



AWQAF Journal Waqf

In recognition of the waqf thought and philosophy in establishing the social projects and extending services in the framework of sustainable and self-supported system, KAPF established AWQF journal waqf. Therefore, this periodical publication will not rely on sales revenue of its issues , rather it seeks to realize the aims and objectives for which it was created. it will endeavour to provide the journal free of charge to all those who are interested in waqf as well as researchers, research centers and organizations related to Waqf.

On the other hand, KAPF will continue to develop the financing AWQAF Journal Waqf through inviting contributions, whether in the form of subscriptions, deductions or any amounts for the account of the journal in an attempt towards supporting the journal and enabling it to assume a share of the society burdens in extending vital developmental services.

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- Contributing to upgrading waqf researches so that the journal might rank with the prestigious refereed journals.
- Laying emphasis on the typical dimension of waqf, together with identifying its characteristics and the role entrusted to it.
- Advocating methodology in approaching issues based on the link between present and future, and therefore boosting thought in practical models.
- Linking its subjects to the waqf concerns in the entire Islamic world.
- Providing the greatest number of researches, universities and research centers with this journal free of charge.
- Encouraging efficient people to specialize in waqf-related issues.
- Establishing a network for all people interested in Islamic thought, particularly waqf thought, and facilitating communications and interaction between them.

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Abu Hurairah (may Allah be pleased with him) reported, The Messenger of Allah (peace be upon him) said: "When a man dies, his deeds come to an end except for three things: Sadaqah Jariyah (ongoing charity); a knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased)."

[Narrated by Muslim]



Project of AWQAF journal

AWQAF Project 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 Muslim nation. The history of Islamic world countries also reflects on Waqf rich experience in devising a societal involvement which encompasses almost all diverse walks of life and helps primarily in developing solutions for emerging human difficulties. During the decline of the Muslim nation, Waqf provided shelter and support for a significant share of the innovations that Islamic civilization was famed for and secured their passing from one generation to another.

Nowadays, the Islamic world is witnessing a governmental and popular orientation towards mobilizing its material competencies and investing its genuine perceptions that culture makers' cherish in a spirit of scholarly innovation to arrive at fully comprehensive developmental models deeply rooted into the values of righteousness, virtue and justice.

Based on this conviction, AWQAF Journal embarks upon achieving a mission that would enable Waqf to assume the real and befitting standing in the Arab and Islamic field of thought. It therefore seeks to emphasize Waqf as a discipline those remotely or greatly interested in Waqf to uphold a scientific trend towards developing Waqf literature and link it to comprehensive social development considerations.

Since the basic concept of waqf is related to volunteering, such a requirement cannot prosper unless Awqaf Journal becomes concerned with the social work which is directly related to community issues, social work, volunteering and other relevant issues which, when combined together, accept that reaction between the state and the society and the balanced partnership in making the future of the society and the role of the NGOs in this effort.

AWQAF Journal Objectives

- Reviving the culture of Waqf through familiarizing the reader with its history, developmental role, jurisprudence, and achievements which Islamic civilization grew into until recent times.
- Intensifying the discussions on the scientific potentials of Waqf in modern societies through emphasis on its modern structures.
- Investing in current Waqf projects and transforming them into an intellectual and culture-based product for deliberation among specialists. This is hopefully expected to induce interaction among researchers and establish a linkage between theory and practice of the tradition of Waqf.
- Promoting reliance on the civilizational repertoire in terms of social potential resulting from a deeply rooted and inherent tendency towards charitable deeds at the individuals and nation's behavior levels.
- Strengthening ties between the Waqf school of thought, voluntary work and NGOs.
- Linking Waqf to other areas of social activities within an integrated framework to create a well-balanced society.
- Enriching the Arab library on this newly emerging topic, i.e. Waqf and Charitable Activities.

An Invitation to All Researchers and interested People

AWQAF Journal would naturally aspire to accommodate all the topics that have a direct or indirect relationship to Waqf such as charitable activities, voluntary works, community and development organizations, and reaches out to researchers and those interested in general in interacting with it; in order to meet the challenges that obstruct the march of our societies and peoples.

The journal is pleased to invite writers and researchers to contribute in one of the three languages (Arabic, English and French) to the material related to the objectives of the journal and Waqf horizons in the different sections such as studies, book reviews, academic dissertations abstracts and coverage of seminars and deliberations the ideas published on.

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Editorial



The Waqf: A Civilisational Soft Power

Islam exalts the concept of freedom as a human value. Some contemporary fundamentalists consider it the sixth objective of the Sharia in addition to the recognised five. The Qur'an and the Sunnah of the Prophet (PBUH) are replete with clear and unambiguous signs that confirm and reinforce this value. The verse (There is no compulsion in religion)⁽¹⁾ showcases that the responsibility placed on man requires him to choose from among many alternatives and bear the consequences of his choice-(Whoever wills - let him believe; and whoever wills - let him disbelieve⁽²⁾). The question raised here relates to one of the ideas in which the Islamic civilization used to attract people to the religion: Islam recognising the right and freedom of man in his choices and not obligating him to follow beliefs through authoritative coercion.

In political science, international policy experts differentiate between hard powers that use coercion and violence to achieve their objectives and soft powers that use nonviolent methods to achieve the same. The concept of soft powers calls for the intellectual integrity, cultural identity and social interactions of a group's values, from which influences global ideas without resorting to violence. Regardless of the historical context in which this term appeared and its relationship to the remnants of the Cold War and the political conflict between capitalism and socialism, it alludes broadly to the means of civilisational scramble that characterised the complex relations between regions they played. Soft powers here have a leading role.

(1) The Qur'an, Surah Al-Baqarah, Verse: 256.

(2) The Qur'an, Surah Al-Kahf, Verse: 29.

Islam, upon its spread, through a number of means aimed to affect others emotionally and intellectually. This has played a major role in the expansion of its territory and ideas. The geography of the Islamic world has stabilised, and the people persisted to choose Islam, even after the exit of the first conquerors from the cities that had other religions preached in. The experience of Islamic civilisation starting from the ninth century AD, during the first two centuries of the Abbasid Caliphate, Andalusia, and finally with the Ottoman Caliphate from the fifteenth century AD until the seventeenth century AD has become a global civilisational attraction, whose minds of its creators and scientists and engineers have flourished. Architects, merchants, and craftsmen have applied scientific, social and cultural civilised ideas that translated the values of Islam and its humanity, inviting others to either join them and integrate into their culture, or to follow their ways of life and benefit from what they have achieved.

Waqf represented a model for the applications of soft power in the Islamic civilisation, as it participated in sustaining it for both of those who belong to it or to those coming to it. The endowment system has expanded in the Islamic community to contribute to achieving a better quality of life for many groups by providing public services and developing its infrastructure. Some of these include mosques, markets, public squares, fountains, and streets. The endowers spend on projects they love, aiming to provide the best, which adds an unforgettable touch to the aesthetics of Islamic cities and their architecture.

The elements of civilisational empowerment that the Waqf contributed to in development of Islamic societies were not limited to making the Muslim community attractive. It has also become a common international space between its various regions through which Muslims were able to confirm their practical and realistic affiliation with the combined Islamic Ummah.

The movement of ideas accompanied the movement of goods and trade. The endowments acted as means for this movement, and through these endowments emerged inter-trade relations between Islamic countries. It reflected on the political and social ties between them and the reduction of their dependence on foreign goods and aid. Hence, endowments contribute to issues related to the foreign policies of Islamic countries, such as ransomed Muslim prisoners. The effects of a nation benefiting from endowments ensure its safety and preserve its dignity.

The role of the soft powers produced by the Islamic civilisation, including the endowment, was not limited to contributing to the empowerment of those who belonged to it, but also influencing those outside of it when communicating even in times of war. The Mongols succeeded militarily in overthrowing the Abbasid rulers, but they could not act civilly in front of the books they burned, the cities they destroyed and the endowment institutions that they affected. They entered the religion of God in groups. The French Pope Sylvester II drew on the knowledge of Muslims during the three years he established in Andalusia in the tenth century. The application of the establishment of charitable work in Britain, following the influence of Europeans who lived in the Greater Levant and Palestine, during the Crusades between the eleventh and thirteenth centuries, began to apply the endowment formula almost literally in Britain and the charitable credit system came out in 1601 AD. The parameters of charitable work changed in Europe and then the United States of America, starting in the seventeenth century.

The waqf system was able to create a positive image of the Islamic civilisation by adapting the material elements (endowments) into resources that are predominantly immaterial, and then imprinted with the culture, values and principles of Islam, and represented a qualitative transformation that gave Muslims opportunity to benefit from them. We need to consider the elements that play an effective role in confronting the image distortion campaigns against Islam, and take the values of society as a main base for production in the fields of literature, art, education, and media seriously to compete with products fuelled by hard power struggles that make human life a pursuit of instincts and material pleasures.

The forty-second issue includes two studies on the relationship of endowment values and its role in developing the endowment's institutional performance. **Medhat Maher Allaithy**, discusses in his research, *Endowment (Waqf) Ethics and the Renewal of Community Effectiveness: A Maqasidi Value-Oriented Approach, the approach that aims to highlight* a number of methodological links in dealing with the endowment and its social effectiveness, by focusing on its values and its impact on bringing about a set of tangible results in society. This approach aims to consider the relationships that develop between endowment

institutions and their values and to achieve public interests in the reality of people and their livelihood.

Prof. Kamel Mansouri and Dr Imane Melala write in their research, *The Contribution of the Leadership Based on the Ethical Principles in Improving the Developmental Performance of the Waqf Sector- A Case Study of the Views of Administration Leaders of the Waqf Sector in Algeria, on the importance of providing an ethically oriented work environment for workers in endowment institutions to develop their performance. The research was based on a qualitative analysis using interviews with officials of the endowment sector in Algeria.* The analysis included the positive relationship that arises from improving the developmental performance of the endowment sector and enhancing the moral orientation of its supervisors.

On the economic side, **Dr Ahmed Dib** writes in his research, *What Do Endowments Offer for Water Security? Innovative Financing Proposals*, on the possibilities provided by the endowments, through the mechanism of verification, to finance the needs of development projects specifically to confront the issue of water security as part of national security. The research presented the financing of endowments, indicating the regulatory framework of banks that directly serve water security projects.

Dr. Sayyed Mohamed Muhsin, in his research in English, *The Road Towards a Maqasidic Governance of Waqf in Kerala: A Preliminary Analysis*, focuses on the relationship between the legitimate purposes of the waqf and the administrative methods used to realise them. The researcher implements social analysis through open interviews to discover the effects that result from adopting specific management methods to determine the extent of its commitment to achieving the goals for which it was built.

This issue also includes a research translated from French by **Dr Tariq Abdullah** under the title, *American Universities and the Waqf - The Formula Is Still Successful*. The researcher uses Harvard University as a model to approach the main characteristics of endowment university institutions, and to then monitor the practices that govern its development, and clarify the possible relationships between culture, the economy, and charitable work, in order to better understand the impact of endowment funds on education.

Dr. Fuad Abdullah Aleumar discusses in his article, *The Gulf Endowment: A Hopeful Reality*, endowments in Gulf countries, analysing the levels of contrast and convergence between them. The researcher presents a vision for the future in the development of endowment and the integration of Gulf endowment institutions. The digital world can be utilised to empower women and other groups to provide recommendations to accelerate Gulf endowment cooperation processes and to find solutions to the challenges the endowment sector in the Arabian Gulf faces.

This issue also contains the contribution of **Isabelle Grangaud** through her research in French, *Les Dotations de la Mosquée Sidi Al-Kittani (Constantine au XVIII e siècle)*, studies a 75 paged endowment manuscript not only related to the mosque, but to many endowments established to serve it and its social role. According to the researcher, the argument contains a list of impressive endowments, which included shops, bakeries, homes, a hotel containing 77 rooms and a home for the elderly. The researcher tries to look at the social backgrounds and the urban movement accompanying the establishment of endowments, as well as the political aspects of the argument since it was established by the Bay Salah during his reign at the end of the eighteenth century.

Rashid Fahad Almikrad presents **Dr. Imad bin Abdul Latif Mahmoud's** book, *Control of the Endowment Supervisor's Work in the Light of Governance Principles*, referring to the most important issues addressed by the book, based on the theoretical foundations of the endowment overseer's work, the powers of the Endowment Supervisor Council, and the historical stages that oversight endowments and their development. He refers to the work of the endowment overseer in the light of the principles of governance and the obstacles that prevent the activation of mechanisms for controlling the work of the endowment overseer according to these principles, with some recommendations being suggested.

The Editorial Family.



Articles in English

Road Towards a Maqāṣidic Governance of Waqf in Kerala: A Preliminary Analysis

الطريق نحو الحكم المقاصدي للوقف في ولاية كيرلا: تحليل أولي

Dr. Sayyed Mohamed Muhsin*

ABSTRACT

The institution of the Waqf plays philanthropic, religious and social roles in the well-being of the people, subject to the efficient governance it avails. In the context of Waqf, ‘maqāṣidic governance’ refers to the protection and administration of waqf properties and distribution of waqf income to the deserving people, fulfilling the objectives of Sharī‘ah and the goals of Waqf while meeting the needs of the time. This paper attempts to conduct a preliminary analysis of existing practices of Waqf in Kerala. Adopting an analytical method and conducting open-end interviews, this research scrutinizes the current trends of waqf management in Kerala. Following the exploration of the synthetic relationship between Maqāṣid al-Sharī‘ah and Waqf, this study delves into a discourse on the application of potential maqāṣidic governance to the waqf administration in Kerala. This study affirms that the maqāṣidic governance of Waqf has an undeniable scope in Kerala, which is hoped to concurrently meet the demands of Waqf and the needs of beneficiaries.

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Keywords: Waqf, Kerala, Maqāṣidic, Governance, Sharī‘ah

الملخص:

يلعب نظام الوقف في الإسلام دوراً فعالاً في تحقيق رفاهية الناس على جميع أصعدة الأعمال الخيرية والدينية والاجتماعية مع مراعاة الحكومة الفعالة التي يوفرها. وفي سياق الوقف، يشير مصطلح الحكومة المقاصدية إلى حماية ممتلكات وإدارتها الوقف وتوزيع دخل الوقف على المستحقين، كما ينص على تحقيق مقاصد الشريعة ومقاصد الوقف مع تلبية احتياجات العصر. تحاول هذه الورقة إجراء تحليل أولي للممارسات الحالية التي تجري في ولاية كيرالا الهندية باعتماد منهج تحليلي وإجراء حوارات مفتوحة، كما يفحص هذا البحث الاتجاهات الحديثة في إدارة الوقف في كيرالا، وبناءً على العلاقة التركيبية التي تقوم بين مقاصد الشريعة والوقف الإسلامي يسعى هذا البحث إلى إيجاد خطاب حول تطبيق إمكانية الحكومة المقاصدية لإدارة نظام الوقف في كيرالا. ويؤكد هذا البحث على توفر مجال واسع لا يُنكر للحكومة المقاصدية في كيرالا ليلبي من خلاها مطالب الوقف واحتياجات المستحقين.

