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**ANALYZING THE CONCEPT OF WAKF AND THE PSYCHOLOGY UNDERLYING
BEHIND THE DONATING BEHAVIOUR**

BY: SWATI PRAGYAN SAHOO

Introduction

Waqf (or habs) is an Arabic word, which means preventing something from movement. In Shariah, it refers to the act of making a property invulnerable to any disposition that leads to transfer of ownership and donating the usufruct of that property to beneficiaries.¹ According to the school of Abu Hanifah, which governs the conduct of most Sunnis in India, it signifies the appropriation of a specific object in such a way that the appropriator's right in it shall still continue, and the advantage thereof will be applied to charitable purposes or other good objects.² Both the Sunnah (Prophetic Traditions), as well as the *Ijma'a* (Consensus of Muslim jurists), have been emphasized by Waqf. Waqf is a binding undertaking; thus, to declare a property as Waqf would automatically strip its donor owner of the right of possession.

Wakf is an important Islamic institution that has been inherited from the ancestors and that holds the potential for the economic and social reconstruction of the society. The assets or properties are not equally divided among the people and neither the individuals do possess property, wealth, and luxury in equality with the other members of the society. This unequal economic status of the people in the society has created a social barrier where the rich belong to the affluent classes while the poor are the impoverished and deprived classes. For the people of the economically backward classes, who have no means of meeting basic needs, no means of saving, and no ability to earn, Islam has proposed voluntary and compulsory donations [Zakat, wakf, sadqa] to address the needs of the various degrees of the poor, from the impoverished to the less poor, and also to cause the distribution of wealth which leads to fair distribution, which is also another way of reducing poverty. The Muslim culture includes the creation of Wakf as a part of life that helps in the contribution to the service of people. The establishment of the institutions of Wakfs aims to eradicate poverty and uplift the economic condition of the deprived class of people. Wakf plays an essential part in the formulation of civilization where the individuals behave rationally and have moral character. One of the crucial factors behind the cultural and scientific expansion and prosperity of Islamic civilization is the institution of Wakf. It also forms a fundamental foundation for public institutions.

Wakfs or the Islamic Endowment framework aims to escalate the status of the poor

¹ Mufti Fahad Ahmed Qureshi, *Development of WAQF: A History from Concept to Institution*, RESEARCHGATE, (Sept. 2007), https://www.researchgate.net/publication/325870127_Development_of_WAQF_A_History_from_Concept_to_Institution.

² Sk. Ehtesham Uddin Ahmad, *Family 'Wakf': Colonial Law and 'Modernist' Sharia*, 71 INDIAN HISTORY CONGRESS 745, 746 (2010-2011).

people by eradicating poverty by the process of funding to the economically deprived communities. Wakf forms a significant part of public service in Islam religion. Islam communities consider Wakf as a mere charity but the donation of Wakf property has bought a remarkable impact on the alleviation of poverty within the Islam community. The paper aims to analyse the concept of “Wakf” in Islamic Law. Further, it focuses on the various aspects of Wakf properties in India. Essentially, the paper aims to study and analyse the psychology of the people behind the creation of Wakf and the psychology of the people involved in the donation of Wakfs for the upliftment of Islam communities in India as well as across the globe. The research paper will elucidate the role of Wakf property in the alleviation of poverty and the rise in Islamic economies by aiding to eradicate poverty. Lastly, the paper also raises the question of whether the Wakf property is donated and confined only for the cause of the Islam community and not for other religious communities? And if so, why there is such a restriction regarding the funding of the Wakf property, and can such restrictions be extended to other communities in any circumstance. Lastly, it will critically analyse the restriction imposed on such an extension.

