

Article

A FRAMEWORK FOR ANALYSIS OF ISLAMIC ENDOWMENT (WAQF) LAWS

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Analysis of the Shariah-legal framework for Islamic endowments (awqaf, or in singular waqf) around the globe reveals that the Shariah law as well as the national laws are rooted in several considerations. Preservation of the endowed assets seems to be the overriding consideration, which has been interpreted variously as preservation of the assets in their physical form and as preservation of benefits for the intended beneficiaries. While preservation of assets manifests in the form of stipulations such as prohibitions against any sale, gift, or mortgage that might lead to transfer of ownership of the assets, preservation of benefits for the intended beneficiaries requires prudent management of the assets and efficiency in their development and investment. Development may actually lead to expansion of benefits for the intended beneficiaries and may at times require a degree of dilution in the stipulations concerning preservation. We find that laws and regulations often involve a trade-off between concerns about preservation of assets in physical form and concerns about development. Although the focus here is on Islamic endowments in India, this framework may also be employed to analyze laws in other jurisdictions.

1. Introduction

Laws governing Islamic endowments (*awqaf*, or in singular *waqf*) display wide variations. In most countries the laws demonstrate the influence of their colonial past. In these countries, Islamic law was superseded by secular law² and the endowments remained dormant for long periods. The extent of reform efforts varies among countries. For example, though Malaysia is far ahead of others in putting into practice Islamic law in the field of banking, insurance, and financial markets, it lags way behind in operationalizing a progressive law for its *awqaf* sector. Indonesia stands far ahead of others in enacting a law that reflects state-of-the-art thinking among scholars in the field and that may perhaps serve as a model for other countries. India, Pakistan, and Bangladesh share the same origin, in laws enacted during the undivided British India, but they have introduced reforms in varying degrees since achieving their independence. A high degree of commonality therefore exists in their laws.³

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² Islamic law was replaced by British law in all countries with the exception of Indonesia, which was colonized by the Dutch.

³ See *Islamic Social Finance Report* (2014), ch. 4, Islamic Research and Training Institute, Jeddah, Saudi Arabia, which provides a comparative analysis of regulations for the *awqaf* sector in six countries in South and Southeast Asia.

Malaysia comprises thirteen states and federal territories. In Selangor and Malacca, the provisions of law on *awqaf* are provided under the Enactment of Wakaf (State of Selangor) 1999 and the Enactment of Wakaf (state of Malacca) 2005; the other states that do not have such legislation are governed by the states' administration of Islamic law.⁴ The provisions of Part VI of the Administration of the Religion of Islam (Federal Territories) Act 1993 relating to Islamic endowments have striking similarities with those in Chapter 3 of the Administration of Muslim Law Act, Singapore 1999, that deal with Islamic endowments.

In Indonesia, *waqf* is regulated by the Act of Republic of Indonesia No. 41 on Waqf 2004.

India, Pakistan, and Bangladesh share a common history of being part of the undivided India ruled by the British until 1947; therefore, they show striking similarities in their *waqf* laws.⁵ There have been major changes since, though. India, like its neighbors, has a long history of *waqf* laws in various versions, including the Waqf Act 1995 followed by the Waqf Reform Act 2013, which may be the most recent applicable legislation in any country. In Pakistan the Provisional Waqf Ordinances 1979 in its four provinces provide the regulatory framework. In Bangladesh the Waqf's Ordinance 1962 primarily governs *waqf* creation and administration.

In the Gulf Cooperation Council and Middle East/North Africa region, laws governing Islamic endowments have also evolved over time. Islamic endowments were transferred from the voluntary sector (managed by private trustees under the supervision of the *qadi*/judiciary) into the domain of the governments as a response to alleged corrupt practices and usurpation. The endowments in the region remain under the control of the Ministry of Islamic/Religious Affairs.

State control has been less stringent in Sub-Saharan Africa. Countries such as Nigeria and Sudan have been giving increasing attention to reforming their *waqf* infrastructure and providing an enabling regulatory environment for the endowments to be managed and developed.

