



# AWQAF

Refereed Biannual Journal Specialized in Waqf & Charitable Activities

No. 22 - Year 12 - Jamada II 1433 H, May 2012

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- ✿ The significance of Cash waqf in Jerusalem during the Ottoman rule :  
Mohammad M. Al Arnaut
- ✿ Waqf and Education in Malaysia : Selected issue  
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- ✿ The role of waqf in funding small projects  
Abdul Qader Zeitouni

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# AWQAF

Refereed Biannual Journal Specialized in Waqf and Charitable activities

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**AWQAF No. 22 - 12<sup>nd</sup> Year - Jamada II 1433 H, May 2012**

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.

## **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 and reports on conferences, symposia, and seminars dealing with the field of Waqf.

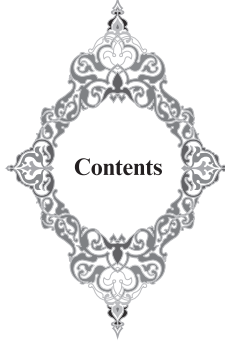
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- ❖ Coverage of seminars and conferences is acceptable.
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## **M.A Degree in Waqf Studies: Significance and Obligations**

Introducing academic specialized studies at a university is usually a direct result of two factors: (1) the availability of accumulated information in a specific field of knowledge, (2) the demand made by community institutions for this specialization in order to secure qualified cadres to deal with this field. Therefore, specialized academic programmes may be regarded as a basic nucleus round which the theoretical and practical development processes revolve. This, no doubt, will open new vistas for the deep and accurate research, in addition to preparing students and directing their creative potentials towards the accurate specialization. It is of vital importance to provide the weighty references and ignite academic competitiveness among them in the light of strenuous restrictions in order to upgrade the subject, create plans and programmes as per the modern techniques of teaching and training. This allows for optimal utilization of the Information Technology known for its ample spaciousness which transcends sheer getting familiarized with a bit of information. It seeks to encourage a student and a learner to approach analysis and benefit from this bit of information to knock the door of addition and innovation.

Within this context comes the launching of the first post-graduate program in the area of waqf as a specialization is initiated by the University of Zayed in the UAE as exemplified in the Arab World Studies Institute. It is the first M.A programme in waqf studies which takes waqf as a specialized academic field. In view of the importance of this event from the academic and media perspectives, it is important to refer once again to the question we raised at the beginning of this editorial about the presence of the major requirements for teaching waqf as a post-graduate programme.



- With reference to the first requirement associated with the accumulation of information in the area of waqf, we can claim that despite the limited information on waqf in the traditional books, we may confirm that there has been a leap in this domain as reflected in producing, publishing waqf-related materials, in addition to drawing comparisons with other relevant subjects advocated by the majority of jurists (faqih) and scholars. This so-called accumulation can be felt through three factors:
  - 1 - The first factor is connected with the modern waqf literature during the last three decades which witnessed a remarkable expansion in this area which embraced books, researches academic seminars and encouraging relevant academic publications on the part of some institutions. These efforts contributed to the creation on what has come to be known as the waqf library.
  - 2 - The second factor is associated with the old-but-new academic interest of the western futuristic school in the waqf issue viewed as one of the major clues for understanding the Islamic civilization. It goes without saying that these numbers of books in western languages represent a good repertoire for approaching and analyzing the socio-economic history of waqf in the Islamic communities. This school is still active and may be regarded as an important asset for the academic accumulation related to waqf.
  - 3 - Relevant waqf deeds constitute a third factor which contributes to the accumulation process in terms of providing scholars and researchers with practical information. Such waqf deeds, though of paramount importance at the historical and epistemological levels, exceed these boundaries to embrace the assimilation of the comparative jurisprudential viewpoints related to waqf issues Traditional books and codes abound in such rich and important examples as reflected throughout the Islamic epochs, for example institutions, societies, monuments, maps etc...

The three above mentioned factors represented three integrated tiers on which we can conduct the academic comparisons on waqf and meet the dire need to make a specific shift in modern writing on this issue. Today we stand in need of weighty academic writing, investigation and challenge to cope with the objective criteria for a massive quantity of waqf information Modern waqf writing stand in need of developing its performance and shunning generalizations. Futuristic visions on waqf must be adequately assimilated and criticized; researchers must delve into the waqf deeds to reveal their secrets and analyze them in the light of the academic restrictions. This is the expected role of the post-graduate programmes in any university education, i.e., urging instructors and students

to go deep into a subject, adopt academic methods, and resort to strenuous investigation in order to introduce an academic addition.

Regarding the second prerequisite related to the demand for well-qualified cadres in the waqf domain, this is no longer a secret for those in touch with the waqf sector. Waqf formulas have become prevalent in managing non-governmental and non-profit institutions (Al Khairy, civil and familial). The attempt to establish waqf specialized cadres will represent a major asset for promoting the efficiency of such institutions and inducing a specific shift by charging well-qualified cadres, who, through their steady efforts can achieve the strategic objectives. in addition to undertaking the responsibility for management.

It is important in this respect to indicate the voluntary experience in many Arab countries which substantiate the direct relation between the potential of this sector and the process of academic support which has become a major index for its success. Several academic institutions in the USA have launched specialized academic programmes and research institutions to encourage academic researches on volunteerism and philanthropic work, in addition to urging academicians in various specializations to build a specialized background for the voluntary sector. The University of Johns Hopkins stand as a landmark in the researches on volunteerism due to its early involvement or the projects being implemented. The Center for Civil Society Studies which belongs to the Institute for Policy Studies is a ring in the chain of this academic construction for which Johns Hopkins university takes credit. It is now one of the most outstanding centers for academic research on volunteerism worldwide. This strategy has proved a success in building intimate relations between the output of the university and the research institutes on the one hand and the actual needs of the voluntary sector in the USA.

The introduction of waqf as a specialized subject at the Arab and Islamic universities is a crucial step in the history of modern waqf experience. Following the dissemination of the waqf formulas and the growing interest therein through the mass media, the M.A degree program in Waqf Studies emerges, with numerous challenges encountering it. This experience seeks to achieve that connection between knowledge and application based on academic principles. It is a decisive stage which requires all the components of the waqf sector and philanthropic organizations to join hands to achieve that constructive reaction. The main aim of such programmes is to develop and improve the performance of both the waqf and philanthropic organizations, the aim of which is develop the

society and to introduce humanitarian models in which waqf plays a core role. Here we should insist on the following obligations:

- Governmental and non-governmental waqf institutions should urge their employees to register in this program due to be conducted either in English or Arabic. The timing of the study will be convenient to the employees, particularly if they follow the same institution and without encroaching on the regulations of teaching, attendance and evaluation.
- These institutions should provide scholarships for students from the different parts of the Islamic world, especially from Asia and Africa because qualifying people from these continents will achieve a set of objectives which are directly related to the revival of the waqf institution. Consequently, there will be a speedy and sound revival of the waqf institution wherever specialists are needed in this domain.
- Arab and Islamic universities should launch academic programs about waqf to stir creative competitiveness, besides expanding the options of the learners. This will result in responding to the growing needs of the waqf sector for qualified cadres. Therefore, it seems imperative for the universities getting the support of waqf to show gratitude by providing the opportunities for those who speak the language of waqf and utilize its concepts.

Issue 22 of Awqaf Journal includes a number of important researches. In his research "*A Legal Study of ten Problematic Issues in the Moroccan Waqf Code, Compared to some Arab Legislation*" reviews the legal, Shari'a and social background which surrounded the preparation of the Moroccan Waqf code since 1997 and lasted for thirteen years. The author analyses the importance of this great work which is likely to provide a unified and modern legal reference which meshes with the developments introduced into this sector in the interest of waqf institutions. The research submits ten types of the problems included in the Code, together with citing comments and analyses within the context of the comparative fiqh. There is not the least doubt that such a work paves the way for giving decisive attitudes towards some controversial issues which triggered confusion and uncertainty among judges and jurists. It also contributes positively to the process of integration among the Islamic countries in the area of waqf.

**Dr. Khalifa Hammash** concentrates on the role of awqaf in the dissemination of learning and culture. This is carried out through studying the 19<sup>th</sup> century waqf deed of the Tunisian bay Al Mushir Ahmad Pasha. The researcher went through this document by virtue of being an example of the books on waqf in the Arab countries in the late Ottoman era. He analyzed its contents and social implications, in addition to the information about Tunisia.

