf assets (Section 52A)
3.2.4. Tribunal

While the dominant role in waqf administration is entrusted to the state, the judiciary is expected to act as a watchdog to prevent acts of transgression by the state agency against the trustee-manager or mutawalli and adjudicate in matters of dispute. However, its effectiveness in ensuring fair play is dependent on provisions of law that define its constitution, power and functions.

The Waqf Act (1995) provides for establishment of Waqf Tribunal to adjudicate on disputes on whether a particular property specified as Waqf property is indeed waqf property (Section 6-7); to ensure fair deal to aggrieved trustee-manager (Section 33-35) and member (Section 16), executive officer and staff of SWBs (Section 38.7). However, though the creation of the Tribunal was primarily to ensure the preservation of endowed assets (movement of type 2 towards REF) by recovering encroached assets (Section 52), experience showed that the Tribunal was largely ineffective against encroachment.

The Waqf Amendment Act (2013) sought to further enhance preservation of endowed assets (movement of type 2 towards REF) through the following provisions with respect to the Tribunal (Section 54).

- The Tribunal has such powers of assessment of damages by unauthorized occupation of waqf property and to penalize such unauthorized occupants and to recover the damages.
- Whosoever being a public servant fails in his lawful duty to prevent or remove such encroachment, shall on conviction be punishable with fine.

3.3. Management of Assets

According to Islamic law, it is compulsory to invest waqf assets\textsuperscript{12}. It is the duty of the mutawalli or trustee-manager to manage the waqf assets prudently and efficiently. And it is the duty of the state (waqf administration) and judiciary to ensure that the same is being undertaken. The returns or benefits from the endowed assets are meant to flow to the beneficiaries as intended by the endower or waqif. However, this basic idea behind the act of endowment seemed to have been lost on early law-makers who seemed to be obsessed with the idea of preservation. The Waqf Act (1995) stipulated that lease or sub-lease of endowed assets was not permissible for period beyond 3 years (movement of type 2 towards REF). Lease or sub-lease was permitted for 1-3 years, but only with prior approval of the Board (Section 56). By ruling out long-term lease, this effectively ruled out the

\textsuperscript{12} Resolution No. 140-15/6, Rulings of OIC Fiqh Academy on Awqāf, reproduced in Obaidullah, M (2013) Awqaf Development and Management, Islamic Research and Training Institute, Jeddah, Saudi Arabia, chapter 3.
This realization has led to amendment of the above restrictive section in the Waqf Amendment Act (2013) which provides the following:

1. Lease period is enhanced up to 30 years for commercial activities, education or health purposes;
2. Approval by the State Govt. is necessary because of the long gestation periods;
3. Board will sanction lease with consent of at least two-thirds members;
4. Maximum period of lease of agricultural land at 3 years.

Clauses 2-3-4 show that sufficient caution has also been exercised while facilitating the development of endowed assets. The Leasing Rules (2014) further enhance preservation as well as development aspects (movement of type 1 towards REF) by requiring that:

1. Minimum lease rental on such asset put under lease must be at least 5 percent of its market value.
2. Lease rentals must increase by not less than 5 percent every year.
3. There must be competitive bidding for correct price discovery.
4. Two years rental must be paid upfront as security if lease period is over 10 years.
5. No sub-lease is permissible.
6. No clause should exist for automatic renewal of lease.
7. Stringent conditions in agreement for possible default by lessee.

It may be noted that the above rules have been formulated by the Ministry of Minority Affairs as prescribed by the Act. Arguably, these need to be revisited as we will find later.

### 3.4. **Need for Development of Endowed Assets**

In line with a growing concern for development that is the only way to enhance the benefits for the endowment beneficiaries (a flatter REF to the right), there is a need to take a look at the available mechanisms to ensure development.

The mechanism for waqf development that has been existing for several decades is the Urban Waqf Properties Development Scheme of Central Waqf Council. It is funded through yearly grant-in-aid from the Central Government. The scheme provides loans with two conditions for waqf management: (i) donation of 6 percent per annum to Education Fund and (ii) 40% of enhanced income after loan repayment to be paid towards education.

The National Waqf Development Corporation (NAWADCO) has been set up recently with the explicit objective of development of awqaf assets. However, it may be noted that against 490000 registered awqaf properties with estimated market valuation of assets at USD24billion:
(i) The Urban Waqf Properties Development Scheme of Central Waqf Council has hitherto provided loans to 137 projects of US$ 5.77 million (1974-2012) of which 84 have been completed in all respect and are now yielding income.

(ii) The National Waqf Development Corporation has been established with authorized capital of INR500 crores (USD80 million) which is less than 0.35 percent of asset value.

A pertinent question therefore arises: How do we meet the massive capital needs for waqf development in an efficiency-enhancing manner?