Analysis of the Shariah-legal framework for Islamic endowments around the globe reveals that the Shariah law as well as the national laws of *awqaf* are rooted in several considerations. Preservation of the endowed assets seems to be the overriding consideration, which has been interpreted variously as preservation of the assets in their physical form and as preservation of benefits for the intended beneficiaries.⁶ While preservation of assets manifests in the form of stipulations such as prohibitions against any sale, gift, or mortgage that might lead to transfer of ownership of the *waqf* assets, preservation of benefits for the intended beneficiaries requires prudent management of the assets and efficiency in their development and investment. Development may actually lead to expansion of benefits for the intended beneficiaries and may at times require a degree of dilution in the stipulations concerning preservation.

In the next section, we present a framework for analysis of laws and regulations as they have been put in place over time. We demonstrate that these have often involved a trade-off between concerns about preservation of assets in physical form and concerns about development.

⁴ The term *wakaf* is used for Islamic endowments in Southeast Asian countries, including Malaysia. The corresponding term in South Asia is *wakf*; in the Middle East, *waqf*; and in North Africa, *habs*.

⁵ This is also the case with Zanzibar in Tanzania that was under British occupation.

⁶ See Monzer Kahf, *Towards the Revival of Awqaf: A Few Fiqhi Issues to Reconsider*, paper presented at Harvard Forum on Islamic Finance and Economics, October 1, 1999, Harvard University, U.S.A.

Using the framework, we analyze laws of Islamic endowments as they have evolved in India. Based on the analysis we argue that further reforms are required to facilitate creation of new endowments and revival of existing endowments.

2. Understanding the Regulatory Trajectory

In order to appreciate the way the laws have evolved over time, we present the concept of society's objective function for laws/regulations/rules/policies. We hypothesize that the objective function for laws/regulations/rules/policies pertaining to Islamic endowments is determined largely by the Islamic scholars who lead the Muslim masses in matters of religion. In a democratic state the laws seek to capture the objective function over time. We hypothesize that given the large-scale encroachment of *awqaf* assets by rulers, the scholars' and society's primary objective has been the preservation of assets. However, over time one may witness a shift in the objective function from (i) preservation of assets to (ii) preservation of benefits for the intended beneficiaries and vice-versa. For instance, such a shift in the objective function is believed to have taken place as one finds increasing scholarly discussion of the concepts of exchange and replacement of waqf assets (*ibdal* and *istibdal*). Arguably, this may occur in the face of a realization that the objective function may need to be modified to (iii) sustained enhancement of benefits for the intended beneficiaries. This would also ensure the fulfillment of (i) and (ii).

Society's objective function may be presented in a two-dimensional space as Regulatory Efficiency Frontier (REF), with the two dimensions being preservation and development. Creation of an enabling legal environment would involve a search for laws of the following types:

1. Laws that enhance both preservation and development: a movement toward the Regulatory Efficiency Frontier
2. Laws that enhance preservation without adversely affecting development: a vertical move upward
3. Laws that enhance development without adversely affecting preservation: a horizontal move to the right

The search for efficiency should involve movement of all three types. Society will optimize efficiency gains at the Regulatory Efficiency Frontier (see Figure 1). A shift in objective function itself (relative importance attached to concerns about preservation and development) would mean a change in the shape of the REF.

