

# AWQAF

*Refereed Biannual Journal Specialized in Waqf and Charitable activities*

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AWQAF is based on a conviction that waqf -as a concept and an experience- has a great developmental potential which entitles it to contribute effectively to the Muslim communities and cope with the challenges which confront the Umma. Waqf also reflects the history of Islamic world through its rich experience which embraces the various types of life and helps finding solutions for emerging problems. During the decline of the Umma, Waqf maintained a major part of the heritage of the Islamic civilization and caused it to continue and pass from one generation to another. Nowadays, the Islamic world is witnessing a governmental and popular orientation towards mobilizing its materialistic capacity and investing its genuine cultural components in a spirit of innovative thinking leading to comprehensive developmental models conducive to the values of justice and right.

Based on this conviction, AWQAF comes up with a keen interest to give waqf the actual prestige in terms of thinking at the Arab and Islamic levels. It centers on waqf as a specialty and attracts waqf interested people from all domains and adopts a scientific approach in dealing with waqf and relating it to comprehensive community development. Waqf is originally known to be a voluntary activity which requires AWQAF journal to approach the social domains directly related to community life, along with other relevant social and economic behaviors. This might bring about a controversy resulting from the society-state interaction and a balanced participation aiming to reach a decision touching the future of the community life and the role of NGO's.

### **Objectives of AWQAF:**

- ❖ Reviving the culture of waqf through familiarizing the reader with its history, developmental role, jurisprudence, and achievements which Islamic civilization had witnessed up to date.
- ❖ Intensifying the discussions on the actual potential of waqf in modern societies through emphasis on its modern instruments.
- ❖ Investing the current waqf projects and transforming them into an intellectual product in order to be exposed to specialists. This is hopefully expected to induce dynamism among researches and establish a link between theory and practice.
- ❖ Promoting reliance on the repertoire of Islamic civilization in terms of civil potential resulting from a deep and inherent tendency towards charitable deeds at the individual's and nation's levels.
- ❖ Strengthening ties between the waqf on the one hand, and voluntary work and NGO's on the other.
- ❖ Linking waqf to the areas of other social activities within an integrated framework to create a well-balanced society.
- ❖ Enriching the Arab library with articles and books on this newly approached topic, i.e. waqf and charitable activities.

## **Publication Regulations**

AWQAF journal publishes original Waqf-related researches in Arabic, English and French. It also accepts summaries of approved M.A's and Ph.D's and reports on conferences, symposia, and seminars dealing with the field of Waqf.

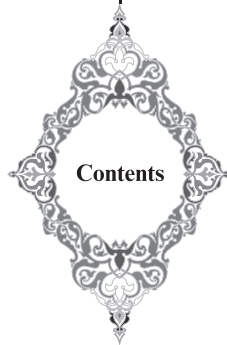
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- ❖ They should not have been published before or meant to be published anywhere else.
- ❖ They should abide by the academic conventions related to the attestation of references, along with the academic processing.
- ❖ An article must be 4000-10,000 words in length, to which a 150-word abstract is attached.
- ❖ Articles should be typed on A4 paper, preferably accompanied by a disc (word software).
- ❖ Material meant for publication should undergo a confidential refereeing.
- ❖ Coverage of seminars and conferences is acceptable.
- ❖ Material once sent for publication, whether published or not, is unreturnable.
- ❖ Awqaf is entitled to re-publish any material separately without checking with the relevant author.
- ❖ Awqaf allocates material remuneration for publishable researches and studies as set forth in the relevant rules and regulations, in addition to 20 offprints to the respective researcher.
- ❖ All submissions should be sent to:

**AWQAF, Editor in Chief,  
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Tel. 965-1804777 Ext: 3137, Fax. 965-2254-2526  
E-mail: [awqafjournal@awqaf.org](mailto:awqafjournal@awqaf.org)**

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## **Pilgrimage and Waqf Partnership: When Worship Turns into Overall Development**

Social mobility has long ago been characterized by its ability to benefit from the moral and material components in favour of establishing a sound Islamic society, holding the worship of Allah as its major objective. With these social and economic institutions, which constitute the major channels which embodied such mobility, they managed to energize and activate each component, whether it is moral or material, through establishing partnerships which converted them into beneficial channels conducive to the attainment of the set objectives. The genius of the economic and social institutions developed through the Islamic civilization manifests itself in providing a national self-protection element through involving individuals in developmental processes which fill in the gaps and guide all potentials towards innovation and creativity. Such was the case with the role of the waqf institution when it contributed directly to the progress of the Umma and promoted its potentialities, thereby bringing the Islamic civilization to new horizons unmatched by any other civilization. In this respect, we come to feel that interaction between waqf and other religious services, for example prayer, fasting and pilgrimage. This interaction led to the establishment of a partnership which assisted in sublimating worship and heightening the Islamic social experience. Pilgrimage, in this respect, has shown itself as a remarkable indicator of this move.

Few weeks ago, pilgrimage season came to an end and pilgrims left for their countries, cherishing the hope of the Divine forgiveness and Graciousness. Therefore, it is important in these blessed days, and at a time we see waqf gaining ground worldwide, to shed a spotlight on that relation and review the feedback of such a partnership.

Reflecting on the relation of waqf with pilgrimage urges us to consider a network of subsidiary channels engaged in providing a spectrum of social, economic and cultural institutions. This relation enriched the social experience and presented a sound concept of worship based on striking a balance between what cherish in our hearts and what we actually do to benefit people on the moral and material levels.

The remarkable outcome of that strong relation between waqf and pilgrimage is the emphasis on the Islamic unity which is realized through intensifying the intellectual, economic and social links, establishing models of interaction among the Islamic countries, boosting inter-country ties and harmonizing geographical and social elements. We sense more than ever the importance of the strategic dimension of the future of the Islamic countries in that tendency towards unification and forming gigantic political and economic initiatives vis-à-vis a dwindling role of the national state. The European, Chinese and Indian experiences in this domain show that the time of economic and political fragmentation has vanished for ever and that clustering round clear-cut objectives and principles represent the real strength. This is the strategic point to which waqf responded practically as early as the rise of the Islamic civilization.

The pilgrimage season has been viewed as an appropriate opportunity which reflects Islamic unity as exemplified in linking the organization of pilgrimage and fulfilling the Moslems' needs during this journey from the starting point till reaching the destination in Mecca. For this reason, we see that waqf was not only restricted to pilgrimage-related affairs in terms of providing facilities for pilgrims and securing their return, but it also included the rendering of services to pilgrims in Mecca and Medina (Awqaf al Haramain). At the same time, pilgrimage assisted in realizing the pilgrimage objectives of gathering Moslems from all over the world to maximize the benefits from such a unique opportunity. Consequently, the role of waqf was boosting the academic relations among the various Islamic cultural centers, besides activating communication channels among Moslem Ulama (scholars).

We see that pilgrimage may be converted into a multi-purpose developmental process which switches from one geographical point to another, carrying with it multiple benefits which transcend the limits of time and individuals which acquire a permanent nature. Through pilgrimage a Moslem gets in direct contact with those meanings and dimensions which embody Islam, for example worship, human relations, social education and practical training. Such is the image delineated by waqf throughout the Islamic world.



Meditating on some waqf models related to pilgrimage, we find that they provide us with an evidence of how pilgrimage can be converted into a comprehensive developmental institution, with its benefits reaching all Moslems, in addition to being linked to the major shari'a objectives. A researcher may draw a multi-faceted chart of awqaf, showing the pilgrimage routes converging on the Holy cities of Mecca and Medina. Regardless of the geographical locations, Moslems managed to build a network of subsidiary institutions to respond to the needs of the Umma thanks to the waqf which was one of the major institutions.

Some would argue that pilgrims nowadays use modern means of communications, such as planes, cars and ships, and this causes the role of waqf to shrink, but it is not those specific forms and models in themselves that concern us, but rather the methodology which prevailed among Islamic communities and means of interaction with their moral and material potentialities. The waqf-pilgrimage relation is a practical translation of the methodology which prevailed for a long time and has been indicative of that awareness which entitles the nation to occupy a unique place in execution of the call of the Qur'anic verse "and make us a model for the God fearing". These potentialities must be turned into actual sources of power. The waqf-pilgrimage partnership managed to bring about numerous benefits at different levels, thereby changing this ritual into a full developmental process which distributed its benefits to all the parties involved therein.

- The social mobility gained new mechanisms through converting this great spiritual journey into an opportunity for social relations of high quality through which views and commodities are exchanged among Moslems.
- The Umma with its broad spectrum was involved in managing its own affairs as each individual was entrusted with a specific job. This, no doubt, enriched the pilgrimage ritual and heightened its social role.
- Developing the waqf institution and giving it other dimensions which cope with the Umma's needs.