The first mechanism following from successful international experiments seems to be through private capital contribution for limited and finite period. This would however call for a relaxation of leasing rules and more specifically, to accord permissibility to sub-leasing to facilitate sukuk issues, since no other form of Shariah-compliant borrowing is possible in India. There is little scope for modes like bai-istisna by Islamic banks as there are none in India. Without permissibility to sub-ijara or sub-lease many of the modern awqaf financing mechanisms would fall flat.

One may draw here a parallel with the widely acclaimed success in waqf development in Singapore by the state agency Majlis Ugama Islam Singapura (MUIS). MUIS has been highly successful in transforming and significantly enhancing the incomes of awqaf assets in Singapore. MUIS now directly manages 68 waqf assets and additional 33 waqf assets indirectly through mutawallis. MUIS appoints mutawallis for privately managed awqaf, approves any development or re-development or purchases by them. It holds the title deeds of all including the privately managed awqaf. Observers attribute this success to a very progressive regulatory change that accorded permissibility to give waqf property on lease for up to as long as 99 years without transferring the ownership to the lessee; as also to sell off completely waqf properties and replace them by purchasing new, higher yielding free-hold properties (istibdal). Because of this flexibility accorded by the change, MUIS could issue participation sukuk called Musharaka bonds to finance the development of endowed assets on a fairly large-scale.13

The second mechanism to finance the development of new waqf is through creation of new waqf. However, the waqf laws in India in their present form do not provide for explicit rules for cash waqf and waqf shares. Laws are also silent on rules pertaining to investment of cash waqf.

It is a matter of common observation that there is need for level playing field for awqaf as compared with other forms of Not-for-Profit-Organizations, such as, Societies, Trusts and Section 35 Companies. However, waqf involves significant financial and non-financial costs as compared to the above structures leading to lack of interest among Muslim philanthropists for using the awqaf mode for establishment of education, healthcare and other socially useful projects. A striking example is that of Azim Premji Trust that transferred 295.5 million equity shares, valued at 2.3 billion USD representing 12 per cent

13 See Shamsiah Bte Abdul Karim (2010), Contemporary Shari’a Compliance Structuring for the Development and Management of Waqf Assets in Singapore, Kyoto Bulletin of Islamic Area Studies, 3-2
of the shares of Wipro Ltd, to an irrevocable trust (the Azim Premji Trust) that finances the activities of the Azim Premji Foundation\textsuperscript{14}. It is to be noted that the irrevocability of the trust takes care of the most significant difference between a waqf and a trust and therefore the Azim Premji Trust can be legitimately called an innovative case of corporate waqf. There are strikingly similar examples of corporate waqf, such as the WANCorp by Johor Corporation in Malaysia and the Vehbi KoC Foundation in Turkey\textsuperscript{15} and there is no reason why Indian laws cannot provide for the possibility of corporate waqf.

Interestingly, there is very little mention of the term “waqif” or donor in the Indian waqf laws. It appears that these laws are meant for awqaf created many centuries ago and not for new awqaf that are to be created. A suggestion that is worth considering is the possibility of providing an option to waqif to create waqf outside the purview of Board (which is where most non-financial costs come from). Without the above changes on the law, the problem of funds would continue to haunt the prospects of waqf development.

4. Conclusion

This paper attempted to trace the trajectory of the laws of awqaf in India, to examine how different provisions of the laws were enacted from time to time to address the societal concerns about preservation of endowed assets with a view to retain its expected benefits for the intended beneficiaries; development of the assets with a view to enhance the expected benefits for the intended beneficiaries; or both. The former seems to have dominated the minds of lawmakers in India so far, though of late there seems to be growing realization about the significance of the latter. The search for efficiency-enhancing laws, regulations, rules and policies must continue. One must not shy away from considering and experimenting with new innovations in waqf financing which is an essential prerequisite for taking the development agenda forward. Undoubtedly, it makes no sense to allow the endowed properties to remain as they are; without being of any value or providing benefits to any one.

Further, the modes to address society’s concerns (preservation or development) must be correctly identified. For example, extreme concern for preservation has led to seeking parental state protection without recognizing its adverse impact on institutionalization of voluntarism. Indeed, state protection is sought to curb private corruption while state apathy, corruption and interference has discouraged voluntary acts. Recent philanthropic action by members of the community seems to have preferred non-waqf forms, perhaps because of excessive government control over waqf, thanks to the existing laws in place. Indeed, waqf was always meant to be in the voluntary sector and not in the government sector. What is needed is the formulation and implementation of efficient laws, which may ensure a reversion to the original status of Islamic endowments as an mechanism that encourages voluntarism, benevolence and philanthropy.


\textsuperscript{15}See Obaidullah, M (2013) \textit{Awqaf Development and Management}, Islamic Research and Training Institute, Jeddah, Saudi Arabia, Ch.2.
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