In his research on '*Voluntary Work: A study on the Intellectual and civilizational dimensions*', **Issam Abdul Shafi** deals with the major pillars of the voluntary work and its theories, along side with the obstacles which hinder its progress and means of overcoming them.

In his research on '*the Role of Waqf in Funding Small Projects*' **Abdul Qader Zeitouni** deals with the relation between waqf and the community development, and particularly in activating the role of the poor and medium sectors and including them in the economic cycle. The research seeks to clarify the role of waqf in funding the small projects through providing a definition of waqf funding and its restrictions. Furthermore, he approaches the methods of mobilizing the waqf monies, cash and inkind, then he deals with the major means or formulas through which waqf monies can be utilized in funding small projects.

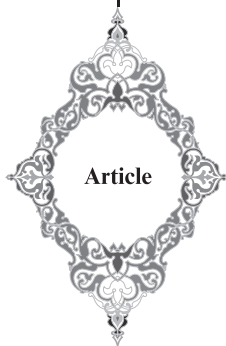
The issue included two researches in English: the first is provided by **Dr. Mohammad M. Al Arnaut** on '*the Significance of the Cash Waqf in Jerusalem during the Ottoman Era*'. The researcher tracked the process of integrating cash money in the waqf formulas and the controversy it ignited among the various schools of Islamic thought. The researcher in this regard confirms that such a controversy was associated with the developments which took place during the Ottoman era, especially those at the economic level and the expansion in using cash money in the Ottoman state..This trend applies also to Bilad el Sham and Palestine, namely Jerusalem which was a scene of economic hustle and bustle in the 16<sup>th</sup> century. The researcher introduced examples of the cash waqf in Jerusalem, citing its economic and social significance.

In the second research, **Aslam Hanif** introduces the modern waqf experience in Malaysia, citing its legal, administrative and investmental broad lines. He lays emphasis on the relation between waqf and education while dealing with the experience.

Moreover, a reader may find some news and coverages, including the book review made by Masoud Sabri on the book of Rashed Bin Mohammad Bin Asaker '*Charitable deeds and Shari'a awqaf in Nejd*' by Sheikh Qasem Bin Mohammad Al Thani (1331 AH) *Waqf of Places and Books in Riyadh* as an example.

**Editorial Staff**





## Significance of Cash Waqf in Jerusalem during the Ottoman Era

By: Dr. Mohammed M. Arnaut<sup>(\*)</sup>

Following a fatwa (religious edict) issued by Imam Ibn Abi Asroun in favour of the waqf of Sultans (taking the form of *Irsad*) in the interest of Moslems, a remarkable fiqhi and historical development of waqf in Bilad Al-Sham came into existence<sup>(1)</sup>. This encouraged Nouruddin Zinki (D 569 H - 1174) and Salahuddin Al Ayoubi (D 588 H /1192) and others to establish schools and Bimaristans in Aleppo, Damascus and Cairo<sup>(2)</sup>. The crusades, on the other hand, through fighting and stirring up religions and sophist spirit, paved the way for a new type of waqf, for example waqf on the captives<sup>(3)</sup>,

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(\*) Professor of modern history at Al Albait University - Jordan.

(1) Ibn Al Safti Says that sultan Nouruddin Mahmoud was the first to make a waqf out of Bait al Mal on mosques and schools. He resorted to Imam Ibn Asroun for advice on this waqf and a fatwa in favour of this sort of waqf was issued and endorsed by scholars from the various schools of thought. Ibn al Safti, Attiaturrehman fi Sihhat Irsad Al Jawamik wal Atyan - Cairo, 1314, P 21-22 Ibn Al Subki approved of such waqf (D 771 H/1369 AD).

Dr. Muhammad Afifi, al-Awqaf wa al-hayat al-iqtisadiya fi al'asr al-'uthmani, al-Kahira 1991, PP 47,48

(2) See Ibn Qadi Shahba: Al Kawakib Al Durria fi al-Sirra Al Nabawiyya, Beirut, 1971. See also Abu Shama: Al Rawdatain fi Kitab Dawlatain edited by Ibrahim Al Zaibaq, Beirut, 1997, Vol 1, PP 44, 49,58,59,63, 71-77. Salahuddin, Ibn Al Safti says, dedicated much of the lands of Bait el Mal in Egypt, Syria and Jerusalem. See waqfiat Salahuddin which includes a lot of information which confirm this fact.

(3) This kind of waqf might have appeared first in Morocco, and then reached Bilad al- Sham. For more information see Abdul Hadi Al Tazi "Tawzif Al Waqf Likhidmat Al Siyasa al Kharejia, in Social and Political Power with and introduction by Randi Deguilhem, French Institute of Arabic Studies, 1995.

khankas<sup>(4)</sup> and others. With the emergence of the Mamluki state, waqf continued to expand and diversify<sup>(5)</sup> until it reached its culmination with the Ottoman State which annexed Bilad Al-Sham in 923/1516<sup>(6)</sup>.

The Ottoman State, whose initial nucleus was in Borsa, was closely associated with waqf. A remarkable development in this domain came into existence when the Ottoman State expanded in Europe, with their capital relocated to Edirna (Adrianople) since 1361. Cash waqf started here and was reportedly described as a 'revolution in the waqf-related fiqh'. It also represented the major Ottoman contribution to the Islamic civilization<sup>(7)</sup>.

The early Islamic fiqh was not without those gestures to this sort of waqf<sup>(8)</sup>, but its circulation was not completed until the advent of the 9<sup>th</sup> century AH/15<sup>th</sup> century AD. The first type of this waqf appeared in the 1423. During that time Haj Muslihuddin dedicated a number of shops and an amount of 10,000 akca, the proceeds of which would be directed to three recites of Quran (1 akca per day) at the mosque of Kleissa<sup>(9)</sup>. As per the waqif's conditions, proceeds were generated from shop renting and loans were advanced at a fixed interest of 10%.

Though this waqf was a combination of the traditional waqf and the cash waqf, it opened the door for the rise of new awqaf based on cash waqf. It should be pointed out here that this new cash waqf differed from the traditional waqf

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(4) Khanka of 'Said Al Suadaa', established by Salahuddin Al Ayoubi in Cairo in 569H/1174 was the first of its type. It offered accommodation and boarding to 300 Sophists. After the conquest of Jerusalem, Salahuddin established Al Khanka al Salahia in 585H/1198 and was dedicated to the Sophists. Later Al Khanka Al Fakhria and Al Khanka Al Basttia were established in 1187 and 1198 respectively. See Mohammad Ahmad Salim Al Yaqoub: Nahiat al Quds Al Sherif in the tenth century AH, Amman (Al Ahli Bank of Jordan).

(5) For more on waqf during the Mamluki era see Mohammad Amin: Al awqaf wal Hayat el Ijtima'iyya fi Misr 648-923/1250-1517, Dar Al Nahda, Cairo, 1980.

(6) For more see our study: Waqf fil al Dawla Al Othmania, See also Awqaf Journal Issue 3, Kuwait 2002, PP 47-56 and Waqf Bibliography of Turkey, Kuwait Awqaf Public Foundation.

(7) John E. Mandulle " Usurious Piety: the cash waqf controversy in the Ottoman Empire " ITEMS 10 (1979) PP 289,308. This study was published in Arabic under the title ' al mardoud al Khairy lil riba in Al Ijtihad Magazine, issue 43, Beirut 1999 then the reference on cash waqf. Studies on cash waqf: A concept different from riba in the Ottoman society, Zaghwan (Al Tamimi Institution for Academic Research) 2001

(8) Among the early signs of this waqf is the fatwa of Imam Malik in favour of the Zakat on the withheld dinars (dananeer muhbasa): Al Mudawanna Al Kubra of Imam Malik, Beirut Vo1, P343.

