The current economic situation of almost all Muslim countries in terms of their high illiteracy rate, lack of good healthcare, high unemployment rate, the spread of poverty and low level of food production must encourage one to study the institution of waqf, which has played an instrumental role in addressing a range of socio-economic issues in the Muslim societies of the past. Many contemporary Islamic economists contend that the institution of waqf is still relevant to the socio-economic development of the Muslim societies, most of which face a multitude of problems. The relevance of waqf has also been highlighted in the wake of success of IBF, which has assumed mainstream relevance in some of the countries in the OIC block. Yet, applications of the principles of waqf in IBF are rather scarce. This chapter focuses on some possible roles that waqf may play in the contemporary practices of IBF. The major focus towards the end of the chapter shifts to what is known as cash waqf.
INTRODUCTION

Islam strongly endorses socio-economic and welfare-friendly practices, supporting and promoting philanthropic and charitable deeds. The concept of waqf in Shari’a is regarded as an empirical embodiment of this very proposition. Waqf derives its origin from approximately fourteen centuries back, and is known to have been first practised by the Prophet himself for public utility or social causes.

Waqf is a financial or non-financial charitable institution established by someone by withholding an immovable and movable property, with a view to perpetually use it (i.e., the property itself) or to spend revenue derived from the asset (e.g., money and the activities in which it is invested) on either well-defined causes or general social and charitable causes. The welfare of the beneficiaries is the common intention, whether the cause is specified or not. Once a property (or another asset) is locked into a waqf, its ownership changes from the benefactor to God. This means a waqf is essentially a permanent trust that cannot be dissolved, although the designated beneficiaries may benefit from its revenue generating activities.

The main motivation for a founder to create waqf is to seek the pleasure of God in accordance with the Islamic teachings as described in the Quran and the prophetic traditions. However, other worldly pursuits are not completely ruled out in some forms of the awqaf that have historically been used in the Islamic history.

Awqaf have been used by Muslim philanthropists in the past and at present, in pursuit of religious satisfaction. Although it is a common assertion in the Islamic literature that waqf is a unique Islamic financial institution, there are parallels in other traditions as well. For examples, endowments and trusts in the Western world are similar to the institution of waqf. Admittedly, such developments in the West took place much later than the use of waqf in Islamic countries, and it is possible that trusts and endowments were an Islamic influence in the Western world.

The main objective of this chapter is to highlight the missing link between the institution of waqf and Islamic finance today. Before doing so, however, it is important to give background of the role of the institution of waqf of immovable properties as a financial instrument, the causes that led to its destruction and its re-emergence in its new movable form as an efficient financial institution that can take on most of the challenges it faces. Awqaf properties in India is an interesting example, which should provide a credible explanation of how waqf as an institution disappeared or became ineffective over time (see Box 5). The developments in the waqf sector in Malaysia are encouraging (see Box 4), and one should hope that the institution of waqf may in fact be revived with the help of IBF.

IMMOVABLE WAQF: A FINANCIAL INSTITUTION

Mosques in Islamic tradition are perhaps the first example of setting up immovable waqf. Thus, history of awqaf is as old as Islam itself. Historically speaking, during the lifetime of the Prophet Muhammad (peace be upon him), whenever a need was identified within the Muslim society, it was fulfilled immediately through the creation of a waqf. For example, when the Prophet felt the need for a regular place for Muslims to perform their daily prayers, he built the Quba’ Mosque on his arrival in Medina, followed by building Masjid Nabawi due to the increasing number of newly converted Muslims. During that time these two mosques were not used for daily prayers only but were also used by the Prophet to teach Muslims their religion. Besides, the Prophet created different other awqaf for the benefit of the people. For example he dedicated one of his gardens in Medina to feed the Muslims. He also gave his acquired land in Khyber as a waqf to build a guest-house for travellers and newly converted Muslims. Furthermore, the Prophet encouraged his companions to create a new waqf whenever a need arose. For example, he encouraged Muslim troops to dedicate their weapons for the battles the Muslims had to get engaged to defend themselves. First notable example of a waqf for social welfare was a drinking water well (called Rummah), which was bought from a Jewish man to provide free drinking water to all. There are numerous other examples of establishment of awqaf in the life span of the Prophet.

As time passed the creation of waqf did not only cover building of mosques, guest houses, schools, army establishments, agricultural farms and wells for drinking water and irrigation. It expanded during the Umayyid
and Abbasid times by financing almost all social services. With the spread of Islam, the demand for Islamic education and learning increased. Consequently, mosques were extended to include the learning centres and educational establishments. The facilities also included residences for scholars and students. The additional demand for capital was met by the philanthropists to establish an increasing number of awqaf in different parts of the Muslim world. Such educational establishments increased in number and with it the number of awqaf. According to Ibn Hawqal, the number of primary schools set up under awqaf reached 300 in the city of Saqaliah alone, and that they accommodated hundreds and in some cases thousands of students. Later on, due to the continuous increase in the number of people converting to Islam, the need for more schools to teach them emerged. This encouraged rich people and rulers to create awqaf to support Islamic education in the form of building separate schools, and shops and houses to finance students, paying teachers’ salaries besides dedicating books to set up libraries.

The waqf sector did not only cover the education sector, it also spread to benefit orphans and travellers in the form of guest-houses and other places of shelter for the beneficiaries. The increase in the number of waqf properties led the state to organise and supervise them. During Caliph Hisham Bin Abdel Malik’s time (65-87 AH / 684-705 AD), a comprehensive regulatory framework was developed to ensure proper functioning of awqaf and to avoid their possible misuse and appropriation by general public or others. Tawbah Bin Numir, a prominent jurist of that time, was appointed as the chief judge, and his duties included setting up and maintaining a registry for awqaf. This act of good governance of waqf properties was followed by other Muslim states of that era and the following successive governments until the end of the Moghal empire in India (see Box 5).

From that time, the supervision of awqaf was entrusted to the courts that ensured that the founders and their appointed trustees managed the awqaf affairs diligently, efficiently and in strict adherence to Islamic teachings. Succession planning was very integral to waqf management in the early governance system. However, in the event of a founder’s death before they had specified any trustees, the chief judge had the right to appoint new trustees. During that time, the management of public waqf was placed under a dedicated institution called Diwan al-Ahbas, while the management of family waqf was administered by the founders and their appointed trustees. There was a well-defined dispute resolution mechanism, supervised and managed by the chief justice of the caliphate.

