

ISSUES AND CHALLENGES IN MANAGEMENT OF WAQF IN DELHI PROVINCE OF INDIA

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Abstract.

Waqf is a philanthropic institution which is unique to Islam. Since the time of the Prophet Muhammad (peace be upon him) through to the Ottoman Empire, millions of awqāf were set up by Muslims in every corner of the world. Waqf is one of the institutions that have been created for the protection of the needy, the poor, the family and the society at large. Personal assets or any other belonging can be endowed waqf for educational, health, public goods or any other benevolent. The history of waqf in India can be traced back to 800 years ago. Most of the researchers, suggest how waqf can be used a tool to mitigate the poverty of Muslims. *Waqf* institutions in India are facing several issues and challenges such as waste of charitable resources, difficulties in retaining *waqf* assets, and low levels of professionalism of those involved in *waqf*. The main objective of this paper to highlight several issues and challenges facing waqf in India, including the lack of a defined aim, low level of capability and professionalism, narrow-mindedness, and poor levels of coordination. Other issues include brain drain, unstable performance, low qualification, and managerial neglect of waqf managers.

Key words: Waqf management, Indian Muslims, National Governance, India

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1. Introduction

The word “waqf” has its origin in the Arabic verb, “waqafa” meaning thereby ‘to detain’ or ‘to hold or to tie up’. (Puad, 2014) In legal terms it means to protect a thing from becoming the property of a third person (Hanafiah, 2015). It is described as permanent submission by a Muslim of a beneficial property to the possession of Allah *swt*. According to Khalid Rashed, (Rashid, 2018) it is the *mutawalli*(manager) obligation to govern the *Waqf* properties to the best interest of the beneficiaries once *Waqf* founder had determined the type of management of his / her *Waqf*. First priority is to preserve the property and secondly to maximize the revenues of the recipients. The revenues are used for the benefit of the society including social, spiritual and economical purposes, which is distributed among the poor and the needy, mosques, schools, graveyards, orphans, widow, old folk’s etc. The list of the beneficiaries is unlimited, as long as the donor determines the need of a group or individual for any Shari’ah compliant purpose the donation would be contemplated valid (Puad, 2014).

However, the role of Indian Muslims should not be overlooked or undervalued, as they have capable enormous portions of estates in the form of waqf. India, which is home to more than 172 million Muslims, accommodates thousands of waqf properties. Notably, up till the Mughal regime, Indian waqf was managed by the individually appointed mutawallis and were managed by qadis in accordance with Shari’a law. Nevertheless, with the fall of the Mughal Empire, and the advent of British rule in the subcontinent, there were huge changes to the methods of overall governance. In the transition, the institution of waqf, inter alia, suffered critically and lost its special nature in terms of being supervised by judges. (Nadwi, 2013).

Unluckily, the sizeable potential has yet to be recognized by Muslim. Waqf today considered and understood to be very narrow, unmodern, non-economic, anti-social and resolves only nearby religious issues. Therefore, it is a great challenge for *Waqf* institution in this country to participate a role in inspiring the pride, dignity and supremacy of Islam in India (Rafdi, 2014). As such, this paper aims to investigate the present issues and challenges in the management of *waqf* institutions. From the development of the last 10 years, the irregularity of theoretical knowledge of Islam and exercise has led to very serious operational mistakes in Islamic charity. Additionally, this paper investigates and discovers the social environment of *waqf* in India by

analysing Islamic and national governance of *waqf*. The interior management mechanism of *waqf* institutions cannot be divided from the laws and regulations of the country and the Islamic governance is a compulsory procedure for the implementation of *waqf*. Subsequently, this paper explores the relationship between these factors to address the challenges facing *waqf* in India (Kassima, 2017).

2.0 Literature review

2.1 Religious Policy in India

India is the world's second-most populous country with more than 1.3 billion people and is the origin of four main world religions: Hinduism, Buddhism, Sikhism, and Jainism. It is too home to about 180 million Muslims—only Indonesia and Pakistan have more. A small Christian minority includes about 30 million people. An officially secular nation with thousands of cultural groups and 22 official languages, independent India has a long tradition of religious tolerance (with periodic and sometimes serious lapses). Religious choice is openly harmless under its constitution. Hindus account for a vast majority (nearly four-fifths) of the country's populace. Hindu nationalism has been a rising political force in current decades, by several accounts eroding India's secular nature and leading to new attacks on the country's religious freedoms (Kronstadt, 2018).