CHAPTER 1: ANALYSIS OF THE CONCEPT OF ISLAMIC ENDOWMENT OR “WAKF” UNDER ISLAM

1.1.DEFINITION OF WAKFS UNDER SEVERAL LAWS

Wakf is derived from an Arabic word that means ‘to detain’ or to ‘tie-up’ or ‘to hold’. Earlier, the literal meaning of the term ‘Wakf’ was considered to be ‘detention’, and there existed confusion regarding the vesting of ownership of the Wakf property. Abu Hanifa, defined Wakf as “*the tying up of the substance of a property in the ownership of the Wakf and the devotion of the usufruct, amounting to an arya, or commodate loan, for some charitable purpose*”.³ According to the definition of the Muslim Jurist, Abu Hanifa, there are 3 essential elements of Wakf:

1. Ownership of the property vests with the God
2. Ownership of Wakif/founder is extinguished
3. The cause of the property shall be for the benefit of mankind.

Wakf in its literal sense means the financial charitable act where the movable or immovable property is donated for family or public needs. Properties once created for Wakf are restrained from getting gifted, or sold, or inherited by someone.

³ PARAS DIWAN ET AL., FAMILY LAW 578 (11th edn 2018).

The Wakf Act, 1954 defines Wakf as, “*Wakf means the permanent dedication by a person professing the Islam, of any movable or immovable property for any purpose recognized by Muslim Law as religious, pious, or charitable.*”⁴ Section 2 of the Mussalman Waqf Validating Act, 1913 defines Wakf as “the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by Musalman Law as religious, pious or charitable.”⁵ Under **Shia law**, the *Sharia-ul-Islam* defines Wakf as “*A contract, the fruit or effect of which is to tie up the original of a thing and to leave its usufruct free*”.⁶ The definition of wakf under Shia law doesn’t specify with whom the ownership of the property vests. It does contain only 2 essentials in accordance with its definition, i.e., the subject matter of Wakf and usufruct of the property for mankind’s benefit.

In the case of *M Kazim vs A Asghar Ali*⁷, the Patna HC held that the legal meaning of Wakf is the commitment of a particular property for a holy purpose or the emancipation of a pious purpose. Moreover, in *Kassimiah charities v. Secy., Madras State Waqf Board*⁸, the court pronounced that the meaning of Wakf is the detention of the property in the hands of God or the ownership vests with God and the profits of the same shall be for the benefit of the servants of God. The purpose of dedication of the property must either be for pious or charitable reasons.

Asaf A.A. Fyzee, in Muhammadan law, states that the actual purpose of the creation of Wakf is for achieving merit before Lord. The meaning of Wakf is not possible to be explained through a single definition as it contains a myriad of subject matter. At times, it is considered as a charitable trust or a will or endowment that is a donation for a religious or charitable purpose. And this property is reserved perpetually and is restricted from being inherited, or being used as a gift, sale, or for any other purpose.

1.2.KINDS OF WAKFS

1. **Public Wakf:** The creation of public wakfs is dedicated to the cause of general public welfare or charitable purpose or for any religious purpose.
2. **Private Wakf/Family Wakf:** The wakfs were created by the Muslim for bestowing it to his family and his descendants. Family or Private Wakf is also called ‘*Waqf-ulal-Aulad*’ as it is created for the Muslim’s *Aulad*. The Prophet is reported to have said, “*when a Muslim bestows on his family any kindred, hoping for a reward in the next world it becomes alms, although he has not given to the poor, but to his family and children.*”⁹

⁴ The Wakf Act, 1954, No. 29, Acts of Parliament, 1954 (India).

⁵ The Mussalman Wakf Validating Act, 1913, § 2, No. 6, Acts of Imperial Legislature, 1913 (India).

⁶ DIWAN, *supra* note 3, at 579.

⁷ *M Kazim v. A Asghar Ali*, AIR 1932 11 Patna 238.

⁸ *Kassimiah charities v. Secy., Madras State Waqf Board*, AIR 1964 Mad 18.

⁹ DIWAN, *supra* note 3, at 581.

In the case of *Abul Fata Md. V. Russomony Dhur Chowdhary*¹⁰, the PC held Family Wakfs as invalid as it was against the public policy. Family Wakfs empowers the Muslim to serve his family and his descendants as well as his kindreds. So, the Court held that such family wakfs are invalid as it allows the Muslim man to reserve the property and dedicate it for the upliftment of his family and rather not allowing him to tie up his corpus for a charitable purpose. This decision of the Court in the aforementioned case led to disapproval and objection from the Muslim community. Ultimately, Family wakfs were held valid with the passing of the Mussalman Wakf Validating Act, 1913¹¹.

