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mismanagement of *awqāf* to public attention, thereby hiding their own failings in administering *awqāf* properly.

University of Lucknow organized a Seminar on *awqf* during 1994 in which the majority of paper presenters and participants were non-Muslims, which shows the extent of popular academic interest in such matters⁽¹⁾. Such events deserve to be organized regularly.

Awqf resources constitute a major component of the societal wealth of the Muslims. As the institution of *waqf* belongs to the non-governmental sector, it is but logical that it shall be managed not by the Government but by the Muslims.

Awqf need to be protected, maintained and developed because these are the institutions which support public welfare schemes and bring improvement in the quality of life of masses. Today, *awqāf* might not be in the best of their health, but Insha Allah, the time will soon come when they will regain their traditional position as the most popular and widely practiced expression of Muslim philanthropy.

Conclusion

In a country which has more than 300,000 *awqāf*, many of which possess enormous developmental potentiality and ability to generate vast amount of income for the welfare of Muslims, it is un-fortunate that not much has been done in the past half a century to improve the situation. There is neither an all-India body especially established for the specialist work of development nor any co-ordinated plan ever designed for this purpose. The resources that *awqāf* could generate may finance significant schemes for the socio-economic and educational betterment of Indian Muslims. It deserves our immediate attention.

The administration of *awqāf* must be handed over by the government to the Muslim community. A fresh administrative set-up on democratic lines need to be established, including a Central *Waqf* Board in place of the useless Central *Waqf* Council. Such an initiative may also solve the present problem of excessive governmental control on *awqāf*.

With proper attention and drive, *awqāf* in India may be turned into a goldmine of progress.

(1) The author visited Lucknow in 1994 and collected papers presented at this seminar.

The primary issue here is: why should the Government exercise control on *awqāf* when this does not improve the situation and further it creates doubts in the minds of Muslims. It will rather be in the best interest of the Government that it may minimize its direct involvement in *waqf* administration, and may confine its role to legislate laws for effective *waqf* administration.

What *waqf* needs most today is greater involvement of Muslim masses, *Ulema*, Muslim NGOs and Muslim institutions and organizations. Happily, this new trend is becoming more and more evident now. For instance, the Fiqh Academy of India, an Islamic organization in New Delhi, organized a seminar on *awqāf* in Bombay during 1999.⁽¹⁾ Similarly, the conference on the “Protection, Maintenance and Development of *Awqaf*” organized jointly by the Institute of Objectives Studies, New Delhi, the Indian Milli Council and the Rajasthan *Waqf* Board during 2002 in Jaipur,⁽²⁾ and a Conference on *awqāf* that the *Jami'at Ulema-Hind* organized in New Delhi in 1979.⁽³⁾ Earlier, in 1998, a conference on *Awqaf* in South Asia was organized by the Institute of Objective Studies, New Delhi in collaboration with Kuwait *Awqaf* Public Foundation.⁽⁴⁾

This type of involvement of various organizations, institutions and *ulema* in matters of *awqāf* is a very healthy development, which should be encouraged. Probably, it should now be the responsibility of the premier *waqf* institution in India - the Hamdard *Waqf* - to organize the biggest of all conferences on *waqf*. It will be the fulfillment of a desire of the late Hakim Abdul Hameed, one of the founders of the Hamdard *Waqf*, who tried to organize such a conference in 1972.⁽⁵⁾ However, sadly enough, the idea of holding this conference was to be abandoned under the pressure of those high-ups who did not want to bring the

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- (1) The papers and proceedings of this seminar were published in 1999. See, Qadi Mujahidul Islam Qasmi (ed). *Awqāf*, (Islamic Fiqh Academy, New Delhi, 1999) (Urdu), pp. 564.
 - (2) The papers and proceedings of this conference are published. See, Syed Khalid Rashid (ed.) *Protection, Maintenance and Development of Awqāf in India (with special reference to Rajasthan)*, (Institute of Objective Studies, New Delhi, 2005), p. 457 + xxi.
 - (3) A booklet containing the resolutions passed at the conference, along with a background paper written by Syed Khalid Rashid were published by the Jami'at Ulema-i-Hind, New Delhi in 1979. See, *Resolution Passed at the Waqf Conference - 1979* (New Delhi, 1979).
 - (4) The papers and proceedings of this conference along with some additional material were published in 2002. See, Syed Khalid Rashid (ed.), *Awqāf Experiences in South Asia*, (Institute of Objective Studies, New Delhi, 2002), pp. 634 + xviii.
 - (5) This author was invited by the late Hakim Abdul Hameed to organize this conference. Preparatory committee meetings were held under the chairmanship of Hakim Abdul Hameed, and it was only after sometime that the idea of conference was dropped.

governmental self-interest. The Council should be abolished and replaced by a Central Waqf Board.

6. The Problem of Excessive Governmental Control

On more occasions than one, Muslims have expressed their resentment against the interventionist policy of the Government in matters of *waqf*. When total expenditure on running the *Waqf* Boards and the Central *Waqf* Council are met out of the income of *awqāf*, it is only natural for Muslims to demand the right to manage *awqāf* and the affairs of their religious and charitable institutions. It is high time that *waqf* administration shall be democratized and decentralized by putting in place an administrative set-up on democratic lines, involving a cross-section of Muslim population in India. A new legal regime should be devised to give effect to this scheme.

Exercising too much of State control on *waqf* affairs is a self-defeating exercise which creates mistrust. The present practice whereby the Central Government nominates all the members of the Central *Waqf* Council, its Secretary, and also all the members of the *Dargah* Committee (Ajmer) and its Nazim, are examples of such control. The biggest and richest *Waqf* Board of Punjab is presently run by an Administrator appointed by the Central Government.

Sections 1(3), 9, 12, 96, 102, and 106 of the *Waqf* Act 1995 give powers in matters of *awqāf* to the Central Government. Section 96, for example, gives it the power to regulate the “secular” activities of the *awqāf*, which the act defines to mean the “social, economic, educational and other welfare activities” of *awqāf*. Thus, apart from purely religious activities, everything else falls within the regulatory powers of the Government.