The question which yields itself to be asked is this: How can we convert our potentials into actual power and how do we create this methodological situation in which waqf has become a major component of the comprehensive development?

The first point relates to the exploration of the waqf philosophy, i.e., the basic idea on which Moslems established their waqf experience. This is likely to lead to an understanding of the essence of waqf being part and parcel of a methodological case once prevalent in the Islamic world. In this context, Dr. Nasr M. Aref in his research **'Waqf and the Sustainability of the Civilizational**

**Action'** goes deep in the 'multiple waqf layers' in order to draw a set of relations established by awqaf between a waqif and a beneficiary on the one hand and between the waqif and his human brother on the other away from the limitations of time and place. The process of defining the epistemological postulations on which such relations were based leads us to understand their tracks and the civilizational consequences of such an idea, This takes us to the implementation of the idea and its embodiment in the social and civilizational domains of the Islamic nation and presumably the other nations adopting it.

On the same level, Dr. Nagi Ben Al Haj Taher in his '**Waqf and the Medina-An Epistemological Vision**' presents a new waqf concept within the framework of establishing an Islamic city. The word 'city' (or medina) in this respect is used punningly: Al Medina al Munawarra which witnessed the rise of the Islamic state then there is the concept of Al Badiyya (Bedouin neighbourhood) which stands in opposition to that of the city and viewed as an important phase in the development of human settlement. Here waqf emerges as part and parcel of a methodology which helps Moslems forge their concepts, following the example of the Prophet (PBUH). Therefore, the researcher sought to trace back the emergence of waqf (as a concept) within the Islamic society in order to highlight its role in promoting a society. On the other level, the issue contains three researches which tackle modern waqf experiences in some parts of the Islamic world. It is noteworthy in this respect to say that these experiences provide us with substantial evidence on the status of waqf being divided between reformatory and conservative powers.

In '**Modern Islamic Experiences in Organizing and Managing Awqaf- Kuwait as a model**' Mr. Badr N. Al Mutairi traces the phases of the development of awqaf and tries to monitor those specific shifts in waqf management. Then he moves on to analyze the major phases in managing and employing funds. For this purpose, he approaches KAPF experience (instituted in 1993), viewed as a benchmark in the contemporary Islamic history of waqf reform. The researcher sought to analyze the strategic trends of KAPF relation with the developmental policies of Kuwait and to highlight this experience at the international level. Such developments account for the current challenges confronting KAPF as maintained by the writer.

On parallel lines, researchers Farris Masdoor and Kamal Mansouri present an image of the Algerian experience in '**Algerian Awqaf: A Look into the Past and the Present**'. The researchers handle the major institutional and functional developments undergone by the Algerian waqf institution since the Ottoman era, through the imperialistic period till the independence. Despite the positive role

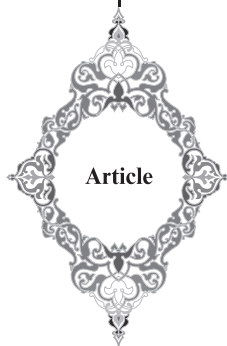
assumed by awqaf during the imperialistic period, the independence period did not give its due attention to this sector. This state of affairs caused both researchers to view the current waqf administration as the weakest due to the lack of experience and the absence of a clear strategy. Moreover, the lack of interest in this sector wasted much of the rights and funds of waqf.

Mr. Abdullah Naser Al Sadhan takes us back to respond to the inquiry raised in the Editorial about converting our potential to actual power through merging waqf into the youth activities in order to benefit from the invaluable source of power exemplified in "time". The researcher in his paper "**A Futuristic Vision of the Role of Waqf in Benefiting from the Youth - Time Waqf as an Example**", the writer presents the concept of promoting waqf activities to embrace waqf volunteering as a means of exploiting the youth's potentialities and enthusiasm in developmental activities in favour of the Islamic societies.

The issue includes also a research in English by Dr. Syed Khaled Rashid entitled **Bibliography of Waqf Literature**. The Research, being the first of its type, surveys the writings on waqf in India, Pakistan, Indonesia, Malaysia and Bangladesh and it is expected that the research with all its appendices will be published is a special book.

**Editing Staff**





## **Bibliography of Waqf Literature Produced in India, Pakistan, Bangladesh, Malaysia and Indonesia during the period from (1977 - 2007)**

**Dr. Syed Khalid Rashid<sup>(\*)</sup>**

### **Abstract:**

No bibliography of Waqf literature has ever been compiled in any of the five countries covered by this study. With the help of field-study, 305 material on waqf have been found, covering the period of last thirty years - 1977 - 2007. India having produced 124 waqf materials, during the last 30 years, tops the list, followed by Malaysia (70), Indonesia (43), Bangladesh (40) and Pakistan (28). An analysis of the literature shows that a majority of the literature deal with waqf laws, both classical ad modern. Not much attention appears to be paid to contemporary issues like development and management. There is no literature dealing with Shia awqaf, a large number which are there in India and Pakistan. Studies on awqaf happen to be a neglected area of the academic studies and research in the universities of the five countries. Malaysia, with 2 PhD theses and 21 Master's dissertations is sitting at the top, while Pakistan is at the bottom, with no PhD or Master's dissertations.

In recent years, the emphasis is shifting from hypothetical discussions to empirical studies. Governments have also started showing interest in waqf matters with the help of better waqf laws and more popular involvement of the members of both public and the government.

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(\*) B.Sc., LL.B., LL.M., Ph.D. (Aligarh), Professor, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. I have personally collected material from India, Pakistan and Malaysia, while Mr. Fazlul Karim, a Ph.D. candidate at IIUM, doing research on waqf administration in Bangladesh, has collected material from Bangladesh. Another Ph.D. candidate at IIUM doing research on waqf administration in Indonesia, Mr. Fahmi Nasir has collected material from Indonesia.

## 1. Introductory Remark

As no bibliography of waqf literature in English or in some important local languages like Urdu, Bengali, Bahasa Malaysia and Bahasa Indonesia has ever been compiled in India, Pakistan, Bangladesh, Malaysia or Indonesia, it appears only appropriate to attempt such a compilation. Its coverage is confined to the last thirty years (1977-2007) in the belief that any material which is more than thirty years old has become 'historical', losing much of its contemporary relevance.

In view of the large number of listings in this bibliography, it is not possible to make comments on each and every material. It would have increased the bulk of this paper beyond reasonable limits. Thus, comments of only general nature have been made on an over-all basis, with occasional brief comments on some important individual material.

Probably the only bibliography of waqf literature published in English was prepared by Dr. Abdul Azim Islahi of the Islamic Economics Research Centre, King Abdul Aziz University, Jeddah in 2003.<sup>(1)</sup> He has acknowledged the existence of a few bibliographies of waqf literature in Arabic, but could not find only in English, as none existed upto that time. His 38 page long effort was therefore of pioneering nature and deserves to be praised. However, by attempting in so few pages global coverage of waqf literature in English, he probably became rather too ambitious. Consequently, the coverage is sometimes inadequate. Nevertheless, it was indeed difficult for him to do single-handedly such a Herculean task, and that too, presumably, on the basis of material available to him locally. Since he has not disclosed his research methodology, nothing can be said for sure whether he did some field-study also. But apparently no visits to the different countries of the world covered by his study appear to be made.

In case of the present study, effort has been made to personally collect material in Malaysia, India, and Pakistan. Mr. Fazlul Karim collected material in Bangladesh and Mr. Fahmi Nasir did this in Indonesia. No claim of full coverage could be made, as the search remained confined to prominent libraries, waqf institutions and universities. The work is big and requires more time, energy and resources. Probably in future, more of such efforts would be sponsored and undertaken by a team constituted for each country.

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(1) Abdul Azim Islahi, *Waqf: A Bibliography*, (Scientific Publishing Centre, King Abdul Aziz University, Jeddah, 1424/2003), pp. 38

On comparing the bibliographical material on waqf collected earlier in Arabic with the one collected by him in English, Dr. Abdul Azim rightly found “that the topics on which more works are available in Arabic, such as *fiqh*, less works (on parallel topics) are available in English. And the converse is also true. (Thus) this work (in English by Abdul Azim Islahi) alongwith other bibliographies on the subject in Arabic would be complementary and supplementary to each other”.<sup>(2)</sup>The same is also true in case of this compilation.

The bibliography now being prepared may strengthen the one prepared by Dr. Abdul Azim by adding new material produced during the period between 2003 and 2007, and also by including some of such material which found no mention in the earlier compilation. As said earlier, the job of preparing a bibliography on waqf, and for that matter any bibliography, is very tough, painstaking and time consuming, requiring a joint effort of several persons and expenditure of large sums of money.