Negligence on part of the waqf founders and their trustees was deemed a criminal offence, punishable by lashing. The supervisory authorities took the institution of waqf very seriously and ensured that the waqf assets and properties were in good order. An example of the supervision of these properties can be traced back to 173 A.H. The then chief justice Abu Tahir Abdel Malik Bin Muhammad Hazmi used to supervise all the waqf properties three times a month. In case of any damage found to the properties in terms of any tear or wear the chief justice ordered to repair the damage and to keep up the premises in good shape. Moreover, if the chief justice found any misuse on part of the trustees, punishment in terms of whipping the trustees ten times would be the way to prevent such negligence in the future.

Given this serious attitude of the society towards waqf and a comprehensive regulatory and supervisory regime that was developed to protect it. It is not surprising to learn that almost all major socio-economic activities in the past caliphates in the Muslim world benefited from awqaf. One of the most notable philanthropists who contributed to the development of awqaf was the wife of the famous Abbasid caliph Harun Rashid. She created many awqaf in the services sector. The public works financed through her awqaf included Zubaida Well in Makkah, a highway between Baghdad and Makkah, and a canal from Iraq to Makkah to supply water to the pilgrims.

As stated earlier, the education sector benefited immensely from numerous awqaf set up by philanthropists in the Muslim world. Historical records of the year 366 AH show that 70 libraries were financed through awqaf in Cordoba only. Almost all academic positions and scientific research in the Muslim world were financed by awqaf. Scientific research organisations like Dar al-’Ilm, Dar al-Hekma, and Azhar University in Egypt in 400-405 A.H. were all financed through waqf revenues.
In addition, the health sector was also financed through waqf revenues, not only in the Islamic world but its benefits also spread to finance the European countries too. Although there were awqaf that would fund research in health sector, most of the waqf properties were established to finance construction and on-going operations of hospitals. There were 50 waqf hospitals in the Muslim Cordoba alone. Waqf revenues were also used to finance famous medical publications such as the Kitab al-Kiliyat fi al-Tib of Ibn Rushd, which was translated into different languages and became the main medical book in Europe, besides Kitab al-Hawi fi al-Tib, a book written by Ibn Sina.

The growth of waqf continued through centuries in the Muslim world, until the end of the Ottoman period in Turkey at the start of the 20th century, and the collapse of Mughals in India in the middle of the 19th century (see Box 5).

The creation of waqf reached its peak during the Ottoman Caliphate and this encouraged the sultans, ministers, princes and their wives and mothers to create a waqf in different forms for public benefit. These types of waqf were known as Sultans’ awqaf. The creation of waqf was not limited to the above mentioned people, although during the Ottoman period a number of rulers were generously involved in the sector. Given the high-level patronage, and the social welfare these awqaf contributed to, they led to very significant economic activities. Their role in job creation and sustainable employment has been highlighted by many researchers on the topic. According to some estimates, three-quarters of all the arable land during the time of the Ottomans belonged to awqaf. Furthermore, there were 8.23 percent people employed in the waqf sector in 1931. The comparable figure for the public sector employment was 12.68 percent.

Most of the Ottoman awqaf were in immovable forms such as agricultural lands and farms, and orchards and gardens. A typical Sultan’s waqf would comprise a palace, stables, storage facilities, beehives, various types of livestock and agricultural tools. There would be a residential community of farmers, and other people involved in running of the waqf. All the facilities to the community would be provided by the waqf, which created stable and sustainable economies on a local level.

The above discussion suggests that the immovable waqf during the early days of Islam until the Ottomans played a significant economic role through its varied and wider contributions to the different socio-economic sectors. Education, health, public infrastructure and almost all other socio-economic activities benefited from the institution of waqf. The question arises: how can IBF employ this important instrument to develop

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1. Sultan’s Awqaf have parallels with, and perhaps were influencing factor behind, the establishment of khanqahs in India. Similar to Catholic monasteries, khanqahs were establishments set up and run by Muslim sufi saints all over India.
Islamic financial products that, on one hand side, make an economic sense for the institutions offering Islamic financial services and, on the other hand, are deemed socially beneficial for the users of such financial services?

DESTRUCTION OF THE INSTITUTION OF WAQF

After the collapse of the Ottoman Caliphate, Turkey underwent political reforms that resulted in the creation of the Republic of Turkey. The political change in Turkey affected the institution of waqf adversely. In fact, deterioration in the waqf administration had started well before that. During the regime of Sultan Mahmud II (1785 AD - 1839 AD), who called for the establishment of a Minister of Waqf apart from the Muslim jurists, the signs of decay started appearing. The objective of this change in policy was to bring the local machinery of waqf supervision into a centralised bureau in Istanbul. Under this regime, new and additional waqf administrators were appointed to administer the affair of the awqaf. Consequently, Muslim jurists lost control over the institution of waqf. This led to the burgeoning mismanagement and abuse of the waqf system, as many of the appointed administrators were not familiar with the legalities of this institution. The centralisation of waqf administration and lack of good supervision and governance from Shari'a courts resulted in many problems that weakened the institution and diluted its effectiveness.

One such problem was an increase in the costs of running awqaf. Many awqaf trustees decided to quit their regular jobs or business and instead become full-time employees to start drawing heavy monthly/regular salaries. This, along with a culture of laziness not only contributed to inefficiencies in the institution of waqf but was also held responsible for slow down in general economic activity on a macro level. Moreover, the new appointed state administrators were interested in protecting their own jobs rather than further developing the waqf properties and their associated businesses. In many cases, misappropriation of the waqf properties and abuse of assets and resources became rampant. This was, therefore, a natural outcome that most of the awqaf started facing liquidity problems, which resulted into further neglect of the waqf properties.

In addition, strategic uses of waqf created a number of social problems. For example, a number of rich families started using family waqf as a tool to preclude their daughters from their inheritance. This point is highlighted by many contemporary economists, most notably Timur Kuran and Mahmoud El-Gamal. This situation continued until the regime of Muhammad Ali Pasha (1769 AD - 1845 AD) who found out about 600 thousand feddan out of 2 million feddan of agricultural land had been put into a waqf. This created not only an imbalance in the social structure but also was responsible for loss of revenue for exchequer, as almost one-third of the agricultural land in that period was under awqaf and, hence, tax exempt.