Powers conferred on the State Government under section 4, 13, 20, 24, 47 (1) (c), 66, 75, 77, 78, 80, 81, 83, 98, 99, 103 and 109 of the *Waqf* Act 1995 are far more extensive. These include the power to appoint certain members of the Board, the Chief Executive Officer of the Board; to regulate the Budget of every *waqf* in the State; to ‘suggest’ modifications in the budget of the State *Waqf* Board; and according to section 78 “the Board shall incorporate all - corrections”. The State Government may also supersede the Board and appoint an Administrator in its place, to run it on behalf of the Government (section 99).

The situation is the same under the Jammu & Kashmir *Wakaf* Act, 1978 which gives very wide powers to the State Government under sections 4, 6, 7, 24, 25, 33, 34, 43, 51, 58 and 60. These powers are sometimes exercised in very arbitrary manner.

the Government wishes to be so advised, it shall establish, at its own expense, such an advisory body. It is simply uncalled for to require *awqāf* to pay the cost of running a body which exists for the sole purpose of advising the Government of India.

During the whole period of its existence, the Council may not cite many instances where its advice made a difference in the governmental attitude towards *awqāf*. It is rather the *Waqf* Section in the Government of India which acts as the de facto adviser, and all of the policy decisions could be traced back to this Section rather to the Council.

Moreover, as the Minister in charge of *waqf* at the Central Government level also acts as the Chairman of the Central *Waqf* Council and as the Council exists to advise the Central Government, it presents the strange case of a person advising himself. It is simply illogical and absurd.

It is significant that one of the few recommendations made by the *Waqf* Inquiry Committee in 1976, which the Central Government did not accept, included the recommendation to abolish the Central *Waqf* Council. The Inquiry Committee rejected the idea of maintaining the Council, and observed that the constitution of such a large advisory body (consisting of 21 members), with no effective powers, with a permanent secretariat involving an expenditure of nearly Rs.200,000 annually (now nearly Rs.2000,000 in terms of current value of Indian rupee) amounts to an un-necessary drain of the resources of the *Waqf* Boards, which pay this amount.⁽¹⁾ If the Central Government in its wisdom still desires that it should have such a large non-official body for the sole purpose of giving advice, and assist it in the matter of issuing directives on matters of policy, it is both right and proper that the Central Government should foot the bill. Under no circumstances, should *awqāf* in the country be made liable to pay 1% of their net income for the maintenance of the Central *Waqf* Council.⁽²⁾

But the Government of India finds in the Council a standing body for getting free advice on *waqf* matters, plus the privilege and power of appointing Council members and its Secretary. It was indeed a very short-sighted political decision of the Government not to accept the recommendation of its own committee. The interests of *awqāf* in the country are sacrificed at the altar of

(1) In spite of a personal visit made by this author to the office of the Central *Waqf* Council in New Delhi, in 2003, budget of the Council was not furnished to him.

(2) Final Report 1976: *Waqf* Inquiry Committee, (Government of India: Ministry of Law, Justice and Company Affairs (Legislative Department, New Delhi, printed at the Government of India Press, Simla, 1976), pp. 3-4.

also educate them of the importance of the sacred trust and religious duty imposed on them to honestly administer the *awqāf* under their control.

A Central *Waqf* Board shall replace the present Central *Waqf* Council. The idea of a Central *Waqf* Board to exercise supervisory control over the working of the State *Waqf* Boards was initially mooted in the *Waqf* Bill, 1953. However, on the recommendation of the Select Committee of the Parliament to which the Bill was referred for consideration, this provision was dropped. Seen in retrospect, it appears the idea of a Central *Waqf* Board was good. Because what happens now is that either the Central or the State Government exercises this supervisory control, which is ineffective and generates mistrust in the Government. Neither under the *Waqf* Act, 1954 nor under the present *Waqf* Act, 1995 the Central *Waqf* Council exercises any supervisory control over *Waqf* Boards. The Council plays a purely advisory role, that is, to advise the central government on matters of *waqf*.

The Central *Waqf* Board shall have one member each to be elected from amongst themselves by the members of each *Waqf* Board, and all the members so elected shall co-opt six more members: two from Muslim religious organizations of national stature; one retired Muslim civil servant; one Muslim Professor of law, preferably specialist in Islamic law; and one eminent Muslim economist or chartered accountant.

The Central *Waqf* Board shall supervise the working of the State *Waqf* Boards and shall also undertake big schemes for the development of *waqf* properties, procure funds for financing *waqf* development, making schemes for utilization of the income generated through development; undertaking research in *waqf* and training of *waqf* officials and advising the Central Government in matters of *waqf*.

The expenses of the Central *Waqf* Board shall be met out of a 2% contribution from the income of each *waqf* in the country.

5. The Problem of a Redundant Central *Waqf* Council

The Central *Waqf* Council was established in 1965 under the now defunct *Waqf* Act, 1954, to advise the Central Government on matters of *waqf*. The whole expenses of the Council are met with the 1% contribution out of the income of *awqāf* in the country.

The sole statutory purpose behind the establishment of the Council is to advise the Central Government on matters of *waqf*, as stated in the *Waqf* Act 1954 and now in the *Waqf* Act, 1995. It is a waste of valuable *waqf* resources to maintain the Council for the sole purpose of advising the Government. In case