Article 25 of the Indian Constitution states that “all peoples are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion” in a manner that does not unfavourably affect public order, health, or morality.²⁵ India's federal law provides “minority community” status for six religious groups—Buddhists, Christians, Jains, Muslims, Parses (Zoroastrians), and Sikhs—that together comprise about one-fifth of India's population. The laws state that the administration will protect the existence of these minorities and encourage conditions for the promotion of their individual individualities. A majority (59%) of India's 90 “Minority Concentration Districts” are in four states: Assam, Bihar, Uttar Pradesh, and West Bengal (Kronstadt, 2018)

2.2 History of Waqf in India

The size of assets under Islamic endowments in India is high. After the establishment of the Delhi sultanate in the 12th century, the Islamic rule in India was born in the year 1206 AD. A report by Ibn Battuta offers evidence as to the mode of management of Waqf by Mutawallis through the Sultanate period. With the establishment of Muslim rule in India, extensive construction of public places such as mosques, tombs, Madrasahs and graveyards took place and were designed generally to become Waqf, for the benefit of the following generations (Htayb, 2013). The Islamic endowments in India are considered by massive encroachment by state agencies and corporate houses, raising serious concerns of protection. Indeed, historians assert that aggressive encroachment by state began after 1857 mutiny against the British raj (Obaidullah, 2014).

Currently in Delhi alone, over 30 percent of about 2000 waqf properties are unlawfully engaged by government agencies. Additional, media reports on specific high profile cases have kept the concerns about preservation in the front burner. For instance, in 2002 an orphanage land valued at about USD24 million was sold for USD3.4 million for building of residence of India's richest man that is currently valued at around USD1 billion (Obaidullah, 2014).

2.3 Waqf in British India

Waqf was industrialized in India during British Rule is reachable. Until 1920, no serious study was made to count the number of Muslim endowments in India. After 1920, some State and Central laws were placed on the Statute Book, which obligated the custodians of the Waqf assets necessary to register their endowments with the Government's agencies-Waqf Board, etc. Despite this legal requirement of compulsory registration of Waqf property, no one seem like to have a precise idea of the number of Muslim Waqf in British India. The British method of law, land tenure and administration seem to have formed hurdles in the way of creation of New Waqf and consequently, the development of Waqf during British Rule has been very dispiriting and unfavourable (Htayb, 2013).

2.4 Economic State of the Muslim Community in India

The Muslim community in India are mostly determined in the northwest region of the country, organically, it is unevenly dispersed over the national region from roughly 2/3 in the state of

Jammu and Kashmir to less than 5% such a major state like Tamilnadu. Even within a state it is not consistency distributed and various from a higher than average proportion in one district to nearly zero in another. In roughly 120 out of 400 district in India Muslims constitute about 20% of the population and above undoubtedly a politically and economically significant proportion. Compared to the national average, the Muslim community is slightly more urban-oriented (Shahabuddin, 2007).

Indian Muslims constitute an important and essential, though complex, section of Indian population. They are the second major majority after the Hindus and the single largest religious minority group in the country (Shahabuddin, 2007) Settled even in the remote and unreachable villages and far away towns, they are distributed all over India. They speak different regional languages and are enamoured in different local and regional colours. Consequently, they add depth and diversity to India's social and cultural life in more than one ways. Keeping in view the huge size and strategic position of Muslims in India, it could be said that India's effort at social and economic development will not be complete and successful so long this community along with other under privileged sections of the Indian society remains in the backwoods of development and is poor of equal chance to become an educated, forward looking, progressive and dynamic community. Henceforth, the issue of social and economic development of Indian Muslims is important not only for the sake of Muslims themselves, but also for social and political integration of India as a whole (Sachar, 2012)

3. Administration of Auqaf

The law related to Waqf systems an essential and most important branch of Islamic law. In India, the institution of Waqf through the Mughal rule was supervised and managed through mutawallis who were always respected scholars and high caliber jurists, well-versed in the jurisprudence of Waqf (Htayb, 2013). Nevertheless, with the establishment of British rule in the Indian Subcontinent, the department of the Waqf fell into dismay and lost its special quality in that it was largely being supervised by qualified individuals ((Anwar Aziz, 2018). In post-independence India, the Government of India approved the Waqf Act 1954 with the objective of promoting better administration of Waqf properties in the country (Ahmed & Khan, 1998). Such as mentioned previously, this was superseded through the Waqf Act 1995. At present, Waqf

administration in India is governed by the Waqf Act 1995 which was amended by the Waqf Amendment Act 2013 (Karimi, 2014). A central level Waqf Council and state-level Waqf boards were constituted under the Waqf Act 1954 that regulate the Waqf properties scattered throughout the country (Khan, 2014).