1.2.1. WAKFS DIFFERENTIATED BASED ON THEIR PURPOSE

1. **Wakf Ahli:** Essentially, such wakfs are designed to address the needs and requirements of the children and the descendants of the Wakifs. However, the beneficiaries of the Wakf are not empowered with the rights to dispose of or sell or transfer the subject matter of the Wakf.
2. **Wakf Khayri:** *Wakf Khayri* are dedicated to philanthropic and charitable causes and the beneficiaries are the people from the economically backward classes. Such Wakf property is financed to build mosques, schools, colleges, madrasas, universities, shelter homes, etc. Essentially, this is committed to alleviating the financially poor groups.
3. **Wakf Al-Sabil:** Such wakfs benefit the general public and it is quite similar to *Wakf Khayri*. But it is generally financed for the construction of public services such as water supplies, cemeteries, schools or mosques, etc.
4. **Wakf Al-Awaridh:** They are used as an ultimate option in case of any emergency. For this purpose, they are kept as a reserve and put to use when any unforeseen circumstance occurs that impacts the well-being or the livelihood of a community. Waqf can be dedicated to suit the specific needs of society, such as the supply of medicines to sick poor people who cannot afford them. It can also be financed for the upliftment of the utility services of any specific community or village.

1.2.2. WAKFS DIFFERENTIATED BASED ON THEIR OUTPUT NATURE

1. **Waqf-Istithmar:** They are formed for the use of the property for investments. These assets are handled in such a way that income is used for the construction and rehabilitation of the waqf properties.
2. **Waqf-Mubashar:** The funds nominated in such wakfs are dedicated to the cause of charity. Example: public utilities, schools, mosques, etc.

¹⁰ *Abul Fata Md. v. Russomony Dhur Chowdhary*, (1894) 22 IA 76.

¹¹ The Mussalman Wakf Validating Act, 1913, No. 6, Acts of Imperial Legislature, 1913 (India).

1.3.LEGAL CONSEQUENCES/ CHARACTERISTICS OF A WAKF

There are several unique characteristics or features of the Muslim endowment 'Wakf' and some of these are:

1. **Non- Transferable:** The ownership of the usufruct vests with the Almighty and hence, is non-transferable. On the completion of Wakf, the ownership is transferred from the *Wakif* and is vested in God. "*Property is God's acre*".¹² No one can claim ownership of the property after Wakf. The SC in *Md. Ismail vs Thakur Sabir Ali*¹³ held that also in *Wakf alal-aulad* the ownership of the wakf property vests in God and hence, the usufruct of the same can be utilized by the descendants.
2. **Irrevocable:** A wakf cannot be revoked after it is validly constituted. If conditions are stipulated in the *Wakfnama* that the *wakif* retains the right to revoke the wakf or the wakf shall be revoked on the occurrence of any certain event, then it is held void, as in the case of *Abdul Sattar v. Noorbai*¹⁴ It is impliedly assumed that since the ownership of the property vests in God, it is irrevocable as it's revocation would indicate the taking back of the property from God.
3. **Perpetual or Permanent:** It is an utmost central feature of the Wakf property. Wakf is not lent for any period rather it is dedicated permanently and cannot be taken back. So, a wakf is created for an unlimited period. Other than in the case of a family wakf, the ultimate advantage must be explicitly or indirectly preserved for the needy or some other reason of a lasting nature.¹⁵ In *Mst Peeran vs Hafiz Mohammad*¹⁶, where the construction of a house was on a construed land for a fixed span and it was held invalid by the Allahabad HC.
4. **Inalienable:** It is inalienable in the sense that once it is dedicated to God, it cannot be reverted. But it is not an absolute rule as the same is possible in certain cases. A *mutawalli* has the right to alienate the property and he may sell or lease the same only with due permission from the court. When a *wakfnama* permits the sale of wakf properties under such circumstances, *mutawalli* has the authority to alienate wakf properties in those situations.
5. **Unconditional and Absoluteness:** 'Permanent Dedication' is an important characteristic and it states that the dedication of the property shall be absolute and unconditional. Any wakf subjected to any conditions shall be held invalid. The SC in the case of *Muhammad*