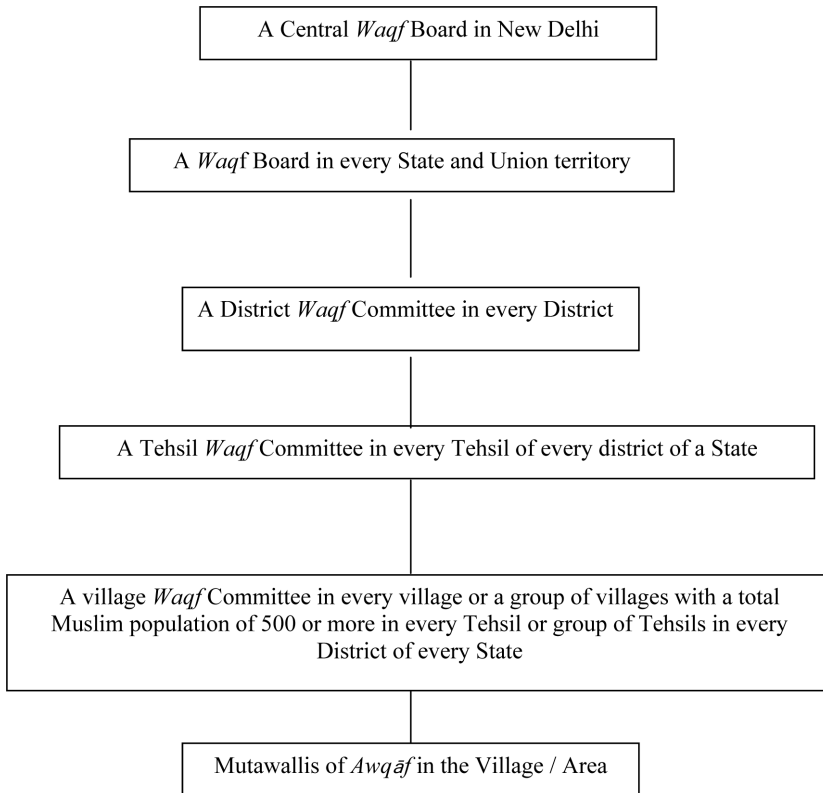
Tehsil *Waqf* Committee shall consist of ten members, to be elected for a term of 5 years, by the members of all the Village *Waqf* Committees within the Tehsil, from among themselves. These members will thus be members of two committees at the same time, which will certainly facilitate deliberations. The Tehsil Committee shall supervise the working of the Village Committees, and carry out any instruction received from the higher *waqf* bodies. They may exercise whatever powers are given to them. The District *Waqf* Committee shall consist of 15 members; 10 to be elected from amongst themselves by the members of all the Tehsil *Waqf* Committees within the district, who then co-opt 5 members out of the leading lawyers, *ulema*, social workers and teachers in the district. The committee shall exercise such supervisory powers as given to it by the statute.

Every State shall have a State *Waqf* Board consisting of 15 elected and 4 co-opted members holding office for 5 years. The 15 members shall be elected by the members of different electoral colleges: one member to be elected by the Muslim Members of the Parliament (Lok Sabha) belonging to the State from among themselves; two members to be elected from among themselves by the Muslim Member of the State Legislative Assembly; three members to be elected from among themselves by the Muslim religious and social organizations of the State; three members to be elected from among themselves by the prominent Muslim religious academic institutions in the State; and six members to be elected from among themselves by the Muslim members of the academic staff of the universities and postgraduate colleges in the State. In case there is no Muslim Member of Parliament from the State or Muslim Member of the Legislative Assembly, their numbers are to be added to the number of Muslim members of academic staff of universities and postgraduate colleges.

The 15 elected members shall co-opt 4 members; two from the retired Muslim judges of the Supreme Court or High Courts who belong to the State (Muslim District Judges who are retired may be co-opted in the absence of High Court or Supreme Court judges), and two from the retired civil servants belonging to the State. (Details may be worked out in the Regulations that are drafted for this purpose.)

The State *Waqf* Board shall have its own staff, to be appointed by the Board. The Government shall exercise no control, direct or indirect, on the working of the Board, which shall be supervised by the Central *Waqf* Board. In the State, the main function of the Board shall be to develop *waqf* properties and to utilize the additional income so generated for the social welfare schemes. It must also educate the Muslim masses about the positive benefit of *awqāf* in order to motivate them to create new *awqāf*. It must not only supervise *mutawallis* but

Flow Chart of the Proposed *Waqf* Supervisory Set-Up in India



Membership of Committees shall be through election. The membership of Village, Tehsil and District *Waqf* Committees shall be honorary, while members of the State and Central *Waqf* Board shall be entitled to claim traveling and daily allowances for attending the Board's meetings.

Each Village *Waqf* Committees shall consist of five members, to be elected through popular election, for 5 years, from among themselves, by the Muslims of a village or villages having a minimum total Muslim population of 500.

Each of such committees must keep a watchful eye on the *mutawallis* and *awqāf* situated within its area, and to redress small wrongs with social pressure and some small powers given to these committees. Matters which are beyond the redress capabilities of these committees are to be forwarded to the Tehsil Committee.

But this healthy and prudent policy was abandoned by the Government of India, and by 2003 the charge of *awqāf* came to be held by a non-Muslim Minister. Additional Secretary, Deputy Secretary, Section Officer and even the clerks in the *Waqf* Section were all non Muslims.

In defence of this policy, the Government may argue that religious affiliation is irrelevant in matters of administration. But it is to be appreciated that in case of *waqf*, it is not simply a matter of administration, but about knowing Muslim sentiments and aspirations, of knowing *shari'ah* and Muslim customary practices. It may be argued that knowledge is not the monopoly of the followers of any particular religion. Anyone may acquire the needed knowledge. But here it is not the question of knowledge per se, but of knowing the community's cultural norms. As rightly pointed out by Justice Krishna Iyer, a judge of the Kerala High Court who later on became a judge of the Supreme Court of India, that the "law is largely the formalized and enforceable expression of a community's cultural norms, (and the soul of a culture) cannot be fully understood by alien minds".⁽¹⁾ The word "alien" here may be applied to the Minister and civil servants looking after *waqf* matters, as they might not have even an elementary knowledge of Muslim customs and usages, Arabic, Urdu and *Shari'ah*. Above all, an intimate knowledge of the religious susceptibilities of Muslims should be a pre-requisite for anyone out to deal with mosques, *imambrahs*, graveyards, *darghs*, *khanqhs* and *musafirkhns*.

The time has come to democratize and decentralize *waqf* administration in India. A five-tier supervisory and administrative set-up shall replace the present statutory set-up. It may be achieved through amendments in the *Waqf* Act, 1995. The proposed set-up may be better understood through the following chart.