(9) M. Al Arnaut: Dawr ulwaqf fil mujtamaat el Islamiah, Damascus, Dar al Fikr 2000 P.4.

which relied on fixed real estate property proceeds (for example lands, arcades, baths, markets, etc.) in financing charitable institutions such as schools, hospitals, etc. This process was carried out through dedicating their capitals, and introducing them as advances with a fixed interest (10%-11%) to the merchants and craftsmen and the proceeds were then directed to the same charitable purposes. After the waqf of Muslihuddin, there appeared another waqf in 847/1442 for Bilban Pasha which comprised a bath, four shops and 30,000 akcas to spend on the mosque and charity of Imaret in Edirna and a school in Ghaliboli. The interest on the loan this time was fixed at 10%<sup>(10)</sup>

Istanbul was conquered in 1453 and soon became the capital of the new state. During that time, cash waqf prospered and expanded to the neighboring countries. The commercial activity of Constantinople (Istanbul) by virtue of its geographical location, the flow of cash money and the quasi-banking transactions contributed to this kind of new waqf. The first waqf of this type dates back to 1464 and fifty years later (1453-1505) cash money exceeded traditional awqaf<sup>(11)</sup>

At that time, Istanbul was the seat of shaikh al- Islam, the highest religious authority in the Ottoman State<sup>(12)</sup>. In other words, it was important for this new type of waqf to win the approval of Shaikh al Islam during that specific period. It was not surprising to find Shaikh al Islam Mulla Khusruf who held this position between 1460-1480 a staunch supporter of cash waqf. Mulla Khusruf had started at that time (1473) his work on his book 'Durar al Hukkam fi Sharh al ghurar' which he completed in 1478. This book became a major reference for the Hanafi school of thought which prevailed during the Ottoman rule for several centuries. In this book, Mulla Khusruf says that Mohammad Ibn Al Hasan Al Shaibani, a disciple of Abu Hanifa (D186H / 805D) approved the cash waqf in the light of '*taaruf*' principle.

On Parallel lines, Al Ansari quoted the approval of Imam Zafer, the other disciple of Abu Hanifa, (D158H /775D), of the cash waqf. This attitude boosted the understanding that cash waqf is another type of the movable waqf and was approved by Imam Al Shaibani and endorsed by Zafer<sup>(13)</sup>. During his term,

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(10) Ibid, P 15

(11) Ibid, P15

(12) See R.C.Repp, the Mufti of Istanbul, A study in the Development of the Ottoman learned Hierarchy, London. 1980

(13) John Mandeville: ' Al mardoud el khairi lil riba' (the charitable Impact of Usury): the Difference over Cash Waqf in the Ottoman State, Al Arnaut, Dirasat fi waqf el nuqoud.P21.



Mulla Khusruf endorsed many waqf deeds related to cash waqf and this behavior left the door open for this new type of waqf. This behaviour left the door open for this type of waqf. The same attitude was adopted by shaikh al Islam Zada 1496-1503 and Shaikh al Islam Saadi who held this office during the period from 1535-1538 D<sup>(14)</sup>.

Meanwhile the Ottoman State was expanding to the south as it annexed Bilad al Sham (923/1516) and Egypt in 924/1517 after defeating the Mamluki army. In the same years (923/1516) the scholar Al Tarabulsi, the author of '*Al Is'af fi Ahkam al Awqaf*', died and the book has become a reference for the Hanafi School of thought in matters related to waqf<sup>(15)</sup>.

Al Tarabulsi laid emphasis on the attitude of the predecessors towards cash waqf, specifically the attitude of Mohammad bin Abdullah Al Ansari, a companion of Imam Zafer, who approved the cash waqf provided that such monies should be reverted to mudharabah with their proceeds applied to charities<sup>(16)</sup>. It was apparent that the Mudharabah requirements were unfair and consequently the Mudharabah-based cash waqf did not develop. Al Mudharabah, as it is known, is a partnership between the owners of money and another party to operate and develop it on condition that the profit should be shared by both parties. In case of loss, the loss is borne by the owner of the money or the waqf. In view of the fact that Al waqf Al Khairy is based on having a fixed income in order to provide for the poor and the needy, the essential point in utilizing waqf funds implies a risk to the capital and this endangers waqf. It should be noticed that this new type of waqf depending on a fixed income to be generated from the waqf monies did not expand quickly, taking into account that Bilad al Sham was in the center of the Ottoman Empire which reached Yemen in the south and Algeria in the west. The circumstances were convenient for such an expansion as cash waqf prevailed in the neighbouring Anadol, part of which constituted Aleppo district. Furthermore, the Walis (governors) and Judges(kadis) who came to Bilad al Sham had had an experience in the domain of cash waqf before coming to those countries. We should not forget the fact that Aleppo, Damascus and Tripoli were prosperous commercial centers known for the flow of cash.

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(14) Ibid., P 22

(15) Al Tarabulsi recognizes that he made a summary of Al Khasaf's book "*Kitab Ahkam al Awqaf*" with same adaptation from Hilal book by Hilal Ibn Yahia.

(16) Ibid. p 26.

As far as we know, the first cash waqf in Bilad al-Sham appeared in Aleppo in 963 H/ 1556 AD through the ex-Wali of Aleppo Muhammad Pasha Dukagjin who was appointed Wali of Aleppo in 957 H/1550 AD. He served there for four years and established the biggest waqf in Aleppo during the Ottoman rule. This waqf included a cemetery and a school for the Holy Quran to sublimate the memory of his deceased mother which died in Aleppo. Besides, the waqf included a big mosque (Al Adelia), the first to be built on the Ottoman style. There were also many arcades, khans (inns), markets, and an amount of 30,000 Sultani dinars. It is clear that the waqf of Muhammad Pasha was of the mixed type as it included fixed assets for rent and waqf capitals used as loans extended to merchants with an interest of 10%. Moreover, Muhammad Pasha empowered the Wali to dispose of the money at his own discretion. So he built real estate property for renting whenever this proved more convenient. This was what the Mutawelli did when he built the khan of Nahhaseen and the market of wool (Souq al Jokh)<sup>(17)</sup>.

Given the importance of such a waqf which was the first in Bilad al-Sham, it did not receive the due attention. The same can be said about the waqf established by Mustafa Halabi in Muharram 978H/1570 which included 20,000 Sultani dinars, half of which to be operated in Aleppo at a fixed interest rate of 10%.<sup>(18)</sup> This urged some researchers to believe that first waqf in Aleppo appeared in the 16<sup>th</sup> century through Ahmad Pasha (the Wali) who dedicated 10,000 gold dinars to be operated at an interest of 11%<sup>(19)</sup>. Nevertheless many other cash awqaf appeared in Aleppo, for example the waqf of Muhammad bin Ahmad Al Zababili and others<sup>(20)</sup>.

The rise of cash waqf in Aleppo coincided with another cash waqf movement in Jerusalem so far believed to be the most important cash waqf in Bilad al-Sham. Some believe that the circumstances were convenient for the rise

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(17) For more on this subject, see Muhammad Al Arnaut: *Dirasat fil tarikh el hadhari li Bilad el Sham in the 16<sup>th</sup> century*. (Dar Al Abjadiyya)1995, Pp46-48

(18) This waqf did not receive the due attention and this waqf deed was published with a French translation: Yvette. Sauvan "une liste de fondacions pieuses (waqfiyya) au temps de Selim III, BEO XVIII, Damas, 1975, PP 231-257

(19) Kamel al-Ghazzi; *Nahr al Dhahab fi tarikh Halab, Aleppo 1342.*, Al Muhby, Khulasat al athar fi Aayan el qarn el hadi ashar, Beirut (N.D)part 1, p 364  
Bruce Masters, *The origin of Westaern Economic Dominion in the Middle East Mediterranean and the Islamic Economy in Aleppo 1600-1750*, New York - London, New York University Press, 1988, P 162

(20) Center of Historical Documentaries in Damascus. *Records of Shari'a courts in Aleppo: #12, P 103 / Deed 3/1623 AD*

of cash waqf in Jerusalem, which became the hub of the commercial activities in the region, following the period of instability which characterized the earlier Ottoman Empire until the elimination of the Mamlukis and the revolution of Jan Burdi Al Ghazali in 927H/1520 AD. This happened during the reign of the Sultan Sulaiman Al Qanuni 1520-1566 AD. This prosperity came as result of the flow of pilgrims to the city and its demographic growth. Sultan Sulaiman erected a new wall for the city and restored the castle and the Dome of the Rock. He shared his wife the establishment of a big waqf (imaret) which carried the name of wife (Khasky Sultan). Free meals were served to the poor and the reedy in Jerusalem<sup>(21)</sup>. As Jerusalem was the centre of the province (*sanjak*), there was a military garrison and a judicial authority consisting mostly of the “Turks”(actually Rum or Arwam) who came from the depths of the Ottoman state. It is not surprising therefore to find cash waqf associated with the dignitaries and notables of the Ottoman administration, for example, *amir al liwa*,. *Dizdar Kala'a*, the judge of Jerusalem, etc. who were familiar with cash waqf before coming to Jerusalem.