الكلمات المفتاحية: الوقف - كيرالا - مقاصد - الحكم - الشريعة.

Introduction

Waqf means Islamic inalienable endowment meant for the perpetual benefit of the intended beneficiaries. It has a vast potential to help people, render economic support to the community, and enable welfare to the needy sector in society. It plays a philanthropic, religious and charitable role in the well-being of the people, with profound socio-economic implications. The major parties in Waqf are 1) *wāaqif* (settler/endower), 2) *mawqūf ‘alayhi* (beneficiary of Waqf), 3) *mawqūf bihi* (waqf property/asset), and 4) *mutawallī* (trustee/manager). In general, Waqf can be said as a charitable trust. It has the distinctive role of charity due to its inherent nature of permanent use. Also, its ownership is transferred to Allah, and the usufruct of waqf assets is dedicated to the proposed recipients, distinguishing it from zakāt, ṣadaqah and hadiyyah, which are generally useful for a limited period only. In that sense, Waqf is more than a charitable trust. It is distinguished by perpetuity, irrevocability and inalienability. Islam gives

enormous importance to Waqf with great merits offered to the endower. Since it has the nature of perpetuity, it has become a source of accumulated societal wealth over the years with the potential to be used to empower Muslim society.⁽¹⁾

Good governance is inevitable for proliferating the Waqf assets and broadening their usufruct. However, in many parts of the world, Waqf institutions endure incompetent governance and mal-administration. Subject to wise and efficient administration, Waqf can be an integral brick in the social infrastructure of Muslim lives in the modern world. Following the specific conditions set by the endowers, Waqf can be used in education, healthcare, socio-economic development, and public welfare. Being a source of providing such public services reduces the government burden. Its involvement in supporting teaching and research via scholarships, fellowships and research grants strengthens the intellectual freedom of scholars from political constraints.

As a common complaint, Waqf in India has not been administered with due diligence, which ended in hampering its development and depriving its intrinsic characteristics. In India, millions of Muslims are suffering from poverty, and as a result, they are a backward community in the country in several walks of life. India has the third-largest Muslim population in the world, and it has enormous waqf properties worth billions of Indian rupees, which is deemed one of the largest waqf assets in the world.⁽²⁾ In India, Muslims are the second-largest community, with more than 180 million population, constituting nearly 14% of the population in the country⁽³⁾ Undoubtedly, if appropriately used, Waqf in India has the potential to transform several lives as a big number of people are suffering from economic disadvantage and in need of assistance to meet their basic needs. Since Waqf in India is too large and complex to discuss in this study. This study will focus on Waqf in Kerala; a state on the tropical Malabar Coast.

(1) Abdul Kader, S. Z. S., & Dahlan, N. H. M. (2009). *Current Legal Issues Concerning Awqaf in Malaysia*. Paper Presented at the Waqf Laws and Management: Reality and Prospects, Kuala Lumpur.

(2) Shanmugam Munuswamy & Zulkifflee Bin Mohamed, “Financial Disclosure Pattern of State Waqf Boards in India: An Exploratory Study”, *Journal of Islamic Economics, Banking and Finance*, Vol-12, No. 4, Oct - Dec, 2016; 139.

(3) Ibid, p. 141.

In Islamic jurisprudence, Maqāṣid al-Sharī'ah is perceived as a section that deals with the ultimate goals, wisdom and inner insights behind Islamic ruling. Therefore, Maqāṣid has a distinctive role in all juristic deliberations and fiqhī discourses. The implementation of Maqāṣid leads the way towards the realization of sustainable development and complete success. In the light of Maqāṣid, the jurists can fashion the rights and duties of all parties involved in the Islamic endowment, fitting to contemporary times. The governance enriched with Maqāṣid principles is hoped to fulfil the goals of Waqf and meet the needs of the time, which is called here as maqāṣidic governance. Meeting the needs of times is a vital component of Maqāṣid al-Sharī'ah.

The primary focus of the current study is to investigate how efficiently the Waqf institution functions in Kerala. Also, it analyses the reciprocal relationship between Maqāṣid al-Sharī'ah and Waqf, followed by a discussion of the scope of maqāṣidic governance in waqf management. Finally, it attempts to apply the maqāṣidic governance to the current waqf practices held in Kerala.

Brief Note on Waqf in India

Indian Muslims have a huge source of movable and immovable waqf properties and assets.⁽¹⁾ In India, Muslim endowments are established for mosques, religious institutes, tombs of Sufi people, graveyards, orphanages, etc. Awqaf in India are administered or managed by mutawallīs, whereas the governing power is vested in State Waqf Boards.

Central Waqf Council rules and oversees the State Waqf Boards. Central Waqf Council is an Indian statutory body, which was established in 1964 under the Waqf Act, 1954 (now a subsection of the Waqf Act, 1995). It advises the State Waqf Boards on its functioning matters and proper administration of the Awqaf in the country. The Council is headed by a Chairperson, the Union Minister in charge of Awqaf.

During the Mughal period, Waqf in India was administered and supervised by the mutawallīs, known for their piety, religious awareness and knowledge about the Islamic rulings pertaining to Waqf.⁽²⁾ However,

(1) Ibid.

(2) Pearson, O. H. (2008). *Islamic Revival and Revival in Nineteenth-Century India*. New Delhi: Yoda Press.

beginning with the British colonialism in India, like many other Islamic symbols, Waqf was also handed over to unqualified people, which as a result, led to the pathetic dismay of the waqf institution.⁽¹⁾ During the partition time, several waqf properties in India became misplaced and illegally occupied.⁽²⁾

In India, Waqf law in its current form came into existence in 1863 with the name Religious Endowment Act. Its name and contents were amended multiple times, such as Musalman's Waqf Validating Act in 1913, Musalman Waqf Act in 1923, Musalman Waqf validating Act in 1930, and Waqf Act in 1954. After independence, the Government of India passed the Waqf Act 1954 to promote better administration of Waqf properties in the country. Due to some defects in the Act, it was modified three times within 15 years, in 1959, 1964 and 1969. By following the recommendations made by the Waqf enquiry committee appointed in 1970, the Act was again largely modified in 1984. It was again amended in 1995, and the latest was in 2013.⁽³⁾ One of the amendments in 1995 was to limit the prerogatives of mutawallī for controlling the misuse of waqf property.⁽⁴⁾

It is reported that more than 490,000 registered Awqaf are found across different states and union territories of India. A large concentration of the waqf properties is in West Bengal (148,200), followed by Uttar Pradesh (122,839). Other states with a sizeable number of Awqaf are Kerala, Karnataka and Andhra Pradesh.⁽⁵⁾ According to the Sachar Committee Report (2006), the total value of the Waqf properties in India in 2006 was around 500,000 assets, encompassing a total area of 600,000 acres, with a market value of more than 60 billion Indian rupees. According to the same report, if the Waqf properties had better governance, they could generate a return of ten per cent, which would amount to around 120 billion Indian rupees per annum (Sachar Committee, 2006). However, the current

(1) Abdullah, M. (2015). A New Framework of Corporate Governance for Waqf: A Preliminary Proposal. *Islam and Civilisational Renewal*, 6 (3).

(2) Central Waqf Act, 1954 (India), <https://islamicmarkets.com/education/central-waqf-act-1954-india>

(3) Karimi, I. A. (2014). Bihar State Sunny Waqf Board. Paper presented in the seminar on “Awqāf & its law in India” held at Bangalore, India on March 29-30, 2014.

(4) K L Abdul Salam, “Waqf Niyam: Oru Ethi Nottam”, Prabodhanam Weekly, <https://www.prabodhanam.net/article/4789/256>

(5) Shanmugam Munuswamy & Zulkifflee Bin Mohamed, “Financial Disclosure Pattern of State Waqf Boards In India: An Exploratory Study”, 142.

annual income from these properties is only about Rs. 1.630 billion. Of this amount, the Waqf Boards are entitled to receive a share at the rate of 7%, which is used for the working expenses of the waqf Boards.⁽¹⁾ The remaining amount is expected to be spent on the stated objectives of the respective Awqaf.⁽²⁾

Waqf in Kerala

The history of Islam in Kerala traces back to the era of the Prophet Muhammad ﷺ.⁽³⁾ The history of Waqf in Kerala and the history of the advent of Islam in Kerala are interconnected. The first mosque in South Asia is believed to be built in Kerala, known as the Kodungallur mosque. It means the history of Waqf in Kerala is among the oldest in the vast region of South and Southeast Asia. The earliest waqf lands in Kerala are the contributions of the Hindu rulers.⁽⁴⁾ Masjid is the centre of Islamic life, and masjid will always be a waqf property. After the migration of the Prophet to Madinah, among the first things the Prophet did was buying a land for the masjid and its construction.

An excellent amount of Waqf in Kerala is dedicated to dars (system for religious education, mainly attached to mosques).⁽⁵⁾ As a result, Waqf played a significant role in producing several prominent Islamic scholars in Kerala. Students were given free food and accommodation, and teachers were supported by good salaries and remuneration, benefiting from the Waqf made in their respective areas. In several places, mosques are not built in the cities but in remote areas to facilitate a learning atmosphere for students of dars. These Awqaf for dars need to be read in a larger context, considering the importance of knowledge in Islam. Previously, some Keralite Muslims used to do Waqf of some trees, such as coconut, jackfruit,

(1) Shanmugam Munuswamy & Zulkiflee Bin Mohamed, “Financial Disclosure Pattern of State Waqf Boards In India: An Exploratory Study”, *Journal of Islamic Economics, Banking and Finance*, Vol-12, No. 4, Oct - Dec, 2016.

(2) Anwar Aziz & Jawwad Ali, “Comparative Study of Waqf Institutions Governance in India and Malaysia”, *Intellectual Discourse*, Special Issue (2018) 1233.

(3) Muhsin, S. M. (2021). Three Fatwas on Marriage in South India. *Journal of Islam in Asia* (E-ISSN 2289-8077), 18(1), 252.

(4) Abbas Pannakal, The Chronicle of Waqf and Inception of Mosques in Malabar: A Study Based on the Qiṣṣat Manuscript, *Intellectual Discourse*, Special Issue, 2018, pp. 1167-1190.

(5) Noushad MK, Waqf culture: the socio-educational impact of Auqaf on Muslim community, <http://muslimheritage.in/author/139>

areca palm, cashew nut, and black pepper, for masjid and madrassa, which helped to generate income and support the system.⁽¹⁾

Compared to other states of India, the misappropriation of waqf lands in Kerala is less due to geographical and historical reasons, including religious awareness.⁽²⁾ From 1950, many waqf lands were given for lease by the Waqf Board for farming and other activities, which were not given back to the Board and became personal properties.⁽³⁾ On some occasions, mutawallīs/managers sold waqf lands for their interests.⁽⁴⁾ However, as reported by the former Waqf Board Chairman Sayyid Rasheed Ali Shihab, many of such lands were recovered by order from the Board. Some people gave back their properties even without an order for the sake of the pleasure of Allah. For example, an older man of 98 years gave back two acres of land with enormous market value, realizing it was a waqf of Manjeri orphanage. This incident drew the media's attention, and others were also motivated to do the same.⁽⁵⁾

Kerala State Wakf Board

The Kerala State Wakf Board came into existence in 1960 with P.K. Kunju Sahib (Former minister) as its chairman.⁽⁶⁾ Currently, around ten thousand waqf properties are registered under the waqf board of Kerala state. It includes graveyards, mosques, orphanages, properties, lands, etc. These are supervised by managements, mutawallīs, local committees, and elected people by the court or Board. Kadavathu mosque, in Kasaragod district, is believed as the first Waqf registered under the Kerala Wakf Board.⁽⁷⁾

Kerala State Wakf Board is a statutory body constituted by the Government of Kerala under the Wakf Act 1995, selected for five-year terms of office (Central Act 43 of 1995). The primary functions of the regulatory authority can be listed as:

(1) Ibid.

(2) Ibid.

(3) Interview by the researcher with Sayyid Rasheed Ali Shihab, the former chairman of Kerala State Waqf Board, March 27, 2022.

(4) Ibid.

(5) Ibid.

(6) Kerala State Waqf Board, <http://www.keralastatewakfboard.in/>

(7) Ibid.

(1) general superintendence of all waqf institutions and their properties,

(2) exercise powers under the Wakf Act to ensure that the Awqaf under its superintendence are adequately maintained, controlled and administered, and

(3) the income is duly applied to the objects for which such Awqaf are created or intended.⁽¹⁾

The Central Government appoints a chief executive officer (CEO) for the Board. Also, the Board is empowered by the Act to appoint several officers and other employees as per need for the performance of its functions in consultation with the State Government under section 24 of Wakf Act, 1995.⁽²⁾

This Board plays a pivotal role in the waqf management in Kerala, like in other states of India. Its duties include: (1) recovering alienated waqf properties, (2) evicting tenants from waqf properties and (3) land acquisition proceedings.

The Board is an important forum to solve disputes regarding the Awqaf. It holds judicial power over all affairs dealing with Waqf throughout Kerala. Every month, two meetings of the Waqf board, which are presided by the chairman, are held in Ernakulam and Kozhikode to hear waqf cases. Upon the notice from Waqf Board, the Revenue Department of the state and district collector have the duty to recover the trespassed lands/properties of Awqaf.

The waqf board consists of 10 members, including two members from the legislative assembly of Kerala, one member from the parliament, scholars from Sunni and Shia, two women representatives, and two elected mutawallīs. The government of Kerala also nominates some members.⁽³⁾

The seven per cent of waqf income received by the Waqf Board is spent on office expenditure and the salary of the waqf board staff. The

(1) Ibid.

(2) <http://www.keralastatewakfboard.in/about.html>

(3) Interview by the researcher with Sayyid Rasheed Ali Shihab, the former chairman of Kerala State Waqf Board, March 27, 2022.