This problem was partly addressed by imposition of half rate of tax to the waqf land by the regime prior to Muhammad Ali Pasha who in fact took away the tax exempt status of the waqf lands. Altogether while this addressed the tax related issues, it also killed the establishment of genuine awqaf. With this came an end to an era that allowed pious individuals and families to set up awqaf for religious purposes and social causes. The regime of Muhammad Ali Pasha was well aware of this in-intended consequence and hence great care was taken to maintain the mosques and other religious establishments, primarily to manage public reaction to the adverse effects of its policies towards awqaf administration.

However, the Pasha regime failed to find satisfactory solutions to the problems created by the centralisation of the administration of waqf, and instead decided to nationalise it by confiscating all waqf properties. This was followed in almost all the countries in the Middle East, which were under the Ottoman Caliphate. This policy continued in entire of the Muslim world during the period of colonisation.

The destruction of this institution continued even after independence of the Muslim countries, as the centralisation of its administration and lack of good supervisory frameworks remained in place and the successive governments did little to ameliorate the situations. The Indian example (given in Box 5) is an extremely interesting case in this respect. The situation is not entirely different in the neighbouring Pakistan (with majority Muslim population), where awqaf properties are administered by a dedicated ministry.

2. An Egyptian unit of area equivalent to 1.038 acres (0.42 hectares).
Consequently, many waqf lands and properties are in tatters. Although some of the waqf properties in such countries are located on prime locations (like down town areas and city centres), no or little has been done to restore them into revenue generating ventures for good causes. In a number of cases, registration and documentation are missing, making such properties prone to illegal possession and encroachment.

The process of nationalisation of waqf, which Ottomans started, continued in other countries after the end of the period of colonisation. For example, in 1952 a new law was implemented in Egypt in order to abolish family waqf. The same law was followed in Syria and later in Tunisia in 1954. These legislative changes gave the ministries of awqaf many additional rights over all waqf properties. For instance, the new laws gave the ministry the right to become the supervisory body for all public awqaf, the right to change the founder’s conditions, and the right for founders to revoke their family waqf, etc. Subsequently, it discouraged people from creating any new waqf. As a result, many founders started to revoke their waqf property with the exception of waqf for mosques. The process continued until recently when some renewed interest in waqf emerged.

**RECENT REVIVAL AND THE CREATION OF MOVABLE WAQF**

From the earlier discussion we realised that the 20th century was the worst century for the institution of waqf. Its socio-economic role deteriorated, as old awqaf gradually became dysfunctional, with no further progress in terms of numbers and assets. Also, there has been little development in improving legal and supervisory frameworks in this respect. Nevertheless, not every thing has been lost, as there is now a renewed interest in the revival of this important institution in the OIC countries and some other countries with Muslims as minority populations. In this respect, the institution of cash waqf is expected to have a bright future.

A few Islamic economists have highlighted in their researches the potential role of the institution of waqf in economic development and poverty alleviation. They have for long advocated resurrection of waqf in this respect. Due to this and because of political pressure, the governments, financial institutions, other social sector organisations and individuals in a number of Muslim countries have allocated huge amounts of capital to redevelop the old waqf properties into financially profitable and economically meaningful entities again. Islamic financial institutions have understandably played an important role in this respect. Financial structuring of the waqf regeneration projects was by and large done by the institutions offering Islamic financial services. Specific examples of financial structuring for waqf projects include the use of musharaka sukuk, diminishing musharaka, ujra al-mithl, mudaraba sukuk and build-operate-transfer (BOT) modes. Perhaps the most notable example of the regeneration of waqf properties and land is that of Waqf King...
Abdelaziz Bin Al Saud in the holy city of Makkah. With the help of a number of innovative Islamic financial structures, a series of tall towers have been constructed outside the Holy Mosque. Given their strategic location, these towers have emerged as very successful commercially run waqf businesses that provide hoteling facilities, shopping and a lot of other services related with religious tourism.

The current government in Turkey has also allocated huge funds to regenerate mosques and other buildings of touristic attraction. All such properties are owned by their respective waqf. Consequently, there is now a significant focus on bringing many of the dysfunctional waqf into economic life. A number of waqf-owned buildings have been renovated to turn them into restaurants, cafes, and commercially viable heritage shopping centres. Many mosques that were in very bad shapes are being renovated. With the renovation work, some new buildings are being constructed as shops, cafes and restaurants to ensure that the mosques are run on a sustainable basis.

Regeneration projects are a good step towards the revival of the institution of waqf. However, there is a need to bring reforms in the legal, supervisory and regulatory frameworks governing awqaf in the Muslim countries. The administration of awqaf must be decentralised to ensure that these entities are run locally and by competent people with integrity. Furthermore, laws should be changed to encourage the establishment of family awqaf, which has disappeared completely in almost all the countries in the OIC block. This will require bringing reforms in taxation laws and property rights.

CASH WAQF AS A FINANCIAL INSTITUTION: THE MISSING LINK

As stated above, there is an urgent need for amendments to the current law and administration of waqf in almost all Muslim countries to encourage more founders to create waqf, especially cash waqf. The cash waqf can play at least two roles in reinvigorating the old waqf properties and financing other socio-economic projects in Muslim societies. The cash waqf is a special type of endowment that differs from the ordinary real estate waqf in that its original capital consists, purely or partially, of cash. Although the institution has existed in the Islamic history since the fifteenth century, it has been developed as a banking product only recently. Social Islamic Bank in Bangladesh has been offering a cash waqf deposit for a few years now. Other banks offering deposits based on the cash waqf include Islamic Bank Bangladesh, EXIM Bank, Bank Asia, Shahjalal Islami Bank, Al-Arafah Islami Bank, Prime Bank (all in Bangladesh) and Bank Islam in Malaysia. All these are examples of indirect cash waqf models (see Figure 2).

This is a very positive development, as these deposit programmes will bring institution of cash waqf under decentralised yet tightly regulated financial regime. Furthermore, this allows Islamic banks to introduce cash waqf as a retail product that may be used to collect small amounts of donations and charity from a large number of people. This is consistent with the proposition made in Chapter 7 of this report under donation-based banking (see Box 6).