The first cash waqf in Jerusalem is believed to have been established by Farroukh Bey, the Amir of Jerusalem province in 964/1556. This man dedicated 16000 dirhams to be utilized as loans with a fixed interest of 15%, with the proceeds going to ten reciters of the Quran at al Haram al Ibrahimi in Al Khalil(Hebron) city<sup>(22)</sup>. The cash waqf which followed was associated with the “rumi” legal and military dignitaries, for example Fath Fathullah Efendi (the son of Prince Darweesh Mohammed)<sup>(23)</sup>. There was also the waqf of Sulaiman Bey, known as, *Mafkhar al Sibahia* in Jerusalem<sup>(24)</sup>, then the waqf of Sulaiman Bey the governor of Jerusalem Province<sup>(25)</sup>, and finally the waqf of Abdul Qader Ibn Abi Al Khair, the kadi at the province of Jerusalem<sup>(26)</sup>.

The sentiment for cash waqf continued its hike until it reached its culmination after the second century of the Ottoman rule, Thereafter, it started

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(21) The population of the city doubled twice in 20 years of the Ottoman rule: 932-963H/1525-1551 AD. There were 943 Khanas and reached 2433. Al Yaqoub, Nahiat el Quds el Sharif, Vol.I.,p34. For more information on the development of the city during the reign of Sultan Sulaiman (the golden age of the city), see.....

(22) Documents Center at the Jordanian University Records of the sharia court of Jerusalem, H 33 P.371

(23) Records of the sharia court in Jerusalem # 40 P 38

(24) Records of the Sharia Court in Jerusalem # 54 PP 490-491

(25) Records of the Sharia Court in Jerusalem # 56 pp 330.

(26) Records of the Sharia Court in Jerusalem # 65 PP 333-334.

to recede. In the light of the available waqf deeds (65 in number), it can be said that cash waqf, represented 50% of the Khairy waqf established in Jerusalem during the first two centuries of the Ottoman rule. This cannot be found in any other area of Bilad al Sham or elsewhere. Nevertheless, the waqf deeds we found in the shari'a courts of Jerusalem do not represent all the cash waqf in Jerusalem. Some cash waqf deeds, for example the waqf of Turgut Aga, had not been documented with the Shari'a courts, but we found their annual records including data about loans extended to people and other relevant transactions<sup>(27)</sup>.

The available published deeds are 65 waqf deeds and depict a good picture of the development of cash waqf in Jerusalem and the mechanisms of their work. They were converted into something like Islamic social banks whose terminology has been established in this area.

It is noteworthy that 63 deeds out of 65 were waqf Khairy, two family waqf deeds and one joint waqf. This means that the proceeds of the loans being advanced out of cash awqaf had never reached individuals who did nothing except that they were the posterity of the waqif, but rather they went to the various sectors of the society. This, no doubt, caused cash loans to acquire a prevailing social touch.

With respect to the channels of spending, it should be noticed that the proceeds often went to the reciting of the Quran, the prayer for the waqif and his family in Jerusalem Haram or for providing light facilities for it. Thirty two awqaf were dedicated to the Holy Book, 16 for lighting and five joint awqaf for the Quran and the lighting.

The first ever known cash waqf at the state's level (waqf Al Haj Muslih Eddin) in Edirna was dedicated to provide for three reciters of the Holy Quran. This high percentage of cash waqf (about 50%) was attributed to the sanctity of the place for Moslems. The prophetic tradition promises a great reward to whoever offers oil for lighting or who asks forgiveness for somebody there<sup>(28)</sup>.

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(27) See our study on the Annual Record of Turgut Aga waqf Transactions by M., Al Arnaut: *Tatawor waqf el Nuqoud fil asr el Othmani* (3) *Dirasat magazine*, Jordanian university, issue 1, Amman 1993, PP 366-382.

(28) In respect of the sanctity of the place for Moslems, see *Fada'il Bait al Maqdis* by Dr Kamel J. Al Asali; Muhammad Ahmad Al Wasiti, *Fada'il Bait al Maqdis*. Hebrew University 1979, PP.29. Al Wasiti, in his book which he wrote in 11th century AD, recalls the saying of the Prophet (PBUH) that a single prayer in the Aqsa mosque equals one thousand prayer elsewhere.

'Fadail Bait el Maqdis' edited with an introduction by A. Hassoun, Al Quds (Dar Maghnis, Hebrew University) 1979, PP25-29

It is also noteworthy that the volume of such cash waqf ranged between 60,000 silver dirhams and ten Asadi piasters. Moreover, cash waqf always took the form of the currency in circulation at that time for example: Sultani gold dinar, Asadi piastre and Cypriot dinar, accompanied by the equivalent values in other currencies, for example Sulaimani silver or Egyptian silver etc... This shows the flow of the various currencies in Jerusalem and the possibility of conversion into other currencies<sup>(29)</sup>.

In dealing with the loans out of the cash waqf in Jerusalem, it is noticed that the interest rate was fixed clearly in the deed, with the exception of two only. The rate ranged between 10% and 15% but some fixed it at 20%.

This type of waqf which won the approval of the majority of the Hanafi faqihs (the formal school of thought for the Ottoman Empire) had to acquit itself of the usury (*riba*) in order to be accepted in Bilad al Sham. This indicates the reserved attitudes of the followers of the other schools of thought, (for example the Shafii, Hanbali and Maliki Faqihs) towards this trend. To cope with this weakness, most waqf deeds used to emphasize that such an interest rate is compatible with the Islamic sharia. There was also an emphasis on the part of the waqif through the Mutawelli to shun any behaviour which could be viewed as usury.

Most waqifs available to us here were followers the Hanafi school of thought which permitted the cash waqf, but at the same time they sanctioned its revocability. In most of these waqf deeds a waqif pretended to revoke a waqf, after which a Mutawelli would submit the case to the judge for a decision. Here a shari'a verdict is passed and a waqf, according to Imam Abu Hanifa, becomes irrevocable. Here we see that a waqif used to renege on the waqf because a cash waqf, as maintained by some faqihs, is null and void with all its relevant conditions. Finally, the judge issues a verdict in favour of the cash waqf with all its particularities and universalities as maintained by Muhammad al Ansari, a disciple of Zafer and in conformance with the attitude of Imam Muhammad and Abu Yusuf (May Allah be pleased with them)<sup>(30)</sup>.

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(29) In respect of the currencies in circulation and their values, see Al Yaqoub, Nahiat Al Quds al Sheriff, Vol I, PP 145-149.. Amon Cohen, Economic Life in Ottoman Jerusalem, New York (Cambridge University Press) 1929, PP129-151 See also Shawkat Bamuk: Financial History of the Ottoman State, translated by Abudul Latif Al Harris. Beirut, Al Madar Al Islami 2005, PP 123-126, 183-185,197-198and others.

(30) Waqf of Abdul Qader Al Hariri, Records of Sharia court in Jerusalem #56, PP333-334

Sheikh al Islam Mulla Khusruf in whose term, (1460-1480) the cash waqf appeared had approached this point in his book "*Durar al Hukkam fi Sharh Gurar el Ahkam*" which remained in vogue for several centuries during the Ottoman era. He made a faint hint to Imam Muhammad al Shaibani (D 805) who was a disciple and companion of Abu Hanifa and reported to have approved the cash waqf in view of the principle of "*taaruf*". Similarly Muhammad al Ansari quoted Imam Zafer, a disciple and companion of Abu Hanifa, as accepting the cash waqf<sup>(31)</sup>. Though this conclusion is inaccurate in relation to al Shaibani and al Ansari, we find that this attitude gained ground and a principle to be reckoned with in respect of waqf. On the other side, we do not find anyone indicating the fatwa issued by the reputable Sheikh al Islam Abul-Ssu'ud effendi in favour of cash waqf in which he preferred to follow what Al Bukhari reiterated about Al Zahri (D 124) who approved cash waqf for mudharabah purposes only<sup>(32)</sup>.

It is known that the continuation of al Waqf el Khairy is associated with the continued flow of proceeds generated from cash funds, thus the said mudharabah was not fit for it. Cash waqifs in Jerusalem were keen to put some conditions which guarantee the repayment of loans, together with the interest in order to provide for the beneficiaries. The common factor among the waqf deeds (waqfiyyas) is that they exclude traditional people who represent the state and express concern over the non-payment of the loans taken from the awqaf. Among those people were al Sibahiyya, the Janissaries, the rulers and the judges. On the other hand, we find that waqf deeds imposed conditions on a Mutawelli who had no other choice but to accept that in relation to the recovery of loan corpus, together with the fixed interest. Among such conditions are the following:

- Stopping all dealings with those adjudicated bankrupt.
- Requesting a mortgage equal in value to the loan or exceeding it, or a guarantor.
- Commitment to the fixed interest rate.
- Receiving the interest immediately after negotiating the loan.
- Never to advance the whole amount at a time for one person.