Board has implemented loan scholarships for economically poor students studying professional courses.⁽¹⁾ The Board is also allotting grants to 100 students for their higher studies by utilizing 50% grants from Central Waqf Council⁽²⁾

The Waqf board uses Kerala's waqf lands to gain income for various activities. The grounds are given for lease for farming and other activities. In some areas, waqf lands are used for the plantation of medicinal plants, which helps to get income and keep their sites clean, productive and valuable. This process is called a tri-party agreement. The first party is the waqf board. Mutawallī and the land receiver are the second and third parties, respectively. The maximum duration of the lease is 30 years. The Waqf board motivates entrepreneurs to start new profitable institutions by giving loans.⁽³⁾ The Waqf board allots a loan to them for their construction and other requirements on waqf land. The primary duties of Kerala State Waqf are as follows⁽⁴⁾:

1. To maintain the register of Awqaf.
2. To direct mutawallīs for the proper administration of Awqaf.
3. To scrutinize the budgets and accounts of the Awqaf.
4. Audit the accounts of Awqaf.
5. To settle and frame schemes of management of the Awqaf.
6. To recover the alienated waqf properties through District Collectors.
7. To remove encroachments through Sub Divisional Magistrates.
8. To sanction to purchase properties and grant lease/ mortgage of Awqaf Properties.
9. To appoint and remove mutawallīs in some instances.
10. Assume direct management, supervision and supersession of management of Awqaf.

(1) Ibid.

(2) Ibid.

(3) Ibid.

(4) The Kerala State Wakf Board, Activities, <http://www.keralastatewakfboard.in/activities.html>

11. Inquiry relating to the administration of the Awqaf and the disposal of their revenue after due consideration of the cases filed before the Board by aggrieved parties.

In addition, Waqf Board undertakes some social and educational welfare activities for the development of the Muslim community in the State, which are as follows⁽¹⁾:

1. Pension to scholars and teachers in Arabic language and Literature and khādīms under Social Welfare Scheme.
2. Financial aid for marriage and treatment under Social Welfare Scheme.
3. Loan scholarship for professional education.
4. Grant scholarship for technical and higher secondary education.
5. Providing loans for the construction of the shopping complex, shadi mahals etc., from Central Wakf Council.
6. Providing grants for libraries from Central Wakf Council.
7. Issuing marriage certificate.
8. Maintenance for poor Muslim divorced women as per the court's order.
9. To provide financial support to start Islamic Chairs in Universities.

Income to Kerala Waqf Board from Hindu Devotees

Hinduism is the most widely professed faith in Kerala. The Sabarimala Temple is a temple complex located at Sabarimala hill inside the Periyar Tiger Reserve in the Perinad Village, Pathanamthitta district, Kerala, India. It is one of the largest annual pilgrimage sites globally, with over 40 to 50 million devotees visiting every year. The temple is dedicated to a Hindu Brahmachari (Celibate) deity Ayyappan. The story about the friendship between the Ayyappa and the Muslim saint Vavar is an excellent example of communal harmony in Kerala. Vavar's tomb is located on the way to Sabarimala temple. It is believed that Ayyappa ordered all of his devotees

(1) Ibid.

to visit his best friend Vavar before coming to Sabarimala. As a tribute to this order, all devotees of Ayyappa come to the Vavar before going to Sabarimala and donate some amount and coconut to the Vavar masjid. These donations make some income for the Kerala waqf board.⁽¹⁾

Maqāṣid al-Sharī'ah and Waqf Governance

Maqāṣid al-Sharī'ah subsumes all the significant themes of Islam, and it is, therefore, an infrastructure for every Islamic functioning. In the landscape of Sharī'ah-based governance, Maqāṣid is the configuration. The 'Ibādāt (worship) and Mu'amalāt (transactions) in Islamic jurisprudence are not only ordained as a form of prayer and obedience to the Almighty Allah, but it is also meant to achieve specific higher objectives in worldly life. Therefore, any governance that is based on the Maqāṣid al-Sharī'ah principles will consequently pay the path to comprehensive excellence from an Islamic perspective. That is the motivation to bring the waqf governance in light of Maqāṣid principles.

The central message of divine revelation is the full realization of the oneness of God and the exclusive worship of the One God, Allah; from which realization of justice and integrity in this world is derived; as Allah says:

لَقَدْ أَرْسَلْنَا رُسُلًا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ
وَأَنْزَلْنَا الْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنَافِعٌ لِلنَّاسِ وَلِيَعْلَمَ اللَّهُ مَنْ يَنْصُرُهُ وَرُسُلُهُ بِالْغَيْبِ
إِنَّ اللَّهَ قَوِيٌّ عَزِيزٌ.

We have already sent Our messengers with clear evidence and sent down with them the Scripture and the balance that the people may maintain [their affairs] in justice. And We sent down iron, wherein is great military might and benefits for the people, and so that Allah may make evident those who support Him and His messengers unseen. Indeed, Allah is Powerful and Exalted in Might. (al-Quran, 57: 25).

Abū Ḥāmid al-Ghazālī (d. circa 1111) summarised the core message of the Sharī'ah as the protection and promotion of five fundaments, namely

(1) Interview by the researcher with Sayyid Rasheed Ali Shihab, the former chairman of Kerala State Waqf Board, March 27, 2022.

faith, life, mind, posterity and wealth.⁽¹⁾ Ibn Qayyim al-Jawziyyah (d. circa 1350) elucidated the Sharī'ah as:

Sharī'ah is based on wisdom and achieving people's welfare in this life and the afterlife. Sharī'ah is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common with mischief, or wisdom with nonsense is a ruling that does not belong to the Sharī'ah, even if it is claimed to be so according to some interpretation.⁽²⁾

Maqāṣid refers to "fulfilment and protection of the interests, "removal and elimination of harm", reduction of hardships and their eradication", "establishment of safety and justice", "facilitation", "moderation", "and kindness" are the other core themes of Maqāṣid.⁽³⁾ Ibn 'Āshur defined it as "modalities intended by the Sharī'ah for people to achieve beneficial purposes or to save the interests of the public in their specific actions".⁽⁴⁾ To sum up, Maqāṣid al-Sharī'ah refers to the "attainment of the welfare of people and elimination of evils" (jalb al-maṣlahah wa dar' al-mafṣadah). How can the Waqf be made, administered, distributed, and governed to achieve the abovementioned goals is part of the discussion in the maqāṣidic governance of Waqf.

The philosophy of Islamic law in social interactions and interpersonal relationships is based on benefitting both parties involved. For example, the benefit of Waqf is twofold, as wāqif is guaranteed a source of perpetual reward in the hereafter, and the beneficiary (mawqūf alayhi) is being helped meet his socio-economic needs. Wāqif's good intention is an essential factor in the acceptance of Waqf, as per the hadith, "The deeds are considered by the intentions, and a person will get the reward according to his intention"

(1) *Abū Ḥāmid al-Ghazālī, al-Mustasfā fī 'Ilm al-Uṣūl*, (Beirut: Dār al-Kutub al-Ilmiyyah, 1413H), 1: 174.

(2) Shams al-Dīn ibn al-Qayyim, *I'lām al-Muwaqqi 'in 'an Rabb al-'Ālamīn*, ed. Taha Abd al-Ra'ūf (Beirut: Dār al-Jīl, 1973), vol 3, p3. (Translation retrieved from the book, Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law; A Systems Approach*, (London, Washington: IIIT, 2008), xxii.

(3) Bouhedda Ghalia, Muhammad Amanullah, Luqman Zakariyah and Sayyed Mohamed Muhsin, "Medical Ethics in the Light of *Maqāṣid Al-Shari'ah: A Case Study of Medical Confidentiality*", *Intellectual Discourse*, 26:1 (2018) 133–160.

(4) Muhammad al-Tahir ibn Ashur, Treatise on Maqasid al-Shari'ah, Original Edition Translated from the Arabic and Annotated by Mohamed El-Tahir El-MesawiMesawi, (Herndon, USA: International Institute of Islamic Thought, 2013)306-307.

(Riyāḍ al-Ṣāliḥīn, 1). The intention is to please Allah, as an essential duty of a committed and obedient servant in his mission to accomplish the task of khilāfah on the earth. From a broader and social perspective, Waqf can inculcate the culture of muwāsāt (mutual help), mawaddah (social love) and ukhuwwah (brotherhood).

The relationship between Waqf and Maqāṣid is reciprocal. So, the discussion also needs to be handled in that aspect. Maqāṣid can be a framework for the efficient functioning of Waqf, whereas Waqf has, by default, the potential to aid in the actualization of the Maqāṣid. To put it differently, in the light of Maqāṣid al-Sharī'ah, a clear-cut and pragmatic framework, which is in line with Sharī'ah standards and demands of contemporary times, can be designed. Maqāṣid can draw a roadmap that can be streamlined to move on for wāqif, philanthropists, mutawallīs, local management and state administrations. On the other hand, the waqf property and assets can be a huge source of help for fulfilling some maqāṣidic goals, which are at the same time efficient to please Allah and meet the needs of people.

Maqāṣid al-Sharī'ah is perceived as the philosophy of Islamic law, and therefore it has to be also governing outline for the usage of Waqf. Hence, the Waqf needs to be used for mawqūf 'alayhi in terms of protecting their dīn (Islamic faith), life, family, mind and wealth. Such protection is undeniably, among others, related to certain economic objectives. The abovementioned five fundaments are vital for achieving a prosperous life in this world and success in the hereafter. Islamic faith is not meant for achieving some rituals and religious practices, as some interpret. Rather, it is a way of living and worldview which inculcates in the people the nature of civilized and disciplined life. Likewise, protection of health refers to aspects of holistic healthcare which include the protection of physical fitness, psychological well-being and humanness of every member of the society. Protection of family is related to leading the kith and kin to a righteous living and having a sound and healthy sexual life. Protection of mind is all about preserving, honouring and improving the intellectual aspects of a person's life. Protection of wealth is about a self-sufficient society that gathers and distributes the wealth as per the guidance of Allah. Protecting the five fundaments contributes to improvements that ultimately reflect economic development. In this way, Waqf can be instrumental in promoting sustainable and inclusive growth.

In the context of Maqāṣid, the areas of waqf use can be generally categorized as values, humanity, nature and knowledge. Here, the values can be explained as faith and religious enrichment. Humanity refers to life, health, and progeny. Nature means all types of resources and wealth and extends to the environment and ecosystem. The knowledge points to the means for the protection of sound intellect. The kind of waqf governance that protects and upholds the abovementioned factors can be called Maqāṣidic governance of Waqf.

Diligent monitoring, continuous maintenance and adequate management are vital factors in waqf management. Continuity and development of the usufruct need to be assured for the benefit of *wāqif* as well as *mawqūf* ‘alayhi. Waqf is the source of perpetual divine reward, which depends on the use and benefit of the Waqf. The duty of taking this *amānah* i.e., protecting and maintaining the regular use and character of charity, needs to be moved from generation to next generation. Mahall⁽¹⁾ committees, mutawallīs and official departments in particular and Muslim ummah in general, are accountable.

In the context of Waqf, maqāṣidic governance refers to the protection and administration of waqf properties and distribution of waqf income to the deserving people, fulfilling the objectives of Sharī‘ah and the goals of Waqf. Here, the goals of waqf are specific, and the objectives of Sharī‘ah are general, i.e., the latter includes the former. However, they are cited separately to highlight the reciprocal relationship in achieving their goals.

Being the ultimate goals and all-encompassing wisdom behind the Islamic teachings, the principles of Maqāṣid Sharī‘ah always remain relevant, updated, inclusive and applicable across the ages and places. Consequently, maqāṣidic governance inevitably allocates added importance to the aspect of meeting the needs of the time it operates. Maṣlahah (welfare) is the nutshell of Sharī‘ah’s message. Achievement of benefit and repulsion of harm is the definition of maṣlahah. Therefore,

(1) Mahall means a social format of Muslims of particular localities by dividing the areas which include a Jumu‘ah Mosque and its committee. The committee leads the majority of collective rituals which are supposed to be done in a place where Muslims live and organize a wide variety of Islamic programs. In Kerala, almost all places where Muslims live have a separate mahall system and its committees. Sayyed Muhsin, Multiple Roles of Mufti: A Kerala Model, <https://twocircles.net/2020jun10/437420.html>

the maqāṣidic governance of Waqf refers to attaining good benefits and eliminating all sorts of evils from the waqf institution.

Road Towards a Maqāṣidic Governance of Waqf in Kerala

Maqāṣid, as it refers to the higher objectives of Sharī'ah, fashions the roadmap for any activity in Islam. The case of Waqf is also not different. It can be applied no matter whether the country is Muslim-majority or not. The depth and size of the application may be different according to the respective areas, efforts made, visions of the leadership, etc. As far as Kerala is concerned, Islam is the second-largest practised religion in Kerala (26.56%), next to Hinduism. Being a minority in a secular country, implementing Islamic principles and directions has limitations. However, the Maqāṣid-based framework is all-encompassing and inclusive of all situations. Therefore, by having a thorough comprehension of the context and Maqāṣid, the concerned parties can formulate the best possible and suitable format for the application of Maqāṣid in the respective areas.

In light of the current study, the Kerala State Waqf Board and Mutawallī/Mahall committee are the two major forces in the success and failure of achieving the goals of Waqf. Therefore, in the coming section, the potential role of the Kerala State Waqf Board and the Mutawallī/Mahall committee in the actualization of maqāṣidic governance of Waqf will be analysed.

Role of Kerala State Waqf Board

The application of Maqāṣid to the Waqf board begins with the judicious selection of members, considering their credentials and qualifications and detaching from the political or regional interests. Waqf is an Islamic institution. Shariah's interests warrant to be the yardstick in the selection criteria. An ideal board needs members from various educational backgrounds, particularly Islamic jurisprudence, Islamic economics, waqf laws and governance. Religious orientation, trustworthiness, and commitment should be the priority of selection criteria. An expert in the Indian laws related to Waqf will be highly helpful in avoiding the legal complications and organizing the work in conformity with the legal system of the country.

Currently, in the selection and nomination of Board members, the abovementioned aspects are being overlooked, which causes a drawback

to the trust and credibility of the Board's decisions. Presently, the members are selected based on their political affiliation. At the end of 2021, some Muslim organizations in Kerala protested against the Kerala government's decision to hand over State Wakf Board appointments to the Public Service Commission (PSC) because non-Muslims would also get positions on the Board.⁽¹⁾ This decision appears against the maqāṣidic governance as Waqf is not only a philanthropic enterprise but also has religious content. To sum up, the Waqf Board members must have the qualities to lead the Waqf.