Starting with a Central *Waqf* Board, which shall replace the present Central *Waqf* Council, to exercise supervision over all the *Waqf* Boards and *waqf* affairs in the country, there should be established a State *Waqf* Board in each State and Union Territory, a District *Waqf* Committee for each district of a State, a Tehsil *Waqf* Committee for each Tehsil in the district, and a Village *Waqf* Committee in each big village having a specified minimum of Muslim population, or a group of villages in each Tehsil. In case of cities and towns, Area and sub-Area *Waqf* Committees may serve as Tehsil, Village and District *Waqf* Committees.

(1) See his judgment in *Yusuf Rowther v. Sowaramma*, Kerala Law Times, 1970 p. 477.

tions of the *Waqf* Inquiry Committee appointed by the Government of India which submitted its Report in March 1976.⁽¹⁾

The government dominated pattern of *waqf* administration recommended by the appointed Committee in its 1976 Report became the main plank on which the 1984 amendment Act was based. The 1984 bill was opposed by many distinguished Indian Muslims, prominent among whom were Mawlana Syed Abul Hasan Ali Nadwi and Syed Shahabuddin, who approached the President of India with a request that he may decline to give his assent to this bill, so that it might never become law. But the President gave his assent and the bill became law. In view of the large-scale dissatisfaction among the Indian Muslims and political ramifications of this fact, the Government of India did not implement such provisions of the 1984 Act which conferred excessive powers on the government, both Central and State. A political rethinking started after the agitation and it culminated in the passing of the new *Waqf* Act, 1995. It ushered in, even though in a diluted form, the idea of democratisation of *waqf* administration. Certain members of the *Waqf* Board, who previously were all nominated by the State Government, are now elected through various electoral colleges (see, Section 14 of the 1995 Act). The Central *Waqf* Council, however, still continues to be totally nominated by the Central Government (see, Section 9 and 12 of the 1995 Act), so also are the members of the *Dargah* Committee of the *Dargah* of Ajmer under the *Dargah* Khwaja Saheb Act, 1955 (see, Sections 5, 6, 9, 10 & 19). During the last decade or so, the lack of effective political leadership, the communalization of politics and its reflection in the governmental administration have made the Indian Muslims very uncomfortable with the governmental control on *awqāf*. For example, in the past the charge of *waqf* administration at the Centre was always given to a Muslim Cabinet Minister. As such, Hafiz Mohamad Ibrahim, Prof. Humayun Kabir, Fakhruddin Ali Ahmad, etc. held this position. Similarly, the *Waqf* Section in the Government of India was always headed by a Muslim civil servant. If a Muslim civil servant was not available in New Delhi, one was brought from any State in the country. For example, Mr. Syed Athar Husain was brought from U.P. Mr. Hasanuddin Ahmad and Mr. Syed Ghulam Rasool were brought from Andhra Pradesh, etc.

(1) Final Report 1976: Waqf Inquiry Committee (Government of India: Ministry of Law, Justice and Company Affairs (Legislative Department, New Delhi: Government of India Press, Simla, 1976). Syed Ahmad was the Chairman of this committee, and members were Ishaq Sambhali and Zulfiquar Ali Khan. (F.H. Mohsin served as a member briefly). Syed Ghulam Rasool was its Secretary.

awqāf a limited span of life, say of 60 years, after the expiry of which the property should revert back to the *wāqif* (settler) or his heirs. During this limited life-span, however, this *waqf* shall enjoy the same status as that of a charitable *waqf* or trust and must be exempted from the various taxes. These *awqāf* should also be put under strict supervision, otherwise, these *awqāf*, with the passage of time, will cease to exist in India due to lack of supervision.

4. Absence of Democratization and Decentralisation in *Waqf* Administration

The *Waqf* Act, 1995 presently confers too many powers on the Government, both Central and States, to intermeddle into *waqf* affairs. It is in a way the continuation of the colonial legacy, started by the British Government in India during the early period of its colonial rule. In the post-independence India, when the *Waqf* Act, 1954 conferred a lot of powers on the government in matters of *waqf*, Muslims did not oppose it because many of their leaders, like Mawlana Abul Kalam Azad, Mawlana Hifzur Rahman, Syed Ahmad Kazmi, Mawlana Husain Ahmad Madani and others, had confidence in the government of that time, mainly due to Prime Minister Nehru. The above named Muslim leaders were such re-assuring figures for the Indian Muslims of that time, that they saw no harm in giving the driving seat to the Government for running *waqf* administration under the provisions of the *Waqf* Act, 1954. In all fairness it is to be admitted that on its part the Government of the day also acted honestly, both at the Federal and State levels and entrusted *waqf* matters to a Muslim Minister of the Cabinet rank, and to Muslim civil servants, without replacing the *mutawallis*. However, slowly the political considerations in the nomination of State *Waqf* Boards members, tolerance of less than honest dealings in the alienation of *waqf* properties by the *Waqf* Boards and political considerations in appointing members of the *Waqf* Board and the Central *Waqf* Council, eroded their confidence. When in 1984, amendments were made to the *Waqf* Act, 1954, these grossly increased the level of governmental powers. Muslims cried foul and started agitating against the implementation of the 1984 amending Act. The Government had to take note of the Muslim dissatisfaction and never fully implemented the 1984 amending Act,⁽¹⁾ which was based on the recommenda-

(1) For the full text of the *Waqf* Act, 1954 as amended by the *Waqf* (Amendment) Act, 1984, See., *Islamic and Comparative Law Quarterly*, vol. 5, No. 1 (1985), pp. 1-80.

For an appraisal of 1984 amending law and a plea for its review, see - Furqan Ahmad, "The *Wakf* Amendment Act, 1984 - An Analysis", *Islamic and Comparative Law Quarterly*, vol. 5, No.1 (1985), pp. 81-84, and Atique Khan, "The *Wakf* (Amendment) Act, 1984: A Plea for Reconsideration", *Islamic and Comparative Law Quarterly*, Vol. 5, No. 1 (1985), pp. 85-90.