¹² Abdul Rahim v. Narayan Arora, AIR 1932 PC 44: Abadi begum v. Bibi Kaniz, AIR 1927 PC 2.

¹³ Md. Ismail v. Thakur Sabir Ali, (1963) 1 SCR 20.

¹⁴ Abdul Sattar v. Noorbai, AIR 1933 Bom 87.

¹⁵ Rahlman vs. Bagridan, AIR 1936 Oudh 213.

¹⁶ Mst. Peeran W/O Abdul Razzaq vs Hafiz Mohammad Ishaq, AIR 1966 All 201.

*Arif v. State of Gujarat*¹⁷ held that if the creation of any Wakf depends on the occurrence of any future event, then the same shall be held *void ab initio*.

6. **Usufruct used for Charitable or Pious Purpose:** The usufruct of the property shall only be dedicated for a religious or charitable purpose. It shall be utilized for providing public services and facilities and uplifting the people of a particular community. In private wakfs, the same shall be dedicated to the family.
7. **Revocation of Testamentary Wakf:** A settlor can revoke a testamentary wakf any time before his death.¹⁸ As a testamentary wakf is like a bequest and hence it can be revoked by the settler as normal bequests are revoked. After the death of the settlor, the testamentary wakf comes into existence.
8. **Inspection of Wakf by Court:** The court has the authority to enquire regarding the proper functioning, use, and management of the property. The misuse of the wakf property is a criminal act under the Wakf Act, 1995.

CHAPTER 2: THE PSYCHOLOGY INVOLVED BEHIND THE DONATING BEHAVIOR

The concept of the “giving culture” in Islam with its dimensions, values, beliefs, and principles is believed to be for the fundamental growth of the Islam community. There are also a variety of ways to encourage behavioral donation and charity among Muslims. One of the most significant methods of charitable action in Islam is the development of Wakf. Scholars believe that the charitable attitude and the donating behavior of the people in Islam are influenced by a mixture of self-interest and altruism, or due to a sense of moral responsibility or achievement or personal faith, or might be due to public benefit, happiness, connection, religious beliefs or due to influence the new generations. There can be many established theories for the reasons behind such donating behavior of the people from the Islamic communities. Donations for charitable or religious purposes or the action of helping others can be connected with motivations or engraved empathy towards the people. People are taught regarding the benefits of donations and charity and also the religious teachings that associate our giving behavior with personal satisfaction, have an influence on the people. Social scientists have identified that charitable behavior benefits the giver psychologically via experiencing wellbeing from helping.¹⁹

The value of charitable donation is stated in the *Quran* many times and also in *Hadith* (Prophet’s sayings). The fundamental principle of Islam is Charity, i.e., everything that a man

¹⁷ Muhammad Arif v. State of Gujarat, AIR 1997 SC 105.

¹⁸ Md, Ahsan v. Umardaraz, ILR (1906) 28 All 633.

¹⁹Shadiya M. Baqutayan and Akbariah M. Mahdzir, *The psychology theories of waqf-giving behaviors*, 4(4) JOURNAL OF ECONOMIC AND SOCIAL THOUGHT 424,424 (2017).

has belonged to God and that the Muslim man has to divide his property and share with the deprived people. There can be different motives of the people from the Islamic community behind such donations and charity. But this psychology differs for each individual as they might be any motivational or fundamental factors for the same.