Next, during the random discussion with some position holders in Mahall committees in Kerala, the researcher found that neither the mutawallī/Mahall committee nor the regional Muslim leaders, let alone the public, have a clear understanding of the Board and its activities. It consequently affects trust and confidence in the decisions, proposals, projects and regulations made by the Board. This issue can be tackled if the Board launches campaigns collaborating with the leading religious and social organizations, thus reaching out with its creative and innovative missions to the ground level of the Muslim community.

Accountability and transparency, which are vital terms in maqāṣidic governance, need to be prevalent in the functioning of the Board to improve the credibility of the institution and enhance the confidence of stakeholders. It needs to implement a systematic accounting process, including annual income, expenditures, and waqf assets increment. To efficiently manage waqf accounting, it is proposed to establish accounting standards coupled with periodic (preferably quarterly) auditing for Waqf.⁽²⁾ By having a waqf accounting and auditing system in place, the performance of the mutawallī/Mahall committee can be monitored, and their work will be more transparent.⁽³⁾ Both state-level administration and local management need to be free from corruption.

The system should be enhanced to administer waqf property, distribute property, disburse resulting revenue, and protect it from encroachment.

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- (1) <https://timesofindia.indiatimes.com/city/kochi/waqf-board-postings-muslim-league-warns-of-legal-action-against-kerala-government-calls-meeting/articleshow/87695336.cms>
 - (2) Siti Rokyah Md. Zain. (2005). Determinants of financial reporting practices on WAQF by Malaysian state Islamic religious Council in Malaysia. Unpublished MA dissertation. International Islamic University Malaysia, Kuala Lumpur.
 - (3) Abdul Rahim Abdul Rahman, Mohamad Daud Bakar, and Yusuf Ismail. (1999). Current practices and administration of WAQF in Malaysia: A preliminary study. Awqaf Report-Malaysia.

Waqf needs to be dealt with as a social responsibility. Nissar Commission, which was appointed by the LDF government in 2007, had filed a report revealing that 676 acres of wakf land in Kerala had been illegally sold or transferred to private parties. The Board needs to be strict in protecting the waqf properties by getting alternative grounds if the waqf lands are used for public purposes, taking action against the illegal encroachments of waqf lands, and ensuring the implementation of the Land Acquisition Act. Waqf Board needs to recover all of the illegally occupied waqf properties and utilize them to benefit the intended beneficiaries. Preservation of the waqf properties (*hifz al-māl*) from all sorts of misappropriation and misuse is a significant aspect of Maqāṣidic governance. The Waqf Board can play its inevitable role in retrieving the unlawfully occupied waqf lands from exploitation.⁽¹⁾

At times, the waqf cases are delayed, which also causes damage to the waqf governance. Therefore, a period needs to be specified in cases of waqf matters for the judgements. In the Wakf Tribunal, cases and disputes related to waqf in Kerala are settled by a single panel that deals only with waqf related issues.

In addition, the researcher would like to reiterate some legal issues present in the Indian Waqf laws, which need to be addressed by the Central Waqf Council and state waqf boards. Anwar Aziz and Jawwad Ali (2018) referred to these issues as given below:⁽²⁾

1. There is a special provision in law to vacate Waqf properties for public purposes. The government promised a similar law to tackle illegal encroachments on the Waqf lands. Still, unfortunately, this was not included in the Waqf Act or any particular bill separately presented in this regard (Rehmani, 2014).

2. In the event of any conflict regarding the Waqf properties, an appeal is to be made to Waqf Tribunal (Waqf Act, 1954; Rashid, 2011), But no period is determined for the Tribunal to the judgment. Although, the period for the Tribunal to issue the judgment should be bounded to six months

(1) Interview by the researcher with Sayyid Rasheed Ali Shihab, the former chairman of Kerala State Waqf Board, March 27, 2022.

(2) Anwar Aziz & Jawwad Ali, “Comparative Study of Waqf Institutions Governance in India and Malaysia”, Intellectual Discourse, Special Issue (2018), 1239-1240.

or not more than a year. (as demanded by All India Muslim Personal Law Board) (AIMPLB) (Rizwi, 2014).

3. According to the law, if the government acquires any Waqf property, they need to pay for it as per its market value. The government has recently passed the Land Acquisition Act, according to which the compensation for the land acquired in urban areas would be two times the market value and four times if the land acquisition is in a rural area, which should apply to Waqf land as well (Rehmani, 2014).

4. The structure of Waqf Boards instituted by the government consists of more of its nominated representatives than the number of the representatives elected from among the Muslims themselves. The bitter experience of the Muslims so far in this regard leads them to reconsider this structure rightly. (Rehmani, 2014)

The abovementioned matters are among the legal constraints in waqf management, which need to be settled. Otherwise, it will hinder the way of achieving a maqāṣidic governance of Waqf in the State.

Last but not least, the engaging, open, trustworthy and dynamic relationship between the Waqf Board and the mutawallī/Mahall committee is the essential brick in the format of maqāṣidic governance. In light of the current study, the appearance of the former is unwelcome for the latter because of the perception that the Waqf board is of no use other than unpleasant collecting seven per cent of the income. This perception needs to be breached by highlighting the Board's activities and proposing innovative social and educational welfare projects. In this regard, the appointment of a skilled coordinator in each Mahall for bridging between the Board and local management is highly recommended. The coordination has to engage in a conducive way for both parties.

Role of Mutawallīs/Mahall Committees in Kerala

Mutawallīs, addressed in the Act 1954 as a manager and caretaker of Waqf property, are the immediately responsible party for the waqf management. They have a central role in the success and failure of the waqf administration. In several places in Kerala, waqf management is carried out by the Mahall committees, representing the mutawallīs. Mahall means a social format of Muslims of particular localities in Kerala by dividing

the areas, including a Jumu'ah Mosque and its committee. The committee leads most collective rituals that are supposed to be done where Muslims live and organize various Islamic programs. Almost all places where Muslims live in Kerala have a separate Mahall system and committees. As far as Waqf is concerned, the mutawallī/Mahall committee is deemed the authorized local waqf management.

It is noted that the root cause of several problems related to waqf management in Kerala is because of the negligent behaviour of the mutawallīs.⁽¹⁾ They are responsible for the unfortunate scenarios that occurred to the Waqf; over the years, “a large number of awqāf properties were expropriated, lost, or remained undeveloped or under-utilized, and the latent wealth of awqāf remains largely untapped”.⁽²⁾ They were leasing out the waqf properties without following procedures, thus damaging an essential social and religious institution. The amended Waqf Act 2013 specifies that a mutawallī is entitled to give Waqf property on lease for one year with the permission of the Waqf Board. The Waqf Board alone is competent to lease the property for up to 3 years and up to a maximum period of 30 years, with the permission of the State Government (Waqf act 2013, Sec, 56).

The custom in early history, the endower himself was doing the duties of waqf management. In other words, wāqif and mutawallī used to be the same person. Otherwise, he would choose an individual known for honesty, and dignity as a mutawallī. Mutawallī's primary duties are protecting waqf assets from encroachments, their maintenance and their revenue distribution to the deserving people, i.e., entitled beneficiaries. However, mal-administration, mismanagement, misuse and negligence of waqf properties by mutawallīs are reported on a large scale. If the Waqf remains without any benefit, the Muslim community in general and mutawallīs and other authorities in particular, are accountable.

Mutawallī has a contractual relationship with the endower and a fiduciary relationship with mawqūf 'alayhi. To both parties, the mutawallī works based on trust to act and manage waqf assets on behalf of the endower. Mutawallī can be deemed as a trustee. The accountability of

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- (1) Asisah S. Rashid, R. (2015). Towards improvement of the rights and duties of mutawallī and nazir in the management and administration of Waqf assets. ISBN 978-967-394-230-5 [proceedings of idmac2015].
 - (2) Abdel Mohsin, M. I. (2009). Family Waqf: Its Origin, Law Prospects. Paper Presented at the Waqf Laws and Management: Reality and Prospects, Kuala Lumpur.

mutawallī in discharging his responsibilities is the cornerstone for the empowerment of Waqf, a noble, social and religious institution in Islam. To ensure the work's credibility and transparency, a system needs to develop for reporting income and expenditure every year, with plans about using waqf endowment and generating revenue for the beneficiaries—specific qualifications for appointment as mutawallī to be set in relevant laws.

Under Sec. 44, 45, 46, and 47 of the Waqf Act 1995, mutawallīs are liable to be audited of their accounts at the discretion of the State Government and to send the statements to the Waqf Board. But, because of the lack of the elements such as a precise work plan, regulations, legal administration, and timely action, many mutawallīs are not executing their duties and following the guideline of the waqf act.⁽¹⁾ Also, since the Waqf management takes a long time (typically 3-5 years) to provide annual reports, it ends up submitting outdated notices. Therefore, making reports at shorter intervals (quarterly, for example) and requiring external auditing yearly seems to be mandatory.⁽²⁾ Studies prove that mutawallīs are often overlooked their responsibilities. Previously in history, mutawallīs were scholars and learned jurists with the understanding of Sharī'ah; therefore, they acceptably discharged their duties. In contemporary times, mutawallīs need to be educated about their religious and social duties from an Islamic perspective. For achieving this, special training sessions need to be organized by the Waqf Board.

As part of hifz al-mal, the committees are bound to cultivate, flourish, and maximize the use and benefit of Waqf assets/properties/lands. If they are left unused, the immediately responsible party is mutawallī/committees. It becomes the breach of maqāṣidic governance of Waqf, which in essence is against the teachings of Sharī'ah. Increasing income through investments is one of the ways to reach out to a good number of beneficiaries and improve their quality of life.

Mutawallī is deemed as a Khalifah to ensure adequate operation of Waqf. The paramount duty of mutawallī is to fulfil the goals and benefits specified

(1) Ahmed, H., & Khan, A. (1998). Strategies to develop waqf administration in India (No. 50). The Islamic Research and Teaching Institute (IRTI).

(2) Hasan, R., Alhabshi, S. & Yusoff, A. (2017). Towards Providing the best Sharī'ah Governance Practices for Waqf Based Institutions. *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)*. March 2018. <http://journals.iium.edu.my/shajarah/index.php> shaj/article/view/614.

in Waqf by wāqif. Also, protecting the interests of beneficiaries related to the Waqf is the duty of mutawallī. Mutawallī has discretionary power to identify the causes of damage and reach pragmatic solutions. Mutawallī should oversee and supervise the administration and management of waqf properties. Mutawallīs should make plans to utilize the underused waqf properties in modern times. Mutawallīs should be systematically trained to fathom the Sharī‘ah injunctions, higher objectives of the Waqf, legal requirements/technicalities of respective lands and needs of the time. In general, he must be instrumental in the actualization of the Maqāṣid of Waqf by looking after and managing the waqf property.

For achieving the Maqāṣid of Waqf, the activity and commitment of Mahall committees and mutawallīs need to be enhanced. If they work correctly and regularly, it will help create a good income for running the masjid, madrassa and other social welfare projects. The self-sufficiency of religious institutions is essential in preserving faith (*hifz al-dīn*).

In addition, a detailed survey of existing waqf assets is to be conducted in each Mahall, and they should be documented. It is crucial for preserving Waqf from encroachments and utilization for further benefits. Also, as stipulated by the endowers, the beneficiaries need to be studied and checked, and their record needs to be prepared. It is vital for the distribution of waqf income to the deserving people. Such surveys should be mandated yearly.

Mahall committees can ensure the maqāṣidic governance of Waqf by appointing trained, skilled, and committed employees to administer and manage the waqf assets, generate income, and then distribute them to the deserving group of people. Imams and khatībs of Mahall committees can make the local management and members in general aware of the rights and duties related to Waqf. Specific credentials must be specified for the appointees. Some authority must be charged with reviewing and approving appointments.

After paying seven per cent of the board's income to the Waqf Board, the mutawallī/Mahall committee must spend the rest of the amount for achieving the goals specified by the waqif and to maximize the net benefit of Waqf income. The person undertaking the duties of waqf management is entitled to the remuneration fixed by the wāqif or the Board. In contemporary times, the Mahall committee should specify and provide compensation for employees to ensure efficient governance. If otherwise, the duties

will be discharged as a charity, in which accountability and efficiency will be compromised, which is against the maqāṣidic governance. Some appointees may waive their salaries voluntarily. However, this should in no way reduce accountability and quality of service.

Likewise, in the light of the current study, the researcher found that mutawallīs/committees are not aware of the advantages and opportunities put forth by the Waqf Board, such as loans, grants, financial assistance, and opportunities for the lease. The appointed employee or the coordinator needs to bring the benefits given by the Board to their places and distribute them to the deserving parties. This mutuality between Board and mutawallīs/committees is crucial in the implementation of maqāṣidic governance.

Last but not least, in the light of the current study, the researcher found that mutawallīs in several places are too old or physically weak to take care of the waqf properties. Some of them do not attend the programs organized by the Waqf Boards either. They do not allow nor assign others to represent them, causing damage to the noble institution of Waqf. As a result, waqf management has become inefficient, and the properties are left behind. This problem can be settled by assigning the duties to a capable representative. Mahall committees need to heed this problem and assign representatives whenever necessary. Appointments of employees and committee members must be for specific periods and subject to periodic review.

Preliminary Proposal for Maqāṣidic Governance in Kerala

In order to strive towards a maqāṣidic governance in Kerala, the researcher would like to put forth some thoughts highlighting the remarks in the existing system and potential solutions, the details of which are given in the table below.

Remarks	Probable Solutions
Incompetent Team members in Waqf Board for maqāṣidic governance	<ul style="list-style-type: none"> • Judicious selection of its members based on credentials and qualifications. • Appointment of knowledgeable and experienced people in Islamic jurisprudence, Islamic economics, waqf laws and governance.

<p>Waqf Board and its activities are not enough known to direct or indirect beneficiaries</p>	<ul style="list-style-type: none"> • Popularization of Waqf Board and its activities using the channels of the religious organizations. • Mass awareness programs about the State Waqf Board and its activities. • Maintain an engaging, open, trustworthy and dynamic relationship between Waqf Board and the mutawallī/Mahall committee. • Publicize the advantages and opportunities put forth by the Waqf Board, such as loans, grants, financial assistance, and opportunities for the lease. • The appointment of a skilled coordinator in each mahall for bridging between the Board and local management.
<p>Lack of systematic accounting process, corruption and misuse</p>	<ul style="list-style-type: none"> • Accountability and transparency in the functioning of the Board by preparing and implementing procedures and guidelines. • Waqf accounting and auditing system on a regular basis. • Efficient monitoring of mutawallī/Mahall committee. • Periodic review • Free from all sorts of corruption
<p>Misappropriation of waqf properties</p>	<ul style="list-style-type: none"> • Investigation • Protecting waqf properties from encroachment. • Taking action against the illegal encroachments of waqf lands. • Conducting a detailed survey of existing waqf assets and documenting them.