3.1 Waqf Substructure

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

3.2 Central Waqf Council:

The Act envisages the institution of a Central Waqf Council for the aim of guiding the Central Government, State Governments and the Boards on matters regarding the working of the Boards and the due administration of auqaf. the *Waqf* board of a specific State including the Union Territory of Delhi have to have 7 to 13 members, of which the majority are elected from amongst the Muslim members of Parliament (Abdullah, 2013). The Council shall have its own fund by the name of Central Waqf Fund. It will contain of money received by the Council as donations, benefactions and grants. Every Board shall pay from its Waqf Fund, an annual contribution equivalent to one percent of the annual income of the Waqfs (Khan, 2014). The Council is also required under section 11 to maintain its account in such manner as may be prescribed. With a view to protect vacant Waqf land from encroachers and to develop it on commercial lines for generating more income in an order to widen welfare activities, Central Waqf Council has been implementing this scheme since 1974-75 with yearly grant-in-aid from the Central Government. Under the Scheme, loan is extended to various Waqf Institutions in the Country for taking up economically viable buildings on the Waqf land such as commercial complex, marriage halls,

hospitals, cold storage etc. For this, the Central Government has released a total grant-in-aid amounting to Rs. 30 crores 26.36 lakhs only from September 1974 to March, 2007, and in turn the Central Waqf Council has extended loan to 119 projects approved by the Council as well as by the Government of India (Affairs, 2017) Out of these 119 projects, 75 projects have been completed in all respect and are yielding income. The loan amount is repaid to the Council by the loaner institutions in easy instalments and the amount thus received back forms a Revolving Fund, which is again utilized for giving loans up to USD 28278.58 to the Minor Development Projects on Waqf properties. From this Fund, the Council had released a sum of USD, 9757200.00 to 87 projects up to 31.3.2007 out of which 66 projects have been completed. Happy to note, now the fund has been given to digitization of the records relating to Auqaf (Affairs, 2017).

3.4 State Waqf Boards

Under the *Waqf* Act, the State *Waqf* Boards are recognized through respective State governments (Ahmad, 2002) for the general superintendence of all *waqfs* in a State¹⁸ with five years as a term of office (Ahmad, 2002) If the number or income of *Shia waqf* properties in a State is more than fifteen per cent, a separate *Waqf* Board for *Shias* may be established.²⁰ The Board is a body corporate having perpetual succession and a common seal with power to acquire, hold and transfer property and can sue and be sued.²¹ The Board is composed of both elected and nominated members. The State Government elects one and not more than two members from each of the electoral colleges consisting of Muslim members of Parliament, State Legislature, Bar Council and *Mutawallis*. The State Government also nominates one person among Muslims, having professional experience in town planning, business management, social work, finance, revenue, agricultural and development activities. Also, one Muslim recognised scholar of Shia and *Sunni* theology and one Muslim officers of the State Government not below the rank of Joint Secretary to the State Government. In case of Union territories other than National Capital Territory of Delhi (Ahmad, 2002) the Board should consist of not less than five and not more than seven members to be appointed by the Central Government. Every Board shall have at least two women members.

3.5 Issues and Challenges of State *Waqf* Boards

In India has 32 *Waqf* boards, which are responsible for the common superintendence of respective *auqāf* in their States/Union Territories. The *Waqf* Board in India and corruption has very locked relationship. There is a long time, systematic daylight robbery in India. It is in the wheeling and dealing of *waqf* land through the *Waqf* Boards which is assumed them in the name of Allah by the affluent for the maintenance of orphans, widows, divorced women, educational and charitable resolutions (Khan, 2014). There is a nexus among politicians, police, bureaucrats and land mafia who have always eyed *waqf* land which cannot be sold or its use changed till infinity. They are given on lease in lieu of money that fills the offers of officials. How the *Waqf* Board has become an establishment deeply mired in corruption can be gauged from some land scams like the one at the Maharashtra *Waqf* Board that has given 4,535 sqmts in the upmarket Atta mount Road to MukeshAmbani for his 27-storey Apartment. Similarly in Bangalore, the Windsor Manor Hotel worth more than 600 crore has been leased for a petty Rs.12000 per month.⁴⁵ (Khan, 2014) The Sachar Committee Report suggested that an overhauling of the *Waqf* Board is required as the government does not get proper CEOs in most of the states and those who are there are either manning this post as an further charge or are only not qualified. There are several issues and challenges these *Waqf* Boards face even though discharging their duties. Some of the main problems are identified below.