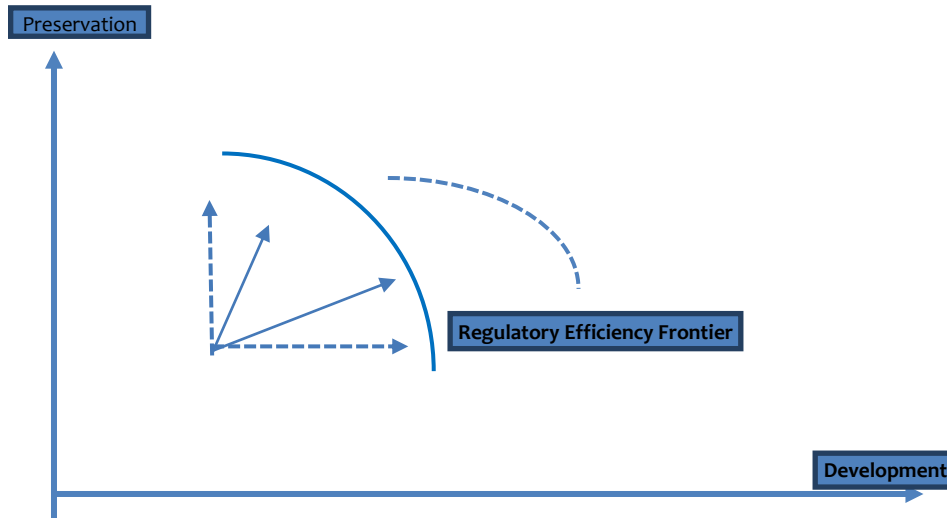
3. Islamic Endowments in India

The following facts for the Indian *awqaf* sector provide the basis for the framework. The size of assets under Islamic endowments in India is huge. The Report on Social, Economic and Educational Status of the Muslim Community of India (2006) estimated that there are more than 490,000 registered Islamic endowments.⁷ The total area under endowed land assets is estimated at 600,000 acres; 80 percent is in rural India and the rest is in major cities. The book value of these assets is estimated at USD 1 billion and the market value at USD 20 billion. At the same

⁷ Social, Economic and Educational Status of the Muslim Community of India: A Report, Prime Minister's High Level Committee, Cabinet Secretariat Government of India, November, 2006, http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/sachar_comm.pdf

time, the annual income on endowed assets is meager, estimated at USD 27 million, or 2.7 percent of book value.

Figure 1: Regulatory Efficiency Frontier



The Islamic endowments in India are characterized by massive encroachment by state agencies and corporate entities, raising serious concerns of preservation. Historians assert that aggressive encroachment by the state began after the 1857 mutiny against the British raj. According to one estimate, currently in Delhi alone, over 30 percent of about 2,000 *waqf* properties are illegally occupied by government agencies. Media reports on high-profile cases have kept the concerns about preservation on the front burner. For example, in 2002 an orphanage land valued at about USD 24 million was sold for USD 3.4 million for construction of the residence of India's richest man (currently valued at around USD 1 billion).⁸

Studies have also reported excellent returns on properties post-development. Therefore, it is believed that the potential and significance of *development* is huge. A study by Syed Khalid Rashid estimated the average return on investment of 20 percent post-development.⁹

3.1. *Waqf* Laws in India

India has witnessed multiple *waqf* laws beginning in 1810. The more recent enactments have been the Wakf Act 1954, Wakf Amendment Act 1984, Wakf Act 1995, and now the Wakf Amendment Act 2013.

A research study undertaken by Hasanuddin Ahmad and Ahmadullah Khan in 1995 for the Islamic Research and Training Institute (IRTI) provides the complete history of *waqf* laws in

⁸ "Mukesh Ambani, India's richest man, faces court over Dh3.6bn Mumbai home," The National, Aug. 4, 2011, <http://www.thenational.ae/news/world/south-asia/mukesh-ambani-indias-richest-man-faces-court-over-dh3-6bn-mumbai-home#ixzz3Eb2rfPxx>.

⁹ S.K Rashid (2005), Protection, Maintenance and Development of Awqaf in India (with special reference to Rajasthan), Institute of Objective Studies, New Delhi, pp 74-85.

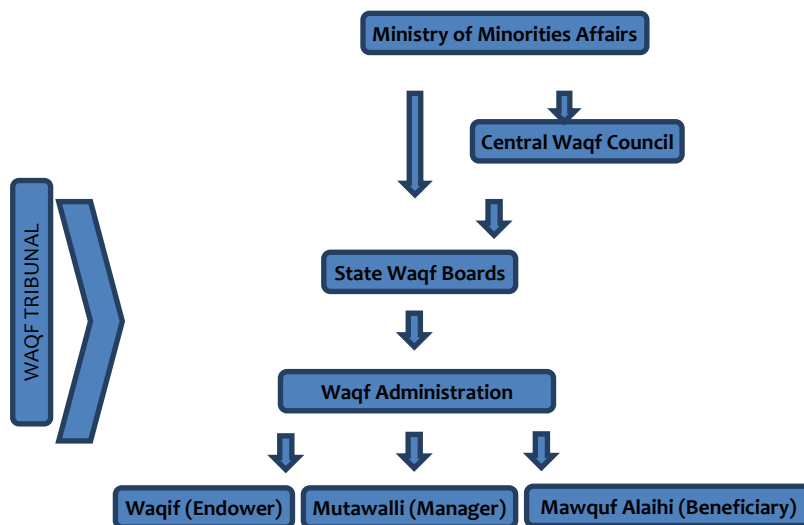
India.¹⁰ However, we restrict our analysis to post-independence India where laws resulted from the democratic process rather than British rule. The first comprehensive legislation for *waqf* in independent India was the Waqf Act 1954. However, this Act failed to address the concerns relating to *awqaf*; therefore, a Waqf Enquiry Committee was constituted by the government in 1969 comprising public representatives. The Committee held nationwide deliberations and made wide-ranging recommendations. This led to the passage of the Waqf Amendment Act 1984. However, for a variety of reasons, this Act remained dormant. The Waqf Act 1995 is the first comprehensive piece of law that defined the rules of the game. The operation of the law, however, continued to attract criticism, and it was largely perceived to be ineffective in preserving the *waqf* assets. This led to further calls for reform. The Waqf Reform Bill 2010 was formulated after extensive consultations. It took the shape of Waqf Amendment Act 2013 three years later.

