



Comparative Analysis of Waqf Provisions in Islamic Jurisprudence and the Legal Framework in Bangladesh

İslam Hukukunda Vakıf Hükümleri ve Bangladeş'teki Hukuki Çerçevenin Karşılaştırmalı Analizi

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<https://ror.org/0411seq30>

Makale Bilgisi / Article Information	
Makale Türü / Article Types:	Araştırma Makalesi / Research Article
Geliş Tarihi / Date Received:	17 Eylül 2023 / 17 September 2023
Kabul Tarihi / Date Accepted:	03 Aralık 2023 / 03 December 2023
Yayın Tarihi / Date Published:	25 Ocak 2024 / 25 January 2024
Yayın Sezonu / Pub Date Season:	Ocak 2024 / January 2024
Cilt / Volume: 10, Sayı / Issue: 1, Sayfa / Pages: 1-20.	

Atıf: Uddin, A H M Ershad. "Comparative Analysis of Waqf Provisions in Islamic Jurisprudence and the Legal Framework in Bangladesh". *İhya Uluslararası İslam Araştırmaları Dergisi* 10/1 (Ocak 2024), 1-20. <https://doi.org/10.5281/zenodo.10530552>

Cite as: Uddin, A H M Ershad. "İslam Hukukunda Vakıf Hükümleri ve Bangladeş'teki Hukuki Çerçevenin Karşılaştırmalı Analizi". *İhya International of Islamic Studies* 10/1 (January 2024), 1-20. <https://doi.org/10.5281/zenodo.10530552>

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Comparative Analysis of Waqf Provisions in Islamic Jurisprudence and the Legal Framework in Bangladesh

Abstract

This paper analyzes the evolution of Waqf governance in Bangladesh, focusing on its historical development, challenges, and prospects for enhancement. It uses a multidisciplinary approach that includes historical analysis, legal examination, and socio-economic assessment to trace the trajectory of Waqf governance in Bangladesh. The study begins by exploring the foundational principles of Waqf, emphasizing cooperation and interdependence within society and the role of Islamic law in shaping religious duties and practices. It emphasizes Waqf's pivotal role as a charitable institution, where assets are dedicated to promoting socio-economic and cultural development. The historical context is examined, particularly during the colonial era from 1757 to 1947, when the legal framework for Waqf in Bengal began to take shape. The enforcement of initial legal regulations in 1894 by the Privy Council marked a significant milestone, followed by the introduction of the Mussalman Waqf Validating Act of 1913. The paper also examines the amendments and modifications that occurred post-1947, leading to the emergence of Bangladesh in 1971. The analysis reveals that Waqf has historically played a pivotal role in the socio-economic and cultural development of Muslim society in Bengal. However, over time, interest in Waqf waned, and governing intellectual and political systems allocated diminishing attention to this vital institution, resulting in a diminishing significance of Islamic endowments. This paper contributes to the broader discourse on the role of Waqf in fostering socio-economic and cultural development within Muslim societies, with a specific focus on its manifestation in Bangladesh.

Keywords: Islamic Law, Waqf, Legal System, Management, Bangladesh.

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Öz

Bu makale, Bangladeş'teki vakıf yönetiminin evrimini, tarihsel gelişimini, karşılaştığı zorlukları ve gelecekteki potansiyel gelişme noktalarını detaylı bir şekilde analiz etmektedir. Çalışma, Bangladeş'teki vakıf yönetiminin dönüşümünü incelemek adına, tarihsel analiz, hukuki değerlendirme ve sosyo-ekonomik bir bakış açısını bir araya getiren çok disiplinli bir yaklaşım benimsemektedir. Bu çalışma, vakfın temel ilkelerini keşfetmeye, toplum içindeki iş birliği ve karşılıklı bağımlılığı vurgulamaya ve İslam hukukunun dini görev ve uygulamalarının vakfın şekillenmesindeki rolünü anlamaya odaklanmaktadır. Makale, vakfın varlıklarının sosyo-ekonomik ve kültürel kalkınmayı destekleme amacına odaklanarak, bir hayır kurumu olarak vakfın önemli rolünü vurgulamaktadır. Ayrıca tarihsel bağlamıyla, özellikle Bengal'deki vakıfların yasal çerçevesinin 1757'den 1947'ye kadar olan sömürge döneminde nasıl şekillendiğini incelemektedir.

Bu bağlamda ilk yasal düzenlemelerin Privy Council tarafından 1894 yılında yürürlüğe konulması önemli bir dönüm noktası olmuş, ardından 1913 tarihli Müslüman Vakfı Tasdik Kanunu yürürlüğe girmiştir. Ayrıca, makale 1947 sonrasındaki değişiklikleri ve modifikasyonları da ele alarak, Bangladeş'in ortaya çıkmasına yol açan süreci incelemektedir. Araştırma, vakıfların Bengal'deki müslüman toplumunun sosyo-ekonomik ve kültürel gelişimine tarihsel olarak önemli bir katkı yaptığını göstermektedir. Ancak, zaman içinde vakfa olan ilgi azalmış ve yöneten entelektüel ve siyasi sistemler bu önemli kuruma giderek daha az ilgi göstermiştir, bu da İslami vakıfların genel manada önemini azaltmıştır. Çalışma, Bangladeş'teki vakıfların etkilerine odaklanarak, müslüman toplumlar içinde sosyo-ekonomik ve kültürel kalkınmayı teşvik etmedeki rolünü daha geniş bir perspektifle anlamamıza katkıda bulunmaktadır.

Anahtar Kelimeler: İslam Hukuku, Vakıf, Hukuk Sistemi, Yönetim, Bangladeş.

Extended Abstract

The Waqf system is established through a legal transaction summarized as the enduring dedication of property by its owner to religious, social, and charitable purposes, constituting a significant aspect of Islamic civilization. These Awqāf's definitions differ due to various opinions among fiqh schools and jurists concerning issues like Waqf's legal nature, its components, binding aspects, and the ownership of donated assets. While the Holy Quran does not explicitly mention the specific concept or institution of Awqāf. However, many verses advocate spending in the way of Allah, providing aid and charity to the disadvantaged, assisting each other in performing good deeds and righteousness and engaging in charitable and beneficial actions, which have been applied in Muslim societies. These verses served as the Waqf's basis for understanding and practice. In Islamic law, the Waqf transaction is an oral legal act. Islamic jurists concur that Awqāf, established for public benefit without specifically naming beneficiaries, does not constitute a contract in the technical sense but rather a unilateral legal transaction. Therefore, to establish such a Waqf, only the donor's request is adequate, and there is no need for a formal acceptance declaration. According to most jurists, the Waqf process comprises four elements: the declaration of will (Şīghah), the dedicator (Wāqif), the endowed property (Mawqūf), and the beneficiaries of the foundation (Mawqūf 'alayh). Ḥanafī jurists hold that the pivotal element of the foundation is siga, considering the other elements as conditions. Siga refers to a clear or customary declaration of will signifying the foundation's establishment, deemed legally valid. All jurists universally recognize words like Waqf, preserving, keeping, etc., as explicit expressions of will.

In contrast, terms that may imply both Waqf and other meanings, such as charity, are viewed as metaphorical expressions of will. Different sects within the fiqh doctrine elaborate extensively on which words are explicit and which belong to the allegorical group. This paper investigates the multifaceted evolution of Waqf governance in Bangladesh, aiming to comprehensively understand its historical development, challenges, and prospects for enhancement. The primary purpose is to identify the existing obstacles within the Waqf system and propose strategies for its improvement. Eventually, the goal is to maximize the effectiveness of Waqf institutions in catalyzing the advancement of the local community and society. The study employs a multidisciplinary approach that combines historical analysis, legal examination, and socio-economic assessment to trace the trajectory of Waqf governance in Bangladesh. It begins by exploring the foundational principles of Waqf, emphasizing cooperation and interdependence within society and the role of Islamic law in shaping religious duties and practices. It underscores the pivotal role of the Waqf as a charitable institution, where assets are dedicated for specific purposes in promoting socio-economic and cultural development. The paper then explores the

historical context, particularly during the colonial era from 1757 to 1947, when the legal framework for Waqf in Bengal began to take shape. The enforcement of initial legal regulations in 1894 by the Privy Council marked a significant milestone. The subsequent introduction of the Mussalman Waqf Validating Act of 1913 provided the first formal legal framework for Waqf governance in British India, encompassing the Bengal region. This historical backdrop sets the stage for understanding the evolution of Waqf governance.