3.5 Encroachment

Waqf properties are under massive encroachment in entire country but the condition in north India especially in Punjab, Haryana and Delhi has been made worse thru partition. Here was an unparalleled mass migration of Muslims to Pakistan leaving behind massive properties with *waqfs* which were subsequently put under the control of custodians who allotted them to refugees/displaced peoples mostly on the basis of ownership (Rasool, 2017) With the establishment of *Waqf* Boards underneath the *Waqf* Act, 1954 and the survey undertaken, a large number of *waqf* properties were found under unlawful occupation. For improving these properties the process of process was started but the suits were time barred. A special statute- the Public *Waqfs* (Extension of Limitation) Act, 1959 was passed and the period of control for filling of suits was extended up to 15th August 1967 for all illegitimately occupied *waqf* properties dispossessed at any time after 14th August 1947 and before 7th May 1954. The date was e

extended several times and several properties were recuperated. Meanwhile litigation is expensive and in the process the endowed property is drained up, Muslims have been demanding the extension of Public Premises (Eviction of Unauthorised Occupation) Act, 1958 to *waqf* properties but awkwardly this was not done (Rasool, 2017).

The requirements in *Waqf* legislation relating to the salvage of properties is not very effective, partly owing to the lack of will of law implementation agencies and partly to the lack of compulsory staff and funds required. Sections 51 to 56 of *Waqf* Act, 1995 deals with the important issues like prevention of alienation of *waqf* properties, their recovery, prohibition on purchase, removal of encroachment and restriction on lease. The most important section relating to removal of encroachment is section 54 which authorises the Chief Executive Officer (CEO) of *Waqf* Board to initiate action, *suomoto* or on application (Rasool, 2017) The CEO has to follow the of the property in question.

3.6 Litigation

The first question is whether a *waqf* identified in the list is *Shia* or *Sunni waqf*? A suit in this respect may be trailed with the *Waqf* Tribunal whose resolution will be final. Nevertheless (Section 83 in The Wakf Act, 1995), a High Court *sue motto* or on the application can observe the case for legality or propriety and may confirm, reverse, or modify the order of the Tribunal as it may think fit. The State *Waqf* Boards are fiscally weak to afford an effective legal machinery to fight the cases. This has become a main impairment in the development of *waqf* properties. For the establishment of a solid legal cell, State Governments may provide compulsory assistance to *Waqf* Boards as is obtainable to other Government departments. Syed Khalid Rashid favours Alternative Dispute Resolution through negotiation, mediation, arbitration etc which will encourage out of court settlements, though, he cautions us not to take this route in serious matters involving possession of *waqf* properties (Section 83 in The Wakf Act, 1995)

3.7 Establishment of *Waqf* Board

Waqf Act has authorized State governments to begin *Waqf* Boards. But, many State Governments have either unsuccessful to constitute the Board or have not allotted the full strength of the Board, which makes them non-functional (INDIA, 2008). The State Governments have also

exposed apathy in engaging full time Chief Executive Officers. Since Chief Executive Officer discharges the directions of the Board and for practical drives is the most important functionary, his/her absence breaks down the entire machinery.²⁶ For political parties, *Waqf*Boards have develop an opportunity for political patronage. Together the elected and chosen members have some political association (INDIA, 2008) In discharging their duties, political allegiances has often surpassed constitutional duties. The recent controversies surrounding Delhi *Waqf*Board is a case in point.

The Board was succeeded by Delhi Government (*AamAdmi Party hereafter AAP*) under Section 99 (I) of the *Waqf*Act in October 2015. The incumbent Chairperson Rana ParweenSiddiqu (INDIA, 2008) filed an appeal with High Court looking for the quash the notification and termed the action by AAP government as contempt of Court on the basis of an previous status quo order In March 2016 AAP MLA (Member of Legislative Assembly) was elected as the new Chairman of the Board (Hindu, 2015)He was blamed of alleged corruption and practical irregularities and the Board was dissolved on 08 October 2016 and the case was referred to Central Bureau of Exploration for probe. The AAP government alleges that Board has been dissolved for fighting against corruption (India, 2016.) This has made *Waqf*Boards unpopular and one of the main reasons why Muslims feel apathetic towards this institution. Though, it does not suggest that *waqf*in itself has stopped to be a thing of beauty and charm for Muslims.

3.8 Financial Problems

The business position of *Waqf*Boards is very weak. Underneath section 72 *Waqf*Boards annually receive charities not exceeding 7% from *mutawallis* whose net annual revenue is not less than five thousand rupees. Such contribution is insignificant since most of the *auqāfare* not yielding any income. Several *Waqf*Boards feel it tremendously difficult to even pay the salaries to the staff. They are not in a situation to fight cases in Courts and development of *waqf*assets is beyond their reach. It has been perceived that some state governments have started giving grants to the board. The essential is that all states should extend grant to the individual boards and it should be a handsome one, not a formality only (Rasool, 2017).