We focus on provisions of the Waqf Act 1995 and the Waqf Amendment Act 2013 and highlight how the changes that have taken place over time with respect to the infrastructure for *waqf* administration address the concerns about preservation and development.

3.2. *Waqf Infrastructure*

India has a huge *waqf* infrastructure under its Ministry of Minorities Affairs, but with significant autonomy to *waqf* boards constituted at the provincial or state levels. The State Waqf Boards (SWBs) are established by the respective provincial or state governments in view of sections 13 and 14 of the Wakf Act 1995. These work towards management, regulation, and protection of the *waqf* properties by constituting local committees. Currently there are thirty *waqf* boards across the country. The Central Waqf Council is a statutory body established in 1964 by the Government of India under Wakf Act 1954 (now a subsection the Wakf Act 1995) for the purpose of advising it on matters pertaining to working of the State Waqf Boards and proper administration of the *awqaf* in the country.

Figure 2. Waqf infrastructure in India



¹⁰ Hasanuddin Ahmad and Ahmadullah Khan (1995), *Strategies to Develop Waqf Administration in India*, Islamic Research and Training Institute, Jeddah, Saudi Arabia.

Figure 2 presents the various components of the *waqf* related infrastructure in India.

We move on to explore how changes in laws over time affecting them have been governed by concerns about preservation and development.

3.2.1. Central Waqf Council

Section 9-12 of the Wakf Act 1995 provided for the creation and functions of the CWC to advise the Government of India on matters concerning the working of Waqf Boards and the due administration of *awqaf* in the country; and to undertake development of *waqf* assets to ensure preservation.

These provisions were clearly governed by a need to ensure physical preservation of endowed assets (movement of type 2 towards REF in Figure 1). The Act asserted that the endowed assets need to be developed lest they be physically dilapidated to an extent that they would cease to provide any benefits. Thus, the focus was on maintenance of the assets so that benefits continued to flow out and not on development of the assets so that benefits could be enhanced. The law at this stage provided very little that could lead to large-scale development of the endowed assets.

The Waqf Amendment Act 2013 sought to strengthen the role of the CWC as a central and key pillar in *waqf* administration. Among other things, it sought to address the concerns about physical preservation of endowed assets (movement of type 2 toward REF) by empowering the CWC to issue directives to the State Waqf Boards (SWBs) on their financial performance, survey, and maintenance of *waqf* deeds, revenue records, and encroachment of *waqf* properties seeking annual report and audit report; and by providing for any disputes arising out of its directives to be referred to a high-level Board of Adjudication

3.2.2. State Waqf Boards

The idea of federalism, with the State Waqf Boards (SWBs) as the foremost actors in *waqf* administration in India, was introduced quite early. However, it was the Wakf Act 1995 that provided an elaborate list of power and functions of the SWBs (Section 32) as well as the duties and obligations for the trustee-manager or *mutawalli* relating to registration, disclosure, and compliance with directives of the board (Section 50). These provisions were essentially governed by the concern to ensure and enhance preservation of the endowed assets (movement of type 2 towards REF).