Delay in giving judgements in Waqf cases	<ul style="list-style-type: none"> • Specification of a time frame and its strict implementation • Expediating the judgements on Waqf related cases. • Settling the legal constraints in waqf management.
Disregard to Market value of Waqf land	<ul style="list-style-type: none"> • Implementation of the Land Acquisition Act to Waqf land also.
Incompetent mutawallīs	<ul style="list-style-type: none"> • Training sessions for mutawallīs for improving their knowledge about aḥkām of waqf, their duties and maqāṣidic governance. • Organize workshops for the mutawallī/Mahall committee, thus equipping them to deliver their duties, flourish the waqf income and distribute to the deserving people in the community. • Educating about legal requirements/technicalities of respective lands and needs of the time. • Implement strict monitoring of the mutawallī/Mahall committee by designing work plans, regulations, legal administration, and timely action that must be submitted for audit every year. • If mutawalli is physically unable to discharge his duties, he needs to be changed or a representative must be appointed. • Income and expenditure of waqf properties need to be reported and shared with Mahall members. • Regular and systematic monitoring of the performance of the mutawallī/Mahall committee. • Systematic audit must be implemented.

Insolvent nature of Waqf institutions	<ul style="list-style-type: none"> • Cultivate, flourish, maximize use and benefit of Waqf assets/ properties/lands • Projects for increasing income • Investments to flourish Waqf income • Generate revenue for the beneficiaries • Ensure the self-sufficiency of waqf institutions
Underused/damaged waqf properties	<ul style="list-style-type: none"> • Mutawallī/Mahall committee must use their discretionary power to identify the causes of damage and reach pragmatic solutions. • Develop a system for reporting income and expenditure every year, with plans about using waqf endowment and generating revenue for the beneficiaries. • Utilizing Imams and khatibs to make awareness about Waqf and its potential for the community's well-being. • Appointing trained, skilled, and committed employees to administer and manage the waqf assets. • Remuneration for employees of waqf management. • Utilization of benefits and opportunities given by the Board, such as loans, leases and financial assistance.

Table 1: Preliminary Proposal for maqāṣidic governance in Kerala

In addition, the researcher hereby makes some suggestions for considering the course of maqāṣidic governance in Kerala. The suggestions are meant to illustrate some examples for using Waqf properties and funds. However, if endower has specified any particular field to be used, it needs to be considered and used for that in a comprehensive format. The suggestions are given in the table below:

No	Five essentials in Maqāṣid	Target Area	Suggestions for using Waqf properties and funds from a maqāṣidic perspective
1	Hifẓ al-dīn (protection of religion)	Values	<ol style="list-style-type: none"> Establishment of Islamic institutions. Facilitation of religious practices. Opportunity for Islamic education. Funding for students, teachers, imām, mu’addin, etc. Support for Da’wah activities.
2	Hifẓ al-Nafs (Protection of life)	Humanity	<ol style="list-style-type: none"> necessities for leading a healthy life, such as food, home, healthcare, etc.
3	Hifẓ al-Nasl (Protection of the family)	Humanity	<ol style="list-style-type: none"> Help the wedding of low-income families Help pregnant women from low-income families. Support for the expenses of child-delivery and post-delivery needs.

4	Hifz al-Aql (Protection of mind)	Knowledge	10. Financial support for students, libraries, and educational institutions. 11. Support for research and intellectual activities, 12. Rehabilitation and care for addiction
5	Hifz al-Maal (Protection of properties)	Nature	13. Plantation, agriculture and gardening. 14. Investments. 15. Use the money to help the needy create jobs and livelihood. 16. Development, social security. 17. Financial stability, wealth distribution, economic justice, altruism (<i>Ithār</i>).

Table 2: Suggestions for Using Waqf Properties and funds from the maqāṣidic perspective

Conclusion

Maqasid represents wisdom, higher objectives and ultimate goals imbued in the Islamic teachings. Therefore, the governance gets the shape of inclusiveness, relevance and dynamicity when it designs in the paradigm of Maqāṣid. Maqāṣidic governance of Waqf refers to the protection and administration of waqf properties and distribution of waqf income to the deserving people, fulfilling the objectives of Sharī'ah and the goals of Waqf and meeting the needs of the time. In addition, it postulates to utilize the waqf income for the protection of dīn, life, family, intellect and wealth of beneficiaries. In a nutshell, the maqāṣidic governance of Waqf refers to attaining good benefits and eliminating all sorts of evils from the waqf institution.

This study has concluded that Waqf in Kerala can be further improved and equipped to achieve its goals through a maqāṣidic governance. Its ample prospects are yet to be explored in the context of Kerala. As part of this study, the researcher found that waqf governance has come to routinary procedures, as the local management is unaware of its possibility in social welfare. As a result, little attention is paid to it. Waqf properties have tremendous potential to change the lives of thousands of Muslims struggling to meet their basic needs. Awareness of Waqf and its potential role in social welfare must be conveyed on a ground level. For that, the local management, in the form of mutawallī and Mahall committees, should prepare their work plans.

In the light of preliminary analysis, two parties can be significant forces in the implementation of the maqāṣidic governance of Waqf in Kerala. (1) Kerala State Waqf Board and (2) mutawalli/Mahall committees. Both of them have the potential and scope for the application of maqāṣidic governance in discharging their duties and dealing with the issues.

To sum up, every authority is an amānah (trust), for which those in authority are accountable. To efficiently deliver this amānah, which includes the waqf institution, to the relevant parties without any compromise is the core element of maqāṣidic governance.

References

1. Ahmed, H., & Khan, A. (1998). Strategies to develop waqf administration in India (No. 50). The Islāmic Research and Teaching Institute (IRTI).
2. Abbas Pannakal. (2018). The Chronicle of Waqf and Inception of Mosques in Malabar: A Study Based on the Qiṣṣat Manuscript, Intellectual Discourse, Special Issue, pp. 1167-1190.
3. Abdel Mohsin, M. I. (2009). Family Waqf: Its Origin, Law Prospects. Paper Presented at the Waqf Laws and Management: Reality and Prospects, Kuala Lumpur.
4. Abdul Kader, S. Z. S., & Dahlan, N. H. M. (2009). Current Legal Issues Concerning Awqaf in Malaysia. Paper Presented at the Waqf Laws and Management: Reality and Prospects, Kuala Lumpur.
5. Abdul Rahim Abdul Rahman, Mohamad Daud Bakar, and Yusuf Ismail. (1999). Current practices and administration of WAQF in Malaysia: A preliminary study. Awqaf Report-Malaysia.
6. Abdullah, M. (2015). A New Framework of Corporate Governance for Waqf: A Preliminary Proposal. Islām and Civilisational Renewal, 6 (3).
7. Abū Ḥāmid al-Ghazālī, (1413H). al-Mustaṣfā fī Ilm al-Uṣūl. Beirut: Dār al-Kutub al-Ilmiyyah.
8. Anwar Aziz & Jawwad Ali. (2018). “Comparative Study of Waqf Institutions Governance in India and Malaysia”, Intellectual Discourse, Special Issue, 1239-1240.
9. Asisah S. Rashid, R. (2015). Towards improvement of the rights and duties of mutawallī and nazir in the management and administration of Waqf assets. ISBN 978-967-394-230-5.

10. Bouhedda Ghalia, Muhammad Amanullah, Luqman Zakariyah and Sayyed Mohamed Muhsin. (2018). “Medical Ethics in the Light of Maqāṣid Al-Sharī'ah: A Case Study of Medical Confidentiality”, Intellectual Discourse, 26:1 133–160.
11. Al-Fāsī, 'Allāl. (1993). Maqāṣid al-Sharī'ah al-Islāmiyyah wa Makārimuhā. Tunisia: Dār al-Gharb al-Islāmī.
12. Firoz Bakht Ahmed, “In the name of Allah: Waqf corruption in India”, Deccan Herald, <https://www.deccanherald.com/content/31093/in-name-allah-waqf-corruption.html>
13. Al-Ghazālī, Abū Ḥāmid. (1413H). al-Mustaṣfā fī 'Ilm al-Uṣūl. Bayrūt: Dār al-Kutub al-Ilmiyyah.
14. Ḥāmid, Yūsuf. (). al-Maqāṣid al-'Āmmah li al-Sharī'ah al-Islāmiyyah. Sudan: Dār al-Sudāniyyah li al-Kutub.
15. Hasan, R., Alhabshi, S. & Yusoff, A. (2017). Towards Providing the best Sharī'ah Governance Practices for Waqf Based Institutions. Al-Shajarah: Journal of the International Institute of Islāmic Thought and Civilization (ISTAC). March 2018.
16. Husin, R. (2018). Waqf Implementation in Malaysian Universities: Overview and Way Forward. *The Social Sciences*, 13(1), 145-149.
17. Ibn al-Qayyim, Shams al-Dīn. (1973). I'lām al-Muwaqqi'iñ 'an Rabb al-'Ālamīn, ed. Taha Abd al-Ra'ūf . Beirut: Dār al-Jīl.
18. Ibn 'Āshūr, Muhammad al-Tāhir. (2001). Maqāṣid al-Sharī'ah al-Islāmiyyah. ed. Mohamed El-Tahir El-Mesawi. Jordan: Dār al-Nafāis al-'Ālam.
19. Ihsan, H, & Ayedh, A. (2015). A Proposed Framework of Islāmic Governance for Awqāf. *Journal of Islāmic Economics, Banking and Finance*, Vol. 11 No. 2, pp. 117-133.
20. Jasser Auda. (2008). Maqasid al-Sharī'ah as Philosophy of Islamic Law; A Systems Approach. London, Washington: IIIT.

21. K L Abdul Salam, “Waqf Niyam: Oru Ethi Nottam”, Prabodhanam Weekly, <https://www.prabodhanam.net/article/4789/256>
22. Karimi, I. A. (2014). Bihar State Sunny Waqf Board. Paper presented in the seminar on “Awqāf & its law in India” held in Bangalore, India, on March 29-30, 2014.
23. Kerala State Waqf Board, <http://www.keralastatewakfboard.in/>
24. Muhammad al-Tahir ibn Ashur. (2013). Treatise on Maqasid al-Shari‘ah, Original Edition Translated from the Arabic and Annotated by Mohamed El-Tahir El-Mesawi. Herndon, USA: International Institute of Islamic Thought, 2013.
25. Muhammad al-Zuhayli. (1423AH). Maqāṣid al-Sharī‘ah. Qatar: Kitāb al-Ummah, Wizārat al-Awqāf wa al-Shu‘ūn al-Islamiyyah.
26. Muḥammad ibn al-Qayyim. (1428 AH). Al-Ṭuruq al-Hukūmiyyah fī al-Siyāsah al-Sharī‘iyah. Beirut: Dar al- Kutub al- ‘Ilmiyyah.
27. Pearson, O. H. (2008). Islamic Revival and Revival in Nineteenth-Century India. New Delhi: Yoda Press.
28. Rashid, S. k. (2012). Measures for the Better Management of Awqāf. IIUM Law Journal, 20 (1).
29. Rasool, T. (2017). Waqf administration in India: issues and challenges of state Waqf Boards. Al-Shajarah, journal of Islamic thought and civilization 7
30. Shams al-Dīn ibn al-Qayyim. (1973). I'lām al-Muwaqqi'iñ 'an Rabb al-'Ālamīn, ed. Taha Abd al-Ra'ūf. Beirut: Dār al-Jīl.
31. Shanmugam Munuswamy & Zulkifflee Bin Mohamed, “Financial Disclosure Pattern of State Waqf Boards In India: An Exploratory Study”, Journal of Islamic Economics, Banking and Finance, Vol-12, No. 4, Oct - Dec, 2016.

32. Al-Shāṭibī, Ibrāhīm bin Mūsā. (n.d.). al-Muwāfaqāt. Cairo: Dār al-Fikr al-‘Arabī.
33. Siti Rokyah Md. Zain. (2005). Determinants of financial reporting practices on WAQF by Malaysian state Islamic religious Council in Malaysia. Unpublished MA dissertation. IIUM.



Articles

Les dotations de la mosquée Sîdî al-Kittâni (Constantine au XVIIIe siècle)

أوقاف مسجد سيدى على الكتاني في ولاية قسنطينة - الجزائر
"خلال القرن الثامن عشر"

Isabelle Grangaud*

Résumé

Cet article analyse un document habous (hujja waqfiya) datant du XVIII^e siècle, et fondée par le gouverneur turc Sâlah bey en 17771 au profit de la mosquée Sîdî al-Kittâni à la ville algérienne Constantine. La description des opérations de ce habous démontrent la densité des connections socio-économiques mais aussi politiques et personnelles qui s'établissent à travers la constitution des habous dans les cités musulmanes du XVIII^e siècle. Non seulement ces habous seront conçues comme un commencement de projets d'urbanisation de grande envergure, donc lié à une politique économique, mais aussi leur gestion démontre la complexité des intentions, liens familiaux et rapports de pouvoirs entre les différents acteurs en relation avec le même habous.

Habous, document habous, Constantine, Mosquée Sîdî al-Kittâni, Habous et urbanisation,

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ملخص:

يحلل هذا البحث وثيقة أحد الأحباس (الأوقاف) التي تعود إلى القرن الثامن عشر، والتي أسسها الحاكم التركي صلاح بك عام 1771م لصالح مسجد سيدى الكتاني في مدينة قسنطينة الجزائرية. ويتبين -من خلال تبع العمليات المنصوص عليها بالوثيقة- أن الباحث يركز الضوء على كثافة العلاقات الاجتماعية والاقتصادية وكذلك الروابط السياسية، بل والشخصية العائلية التي نشأت من خلال هذه الوثيقة. وتؤكد هذه الحجة أن الأحباس في القرن الثامن عشر كانت منطلقاً لخطط عمرانية واسعة النطاق للمدينة الإسلامية، وبالتالي ارتبطت بسياسة اقتصادية انتهجها الحكام. كما أن إدارة هذه الأحباس توضح أيضاً جزءاً من العلاقات التي نشأت بين السلطة السياسية و مختلف الجهات ذات العلاقة بالأحباس، سواء من جهة التأسيس أم النظارة .

الكلمات المفتاحية: الحبس، مسجد سيدى الكتاني، قسنطينة، الحاكم التركي صلاح بك، الحبس والحركة العمرانية.