INDIVIDUAL BEHAVIOUR AND SOCIAL NORMS: Individual behavior is a logical process where elements such as attitude, norms, and behavioural control influence the individual.²⁰ The core philosophy for the actions of a Muslim is what the *Quran* relates to as *Al'Amal Assalih* or good acts. Doing good deeds and having the right faith go together with Islam. That is why the Quran always talks of true Muslims as "those who believe and do good deeds". Charity giving is among the best actions towards others, as well as the most important responsibilities in Islam and the greatest character of Muslims. Thus, a Muslim is consistently expected to work in charitable acts, and a clear Muslim tradition endorses donating to the poor.

RELIGIOUS BELIEFS: Giving charity is proof of faith, as those who are close to God, are always seeking his love through giving.²¹ Quran preaches that charity is related to faith and is affirmed through it. Charity is considered as a pious activity and a virtuous deed and this indicates a person's belief in Imam or one's faith. The more a man indulges in charity the more it showcases his faith towards Imam. So, there is substantial domination of religious and spiritual beliefs on the donation and charity behavior of the Muslims who involve in the "giving culture" to affirm their belief in their religion.

CULTURAL SIGNIFICANCE: The Islamic endowment Wakf holds great cultural significance in the Islam religion, as it helps in the creation of socially stable societies through the donations of the people through Wakf. Although Wakf cannot be stated as an obligatory practice in Islam, it is of great relevance as the Prophet asserts it as the greatest humanitarian deed that aims to help the needy and the poor people. It has been encouraged by the Prophet as a medium to get closer to Allah and hence, it is a highly promoted and prevailing cultural practice in Islam. The individual's intentions to be a part of the same are also formed through the culture.

SIGNIFICANCE OF RELIGIOUS EDUCATIONS: The impact of religious education on individuals' monetary donations can be viewed through its impact on general human

²⁰ Muhammad Kashif et al., *Charity donation: intentions and behaviour.*, 33(1) MARKETING INTELLIGENCE & PLANNING 90 (2015).

²¹ Shadiya Mohamed S Baqutayan, *The psychology of giving behavior in Islam*, 2(2) SOCIOLOGY INTERNATIONAL JOURNAL 88, 89 (2018).

behavior.²² According to Mokhlis²³ religious education is an important cultural factor to study because it is one of the most universal and influential social institutions impacting peoples' behavior at both individual and societal levels. Indeed, religion is positively related to altruistic values and pro-social behaviors.²⁴ Religious education is an effective medium of bringing together people and also helping others.

The psychology of the people is not only influenced by the factors that motivate them for a donation rather are also determined by the outcomes that they shall receive on following such behavior. The ideas behind these rely on the belief that one acquires blessings of God through such charity work. Sometimes, it gives them psychological comfort by helping the poor people and this can also be simultaneously related to happiness and joy. It also provides a man with self-satisfaction as they believe that when they help others they ultimately help themselves. Further, the Quran mentions that the reward gets doubled for a person who does charity.

CHAPTER 3: ROLE OF WAKF PROPERTY IN THE ALLEVIATION OF POVERTY AND RISE IN ISLAMIC ECONOMIES

Poverty is a global socio-economic crisis. Poverty is more than a lack of financial power, resources, and opportunities for basic needs such as food, shelter, and clothing. Islam's approach towards the alleviation of poverty is extensive and multi-dimensional. Charity in Islam is considered one of the important 5 pillars of faith which is obligatory for practicing Muslims and it aims at narrowing the social inequality and the differences in the society through the Islamic institutions of Wakf. The wakf property in India is governed by the Wakf Act, 1995. There has been significant development in the enactment of Wakf laws in India. The more recent enactments have been the Wakf Act 1954, Wakf Amendment Act 1984, Wakf Act, 1995, and now the Wakf Amendment Act 2013.²⁵

The main objective of waqf is to support the less privileged members of the society, poor and needy people, orphans and widows, wayfarers, students, etc. to improve their living standard, economic status, health and education, water supply, equitable redistribution of wealth, socio-economic welfare and to enhance their economic resources, economic opportunity, community participation empowerment, security social protection, social and other standards of their well-being, influence over their environment, and deprivation from other things that make a difference between truly living and merely living as well as to make

²² *Id.*

²³ *Id.* at 21.