Deposits, however, is only one of the many products based on the cash waqf. Other products include:

1. Waqf shares scheme;
2. Direct cash waqf scheme (as depicted in Figure 1);
3. Semi-compulsory waqf scheme;
4. Corporate waqf scheme; and
5. Cooperative waqf scheme

Many of these schemes are being run informally or under charitable trusts in Muslim as well as non-Muslim countries with Muslim minorities.
Waqf and Islamic Banking and Finance: The Missing Link

Figure 1: Direct Cash Waqf

1. Waqif/Founder  
   - Individuals  
   - Organisations  
   - Institutions  

Cash-Waqf

INSTITUTION/ORGANIZATION/NGO

Accumulated Cash-Waqf

80%

Old Mosque  
Waqf Hospital, Waqf Clinic  
Waqf School, Waqf College

20%

Figure 2: Indirect Cash Waqf

1. Waqif/Founder  
   - Individuals  
   - Organisations  
   - Institutions  

Cash-Waqf

CASH WAQF FINANCIAL INSTITUTION

Accumulated Funds Cash-Waqf

10%

Management

School/College/University  
Hospital/Clinic  
Any Specified Property

20%

SFD

20%

Invested According to Shari’a

70%

Beneficiaries

Revenue
Benefits of Cash Waqf in the Contemporary Practice of IBF

With small amounts of money by a large number of people, very significant sums of money can be collected, especially in countries with huge populations. Small donations can be efficiently put into a cash waqf structure to invest on a long-term basis. These investments may be made into large infrastructure projects like urban transit rails, airports and seaports and other similar infrastructural projects. From the income of these projects / investments other socially relevant goods and services can be produced for the specifically targeted beneficiaries or for general public. The social goods and services typically financed by waqf have been:

A. Education: schools, both religious as well as contemporary education;
B. Health Sector: primary hospitals but may also include specialist hospitals, e.g., a cancer treatment and research hospital;
C. Orphanages and residential facilities for working women;
D. Interest-free financing for personal use or for setting up small businesses (microfinance);
E. Public parks and other public amenities; and
F. Drinking water, etc.

Moreover, Deposits based on cash waqf offer a distinct advantage as it allows authorities to monitor charitable flows, something that has assumed paramount importance in the world facing terrorism and other security threats.

 Nonetheless, similar to the current centralised administration of the immovable waqf properties the cash waqf based products and institutions may face challenges in some Muslim countries where the existing laws are not favourable for such activities and operations. Hence, it is imperative that an enabling environment is created for their successful and efficient functioning. There have been some cases where some trustees changed their cash waqf schemes into trusts, endowments or foundation structures to escape from usurping the management of their cash waqf under the current centralised administration of waqf.

CONCLUSION

In conclusion, one may safely contend that waqf, either immovable or movable, can play an important role in economic development and social uplift of Muslim societies. Cash-waqf, in particular, can be sued to develop a new model of banking and financial intermediary that can in due time be used to replace the current interest-based financial system.

Understanding the significance of decentralisation of its administration, and creating a favourable environment will enhance waqf’s financial role not only in providing the goods and services needed in Muslim and Muslim minority countries but will also assist governments in providing these services without any cost to them.
BOX 4: AWQAF PROPERTIES IN MALAYSIA

Waqf¹ (plural awqaf) is popularly known in Malaysia as wakaf. Awqaf exist in various forms, from traditional to contemporary modes of creations. Current awqaf are extensions of the practice of waqifs (waqf donors) that occurred in the past. These were influenced by Islamic religious faith, whose introduction to Malaysia occurred around the 15th century.

It is important to note here that, in Malaysia, awqaf are given not only by Muslims but also by non-Muslims, and they are both domestic and international. In addition, Muslims and non-Muslims alike enjoy the benefits of mawquf (waqf property). According to the Department of Waqf, Zakat and Hajj (JAWHAR, i.e., Jabatan Wakaf, Zakat dan Haji), awqaf lands in Malaysia are 11,091.82 hectares, worth RM1.17 billion². Efforts have been made from time to time by the respective organisations, particularly the State Islamic Religious Councils (SIRCs) with the co-operation of various parties, to develop awqaf lands. The Malaysian Government has also contributed significant funds for the purpose through the Malaysia Plan (Rancangan Malaysia).

Based on the existing Malaysian legal framework, the matter of waqf, has been made as one of the important Muslim affairs in the country. The word wakaf can be found in the Federal Constitution and it is positioned under the State matter. With the authority of the Constitution, the promulgation of waqf law has been made in the legislation of the states with a number of significant substantive and administrative provisions to regulate the matter.

Some of the states, i.e., Selangor, Malacca and Negeri Sembilan, have created specific statutes called Wakaf Enactments. The other states, including the Federal Territories (Kuala Lumpur, Putrajaya and Labuan), have codified the provisions in the administration of Islamic Law statutes, which also include other matters specifically related with Muslims. The major focus of the law contains several parts of the codification, ranging from procedures of waqf creation; conditions of its validity; powers and rights of the SIRC as the sole trustee; powers of the Waqf Management Committee: vesting of mawquf; establishment of waqf funds and waqf schemes; and also references to fatwa and Shari’a law.

All state laws (enactments/ordinances/acts) provide that the SIRCs, also known as Majlis Agama Islam (Majlis), are the sole trustees of all awqaf, whether particularly the State Islamic Religious Councils (SIRCs) with the co-operation of various parties, to develop awqaf lands. The Malaysian Government has also contributed significant funds for the purpose through the Malaysia Plan (Rancangan Malaysia).

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Notwithstanding any provision to the contrary contained in any instruments or declaration creating, governing or affecting any wakaf, the Majlis shall be the sole trustee of all wakaf, whether wakaf ‘am or khas, situated in the State of Selangor.

¹ Given that in the Malaysian legal documents the word “waqf” is spelled as “wakaf,” we shall use the two spellings interchangeably in this box.
² Equivalent to US$508 million (using exchange rate of RM1 = US$0.30).
private trustees, would be treated as illegal and not conforming to the laws.

The laws also provide that all mawquf should be vested in the Majlis and necessary steps have to be taken to fulfil the said provision. As for immovable property, registration should be made in accordance with the provisions of the National Land Code 1965 (Act 56). For example, Section 50 of the Wakaf (State of Malacca) Enactment 2005 stipulates that:

1. The Majlis shall take all necessary steps as soon as practicable to vest in itself wakaf which are created under this Act.

2. Any usufruct or benefit from a mawquf shall be vested to the Majlis from the date of the commencement of the wakaf, and the Majlis may claim any usufruct or benefit of a mawquf from any person before the registration of the wakaf.