3.9 Development

The growth principals towards protection of *waqf* properties by conservation equally property and benefits of that property. Section 32 (4) (5) (6) empowers *Waqf* Boards to progress a potential *waqf* property as an instructive institute, shopping centre, market, housing or residential flats etc. For this aim it may direct the *mutawalli* concerned to grow the property. If the *Mutawalli* fails either of reluctance or incompetence, the property can be taken over by the board itself for development and will be returned to the *Mutawalli* after all expenses incurred by the board are improved along with attention from the income of the property established (Obaidullah, 2014).

The Growth of Town *Waqf* Properties of Central *Waqf* Council has been functioning for a long time now then narrow financial resources has twisted out to be the key obstacle in the much required scheme for development of *Waqf* properties. Meanwhile its inception in 1974-75, a total Grant-in-Aid amounting of 4202.41 lacs has been released by Central Government to Central *Waqf* Council and the final has extended loan to 136 projects out of which 85 have been finalized and remaining are under construction.⁴³ The endowment released is no doubt admirable but it is also little to take up the giant task of enlargement (Statements, 2015). On the approvals of Sachar Committee and Joint Parliamentary Committee on *Waqf*, National *Waqf* Development Corporation Limited (NAWADCO) was set up on 31st December 2013 and was formally launched on 29th January 2014 with the mission 'to act as nodal agency for improvement of viable *Waqf* properties transparently and professionally, so as to ensure enhancement of their income, for the benefit of the Muslim community, based on Islamic principles of *Shari'ah*' and idea 'to provide technical, consultancy, executive and financial support to *Waqf* management for increasing the output of *Waqf* properties (Statements, 2015).

4.0 Conclusion

The current issues and challenges of management mechanism of *waqf* institutions in Delhi have a definite correlation, which touches *waqf* exercise. Likewise, the condition of the *waqf* industry has the same correlation produced by several complex factors. The chief findings of those issues in management can be categorised into theoretical knowledge, human resources, and macro control. The theoretical knowledge refers to the exact Islamic *waqf* knowledge, which contains the rigorous regulations of *Shari'ah* compliance. From the management model issue to examines for the structural requirements of *waqf*, the *waqf* construction should include a board, *Shari'ah* Audit

Department, and the Checking Department. They ensure compliance with the secular aspects of the national laws and regulations. There is little thought of *Shari'ah* compliance. Another evidence related to the staff level of *waqf* knowledge is their behaviour. For example, the tendentiousness issue indicates that lack of Islamic values between staff in terms of morality, accountability, and duty. In other words, the lack of ideology or awareness is one of the manifestations of lack of theoretical knowledge.

In some instances, the chairman of the *waqf* institution has too much power in the policymaking process. In fact, most *waqf* institutions are launched a proficient training programme for the staff and project manager, but the efficiency of *waqf* projects improves little because of the brain drain. It has many impacts such as unstable performance, low qualification, low persistence capability, and high neglect. This issue is like a whirlpool, which unceasingly creates issues and challenges for *waqf*. Part of the reason for low feasibility or low persistence capability is that managers are not in the right position and incomes are too high. Some managers do not have the correct defiance to charity. The focus was on the establishment of boards, survey, encroachment, litigation, financial issues, and development. It highlighted the problems in constituting the boards, lack of staff and the weak financial condition of *Waqf* Boards. The problems connecting to the conduct of survey and removal of encroachment were also deliberated. It was found that without a proper survey, no policy can be expressed as the knowledge about the exact number and nature of *waqf* properties will be murky and blurred. Since a huge number of *waqf* properties are under encroachment and the practice to remove it has made it a cumbersome legal task.

Furthermore, *waqf* practice is based on the values of Islam to help others. Muslims are the chief consultants of this value. Islamic governance is an indispensable part of the contemplation for *waqf* practice. However, the issue is that the current Islamic governance of *waqf* institution in India is too weak. Finally, the board behaviour in the *waqf* institution is a major issue as the right of a director is too determined in some *waqf* institutions. It means the decision-making lacks democracy or the other directors did not perform their functions well. Moreover, We are desperately lacking a cadre of professional *waqf* administrators and this can be addressed through the creation of Indian *Waqf* Services. For training of officers, National *Waqf* Academy may be

established. Regular seminars and workshops should be organized by civil society to sensitize the people about *auqāf*.

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