²⁴ *Id.* at 21.

²⁵ Mohammed Obaidullah, *A Framework for Analysis of Islamic Endowment (Waqf) Laws*, IRTI WORKING PAPER SERIES 1,4 (2014).

arrangements for the provision of basic needs to the less fortunate members of the society based on the *Maqasid al-Shari'ah*.²⁶ In Islam, charity is witnessed as a virtuous deed of the transfer of wealth from the higher class to the people of lower classes considering it as a medium for self-development. Over time, the institution of Wakf has aided in the alleviation of poverty of the people from the Islamic communities. Apart from the reduction of poverty, Wakfs has had a significant impact on the progress of the economy and has aided in the reduction of government expenditure over the years. Further, it helps in the restoration of income distribution and prevents deficit financing. Other roles involve the enhancement in agricultural farming, sustainable development initiatives, and promoting creative skills and entrepreneurship. It funds small businesses and also helps in creating employment opportunities. There has been significant development of the Islam community through Wakf properties. Wakf has helped in the upliftment of the deprived and economically backward class people of the Islam community.

CHAPTER 4: ARE WAKF DONATIONS EXTENDED FOR OTHER RELIGIONS?

Wakf is essentially related to the Islam religion and it plays a crucial part in the Muslim communities. In Islam, it is the utmost important source for public service. The concept of Wakf is deeply engraved in the faiths, beliefs, and principles of the religion of Islam as it is also inculcated in their culture. Waqf has also become a source of funding for Muslims over the centuries, due to large endowments (Awqaf) made by the prophet (Peace Be Upon Him) and his companions.²⁷ From the ancient period, people used to Wakif their properties and used them as places for worship. But it is important to note that the Islamic endowment of Wakf does not extend to other religions. The donation of Wakf property is strictly limited and confined within the Islam religion. The people from the Islam community indulge in the charitable giving culture within their religion, i.e., they donate for the cause of upliftment of the people belonging to Islam. Although the donation of wakf stands unconditional and once donated it cannot be retrieved back, but such donations are not dedicated to the people of other religions or the people of the economically backward sections in general. Charity should be done in general and should be extended to others in general. It should be inclusive of everyone so that the development and the upliftment of the people can be achieved universally. The confinement of such a pious practice for elevating the status of the only Muslim community is a conditional approach and this needs reforms that shall make it extensive. The donations should be for the noble cause of the people in general and should benefit the individuals of all communities. This

²⁶ Muyassar Mukhitdinova Ziyaviddinova and Khadzhaev Khabibulla Sagdullaevich, *Poverty Reduction by Islamic Waqf System*, 7(4) JOURNAL OF CRITICAL REVIEWS 68,69 (2020).

²⁷ Shadiya Mohamed S. Baqutayan et al., *Waqf Between the Past and Present*, 9(4) MEDITERRANEAN JOURNAL OF SOCIAL SCIENCES 149, 150 (2018).

shall help in the upliftment of the people by and large without being inclined to only a single community. But this essentially draws or attention to one of the most burning issues, i.e., if the Wakf properties are dedicated to the upliftment of the people of the Islam community and such an act is practiced by the upper-class Muslims who donate to the lower classes, then why is there still poverty prevailing in the community of Islam. Since such a practice draws its origin to ancient times and is followed by the majority of practicing Muslims, then why has the purpose of such donation not been fulfilled? And why are there Muslims who are stilled deprived of basic needs and are still poverty-stricken?