Furthermore, the study examines the amendments and modifications that occurred post-1947, when the region underwent significant political changes, leading to the emergence of Bangladesh in 1971. It highlights the continuity of the East Pakistan Waqf Ordinance and its subsequent amendments in the newly independent nation, reflecting the evolving needs and challenges faced by the Waqf sector in Bangladesh. The analysis reveals that Waqf, as an institution, has historically played a pivotal role in the socio-economic and cultural development of Muslim society in Bengal. It was a driving force behind enlightened educational and cultural progress, particularly during the colonial period. However, over time, interest in Waqf waned, and governing intellectual and political systems allocated diminishing attention to this vital institution. As a result, the significance of Islamic endowments began to decline. This paper holds significant value in shedding light on the historical and contemporary dynamics of Waqf governance in Bangladesh. It is a valuable resource for policymakers, scholars, and stakeholders interested in understanding Waqf institutions' evolution and challenges. The recommendations offered herein provide a roadmap for optimizing the operational efficiency of Waqf institutions, ensuring their continued contribution to the advancement of the local community and society. In essence, this study contributes to the broader discourse on the role of Waqf in fostering socio-economic and cultural development within Muslim societies, with a specific focus on its manifestation in the context of Bangladesh.

Introduction

The Waqf system, deeply rooted in Islamic tradition, has been an enduring pillar of support within Muslim societies throughout history. Its significance traces back to the time of Prophet Muhammad and has played an indispensable role in shaping Islamic civilization. Following the Sunnah of the Prophet Muhammad, the Waqf Foundation actively contributes to various charitable, educational, social, and scientific initiatives. It extends its support to both the public and private sectors, making substantial contributions to the national economies of Muslim countries. Establishing a Waqf represents creating a permanent economic institution with a lasting legacy supporting societal development.

In the context of societal development, Islam mandates certain obligations for its followers, such as Zakāt (almsgiving) and *Usher* (tithes), while also permitting, regulating, and encouraging acts of general charity. Within this framework, the Waqf system holds a significant and enduring place. In Bangladesh, home to a substantial Muslim population, considerable wealth and land have been dedicated to Waqf for the betterment of Islam and its followers, all in the name of Allah. Initially, prosperous Muslims made these commitments, and later rulers upheld them. During the Mughal and Sultanate eras, the Waqf system provided substantial financial support to a significant portion of the Indian subcontinent's educational infrastructure. However, British colonial rule introduced various legislative and administrative measures, including permanent settlements confiscating extensive Waqf properties designated for Muslims.

The legal framework governing Waqf in the subcontinental region has its roots in British colonial rule and can be traced back to the Waqf legislation of the Mughal Empire. After gaining independence from British colonial rule, Bangladesh was under Pakistani administration, which took measures to revive and maintain the continuity of the Waqf system despite various legal changes introduced by the Pakistani government before Bangladesh's independence in 1971.

Historical sources reveal that the British introduced the Waqf Act in 1894 through the "Proclamation of the Privy Council," which abolished the family Waqf system. However, this decree was later replaced by the 'Muslim Waqf Act' in 1913, reinstating the practice. This Act underwent further amendments and became known as the 'East Pakistan Waqf Ordinance 1962', as Bangladesh was then a part of Pakistan. Following Bangladesh's independence in 1971, the Waqf system was still governed by the 1962 Ordinance, with some minor changes introduced through the 'Waqf Ordinance 1988' and 'Waqf Ordinance 1998'.¹

Subsequently, in 2013, two critical legislative acts were enacted: the 'Waqf Estate Transfer and Development Ordinance Act 2013' and the 'Waqf (Amendment) Act 2013'. These acts significantly changed the management of Waqf in Bangladesh. However, it is worth noting that the Waqf management in Bangladesh is overseen by a Waqf Administrator who operates under the authority of the Ministry of Religious Affairs.²

This paper aims to comprehensively analyze Bangladesh's Waqf system, focusing on its historical development and alignment with classical Islamic law texts. Furthermore, it will critically

¹ Hardianti Yusuf et al., "A Construction of Cash Waqf Management in Bangladesh", *Al-Bayyinah* 5/1 (2021), 95.

² "The Mussalman Waqf Validating Act, 1913" (Dhaka-Bangladesh: Ministry of Law, 2023). "The Mussalman Waqf Validating Act, 1913".

evaluate the various amendments introduced in Waqf regulations before and after Bangladesh's independence. Additionally, this paper will thoroughly investigate the challenges faced within the Waqf system and propose solutions to address these issues effectively.

1. The Legal Framework of the Waqf Mechanism in Islamic Law

Waqf, a significant charitable institution in Islamic history and civilization, experienced a transformative period from the mid-19th century until the late 19th century. During this time, it profoundly influenced Islamic societies' social, economic, and cultural aspects. Waqf was a cornerstone, fostering a profound sense of personal and conscientious responsibility toward humanity. It promoted values of kindness, compassion, cooperation, and solidarity, upholding the principles of free will, particularly among those who embraced these values as their guiding principles.

While the Qur'ān does not explicitly mention the concept and establishment of Waqf, it contains numerous verses that encourage acts of generosity and charity towards the less fortunate. These verses underscore the importance of good deeds and piety, forming the foundation for understanding and implementing the institution of Waqfs. Some of these verses have been closely associated with the concept of Waqf by scholars, particularly those emphasizing spending money in the way of Allah³, aiding each other in doing good⁴, and encouraging competition in acts of charity.⁵ These verses highlight the significance of selflessness, collaboration, and unwavering commitment to virtuous deeds, providing valuable insights into the concept of Waqf within Islamic thought.

The legitimacy of the Endowment (Waqf) received unanimous agreement from the Rightly Guided Caliphs (*Khulafā' rāshdūn*) and the companions of the Prophet. Tirmidhī confirms this consensus that this practice has been consistently followed by those knowledgeable about the companions of the Prophet and early predecessors. There is no validation of any disagreement on this issue. However, disputes emerge about granting permissible specific territories and other assets.⁶

Jābir Ibn Abdullah, as reported by Ibn Qudāmāh, asserted that among the companions of the Prophet, there was not a single individual who could act for the greater good but refrained from doing so. This consensus materialized among them because those capable of taking action acted, and it was widely acknowledged that none of them opposed it; thus, it solidified as an established consensus (*ijmā'*).⁷

Furthermore, al-Qurṭubī attests that the matter enjoys unanimous support among the Companions, including Abū Bakr 'Umar 'Uthmān 'Alī 'Ā'ishah, Fāṭimah 'mar ibn al-'Āṣ, Ibn Jubayr and Jābir. They all established endowments (*awqāf*), and their endowments in Mecca and Medina are renowned and widely recognized.⁸

³ al-Baqara, 2/195, 261.

⁴ al-Maida, 5/2.

⁵ al-Baqara 2/148; al-Imran 3/114.

⁶ Muḥammad Ibn 'Isā Ibn Mūsā Tirmidhī, *Sunan Al-Tirmidhī* (Egypt: Maktabat Muṣṭafā al-Bābi al-Ḥalabī, 1977), 3/659.

⁷ 'Abd Allāh Ibn Muḥammad Ibn Qudāmāh, *Al-Mughnī* (Riyadh: Dār 'Ālam al-Kutub, 1997), 7/206.