A quick look at the owners of these awqaf, we notice that 7 waqfs out the 65 mentioned above belonged to women. In one of these awqaf, we find that a woman and her husband used to share one waqf. It should also be noticed that all

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(31) Mandeville, *Al mardoud el Khairy lil riba*, P21. It should be noted here that Imam Ibn Taimia approved of the cash waqf as maintained by Al Ansari. Ibn Taimia: *Majmou' el Farawa*, Riyadh 1398, part 31, p334

(32) Abu al Su'ud Efendi Al Hanafi., *Risala fi sihhat waqf al-nuqud*, with commentaries by Saghir Ahmad Shaghef, Beirut (Dar Ibn Hazm) 1997 P.24.

these women, except one, were Rumis, either from those who settled in Jerusalem or from among those settling in Istanbul. These women were keen to gain the good pleasure of Allah through settling in the holy city of Jerusalem. Among the reputable names were Nazira Hatun, wife of Ahmad Celebi, an official at the Sublime Porte, and Hatice Al Rumiya, in addition to the lady Fakhr Bint al Sheikh Muhammad Al Ja'uni from the local families known for cash waqf.

The emergence of the local families through the records of the shari'a courts (al Alami, Al Fetyani, Al Dajani, Al Khaledi) during the 11th and 12th centuries AH - 18<sup>th</sup> & 19<sup>th</sup> centuries AD is associated with the retreat of cash waqf. This consolidates the fact that the appearance and disappearance of cash waqf was associated with the Rumisa and Hanafi elements in Jerusalem.

## Appendix

### Waqf Deed of Farroukh Bey

Praise be due to Allah who promised the believers, men and woman, a great achievement, and prepared for the well-dears a decent reward, and gave a good life for those who did good deeds and multiplied the reward of the pious as cited in the Holy Book: *'The parable of those who spend their wealth in the way of Allah is that of a grain of corn: it growth seven ears, and each ear hath a hundred grains'* Blessing are due to the prophet Mohammad, his kinsmen and companions till the Day of Judgment. It is in this blessed meeting in the holy city of Jerusalem that this document was executed by Mawlana effendi Abdul Rahman, may Allah protect him, in favour of Farroukh Bey Ibn Abdullah the most reputable and respectable among the notables and dignitaries. Farroukh Bey admitted that he withheld, immobilized and dedicated on a perpetual basis as waqf all the silver amount in his possession known as the Sulaimania Sultania legal tender. The amount is 16000 dirhams, equal to 8000 Sulaimani silver pieces.

The proceeds of the amount should be allocated to ten reciters of the Quran, provided that they should meet daily after the noon prayer in al Khalili Harem. Each one should read a full section and read the Suras of Ikhlas, Alak, Al Nas, and the Opening of the Book till the verse *'and those are really the prosperous'*. Then they can reiterate what they like in terms of du'aa in favour of the waqif and the dead Moslems. For the reciting of the Quran, he specified Sheikh Jamal Eddin Mohammad Ibn Qasem, Sheikh Ghars Eddin al Tadmuri, Sheikh Ali Bin Abdul Latif, Sheikh Mohammad al Zaatari, Sheikh Shehab Eddin Bin Tahboob, Sheikh Mohammad Abil Jud al Masri, Sheikh Mohammad Bedah, Sheikh Abdul Wahab bin al Hujja and Sheikh Ahmad Bin al Habra. To each one of the aforesaid reciters to be paid an amount of 215 uthmania out of the proceeds of the dedicated waqf (money) on an annual basis. To the waqf Mutawelli (administrator) an amount of 150 shall go as this constitutes the interest of the 1000 uthmania. To the person who distributes the sections of the Quran, an amount of 100 uthmania shall go. This job was assigned to Mohammad Ibn Abdul Latif and after him to the person chosen by the nazir. The waqf administration was assigned to Sur Agha bin Abdullah, the Imam at al Khalili harem, incase one of the reciters might pass away.

The judge at his sole discretion shall choose another one through consultation with the nazir. And in case a reciter was absent, he is authorized to choose another one in his stead until he turns back.



The aforementioned waqif declares that he waived the above waqf and dedicated it in the proper way to Allah and who ever changes it, the sin will fall on him. Allah is verily All-Knowing, All Hearing and never causes the reward of the well-doers to be lost.

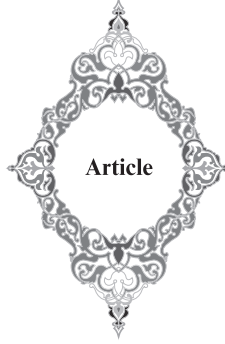
The said Mutawelli accepted the responsibility and was handed the said amount in the proper shari'a way from the said waqif and confirmed its validity and correctness as cited by the great Imams.

**Executed in Jumada al Thani 964 AH**

**Witnesses**

**Source: Jerusalem Sharia Records**

**Record 33, P 371**



## **Waqf and Education in Malaysia -Selected Issues-<sup>(\*)</sup>**

**By: Dr. Mohamed Aslam Haneef<sup>(\*\*)</sup>**

### **Introduction**

Modern economics today generally recognizes a two sector economy, i.e. private and public. The mainstream position is that the market/private sector is the main dynamo of the economy, while the public sector/state intervenes to tackle market failure or to be involved in the production of public goods, goods that are necessities, but are economically not profitable. This view of a 'two sector' economy is also found in comparative economic systems textbooks that view capitalism and socialism as having characteristics that swing between the market or plan/state and between private or public ownership. This paper proposes re-invigorating the institution of waqf (pl. awqaf) in the economy to represent a three sector model. The idea of a three sector is, according to the present writer, an ethically superior system as it would include ethically 'superior motives' that should be promoted. The awqaf institution, since it is not obligatory like zakat, is purely an ethical, voluntary institution, and hence,

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depicts a 'higher level' of humanity. This article will present the state of waqf in Malaysia in general, highlight its education dimension (that is rather limited) and discusses a few contemporary case studies that represent attempts at creating a bigger presence for the third sector in Malaysia. In doing this, the paper will also identify challenges and barriers and propose steps for moving forward.

The outline of the paper is as follows: It begins with a brief overview of the awqaf institution in the history of Islamic civilization. This is followed by a brief introduction to the definition and scope of waqf in Islamic literature. Next, the waqf institution in Malaysia is presented and an overview of some administrative and legal issues is provided. This is followed by examples of waqf and education in Malaysia, with some challenges being highlighted. The final section is a conclusion.

### **The Institution of Waqf in History**

Historically in Muslim civilization (and one could argue before), the voluntary sector was quite known to be a main provider of goods and services, especially when the idea of the state having an economic function as today was still not in vogue. One important voluntary institution was the Waqf (pl. awqaf) institution, that was successfully used to mobilize additional resources to address various social needs in the community. For instance, Ottoman society relied entirely on the *Waqf* system to finance their health, education and welfare needs. The system of *Waqf* flourished during that Ottoman period so much so that a person would have been born in a *Waqf house*, slept in a *Waqf* cradle, eaten and drunk from *Waqf* properties, read *Waqf* books, taught in a *Waqf* school, received his salary from a *Waqf* administration, and when he died, placed in a *Waqf* coffin and buried in a *Waqf* cemetery (Baskan, 2002).

Although the institution of Waqf had played significant roles in the earlier periods of Islam, its effectiveness has declined greatly over the centuries. Both internal and external reasons can be cited for this decline. Inability to innovate and show dynamism is an example of the former, while the advent of colonialism (and its implications) is an example of the latter. The institution was badly handled and later forcefully uprooted by the colonial rulers, including confiscation and misuse (Cizakca, 2000). In addition, the civil law codes enacted in Muslim countries further limited the development of the waqf institution. An already weak waqf system was further marginalized in the 19<sup>th</sup> and early 20<sup>th</sup> centuries.