Section 32.2 describes the powers and functions of the SWBs as follows:

1. to maintain a record containing information relating to the origin, income, object, and beneficiaries of every *waqf*;
2. to ensure that the income and other property of *awqaf* are applied to the objects and for the purposes for which such *awqaf* were intended or created;
3. to give directions for the administration of *awqaf*;
4. to settle schemes of management for a *waqf*, provided that no such settlement shall be made without giving affected parties an opportunity of being heard;
5. to direct (i) the utilization of the surplus income of a *waqf* consistent with the objects of *waqf*; (ii) in what manner the income of a *waqf*, the objects of which are not evident from

any written instrument, shall be utilized; (iii) in any case where any object of *waqf* has ceased to exist or has become incapable of achievement, that so much of the income of the *waqf* as was previously applied to that object shall be applied to any other object, which shall be similar to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim Community;

6. to scrutinize and approve the budgets submitted by *mutawallis* and to arrange for auditing of account of *awqaf*;
7. to appoint and remove *mutawallis* in accordance with the provisions of this Act;
8. to take measures for the recovery of lost properties of any *waqf*;
9. to institute and defend suits and proceedings relating to *awqaf*;
10. to sanction any transfer of immovable property of a *waqf* by way of sale, gift, mortgage, exchange, or lease;
11. to administer the Waqf Fund;
12. to call for such returns, statistics, accounts, and other information from the *mutawallis* with respect to the *waqf* property as the board may require;
13. to inspect, or cause inspection of, *waqf* properties, accounts, records, or deeds, and documents relating thereto;
14. to investigate and determine the nature and extent of *waqf* and *waqf* property, and to cause, whenever necessary, a survey of such *waqf* property; and
15. generally do all such acts as may be necessary for the control, maintenance, and administration of *awqaf*.

This law also provided for proactive intervention for development of an asset with prior government approval (Section 32.4). The development-related concerns were obviously becoming more significant in shaping the regulatory framework (movement of type 3 towards REF).

Section 32.4 stipulates that where the board is satisfied that any endowed asset offers a feasible potential for development, it may ask the *mutawalli* to develop it. Otherwise, it may, with the prior approval of the Government, take over the asset, develop it with its own funds, and control and manage it until the original investment and the financing cost are recovered (Section 32.5), subsequent to which the developed asset shall be handed over to *mutawalli* of the concerned *waqf* (Section 32.6).

The Waqf Amendment Act 2013 made major changes with respect to the power and functions of the SWBs. It did away with the “government approval” requirement in Section 32.5, thus paving the way for SWBs to undertake development faster and more easily. It also provided for additional physical punishment over and above financial penalties for the *mutawalli* in case of non-compliance with provisions of the law concerning its duties and responsibilities vis-à-vis preservation and development of the endowed assets (movement of type 1 towards REF) (Section 61).

It also sought to strengthen the preservation of endowed assets (movement of type 2 towards REF) by providing for:

- Establishment of boards in states where they are nonexistent (Section 13);
- Prohibition of sale, gift, exchange, mortgage, or transfer of *waqf* property ab initio, except for the possibility of acquisition of *waqf* properties for a public purpose under the Land Acquisition Act 1894 or any other law relating to acquisition of land if the acquisition is made in consultation with the board, provided also that (a) the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act 1991; (b) the purpose for which the land is being acquired shall be undisputedly for a public purpose; (c) no alternative land is available which shall be considered suitable for that purpose; and (d) to safeguard adequately the interest and objective of the *waqf*, the compensation shall be at the prevailing market value or a suitable land with reasonable *solatium* in lieu of the acquired property (Section 51);
- Restoration of *waqf* properties in occupation of government agencies to the *mutawalli* or Waqf Board, or payment of rent at market rates (Section 51);
- Inclusion of professionals and scholars on the board, with a Muslim CEO to effectively deal with administrative machinery in the state (Section 20);
- Removal of corrupt members through no-confidence motion (Section 20A);
- Survey and digitization of records, and compulsory registration within one year of enactment and every ten years thereafter (Section 6); and
- Punishment for alienation of *waqf* assets (Section 52A).

3.2.3. Tribunal

While the dominant role in *waqf* administration is entrusted to the state, the judiciary is expected to act as a watchdog to prevent acts of transgression by the state agency against the *mutawalli* and adjudicate in matters of dispute. However, its effectiveness in ensuring fair play is dependent on provisions of law that define its constitution, power, and functions.