⁸ Shams al-Dīn Abū 'Abd Allāh Muḥammad ibn Aḥmad Qurṭubī, *Al-Jāmi' Li-Aḥkām al-Qur'ān* (Riyadh: Dār 'Ālam al-Kutub, 2003), 339.

al-Qarāfi, in his work *al-Dhakhīrah* on the Companions' actions, noted their authoring of books that prohibited sales and gifts within them. Their renowned endowments (*awqāf*) were highlighted, especially in the Two Holy Mosques. Their successors faithfully transmitted this practice from their predecessors by the specified terms and conditions, leading to a unanimous agreement, and consequently, this evolved into a consensus.⁹

1.2. The classification of Waqf in Islamic Tradition

Within the Islamic tradition, three distinct categories of waqf exist, and they are briefly elaborated:

a) **Al-Waqf al-Khayrī or Charitable Waqf:** This type of endowment is a broad provision meant for the benefit of all Muslims. It is not the property of any specific individual or organization.¹⁰ Charitable Waqf encompasses various philanthropic endeavors, such as supporting the less fortunate, including the poor, the needy, and orphans, as well as funding the construction of mosques, schools, hospitals, etc.

b) **Al-Waqf al-Ahlī or Family Waqf:** Family Waqf, also known as a civil endowment, designates an endowment intended for the exclusive benefit of a particular group of Muslims, usually a family. It typically begins with the responsibility of children, grandchildren, descendants, and close relatives. However, once this line of beneficiaries ceases, the endowment benefits all Muslims. This type of endowment is often called '*ahlī*' about the people and relatives involved or as the 'offspring' in connection to the donor's descendants.¹¹ For instance, if a house owned by the donor continues to stand after their passing, it becomes a residence for all their relatives and descendants. If this line is severed, it serves as a shelter for the needy among all Muslims. The critical distinction between family and charitable Waqf lies in the intended recipients: the former is specific to a particular group of relatives, while the latter is for the broader Muslim community.

c) **Al-Waqf al-Mushtarak or Joint Endowment:** The collective endowment combines family and charitable elements. It may initially start as a family endowment, benefiting the donor's descendants, but later transformed into a generous endowment when the donor's descendants no longer benefit from it. This transition depends on the conditions set by the donor.¹²

It is worth noting that the terms 'family waqf' and 'charitable waqf' were not employed initially in early Islam to categorize these entities. However, civil endowments offer the advantage of continuity across generations within the donor's family and their close associates.¹³ Nevertheless, they can pose challenges, such as potential disputes or favoritism among heirs.¹⁴

In present-day from the Islamic legal viewpoints, cash Waqf is practiced, even though it is not the primary focus here. However, as a versatile asset, money symbolizes the value of commodities and property, serving diverse sectors. Unlike real estate, money preserves its inherent

⁹ Aḥmad ibn Idrīs Shihāb al-Dīn Qarāfi, *Al-Dhakhīrah* (Beirut-Lebanon: Dār al-Gharb al-Islāmī, 1994), 6/324.

¹⁰ Muḥammad ibn Aḥmad Ibn Ṣāliḥ, *Al-Waqf Fī al-Sharī'ah al-Islāmīyah Wa-Atharuhu Fī Tanmiyat al-Mujtama'* (Riyadh: Maktabat Mālik Fahd, 2001), 53.

¹¹ Ibn Ṣāliḥ, *Al-Waqf Fī al-Sharī'ah al-Islāmīyah Wa-Atharuhu Fī Tanmiyat al-Mujtama'*, 53-54.

¹² Ibn Ṣāliḥ, *Al-Waqf Fī al-Sharī'ah al-Islāmīyah Wa-Atharuhu Fī Tanmiyat al-Mujtama'*, 54.

¹³ Mandhar Qahf, *Al-Waqf al-Islāmī Taṭawwuruh Idāratuhu Tanmiyatih* (Dimashq: Dār al-Fikr, 2000), 114.

¹⁴ Muḥammad ibn Aḥmad Ṣāliḥ, *Al-Waqf Fī al-Sharī'ah al-Islāmīyah Wa-Atharuhu Fī Tanmiyat al-Mujtama'* (Riyadh: Maktabat al-Malik Fahd, 2001), 107.

value but is susceptible to fluctuations due to transactions, expenses, and economic elements such as inflation. Bangladesh has observed an increasing trend toward 'Cash Waqf', wherein individuals contribute money as Waqf, with certain private Islamic banks spearheading this initiative.¹⁵ In addition, contemporary Islamic scholars are contributing to the copyrights of their publications as Waqf. Various schools of fiqh sanction the leasing of Waqf properties, and scholars have extensively covered different facets of this practice. These include the power to authorize leases, including Waqf conditions in lease contracts, rightful recipients of rent, rental values, lease durations, and the termination of lease agreements. Crucially, these practices conform to Islamic Fiqh and do not contradict the stipulations in this law section.¹⁶

1.3. Prerequisites for Waqf-Associated Endeavors

The main goal of Waqf is to improve community well-being through charitable donations, addressing immediate needs, preserving and enhancing existing initiatives, and passing down these principles to future generations.¹⁷ However, the intention to cease is signified by the term 'Waqf', categorized into explicit (*şarīh*) and metaphorical (*kināyah*) types. The explicit form involves direct expressions like 'I stood', 'withheld', or 'withdrew'. Conversely, the metaphorical form conveys the intent of endowment through words like 'alms' or 'donations' for charitable purposes. The euphemistic term alone cannot establish a Waqf unless coupled with contextual indications of intent.

The conditions necessary for an individual to establish a Waqf are as follows:

1. Mental and Legal Capacity: The person establishing the Waqf must be of sound mind, legally competent, an adult, and free from legal restrictions.¹⁸ Since the servant does not have ownership, they lack the authority to terminate what they do not possess. Consequently, it is unacceptable to halt actions under coercion or compulsion in a choice-based decision.¹⁹

1. Financial Soundness: They should not be burdened by excessive debts or immoral behavior hindering them from establishing the waqf.

2. Intent and Consent: Establishing the Waqf must be voluntary, and the individual should have a clear intent and consent to create it.²⁰

3. Altruistic Motive: The donated assets or property should be contributed sincerely to seek goodness and reward, according to their beliefs and convictions.

These stipulations regulate the utilization, management, and beneficiaries of endowed property, ensuring its alignment with designated charitable goals in adherence to Islamic principles. However, specific conditions apply to property contributions to the waqf, as follows;

¹⁵ Yusuf et al., "A Construction of Cash Waqf Management in Bangladesh," 88.

¹⁶ Md. Thowhidul Islam, "Historical Development of Waqf Governance in Bangladesh: Challenges and Prospects," *Intellectual Discourse* (Malaysia: IIUM Press, 2018), 1149.

¹⁷ Nazif Öztürk, *Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi* (Ankara: Türkiye Diyanet Vakfı, 1995), 47.

¹⁸ Muḥammad 'Ubayd al-Kubaysi, *Aḥkām Al-Waqf Fī al-Sharī'ah al-Islāmīyah* (Baghdad: Maṭba'at al-Irshād, 2011), 312-313.; *Al-Mawsū'ah al-Fiqhiyah al-Kuwaytiyah* (Kuwait: Wizārat al-Awqāf wa-al-Shu'ūn al-Islāmīyah, 1427), 44/124.

¹⁹ Muḥammad Amin Ibn 'Ābidin, *Ḥāshiyat Radd Al-Muḥtār 'Alā al-Durr al-Mukhtār* (Beirut-Lebanon: Dār al-Fikr al-'Arabī, 1421), 3/394.

²⁰ Ḥasan ibn Maṣṣūr al-wazndy Fakhr al-Dīn Niẓām, *Al-Fatāwā al-'Ālamgīriyah (al-Fatāwā al-Hindīyah)* (Egypt: al-Maṭba'ah al-Kubrā al-Amīriyah-Bulāq, 1310), 2/352.

a) Ownership: The donated property must remain with the Waqf after its establishment. It can only revert to the donor's possession if the donor is also a beneficiary, like when they establish a mosque for their use or benefit.²¹

b) Separation and Freedom from Debt or Interest: The donated property should be separate from any outstanding debts or obligations and not be subject to debt or interest payments.

c) Income-Generating Property: The donated property should generate income, such as real estate (e.g., a house, shop, or field), which can support the waqf's activities.²²

d) No Conditions of Choice: Imposing limitations on utilizing donated property within a Waqf is not permissible. Specifically, a Waqf cannot be formed solely based on a promise, nor can it be contingent upon specific conditions, like the arrival of a particular individual.²³

e) Sustainability: The buildings and trees dedicated as part of the donation should not be of a type that is inherently unstable or destined for collapse and dismantling shortly.²⁴

f) Clear Identification of Donated Property: The property contributed to the Waqf should be clearly and unambiguously identified, leaving no room for confusion or dispute.

g) Determination of Beneficiaries: The Waqf should specify and determine who will benefit from its activities. This clarity ensures that the waqf's resources are directed toward their intended recipients.

h) Generosity: The Waqf must embody a spirit of generosity and community improvement. Acts like endowments for gambling clubs or entertainment venues are considered invalid. Ibn Qudāmah asserts that an endowment lacking a righteous purpose is invalid.²⁵

1.4. Attributes and Prohibitions for a Responsible Mutawallī of Waqf Property

Islamic jurisprudence has outlined specific attributes expected of a Mutawallī (trustee) overseeing Waqf property:²⁶

1. Possessing a sound moral character.
2. Reaching adulthood.
3. Demonstrating unwavering trustworthiness.
4. Capable of effectively fulfilling supervisory duties.
5. Adhering to the Islamic faith.