Philanthropic Waqf was introduced with the consent of Prophet (PBUH) to provide a wide range of services, especially to, but not exclusively for, the poor sections of the society. Many groups and 'intentions' were thought of, including services of public utilities, libraries, scientific research, education, health services,

care for animals and environment, funds for small businessmen, parks, roads, bridges, dams, etc. More specifically, there were five main categories of social services such as food, housing, health, education and religion that were provided in the Islamic Lands through Awqaf. Kahf (2000) explains some historical details on the relative size of these various sectors. Sait and Lim (2006) have shown that the Ottoman Caliphate (the state/public sector) was not really responsible for generating social welfare. Rather it relied on the institutions of Awqaf for serving the needs of the population. Thus, historical evidences support that Awqaf models were among the best alternative means for providing for people's needs.

One important area for socio-economic development is the education sector. Educational Waqf provides for the person who will then, likely promote development in society. Nowadays, education is recognized as one of the major determinants of economic growth and development. The more knowledgeable the society is the more is the value added to the economy of the nation. There are many educational institutions including universities, colleges, schools, and most of the religious-oriented educational institutions that have been funded through Awqaf. Al-Azhar University in Egypt is the first University in the world that was financed by Waqf in the year 330H (Kahf, 1998)<sup>(1)</sup>. Dar Al-Hikmah in Baghdad is another example. For a more modern example, one could cite the Aligarh Muslim University of India. The extent of the role of awqaf in education varies from country/region to another in the Muslim world. While the Middle East and South Asia may have witnessed a greater contribution, the Southeast Asian region did not.

Despite shortcomings, there has been an increasing awareness of the need to revive, restructure and modernize the Waqf institutions across the OIC member countries. Such awareness is necessary for proper management and utilization of Waqf resources. The remaining sections of this paper attempts to look at the case of waqf in Malaysia

## **Waqf in Malaysia**

Unlike the examples cited above and of other parts of the Muslim civilization, the waqf institution in Malaysia did not have the kind of extensive role and impact as in, say Egypt or Turkey. However, waqf was and still is, a living part of the history of Islam in Malaysia. Although cash waqf has recently been introduced in a more organized way, traditionally land was the subject of

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(1) Kahf refers to the writing of Abdul Malik Ahmad Sayed, 'Role of Awqaf in Muslim History' in Hassan Abdullah Al-Amin (ed), *Idarat Wa Tathmir Mumtalahat Al-Awqaf*, Jeddah: IRTI, 1989.

waqf deeds. Before discussing some issues relating to waqf in Malaysia, some legal and administrative framework issues should be introduced.

### **Waqf Enactments and Administration**

Malaysia has both civil law and shari'ah law systems in practice. What sometimes complicates things is that Islamic law was also 'unwritten' law in Malaysia. As far as jurisdiction of wakaf is concerned, it should be in the shari'ah courts and the responsibility of the Islamic Religious Council of each State (SRICs). There are 13 states and one Federal Jurisdiction, hence there are theoretically 14 'independent' jurisdictions of waqf. In March 2004, the Federal government established the *Jabatan Zakat, Wakaf dan Haji* (JAWHAR), with the aim to coordinate and improve administration and management of these three areas, although most focus was given to Zakat and wakaf. This was because there was already a relatively well functioning Hajj institution, the *Lembaga Urusan dan Tabung Haji* (LUTH) that has been overseeing matters dealing with hajj (including savings, investments of the funds and management of hajj pilgrims for the hajj itself). Despite this effort, the JAWHAR really does not have any legal jurisdiction on the 13 state jurisdictions, especially those states that have individual Malay rulers (Sultans).

In term of courts jurisdiction, *waqf* lies within the jurisdiction of the shari'ah court as provided in List II (1) of the Ninth Schedule of the Federal Constitution, but is one of the subject matters which are under the individual state jurisdictions. For example, in Selangor the jurisdiction for the Shari'ah High Court to hear and determine *waqf* is founded in the Administration of the Religion of Islam (State of Selangor) Enactment 2003; in Pulau Pinang, it is provided in the Administration of Islamic Religious Affairs (State of Pulau Pinang) Enactment 1993 and in Federal Territory, the Administration of Islamic Law (Federal Territories) Act 1993.<sup>(2)</sup> While all waqf properties are supposed to be registered with the State Islamic Religious Councils, this in itself is an issue to be discussed later, since many properties are not registered as waqf, for various reasons (just as many funds are made endowments rather than waqf). As we shall see later, this jurisdiction of wakaf is debated as some legal authorities have stated that wakaf properties are still subject to civil laws like Trustee Act 1949 and National Land Code 1965. This becomes even more pronounced when there is dispute concerning registration.

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(2) For greater legal discussion, see Zulkifli Hasan and Muhammad Najib Abdullah (2008), *The Investment of Waqf Land As An Instrument of Muslims' Economic development in Malaysia*.

## Scope of waqf in Malaysia

The four schools of Jurisprudence have viewed Awqaf from different perspectives. The Shafii school is of the view that ownership of Awqaf property belongs to God and what constitutes human ownership relates to issue of trusteeship. The Hanafi and Hanbali school share the same view and hold that the Waqf belongs to the beneficiaries in relative terms, i.e. they are bound by the decree of the founder. The Maliki jurists, on the other hand, hold that a Waqf remains under the ownership of the founder and the legal heirs could inherit the Waqf property. Among the schools of Jurisprudence, it is only Maliki that differ in terms of eternity of Awqaf<sup>(3)</sup>. While differences of fiqh views is an issue, it is probably less of a hindrance to waqf development than some of the other issues dealing with legal provisions in the country and other administrative/management issues.

Waqf has been classified into family (private) and public. In family waqf, the property is maintained for the family of its founder, until a day when it is/can be diverted to a charitable purpose. Public waqf involves permanent devotion of the property for charity purpose (Hassan 2007). However, Zain (1982)<sup>(4)</sup> classified items for Waqf into immovable (e.g. land) and movable property (e.g. books). Cash Waqf is another form Waqf and it is regarded as a special type of endowment in that its original capital, '*asl al-mal*' or, corpus, consists of cash (whether in total or partially). The main idea is to generate income to not only maintain its initial value, but to grow or at least to preserve its perpetuity; the income generated from investment is then distributed to the beneficiaries.

Wakaf in Malaysia is generally divided into two: wakaf am (general/public) and wakaf khas (special/private). Income of *waqf am* goes to the individual state *baitul mal* while for *waqf khas* is applied to objects specified by the waqif. It is a requirement for every *waqf khas* to be declared and validated by the Sultan, while the State Islamic Religious Councils are the sole trustees of the waqf property or *al-mutawalli*. Land is the most common Waqf property in Malaysia. In 2007, Hassan estimated approximately 35,727 hectares of land under Waqf in Malaysia, while an earlier Federal government estimate recorded 20,735.61 acres of land across the 13 states and Federal Territories in 2000. Many issues are raised with regards to waqf land. Siti Mashitoh (2010) cites that some Waqf lands have failed to satisfy the rule

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(3) Hisham Dafterdar, Towards effective legal regulations and enabling environment for Awqaf, Unicorn Investment Bank, Bahrain

(4) An overview of the effectiveness of the administration of *Waqf* land in Malaysia, paper presented at the International Waqf Conference of Southern Africa, Cape Town, 17th- 18th August 2007 organized by Islamic Development Bank, the Islamic Research and Training Institute, the Kuwait Awqaf Public Foundation and Awqaf South Africa.

that the land must be wholly owned in perpetuity by the waqif; Waqf properties seem to also operate under the civil laws namely, Control of Rent Act 1966; and are also affected by Local Government Act 1976, which subjects Waqf Property to municipal tax rates just like any other properties.

While cash wakaf has also made its mark on Malaysia, a new innovative form of wakaf called corporate wakaf was introduced by Johor Corporation (JCorp) in 2006. JCorp, the corporatized transferred 12.35 million unit shares owned by JCorp Kulim (M) Bhd, 18.60 million unit shares in KPJ Healthcare Bhd and 4.32 million unit shares in Johor Land Bhd worth RM200 million to Kumpulan Waqaf An-Nur Bhd as trustee entity of former Johor State Economic development Corporation (JCorp Annual Report, 2007). JCorp pledged to dedicate 25% of the annual dividend payout from the shares transferred to be used for various activities involving Muslims and non-Muslims that benefitted and fulfilled the needs of society as a whole.