## **2. More Attention Is Given In the Existing Waqf Literature To Legal Aspects**

In spite of the fact that the beauty of waqf lies not in its legal niceties but in its ability to alleviate poverty and bring social welfare, a majority of the writings on waqf are focused more on the legal aspects of waqf rather than on its welfare and developmental aspects. The administration of waqf has also remained a neglected field in the whole of region till 1968 when a book on this subject first appeared in India.<sup>(3)</sup> Though it was only rudimentary in coverage, yet it became popular, as there was no other such book till then written in India, Pakistan and Bangladesh. In Malaysia, such a book is now being published by Siti Mashitoh in November, 2006, based on her Ph.D thesis approved by the University of Birmingham (U.K).<sup>(4)</sup> In India, such a Ph.D. thesis was approved in the past by the Aligarh Muslim University in 1971 and published in 1978.<sup>(5)</sup> Many books were published in Indonesia between 1982 and 2006.

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(2) Id. at iii (Preface).

(3) The book was: S. Athar Husain & S. Khalid Rashid, *Waqf Laws & Administration in India*, (Eastern Book Co., Lucknow, 1968), 2nd ed. 1973, reprinted since then several times. Now out of print, pp. 653.

(4) Siti Mashitoh Mahamood, *Waqf in Malaysia: Legal and Administrative Perspectives*, (University Malaya, Kuala Lumpur, 2006), pp. 191.

(5) The Ph.D Thesis was by Syed Khalid Rashid, published as *Waqf Administration in India: A Socio-Legal Study*, (Vikas Publishing House, New Delhi, 1978), pp. 184+xx

Apart from two Ph.D theses on waqf administration approved in India and Malaysia, there are three more which were approved: one in Bangladesh, submitted to the University of London in 1982<sup>(6)</sup>, the other in India, submitted to the Aligarh Muslim University in 1998<sup>(7)</sup>, and the third in Indonesia, submitted to the Sharif Hidayatullah Islamic University Jakarta in 1997.<sup>(8)</sup>

### 3. Very Few Doctoral Researches on Waqf

The fact that in all only five Ph.D theses on waqf administration have been produced during the last 30 years (1977-2007) in five countries should be a matter of concern for the academic fraternity. Presently, there are only two more ongoing Ph.D researches on waqf administration: one relates to Bangladesh and the other to Indonesia, both conducted at the Faculty of Law, International Islamic University Malaysia.<sup>(9)</sup> In view of the importance of waqf and the need of information by waqf administrators, a more extensive research coverage is needed in the area of waqf administration, development, investment, auditing and accounting. Settlement of waqf disputes outside the courts through some alternative institution like Waqf Tribunal also offers an interesting field of research. Lack of financial backing is the main excuse often given by the researchers.

Speaking on the basis of personal experience I found to my dismay how two Ph.D researchers left this university because no financial help could be found for them from any source, including World Waqf Foundation and Kuwait Awqaf Public Foundation. Islamic Development Bank may consider offering a reasonable number of scholarships to students planning to undertake research either at Ph.D. or Master's level on some contemporary aspects of waqf administration and development.

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(6) Muhammad Nazmul Haque, *A Critique of the Law of Waqf in Bangladesh*, PhD thesis in Law submitted to the SOAS, University of London, 1982 (pp. 711) (Unpublished)

(7) Ghulam Imtiaz Ahmad, *Management of Waqf Properties in West Bengal: A Case Study*, PhD Thesis in Law submitted to the Aligarh Muslim University, India in 1998. (pp. 501) (Unpublished)

(8) Uswatun Hasanah, *Peranan Wakaf dalam Mewujudkan Kesejahteraan Sosial (Studi Kasus Pengelola Wakaf di Jakarta Selatan)*, [The Role of Waqf In Achieving Social Welfare (A Study of Waqf Administration in South Jakarta)], Ph.D Thesis in Shari'ah, IAIN Syarif Hidayatullah University, Jakarta, 1997, pp.311, (unpublished).

(9) One is on waqf laws and administration in Bangladesh and the other on waqf laws and administration in Indonesia.



#### 4. General Focus of Waqf Studies

A study of the available material on waqf, both published as well as unpublished, shows that the focus of these studies is generally on the legal aspects, both statutory and non-statutory. Very few of the authors or researchers have ventured to cover other areas. There is a need to remind ourselves that enough has already been written on the law of waqf. Now, what is needed are studies aimed at improving the management of *awqaf*, their development and better utilization of their resources.

Similarly, no comparative studies of waqf experiences in various countries have been made to take advantage of each other's experiences. Such studies may be regional to begin with and then global. There is no harm in comparing the management of English trusts and Hindu endowments with that of waqf. Trusts do have the advantage of a well-established administrative infra-structure in place, which may provide some useful hints for the improvement of waqf management. Similar might be the case with many judicial pronouncements of the English courts in defining the duties of trustees, which could be relevant for *Mutawallis*.

[NOTE:] *Statutes and judicial pronouncements on waqf are not included in this bibliography, as these are well classified and indexed in Law Reports, Digests and List of Statutes, in addition to annual surveys and index of cases. Legal material on waqf, like statutes and court judgments, could be easily accessed in the above mentioned sources, in each of the countries under study.*

#### 5. No Waqf Journal

No journal or magazine dealing exclusively with waqf is published in India, Pakistan, Bangladesh, Indonesia or Malaysia, which hampers the possible publication of waqf literature. The surprising thing is that such well-known journals devoted to Islamic studies like *Ma'arif* (Urdu) published from Azamgarh, India, *Islamic Studies*, published from Islamabad, *Islamic Culture*, published from Hyderabad, have hardly published any article on waqf during the long period of their existence. A monthly magazine devoted to waqf in Urdu language - *Tarjumān-e-Awqāf*, published from Lucknow (India) and edited by Ashfaq Ali, ceased publication in 1990s within a few years of its launching, due to financial problems. The publication of such reputed journals like *Awqaf* (Kuwait) may go a long way in boosting the scholarship in waqf, and may help to produce valuable waqf literature.

## **6. Need to Publish the Unpublished Material**

A whole wealth of waqf literature in the form of papers presented at scores of waqf conferences and seminars organized during the last thirty<sup>(10)</sup> is lying unpublished. Quite a number of these may be worth publishing after necessary revision and editing. This work is of paramount importance and deserves to be entrusted to some capable hands. As a majority of these conferences were funded by the Islamic Development Bank and/or Kuwait Awqaf Public Foundation, they may think of undertaking this responsibility.

Many of these unpublished conference papers on waqf and some other material are left out of this bibliography because of the non-availability of these materials. Future researchers have to do some extra work in finding and including these material.

## **7. Good Quality of Material on Legal Aspects of Waqf is Produced in the Five Countries.**

Good commentaries on the statutory law of waqf have been written in all the five countries. These are based on the interpretation of waqf laws in the respective countries rather than on the jurisprudential exposition of law. It brings the discussion much nearer to the ground realities and helps the waqf administrators self-assess and improve. The worth-mentioning books on waqf laws are: *India* - M.A. Qureshi (S.No.8), Syed Khalid Rashid (S.No<sup>s</sup>.16, 17), S.A. Kader (S.No.12), Ahmadullah Khan (S.No.1); *Pakistan* - Abdul Wahid Chaudhry (S.No.125); *Bangladesh* - P.B. Chowdhury (S.No.155); *Malaysia* - Siti Mashitoh Mohamood (S.No.199); *Indonesia* - A.G. Anshori (S.No.262), Suparman Usman (S.No.283).

## **8. There is No Waqf Material in Pakistan Commenting on the Nationalization of Awqaf**

Malaysia and Pakistan are the two countries in this region where *awqaf* have been nationalized. In both these countries, all waqf properties and their income are administrated by the government officials. In Malaysia, this is briefly commented upon by Siti Mashitoh Mahamood in her book of 2006 (S.No.199). But in Pakistan, no

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(10) See, Resolutions passed at the end of the South Africa Waqf Conference, August, 2007. See also the paper presented by Syed Khalid Rashid, "Issues Inherent in the Development of Waqf Properties", at the International Conference on Developing Waqf Institutions for Sustainable Community Development & Poverty Eradication, Cape Town, South Africa, August 17-19, 2007.

assessment of this nationalization (done in 1976) has been attempted by anyone, leaving a big gap in our knowledge about *awqaf* in this country.