According to the Zāhirī school of thought, it is permissible for the donor to take on the role of Mutawallī (trustee) for the Waqf property. However, this only happens if the donor explicitly designates himself as the Mutawallī. This approach aligns with the essential requirement for a valid

²¹ Ibrāhīm ibn 'Alī Shīrāzī, *L-Muhadhdhab Fī Fiqh al-Imām al-Shāfi'i* (Beirut-Lebanon: Dār al-Kutub al-'Ilmiyah, 2009), 1/441.

²² 'Alī Muḥammad Muḥammadī, "Al-Waqf: Fiqhuh, Wa-Anwā'uh" (The First Conference of Awqaf, Ummul Qura University-Makka, 1422), 162-163.

²³ Zayn al-Dīn Ibn Nujaym, *Al-Baḥr al-Rā'iq Sharḥ Kanz al-Daqā'iq* (Beirut-Lebanon: Dār al-Kutub al-'Ilmiyah, 1997), 5/212.

²⁴ Muḥammad al-Khaṭīb al-Shirbīnī, *Mughnī Al-Muḥtāj Ilā Ma'rifat Ma'ānī Alfāz al-Minhā* (Beirut-Lebanon: Dār al-Fikr al-'Arabī, 1997), 2/381.

²⁵ 'Abd Allāh ibn Muḥammad ibn Qudāmah, *Al-Mughnī* (Beirut-Lebanon: Dār 'Ālam al-Kutub, 1997), 7/239.

²⁶ *Al-Mawsū'ah al-Fiqhīyah al-Kuwaytīyah*, 44/205-210.

Waqf, where the property should be placed under the care of a Waqf management committee. As a result, the donor surrenders control over the property once the Waqf is established, according to Muhammad ibn Shaybānī. Nonetheless, if the person establishing the Waqf appoints another individual as the Mutawallī, he can still choose himself as the Mutawallī, which is often a more practical choice.²⁷ In some scholarly opinions, when creating a Waqf for a mosque, there is no absolute necessity to appoint a Mutawallī, as the mosque does not need to be allocated to a specific entity. However, in contrast to this viewpoint, it is argued that mosques require a Mutawallī to manage tasks like cleanliness and maintenance. Therefore, this arrangement is also permissible if the Waqf creator designates another individual, the mosque's Mutawallī.²⁸

A Waqf's Mutawallī can hire paid staff to maintain assets within regulatory guidelines, including expenses for property preservation. Funds from mosque income can cover utilities but must be used solely for mosque construction. Borrowing against Waqf property should be a last resort for the Mutawallī.²⁹ Suppose the Waqf creator appoints himself as a Mutawallī and sets conditions for his appointment. In that case, any proven mismanagement or misappropriation of Waqf's assets can result in his removal by the relevant government authority to protect the rights of people in need. Similar to cases involving minors, the judiciary can remove Mutawallī if he fails to safeguard the assets adequately. Even if the Waqf creator specifies that neither the head of state nor the court can remove him from the role of Mutawallī, such a clause becomes void if he is found guilty of treason. This is because it contradicts Islamic law and the principles of the Waqf institution.

2. Waqf Initiatives in Bangladesh:

The spread of Islam in the Indian subcontinent began with the Prophet's companions, reaching even remote parts of Bangladesh. However, Muslim rule in Bengal was established during Emperor Quṭubuddīn Aybek's era and the efforts of Ikhtiyār al-Dīn Muḥammad Bakhtiyār Khilji in 1203 AD. Bakhtiyār Khilji, from Turkey or the Turkmen region, conquered Bengal, initiating a rule that lasted 554 years until 1757 AD under 101 rulers.³⁰ The first Sultan, Bakhtiyār Khilji, built mosques and schools inspired by Delhi's Emperor Quṭubuddīn Aybek. This era witnessed remarkable educational and poverty alleviation advancements through Waqf resources, with Bengal's Sultans fostering education and actively supporting its expansion.³¹

Influenced by their example, affluent Muslim landlords and wealthy individuals in the region established Maktabs³² and Madrasas in their respective areas, generously donating substantial wealth and land to cover the expenses. According to Mallic (1977), these organizations covered all costs associated with the education of students in various educational institutions throughout Uttaranchal in Bengal, including accommodation, food, clothing, books, notebooks, pens, ink, and

²⁷ Shīrāzī, *L-Muhadhdhab Fī Fiqh al-Imām al-Shāfi'ī*, 1/445–446.; Ibn 'Ābidīn, *Hāshiyat Radd Al-Muhtār 'Alā al-Durr al-Mukhtār*, 3/531.; Muḥammad Ibn 'Abd al-Wāḥid al-Sywāsy al-Sakandarī Kamāl al-Dīn Ibn Humām, *Sharḥ Fath Al-Qadīr 'alā al-Hidāyah Sharḥ Bidāyat al-Mubtadī* (Beirut-Lebanon: Dār al-Kutub al-'İlmīyah, 2003), 5/40.

²⁸ Manşūr ibn Yūnus ibn İdrīs al-Buhūti, *Sharḥ Muntahā Al-İrādāt* (Saudi Arabia: Dār al-Kutub al-'İlmīyah, 1993), 4/415.; Humām, *Sharḥ Fath Al-Qadīr 'alā al-Hidāyah Sharḥ Bidāyat al-Mubtadī*, 5/41.

²⁹ Humām, *Sharḥ Fath Al-Qadīr 'alā al-Hidāyah Sharḥ Bidāyat al-Mubtadī*, 5/68.

³⁰ Abbas Ali Khan, *Bānglār Musalamāndēr Itihāsh* (Dhaka: Bangladesh Islamic Center, 2021), 15.

³¹ Khan, *Bānglār Musalamāndēr Itihāsh*, 141.

³² Maktab is designated for instructing fundamental Quranic recitation and teachings of Islamic rituals. See, Kasım Kocaman - AHM Ershad Uddin, "Bangladeş'te Dinî/İslamî Eđitim Kurumları: Medreseler", *Talim* 5/2 (2021), 157–181.

other supplies.³³ The affluent noble families had a tradition of providing their children with education through suitable tutors, and even underprivileged students could receive free education. Nearly the entire financial burden of educational institutions was shouldered by individuals directly or through endowments, waqfs, or trusts.³⁴

Nonetheless, Islam (2018) identified that following the decline of Muslim rule and the imposition of colonial administration in Bengal, significant transformations in the management of Waqf properties transpired. This transitional period witnessed considerable hardships for the Waqf institution, eroding many of its unique characteristics.³⁵ However, upon gaining dominance over the subcontinent, the East India Company issued a proclamation stipulating that matters about religion and personal affairs would remain outside the purview of the colonial state. It was declared that the religious scriptures of each community would continue to serve as the foundation for personal laws³⁶. As documented by Hussain in 2003, colonial authorities employed this approach in the late 18th and early 19th centuries, particularly in the governance of Waqf estates under Muslim personal law. During this period, the responsibility for overseeing Waqf properties within a district rested with the region's Chief justice (*qāḍī*);³⁷ however, this approach gradually transformed as the East India Company solidified its control over all governmental institutions. However, the advent of the Bengal land revenue system during the East India Company's land law changes in the Bengal area harmed Waqf properties. This was because these properties ended up in the hands of those entrusted with protecting and nurturing them.³⁸

2.1. Laws and Regulations Governing Waqf in Bangladesh

The Muslim Waqf Act of 1913 was essentially declarative, and Section 92 of the Code of Civil Procedure of 1908 was intentionally excluded from its scope. This omission was because Section 92 did not apply to Waqf trust proceedings; instead, it was primarily designed for legal institutions to rectify wrongs or manage accounts or authorized property transfers. The Muslim Waqf Ordinance of 1923 was intended to oversee the Waqf administration. However, it suffered from ineffectiveness due to its inherent ambiguity and various legal loopholes and shortcomings. Below is a concise overview of the key provisions and sub-sections in the Muslim Waqf Act of 1923, the Waqf Ordinance of 1962, and the Waqf (Transfer and Development of Property) Special Provisions Act of 2013 of Bangladesh.³⁹

The Muslim Waqf Act of 1923, also known as the Mussalman Waqf Act, was enacted to ensure the efficient management and proper accounting of Waqf properties. Under this provision, the Mutawallī (custodian) of any Waqf property (except for Waqf lil'awlād) must submit to the court a statement detailing the income and expenditure of the Waqf property.⁴⁰ Additionally, a copy of the

³³ Azizur Rahman Mallick, *British Policy And The Muslims In Bengal 1757-1856* (Dhaka: Bangla Academy, 1977), 150.