Summary

This paper aims to analyze an endowment document (Waqf or Habous) dating back to the eighteenth century, established by the Turkish ruler Salah Bey in 1771 AD for the Sidi El Kettani Mosque in the Algerian city of Constantine. By tracing the processes set forth in the document, the researcher focuses on the intensity of social and economic relations as well as political ties, and even the familial that arose through this document. The author tried to confirm that Al-Ahbas in the eighteenth century was the starting point for large-scale urban plans for the Islamic city, and thus was linked to an economic policy pursued by the rulers. The management of these endowment also clarifies part of the instable relations that existed between the political authority and the various habous stakeholders, whether from the point of view of the founders or the administrators

Key words: Habous, Sidi El Kettani Mosque, Constantine, Turkish ruler Salah Bey in 1771, Habous and urbanization.

La mosquée Sîdî al-Kittânî fut fondée dans la ville de Constantine en 1771 par le bey Sâlah (1771/1792, l'un des plus fameux gouverneurs turcs de la Province de l'Est de la Régence d'Alger) alors tout récemment nommé à la tête du Beylik de Constantine. Cette mosquée devait prendre une place importante dans le paysage aussi bien religieux que politique de la ville, en raison du rôle que lui attribua le bey bientôt après son édification. En effet, elle allait devenir le centre d'un projet urbanistique d'envergure mené non sans arrière-pensées politiques, via une pratique intensive de la dotation inaliénable, le habous.

Dans un document conservé au Centre des archives historiques de la Wilaya de Constantine, sont consignées les différentes opérations de habous établies au profit de la mosquée Sîdî al-Kittâni. Il montre qu'outre Sâlah Bey, principal acteur de cette dotation, 8 donateurs ont agi, à des degrés divers, à ses côtés. On cherchera à comprendre le sens de cette participation. Pour ce faire, on tentera de reconstituer les différentes étapes du projet aussi bien urbanistique que politique qui se joue autour de cette mosquée. Sans prétendre saisir précisément les motivations d'ordre plus ou moins intime des acteurs de cette affaire, ce qui n'est pas possible au vue de la documentation, on cherchera cependant à replacer dans leur contexte les opérations successives parties prenantes d'une action dont on mettra en lumière la portée politique et ses conséquences.

Un document

Contenant 75 feuillets, le document intitulé “Registre de Sâlah Bey en matière de fondations inaliénables”⁽¹⁾, intéresse une soixantaine d'opérations habous, établies entre 1774 et 1791. L'intitulé ne recouvre pas littéralement le contenu de l'enregistrement : toutes les constitutions de habous de Sâlah n'ont pas été notifiées dans ce document, et Sâlah Bey n'est pas, non plus, le seul constituant. Le registre n'est pas tellement celui du bey que celui de la mosquée qu'il a fondée. Pour autant, cet intitulé n'est pas dénué de fondement, si l'on veut bien y voir une procédure visant à servir un projet beylical. En effet, parce que l'existence d'un tel document ni ne va de soit ni ne s'impose, l'histoire de celui-ci renseigne sur le projet d'ensemble. Encore faut-il savoir dans quelles conditions il a été constitué.

Tel que ce registre est parvenu jusqu'à nous, il n'est pas possible de reconstituer précisément l'ordonnancement des pages qui se présentent dans le désordre. Certaines même sont très clairement manquantes (par exemple, certains actes incomplets ne sont pas datés) dans la seule copie aujourd'hui disponible. D'autre part, une partie des actes sont des copies, établies plus ou moins longtemps après l'original.

La première inscription dans ces pages, correspondant à la constitution par Sâlah Bey d'un habous, daté du mois de novembre 1774 (ramadan 1188) mais il est difficile de penser que le bey, fondateur de la mosquée, n'ait pas, dès sa construction en 1771, constitué un patrimoine en vue du fonctionnement de l'édifice. D'autant qu'alors, il est attesté que cette mosquée est bien en service et que, de plus, il lui est octroyé une place

(1) “Sidjil Sâlah Bây min awqâf” (désormais RSW).

de choix dans la géographie religieuse (et politique) de la ville. En effet, l'acte de constitution de habous d'un certain 'Achiq 'Umar est un peu plus ancien puisque datant d'octobre 1774, et finalement la première dotation en direction de la mosquée que l'on connaît ; mais il a été retranscrit dans le registre beaucoup plus tardivement, en 1777. Or, ce que nous apprend cet acte à propos de la mosquée, c'est que "son fondateur y a placé un sermon (khutba) le vendredi qui domine les époques"⁽¹⁾, ce qui indique que c'est, dès lors, au sein de cet édifice et non, comme ses prédécesseurs, dans la mosquée de Sûq al-'Azil, que le bey assiste à la grande prière du vendredi.

On peut envisager l'hypothèse de pages manquantes correspondant à l'enregistrement de dotations plus anciennes au profit de la mosquée. Il semble, en particulier, qu'il manque une profession de foi beylicale rédigée au début du registre et évoquée incidemment dans certains actes⁽²⁾. Mais il est également possible que le principe même du registre ne se soit imposé qu'en novembre de cette année 1774; du moins, nulle n'est besoin de penser que cet enregistrement systématique se soit imposé en raison de la constitution d'un patrimoine habous de la mosquée. Au contraire, tout porte à croire que la constitution d'un tel registre sert un autre dessein.

Comment ce registre a-t-il été matériellement constitué ?

Certains documents sont des copies dont l'original est plus ou moins ancien, d'autres non, qui ont été directement compulsés dans le registre. Les copies sont largement les plus nombreuses. Pourtant, une partie d'entre elles (17 actes), établies entre 1775 et 1787, portent la même date que leur original, ce qui les distingue fort peu de ceux-ci, mis à part que cela indique qu'ils ont été rédigés en plusieurs exemplaires. On peut imaginer que l'original a été remis aux constituants du habous lui-même, ce qui paraît d'autant plus évident lorsqu'il s'agit de constitution de habous à dévolution familiale⁽³⁾.

(1) RSW, 'Ashiq 'Umar, djumâda ath-thânî 1191.

(2) RSW, SB, hidja 1194 ; SB, djumâda ath-thânî 1199.

(3) En effet, les constitutions de habous publics de ce type, toutes à l'initiative du bey Sâlah, non seulement sont peu nombreuses (3 actes) mais présentent une forme assez particulière. Dans deux cas, le habous est associé à un échange ; dans le dernier, le habous est dirigé non vers la mosquée, mais vers le tombeau du Saint Sîdî al-Kittânî, et à cette occasion, les fonctions d'un gardien sont définies.

Cinq autres actes ont été copiés dans le registre, non pas au même moment, mais quelques jours ou quelques semaines plus tard. Ce qui les distingue d'un troisième lot de copies retrancrites des mois ou des années plus tard. Dans ce dernier cas, il semble que l'on ait cherché régulièrement à procéder à la compilation des opérations relatives au patrimoine habous de la mosquée. Cette compilation peut prendre encore une autre forme : l'énumération de "textes" précédés d'un numéro: c'est le cas d'un document transcrit dans le registre, de façon malheureusement incomplète, qui relate les étapes d'un conflit ayant opposé Sâlah Bey à l'une de ses filles Amina, à propos de habous constitués au profit de cette dernière.

Si l'on observe la nature des actes originaux présents dans le registre, ils sont dans leur grande majorité le fait de Sâlah Bey et, globalement, de deux types.

Il s'agit d'abord d'actes faisant état de habous de type direct, et il apparaît que l'existence d'acte originaux s'explique en ce qu'ils consistent effectivement et immédiatement en la dotation de la mosquée⁽¹⁾. Ils s'étalent entre 1774 et 1781. Encore faut-il noter qu'il est question de deux destinataires différents. Entre 1774 et 1777, les dotations de ce type (11 constitutions de habous de biens urbains dans l'ensemble importants), qui sont le fait à une exception près du bey Sâlah, s'adressent à la mosquée Sîdî al-Kittâni. Ce n'est pas le cas de 3 autres constitutions de habous, établies en 1780 et 1781 qui, elles, sont dirigées au bénéfice du patrimoine d'une fontaine. Ces opérations sont le fait d'un certain Mustafa Qîsârlî, le constructeur de cette fontaine. Or celle-ci est située dans la proximité immédiate de la mosquée, et vient en quelque sorte enrichir celle-ci. Dans la mesure où mosquée et fontaine sont clairement deux institutions indépendantes et autonomes, C'est le sens que donne la figuration de ces actes originaux dans le registre, et qui peut-être ne s'est pas tout de suite imposée. En effet, deux autres actes de constitution de habous de Qîsârlî au profit de la fontaine, avaient été établis dès 1777, date de la construction (ou de la mise en service) de la fontaine. Mais ils ne sont recopierés dans le registre que beaucoup plus tard, en mai 1791.

Les actes originaux peuvent apparaître encore comme les compléments

(1) Dans un cas seulement, un acte original consiste en un habous de type familial, mais avec le versement annuel perçu sur les revenus du bien habous, en direction de la mosquée.

d'actes, ou de copies d'actes, préalablement transcrits dans le registre. C'est le cas de 10 textes. L'un de ces compléments justifie la raison d'être de la présence dans ce cadre de l'acte auquel il réfère, relatif à la constitution d'un habous familial au profit d'une autre destination, soit les Lieux saints, qu'il augmente de la déclaration du donateur selon laquelle il s'acquitte d'un loyer annuel au profit de la mosquée Sîdiî al-Kittâni. Le habous initial date de l'année précédente et a fait l'objet d'une copie au "comptoir des waqfs des Lieux saints de la ville d'Alger la bien gardée".

Ces "compléments" peuvent apparaître comme de courtes notes ou prendre au contraire les formes de véritables actes. En ce qui concerne les opérations initiées par Sâlah Bey en particulier, ils consistent en la mise en œuvre de modifications concernant soit la transformation urbanistique d'un bien préalablement constitué en habous de type direct, soit encore la mise en cause de dispositions préalablement prises dans le cadre même de la constitution de habous. On reviendra plus loin sur ces pratiques beylicales, retenons pour l'instant les conditions de constitution de ce registre comprenant en particulier addenda et rectificatifs, en somme une actualisation des données.

Cette forme d'actualisation suggère une certaine pratique du registre lui-même, ne se présentant sans doute pas sous la forme de feuillets préalablement reliés entre eux, mais plutôt comme un dossier. Les addenda peuvent être compulsés dans la marge même du document, mais lorsqu'ils occupent une page distincte, il n'est pas rare de lire qu'ils réfèrent à "ce qui est notifié sur la page de droite", y compris si cette page a été retranscrite bien plus tôt. Il n'en reste pas moins qu'il s'agit bien d'un registre : le terme apparaît régulièrement, de même que, dans quelques cas, des références à des pages ordonnées. Ainsi, on peut lire au bas d'un acte que: "cette copie qui est produite est le doublet d'une autre copie qui se trouve sur une page précédente, qui est le 27^{ème} feuillet en comptant depuis le début. Et cela par faute d'information concernant la copie préalable, information qui n'est parvenue qu'après que l'on ait procédé à cette nouvelle copie"⁽¹⁾.

(1) Notons que le corpus ne possède pas la première copie à laquelle il est fait référence. Dans un autre acte de hidja 1194, il est fait référence à la constitution en habous d'une maison, notifiée sur "le feuillet 22 précédent ce feuillet"

Un projet urbanistique

On aurait pu voir dans ce registre la volonté du bey d’ériger en exemple cette pratique d’enregistrement dont il se fera le chantre à propos justement de la gestion des bien habous. En effet, en avril 1776, un édit émanant de lui-même propose une réforme de la gestion des habous qui s’accompagne d’un large recensement des biens composant les patrimoines de tous les édifices religieux de la ville⁽¹⁾. Mais ce n’est pas le cas. Le “Registre de Salah bey en matière de fondations inaliénables” n’apparaît pas comme le produit de la simple mise en texte d’une pratique, celle de la constitution du patrimoine habous de la mosquée Sîdî al-Kittâñî ; en effet, il porte, dans son élaboration matérielle même, les traces de la volonté du bey d’en faire un outil mis au service de son autorité, et de sa politique. On va voir également que c’est encore via la constitution du patrimoine de cette mosquée que Sâlah Bey a gagné durablement ses galons de “gouverneur bâtisseur” mis au crédit de son administration.

Certains des actes du registre ne concernent pas la mosquée. C’est, dans un cas, lié au fait que Sâlah Bey semble s’en être servi comme d’un document personnel : quand il y fait figurer un acte relatif à la constitution d’un habous familial en direction de l’adduction d’eau d’une autre ville que Constantine, la “segquia de Annaba”. Mais le lien avec la mosquée est autrement plus évident concernant d’autres destinataires. On l’a vu à propos de la fontaine, que l’on peut considérer comme un prolongement naturel du lieu de culte. Il en va de même de la medersa que le bey fait construire, en 1775, dans sa proximité immédiate. Elle ne fait fera plus qu’une avec la mosquée dans les actes de habous, du moins à partir de 1780, date de sa mise en fonction. Plus tôt, en 1778, Sâlah Bey procède en outre à la constitution en habous d’une boutique, qu’il avait fait construire le long de l’enceinte de la mosquée, au bénéfice de la sépulture du saint Sîdî al-Kittâñî. Cette sépulture préexistait à la mosquée, qui a reçu le nom qu’elle abrite, mais le bey, par cet acte, ressuscite le culte autour du personnage, en désignant un agent chargé à la fois de la gestion du bien habous (“les revenus de la boutique sont attribués au wakîl du tombeau susmentionné après les dépenses nécessaires à l’entretien de la boutique susmentionnée”) et de “la surveillance”, “de l’ouverture et de la fermeture” du lieu. Ainsi, quelques années après la fondation d’une simple mosquée, c’est tout un complexe religieux qui a émergé.

(1) Le texte est reproduit dans Ch. Féraud, “Les anciens établissements religieux musulmans de Constantine”, RA, 1868, n°12, p.121-133.

En réalité, comme on va le voir maintenant, un projet urbanistique d'une bien plus grande envergure prend forme autour de cette mosquée à la faveur de la constitution du patrimoine habous de celle-ci. Revenons aux deux actes les plus anciens du corpus, datant respectivement d'octobre 1774 et de novembre de la même année. Rappelons que le premier, copié seulement 1777, concerne la mise en habous d'un certain 'Ashiq 'Umar, tandis que le deuxième, un original, est le fait de Sâlah Bey. Entre les deux documents, il y a une différence de taille. L'emplacement de la mosquée n'est pas désigné de la même façon. Dans le premier, la mosquée est située dans le Shara' (le quartier juif), dans le second elle figure par contre, ou plus précisément, en fait (les 9 boutiques alors constituées en habous "se trouvant tout à côté de la mosquée") dans le "quartier (mahalla) du Sûq al-djumu'a". Et c'est ensuite par référence à ce sûq strictement que sera présentée la situation de la mosquée. Or, l'apparition de ce toponyme accompagne l'émergence d'un nouveau quartier, fondé sur un espace de la ville alors à l'abandon, situé sous la Casbah et contribuant à circonscrire à l'ouest, tout en l'intégrant à la ville, le Shara'.