### **9. There is No Literature in India or Pakistan commenting on Shia Awqaf**

There are more than 8,000 Shia *awqaf* in Uttar Pradesh<sup>(11)</sup>, which has a concentration of Shia population in Lucknow, Faizabad and Rampur districts. Similarly, a good number of Bohra and Ismaili Shias are there in Gujrat and Maharashtra states. The number of Shia *awqaf* in these two states is not known. The Nawabs of Oudh were Shia. The Shia state capitulated to the English forces in 1857 after having a rule lasting more than 150 years. The Gujrati and Bohra Shias are known for their philanthropy. In Pakistan also there are a large number of Shias and Shia *awqaf*. However, in the absence of any book or writings on Shia *awqaf* in India or Pakistan, nothing is known about them, except knowledge of Shia law of waqf based on law books, particularly by Ameer Ali, and court decisions relating to Shia *awqaf*.

### **10. There is no Study of the Current Situation of Family Awqaf**

In none of the five countries a book or report has been written on the situation of *waqf al alaulad* (family waqf), except a chapter in Syed Khalid Rashid's book<sup>(12)</sup>. In India, the Waqf Act, 1995 (and before then the Waqf Act, 1954) does not apply to family waqf. Only the Jammu & Kashmir Wakaf Act, 1978 covers family *awqaf*. Similar is the situation in Pakistan and Bangladesh. In Malaysia and Indonesia, although such *awqaf* come within the jurisdiction of the State Religious Councils, yet they do not exercise any supervisory control over them. These *awqaf* are neither exempted from the income tax nor other direct taxes. It is a direct result of the British colonial policy which treated such *awqaf* as non-charitable purpose trusts. The post colonial governments have not effected any change in this policy. In India in the wake of 1950 land reforms, all lands held by family *awqaf* were acquired by the State governments, on payment of nominal compensation to the then existing beneficiaries.

No studies have been made of the past and present trials and tribulations of these *awqaf*. It shall also be interesting in Jammu & Kashmir where they are supervised under the provisions of the Jammu & Kashmir Wakaf Act, 1978.

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(11) Syed Khalid Rasyid, "Islamic Financial Instruments for the Development of Waqf Properties", in Syed Khalid Rashid (ed.), *Protection, Management & Development of Awqaf in India*, (Institute Objective Studies, New Delhi, 2005), p85.

(12) Syed Khalid Rasyid, *Waqf Administration in India: A Socio-Legal Study*, (Vikas Publishing House, New Delhi, 1978), chap.8, pp.127-147.

## **11. Need of More Sociological Studies on Various Types of Awqaf**

In the context of Indian *awqaf*, the book of Gregory Kozlowski, *Muslim Endowments and Society in British India* (S.No.3), and his 3 papers (S.No<sup>s</sup>.54, 55 and 56) are well known sociological studies of *awqaf* in India. Another such study is Jamal Malik's paper, "Change in Traditional Institution: Waqf in Pakistan" (S.No<sup>s</sup>.130, 131). The studies of Kozlowski provide a format which may be followed by others wishing to undertake sociological studies of waqf. There is a great need to study the pattern on which the numerous *dargahs* in India and Pakistan (eg. dargah of Ajmer and dargah of Data in Lahore) are administrated. The institution of *khadims* and *sajjadanashins* at these *dargahs* offer great possibilities of multi-dimensional studies - covering customs, religion, sufi traditions and beliefs. A chapter in Syed Khalid Rashid's *Waqf Administration in India* (S.No.16) dealing with the *Dargah* of Ajmer, its *khadims*, *sajjadanashin*, its *nazar* (offerings), its *degs* (food cooked in big historic pots for distribution) is probably the only study of such an institution, but it forms only a chapter of his book.

## **12. A Very Useful Recent Report on Awqaf in India**

In November, 2006, a *Report on the Social, Economic and Educational Status of the Muslim Community of India* - submitted to the Prime Minister of India by the Prime Minister's High Level Committee. Contained a chapter on "Leveraging Community Initiatives, The Case of Waqfs" (S.No.110). It discusses the economic potential of *awqaf* assets in India, the problem faced by *awqaf* in India and the initiatives to overcome these problems. The report carries current data about the total number of *awqaf* in each State of India, their valuation and income. It is indeed very valuable data. The report also carries a very useful recommendation for the establishment of a Waqf Development Corporation with a "revolving corpus fund of Rs.500 crores" and "matching funds to be added to the corpus from the community and NGOs" (p.230).

The report has recommended the exemption of waqf properties from the operation of the Rent Control Acts of the different States in India (p.231) which may substantially boost waqf income.

Another important matter covered by the report is the problem of innumerable waqf properties, mainly mosques, which "despite being places of worship and of religious reverence, cannot be touched by the Waqf Board because (these are) declared as protected monuments.... (and are) under the control of the Archeological survey of India" (p.232). The report fails to recommend the surrendering of these to Muslims, and considers it sufficient if a list of such *awqaf* is "annually reviewed and their condition is assessed in a joint

meeting of senior officers of the A.S.I (Archeological Survey of India) with the representatives of the Central Waqf Council” (p.332). This is a very unsatisfactory solution. The restriction placed by ISI on offering of prayers in these mosques is resented by the Muslims. Mosques are primarily places of worship, not tourist spots, notwithstanding their historical importance. The role of the Archeological Department should be confined to the repair and upkeep of these mosques. The number of such mosques and tombs in Delhi alone comes to 172, and details of each have been given in appendix 11.1 of the Report (pp.382-388). Their total number in the whole of India must be large.

### **13. There is no Study That Reviews the Development of Waqf Properties in India**

Very little has been done in India to develop waqf properties even when their number in the country is not less than 350,000. On a conservative estimate, at least 10,000 of these properties possess developmental potential. But in the absence of an all-India body to undertake this responsibility, the number of *awqaf* developed in India during the last 30 years does not exceed 200. And none of these developments have been undertaken on a big scale. The total investment during the last 33 years comes to US\$8.7 million, that is, a paltry sum of about US\$250,000 per year has been invested to finance this development. It is not enough even to develop one property, what to say of the development of 10,000.<sup>(13)</sup>

### **14. The Waqf Literature in Indonesia Reflects More Contemporary Concerns**

In sharp contrast to the traditionalist nature of waqf literature in India, Pakistan Bangladesh, and to some extent in Malaysia, the literature in Indonesia is very forward-looking. In a large number of books, papers, seminar proceedings and reports, there is very pragmatic discussion on the management and development issues of *awqaf*. There is also a very refreshing discussion of *awqaf* in the over-all context of Islamic philanthropy. Such literature is not produced in such a large quantity in any other country of the region.

### **15. Concluding Remarks**

The amount of literature on waqf produced in the four countries is unbelievably low. A closer look shows that a majority of these are traceable to

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(13) Syed Khalid Rashid, “An Analysis of The Investments Made For The Development of Waqf Properties in India”, a paper presented at the Dubai International Conference for Endowments Investment, 4-6 Feb. 2008.

only four countries. Pakistan emerges as the least active country in this field. Probably, part of reason for this could be nationalization of waqf administration in Pakistan, thereby minimizing the public involvement and active interest in waqf matters. Part of the reason could be the military rule in the country spanning a good part of Pakistan's entire existential history, which might have further discouraged public involvement in waqf. Nationalization could not be the sole cause, because in spite of nationalization of waqf administration and assets in Malaysia, a good amount of public interest in *awqaf* is still there.

Different ways have to be found to increase public interest and involvement in waqf affairs. Probably, it may be good to organize public lectures, seminars and conferences and to increase media interest in waqf. International institution, NGOs, academic institutions and existing waqf bodies have to play a more active role in re-kindling public interest in waqf to make it once again the most significant expression of Muslim philanthropy.

## 16. Overview of the Whole Waqf Literature Produced in the Five Countries

Before proceeding to review waqf literature produced in each of the five countries, an overview of the total number of waqf literature produced during the last 30 years in the five countries shall be in order.

### Comparative Chart Of the Waqf literature Produced in India, Pakistan, Bangladesh, Malaysia and Indonesia during the Last 30 Years (1977-2007)

[For Details of these materials, See Appendix 1 to 5 to this paper]

S.No.	Type of literature	India	Pakistan	Bangla- desh	Malaysia	Indonesia	Total
1.	Books	17	5	10	8	24	64
2.	Part of Book	25	7	4	4	2	42
3.	Papers (published)	34	8	4	12	5	63
4.	Seminar Papers (unpublished)	10	4	N.A.	12	2	28
5.	Ph.D Thesis (unpublished)	1	-	1	2	1	5
6.	Master's Dissertations (unpublished)	1	N.A.	N.A.	21	N.A.	22
7.	Newspaper/Magazine Articles	16	N.A.	6	8	N.A.	30
8.	Seminar Proceedings	-	-	-	-	4	4
9.	Book Reviews	5	N.A.	N.A.	N.A.	N.A.	5
10.	Reports	15	4	9	3	5	36
11.	On-line Material	-	-	6	-	-	6
12.	Total	124	28	40	70	43	305

[Source: Data collected personally from India, Pakistan, Bangladesh, Malaysia and Indonesia.]