Conclusion

Wakf one of the greatest sources of charity, committed for the needy sections of the society dates back to the period when it was practiced by the Prophet and subsequently by his companions who accompanied him in the mission. The Islamic institution of Wakf is a unique act that plays a substantial part in the socio-economic, religious, and cultural development across the history of the civilization of Islam. Wakf in India is widely practiced and prevailed throughout the Muslim community. Further, it also has the backing of laws in India, and hence, it stands valid and is enforceable. The Wakfs are managed by the Wakf boards in India. At present, there are 30 Wakf boards in India spread across 28 states and UTs. The states like Goa, Arunachal Pradesh, Mizoram, Nagaland, and Sikkim, and the UT Daman & Diu have no wakf Board at present.²⁸ Waqf is specifically intended to protect the rights of the vulnerable and disadvantaged groups of society in general and Muslims in specific. In consideration of this goal, it is necessary to maintain the Waqf assets in compliance with the Shariah guidelines, such that the actual objective of the same could be accomplished in the best possible way. Over time, there have been huge allegations by the Shariah scholars on the legitimacy and the validity of management of Wakf activities in several countries. In this context, the Indian Central Waqf Board of Directors, which incorporates one of the largest numbers of Waqf properties in the world, has attracted a great deal of criticism for not complying with the Waqf Shariah Guidelines.

The paper analyzed the concept of Wakf by delving into the various aspects of Wakfs and its various essentials and types that correlate to the same. It examined the kinds of Wakfs as well as enlightened regarding the basis on which Wakfs are segregated into different types thereby taking analysing the same with judicial pronouncements. The paper tried to understand the psychology of the people behind such giving culture through different factors that influence the people to adopt such noble and pious activities. It also enlightened regarding how Wakfs

²⁸ “Adityapuhumi, *Law of Waqf*, LEGAL SERVICE INDIA, [{ 13 }](http://www.legalserviceindia.com/legal/article-2057-law-of-waqf.html#:~:text=According%20to%20Muslim%20law%2C%20it%20means&text=The%20Wakf%20Act%20of%201913,as%20pious%2C%20religious%20or%20charitable.”</p></div><div data-bbox=)

has been a medium of poverty alleviation in the Islamic communities. Waqf institutions have assumed a prominent part in alleviating poverty, distributing wealth, and fostering social well-being within Muslim communities. Further, it surveyed the role of Wakf property in the upliftment of poverty in Islam communities. Lastly, it critically analyzed the reasons behind the exclusion of other communities from receiving the benefits of Wakfs. The analysis of the paper showcases that there is an immediate need for reforms in Wakf institutions and Wakfs can potentially assume a bigger part in helping the society.

Recommendations/ Suggestions

Wakf has surfaced as a vital institution over the years with its growing popularity. Its significance in the lives of Muslims is undeniable. Waqf has proven as one of the mechanisms for the alleviation of poverty and distribution of wealth by providing society with the requisite economic growth and capacity of society as a whole. But over the years there has been an escalation of corruption in the management and administration of Wakfs in India owing to the increasing rate of mismanagement by the Mutawallis. Further, there is no availability of proper data of the Wakf properties with the government. These illegal practices have led to the decline of the institution of Wakf in contemporary times. This calls for immediate attention and the need for reforms. The Scholars should conduct enlightenment and campaign on waqf to encourage Muslim capitalists to be setting aside a portion of their profit as waqf to attract Allah's pleasure and strength the bond of relationship between them and the poor people.²⁹ Regular and proper authorities should be assigned with the supervision of Wakfs and they must ensure the proper management of the same by the Nazir to avoid any forms of corruption, misappropriation, or any illegal conduct.

Social awareness needs to be created to educate the masses regarding its proper execution and utilization to ensure that such property is invested in providing essential public services. The main issue at Waqf is the requirement for accountability and assurance that assets and resources are handled with transparency, consistency, long-term planning, and direction. Thus, it is important to look at the management policies of Waqf and also the investment of its funds. The transparency of Waqf money is also very significant. The administration of the waqf property needs to be reformed. The supervisors must be diligent and reliable in the performance of their duties and the management of the waqf land. The credibility and qualifications of the Mutawallis should be considered to prevent cases of dishonesty on the part of certain Mutawallis. Waqf administration should have detailed guidance for Waqf's Mutawallis as to when and how they should spend Waqf's revenues under their control, or at what cost.

²⁹ ZIYAVIDDINOVNA, *Supra* note at 26, at 72.