Cette urbanisation est tout à fait palpable dans les pages du registre, à partir des constitutions de habous de Sâlah Bey en particulier. L'essentiel des habous directs qu'il établit concerne des biens situés dans cette zone. Or, il s'agit de constructions nouvelles, nées à l'initiative du bey, telles ces 9 boutiques citées plus haut. Dans un certain nombre de cas, il est possible de suivre le processus par lequel, Sâlah Bey fait construire du neuf à l'emplacement d'immeubles en ruine ou sur des terrains vagues. Les uns et les autres sont en effet d'abord achetés et constitués en habous. Puis, un ou deux ans après, un nouvel acte indique que terrains ou édifices à l'abandon ont été construits, et à nouveau une constitution de habous est opérée.

La liste des immeubles ainsi bâtis dans la proximité de la mosquée Sîdî al-Kittâni est impressionnante : trente-neuf boutiques, un four à pain, un café, un grand fondouk comprenant pas moins de 77 pièces, un hospice (dâr al-mardâ), sept maisons, cinq écuries, deux galeries et deux édifices surélevés ('uluw), dont l'un, construit sur le terrain d'une cour "où stationnaient les mulets" sera ensuite transformé pour devenir la fameuse medersa.

L'émergence de ce dernier édifice, la medersa, ne contribue pas peu à la dimension d'importance de la mosquée, et plus globalement du projet urbanistique du bey. Un tel établissement constitue en effet une innovation

notable. Les autres lieux d’enseignement dans la ville se situent au sein des zaouïas, se trouvant sous le patronage des familles “religieuses” de la ville, et qui allient à la dispense d’un enseignement le culte d’un saint ancêtre. L’émergence d’une telle institution dans le paysage urbain s’accompagne en outre de la mise en place d’un règlement de fonctionnement édité en 1780⁽¹⁾ - et de la constitution d’une bibliothèque : un acte de habous de 1783 malheureusement incomplet dresse en effet la liste des ouvrages constitués en habous au profit de la medersa de Sîdî al-Kittâñî.

Parmi les biens construits au Soûq al-djumu‘a, un ensemble cohérent d’immeubles, situé dans la proximité de la mosquée, est, à la différence des autres biens, l’objet d’une constitution de habous de type familial. Ces immeubles forment en effet la vaste demeure du bey. Or, si le habous de ces biens ne date que de 1775, il semble que Sâlah Bey en ait construit les premiers éléments très tôt après la construction de la mosquée. Une inscription, conservée sur une porte, fait remonter son existence à 1772. Et là encore, en quittant le palais traditionnellement réservé aux tenants du pouvoir central, Dar al-Imara, Sâlah Bey innove.

Plus que cela: il contribue à dessiner une nouvelle configuration du pouvoir dans la ville. Une mosquée, qualifiée de “très grande mosquée” (djami‘ al-a‘dham) à l’instar de la Grande mosquée, et devenue le lieu de prière du pouvoir politique ; une medersa, dont on a souligné le caractère inaugural de l’institution ; un “marché du vendredi”, créé de toutes pièces et doté d’une riche infrastructure; un palais beylical enfin, comprenant de nombreuses dépendances, notamment écuries, jardin et galeries, forment un complexe politico-religieux qui défie l’ancien ordre géographique du pouvoir. Les réalisations urbanistiques de Sâlah Bey, de vaste ampleur, ne sont pas sans arrière-fond politique, et informent même de la volonté d’instaurer une conception nouvelle de l’autorité ottomane dans la ville. J’ai pu montrer ailleurs que Sâlah Bey a souhaité mettre en place les fondements d’un pouvoir autonome et dynastique à Constantine, ce qui ne s’est pas réalisé⁽²⁾. Or, il paraît assez évident que le bâtisseur qu’il fut n’a pas peu contribué à l’élaboration d’un tel projet, ce, en s’appuyant sur la dotation de la mosquée Sîdî al-Kittâñî.

(1) Le texte est reproduit dans E. Vaysettes, *Histoire de Constantine sous la domination turque*, RSAC, 1868, p. 357-359.

(2) I. Grangaud, *La ville imprenable. Une histoire sociale de Constantine au 18^e siècle*, Paris, Editions de l’EHESS, p. 233 et suiv.

Une pratique très personnalisée du habous

L'usage intensif que Sâlah Bey à fait du habous suggère un vif intérêt pour cette pratique. On pourrait penser que cet intérêt est à l'origine de l'édit de 1776 dont il a été question plus haut, concernant la gestion des patrimoines habous des édifices religieux⁽¹⁾. Malheureusement, les documents relatifs à cette décision beylicale ont semble-t-il disparu. Les mentions de Féraud, qui a traduit et publié l'édit et qui, lui, a pu constater l'existence ces documents, indiquent que la publication de ce dernier avait été suivie d'une intensive production scripturaire, donnant lieu à la production d'une centaine de registres selon lui.

Outre le recensement des biens habous, cet édit définissait des règles de gestion de ces biens qui ont orienté le contenu de ces registres. Le registre au début duquel se trouvait retranscrite l'ordonnance beylicale traduite par Féraud, renfermait non pas ou pas seulement les données d'un recensement mais la comptabilité bi-annuelle de mosquées. Ces règles visent à protéger les patrimoines des édifices religieux. Or, parmi elles, figure l'interdit fait à l'échange entre des biens habous. Ce rappel peut étonner dans la mesure où ce principe est globalement constitutif de la nature des biens habous et de leur caractère inaliénable, et que conséquemment une telle pratique n'est possible que dans des circonstances particulières et dûment constatées par les autorités juridiques. La notification de cet interdit s'expliquerait donc en raison de ce qu'il serait fait de cette pratique un usage suffisamment régulier pour ne plus être considéré comme tout à fait exceptionnel. En ce sens le bey viendrait défendre l'esprit de la loi.

Or, Sâlah Bey use lui-même de la pratique de l'échange à différentes occasions, et après 1776. Le premier échange retranscrit date de novembre 1777. Le bien habous concerné est celui d'une autre mosquée, Sîdî as-Sabînî. Dans l'acte qui en rend compte, Sâlah Bey, évidemment à l'origine de cet échange, n'est donc pas directement responsable de sa mise en œuvre, du moins formellement. Lui-même n'est d'ailleurs pas mis en scène dans l'acte, et l'échange est présenté comme une pratique qui vise à enrichir le patrimoine de Sîdî al-Sabrînî. Détenant parmi ses biens habous une ruine au Sûq al-djumu'a, l'administrateur de cette mosquée a consulté le juge à propos d'un contrat d'échange avec Sâlah Bey, lui-même propriétaire d'une boutique construite par lui dans le même quartier, vu que de la "ruine susdite, il n'obtint pas de gros revenus pour la mosquée susnommé, alors

(1) Féraud, op. cit.

que les revenus de la boutique sont manifestes étant donné son état sans comparaison avec la première". Dans ces conditions, le juge l'a autorisé à pratiquer cet échange. Les termes de cet acte suggèrent le souci du respect des formes, Mais ce ne sera plus ensuite vraiment le cas.

Un acte de 1779 indique que Sâlah Bey a une nouvelle fois obtenu par échange avec l'administrateur d'une autre mosquée, Djami‘ al-akhdar, un certain nombre d'immeubles et de terrains constituant un prolongement de sa demeure, qu'il a pour partie reconstruit et constitué en habous à dévolution familiale. Mais là, la nature de la contrepartie n'est pas présentée. En 1780, l'échange à nouveau pratiqué intéresse cette fois directement les biens de la mosquée Sîdî al-Kittâni. Sâlah Bey, ayant construit deux maisons sur un terrain acquis et constitué en habous au profit de la mosquée, procède à l'échange des murs de l'une des deux maisons en contrepartie d'une autre maison qu'il avait lui-même préalablement constituée en habous public. Or l'argument n'est pas dans ce cas l'intérêt de la mosquée, et il n'est pas non plus question d'autorisation légale. L'échange est justifié par référence à des dispositions prises par le donateur "au début du registre" quant à la possibilité qu'il s'est donné de "modifier (tabdîl) et de remanier (taghyîr)" ses habous. Un argument qui reviendra encore, pour défendre d'autres pratiques.

En 1782, d'autres échanges de ce type sont également pratiqués par Sâlah Bey avec différents gestionnaires de fondations inaliénables : administrateurs des habous de la zaouïa du lignage religieux des Banî al-Fakûn⁽¹⁾, administrateur des "habous des pauvres" et des "habous des affaiblis"⁽²⁾, gérant de la mosquée Sîdî Umâr al-Wizzân⁽³⁾.

Or, ces échanges ni ne sont justifiés par l'intérêt des institutions concernées, ni non plus ne paraissent répondre à leurs intérêts. Les biens troqués par Sâlah Bey sont essentiellement des immeubles urbains, quand en échange il reçoit des biens fonciers. Ainsi, contre les trois huitièmes d'une maison, il obtient une parcelle. Et contre la totalité d'une maison, un peu plus des trois huitièmes d'une autre et une boutique qu'il a construite, le voilà riche de pas moins de 6 terres. Rien ne nous permet, à partir des données, d'apprecier la valeur effective de ces biens, qu'ils soient ou non urbains. Il ne faudrait pas non plus sous-estimer la hauteur des revenus des immeubles, ou parts indivises. Le processus décrit par A. Henia quant

(1) RSW, djumâda al-awâl 1196.

(2) RSW, safar 1202.

(3) RSW, safar 1202.

à la mise en valeur des biens locatifs urbains à cette époque à Tunis n'est pas un phénomène isolé, propre à cette cité⁽¹⁾. Cependant, le "marché" de la terre auquel s'adonne Sâlah Bey dans les années 1780, avec des partenaires tant institutionnels que privés⁽²⁾, n'est pas mu par la volonté d'enrichir davantage la mosquée Sîdî al-Kittânî, il a pour visée cette fois-ci la réalisation d'un très vaste domaine foncier cohérent aux alentours de Constantine. L'ensemble de ces terres sont également constituées en habous ; mais il s'agit de habous à dévolution familiale qui lui assurent, ainsi qu'à ses descendants, la jouissance de ce patrimoine conséquent⁽³⁾.

L'usage relativement régulier qu'a fait Sâlah Bey de l'échange de biens habous montre qu'il ne s'est pas par trop embarrassé de l'interdit édicté par lui-même. Au contraire il n'a pas hésité à en tirer tout le parti et ce, essentiellement à son profit personnel.

Ce gouverneur va encore faire un usage répété d'une autre pratique, celle consistant à revenir sur l'identité des bénéficiaires des habous constitués. Il inaugure cette pratique en 1785. Il en est fait mention dans un texte rédigé au bas d'une page contenant un acte établi des années plus tôt, en novembre 1777. Il concerne la constitution en habous direct au profit de Sîdî al-Kittânî d'une ruine, autour de laquelle Sâlah Bey a fait construire un mur et placer une porte. Le texte de 1785 indique qu'il souhaite détourner (hawala) cette destination initiale, en faisant valoir qu'il s'était accordé la possibilité de "retirer et d'insérer, de modifier et de remanier durant sa vie" le contenu des habous établis par lui. Cette ruine est alors constituée en habous familial au profit d'un savant, le Sayyid Mubârak al-Sâ'ighî et ses deux fils, ainsi qu'à leur descendance, avant de réintégrer le patrimoine habous de la mosquée Sîdî al-Kittânî.

Au cours des deux décades correspondant à fin avril et début mai 1786, Sâlah Bey va faire un usage intensif de la mise en cause de l'orientation première donnée à un certain nombre de ses habous, mais une mise en cause qui n'affecte pas dans ces cas le patrimoine de la mosquée Sîdî al-Kittânî. Cinq actes sont rédigés dans ce cours laps de temps. Ils concernent tous

(1) Propriété et stratégies sociales à Tunis (XVIIe - XIXe siècles), Tunis, Publications de la Fac. Des Sciences humaines et sociales de Tunis, 1999.

(2) RSW, qa'ada 1196 ; shawâl 1197

(3) Outre le RSW, un autre document de 1790, enregistrant exclusivement la totalité des habous privés de Sâlah Bey, permet de se faire une idée précise de l'ampleur de cette opération. Ce document se trouve également au Centre des archives historiques de la wilaya de Constantine.

les biens constitués en habous à dévolution familiale depuis 1775, et Sâlah Bey s'attache à modifier, parmi ses descendants l'ordre des bénéficiaires. Alors que dans un premier temps, la jouissance des biens devait intéresser, après lui, l'ensemble de ses enfants, garçons (en 1786, il en deux) et filles (au nombre de 5), puis leur descendance, le bey institue désormais au nombre de ses héritiers directs son fils aîné Muhammad exclusivement, puis sa descendance, et enfin à l'extinction de cette dernière, il prévoit "l'entrée dans le habous" de ses autres enfants et / ou leurs descendants.

Qu'il s'agisse de habous publics ou privés, Sâlah Bey n'a pas hésité à mettre cause des modes de dévolution initiaux et l'on peut penser qu'il a reçu l'assentiment des autorités juridiques compétentes. Dans un cas cependant, une telle manipulation de habous ne sera pas agréée. C'est d'abord qu'elle rencontre l'opposition vigoureuse de celle qu'elle tend à défavoriser, la fille du gouverneur, Amina. C'est ensuite que l'opération est jugée illégale, en ce qu'elle met cette fois en cause le caractère proprement "habous" des biens concernés. L'affaire est mentionnée dans un long acte, malheureusement incomplet, qui se présente sous la forme de dix petits textes successifs, courant de février 1788 à avril 1789⁽¹⁾. Ces textes campent la même scène réitérée 5 fois. D'abord c'est le rappel de la constitution en habous de biens de diverse nature qui est relatée. Habous opéré par Sâlah Bey, au profit de sa fille Amina et de sa descendance, puis au profit de ses autres enfants et leur descendance, avant de revenir à la mosquée Sîdî al-Kittâni. Le texte suivant nous transporte au tribunal, et met en scène l'affrontement des représentants respectifs de Saâlah Bey et d'Amina. Le premier fait valoir la volonté du gouverneur de révoquer (*rujû'*) les termes de son habous et l'annuler (*naqd*). Ce à quoi le second répond en demandant en quoi une telle révocation est licite, et que vu les conditions définies dans le habous, il ne peut être annulé. Il est suivi par le juge dont le verdict énonce que le constituant n'est pas autorisé à révoquer son habous.