A total of just 305 materials produced over 30 years in five countries in which nearly 550 million Muslims reside is not a good record by any standards. It comes to nearly 10 material produced each year, at the rate of only 2 material in each of the five countries. What is more surprising is that not much is done in the area of waqf even in such well established and reputed institutions of Muslim learning like *Nadwatul Ulama* (Lucknow), *Daarul Musannefin* (Azamgarh), Aligarh Muslim University (Aligarh), *Jami'a Millia Islamiah* (New Delhi), *Jami'a Hamdard* (New Delhi), Osmania University (Hyderabad), Institute of Islamic Research (Islamabad), Hamdard University (Karachi), and others. It is not that research work is not being conducted in these universities and institutions, but some how not enough attention is being given to waqf.

Similarly not enough of seminars, conferences and symposiums are organized on contemporary issues of waqf. In India, the Institute of Objective Studies, New Delhi and its sister organization - Fiqh Academy of India - organized three successful seminars on waqf, one in New Delhi (1998), the other in Jaipur (2002) and third in Bombay (Mumbai) (1999). But the Institute has considerably slowed down its activities during the past six years, apparently due to financial constraints. As said earlier, IDB and KAPF may consider creating a special fund for fully financing such conferences/seminars.

## **17. Brief Review of Waqf Literature Produced during the Last 30 Years (1977-2007)**

### **A. INDIA<sup>(\*)</sup>**

#### **A.i. Books:**

Out of 17 books published in India (see Appendix - 1), 6 are commentaries on the statutory laws of waqf (S. No<sup>s</sup>. 1, 6, 7, 9, 11 and 12). Notable among these are books by A.S. Quraishi and S.A. Qadir. One book in Urdu by Ashfaq Ali deals only with the early history of waqf. Another by Gregory Kozlowski is a sociological study in which persons, places, and history find more coverage than waqf. A brief study of waqf administration in India by Hasannuddin Ahmad, who was in charge of *awqaf* in Govt. of India for a few years, could not rise to our expectations and fails to give any critical evaluation or logical analysis of the working of the existing waqf institutions in the country.

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(\*) Bibliography of material from India may be found in Appendix-1 to this paper. I have supplied translation of Urdu material into English.



Qazi Mujahidul Islam Qasmi's book *Awqaf* (in Urdu) in fact gives a gist of the inputs made by the *Ulema*, who were invited to the Mumbai seminar on waqf (1999), regarding various problematic issues confronting *awqaf* in India. As the same questionnaire is answered by about 25 odd *ulema*, there is naturally a lot of repetitions and overlapping of ideas. This notwithstanding, the book provides good reading.

In matters of waqf administration and management, the books written or edited by Syed Khalid Rashid (S. No<sup>s</sup>. 13, 14, 15, 16, and 17) are probably the only ones in this field.

#### **A.ii. Part of Books**

Nearly all of the 24 Parts of Books cover areas of contemporary relevance. The most important in terms of coverage, depth and length is Ahmad Raza Barailwi's *Al-Fatawa Al-Rizwiyah* (S. No. 25). There is hardly any question regarding waqf which is not answered in *Fatawa Al-Rizwiyah*. A total of 301 questions with their elaborate answers cover nearly 500 pages of volume 16 of the *Fatawa* which is in 26 volumes. Its coverage is simply amazing. It is a pity that it is not yet translated into English.

A few other important studies are that of Mawlana Khalid Saifullah Rahmani (S. No.30), Syed Khalid Rashid (S. No<sup>s</sup>. 35, 37 and 38) and Syed Zafar Mahmood (S. No. 41).

#### **A.iii. Published Papers**

Many of the 36 published papers deal with matters of great relevance. The main thrust is towards improving the waqf administration and utilization of their income for some social welfare schemes. For example, Syed Khalid Rashid's "Economic Potential of Awqaf in India" (S.No.66), his "Islamic Financing Techniques for the Development of Awqaf (S.No.72) and "Current Waqf Experiences and the Future of Waqf Institutions" (S.No.73) and "Certain Problems Facing Awqaf in India: Possible Solutions" (S.No.63) deal with issues of modern relevance. The writings of certain others which are worth noting are Pathusha's (S.No.57), "Problems of Awqaf and Mutawallis in Tamil Nadu", Khalid Saifullah Rahmani's (S.No.58), "Shari'i Status of Mosques", and Tahir Mahmood's (S.No.75), "Islamic Family Waqf in Twentieth Century Legislation", Gregory Kozlowski's "The Changing Political and Social Contexts of Muslim Endowments: The Case of Contemporary India" (S.No.55), and Furqan Ahmad's "Background of the Mussalman Waqf Validating Act 1913 - Shibli Numani's Contribution" (S.No.52).



#### **A.iv. Unpublished papers**

Only 10 papers could be traced, but there may be quite a few more. Out of these 10 papers, the important ones are:

Abu Saleh Shariff's "Professional Approach to the Management of Waqf Properties in India", (S.No.77); Syed Khalid Rashid's "What Should a Model Waqf Legislation for India and Pakistan Should Contain", (S.No.82) in which he drafts a model waqf legislation and discusses the rationale behind the changes he was suggesting; his paper on "Hanafi Definition of Waqf in the Light of Certain Existing Legal Realities in India" (S.No.84); U.B. Singh's "Factors Affecting the Administration of Waqfs and Managing the Waqf Properties" (S.No.86), are also worthy of attention.

#### **A.v. Ph.D Thesis**

The only other PhD thesis on waqf (apart from Syed Khalid Rashid's thesis, approved in 1971) produced in India during the last 30 years is Ghulam Imtiyaz Ahmad's "Management of Waqf Properties in West Bengal: A Case Study" 1998 (S.No.108). It is essentially an analysis of the statutory provisions governing *awqaf* in the State of West Bengal. There is no coverage of the role of waqf as an instrument for socio-economic and educational upliftment of Muslims. The background in which the Bengal Waqf Act 1934 was enacted by the British is not satisfactorily covered.

#### **A.vi. Master's Dissertations**

The only Master's dissertation on waqf is Syed Sadiq Husain Abdi's "The Waqf Act 1995: Reformatory or De-Reformatory - A Critique", submitted to the Faculty of Law, A.M.U. Aligarh in 2000. As the title suggests, it is essentially a critical examination of the provisions of the Waqf Act 1995.

The fact that only one master's dissertation on waqf has been produced in the past thirty years is a serious reflection on the academic inactivity of Muslim academics in at least three major Muslim educational Institutions: Aligarh, Jami'a Millia and Jami'a Hamdard. A more thorough search elsewhere might probably reveal a few more dissertations.

#### **A.vii. Reports**

The report of the High Level Committee submitted to the Prime Minister of India in 2006 carries a chapter on waqf: "Leveraging Community Initiatives: The Case of Wakfs" (S. No. 110). There is valuable data regarding the number, valuation and income of waqf properties in India, and a critical evaluation of the

performance of the existing statutory institutions administering *awqaf* in India. Important recommendations made by the committee include the recommendation to establish a Waqf Development Corporation for India and to provide it with the seed money of Rs. 500 crores (Rs 5000 million) (US\$ 120 million)

The other important Report submitted to the Govt. of India in 1976 is Burney Committee Report (S. No. 111) which recommended the handing over of hundreds of valuable waqf properties in New Delhi, presently under Government's occupation, back to the Muslim community. Many waqf properties were compulsorily acquired in 1911 during the British rule for the purpose of building Viceroy's Lodge, Parliament, various Ministries, India Gate and other government buildings and the city of in New Delhi, itself. Hundreds of such waqf properties on which no construction was done are lying as such under Governmental control. Hundreds of mosques which are included in these properties were recommended by the Government appointed Committee (Popularity Known as Burney Committee) to be given back to the Muslims. The matter is still pending. The valuation of these properties runs into billions. A majority of these properties are mosques and *dargahs*. Muslims need these mosques to offer prayers and do not find any wisdom in keeping them locked by the Government.

An important recommendation in the form of suggested amendments to the Waqf Act 1995 was submitted to the Govt. of India in 1997 by the Muslim Personal Law Board (of India) (S.No.113). It is a very comprehensive document which the Government has yet to make use of, as no amendments have yet been made to the 1995 Act.