REFERENCES

1. PARAS DIWAN AND PEEYUSHI DIWAN, FAMILY LAW (11th edn, Allahabad Law Agency 2018).
2. MANZAR SAEED, COMMENTARY ON MUSLIM LAW IN INDIA (Orient Publishing Company 2011).
3. I.B. MULLA, COMMENTARY ON MOHAMMEDAN LAW (2nd ed. Dwivedi Law Agency, 2009).
4. POONAM PRADHAN SAXSENA, FAMILY LAW II (Lexis Nexis 2008).
5. The Wakf Act, 1954, No. 29, Acts of Parliament, 1954 (India).
6. The Mussalman Wakf Validating Act, 1913, No. 6, Acts of Imperial Legislature, 1913 (India).
7. Muyassar Mukhitdinova Ziyaviddinovna and Khadzhaev Khabibulla Sagdullaevich, *Poverty Reduction by Islamic Waqf System*, 7(4) JOURNAL OF CRITICAL REVIEWS 68 (2020).
8. Nur Atikah Atan and Fuadah Johari, *A review on literature of Waqf for poverty alleviation between 2006-2016*, LIBRARY PHILOSOPHY AND PRACTICE 1 (2017).
9. Sk. Ehtesham Uddin Ahmad, *Family 'Wakf': Colonial Law and 'Modernist' Sharia*, 71 INDIAN HISTORY CONGRESS 745 (2010-2011).
10. Muhammad Kashif et al., *Charity donation: intentions and behaviour.*, 33(1) MARKETING INTELLIGENCE & PLANNING 90 (2015).
11. A. Majid, *Wakf as Family Settlement among the Mohammedans*, 9(1) JOURNALS OF THE SOCIETY OF COMPARATIVE LEGISLATION 122 (1908).
12. Shadiya M. Baqutayan and Akbariah M. Mahdzir, *The psychology theories of waqf-giving behaviors*, 4(4) JOURNAL OF ECONOMIC AND SOCIAL THOUGHT 424 (2017).
13. Shadiya Mohamed S. Baqutayan et al., *Waqf Between the Past and Present*, 9(4) MEDITERRANEAN JOURNAL OF SOCIAL SCIENCES 149 (2018).
14. Salman Ahmed Shaikh et al., *Application of waqf for social and development finance*, 9(1) ISRA INTERNATIONAL JOURNAL OF ISLAMIC FINANCE 5 (2017).
15. Shadiya Mohamed S Baqutayan, *The psychology of giving behavior in Islam*, 2(2) SOCIOLOGY INTERNATIONAL JOURNAL 88, (2018).
16. Mohammed Obaidullah, *A Framework for Analysis of Islamic Endowment (Waqf) Laws*, IRTI WORKING PAPER SERIES 1 (2014).
17. Mufti Fahad Ahmed Qureshi, *Development of WAQF: A History from Concept to Institution*, RESEARCHGATE (Sept. 2007),

https://www.researchgate.net/publication/325870127_Development_of_WAQF_A_History_from_Concept_to_Institution.

18. Adityapuhumi, *Law of Waqf*, LEGAL SERVICE INDIA, <http://www.legalserviceindia.com/legal/article-2057-law-of-waqf.html#:~:text=According%20to%20Muslim%20law%2C%20it%20means&text=The%20Wakf%20Act%20of%201913,as%20pious%2C%20religious%20or%20charitable>.
19. Madhubala Solanki, *Concept Of Waqf Under Muslim Law*, ACADEMIKE (Feb. 13, 2019), <https://www.lawctopus.com/academike/concept-waqf-muslim-law/>.
20. Subodh Asthana, *Concept of Waqf under Muslim Law*, I PLEADERS BLOG (Jun. 18, 2019), <https://blog.ipleaders.in/concept-waqf-muslim-law/>.
21. Mayank Shekhar, *Wakf under Muslim Law: Concept, Creation, Control and Registration*, LEGAL BITES BLOG (Mar. 24, 2018), <https://www.legalbites.in/muslim-law-notes-wakf-concept/>.