

**WAQF: A QUICK OVERVIEW**

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Waqf, in Arabic language, means hold, confinement or prohibition. The word Waqf is used in Islam in the meaning of holding certain property and preserving it for the confined benefit of certain philanthropy and prohibiting any use or disposition of it outside that specific objective. Waqf (pl. Awqaf) is called Habs (pl. Ahbas) in North and West Africa. This definition accords perpetuity to Waqf, i.e., it applies to non-perishable property whose benefit can be extracted without consuming the property itself. Therefore Waqf widely relates to land and buildings. However, there are Waqf of books, agricultural machinery, cattles, shares and stocks and cash money.

The idea of Waqf is as old as humanity. Muslim jurists argue that the first Waqf ever is the sacred building of Ka'bah in Makkah since the Qur'an (III: 96) mentions that it is the first house of worship set for people. Practically, all societies set aside certain lots of land and buildings, as places of worship. Today, the idea of Awqaf is known and practiced all over the world. It exists in Europe and America under the name of foundations and sometimes endowments, especially religious and charitable foundations. There are tens of thousand foundations in the United States alone.

### **Beginning and kinds of Waqf**

In the history of Islam, the first religious Waqf is the mosque of Quba' in Madinah which was built upon the arrival of the Prophet, pbuh Muhammad, pbuh, pbuh. It stands now on the same site with a new and enlarged structure. Six months later, Quba' was followed by the mosque of the Prophet, pbuh in the center of Madinah. Mosques and real estates confined for providing revenues to spend on mosques' maintenance and operating expenses are in the category of religious Waqf.

Philanthropic Waqf is the second kind of Waqf. It aims at supporting the poor segment of the society and all activities which are of interest to people at large such as libraries, scientific research, education, health services, care of animals and environment, lending to small businessmen, parks, roads, bridges, dams, etc. Philanthropic Waqf began by the Prophet, pbuh Muhammad, pbuh, too. A Jewish man called Mukhairiq made his will that his seven orchards in Madinah be given after his death to Muhammad, pbuh. In the year four of the Hijrah calendar, the man died and the Prophet, pbuh, took hold of the orchards and made them a charitable Waqf. This practice was followed by the companion of the Prophet, pbuh, and his second successor

Umar, who asked the Prophet, pbuh, what to do with a palm orchard he got in the northern Arabian peninsula city of Khaibar and the Prophet, pbuh, said "If you like, you may hold the property as Waqf and give its fruits as charity." many other charitable Waqf were made on the Prophet's, pbuh, advice such as a Waqf of drinking water in Madinah, Waqf of horses and camels for the sake of God and others.

A third kind of Waqf started shortly after the death of the Prophet, pbuh during the reign of Umar (12-23 H = 635-645CE), the second successor. When Umar decided to document in writing his Waqf in Khaibar, he invited some of the companions of the Prophet, pbuh to attest this document. Jaber, another companion, says that when the news broke out every real estate owner made certain Waqf. Some of those put a condition that certain percentage of the fruits and revenues of their Waqf be first given to their own children and descendants and the rest should be given to the poor. This kind of Waqf is called posterity or family Waqf. Therefore, unlike foundations in America which are restricted to religious or philanthropic purposes, Waqf in Islamic society may also be for one's own family and descendants.

### **Ownership of Waqf**

From a legal point of view, the ownership of Waqf property lies outside the person who created the Waqf. Some Muslim jurists argue that the right of ownership of Waqf belongs to Allah. Others believe it belongs to the beneficiaries although their ownership is not complete in the sense that they are not permitted to dispose of the property or use it in a way different from what was decreed by the founder of Waqf. In this regards Waqf differs from a foundation since the management of a foundation is usually able to sell its property. This implies that perpetuity is stronger in Waqf than it is in foundations.

### **Characteristics of Waqf**

As a benevolence infrastructure the Islamic Waqf has the following two characteristics:

#### **I- perpetuity**

It means that once a property, often a real estate, is dedicated as Waqf it remains Waqf for ever. Elimination of the Waqf character off a property requires difficult and lengthy process and is restricted to cases of substitution only. It needs an exchange against another property of equivalent value and equivalent service to the community in addition to a local court's approval. Upon completion of such an exchange, the new property is immediately dedicated as Waqf for the same purpose and beneficiaries of the former one. Hence theoretically perpetuity implies that Waqf properties should not decrease.

Waqf founders and courts usually make extra precaution in documenting and preserving the Waqf deeds. One may be astonished to find that courts in many cities and towns kept detailed records of Awqaf properties as early as the 15 and 16 centuries. Many of these records are still

maintained and historians explore them in Istanbul, Cairo, Fez, Damascus, Jerusalem, Isfahan, and other major cities throughout the Muslim world.