A number of situation reports prepared by the Central Waqf Council, Govt. of India (S. No<sup>s</sup>. 115 to 122) regarding its own working and the development of waqf properties in India furnish very useful factual data about the number of *awqaf* developed (S. No<sup>s</sup>. 119 & 121), total number of developmental projects it has approved (S. No.116), and information about the Council itself (S. No. 118).

#### **A.viii. Articles in Magazines/Newspapers**

Eight articles (out of a total of 16) published in magazines/newspapers, were published in *Radiance Views Weekly*, a well-known Muslim weekly published for the last 45 years by the Board of Islamic Publications, New Delhi. As many as 4 out of these 8 are written by Syed Khalid Rashid. These articles include "Waqf Administration in India from 1947 to 1997: An Appraisal and Critique" (S. No. 95), "Wakfs, Indian Muslims and Governmental Policies" (S. No. 93), and "How to Streamline *Awqaf* in India" (S. No. 97). Inamul Haq's "Indian Waqf Service

Mooted to Protect Waqf Properties” (S. No. 87) and Jamal Safi’s “Imams vs. Waqfs: Legal Wrangle on Cards” (S. No. 88) are two other important articles.

In three of the annual surveys of the judicial decisions of the Indian Supreme Court/High Courts for 1997-98, 1999, and 2000, published by the Indian Law Institute, New Delhi, (S. No.89, 90, 91) while covering Muslim Law cases, also covered cases on waqf, and give an insight into the judicial view-point on various waqf matters. An important write-up on “Supreme Court Grants Imams Right to a Minimum Wage”, (S. No. 102) published in a national daily, touches upon an important issue, which is still hanging unresolved.

## **B. PAKISTAN<sup>(\*)</sup>**

### **B.i. Books**

In none of the 5 books published in Pakistan during the last 30 years, there is any discussion on any contemporary issue relating to *awqaf*. All the books deal with the laws of waqf, either statutory or non-statutory.

### **B.ii. Part of Books**

Out of 7 'Part of Books', as many as 3 deal with the law of waqf, (S. No<sup>s</sup>.132, 135, 136) while only 3 cover non-legal subjects. For example Jamal Malik's "Change in Traditional Institutions: Waqf in Pakistan" (S. No. 130) is a study of waqf in a purely sociological perspective. This is a slightly re-written version of an article by the same author published one year earlier (S. No. 131). Both these two should therefore be counted as one. Similarly, Tanzil ur Rahman's six volume compilation in Urdu on Muslim Law, contains a long chapter of 110 pages on waqf in volume 2 (S. No. 136). This is condensed into 72 pages and translated into English by the author in his two volumes long "Code of Muslim Personal Law" (S. No. 135). Both of these two should therefore be counted as one. So, in fact, there are only 5 'Parts of Books' instead of 7

### **B.iii. Published Paper**

Out of 8 papers, three deal with the origin and history of waqf (S. No<sup>s</sup>. 138, 139, 140), and one with classification and condition of waqf (S. No. 142). Some fresh ideas are presented in Hafiz Hasan Madani's "*Masajid Mein Qabron Ki Taamir*" (construction of graves in mosques) (S. No. 137), S. M. Imamuddin's "Mosque As a Centre of Education in the Early Middle Ages" (S. No. 144) and

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(\*) Bibliography of material from Pakistan may be found in Appendix-2 to this paper. I have supplied translation of material in Urdu into English.

Ziauddin Ahmad's "Waqf As an Instrument of Perpetuity: An Assessment" (S. No. 144). Notice may also be taken of a write-up on 'Shrines in Punjab and Sindh' (S. No. 143), which is a sociological study.

#### **B.iv. Unpublished Seminar Papers**

Only four papers could be traced. Due to disturbed conditions in the whole of Pakistan in the wake of Benazir Bhutto's assassination, this author could not visit the library of the Hamdard University, Karachi where there is a file containing papers presented in an International Conference on waqf organized by this University in 1989. Similarly the Peshawar University Library could not be visited.

(Justice Retired) Khali Iur Rahman Khan's paper on "*Awqaf* Laws in the South Asia and South-East Asia: A Comparative Study" (S. No. 145) and Muhammad Hasan Rizvi's "*Awqaf* Experience in Pakistan" (S. No.147), are the two important papers. Both have been written by very experienced persons and are detailed as well as accurate. In Mohd. Manzoor Alam's "The Viability of Establishing a Regional *Awqaf* Organization in Asia" (S. No. 146) there is a discussion on the possible establishment of a waqf body for SARAC countries. However, in view of the sad experience with the non-working of the World Waqf Foundation, establishment of a Regional Waqf Body does not appear to be a sound idea, particularly when the governments involved are of Muslim minority countries.

#### **B.v. Reports**

There are four reports (S. No<sup>s</sup>.149 to 152) issued by the Council of Islamic Ideology Pakistan. All relate to certain legal issues, not connected with the development of waqf properties. However, the one which deals with the management of waqf properties in the light of *shariāh* provisions deserves attention (S. No.150). The Council may play a more active role in matters of waqf by reviewing the functioning of the Provincial Waqf Administrators, particularly in the area of development of waqf properties, survey of *awqaf* and updating the relevant law. It is also necessary to review the nationalization of *awqaf* in Pakistan with a view to determine the extent and desirability of the involvement of Muslim masses in waqf affairs.

## C. BANGLADESH<sup>(\*)</sup>

### C.i. Introductory Remarks

Although Bangladeshi Muslims have had a rich tradition of creating waqf long before Bangladesh became independent, the available literature on *awqaf* in Bangladesh clearly indicate that this sector received very little serious academic attention in the first decade after independence, gained in 1971. This author has not come across any academic writing on *awqaf* in Bangladesh written between 1971 and 1982. The bibliography of waqf literature published in 2003, by Abdul Azim Islahi of the King AbdulAziz University mentions only 6 references on *awqaf* in Bangladesh published between 1986 and 2002.

Now, as many as 41 writings on waqf published between 1982 and 2007 are being listed in this paper. This shows that during the past thirty six years of independence, more research on *awqaf* in Bangladesh was done in the last decade compared with the first twenty years after independence. In reviewing the literature on *awqaf* in Bangladesh, following features have been noticed.

### C.ii. Historical Evolution of *Awqaf* in Bangladesh

The available literature on waqf, especially the only Ph.D. thesis on waqf, shows that the history of waqf in Bangladesh is discussed in great detail, covering the entire British period, the period of the Muslim emperors, the past role of *kazis* and the *mutawallis*, etc. Cases decided under the various Waqf Acts; events leading to enactment of the Bengal Wakfs Act 1934 and the Waqfs Ordinance 1962 deal with this history.

### C.iii. Census Reports

The two statistical reports (S. No<sup>s</sup>.172&175) published by Bangladesh Bureau of Statistics have unearthed a treasure trove of national waqf assets. The first report, published in 1983 was on the census of mosques, which found out that there were 131,641 mosques in Bangladesh out of which 123,006 mosques have in their favour dedicated waqf properties. The other report published by the Bureau in 1987 was on the '*Census of Waqf Estates 1986*'. This is a report on the first ever complete census of *waqf* estates conducted by the Government throughout the country during January and February, 1986. There are 150,593

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(\*) Bibliography of material from Bangladesh may be found in Appendix-3 to this paper. Translation from Bengali to English has been done by Mr. Fazlul Karim, who also helped in the preparation of notes.

*waqf* estates in Bangladesh. Out of these 97,046 are registered, 45,607 are non-registered and the rest 7,940 are *waqf* by user.

In conducting the '*Census of Waqf Estates 1986*' (S. No.173), the whole country was divided into 21 regions, 61 zilas (Districts) and 2,021 zones. Zonal officers were appointed as enumerators who conducted the enumeration of the *waqf* estates. Supervisory officers were posted in all the zilas and a senior officer was deputed in each region for coordinating the census work. Field enumeration was done through distribution of questionnaires that were completed by the targeted respondents. The report highlights various details of *waqf* estates, including their problems and prospects.

#### **C.iv. Interpretation of the Existing Laws**

Five out of ten books produced during the last 30 years deal purely with the law of *waqf* in Bangladesh, mainly with reference to the Waqf Ordinance 1962. (S.No<sup>s</sup>.153, 155, 156, 160, 161) These books are published locally and focus primarily on the interpretation of the provisions of the Waqf Ordinance and the relevant case law in the form of judicial decisions of the various courts in Bangladesh and also India and Pakistan. These are the law books written in the traditional style, that is, statutory law explained with the help of case law.

#### **C.v. Emphasis on the Need for New Legislation and Manpower**

The available literature on *waqf* generally underlines the necessity for further legislation on *awqaf* in Bangladesh, because the existing laws are less than satisfactory. The revival of *awqaf* sector is to be emphasized. Based on the available data, a fact which emerges is that the whole of *waqf* administration in Bangladesh is run by just 98 officers. Which means there is insufficient staff to handle more than 150,000 *awqaf* in the country.