- On receipt of such a requisition, the Collector shall pass an order notifying the person in possession of the property to deliver the property to the Board within a period of 30 days from the date of the notice.
- Any person aggrieved by the order of the Collector may appeal, within 30 days, to the *Waqf* Tribunal, whose decision in this matter shall be final.
- In case no appeal is made or it is dismissed by the Tribunal, then “the Collector shall obtain possession of the property using such force, if any, as may be necessary, for the purpose and deliver it to the Board”.

This is what may get illegally encroached upon *waqf* properties vacated speedily and inexpensively. It is hoped that the required amendment to section 51 and 52 be made soon.

The proposed amendment will serve two purposes: one, getting back encroached upon *waqf* properties speedily and inexpensively; two, as a means to stop the big drain of valuable *waqf* resources now being wasted on litigation, which is the only way to recover encroached upon *waqf* properties under the present law of the land.

3. The Problem of *Waqf Al-Alaulad* Being Left Without any Supervision

Presently, there is no statutory supervisory control over *waqf al alaulad* in India. It is conveniently assumed that the beneficiaries of such *awqāf* will seek redress of any wrong through the normal civil litigation, notwithstanding its costliness and delays. The survey of *awqāf* conducted in the country under the *Waqf* Acts of 1954 and 1995 did not cover such *awqāf*. Thus, no one knows the number of such *awqāf* in India. A majority of them which comprised of landed properties came to an end in the wake of zamindari abolition and land reforms in the 1950s when payment of nominal compensation for the lands held by such *awqāf* were made to the beneficiaries and these *awqāf* lands stood acquired by the government. The government ignored the illogicality of payment of compensation to beneficiaries and went ahead to implement it, destroying thousands of family *awqāf*. It is believed, however, that family *awqāf* in the form of non-agricultural lands like houses, orchards, cash money, and equity shares, continue to exist as family *awqāf*. These must be protected to safeguard the interests of future generations of beneficiaries. Islamic law treats such *awqāf* at par with charitable *awqāf*. As such, they deserve equal privileges and immunities as granted to the charitable *awqāf*. It is only under the influence of English law of trust, which regards family trusts as non-charitable, that *waqf al-alaulad* is being treated as non-charitable. Nothing could be farther from *shari'ah* than this, as both the *Quran* and the *hadith* emphasize the importance of giving to one's own family members. However, in order to avoid the effects of long term immobilization of family properties, compromise may be made by giving such

could only be solved by the extension of the Public Premises (Eviction of Unauthorised Occupation) Act, 1958 to public *waqf* and such extension should be allowed without further delay”.⁽¹⁾ But the government ignored the plea. During the last 41 years, the Government of India has consistently refused to treat religious and charitable *awqāf* like mosques, graveyards, *dargahs*, *imambaras*, *takias*, etc. as ‘public premises’ so that where these are found under encroachment, their speedy and inexpensive recovery with the help of officials of the district administration may be ensured. Logic and common sense demands that religious and charitable *awqāf* should be treated as public premises for purposes of attracting the relevant law to facilitate eviction of encroachers.

The above goal might as well be achieved by amending section 51 of the *Waqf* Act, 1995. It may provide an equally easy way to eject encroachers in the manner as provided in the Public Premises (Eviction of Unauthorised Occupants) Act, 1958.⁽²⁾ Presently, the scope of section 51 of the *Waqf* Act, 1995 is confined to a declaration that *alienations of waqf properties made without obtaining the prior approval of the Waqf Board shall be void*. Section 52 of the 1995 Act prescribes a summary procedure for the recovery of *waqf* properties alienated without Board’s permission. If the scope of section 52 is enlarged through an amendment to include, inter alia, such *waqf* properties which are also “unauthorizedly encroached upon”, our purpose may be served. The same administrative action then will become available which presently is available only under the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. The mode of recovery, as provided under this Act and under section 52 of the 1995 Act, is identical. A brief summary of section 52 may show how speedy is the recovery process provided therein, and if the same is applied to the recovery of the encroached *waqf* properties, it will make it equally speedy and inexpensive. The contents of section 52, summarized below, shows the easy procedure for recovery provided therein:

- If the Board is satisfied that any immovable property which is *waqf* has been transferred without the previous sanction of the Board in contravention of the provisions of section 51, it may send a requisition to the Collector, within whose jurisdiction the property is situated, to obtain and deliver possession of the property to it.

(1) Resolution No. 13: Resolutions Adopted at the Seminar on *Awqāf* Experiences in South India, in Syed Khalid Rashid (ed.), *Awqāf Experiences in South Asia*, (Institute of Objective Studies, New Delhi, 2002), p. 300.

(2) See, Syed Khalid Rashid, *Waqf Management in India*, (Institute of Objective Studies, New Delhi, 2006).

developed *awqāf*. Such a body is to be constituted for the country to take up the big task of *waqf* development.

The huge funds needed for this purpose may never be made available by the Government, which has till now gave only very small amounts as grants in aid. Indeed, it is not the responsibility of the Government to provide funding for this purpose. Whatever it has done in the past should be regarded as sheer magnanimity and something too good to continue forever. Independent sources of funding need to be searched for this purpose. Within India, some 300 small financing schemes presently operated by the Indian Muslims do not possess enough funds to finance such a big developmental scheme. However, fortunately, the Islamic Development Bank and its subsidiary - World *Waqf* Foundation - are presently operating an *Awqaf* Properties Investment Fund specifically created for this purpose. This Fund was launched as a result of the decision made at the 6th *Awqaf* Ministerial Meeting held in Jakarta on 29th October, 1997. The capital base of this Fund is US\$55 million. During the first 18 months (up to mid 2003) of its existence, it approved 50 projects, which are at different stages of completion. During 1423AH (2002-2003), seven *waqf* development projects involving a total contribution of US\$16.7 million from the *Awqaf* Properties Investment Fund (APIF) were approved for projects in Indonesia, Kuwait, Malaysia, Saudi Arabia and United Arab Emirates.⁽¹⁾ This Fund may be one of the sources from which *waqf* development in India may seek financing.