³⁴ Adam William, *Reports On The State Of Education In Bengal (1835-38)* (India: University Of Calcutta, 1941), 55.

³⁵ Islam, "Historical Development of Waqf Governance in Bangladesh: Challenges and Prospects", 1141.

³⁶ Michael R Anderson, "Islamic Law and the Colonial Encounter in British India", *Institutions and Ideologies: A SOAS Reader* (England: Curzon Press, 1993), 167.

³⁷ Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (USA: University of Michigan Press, 2003), 9.

³⁸ Islam, "Historical Development of Waqf Governance in Bangladesh: Challenges and Prospects", 1140.

³⁹ "The Waqfs Ordinance, 1962 (East Pakistan Ordinance) (Ordinance NO. I OF 1962)" (Dhaka-Bangladesh: Ministry of Law, 2023).

⁴⁰ Muhammad Abdur Rahim, *Social and Cultural History of Bengal* (Pakistan: Pakistan Historical Society, 1963), 180.

deed of the Waqf property and an audited account of the property must be provided. It is important to note that the Act imposes penalties of Tk 500 for the first instance of giving wrong or false information and Tk 2000 for each subsequent mistake. However, there are certain limitations associated with the implementation of the Act. The Act relies on the Civil Courts for enforcement, and these courts are often occupied with various other litigations, making it challenging for them to oversee the Act's provisions effectively. Consequently, adequate supervision by the court is difficult to achieve, leading to limited improvement in Waqf administration.⁴¹

Analyzing the Act, it becomes evident that the court lacks jurisdiction to compel Mutawalli to fulfill his duty (filing of accounts) under Section 3 of the Act. Moreover, the Act lacks provisions for cases where the occupant rejects the Waqf property. The Act's significance is further clouded by varying interpretations and answers from different High Courts regarding whether the court should inquire into the status of Waqf property under this Act. Despite several attempts, the Muslim Waqf Act of 1923 appears to have fallen short of its intended goals due to excessive caution and concerns about potential dissatisfaction, leading to its ineffectiveness in practice.

2.2. The Process of Amendments to the Bangladesh Wakf Ordinance

The Waqf Committee held a significant meeting on October 26, 1997, to discuss revisions to specific sections and sub-sections of the Wakf Ordinance, 1962, and decided to draft future amendments. On April 30, 1998, a meeting featured the presentation and extensive discussion of a draft amendment by the Waqf administration and committee members. An August 25, 1998, meeting led by the Parliamentary Standing Committee of the Ministry of Religion aimed to modernize the Wakf Ordinance while adhering to Islamic principles. On November 19, 1998, during a meeting at the Administrator's office, proposed amendments were discussed, leading to a comprehensive proposal presented to the National Parliament for amendments to various sections and sub-sections of the Wakf Ordinance. On March 3, 1999, the Parliamentary Standing Committee on the Ministry of Religion submitted sub-sections related to the amendments for review.⁴²

The proposed amendments to the Waqf Ordinance 1962 aim to modernize and enhance existing legislation. One significant modification is the classification of properties used for religious purposes over an extended period, such as mosques, graveyards, and shrines, as Waqf properties. This fills a gap in the existing ordinance, as it was previously unclear how properties commonly used for religious purposes by the public would be categorized as Waqf properties. Another change is the formation of committees by the Wakf Administration for the management of Waqf properties. The existing law primarily covers shrines and dargahs, but the proposed sub-section expands this provision to include non-specified Waqf properties. A new sub-section dealing with temporary prohibitions by Wakf Prosecution has been incorporated, granting the Wakf Administration the authority to issue temporary injunctions appointing an official collector to oversee the withdrawal of the Mutawalli or committee in certain circumstances. The proposed amendments also address accountability by introducing provisions regarding Mutawalli misconduct or negligence. Section 32 outlines conditions for a Mutawalli's removal by the Wakf Administration, including

⁴¹ Abdus Subhan Azhari, "Waqf Adhyādēsh 1962 o Waqf ā'in 2013: Ēkṭi Parjālōcanā", *Islami Ain o Bichar* 12/47 (2018), 96.

⁴² "The Waqfs Ordinance, 1962 (East Pakistan Ordinance) (Ordinance NO. I OF 1962)".

misappropriation of Waqf property or criminal accusations. If the Mutawalli's actions result in losses due to property misuse or neglect, they are personally liable, including compensation payment and property recovery per the Public Demand Recovery Act of 1913. This sub-section promotes caution among Mutawallis in managing Waqf properties, discouraging reckless misuse or unnecessary utilization. As per the Wakf Ordinance 1962, concerning the registration of Wakf properties, it is mandatory to register all previously established Wakf properties with the Wakf Administration. Section (1) of the amendment proposal (47) has been introduced to address the re-registration of former Waqf properties previously registered under the Bengal Wakf Act, 1934. This section explicitly states that Waqf properties registered under the Bengal Wakf Act, 1934 do not require re-registration and will be accounted for under the 1962 Act. This provision simplifies the process and eliminates the need for re-registration.⁴³

A new sub-section (d) has been incorporated into section 52, stating that failure to produce necessary account papers and accounts upon request will be considered an offense punishable under section 41. This section empowers the administration or auditor to demand essential documents and accounts from the Mutawalli/Committee, warning that failing to comply will result in legal consequences. The Wakf Committee and Parliamentary Committee have also suggested the removal of the legal restriction outlined in sub-section (3) of Article 56 to prevent the illegal transfer of Wakf property and facilitate the recovery of Wakf property.⁴⁴ The proposed amendment also suggests increasing the fine from 2,000 to 10,000, with a prison term of 2 years instead of the previous six months. The income allocated to the Wakf administration is currently fixed at 5% of the annual income of the Wakf property. However, the amendment proposal recommends increasing it to 10% better to meet the financial needs of the Wakf administration.

The proposed amendment to the Wakf Ordinance includes the reinstatement of sub-section 72, allowing the Wakf Administration to secure loans for Wakf property development. It also addresses a problem where a lawyer appointed by the administration cannot receive fees for Waqf property cases due to a lack of specific provisions. The amendment also introduces a new clause, sub-section 5, into section 81, allowing the Wakf Administration to approve compensation for lawyers handling such cases.

2.3. Review of the Waqf Ordinance of 1962

The Waqf Ordinance of 1962, initially enacted as the East Pakistan Waqf Ordinance before Bangladesh's independence, is officially known as Ordinance No. 1 of 1962, comprising 12 chapters with 105 clauses. It served as the primary legal framework for the Waqf administration until the Waqf (Property and Transfer) Special Provisions Act was introduced in 2013. This ordinance aimed to regulate and oversee Waqf administration and estates in the country, hoping for efficient management. However, due to legal gaps and inadequacies, it fell short of achieving the desired effectiveness in managing and supervising Waqf properties in Bangladesh.⁴⁵

⁴³ "The Waqfs Ordinance, 1962 (East Pakistan Ordinance) (Ordinance NO. 1 OF 1962)".

⁴⁴ 1/23/2024 3:18:00 AM

⁴⁵ Azhari, "Waqf Adhyādēsh 1962 o Waqf ā'in 2013: Ēkṭi Parjālōcanā", 98.