#### **C.vi. Promotion of Cash Waqf and Support for Modern Approach**

The *waqf* literature under review also underlines the importance of cash *waqf* (S. No<sup>s</sup>.159, 166) and outlines strategies to finance small and medium scale enterprises related to *awqaf* and assign social responsibility to *waqf* institutions. Islamic Development Bank (IDB) has published two books of which one is authored by M.A.Mannan, a Bangladeshi economist who discusses the Structural Adjustment of Islamic Voluntary Sector With Special Reference to *Awqaf* in Bangladesh. (S. No.158) The other book authored by Siddiq Abdelmageed Salih (S. No.162) focuses on the challenges of poverty alleviation in IDB Member Countries of which Bangladesh is a member. Cash Waqf has been discussed in M.A. Mannan's second book '*Cash Waqf*' with Special Reference to the Social Investment Bank's issuance of Cash Waqf Certificates (S. No.159).

### **C.vii. Highlighting the Mismanagement and Administrative Irregularities**

The daily newspapers as well as weekly and fortnightly news magazines have widely reported instances of mismanagement, illegal occupation of waqf properties and various irregularities in connection with *awqaf*, (S. No<sup>s</sup>.182&187)

### **C.viii. Promotion of Philanthropy**

Some of the books and articles have promoted philanthropy. For instance, Professor Nurul Islam's book, *Hakim Mohamed Said and Hamdard Bangladesh*, (S. No.157) highlights the contributions of Hakim Mohamed Said and Hamdard Bangladesh in the field of philanthropy generally and in Bangladesh particularly.

### **C.ix. Poverty Alleviation**

Poverty alleviation is one of the core objectives of *awqaf*. The waqf literature highlights the role of waqf in poverty alleviation, particularly in a developing nation like Bangladesh. (S. No<sup>s</sup>.162, 165, 170, 176) Attempts have been made to define poverty and to suggest some ways to make *awqaf* more effective in poverty alleviation.

### **C.x. Underlining the Importance of Growth of Nonprofit Sector**

In a majority of waqf literature under review, development of waqf properties in Bangladesh is discussed so that the income so generated can support programs in education, health and social welfare.

### **C.xi. Translation of Classical Literature on Waqf into Bengali**

Translation of *Fatawa-e Alamgiriyya* into Bengali language (S. No.164) by the Islamic Foundation of Bangladesh is a big achievement. It has an elaborate chapter on waqf in its Vol. 4. It is an important addition to the literature on waqf in the local language, even though it covers only the *fiqh*' issues of waqf.

## **D. MALAYSIA<sup>(\*)</sup>**

### **D.i. Books**

Out of 8 books published on waqf in Malaysia, the one which really deals with the current problems is Siti Mashitoh Mahamood's *Waqf in Malaysia: Legal and Administrative Perspective* (S. No.199). It is published in 2006 and includes

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(\*) Bibliography of material from Malaysia may be found in Appendix-4 to this paper. Translation of material from Bahasa Malaysia to English has been done by Mr. Abdur Rashid, a Ph.D scholar in this faculty.



developments upto 2005. Based on the author's Ph.D. thesis, it is written with care and patience. Her other two books (S. No<sup>s</sup>.200&201) are also noteworthy, but both are in Bahasa Malaysia.

The book of Mohd. Zain Othman (S. No.197) is a mere rendering into English a gist of the law of waqf as contained in the classical books of *fiqh* of the four Sunni schools. No reference is made to any real legal or administrative developments in the country. The other books are of topical interest, but are all in Bahasa Malaysia.

#### **D.ii. Parts of Books**

There are just 4 entries under this category. The most important is Abdul Majid Mackeen's "Islamic Fiscal and Property Laws in Malaysia" (S. No.202) which reviews the statutory and case law on waqf in an evaluative manner.

Syed Othman Alhabshi's "Waqf Management in Malaysia" (S. No.205) gives a critical evaluation of the existing condition of *awqaf* and their administration in Malaysia. It is written with care and concern. Prof. Dr. Alhabshi is known for his good insight in waqf affairs in Malaysia.

#### **D.iii. Published Papers**

Out of a total of 12 published papers, 3 are by Prof. Ahmad Ibrahim (S. No<sup>s</sup>. 207, 208&209). All three deal with issues of topical interest, which were the topic of heated debate at the time when written. The papers by Pawancheek Merican a senior lawyer of the Malaysian Bar, (S. No<sup>s</sup>.212&213) is an evaluative assessment of the Selangor Waqf Enactment 1999. Being a lawyer, Merican knows what he is talking about, while discussing legal infirmities.

Abul Hasan M. Sadeq's paper (S. No.206) dealing with waqf and poverty alleviation is a good piece of writing. As an economist, he knows about poverty alleviation better than a lawyer. The 3 papers by Siti Mashithoh (S. No<sup>s</sup>.214, 215&216) are good studies of waqf matters in Malaysia, but are all in local language-Bahasa Malaysia.

#### **D.iv. Ph.D Theses**

An old Ph.D. thesis (of 1970) on waqf laws (S. No.217) approved 37 years ago is included for its historical value. It was the first in Malaysia. But unfortunately it merely consists of an abridged narration of the law in English of waqf in classical *fiqh* books in Arabic. It is later on published in book form (See, S. No.197) in 1982.



The other Ph.D. thesis approved in 2000 is by Siti Mashitoh. It also has been published as a book in November, 2006 in a slightly revised form (See, S. No.199). This thesis represents the modern form of enquiry in the area of waqf, and has a dominant empirical component.

#### **D.v. Master's Dissertations:**

As many as 21 Master's Dissertations on various aspects of waqf - economic, administrative and management, accounting, legal and developmental - have been the subjects of these studies. These are not very detailed studies, being submitted in partial fulfillment of the requirements of the Master's degree in law, economics or management, yet they represent a new academic thrust towards researching those aspects of waqf which have contemporary relevance and application. Gone are the days when academic scholarship wholly revolved around pure *fiqhi* issues and hypothetical propositions.

Notable in these dissertations are the ones like that of Burhanuddin Luqman's "The Investment of Religious Endowment Funds in Malaysia and Islamic Jurisprudence" (in Arabic) (S. No.222), Hisham Hj. Yaacob's "Waqf Accounting in Malaysian State Islamic Religious Institutions" (S. No.225), I'dad Azman bin Muhammad Nur's (in Arabic) "Investment of Waqf Funds: A Study of Cash Waqf in Selangor State" (S. No.15), Noraini Mohd. Top's "Mobilization of Waqf Resources in Selangor State" (in Bahasa Malaysia) (S. No.228), etc.

#### **D.vi. Seminar Papers (Unpublished)**

There are in all 12 papers under this category. Notable among them are: Izham Yusoff's "Waqf: Potential in the Malaysian Context" (S. No.240), Syed Othman Alhabshi's "Case Study: Malaysia" (S. No.245), Syed Khalid Rashid's "Certain Problems in the Administration of *Awqaf* and What Future Holds for Waqf" (S. No.244), and Sami Salahat's "General Facts About the Endowment Funds System in Malaysia" (S. No.242).

A few more seminars on waqf were held in Malaysia, but unfortunately the papers presented in these could not be obtained for inclusion in this paper.

#### **D.vii. Newspaper Articles/Reports**

A total of 8 listings are there under this head. It is a matter of great satisfaction that all of these 8 write-ups, emphasises on the development of waqf properties. The first write-up is by Rashid Bakar, who in his "Wakaf Vital Weapon in the Hands of Muslims" (S. No.255) underlines the importance of developing waqf properties. Two other write-ups on the same lines are Syed

Khalid Rashid's "Towards Better Waqf Land Administration in Malaysia" (S. No.257), which was reprinted in India under the same title (S. No.258).

A few important newspaper reports are "Waqf Development Project: Pioneering Waqf Financing" (S. No.259), Fuad Yahya's "Wakaf Assets to Become Economic Force" (S. No.254) and Anna Maria Samsuddin's "Tabung Haji to Build RM 150 million building (on Waqf land)" (S. No.252) and "Council Told (by the Sultan of Kedah) to Speed-up Wakaf Land Development", (S. No.253).

#### **D.viii. Reports/Recommendation**

There are 2 Reports and a recommendation made at a conference. One of the two reports is about the set-up and working of the Waqf Development Corporation (S. No.261) which was established with much hope but could not fulfill them. The recommendation relating to "Harmonization of the Malaysian Land Code 1965 and the Shariah Law of Waqf: Recommendations for Amendments" (S.No.262) is noteworthy.