2. The Problem of Encroachment on *Waqf* Properties

Thousands of *waqf* properties in India are presently under illegal occupation. It is a Herculean task to file and pursue thousands of lawsuits to get back encroached upon *waqf* properties. Civil litigation is extremely slow, cumbersome and costly, particularly in India. Filing a single civil suit is an exacting job, what to say of filing thousands of such law suits. The most practical and inexpensive way to get these *waqf* properties vacated is to declare them as “public premises.” By doing so, the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 which contains a very easy administrative process for the evacuation of such properties, will become applicable to such *awqāf*, thereby ensuring their quick recovery at no cost. In the International Seminar on “*Awqaf* Experiences in South Asia”, organized by the Institute of Objective Studies, in New Delhi in 1999, a resolution concerning this issue recommended “that the serious problem of encroachment of *waqf* properties

(1) Vide, *Annual Report 2002 - 2003* (1423AH) of the Islamic Development Bank, pp. 138, 172.

India has thousands of *awqāf* whose objects are either general charitable or have become impossible to achieve. Their income may, therefore, be legitimately spent on any object of general benefit. But instead of selecting *awqāf* for development out of this category, the Council approves the development of any⁽¹⁾ whose objects possess either none or very limited scope for wider social application. Then again, during the past 25 years (1976-2001) the Council has helped only a total of over 100 *awqāf* under the scheme it is operating now.⁽²⁾ The effect of such a small-scale developmental work has hardly touched upon the poor economic condition of 140 million Muslims in India and almost goes un-noticed.

The Council has never formally prepared any scheme for the development of *awqāf* in India, so as to use this in an organized manner for the socio-economic and educational betterment of Indian Muslims, for which a large amount of money is needed and may only be raised through the development of *waqf* properties.

A study of the annual rate of return, that is the income generated in a year as a percentage of the total amount which is invested in developing a particular *waqf* property, in case of the above mentioned 100 *waqf* properties in India, shows an astonishing average rate of return of 31%. That is, for an investment of say, US\$100,000, the developed *waqf* property would generate an annual income of US\$31,000. Even if we may tone it down, it may be assumed to be not less than 25%.⁽³⁾ Hence, developing 2000 *waqf* properties, with a total investment of US\$200 million over a period of 20 years, may ultimately generate annually US\$50 million. As the number of *waqf* properties that may be developed is very large, only sky may be the limit for such a scheme, as more than 350,000 *awqāf* are there in India, of which thousands may be worth developing.

Such a big and specialized project cannot be entrusted to the Central *Waqf* Council which possesses neither the expertise nor the legal mandate for undertaking this specialist work. The sole function and the rationale for the establishment of the Council is to advise the Central Government “on matters concerning the working of (the *Waqf*) Boards and due administration of *waqfs*” (section 9, *Waqf* Act, 1995). The need is that of a specialist body consisting of experts in development planning, construction, finance and administration of the

(1) See, Muhammad Rizwanul Haque, “*Waqf* Experiences in India”, in Syed Khalid Rashid (ed.), *Awqāf Experiences in South Asia*, (Institute of Objective Studies, New Delhi, 2002), p. 125 at 131.

(2) Id at 134 - 140.

(3) 4a *Supra* n.1 at 185.a

of either the *Waqf* Act, 1995 or under the now defunct *Waqf* Act of 1954. Perhaps no other country in the world has such a large number of *awqāf*. Looking at the rest of world, it is very strange that no one knows the total number of *awqāf*, as no systematic survey of *awqāf* has been conducted in countries except a few. India is fortunate in this respect. A survey of religious and charitable *awqāf* has been conducted here in a very thorough manner. Back in the 1960s, the number of known *awqāf* in India was merely 100,000.⁽¹⁾ By 2001, survey has raised this figure to 332,000, which will soon touch the figure of 350,000 as the survey work is not yet complete.

A majority of *awqāf* in India were created in the past. New *awqāf* are hardly created now, mainly because of the pathetic condition of the existing ones which creates an apprehension in the mind of a prospective *wāqif* that such would be the fate of a *waqf* that he/she may create today. Thus, creation of new *awqāf* has suffered a serious set-back, and has ceased to be the most popular expression of Muslim philanthropy, as it used to be in the past. This situation could be reversed if the good name of *waqf* is restored by streamlining *waqf* administration, and making *awqāf* more productive and capable of financing social welfare schemes. An efficiently administered *waqf* needs no publicity. It publicizes itself by itself. Persons willing to create a *waqf* may feel reassured when they look at such a *waqf*. Thus, the streamlining of the *waqf* administration is of utmost importance and should be given immediate attention.

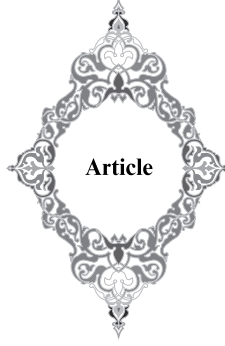
This article highlights the following problems which are presently confronting *awqāf* in India:

- 1 - The problem of the lack of any serious effort to develop *waqf* properties;
- 2 - The problem of encroachment on *waqf* properties;
- 3 - The problem of *waqf al-alaulad* being left without any supervision;
- 4 - Absence of democratization and decentralization of *waqf* administration;
- 5 - The problem of a redundant Central *Waqf* Council; and
- 6 - The problem of excessive governmental control.

1. The Problem of the Lack of any Serious Effort to Develop *Waqf* Properties

The so-called development of *waqf* properties undertaken by the Central *Waqf* Council of India, with the help of small ad hoc grants from the Government of India, is moving at an extremely slow pace and lacks direction.

(1) Syed Khalid Rashid, *Waqf Administration in India: A Socio-Legal Study*, (Vikas Publishing House, New Delhi, 1978), p. 74.