The Waqf Ordinance of 1962 conferred authority upon the Waqf Administration to conduct surveys of all Waqf properties across the country. The Waqf Administration can engage individuals it deems qualified to conduct these surveys. These surveys aim to ascertain the identification and status of Waqf properties. However, no mandatory provisions specify a timeframe for completing these surveys, such as every 10 or 12 years. As a result, since the enactment of the Ordinance, only one survey of Waqf properties has been undertaken after 53 years. The local administration initiated the initial effort in 1981 but lacked proper procedure. The 'Inam Committee' report highlighted the failure of the Waqf administration to conduct these surveys as required. Surprisingly, there were no official survey efforts in the country until 1985.⁴⁶

In 1986, in response to requests from the Ministry of Religion and the Waqf Administrator, the Bangladesh Bureau of Statistics conducted a comprehensive survey of Waqf properties in various divisions and districts. Unfortunately, due to multiple errors and deviations in this survey, it did not fulfill the objectives of the Waqf administration.⁴⁷

Article 32 of the Waqf Ordinance grants the Waqf Administration the authority to take action based on complaints or specific allegations. These allegations may encompass providing inaccurate income accounts, issuing fraudulent vouchers for excessive expenditures, making false donation declarations, manipulating income from various sources, unauthorized property transfers, misappropriating funds through incorrect receipts, and deriving personal benefits from land grants, penalties, or ownership claims in one's name.⁴⁸

However, it is essential to note that the Waqf administration lacks the authority to prevent unethical activities by the Mutawallī or impose a moratorium on Waqf property. When Waqf property is illegally transferred or funds are misappropriated, the Ordinance lacks revisions to address these issues except through court intervention, which can be lengthy and complex. Additionally, the Ordinance does not address indemnification for Mutawallīs in case of property loss during their tenure or false recording of Waqf property as government land.⁴⁹

Before the enactment of the Wakf Ordinance 1962 in East Pakistan, the regulation and governance of Wakf properties fell under the purview of the Bail Wakf Act of 1934. Many properties were registered under this Act. However, introducing the Waqf Ordinance 1962 required the re-registration of all properties, which presented numerous challenges.⁵⁰ The provision for re-registration created several complications, making it difficult to bring many Waqf properties under the control of the Bangladesh Waqf administration. Consequently, the Wakf administration lost control over numerous Wakf properties, and the validity of the Bail Wakf Act was permanently compromised.

Furthermore, the provisions related to determining the nature of a Waqf property, whether it qualifies as such, often require the involvement of the Civil Court for a final decision. Given that the Civil Court is already burdened with many land-related cases, this places additional burdens and expenses on the Mutawallī and the Waqf administration, causing inconvenience and delays.

⁴⁶ Zohora Shahin, "Waqf as Administered in Bangladesh: A Critical Review", *UITS Journal* 2/1 (2013), 186.

⁴⁷ Azhari, "Waqf Adhyādēsh 1962 o Waqf ā'in 2013: Ēkṭi Parjālōcanā", 99.

⁴⁸ Shahin, "Waqf as Administered in Bangladesh: A Critical Review", 187.

⁴⁹ Azhari, "Waqf Adhyādēsh 1962 o Waqf ā'in 2013: Ēkṭi Parjālōcanā", 100.

⁵⁰ Islam, "Historical Development of Waqf Governance in Bangladesh: Challenges and Prospects", 1143.

In the case of Provisions relating to the transfer of Waqf property, the Wakf Ordinance of 1962 explicitly prohibits the transfer of any property by the Mutawalli without prior permission from the Wakf Administration. According to this Ordinance, if any property is transferred without such permission, it is considered canceled, and the Wakf Administration should file for cancellation within four months of being informed of the transfer or within three years from the date of the transfer.⁵¹ However, a significant drawback of this provision is that it imposes a limited timeframe for recovery. Unfortunately, it may not be feasible for the Waqf administration to reclaim the land within this stipulated period, allowing the Mutawalli to misappropriate it. Troublingly, these actions by the Mutawalli do not constitute punishable offenses under this provision, making it difficult to prevent such unauthorized transfers.⁵² Under the Waqf Ordinance of 1962, the Mutawalli must prepare accurate accounting statements for Waqf property, submitting them to the Waqf administration and the court-appointed collector. Unfortunately, the ordinance does not classify the failure to submit accounts as a punishable offense, leading to delays and missing accounts, hampering property management. Penalties in the ordinance include a two-thousand-rupee fine or, for more severe violations, up to six months imprisonment or both. Enforcement remains weak despite over five decades since its enactment. The ordinance also mandates Mutawallis to contribute 5% of annual income as tax to the Wakf Administration, but this amount is insufficient to cover rising expenses, including salaries.

2.4. Analysis of the Waqf Act, 2013

On February 24, 2013, the National Parliament of Bangladesh passed the 'Waqf' (Transfer and Development) Special Provisions Act, 2013 (Act No. 3 of 2013). This law was enacted to establish specific regulations for transferring and developing Waqf properties.⁵³ The Act focuses solely on these aspects and does not constitute a comprehensive Waqf law. It was deemed necessary due to the lack of previous regulations governing the transfer and development of Waqf properties, making the legal framework unclear. However, the transfer method, clearly stated in Section 4 of the Act, states the mode of property transfer that property may be transferred under the Act by sale, gift, mortgage, exchange, lease grant, and partnership-based development transfer authorized under this legislation. Islamic legal views on selling or exchanging Waqf property vary among schools of thought. The Hanafi school prohibits selling or trading Waqf property, especially in mosques. Imām Abū Ḥanīfah disallows selling immovable Waqf property, while others permit it if its utility is lost. The Mālikī Madhhab distinguishes between movable and immovable property, with most deeming it invalid. The Shāfi'ī Madhhab is strict, allowing sales only for mosques in disrepair.⁵⁴ However, most Ḥanbalī Faqihs support selling or exchanging Waqf property based on need and welfare. Scholars across eras have supported the provision allowing such transfers in the Waqf Special Act of 2013.

In the case of leasing Waqf property, which is permissible according to various fiqh schools, in their respective chapters on the provision of leasing of Waqf property, scholars address matters such as the authority to grant the lease, the significance of Waqf conditions in lease agreements,

⁵¹ Shahin, "Waqf as Administered in Bangladesh: A Critical Review", 188.

⁵² Azhari, "Waqf Adhyādēsh 1962 o Waqf ā'in 2013: Ēkti Parjālōcanā", 101.

⁵³ "The Waqf Estate Transfer and Development Special Ordinance Act, 2013" (Dhaka-Bangladesh: Ministry of Law, 2013).

⁵⁴ See, Azhari, "Waqf Adhyādēsh 1962 o Waqf ā'in 2013: Ēkti Parjālōcanā", 101.

eligible recipients of rent, the rental amount, lease terms, and termination of lease agreements. This demonstrates no conflict in Islamic Fiqh with the provisions outlined in this law section.⁵⁵

However, section 11 of the Act outlines a comprehensive procedure for donating Waqf property to another institution in case of transfer through donation and specifying the use of the property. This section comprises four sub-sections: Sub-section 1 stipulates that, notwithstanding the contents of section 1 and section 5, any Waqf property can be donated to a Waqf estate or any religious, educational, or non-profit public welfare institution. Sub-section 2 mandates that donation proposals made under Section 2 must be recommended by the Committee and approved by the Ministry. Sub-section 3 specifies that if any property is donated for a particular purpose under this section, it cannot be used for any other purpose. Any attempt to use it otherwise would violate the provisions outlined in sub-section 3 of Section 4. Furthermore, if any property is used in contravention of the prescribed purpose or if there is an attempt to do so, the Wakf Administrator is empowered, under Section 34 of the Ordinance, to assume control of the said property.⁵⁶

Section 12 of the Act allows for transferring any Waqf property for development on a partnership basis, provided it complies with legal requirements. This process involves a recommendation from a special committee and approval from the government. The detailed procedure for such transfers is outlined in the sub-sections of this section: Sub-section 1 states that Waqf property can be transferred for development purposes. Sub-section 2 specifies that the recommendation for transferring Waqf property under this law, subject to government approval, should be made by the special committee. Sub-section 3 explains that this Act covers assets, and landowners and developers' agreements must adhere to Section 10 of the Real Estate Development and Management Act, 2010. In this context, the Mutawalli or Waqf administrator responsible for managing the Waqf property is the landowner. Sub-section 4 underscores that, like a landowner protecting their interests when agreeing with a developer, a contract must be executed between the Mutawalli or Waqf administrator and the developer.⁵⁷ This contract protects Waqf property and its beneficiaries during transfers for partnership-based development. The Waqf administrator oversees and ensures compliance with the agreement's terms.