### **E. Indonesia<sup>(\*)</sup>**

#### **E.i. Books**

All the books on waqf except one (S.No.268) are in Bahasa Indonesia. It is indeed a serious limiting factor for those who do not know Bahasa Indonesia that not many books have been written in English.

As is the case in other countries under study, a good number of books are on the law of waqf, both classical and statutory. A few important ones are briefly examined here.

Abdul Ghofur Anshori's book (S. No.263) contains a reasonably detailed discourse on the law and practice of waqf in Indonesia. He also discusses the concept of waqf land in Indonesia and also concept of waqf. The book, however, fails to give a critical evaluation of waqf laws in Indonesia.

A better analysis of the law has been made by Abdul Halim in his brief but lucidly written book. (S.No.263) but the full texts of waqf laws from 1960 to 1995 are there in Adijani Al Alabij's book (S.No.267). Another worth mentioning book on laws is of Faisal Hag and Saiful Anam (S.No.269) which discusses the

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(\*) Bibliography of material from Indonesia may be found in Appendix-5 to this paper. Translation of material from Bahasa Indonesia to English has been done by Mr. Fahmi Nasir, who also helped in the preparation of notes.

effect of the Govt. Regulation No.28 of year 1977 on Waqf Land and Right of Ownership.

The Govt. Department of Religious Affairs, Jakarta has published six books or booklets (S. No<sup>s</sup>.271, 273, 279, 280, 281, 282) on waqf with a view to increase public awareness in waqf. For instance, the 311 pages long book on Law No.41 of 2004 on Waqf (S. No.281) traces the history of waqf legislation in Indonesia, its rationale, and its political background.

#### **E.i.a. Cash Waqf**

A useful book on cash waqf in Indonesia is Mustafa Edwin Nasution and Uswatun Hasanah's *Cash Waqf: Islamic Financial Inovation* (2005) (S. No. 278). It is basically the edited proceedings of a national seminar on cash waqf. The first part deals with the legality of this type of waqf, while the second part contains a discussion on the effectiveness of cash waqf in increasing social welfare.

#### **E.i.b. Problems Affecting Awqaf**

A number of books (S. No<sup>s</sup>.275, 283, 284) have highlighted the problems confronting *awqaf* in Indonesia. Iman Suhadi's book (S. No.275) is the earliest book on waqf written in Indonesia. It has raised various issues concerning *awqaf*, in particular, the waqf lands. He suggests waqf laws to improve the waqf administration. Similarly, Taufiq Hamani's book on *Waqf Land Within the Political Perspective of Land Law in Indonesia* (2003), (S. No.284) discusses the effect of land law on waqf lands in Indonesia. He also looks at ways of developing waqf lands.

#### **E.i.c. Studies on Philanthropy**

Five of the books (S. No<sup>s</sup>.266, 268, 274, 276&285) look into *awqaf* matters in Indonesia in the context of Islamic philanthropy. In Chaider S. Bamualim's *Islamic Philanthropy and Social Development in Contemporary Indonesia* (2006) (S. No.268), there is an examination of ten Islamic philanthropy institutions in Indonesia. Out of these, three are waqf agencies. Their influence and capability in shaping Islamic philanthropy are examined. The book reveals that most of the existing institutions are incapable of winning public confidence. However, in case of waqf there in some success stories also.

In Idris Toha's *Donation for All-discourse and Practice of Islamic Philanthropy* (2003) (S. No.275) the author identifies *waqf*, *zakat*, *sadaqa*, and *hiba* as pillars of Islamic philanthropy. The successful operation in Indonesia of the Gontor Islamic Boarding School and Muhammadiyah Organization, based on *zakat* and waqf, could be used for more broad based social welfare schemes.

Tuti A. Najib and Hamid Abidin in their book *Towards a Charitable Nation: Theory and Practice of Social Generosity in Indonesia* (2004) (S. No.286), discovers that waqf in Indonesia is closely related to traditional forms of religious expressions, like building of mosques, grave-yards, and madrasahs. Only a few *awqaf* are of general charitable objects. The author tries to identify the reasons behind this phenomenon and provides possible way outs.

Irfan Abubakar and Chaider S. Bamualim's book-*Islamic Philanthropy and Social Justice* (2006) (S. No.276) that looks at waqf in the broader perspective of Islamic philanthropy and is indeed a useful study.

### **E.ii. Papers (Published)**

Out of the 5 papers, 3 are on Islamic philanthropy generally (S. No<sup>s</sup>.287, 288 & 291) and the remaining two (S. No<sup>s</sup>.289, 290) deal with cash waqf. Azyumardi Azra and Amelia Fauzia (S. No<sup>s</sup>.287 and 288) are known for their association with various research projects dealing with Islamic philanthropy in Indonesia.

The paper by Amelia Fauzia (S. No.287), for instance, argues that philanthropy practices differ among Traditionalist, Modernist and Islamic Muslims, influenced by socio-political circumstance and degree of modernism of the society at any given time. The paper focuses on the philanthropic practices of three organization / institutions representing the above mentioned three groups: Pesantren Al-Hamidiyah Depok (representing the Traditionists), Badan Pelaksana Urusan Zakat Muahmmaddiyyah Kendal (representing the Modernists) and Lembaga Waqf Zakat Salman (representing the Islamists). This paper gives a good insight into the mind of an Indonesian Muslim philanthropist.

The two papers on cash waqf (S. No<sup>s</sup>.289, 290) detail the positive role which such *awqaf* may play in modern cash rich society where cash rather than real property is more readily available to be conveniently made waqf. Views against cash waqf are based on the historic philosophy of those days when Islamic banking and finance were un-known and fear of *riba* was an over-powering factor which coupled with the lack of investment facilities produced anti cash waqf mind set.

### **E.iii. Unpublished Papers**

Both the unpublished papers were presented at international seminars on waqf held in Singapore and Jakarta.

Dodik and Miranti's paper (S. No.292) examines the problems in the way of collection of waqf funds in Indonesia by several voluntary institutions. In the

other paper by Uswatun Hasanah (S. No.293), a cursory comparison is made between waqf administration in Indonesia and Egypt, Turkey, Syria, Sudan and Bangladesh. She highlights the sorry state of waqf affairs in Indonesia and pleads for reforms.

#### **E.iv. Ph.D Thesis (Unpublished)**

The only Ph.D thesis on waqf in Indonesia is Uswatun Hasanah's "*Role of Waqf in Achieving Social Welfare: A Study of Waqf Administration in South Jakarta*" approved in 1997. (S. No.296) She compares waqf administration in Indonesia with certain countries in the Middle East and Sri Lanka, and extends the findings to discuss *awqaf* in South Jakarta. The less than satisfactory legal analysis of the various waqf laws referred to by her is the weakness of this thesis.

#### **E.v. Part of Book**

Rifyal Kabah's "Waqf in the Perspective of National Law" (S. No.295) basically argues that since waqf is not adequately covered in the National Law, hence it fails to achieve its objectives and potential Proper legislative coverage is pleaded for. The other paper (S. No.294) relates to cash waqf and pleads for the embracing of this useful idea.

#### **E.vi. Seminar Proceedings**

There are in all four proceedings of seminar that have been published. Two of the seminars exclusively focused on waqf (S. No<sup>s</sup>.298, 299), while the other two dealt with Islamic philanthropy (S. No<sup>s</sup>.297, 300). The workshop on the economic empowerment of the *ummah* through the waqf development, organized in 2002 by the Department of Religious Affairs, *Batam* is important for the emphasis, it gives to the development of waqf properties (S. No.298). Papers were presented not only on the development, but also on management, investment and on effective use of cash waqf.

#### **E.vii. Reports**

All these 5 'guidelines' and 'training modules' have been prepared and published by the Department of Religious Affairs, Indonesia between 1990 and 2004 (S. No<sup>s</sup>.301 to 305).

The 'Guidelines for Certification of Waqf Land' (S. No.301) outlines problems that may arise during the course of certification of waqf land for purpose of registration and ways to overcome them.

The report on the 'Data of Productive and Strategic Awqaf in Indonesia' (S. No.302) contains on inventory of waqf assets in the country prepared on the basis

of short term, middle term and long term developmental potential of *awqaf*. 'Guidelines For Managing and Developing *Awqaf*' (S. No.304) contain useful hints for managing and developing waqf properties. These Guidelines is part of government's programme to stimulate the development of waqf properties, including cash waqf.

'The Training Module for Waqf Management' (S. No.303) and 'The System of Supervising Nazirs' (S. No.305) are very useful tools for the training connected with the management of *awqaf*. The Department has shown great initiative in publishing these guidelines and training manuals.