As for da'wah activities, JCorp with a Federal agency *Jabatan Kemajuan Islam Malaysia* (JAKIM) developed programmes to instill 'business mind-setting' from Islamic perspective amongst Malaysian community. The programme also invited callers and viewers to donate via SMS (Short Messaging System) which was then distributed to the poor and needy in most of JCorp's programmes. A fund under the name of *Dana Waqaf Niaga* was also been established as a pilot scheme for the purpose of aiding small businesses facing problems in securing financing for start-ups or for business, including micro-credit schemes. Besides that, *Amal Waqaf Brigade* was set up as a voluntary team to assist victims of disasters such as earthquakes and floods. The team consists of five groups based on their capabilities and expertise in providing assistance and are tapped from companies within JCorp Group.

## **Waqf and Education<sup>(5)</sup>**

### *Historical Account of Islamic Education*

Abdul Jalil (1988) states that the history of education in peninsular Malaysia began with Islamic education in the 14<sup>th</sup> century, in the form of

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(5) For the historical account of waqaf and education in Malaysia, I used primarily the writings of Prof. Rosnani Hashim, Professor of Islamic Education at the IIUM. Formal referencing was not completed at the time of writing this paper. For the examples on contemporary waqaf and education, most if not all materials were from websites of the waqaf/endowment concerned, in addition to personal knowledge and information of these. Very little if any formal studies seem to have been carried out on these institutions.

'Qur'anic schools' in the homes of religious teachers and later in mosques and 'surau' (Rosnani, 1995). The pupils did not pay any fees but donated some kerosene for the oil lamps that were used if the classes were held at night; or students would help their teachers carry water from the well, cutting and carrying of firewood or growing and harvesting rice in the fields (Khuo, 1980). The brighter students who completed their basic instruction in these Quranic schools went to pursue their studies in *Pondok* institutions.

Pondok institutions were established in Malaysia in 19<sup>th</sup> century, the first being *Pondok Tok Pulai Chondong* in the Northeast state of Kelantan that was established in 1820 on waqf land. Education in the pondok was free and open to Muslims of all ages. The expenses of these Pondok depended on donations, charitable trusts or endowments (awqaf) as well as the obligatory alms (zakat). However the teachers were not paid any salary. From 1918 onwards the number of pondok institutions began to decline. One of the reasons for the decline was because the pondok did not have a stable source of income, implying possibly a relatively poor management of these institutions. In addition, with the establishment of the various State Religious Departments and Councils, Zakat, and Awqaf funds/properties were no longer given to these pondok institutions.

A group of 'modern muslim intellectuals' (Kaum Muda) started to establish more formal Madrasah education when the pondok system began to decline in the early twentieth century (Rosnani 1995). The first madrasah to be built in the Unfederated Malay States was Madrasah Al- Ahmadiyah in Kedah which was founded in 1908. A number of madrasahs were also established on the waqf lands before the Second World War. After the Second World War the organization of madrasahs were divided into two types.

- (a) Madrasahs which were founded and administered by the state religious department and
- (b) Madrasahs which were founded and administered by local committees through money collected from zakat and awqaf (what can now be termed as Madrasah Agama Rakyat).

Some of the examples of madrasahs which were financed through these charitable funds were Madrasah Al-Ulum al- Shariah and Madrasah Mahad Al- Ahya Al-Sharif in Perak. Besides zakat, some of these madrasahs drew their incomes from awqaf property such as rubber plantations, paddy-fields and house rentals. They also received some income from irregular sadaqat. Despite the financial support from these charities most madrasahs suffered from poor administrative and financial management (Rosnani, 1995). Madrasah education started to decline rapidly in the 1960s. Unlike Pondok education, the decline of



madrasah education was due to changing social values, and one could add also on greater government focus on modern education to produce the manpower needed in the modern Malaysian workforce

In addition, these institutions were also plagued with acute financial problems. Historically, Islamic education in Malaysia had suffered seriously from a lack of public financial support. The Islamic schools were poorly financed and largely depended on resources from the collection of zakat and private endowments (awqaf). Poor funding therefore affected the quality of schools, physical infrastructure and educational equipment such as libraries, laboratories, textbooks and the quality of teachers.

The above clearly shows that one of the main reasons for the decline of Pondok and Madrasah education was due to poor funding of the traditional Muslim education system. However, this was not the case in both Islamic history in other parts of the world, as well as the experience in Europe and the United States of America, where voluntary endowments/waqf played a very important role. This fact should provide us with ideas and examples of how to revive this very important institution in Malaysia.

#### *Waqf and Education In Contemporary Malaysia*

In discussing this topic, we will divide the subject into three main categories: land for education purposes and institutions (mainly for universities/higher learning), charitable foundations/awqaf and endowment/wakaf funds.

- a - Waqf Land and Islamic Education: Board of Trustees, Islamic College of Malaya (Lembaga Pemegang Amanah Kolej Islam Malaya).<sup>(6)</sup>

Although ideas about the Islamic College of Malaya were mooted in the late 1940s, it was in 1955 that the College started operation in Klang, focusing on secondary school education (in lands that were part of the Sultan of Selangor's palace, entrusted for the College). In the early 1960s, with cooperation from University al-Azhar, Egypt, plans were put forward to cover 'college level higher education'. In 1964, through the assistance of the Federal government, a piece of land was endowed for the promotion of Islamic Education located in Section 16, Petaling Jaya, administered by a

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(6) For more details discussion on the historical development of Islamic education in Malaysia, see Abdullah Muhammad Zin, Zulkiplie Abdul Ghani and Abdul Ghafar Hj. Don, *Pendidikan Islam di Malaysia: Dari Pondok ke Universiti* (Islamic Education in Malaysia: From Pondok to University), Kuala Lumpur: Dewan Bahasa dan Pustaka, 2005. For discussion of the Kolej Islam Malaya, see especially Chapter 3.

Board of Trustees. This Board, known locally by its acronym LAKIM, has since expanded to having funds (via its successful investments) that is now supporting many charitable causes in local institutions of higher learning and schools. It is known as the Islamic College of Malaya Trustees Board as the site was initially used for the Islamic College of Klang. Later when they moved to their own site in the town of Klang, the property was used for the temporary campus of the Islamic Studies Faculty of the National University of Malaysia, followed in the mid-1970s by the Islamic Teachers Training College. In 1983, the Federal government decided to set up the International Islamic University Malaysia (IIUM) and decided to use the land for its 'temporary campus'. Almost 30 years later and after huge investments in terms of financial capital and massive building on site, this prime land still houses the Center for Foundation Studies of IIUM.

Despite being a sterling example of how waqf can be utilized in an effective manner, in reality, it is not legally a waqf, nor does the land come under the jurisdiction of the State Islamic Religious Council. Instead, the land is an endowment, governed by the stated Board of Trustees under the Trustee Act 1949.

b - Foundations/Endowment funds- Al-Bukhary Foundation, Malaysia

In the early years, the Al-Bukhary Foundation allied its activities to realize the government's poverty eradication agenda. Education has since become its top priority. Instituted in 2003, the Foundation has offered (till March 2009) a total of RM3 million a year to a total of 382 students from almost 50 countries, many of whom are currently studying at the International Islamic University Malaysia. Through the Al-Bukhary Chair, International Islamic University Malaysia, at the Faculty of Architecture and Environmental Design in the International Islamic University Malaysia, research and programmes that enrich knowledge and understanding of Islamic arts and culture were supported.

The Foundation has now built the Al-Bukhary International University (AIU) where all students attending AIU beginning July 2011 will be sponsored through its Scholarship programme. The Foundation intends to make available ten (10) scholarships for each country to assist disadvantaged youths, mainly Muslim youths, to graduate with an undergraduate degree from the AIU.

Through the Al-Bukhary Tuition Programme the aim was to help narrow the divide between urban and rural Malaysia. This nation-wide free tuition programme has been conducted to help underachievers in rural schools pass

their Sijil Pelajaran Malaysia (O Levels) examinations. Developed in collaboration with the Ministry of Education, the programme was launched in 2001. It consists of a network of 200 tuition centres offering remedial classes in English, Mathematics and Science to approximately 8,000 students annually. Since inception to January 2009, more than 500 schools and almost 80,000 students across the country have benefitted from this programme.