3. All mawquf situated in the State of Malacca, before the commencement of this Enactment, shall, without any conveyance, assignment or transfer whatsoever and in respect of all immovable property upon registration under the provisions of the National Land Code [Act 56 of 1965], is hereby vested to the Majlis to the extent of any property affected thereby.

4. Subject to the provision of section 32, the Majlis shall take all necessary steps to vest in itself for the like purposes any such property situated elsewhere than the State of Malacca.

The Majlis administers all mawquf in accordance with the stipulation of the founders when they were created. As such, according to the existing laws the capital of the mawquf is applied in pursuance of such creations, and held as segregated funds and will not form part of the baitulmal. Their income is paid to and forms part of the baitulmal, and in case of waqf khas being received by the Majlis, it is applied in accordance with their stipulations.

According to the Islamic law of waqf, it is incumbent on the Majlis as the mutawalli of awqaf assets, to observe as much as possible all the stipulations and the conditions laid down by the founder in the waqf deed. He should always be cautious in administering and supervising the mawquf as he deals with the public interest. The foremost duties of the mutawalli consist of preserving and keeping the mawquf intact, gaining profits from the mawquf and collecting and distributing the revenues among the beneficiaries. He should also carefully protect the substance of the mawquf from any loss or damage.

The above are the important responsibilities that the Majlis have to carry out in order to fulfil their legal obligations as the sole trustees for all the mawquf situated in the states.

Types of Awqaf

Generally, the creations of awqaf in Malaysia fall within 3 major categories:

a. Waqf ‘am
b. Waqf khas
c. Waqf al-mushtarak (spelled as al-musytarak)

Waqf ‘am refers to any form of waqf dedication aimed at general welfare or khairat without specifying any particular beneficiaries (individuals or organisations/institutions) or specific purposes. This category of waqf is applicable to things or objectives directed towards general social welfare and charitable purposes. In contrast, waqf khas is a type of waqf with specified beneficiaries or purposes. Under this form of waqf, the waqif will identify the persons who are to benefit from the awqaf or the purpose for which the waqf must be applied. The combination of waqf ‘am and waqf khas forms the hybrid category, waqf al-mushtarak.

Thus, a waqf which is created from any type of property or established under any type of scheme will use either the waqf ‘am or the waqf khas concept. Each type is treated differently in accordance with Islamic principles. It follows that for a waqf khas, the mutawalli or the trustee has the responsibility to implement all the stipulated conditions of a waqif unless they are opposed to Shari’a and the law of the country. In the latter case, proper modifications and adjustments must be made with due reference to the authoritative bodies of the competent jurisdiction. The authority may come from the verdict (also known as a fatwa) of a Mufti or an order from a court, normally a Shari’a court, depending on the applicable laws of a state. According to the textbook of waqf in the Shari’a, a reference has to be made to the qadi (judge) of a state. In Malaysia, according to the laws and practices, the power generally rests with the State Fatwa Committee. However, some states confer the power on the Majlis or the Wakaf Management Committee. As for a waqf ‘am, the mutawalli or the trustee may, at his discretion, use the mawquf for any good purpose as long as it is compatible with the Shari’a law of waqf.
Property Endowed as Awqaf

Movable and immovable properties have been made awqaf for general and specific purposes or beneficiaries, depending on the wishes of waqifs. Previously, Malaysians preferred their awqaf to be established from immovables, consisting of landed properties, especially for the erection of mosques, graveyards and Islamic religious schools including pondok schools.

In the current context, awqaf from movables are also included. These include cash waqf, waqf shares and waqf of gold. The latter is a new kind of mawquf accepted by Yayasan Waqaf Malaysia (YWM, the Malaysia Waqaf Foundation).

Cash waqf is also accepted in the country. Although its validity has been debated by some Muslim jurists in Islamic jurisprudence due to its impermanent character, the Malaysian waqf authorities have approved a cash waqf provided that it is converted into or used towards creating permanent benefits. Normally, the funds collected will be used to purchase immovable assets or be added to existing waqf development projects. Recently, a collaboration between Bank Muamalat Malaysia Berhad (BBMB) and Perbadanan Wakaf Selangor (PWS, Wakaf Corporation of Selangor) has taken place with the introduction of a cash waqf scheme called Wakaf Selangor Muamalat. This new scheme aims to accumulate funds and distribute them in two main areas: healthcare and education.

What is more unique is that the creation of waqf has been expanded to cover waqf of shares which can be formed either from movable or immovable properties. It is very important to note here that waqf shares are different to waqf of shares. For ease of understanding, their definitions are given below as provided in Section 2 of the Wakaf (State of Malacca) Enactment 2005 (No.5 of 2005):

“Wakaf shares mean the creation of a wakaf through the issuance of shares which are subsequently endowed as a wakaf by the purchaser to the Majlis; Wakaf of shares means shares of company or enterprise or existing shares dedicated for wakaf.”

The Wakaf (State of Selangor) Enactment 1999 (No.7 of 1999) only provides provisions on waqf shares, but nothing is mentioned about waqf of shares. Section 17 (1) of the law provides that:

“The Majlis may offer wakaf shares of any property obtained or to be obtained by it to any person for such shares to be purchased which is subsequently endowed as a wakaf to the Majlis.”

In regard to the Wakaf (Negeri Sembilan) Enactment 2005, a provision on waqf shares has been included under Section 11 which mentions a waqf scheme.

The Majlis may offer waqf shares of any property obtained or to be obtained by it to any person for such shares to be purchased which is subsequently endowed as a waqf to the Majlis.
In fact, this provision on waqf shares constitutes a sub-category of the waqf scheme. This statute is unique because other types of waqf, i.e., cash waqf, waqf bonds and other instruments for valuable securities, have also been placed under this scheme. The statute further defines the meaning of these mentioned waqf in Section 11 (2) as mentioned in quotes:

“... the creation of a wakaf through the offering of shares, issuance of bonds or any other instrument for valuable securities which are subsequently endowed as a wakaf by the purchasers of the shares, bonds or any other instrument for valuable securities to the Majlis.”

Other states do not have provisions on such innovative awqaf products and schemes as these mentioned states do, although some of these have introduced their own waqf shares and waqf of shares. In fact, these two types of awqaf products serve as alternative ways of creating waqf to the long-standing classical ones.

The mention of waqf bonds (also known as sukuk) and other valuable securities instruments clearly shows that Malaysia has already prepared to accept these contemporary modes of financing to establish awqaf properties in the country.