However, specific general restrictions on property transfer are outlined in Section 5 of the Act, consisting of four sub-sections. Sub-section 1 stipulates that Waqf property can only be transferred if it serves the needs, well-being, and interests of the relevant Waqf or its beneficiaries, and such transfer must align with the waqf's intended purpose. By sub-section two and section 2(9) of the Ordinance, Waqf property cannot be transferred to or in favor of an unrelated third party. Sub-section 3 establishes that no Waqf property can be sold or transferred on a perpetual lease unless it is deemed essential for the welfare of the Waqf or its beneficiaries.⁵⁸

Conclusion

Endowment, or Waqf, plays a pivotal role in the lives of Muslims, serving as a cornerstone for meeting their needs and fostering their well-being. It holds profound significance in the cultural

⁵⁵ "The Waqf Estate Transfer and Development Special Ordinance Act, 2013,"; see, Azhari, "Waqf Adhyādēsh 1962 ō Waqf ā'in 2013: Ēkṭi Parjālōcanā," 105.

⁵⁶ "The Waqf Estate Transfer and Development Special Ordinance Act, 2013".

⁵⁷ "The Waqf Estate Transfer and Development Special Ordinance Act, 2013".

⁵⁸ "The Waqf Estate Transfer and Development Special Ordinance Act, 2013."

revival of the Islamic community and is governed by three core principles: management, investment, and replacement.

Looking back at the history of Waqf in Bangladesh, it becomes evident that it has undergone a series of transformations and legal developments. From 1757 to 1947, the colonial period saw the official recognition of the Wakf regime through acts like 'The Muslim Wakf Validating Act of 1913' and 'The Bengal Wakf Act of 1934'. However, the unique attributes of Waqf gradually eroded over time, stretching from its inception during the Pakistani period to the present day.

Following the partition of India and Pakistan in 1947, the 'East Pakistan Waqf Ordinance 1962' was introduced, preserving the framework of the Waqf Act even after Bangladesh's independence in 1971. Although amendments were introduced in the 1988 and 1998 Ordinances, a significant restructuring effort only materialized about 15 years later with the Special Waqf Ordinance 2013. Unfortunately, despite its potential significance, this sacred institution was somewhat overshadowed by the complexities of Bangladesh's political landscape, closely tied to social change.

Assessing the present state of Waqf in Bangladesh uncovers several pressing concerns. Centralized management is notably lacking, with departmental and regional offices devoid of decision-making authority, unlike their counterparts in many Muslim countries, including Arab nations. Philanthropic Waqfs within the state face severe constraints due to a shortage of human resources. With a mere 150 employees overseeing nearly 150,000 Waqf institutions, adequate oversight of provincial activities becomes almost impossible. Furthermore, the workforce shortage in 64 administrative districts results in only 38 regional offices nationwide. The numbers reveal that each regional office supervises approximately 800 Waqf estates, significantly weakening the system.

Moreover, the offices administering Waqf properties often remain closed during inspections due to a lack of information and regulations. Accountability is minimal, with employees essentially evading blame. To manage a sacred institution like Waqf effectively, a code of conduct and ethics is essential, yet their absence has led to widespread mismanagement across all aspects of administration.

Despite Bangladesh's independence, the Wakf Act has undergone multiple revisions, including the recent Wakf (Amendment) Act 2013. However, these changes have not fully addressed the complexities in Bangladesh's Waqf administration. Another issue lies in the weakness of the registration system, with the annual registration rate of Waqf estates remaining significantly low compared to the existing properties. Public awareness of Waqf registration is also limited. Illegitimate acquisitions and mismanagement have further eroded the Waqf system, with numerous influential individuals occupying Waqf properties. Various organizations, social groups, and government agencies have seized these assets, with no concerted state effort to reclaim them. Regrettably, this illegal acquisition continues to be perpetrated by influential individuals and institutions.

The history and current state of Waqf in Bangladesh underscore a series of challenges and complexities in its administration, emphasizing the urgent need for comprehensive reforms and coordinated efforts to reinvigorate this crucial institution for the benefit of society. Despite its roots dating back almost six centuries to the Mughal Empire, establishing the Waqf system in Bangladesh presents substantial challenges. The British Empire introduced only minor modifications until 1947,

with further changes implemented in 1962 during the Pakistani administration. Following Bangladesh's independence, additional adjustments were made in 1988 and 1998. However, under the 'Special Waqf Ordinance of 2013', the most recent alteration still falls short of fully adhering to Islamic law.

An illustrative example is cited by Islam (2018), which reveals that the Dhaka police headquarters occupies Waqf land. This highlights the pressing need to address the challenges in managing Waqf properties in Bangladesh.⁵⁹ These challenges include unqualified Mutawallī, misconduct, an inadequate administrative framework, and a lack of government initiatives aimed at transparency and accountability.

Creating a meaningful advisory board and establishing separate ministries for Waqf, similar to those in different Muslim countries dedicated to the welfare of their citizens, remain unexplored possibilities in Bangladesh. Despite the evident feasibility of establishing such a ministry, concrete steps have yet to be taken.

Furthermore, there is no dedicated ordinance specifically addressing the Waqf system. The Waqf system in Bangladesh has been considerably neglected, as evidenced by limited administrative resources, a lack of transparency, and the appropriation of Waqf properties by influential figures, both political and non-political. To address these issues and align with the principles of Shariah, there is a pressing need for distinct and comprehensive Waqf legislation in Bangladesh, similar to the systems in place in countries like Malaysia, Turkey, Kuwait, UAE, KSA, and other Muslim nations. Properly implemented, such legislation would serve the people's best interests and ensure the effective functioning of the Waqf system.

Reference

- Ahmad, Abu Umar Faruq - Karim, Mohd Fazlul. "Opportunities and Challenges of Waqf in Bangladesh: The Way Forward for Socio-Economic Development". *Palgrave Macmillan* 1 (2019), 193–212. https://doi.org/0.1007/978-3-030-18445-2_10
- Anderson, Michael R. "Islamic Law and the Colonial Encounter in British India". *Institutions and Ideologies: A SOAS Reader*. 165–185. England: Curzon Press, 1993.
- Azhari, Abdus Subhan. "Waqf Adhyādēsh 1962 ō Waqf ā'in 2013: Ēkṭi Parjālōcanā". *Islami Ain o Bichar* 12/47 (2018), 85–112.
- Buhūti, Maṣūr ibn Yūnus ibn Idrīs al-. *Sharḥ Muntahā Al-Irādāt*. Saudi Arabia: Dār al-Kutub al-‘İlmīyah, 1993.
- Bukhārī, Abū ‘Abd Allāh Muḥammad Ibn Ismā‘īl Ibn. *Şaḥīḥ Al-Bukhārī*. Bangladesh: Hamidiya Library, 2002.
- Günay, Hacı Mehmet. "Vakıf". *Türkiye Diyanet Vakfı İslam Ansiklopedisi*. 475–479. İstanbul: Türkiye Diyanet Vakfı Yayınları, 2012.
- Humām, Muḥammad Ibn ‘Abd al-Wāḥid al-Sywāsy al-Sakandarī Kamāl al-Dīn Ibn. *Sharḥ Faṭḥ Al-Qadīr ‘alā al-Hidāyah Sharḥ Bidāyat al-Mubtadī*. Beirut-Lebanon: Dār al-Kutub al-‘İlmīyah, 2003.
- Hussain, Nasser. *The Jurisprudence of Emergency: Colonialism and the Rule of Law*. USA: University of Michigan Press, 2003.

⁵⁹ Islam, "Historical Development of Waqf Governance in Bangladesh: Challenges and Prospects", 1155.