Article

Current Problems Facing *Awqāf* in India: Possible Solutions

Syed Khalid Rashid^(*)

Development of even a small fraction of 340,000 waqf properties in India may bring about a vast improvement in the existing poor economic and educational status of Muslims. But this important matter is ignored. Excessive governmental control, lack of democratization of waqf administration and less than adequate supervisory control constitute the basic problems faced by awqaf in India. Coupled with this are the problems of absence of any supervision of family awqāf and the problem of recovery of thousands of waqf properties, which are under illegal occupation and encroachment. There is no central supervisory control on waqf by an all India body established for this purpose. The existing Central Waqf Council is financed by waqf fund but is constituted by the government for the purpose of advising the government. Urgent corrective action is needed to utilize the enormous economic potentiality of awqāf in India.

India has presently about 340,000 religious and charitable⁽¹⁾ awqaf, not to count the thousands of *waqf al alautād* whose numbers are not known, as these types of *awqāf* were never included in the survey conducted under the provisions

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(1) For a State-wise break-up of the total number of *awqāf* in India, see, Syed Khalid Rashid, "Islamic Financing Techniques for the Development of *Awqāf*: With Special Reference to India", *IJUM Law Journal*, Vol. 10, No. 2 (2002), p. 179 at 217.

advantages of those awqaf. The writer lays emphasis on the strict governmental supervision, the lack of both transparency and experience. The writer cites also examples of encroachment on Khairi and Thurri awqaf. The writer is in favour of creating an effective centralized system to be tasked with supervising the awqaf and investing their potential as a top priority for reviving the waqf sector in India.

The issue approaches also the Maleki school of thought and its attitude towards waqf issues. In his article 'Jurisprudential Ijtihad in Dealing with Waqf Issues', Abdul Rahim Al Alami says that ijthad is an expression of the academic advancement which accompanied waqf experience as jurists (faqih) formed a highly accurate specialized team, enjoying that tremendous sensitivity in ijthad and coping with the social developments. The researcher cites more examples which can be utilized nowadays in respect of sharie authentication for a number of questions related to investment and development of waqf.

On the tenth anniversary of initiating the coordination file, this issue will contain a research entitled 'Ten Years of International Coordination among the Islamic Countries in the Area of Waqf: the Kuwaiti Experience between the Importance of Achievements and the Requirements of Development.' Dr. Tareq Abdullah makes a survey of the the Coordination Projects, together with highlighting their methodological and practical achievements and the importance of making a specific shift in this file through energizing the academic repertoire being achieved and establishing new waqfiyyas to consolidate the concept of waqf and philosophy at the international level.

The issue contains also a presentation by Dr. Mohammad Muwaffaq Al Arnaut of the book by Ahmad Sherif entitled 'Awqaf in Macedonia during the Ottoman Era'. This book is of double importance due to the fact that it tackles the waqf experience in the Balkans (Macedonia) and shows the interest on the part of the third generation of researchers in the Balkans in waqf. Consequently, the academic traditions of those Moslems in the Balkans will go on living at a time the Arab, unfortunately, seem to forget all about these regions.

Editorial Staff

The electronic version of Awqaf Journal is connected with three major questions:

- 1 - This page, together with its contents, in terms of the academic material is a waqf for all those interested in waqf and waqf-related researches. Therefore, the refereed researches therein and other articles are available to all in line with the academic established norms and authentication.
- 2 - This homepage seeks to set up a relation between researchers and interested-in-waqf parties in an efficient manner.
- 3 - Being the property of users, the development of the page comes only through interacting with them and expressing opinions to upgrade performance in form and content.

The twelfth issue of Awqaf echoes these aspects and events. Knowledge and its means receive a special attention through two researches. Ahmad Selim Ghanim in his book, "The Waqf of Arabic Manuscripts, a Study of the Types, Significance and Value" writes about one of the means of bringing together the Arabic and Islamic heritage through establishing waqf in the sporadic hundreds of thousands of unedited Arabic manuscripts found in libraries all over the world. In his book, 'Waqf of Educational Institutions - Faculty of Technology as an Example' Hasan Mohammad Al Rifaie sheds a light on the role of waqf in placing technology in the Islamic world through waqf-dependent technological universities. The informational gap between the industrial countries and the Islamic countries is getting wider due to the progressive movement adopted by the western technological institutions, not to except some eastern countries such as Japan, China and India. This gives special importance to the role of waqf in establishing technological institutes.

The issue embraces also two contributions about waqf issues and problems in Lebanon and India. Researcher Hanan Karkuti write about 'Administrative Development of Waqf in Lebanon and the Influence of the Historical events on the Waqf Institution. The researcher dealt with the French colonialism and how it weakened the Lebanese management of waqf. It also touched upon the internal conflicts in Lebanon and how this impinged on the management of awqaf which fell behind with fulfilling the societal needs. The researcher talked about the model of the preferment of orphans in Beirut and how the internal conflicts affected this side.

In his English research about the problems which face Islamic Waqf in India (amounting to about 340,000) Dr. Syed Khaled Rashid writes about those problems which deprive disadvantaged Moslems there from getting the

The waqf awakening has begun to yield fruition and the interest in waqf during the last two decades witnessed a remarkable hike. Waqf formulas, while considering relevant projects, linked themselves with projects having impact on the progress of the ummah and boosted its intellectual and social potential. To highlight this trend, the establishment of Waqfiyyat Mohammad Bin Rashed Al Maktoum in May 2007 stands as a remarkable achievement.

The importance of this Waqfiyyah rests in its relation to one of the crucial issues at both the Arabic and Islamic levels, i.e., information infrastructure. This Waqfiyyah is expected to design and manage programmes for providing a database through research and translation projects, in addition to preparing qualified leadership from among the growing generation to serve in governmental and non-governmental institutions. It will also award scholarships for post graduate studies in western institutions and universities. We should point out here that the amount of this Waqfiyyah estimated at USD 10 billion reflects that consciousness of Moslem waqifs and that ambitious nation-related projects require proportionate finance to cope with the magnitude of objectives. Being a mammoth modern Waqfiyyah at the pan-Islamic level dedicated for learning, this Waqfiyyah is expected to cope with those great and ambitious objectives.