## **II- Permanence of stipulations of the Waqf founder**

Since Waqf is a voluntary act of benevolence, conditions specified by the founder must be fulfilled to their letter as long as they do not contradict or violate any of the Shari'ah rulings. This implies that revenues of Waqf should exclusively be used for the objective stipulated by its founder. Diverting Waqf revenues to other objectives is not within the authority of management or supervisory courts as long as the stipulated objective is compatible with Shari'ah on one hand and is still feasible on the other hand. If a Waqf purpose becomes unfeasible, the revenue of such a Waqf should be spent on the closest purpose available, both conceptually and geographically and if this is not workable the benefits of the Waqf must go to the poor and needy in accordance with the general rule that assumes "helping the poor and needy is the default objective of the Islamic Waqf." Permanence covers all founder's stipulations whether they relate to purpose, distribution of revenues, management, supervisory authority, etc.

### **Legal conditions of Waqf**

Waqf creation requires certain conditions. The most important among them are the following:

The property must be a real estate or a thing which has some meaning of perpetuity. Muslim societies practiced creating Waqf out of land, buildings, camels, cows, sheep, books, jewelry, swords and other weapons, agricultural tools, money, etc.

The property should be given on a permanent basis. Some jurists approve temporary Waqf in other than the Waqf of mosques,

The Waqf founder should be legally fit/apt to take such an action, i.e., minors cannot make Waqf and Waqf cannot be made out of minors' properties by their guardians.

The purpose of Waqf must, in the ultimate analysis, be an act of charity from both points of view of Shari'ah and of the founder. Hence Waqf on the rich alone is not permissible because it is not a charity.

Finally, beneficiaries, person(s) or purpose(s), must be alive and legitimate. Waqf on the dead is not permissible.

### **Management of Waqf**

In principle, the Waqf founder determines the type of management of her/his Waqf. The Waqf manager is usually called Mutawalli, Nazir or sometimes Wasyy and his/her responsibility is to administer the Waqf property to the best interest of the beneficiaries. The duties of the mutawalli are to preserve the property then to maximize its revenues/benefits of the beneficiaries. The

Waqf document usually mentions how the mutawalli is compensated for this effort and if the document does not mention a compensation for the mutawalli, he/she either volunteers the work or seeks assignment of a compensation from the court.

The judicial system, i.e. courts, is normally the authority of reference with regard to all matters and disputes related to Waqf. Early in the history of the Muslim world an Awqaf office for registration and control was established under the supreme judge who used to be called the "judge of judges." Since the mid nineteenth century, a special ministry was established for Awqaf in the ottoman empire and laws of Awqaf were enacted. The most important among them was the Law of Awqaf of Nov. 29, 1863 (19/6/1280 H). This law remained in application in several countries (e.g., Turkey, Syria, Iraq, Lebanon, Palestine, Saudi Arabia) for many years after the dismemberment of the Ottoman Empire in 1918. Presently, most Muslim countries have either Ministries or departments of Awqaf and religious affairs combined together.

On the other hand, Muslim communities in non Muslim countries have organized their Awqaf in accordance with the Islamic Shari'ah within the limits of prevailing laws and regulations. For instance in India, where there is a relatively large Muslim minority, a Waqf act was adopted at the federal level in 1954 and revamped in the early nineties. The Union Minister of Law was made the supervisory authority on Waqf. Each state in the Union of India has a Waqf board that consists of eleven Muslim members. There is an Awqaf law in Kenya too

In the Europe, North America and Australia Muslim communities administer their Waqf properties in accordance with the foundation and non-profit organizations acts and regulations. The usual practice is that each Muslim community establishes a non-profit organization which in turn owns the Waqf property that in most cases consists of the local mosque, Islamic center or school. In 1975 The North American Islamic Trust (NAIT) was registered in the state of Indiana. One of the main objectives of this non-Profit Islamic organization is to own and promote the Awqaf of Muslims in North America. A few years later a sister organization under the same name was registered in the province of Ontario in Canada. Recently a Waqf organization was registered in the state of Illinois and a European Waqf was also created in the European countries.

### **Sociopolitical role of Waqf**

The permanent nature of Waqf resulted in the accumulation of Waqf properties all over the Muslim lands and the variety of its objectives provides support for widespread religious and philanthropic activities. The size of Waqf and its objectives play important role in the sociopolitical life of Muslim societies and communities.