- Ibn Fāris, Aḥmad ibn Zakarīyā Abū al-Ḥusayn. Beirut-Lebanon: Dār al-Fikr, 1979.
- Ibn ‘Ābidīn, Muḥammad Amīn. *Ḥāshiyat Radd Al-Muḥtār ‘Alā al-Durr al-Mukhtār*. Beirut-Lebanon: Dār al-Fikr al-‘Arabī, 1421.
- Ibn manzūr, Muḥammad ibn Mukarram ibn ‘Alī, Abū al-Faḍl, Jamāl al-Dīn. Beirut-Lebanon: Dār Ṣādir, 1995.
- Ibn Muflīh, Burhān al-Dīn Ibrāhīm ibn Muḥammad ibn ‘Abd Allāh ibn Muḥammad. *Al-Mubdi’ Sharḥ al-Muqni’*. Riyadh: ‘Ālam al-Kutub, 2003.
- Ibn Nujaym, Zayn al-Dīn. *Al-Baḥr al-Rā’iq Sharḥ Kanz al-Daqā’iq*. Beirut-Lebanon: Dār al-Kutub al-‘Ilmiyah, 1997.
- Ibn Qudāmah, ‘Abd Allāh Ibn Muḥammad. *Al-Mughnī*. Riyadh: Dār ‘Ālam al-Kutub, 1997.
- Ibn Ṣāliḥ, Muḥammad ibn Aḥmad. *al-Waqf Fī al-Sharī’ah al-Islāmīyah Wa-Atharuhu Fī Tanmiyat al-Mujtama’*. Riyadh: Maktabat Mālik Fahd, 2001.
- Islam, Md. Thowhidul. “Historical Development of Waqf Governance in Bangladesh: Challenges and Prospects”. *Intellectual Discourse*. 1129–1165. Malaysia: IIUM Press, 2018.
- Kāsānī, Abū Bakr Ibn Mas‘ūd. *Badā’i’ Al-Ṣanā’i’ Fī Tartīb al-Sharā’i’*. Beirut-Lebanon: Dār al-Kutub al-‘Ilmiyah, 2003.
- Khan, Abbas Ali. *Bānglār Musalamāndēr Itihāsh*. Dhaka: Bangladesh Islamic Center, 11th Ed., 2021.
- Khan, Abbas Ali - Hassan, M. Kabir. “Financing the Sustainable Development Goals (SDGs): The Socio-Economic Role of Awqaf (Endowments) in Bangladesh”. *Revitalization of Waqf for Socio-Economic Development, Volume II*. 2/35–65. London: Palgrave Macmillan, 2019.
- Kocaman, Kasım - Uddin, AHM Ershad. “Bangladeş’te Dinî/İslamî Eğitimi Kurumları: Medreseler”. *Talim* 5/2 (2021), 157–181.
- Kubaysī, Muḥammad ‘Ubayd al-. *Aḥkām Al-Waqf Fī al-Sharī’ah al-Islāmīyah*. Baghdad: Maṭba‘at al-Irshād, 2011.
- Mallick, Azizur Rahman. *British Policy And The Muslims In Bengal 1757-1856*. Dhaka: Bangla Academy, 1977.
- Mardāwī, ‘Alī ibn Sulaymān ‘Alā’ al-Dīn Abū al-Ḥasan. *Al-Inṣāf Fī Ma‘rifat al-Rājiḥ Min al-Khilāf*. Egypt: Dār al-Iḥyā’ al-Turāth al-‘Arabī, 1956.
- Morgināny, ‘Alī Ibn Abī Bakr Burhān al-Dīn Abū al-Ḥasan. *Al-Hidāyah Sharḥ Bidāyat al-Mubtadi’*. Pakistan: Idārat al-Qur’ān wa-al-‘Ulūm al-Islāmīyah, 1417.
- Muḥammadī, ‘Alī Muḥammad. “al-Waqf: Fiqhuh, Wa-Anwā’uh”. Ummul Qura University-Makka, 1422.
- Nizām, Ḥasan ibn Manṣūr al-wzjndy Fakhr al-Dīn. *Al-Fatāwā al-‘Ālamgīriyah (al-Fatāwā al-Hindīyah)*. Egypt: al-Maṭba‘ah al-Kubrā al-Amīriyah-Būlāq, 1310.
- Öztürk, Nazif. *Türk Yenileşme Tarihi Çerçevesinde Vakıf Müessesesi*. Ankara: Türkiye Diyanet Vakfı, 1995.
- Qaḥf, Mandhar. *Al-Waqf al-Islāmī Taṭawwuruh Idāratuhu Tanmiyatih*. Dimashq: Dār al-Fikr, 2000.
- Qarāfī, Aḥmad ibn Idrīs Shihāb al-Dīn. *Al-Dhakhīrah*. Beirut-Lebanon: Dār al-Gharb al-Islāmī, 1994.
- Qurṭubī, Shams al-Dīn Abū ‘Abd Allāh Muḥammad ibn Aḥmad. *Al-Jāmi’ Li-Aḥkām al-Qur’ān*. Riyadh: Dār ‘Ālam al-Kutub, 2003.
- Rahim, Muhammad Abdur. *Social and Cultural History of Bengal*. Pakistan: Pakistan Historical Society, 1963.
- Ṣāliḥ, Muḥammad ibn Aḥmad. *Al-Waqf Fī al-Sharī’ah al-Islāmīyah Wa-Atharuhu Fī Tanmiyat al-Mujtama’*. Riyadh: Maktabat al-Malik Fahd, 1st Ed., 2001.

- Sarakhsī, Abū Bakr Muḥammad Ibn Aḥmad Ibn Shams al-Dīn. *Al-Mabsūṭ*. Beirut-Lebanon: Dār al-Maʿrifah, 1989.
- Shahin, Zohora. “Waqf as Administered in Bangladesh: A Critical Review”. *UITS Journal* 2/1 (2013).
- Shīrāzī, Ibrāhīm ibn ‘Alī. *L-Muhadhdhab Fī Fiqh al-Imām al-Shāfi‘ī*. Beirut-Lebanon: Dār al-Kutub al-‘Ilmiyah, 2009. <http://bdlaws.minlaw.gov.bd>.
- Shirbīnī, Muḥammad al-Khaṭīb al-. *Mughnī Al-Muḥtāj Ilá Maʿrifat Maʿānī Alfāz al-Minhā*. Beirut-Lebanon: Dār al-Fikr al-‘Arabī, 1997.
- Temizer, Nihal Cihan. “Wakıf Sistemi: Osmanlı ve Batı Karşılaştırması”. *International Journal of Islamic Economics and Finance Studies* 2 (2021), 141–162.
- Tirmidhī, Muḥammad ibn ‘Isá ibn ibn Mūsá al-. *Sunan Al-Tirmidhī-Kitāb al-Nikāḥ* 1089. Saudi Arabia: Dār al-Gharb al-Islāmī, 1996.
- ‘Ulaysh, Muḥammad ibn Aḥmad ibn Muḥammad. *Minaḥ Al-Jalīl Sharḥ ‘alá Mukhtaṣar al-‘allāmah Khalīl Ma‘a Ta‘līqāt Min Tas‘hīl Minaḥ al-Jalīl*. Beirut-Lebanon: Dār al-Fikr, 1989.
- William, Adam. *Reports On The State Of Education In Bengal (1835-38)*. India: University Of Calcutta, 1941.
- Yusuf, Hardianti et al. “A Construction of Cash Waqf Management in Bangladesh”. *Al-Bayyinah* 5/1 (2021), 86–97. <https://doi.org/10.35673/al-bayyinah.v5i1.1410>
- Al-Mawsū‘ah al-Fiqhīyah al-Kuwaytīyah*. Kuwait: Wizārat al-Awqāf wa-al-Shu‘ūn al-Islāmīyah, 1427.
- “The Mussalman Waqf Validating Act, 1913.” Dhaka-Bangladesh: Ministry of Law, 2023. bdlaws.minlaw.gov.bd
- “The Waqf Estate Transfer and Development Special Ordinance Act, 2013”. Dhaka-Bangladesh: Ministry of Law, 2013. <http://bdlaws.minlaw.gov.bd/>
- “The Waqfs Ordinance, 1962 (East Pakistan Ordinance) (Ordinance NO. I OF 1962)”. Dhaka-Bangladesh: Ministry of Law, 2023. <http://bdlaws.minlaw.gov.bd/act-details-326.html?lang=en>