We sincerely hope that this Waqfiyyah will succeed in specifying its output and paving the way for a generation of waqf projects which take into due account the concerns and needs of the Umma in the light of an integrated strategy of objectives and sustainable achievements.

With respect to the inauguration of Awqaf Journal homepage (awqafjournal.net), it should be pointed out here that this is connected with the role of Internet media as electronic pages have become one of the gates for the public to get through incessantly around the clock. Moreover, advanced technologies of research allow researchers to maximally benefit from those pages through handling a set of keys to have access to specific information or get answers to specific questions. These techniques help all those interested in research to have access to the same saved documents at a time and contribute to a wider circulation of the journal.

In a study released by the USA Trade Department, it took the radio fifty years to reach fifty million listeners; for TV, it took thirteen years to reach fifty million viewers; and for the Internet, it reached fifty million users in the first four years of initiating this service at a commercial level. Western academic magazines are plentiful on the Internet, but, contrarily, Arabic magazines on the Internet are either limited, lacking updating or providing summaries only.



Ten Years of International Coordination in the Area of Waqf: The Event and its Revelation

The issuance of the 12th issue of Awqaf journal coincides with the tenth anniversary of initiating the international coordination projects among the Islamic countries in the area of waqf. Parallel to this comes the inauguration of the electronic version of Awqaf journal. These two great occasions will, no doubt, be accorded a hearty welcome by waqifs (dedicators), researchers and the affiliates of the waqf and voluntary sectors.

The process of reviving waqf institution aligned with the awakening movement which the Islamic countries witnessed over their history. Within this context, the projects of revival took different forms and attitudes as reflected in a public interest in enlightenment, benefiting from European civilization and producing practical socio-economic models following the periods of decline and weakness. Consequently, a modern waqf awakening emerged, bringing with it an interest in optimally benefiting from the nation's intrinsic capacity, specifically in the area of waqf, and transforming them into social, economic and academic developmental institutions. It goes without saying that the projects of international coordination among Islamic countries being entrusted to the State of Kuwait since 1997 are the deepest in view of their developmental capabilities we stand in need of.

Generally speaking, the achievements transcend the coordination projects and raise essential questions related to the strategies of civilizational resurgence, such as unifying the nation's potentialities, encouraging team work, depending on the nation's intrinsic capabilities, attending to talented people, transforming the religious repertoire into developmental models and bridging the gap between governmental, non-governmental and private institutions.

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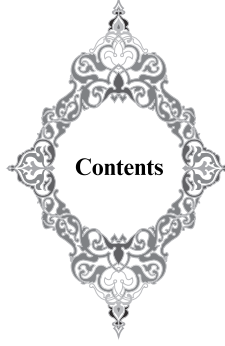
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Publication Regulations

AWQAF journal publishes original Waqf-related researches in Arabic, English and French. It also accepts summaries of approved M.A's and Ph.D's reports on conferences, symposia, and seminars dealing with in the field of Waqf.

Contributions are accepted in Arabic, English or French, provided they abide by the following regulations:

- ❖ They should not be published before, or meant to be published anywhere else.
- ❖ They should abide by the scientific conventions related to the attestation of references, along with the academic processing.
- ❖ Articles should be written in good handwriting on A4 papers, preferably accompanied by a disk (Word software).
- ❖ Articles must be 4000-10000 words in length.
- ❖ All submissions must include an abstract of about 150 words.
- ❖ Material meant for publication should undergo a confidential refereeing.
- ❖ Coverage of seminars and conferences is acceptable.
- ❖ Material once sent for publication, whether published or not, is unreturnable.
- ❖ AWQAF is entitled to re-publish any material separately.
- ❖ All responsibility for the opinions expressed and the accuracy of facts rests solely with the author(s).
- ❖ All submissions should be sent to:

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OPINIONS EXPRESSED IN AWQAF
ARE THOSE OF THE AUTHORS AND DO NOT NECESSARILY REFLECT
THE VIEWS OF THE JOURNAL OR PUBLISHER.

AWQAF is based on a conviction that waqf -as a concept and an experience- has a great developmental potential which entitles it to contribute effectively to the Muslim communities and cope with the challenges which confront the Umma. Waqf also reflects the history of Islamic world through its rich experience which embraces the various types of life and helps finding solutions for emerging problems. During the decline of the Umma, Waqf maintained a major part of the heritage of the Islamic civilization and caused it to continue and pass from one generation to another. Nowadays, the Islamic world is witnessing a governmental and popular orientation towards mobilizing its materialistic capacity and investing its genuine cultural components in a spirit of innovative thinking leading to comprehensive developmental models conducive to the values of justice and right.

Based on this conviction, AWQAF comes up with a keen interest to give waqf the actual prestige in terms of thinking at the Arab and Islamic levels. It centers on waqf as a specialty and attracts waqf interested people from all domains and adopts a scientific approach in dealing with waqf and relating it to comprehensive community development. Waqf is originally known to be a voluntary activity which requires AWQAF journal to approach the social domains directly related to community life, along with other relevant social and economic behaviors. This might bring about a controversy resulting from the society-state interaction and a balanced participation aiming to reach a decision touching the future of the community life and the role of NGO's.

Objectives of AWQAF:

- ❖ Reviving the culture of waqf through familiarizing the reader with its history, developmental role, jurisprudence, and achievements which Islamic civilization had witnessed up to date.
- ❖ Intensifying the discussions on the actual potential of waqf in modern societies through emphasis on its modern instruments.
- ❖ Investing the current waqf projects and transforming them into an intellectual product in order to be exposed to specialists. This is hopefully expected to induce dynamism among researches and establish a link between theory and practice.
- ❖ Promoting reliance on the repertoire of Islamic civilization in terms of civil potential resulting from a deep and inherent tendency towards charitable deeds at the individual's and nation's levels.
- ❖ Strengthening ties between the waqf on the one hand, and voluntary work and NGO's on the other.
- ❖ Linking waqf to the areas of other social activities within an integrated framework to create a well-balanced society.
- ❖ Enriching the Arab library with articles and books on this newly approached topic, i.e. waqf and charitable activities.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

AWQAF

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