Pourquoi le bey a-t-il souhaité mettre en cause ces habous? Est-ce en raison d'un différend l'opposant à sa fille ou voulait-il donner à ces biens la même destination que désormais il privilégiait à l'exclusion de tout autre programme? A défaut de l'avoir vu obtenir gain de cause, l'affaire aura témoigné de la variété des manipulations à laquelle pouvait donner lieu la constitution habous sur les biens.

(1) RSW.

Mais ces manipulations s'autorisent-elles des possibilités offertes en droit par la pratique du habous ou plutôt de l'autorité souveraine, et de la puissance de l'arbitraire de leur auteur ? Une dernière affaire montre que s'il n'a pu déshériter sa fille, Sâlah Bey obtient en revanche, au même moment, en 1789, le droit d'annuler la procédure d'un don (celui d'un fondouk, qu'il a construit aux portes de la ville à Bâb al-Wâd) opéré par lui au profit de son fils aîné⁽¹⁾. Pour ce faire, et alors même que le don a été opéré par l'instance juridique hanafite, Sâlah Bey fait appel au cadi de l'école malikite, dans le but de pouvoir exercer le principe de l'i'tisâr (droit de reprendre sa donation). Un droit cependant exceptionnel, accordé au vu d'une situation de détresse et d'impasse et que manifestement le gouverneur ne s'arroge qu'en vertu de sa puissance.

Ainsi, si la mosquée de Sâlah Bey a pu être au fondement d'un vaste projet urbanistique dont on a pu souligner la dimension politique et ambitieuse, tant en constituant le point d'encrage du nouveau quartier que le bey à fait naître que le destinataire bien doté des édifices construit à cette occasion, cette mosquée a également été le prétexte d'un enrichissement considérable relayé par un usage à la fois systématique et très libre de la pratique du habous qui paraît s'être autorisé avant tout de la position de pouvoir incontesté de son fondateur. Il reste à interroger, par comparaison la place des autres constituants qui ont participé à leur niveau à la constitution du patrimoine habous de Sîdî al-Kittânî.

Les autres constituants

Autant le rapport du bey à la mosquée Sîdî al-Kittânî apparaît central dans le projet politique du gouverneur, autant la présence d'autres constituants peut paraître ne présenter qu'un intérêt limité, eu égard par exemple, avec degs exceptions, à leurs niveau de participation respectif. On peut même au contraire s'étonner de cette présence. Ils sont huit constituants ou groupe de constituants (dans un cas en effet, deux frères constituent en habous des biens en copropriété). Tous, d'autre part, participent à la dotation de Sîdî al-Kittânî à l'époque du bey Salah, et les textes ont été retrançrits sous l'égide du même cadi hanafite, à une exception. En effet, en 1820, le chef de la corporation des tanneurs d'alors et son père établissent un acte

(1) L'acte qui en rend compte se trouve retrancrit dans le document dont on a signalé l'existence, dans lequel est rassemblée la totalité des habous à dévolution familiale de Sâlah Bey. De fait, le don sera transformé ensuite en habous.

retranscrit dans le registre, qui concerne la mise en habous, à dévolution familiale, de leur maison. Cette exception suggère a contrario, du moins si l'information dont on dispose reflète la réalité, qu'une tradition de dotation de cette mosquée ne s'est pas instaurée dans le temps, et que son patrimoine trente ans après sa fondation date de l'époque de son fondateur. Aussi bien, on peut se demander ce qui a motivé les quelques contemporains du bey qui, à ses côtés, ont pris part à l'opération.

Tous ces individus ont pratiqué des habous à dévolution familiale. Cependant, la plupart ne s'en sont pas contentés, et se sont impliqués davantage. En particulier, Mustafa Qîsârlî. On a vu qu'il était le fondateur de la fontaine, construite dans la proximité immédiate de Sîdî al-Kittâni en 1777, et qu'il avait doté cette fontaine de moyens matériels pour son entretien. Or, plus tôt, en 1775, il avait participé à l'opération de constitution du patrimoine de la mosquée, par des habous à dévolution familiale, concernant les trois quart d'un édifice surélevé ('uluw) qu'il possédait au Sûq al-djumu'a, et du quart d'un moulin, qui lui appartenait à hauteur de la moitié des parts. Mais de plus il devait constituer au même moment, à l'instar de Sâlah Bey, un habous public au profit de la mosquée (le deuxième quart du même moulin).

Il est le seul des contemporains du bey à participer à ce niveau à l'opération habous. Mais sans pratiquer la fondation inaliénable de type public, d'autres s'engagent à des versements au bénéfice de la mosquée, de loyers annuels perçus sur les biens constitués en habous privés. C'est le cas, en 1774, du premier constituant que le registre fait connaître, 'Achiq 'Umar, qui trois ans plus tard revoit même le montant initial à la hausse, de 3 à 5 riyals, son bien, une ruine, ayant entre temps fait l'objet de travaux qui en augmentent la valeur. C'est également le cas de Rudwân Khûdjâ, auteur de deux habous familiaux, mais tous deux grévés d'une annuité de respectivement 4 et 5 riyals, ainsi que de Ahmad bin Mukhtar qui lui aussi retient, sur la maison qu'il habouse, 5 riyals.

Un autre constituant, Muhammad b. Kudjuk 'Alî, constitue des habous à 3 occasions, en 1775, puis, au côté de son frère Mahmud, en 1786 et 1792. Or, vu la variété des orientations données, le versement d'un loyer annuel au profit de la mosquée Sîdî al-Kittâni constitue le point commun des trois programmes. Dans le premier cas, seul le versement d'un tel loyer (10 riyasls prélevé sur l'usufruit d'une grande maison), justifie la mention de cette opération, le bénéficiaire in fine étant les Lieux Saints de la Mecque

et Médine. En 1786 puis en 1792 une annuité de 2 riyals est prévue pour des biens dévolus en dernier ressort à Sîdî al-Kittâñî, avec dans le dernier cas, un tiers du bien réservé aux habous des Lieux Saints.

Finalement, deux constituants seulement n'ont pas prévu ce type de disposition, Muhammad b. Abbâs b Sarâdj, à l'occasion de la constitution en habous d'une maison en 1775, et une femme, la seule parmi les constituants, Râdiya fille du défunt Qasîda 'lî Shawush al-Indjashâ'iri, qui se fait connaître dans le même but en août 1788. Le détail montre que sans s'adonner à la pratique de habous publics, la plupart des constituants contribuent d'emblée, même modestement, à l'enrichissement de la mosquée fondée par Sâlah Bey.

Y compris alors même qu'existent des alternatives, peut-être même plus évidentes que la participation à la dotation, précisément, de cette mosquée. L'une de ces alternatives est la constitution de habous en direction des Lieux Saints de la Mecque et Médine. Cette destination jouit d'une réputation si confortable et bénéficie d'une organisation déployée à l'échelle de l'ensemble de la Régence si efficace qu'elle s'impose de façon privilégiée aux constituants potentiels de cette époque⁽¹⁾. Le document même relatif à Sîdî al-Kittâñî témoigne de ce que cette institution a pu être une concurrente directe à la mosquée du bey. Ainsi Muhammad b. Kudjuk 'Alî privilégie sans ambages cette destination dans la première constitution de habous qu'il fait concernant sa maison et, à nouveau ensuite, en 1792, son frère et lui prévoient qu'un tiers des biens fonciers qu'ils habousent alors reviennent aux Lieux Saints. C'est, en ce qui la concerne, un choix du même type que fait Radiya fille de Qasda 'lî al-Indjashâ'iri : la maison qu'elle immobilise doit intégrer à terme, conjointement et à part égale, les patrimoines habous de Sîdî al-Kittâñî et des Lieux Saints. Mais Muhammad b. Kudjuk 'Alî et Radiya ne sont pas les seuls à établir des habous en cette direction. Deux autres constituants en ont fait de même, Rudwân Khûdjâ d'une part qui, en 1187 (1773/1774), a habousé ainsi sa maison, et Mustafa Qisârlî, dont les biens immobilisés dans cette direction sont assez nombreux : un moulin, deux terres, une maison et un édifice surélevé, la moitié d'un fondouk et un atelier de tisserand. Ces données, bien que malheureusement très lacunaires⁽²⁾, confirment que les mêmes

(1) Voir M. Hoexter, Endowments, Rulers, and Community. Waqf al-Haramayn in Ottoman Algiers, Leiden-Boston-Köln, Brill, 1998.

(1) Données présentées dans un document Archives de la Régence d'Alger, CARAN, Paris, sous la côte 228 Mi 22 - 82. feuil. recto-verso 182 à 185, rassemblant un certain nombre d'opérations de ce type effectuées à Constantine.

donateurs qui ont accompagné Sâlah Bey dans son opération, ont dans le même temps, et dans des proportions qu'on ne peut évaluer, honoré la prestigieuse institution des habous des Lieux Saints.

A contrario, leur participation à l'opération de dotation de Sîdî al-Kittâni apparaît volontaire et volontariste. Or, tout porte à croire que c'est moins la mosquée que ces hommes et cette femme honorent par ce biais que son fondateur, Sâlah Bey, en vertu des liens qui les unissent à lui. Des liens que l'on peut chercher à évaluer.

Certains assurent alors des fonctions dans l'entourage politique et militaire direct du bey. Muhammad fils de 'Abbâs, d'abord, est le sellier attaché au palais beylical (sarâdj Dar al-Imâra). Ahmad b. Mukhtâr, lui, en tant que Chef trésorier (bâsh khaznadjî) est préposé à la surveillance des convois transportant les impôts perçus par l'armée beylicale dans les campagnes. On compte encore, parmi les constituants, deux hauts dignitaires du Beylik que sont à l'époque de Sâlah Bey, Rudwân Khûdjâ et Muhammad b. Kudjûk 'Alî. Ce dernier occupe, en effet, la charge éminente de Grand secrétaire (bâsh kâtib). Mais c'est également lui que l'on retrouve mandaté par Sâlah Bey pour le représenter dans le conflit qui l'oppose à sa fille Amina. Quand le mandataire de cette dernière est Rudwân Khûdjâ. Dans un acte du registre, daté de 1780, celui-ci détient le titre d'administrateur du Trésor (nâdir bayt al-mâl), à l'occasion de l'achat d'un bien vacant par le gérant de la mosquée Sîdî al-Kittâni. Mais s'il assume cette fonction, c'est en réalité en tant que Qâ'id ad-dâr, qu'il a la charge de la police urbaine et de l'administration des propriétés du Beylik, charge de laquelle dépend l'institution du bayt al-mâl⁽¹⁾. C'est en effet à ce poste que les sources de l'époque le situent⁽²⁾.

Le père de Râdiya devait en son temps avoir occupé une fonction militaire quelconque, son passage dans les rangs de la milice a en tout cas marqué le libellé de son identité (al-Indjashâ'irî = le janissaire). Il aura également exercé au titre plutôt vague de shawush". Ce qui est sûr, c'est que le contexte dans lequel on rencontre la dame témoigne de ce

(2) Parce qu'il fit construire une fontaine publique et une zawiya qui porte son nom et dans laquelle il fut enterré, parce qu'il occupa très longtemps ce poste, jusqu'en 1805, l'année de sa mort, les historiens de Constantine saluent en des termes lodatifs les qualités de cet homme. Voir Vaysettes, op. cit, p.454, voir également Muhammad Tâhir b. Naqqâd, Ta'rîkh Sâlah Bây, malik Qusantîna, manuscrit BN Tunis.

(3) Outre les chroniques déjà citées, voir 228 Mi 22 - 82. op. cit.

que milieu gouvernemental ne lui est pas étranger: c'est accompagnée de 'Alî al-Gharbi, lui même Qâ'id al-isbâ'ihiya, ou commandant des cavaliers de l'armée beylicale, qu'elle vient constituer un habûs. Le nom du père de Radiya offre une ressemblance troublante avec le gérant des biens de la mosquée Sîdî al-Kittânî, le Sayyid Alî al-Indjashâ'irî. Et c'est au moins l'occasion de rappeler que les transactions accomplies par Sâlah Bey l'ont mis régulièrement en contact précisément avec des administrateurs d'édifices religieux. Parmi eux, Mustafa Qîsârlî. Il est en effet administrateur des biens de la mosquée de Sîdî as-Sab'înî (une mosquée qui se trouve dans la proximité du Sûq al-djumu'a et, à ce titre qu'il intervient dans un échange de biens avec Sâlah Bey, dont l'acte est conservé dans le registre. Or, il est celui qui, après le bey, participe le plus assidûment à la dotation de la mosquée Sidî al-Kittânî. Cela suggère qu'il partageait avec Salah Bey des relations particulières. Or, c'est encore avec un autre homme fort du régime qu'on lui connaît des liens, Ahmad Na'mûn, Qâ'id al-djabrî (duquel relève la charge de percevoir les impôts sur les terres du domaine beylical), avec lequel il était copropriétaire du moulin dont il constituera ses parts en habous. De 'Achiq 'Umar enfin, on ne sait rien. Ou presque : c'est en effet à Sâlah Bey qu'il achète la maison qu'il immobilise ensuite au profit de Sîdî al-Kittânî.

L'ébauche de l'identité des constituants révèle, en dépit de la minceur des informations, la réalité d'un petit milieu, traversé par des relations d'inter connaissance et de solidarité et d'esprit de corps qui sans aucun doute ont poussé ces personnes à prendre part au projet beylical. Le bey, en effet, paraît entretenir avec chacun, ou presque, des liens personnels. Mais des liens peut-être aussi d'allégeance, pour le maintien desquels cette participation s'impose à eux d'avantage qu'elle ne se propose. Dans quelle mesure les places que tiennent les uns et les autres, qui pour la plupart sont la garantie de leur enrichissement et de leur position sociale, ne dépendent pas du bon vouloir du bey ? Et, en contrepartie, quel intérêt a pu représenter pour chacun d'eux cette participation, sinon d'abord de s'attacher l'amitié du gouverneur, en en faisant un gage de visibilité plus grande et un signe de reconnaissance de l'œuvre beylicale ? A nouveau, la mosquée tend à s'effacer devant son éminent fondateur.



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