In the context of the implementation of waqf shares, the Majlis of a state or an institution with the permission of a state Majlis may offer units of waqf shares of any property, normally of immovables, to the public or to any person, so that such shares can be purchased and thereafter be endowed as a waqf. The person who is interested in buying the shares that are offered will pay a certain amount of money to the Majlis depending on the pre-determined unit price for a share. The price differs from one state to another, and depends on the shares bought by the purchaser. It can be as small as RM1. The accumulated monies will be put in a Waqf Fund which will later be used to purchase an identified immovable property, or be used to finance a property development project as determined by the Majlis or the trustee.

A number of states have introduced the waqf shares product. These are: Selangor, Johore, Pahang, Malacca and Penang, although the latter has been using the name Dana Wakaf (Waqf Fund) for the product. In this type of waqf, the State of Johor under the Majlis Agama Islam Johor (MAIJ, i.e., the SIRC of Johor) introduced Saham Wakaf Johor. This was able to accumulate a total of RM6 million\(^3\) for the construction of a student hostel in Cairo.

As for the concept of waqf of shares, the application is simple. Any existing shares in a property or in a company that belong to a person may be endowed as a waqf, for any general or specific purpose.

It is worth mentioning here that the Corporate Waqf introduced by the Johor Corporation Berhad (JCorp) falls under the category of waqf of shares, whereby part of the units of shares owned by this corporation in its subsidiary companies are dedicated as awqaf. The dividend income from these shares is distributed to the SIRC of Johore (5 percent), JCorp (70 percent) and 25 percent to general purpose charities. Waqaf An-Nur Corporation Berhad (WANCorp) has been entrusted with managing all equity shares transferred by JCorp to awqaf. WANCorp is a company established under limited guarantee by the JCorp and the appointment of the Nazir Khas (Specific Manager) to manage the shares, particularly the awqaf dividends, was made on 4 December 2009 in accordance with Wakaf Rules 1983, State of Johore.

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3. US$1.8 million (using exchange rate of RM1 = US$0.30).
In the latest development, Majlis Agama Islam Wilayah Persekutuan (MAIWP, i.e., the SIRC of the Federal Territories of Kuala Lumpur, Putrajaya and Labuan) also showed an interest in introducing its own Corporate Waqf product where corporate companies will be the targets for its implementation. A luncheon talk on the matter organised by the MAIWP, which was held on 12 September 2013, showed their determination to make the Corporate Waqf a reality. Today, the product has attracted commercial banks, corporate individuals and the public as waqifs.

In fact, the existing Corporate Waqf institutions mentioned above are in line with a resolution passed in the 1st Islamic Religious Council Congress held in PWTC, Kuala Lumpur on 26-27 September 2011, urging the establishment of such institutions at the national and state levels.

**Financing & Development of Awqaf**

In Malaysia, the development of awqaf properties has increased a great deal. Various approaches have been applied and these centre on the physical type of waqf land developments.

Awqaf hotels are the most iconic, a recent trend in waqf property development. Until now, four hotels have been built under the waqf concept in the states of Malacca (Pantai Puteri), Perak (The Regency Seri Warisan), Terengganu (Grand Puteri) and Negeri Sembilan (Klana Beach Resort). The latter hotel, which is located at the Baitul Hilal Complex, also has an observatory with the largest telescope in the country, measuring 26 inches in diameter.

The above hotels were built on awqaf lands entrusted to the mentioned SIRCs. These huge projects were funded by the Malaysian government, and the respective SIRCs of those states are the sole trustees for their administration. The hotels are operated by the appointed companies through leasing contracts.

Imarah Wakaf (Menara Wakaf) is another unique example of a waqf development project in Malaysia. It is a 34-storey waqf building under the administration of MAIWP, located at Jalan Perak within the Golden Triangle vicinity of Kuala Lumpur City Centre. The building was built on 1.21 acres of awqaf lands endowed by a wealthy Gujarati Muslim, the late Ahmad Dawjee Dadabhoy. The building incorporates Islamic architectural features with the latest in international building design. It was developed using Build Operate and Transfer (BOT) as well as the Islamic concepts of wakala, jara and istisna’.

Imarah Wakaf was the first large-scale commercial development project in the country constructed on waqf land. It involved 3 leading Islamic organisations, namely the MAIWP, Lembaga Tabung Haji (TH, i.e, the Malaysia Pilgrimage Fund Board) and Bank Islam Malaysia Berhad (BIMB). The project was funded by the TH at a cost of RM151 million, and has a 25 year leasing period. MAIWP as the land owner (i.e., the trustee) will receive RM56.6 million over that period. Imarah Wakaf is now being used as the Bank Islam Headquarters and is well known as Menara Bank Islam. MAIWP has been provided with 1 storey of the building and there is also a place of worship called Surau Wakaf Ahmad Dawjee Dadabhoy, named after the waqif. It is believed that MAIWP will receive RM700 million worth of this commercial waqf building upon the completion of the BOT period. It is worth noting that MAIWP has been recognised by Dewan Perdagangan Islam Malaysia (DPIM, i.e., the Malaysian Islamic Chamber of Commerce) and the International Islamic University Malaysia (IIUM) as the Best Waqf Land Development by Malaysian SIRCs.

The above mentioned types of development clearly show that awqaf are not just confined to traditional subjects, such as mosques and graveyards which are always associated with ‘ibadah symbols, but also take in commercial ones. What is important is that the profits or revenues of such mawquf should ultimately satisfy waqf purposes and benefit mawquf ‘alayh (i.e., waqf beneficiary/ies). In fact, there are many other instances of property developments in Malaysia established under the waqf concept which aim to meet the various needs of society, such as orphanages, business premises, educational complexes and women’s shelters.

In addition to the above examples, waqf development is also significant in the area of medical and health services. For example, JCorp, through WANCorp and in cooperation with some of the SIRCs and support from KPJ Healthcare Berhad has developed and manages 20 Waqaf An-Nur Clinics (KWAN); one Waqaf An-Nur Hospital (HWAN) at Pasir Gudang; and two mobile clinics in Johor on the fundamental of charity through waqf concept’s adaptation. The main objective of their establishment was to provide healthcare
treatment and dialysis facilities to the general public, in particular those in greatest need, regardless of their ethnicity and religion. Up to June 2014, a total of 1,001,115 treatments had been given to patients in the chain of KWANs. Out of those, 73,542 treatments were given to non-Muslim patients. The total number of patients with kidney failure that have been receiving dialysis treatment in HWAN and KWANs are now 124. In addition, HWAN and the chain of KWANs not only provide healthcare treatment for a nominal charge of RM5 inclusive of medication but also offer dialysis treatment at a subsidised rate to the needy. Patients also receive financial support from Baitulmal, SOCSO (also called PERKESO, i.e., the Social Security Organisation) and various other welfare agencies which allow them to receive free treatment.