Information extracted from the registers of Awqaf in Istanbul, Jerusalem, Cairo and other cities indicates that lands of Awqaf cover considerable proportion of total cultivated area. For instance, in the years 1812 and 1813 a survey of land in Egypt showed that Waqf represents 600,000 feddan (= 0.95 Acre) out of a total of 2.5 million feddan (Ramadan, p. 128); in Algeria the number of deeds of Awqaf of the grand mosque in the capital Algiers was 543 in the year

1841 (Ajfan, p. 326); in Turkey about one third of the cultivated land was Awqaf (Armagan, p. 339); and finally in Palestine the number of Waqf deeds recorded up to middle of the sixteen century is 233 containing 890 properties in comparison with 92 deeds of private ownership containing 108 properties (IRCICA, p. L).

With regards to use of Waqf revenues the most frequent purpose is spending on mosques. This usually includes salaries of imam, teacher(s) of Islamic studies, preacher(s). With the help of this independent source of finance religious leaders and teachers have always been able to take social and political positions independent of that of the ruling class. For example, upon the occupation of Algeria by French troops in 1831 the colonial authority took control of the Awqaf properties in order to suppress religious leaders who fought against occupation (Ajfan, p. 325).

Although religious education is usually covered by Waqf on mosques, education in general has been the second largest user of Waqf revenues. Since the beginning of Islam, in the early seventh century, education has been financed by Waqf and voluntary contributions. Even government financing of education used to take the form of constructing a school and assigning certain property as Waqf that provides regular revenues to cover the operating expenses of the school. Awqaf of the Ayubites (1171-1249) and the Mamalik (1249-1517) in Palestine, Syria, Lebanon and Egypt are good examples. According to historical sources, Jerusalem had 64 schools at the beginning of the twentieth century all of them are Waqf and supported by Awqaf agricultural and metropolitan properties in Palestine, Turkey and Syria. Of these schools 40 were made Awqaf by the Ayubites and the Mamalik rulers and governors (Al °Asali, pp. 95-111). The University of al Azhar is another example. It was founded in Cairo in 972 and was financed by its Waqf revenues until the government of Muhammad Ali in Egypt took control over the Awqaf in 1812 (Ramadan, p. 135).

Waqf financing of education usually covers libraries, books, salaries of teachers and other staff and stipends to students. Financing has not been restricted to religious studies, it covers all branches of knowledge including science, philosophy and even translation from other languages. In addition to freedom of education this approach of financing helped creating a learned class not derived from the rich and ruling classes. At times, the majority of Muslim scholars used to be coming from the poor and slave segments of the society and very often they strongly opposed the policies of the rulers (al Syed, pp. 237-258).

The third big beneficiary of Waqf is the category of the poor, needy, orphans, persons in prisons, etc. Other users of Waqf revenues include health services which cover construction of Hospitals and spending on physicians, apprentices, patients and medicines and medical pharmaceutical research. One of the examples of the health Waqf is the Shishli Children Hospital in Istanbul which was founded in 1898 (al Syed, p. 287).

There is also Waqf on animals whose example is the Waqf on cats and the Waqf on unwanted domestic animals both in Damascus (al Siba<sup>ci</sup>) and the waqf on birds in Fez. There are Awqaf for helping people go to Makkah for pilgrimage, helping girls getting married, and many other philanthropic purposes.

### **Waqf in the twentieth century**

During the colonial period of the nineteenth and a good part of the twentieth centuries, the management of Awqaf continued to follow inherited patterns in most Muslim countries and communities. However the general atmosphere of underdevelopment and backwardness which was prevailing in the Muslim world also enveloped the Awqaf property and the Western system of education which was introduced by colonial authorities and supported by newly created economic opportunities gave a strong blow to the traditional education which was financed by an already underdeveloped Awqaf.

With the independence of most Islamic countries came the establishment of national states and the new leadership took a different stand towards Awqaf which was often negative. For instance many Waqf properties in Syria, Egypt, Turkey, Tunis and Algeria were added to the public domain of the government and distributed through land reforms and other means and methods while governments in those countries took responsibilities of spending on mosques and some religious schools including al Azhar university in Cairo. For this Purpose many Muslim countries established a branch of the government for Awqaf and religious affairs. After stripping it of the developmental and productive content, the word Awqaf is now mostly used to refer to mosques only.

However, some countries such as Lebanon, Turkey, Jordan and recently Kuwait, Sudan and Algeria attempt to revive and develop the properties of Waqf. They enacted new laws of Awqaf that helped recovering, preserving and developing some of the properties of Awqaf and encouraging people to create new Waqf.

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