In addition to the above, the Albukhary Foundation has also supported other educational institutions in Malaysia as well as promoted general education initiatives. However, just as in the case of the Islamic College of Malaya Board of Trustees, the Al-Bukhary Foundation Malaysia is not, legally speaking, a waqf. It is established as a Foundation rather than a waqf and is also governed by the Trustee Act 1949.

c - IIUM Endowment Fund (IEF)

The IEF was established in 1999 with initial RM3.5 million capital allocations from the government of Malaysia. Part of money was initially used to provide support for needy students and the remaining portion channeled into investment with a view to generating returns. Just as in the case of Al-Bukhary Foundation, the IEF is not actually a registered Waqf, although it is a widely used term to market its activities. The main reason for this was that the IIUM authorities wanted to retain control of the use of the funds, rather than it coming under the purview of the SRIC of Selangor, where the IIUM is situated. (Maliah, Akhyar and Nor, 2009). Over the years, the endowment fund has grown through its investments activities, additional donations (locally and abroad) and programmes that help it raise funds, including donations from staff and well-wishers. In addition, the IEF is also a registered amil for the State of Selangor and collects zakat on behalf of the SIRC for which it is entitled to a small share of the collection to be used to support poorer students in the IIUM. An empirical study done on the IEF by Maliah, Akhyar and Nor for the period 2003-2005 showed that its structure, governance and management practices were sound, although there was a need to develop sound standards of governance, including disclosure as Islamic standards for these were still unavailable.

### **Challenges of Waqf in Malaysia- The Area of Waqf and Education**

On the one hand, we have the problem of lack of studies, data and even to a certain degree, no idea of what to do. On the other hand, as this comes under the

purview of religious matters, it immediately become part of Malay/Muslim 'sensitivities' and very much a territorial/power issue.

- 1 - The expectations of Waqf as institution towards improving economic, political, educational and social spheres of human life are quite enormous. At various points in time, efforts have been made to make Waqf a more effective institution in Malaysia, for example with the establishment of The Zakat, Waqf, and Hajj department (JAWHAR) in 2004. In addition, Religious Councils laws on Waqf for Selangor (1952), Terengganu (1955), Pahang (1956), Melaka (1959), Perak (1965) and Johor (1978) have been amended to improve the legislation and jurisdiction. However, we have to keep in mind that waqf in Malaysia does not have an extensive historical experience like that in say the Ottoman Caliphate.

This has its advantages too. Not having a 'heavy' tradition can sometimes make it easier to deal with the future, provided we can learn from past and others' experiences, while taking necessary steps to situate waqf in the present context. In the area of waqf and endowment, learning from the history of Muslims, the experience in the west as well as that of the non-Muslims in Malaysia can almost surely be a positive learning experience.

- 2 - A comprehensive survey of all stakeholders to gauge their perceptions and knowledge of the waqf institution needs to be carried out. As stated, expectations are high, but exactly what is expected by different stakeholders is still not clear. Scattered works are available, but because of 'territory and power' issues/disputes among the stakeholders, very little comprehensive work is available. The time and academic will is there and must be seen through to the stage of realizing this comprehensive study. The study could cover history, present status and also identify and conduct various 'gap analyses' faced such 'knowledge gaps' of those involved in waqf administration or among other relevant authorities. Or one may identify the 'legal gaps', financing gaps, human resource gaps etc. With this information, better strategizing can take place.

For example, it was shown that in the case of Al-Bukhary Foundation, IIUM Endowment Fund and Islamic College of Malaya, even when the activities were within the ambit of promoting Islamic education, those involved chose not to call it waqf or to be controlled by the SIRC's. These surveys and fact gathering exercises are very important if true reforms are intended. Again, comparing with findings and performances in other parts of the world would greatly contribute to the reform agenda proposed.

- 3 - Despite efforts to consolidate Waqf activities at various levels of government, there seems to be some impediments. Abdullah (2009) enumerated the challenges of Waqf in Malaysia as beginning with the 'weak inventory' by Religious Councils. There is also lack of registration and documentation of some properties that make identifying them difficult, let alone developing them. For example, in preparing this paper an attempt was made to gather data from a couple of relevant agencies that dealt with waqf lands. The idea was to breakdown the number of properties that were related to educational activities. No such data is available and we were told that no such study had been conducted as of today.

There is a need for a massive 'inventory taking' exercise. With the assistance of the SIRC, the JAWHAR or may be its subsidiary the Malaysian Waqaf Foundation (Yayasan Waqaf Malaysia) should convince all parties to work together to create these databases.

Some work has been started with some SIRC working to develop this inventory base, with some even having geographical information systems (GIS) showing locations of waqf properties. What needs to be done now is to get all states to do the same.

Secondly, to identify which of these properties were dedicated to educational purposes. Based on this (or if not possible), identify a proportion of these lands for this purpose. Currently, the trend is to build bazaars/malls/shophouses and housing projects as these are seen to be money generating. A proper waqf land development strategy needs to be undertaken whereby numerous factors based on location, type of land, its terrain as well as reference to *maqasid al-shari'ah* guide decision-makers to plan more effectively.

- 4 - Due to the state of affairs, coupled by weak management and investment, revenues do not cover operational costs. Either as a cause or effect, most SIRC also suffer from lack of qualified human resources. There is a need to identify administrative and management shortcomings and to propose proper staffing and organizational reforms.

This would certainly require short-term as well as longer term educational and training programmes. In-house programmes for existing officers (at all levels), upgrading of formal qualifications (especially of professional qualifications) by proper human resource development efforts, just like any other private or public organization.

- 5 - The legal framework poses many challenges. It will require a more detailed study by itself. From example, the laws regarding Waqf are yet to be standardized due to the fact that 'Islamic matters' come under the individual waqf legislations of the 14 states (Hassan, 2007). Similarly, the state laws empower Religious Councils (Majlis Agama) religious issues including Waqf and section 3 of the Land Acquisition Act 1960 (civil land law) allows land acquisition only for public interest and economic development throughout the country. By virtue of this law, only Religious Councils could fulfill the requirement not individuals, thus, a kind of impediment is created. In addition, the Land Acquisition Act (1960) and National Land Law that is under the National Land Code (1965) have not made distinction between land for Waqf and land owned by individuals. The status of these laws makes for varied interpretations. In much of this, political will and commitment cannot be understated. Also, the involvement of the Sultans and related institutions is paramount.

## Conclusion

It is evident that Waqf has played a vital role in the areas of socioeconomic and educational spares in different part of globe. The success could be attributed to many factors such as coordination, management, public sacrifice etc. At the conceptual level, it can be argued that it represents part of a 'three sector economy' that is ethically and morally superior to a two sector model. Helping others or giving to others (when you do not have to) is quite a transformative idea. The relevance of Waqf towards the development of education cannot be underscored. Education has benefitted immensely from the Awqaf in different places of the world. A number of examples include Awqaf of Ayubites (1171-1249), Mamalik (1249-1517) and al-Azhar University established in 972 (it was later taken over by the government) (Kahf, 1998).

Similarly, during the Ottoman caliphate in Istanbul (Turkey) health, education and welfare budget had been financed through Awqaf<sup>(7)</sup>. Kahf (1998) quotes the case of the Island of Sicily under the Islamic Political leadership had built 300 elementary schools, paid teachers salaries and provided school supplies through Waqf revenues. The provision of *Awqaf* for education allowed the economically poor classes to have access to educational opportunities that allowed them social mobility. While such opportunities were also seen in the Malaysian case, sustainability of the waqf, legal, administrative and management

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(7) <http://www.awqafsa.org.za/glossary.htm>

issues pose huge challenges. There is a need for greater research into the historical dimension of waqf in Malaysia/SEA.

Having examined the significance of Waqf in education, it is evident that the potential of Waqf in education has not been tapped in Malaysia. This paper has made some modest proposals to conduct extensive surveys of all stakeholders and inventory stock taking as the first step in reforming the waqf institution. This needs to be followed by proper legal, staffing and administration changes. These changes in the context of Malaysia will almost surely require great political will and wisdom, something that is not impossible. As the Malay proverb goes '*hendak seribu daya, tak hendak seribu dalih*' (if you want something there are a thousand efforts, but if you do not want something, there are a thousand excuses).

As an effort to continue down the road, various groups are already undertaking research in the area of waqf. These efforts need to be coordinated and collaborative links be established and strengthened. Funding of such areas that seem to not have much commercial value must be supported by the community. In fact, it is in the provision of important, non-commercial activities where waqf plays an even greater role. For example, there is already sufficient resources, both human and financial, being allocated on research in Islamic Banking and Finance. Even if there are shortages, these can be catered for by the booming Islamic Banking and Finance industry. However, not enough is put into less commercial areas like Islamic economic history, philosophy of Islamic economics, Islamic economic theory and also waqf studies. These areas are where waqf resources should be channeled.

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