Conclusion

Based on the foregoing discussion on the progress and development of awqaf properties in Malaysia, the future looks promising. Research on waqf, particularly on its financing and development, which has produced new findings, serves as good guidance for all the related parties. Financial support from the Government in awarding research grants to Malaysian universities in this respect is very much appreciated. Application of some Islamic modes of financing in the development of iREITs, waqf REITs and sukuk (Islamic bonds) will surely allow the country to develop awqaf properties in accordance with international standards. This has already happened in Saudi Arabia with the Zam-Zam Tower which used sukuk al-intifa’ (time share bonds) and Singapore which used MUIS internal REITs to develop awqaf properties. The time has come for Malaysia to start applying such commercial modes in developing awqaf properties. The successful application of BOT in the development of Ahmad Dawjee’s waqf land can be used as motivation. It is hoped that one day Malaysia will be one of the leading countries in waqf development.

BOX 5: AWQAF IN INDIA

Evolution of waqf in India

One of the first deeds of a waqf was drafted during the time of the second caliph, Omar bin Khattab. Historically, over the subsequent centuries, this prophetic model was enthusiastically imitated by Muslims all across the globe. In this respect, the role of Indian Muslims should not be overlooked or underestimated, as they have endowed enormous portions of estates in the form of waqf. India, which is home to more than 150 million Muslims, accommodates thousands of waqf properties. Notably, up till the Mughal regime, Indian waqf was managed by the individually appointed mutawallis (trustees) and were supervised by qadis (Islamic judges) in accordance with Shari’a law. However, with the fall of the Mughal empire, and the advent of British rule in the subcontinent, there were huge changes to the methods of overall governance. In the transition, the institution of waqf, inter alia, suffered critically and lost its special nature in terms of being supervised by judges.

Remarkably, in the post-independent India, it was highly anticipated that the administrative responsibilities of waqf would be handed over to the community itself so that these properties would be managed according to the well-established Islamic law on waqf. This never happened. Under the provisions of the 1954 Waqf Act, the Government of India took a driver’s seat in managing and administrating the waqf in the country. The door for undue political intervention, manipulation and corruption in this religious institution was deliberately left wide open.

Although in 1995, in response to the ever growing agitated voices of the Muslim community, the government changed the existing Waqf Act, and ostensibly sought to democratize the process and mechanism of waqf administration, this in no way served the purpose. In fact, the waqf-related Shari’a guidelines were put to rest in the process.

The majority of awqaf in India were created in the pre-colonised periods. Historically, successive Muslim sultans had been greatly generous towards funding awqaf since as early as thirteenth century. From the sixteenth century onwards, with the advent of Mughal Empire in the sub-continent, the proportion and magnitude of awqaf expanded enormously. Interestingly, during the regime of the sultans or Mughals there was no centralised waqf managing department, as most awqaf were managed by the individually appointed trustees. The onus of supervising awqaf during these periods, though, was...
subjected to a hierarchy. At the ground level, the imam of a village was entrusted with the supervision of the awqaf and was accountable to the regional qadi in disputed matters. The regional qadis, who were the ultimate resort in all Shari’a-related affairs of their respective regions, were required to report the functions and administration of regional awqaf to the provincial governor. These governors supervised and advised on the functionality of the provincial awqaf and were directed to report the Sudr as-Sudur, the highest religious authority of the state.

In this method of administration and supervision, waqf properties were in the hands of high calibre trustees-cum-Islamic jurists, who, along with being pious and honest, were well versed in the law of waqf. Through this mechanism, waqf witnessed efficient production and their corpuses were highly protected from decay, dilapidation, encroachments, misuse, disuse or abusive exploitations. As an effect, the confidence of the community was sustained through the provision of social benefits and the productivity of the institution.

In the aftermath of the Mughal Empire’s fragmentation in the early eighteenth century, the colonial ruler’s new administrative policy required an instant abolishment of the institution of the qadi. These qadis were replaced with newly appointed judges who were educated and trained in English law of administration, and had little knowledge of Shari’a law. It was initially believed that the religious nature of waqf, and its related underlying complexities, made it difficult for the British judges to interfere with this institution. Later, as the new rulers grew desperate to generate more revenues through taxation, they introduced for the first time in Indian history the policy of taxation on all private lands. Consequently, the Zamindari Act (conferring the ownership of a land to its holder at the time) was implemented in 1793. According to this law, the legal title on land was to be transferred to the farmer working on the land at the time of decreeing this new law. This enactment adversely affected waqf properties as properties fell into the ownership of individuals responsible to protect and cultivate them.

**Legal Status of Waqf**

In post independent India, despite implementation of numerous measures by successive governments, nothing has succeeded in regaining the lost-confidence of the Muslim community, particularly in protecting the security of their religious endowments. The waqf institution has been a tragic victim of political apathy in post-independence too. In fact, the absence of sincere and religiously-motivated high calibre individuals in the state and central waqf boards proved fatal.

Awqaf in India, at present, is regulated and governed by the Waqf Act, 1995. The Act, consisting of 113 sections and divided into nine chapters, encapsulates the legal status of waqf, its pertinent technicalities, the power and activities of waqf boards and the rights and obligations of the related authorities as well. The Act requires each waqf to be registered with the office of the related waqf board, and the trustees are required to provide appropriate details of the waqfs under their management. The details required in the waqf deed include the category of the waqf, particulars of the waqf properties, specific stipulations of the beneficiaries, classes of the beneficiaries and the name of the trustee.

The Waqf Act 1995 was passed in response to widespread criticism of the Waqf Amendment Act of 1984, which had attracted opposition from the Muslim community for providing excessive administrative and managerial powers to the central and state governments.

Under the Waqf Act of 1995, the waqf board of a specific state, including the Union Territory of Delhi, are required to have 7 to 13 members, of which the majority are elected from amongst the Muslim members of parliament, state legislatures, state bar councils and trustees of waqfs which have an annual income of INR100,000 or more.

The nominated members of the board are supposed to be selected from eminent Muslim organisations of the state, recognised scholars of Muslim theology and law, and a representative of the state government not below the rank of deputy secretary (with reference to Section 14 of the 1995 Act). Most importantly, the expenses incurred for the functioning of the state waqf boards are meted out through the obligatory contributions of the respective waqf. The rate of each waqf’s contribution for this purpose is fixed at six percent of their total revenues. Remarkably, the establishment of the Central Waqf Council, which was set up in 1965 under the now defunct Waqf Act of 1954, and was established for the sole purpose of advising the central government on waqf affairs of the country, has been constantly at the receiving end of
controversy and criticism from the community. The major objections raised against its establishment include the need and purpose of its existence and the way its functioning and expenses are financed. As per official directives, the expenses of the Central Waqf Council are to be meted out through the collective contribution of each waqf in the country. Every waqf is required to contribute one percent of its total annual income for this purpose.

The Waqf Act 1995 was passed in response to the recommendations of the Waqf Inquiry Committee appointed by the government of India in 1976. The Committee had strongly advised the government to minimize its excessive control over the affairs of the waqf administration, and to democratise the selection procedures and the administrative system of waqfs. For more than ten years, it had been repeatedly claimed that the recommendations of the Committee had been implemented in letter and spirit.

However, the Sachar Committee, which was constituted in March 2005 by the government to examine the socio-economic status of Muslims and their religious institutions in the country, revealed in its final report that a major part of the legal administrative policies related to waqf are still restricted and are far from being implemented in practice.

The Sachar Report further claims that the current market value of all the waqf properties in the country is estimated to be more than INR1.2 trillion. According to the Report if these properties are put to efficient and marketable use they can generate at least a minimum return of ten percent which is about INR120 billion per annum.

The Worrying Findings of the Sachar Committee

According to the Committee’s report, there are approximately 490,000 registered waqf properties in the country, and the majority of them are registered in West Bengal and Uttar Pradesh - 148,200 and 122,839 respectively. The total area that waqf properties encroach is more than six hundred thousand acres, and their book value is estimated to be INR60 billion. However, it is vital to note here that this estimation of the book value of waqf properties represents the value of each property as estimated sixty years ago. As far as the current market value of these properties is concerned, there is no exact data available in this regard. The official income from all these waqf properties is INR1.63 billion per annum amounting to a meagre rate of return of 2.7 percent. Interestingly, of this revenue six percent is allocated for the working expenses of the respective waqf boards, and one percent of the total revenues is allocated towards the expenses of Central Waqf Council.

According to the Report if these properties are put to efficient and marketable use they can generate at least a minimum return of ten percent which is about INR120 billion per annum.

The Committee observed that there has been no sincere political will on the part of successive governments to enhance the waqf institution in the last sixty years. Instead, in various states a large number of waqf properties are encroached upon by embezzling politicians. What is worse is that state governments are found to be equally involved in this nefarious activity. In this respect, Delhi State Government leads the way as it has illegally occupied more than three hundred waqf properties. The Committee’s report reveals that the encroachments upon waqf properties by private persons and government bodies are generally in two forms:

- An absolute usurpation of property with no rents or other payments of any sort; and
- Those where the occupying party pays a nominal rent which has not been revised for decades.

The consistent indifference and irresponsible attitude of the state and central governments towards the development and protection of waqf has damaged the optimal potential of this socio-religious institution. The Sachar Committee even notes, “it is quite paradoxical that the present Indian state in which nearly six hundred thousand acres of waqf lands have been existing since more than one century, there still reside almost 38% Muslims in absolute or relative poverty.” The Committee strongly recommended numerous amendments into the clauses of the existing Waqf Act of 1995. A Joint Parliamentary Committee (JPC) was constituted in December 2006 to conduct a thorough inquiry into the viability of these recommendations. The JPC submitted its final report on February 2008 approving some of the Sachar Committee’s recommendations, and also providing suggestions. Consequently, the Waqf Amendment Bill 2010 was proposed by the then Minister of Awqaf, Mr. Salman Khursheed, and was passed unanimously in the
Lower House (Parliament) on May 7, 2010.

The Bill is at present pending in the Upper House of the country, and is almost one step away to becoming legislation. However, the proposed amendments of the Bill have utterly failed in winning the confidence of Muslim community. Rather, the Bill has attracted severe criticisms from leading Muslim organisations for comprising unsolicited clauses, and ignoring some key recommendations of the JPC. The major objection raised against the Amendment Bill 2010 is directed to Clause 87 which makes the registration of every waqf property mandatory, and provides that in case of a dispute unregistered lands have no legal standing.

This clause has ignited much concern from the community as the Bill is totally silent on the status of thousands of acres of lands that are definitively waqf property but are not registered with the related offices.

Another objection against the proposed Bill is directed to a clause that states if the succession of a given trustee fails, any revenue generated from the related waqf would be spent on the welfare of the community. Since the word “community” lacks any definition in the Bill, it is feared that funds arising out of the waqf may be diverted to other areas instead of being specifically allocated for Muslims in the country.

Though the proposed Bill provides that any encroachment on a waqf would be tantamount to a non-bailable offence, the definition of encroachment has not been amended as per recommendation of the Sachar Committee. In addition to drafting problems, the resentment of Muslims is fuelled by the absence of any concrete strategy to vacate the already encroached upon waqf properties.

In view of the above, and contrary to the government’s claims that the Amendment Bill is meant to prevent corruption in waqf boards and to protect waqf properties, most leading Muslim organizations, such as the All India Muslim Personal Law Board, regard the Bill as incomplete and which fails to address current problems.

**Conclusion**

Currently, awqaf in India are faced with challenges on three major dimensions. These include:

- Inefficient utilisation of properties by officials;
- Menace of gradual encroachments by individuals and state governments on abandoned properties, and
- Lengthy and expensive process of litigation on adversely occupied properties.

To combat all these fatal challenges posed to Indian awqaf, there is an urgent need for an overall shift in the management paradigm. There is a strong demand for much-needed changes in the methodology, strategies, planning, policies and formulae of the institution’s administration. Unfortunately, going through the Sachar Committee report reveals that the majority of awqaf in India are lying in a state of complete disorder. In fact, due to rampant cases of misuse, disuse, mismanagement, encroachments and ill-administration, this socio-economic and religious-cum-charitable institution is dying a slow but sure death in the country.