The Waqf Act 1995 provides for establishment of a Waqf Tribunal to adjudicate disputes on whether a particular property is indeed *waqf* property (Sections 6-7) and to ensure fair deal to an aggrieved trustee-manager (Sections 33-35), member (Section 16), and executive officer and staff of SWBs (Section 38.7). However, though the creation of the Tribunal was primarily to ensure the preservation of endowed assets (movement of type 2 towards REF) by recovering encroached assets (Section 52), experience showed that the Tribunal was largely ineffective against encroachment.

The Waqf Amendment Act 2013 sought to further enhance preservation of endowed assets (movement of type 2 towards REF) by providing that the Tribunal has powers of assessment of damages by unauthorized occupation of *waqf* property and to penalize unauthorized occupants and to recover damages; and a public servant who fails in his lawful duty to prevent or remove such an encroachment can be convicted and fined (Section 54).

3.3. Management of Assets

According to Islamic law, it is compulsory to invest *waqf* assets.¹¹ It is the duty of the *mutawalli* to manage the *waqf* assets prudently and efficiently. And it is the duty of the state (*waqf* administration) and judiciary to ensure that the *mutawalli* is complying. The returns or benefits from the endowed assets are meant to flow to the beneficiaries as intended by the endower or *waqif*. However, early lawmakers seemed to be obsessed with the idea of preservation. The Waqf Act 1995 stipulated that the lease or sublease of endowed assets was not permissible for a period beyond three years (movement of type 2 towards REF). Lease or sublease was permitted for one to three years, but only with prior approval of the board (Section 56). Ruling out any long-term lease effectively barred the possibility of participation of return-seeking private capital in the development of *waqf* assets.

This realization has led to amendment of the above restrictive section in the Waqf Amendment Act 2013, which provides the following:

1. The lease period is extended to up to 30 years for commercial activities, education, or health purposes;
2. Approval by the state government is necessary because of the long gestation periods;
3. The board will sanction a lease with the consent of at least two-thirds of members; and
4. The maximum period of lease for agricultural land is three years.

Clauses 2, 3, and 4 show that sufficient caution has been exercised while facilitating the development of endowed assets. The Leasing Rules 2014 further enhance preservation as well as development aspects (movement of type 1 towards REF) by requiring that:

1. The minimum lease rental on such assets put under lease must be at least 5 percent of the market value;
2. Lease rentals must increase by not less than 5 percent every year;
3. There must be competitive bidding;
4. Two years' rent must be paid upfront as security if the lease period is over 10 years;
5. No sublease is permissible;
6. No clause should exist for automatic renewals of the lease; and
7. Stringent conditions must exist in the agreement for possible default by lessee.

The above rules have been formulated by the Ministry of Minority Affairs as prescribed by the Act. Arguably, these need to be revisited.

3.4. Need for Development of Endowed Assets

In line with a growing concern that development is the only way to enhance the benefits for endowment beneficiaries (a flatter REF to the right), there is a need to look at the available mechanisms to ensure development.

¹¹ Resolution No. 140-15/6, Rulings of OIC Fiqh Academy on Awqāf, reproduced in Obaidullah, M. (2013), *Awqaf Development and Management*, Islamic Research and Training Institute, Jeddah, Saudi Arabia, ch. 3.

The mechanism for *waqf* development that has existed for several decades is the Urban Waqf Properties Development Scheme of Central Waqf Council. It is funded through a yearly grant-in-aid from the Central Government. The scheme provides loans with two conditions for *waqf* management: (i) donation of 6 percent per annum to Education Fund, and (ii) 40 percent of enhanced income after loan repayment to be paid towards education.

The National Waqf Development Corporation (NAWADCO) has been set up recently with the explicit objective of development of *awqaf* assets.

3.5. Making Sense of Some Numbers

Against 490,000 registered *awqaf* properties with an estimated market valuation of assets at USD 24 billion, the Urban Waqf Properties Development Scheme of Central Waqf Council has hitherto provided loans to 137 projects of USD 5.77 million (1974-2012), of which 84 have been completed in all respects and are now yielding income; and the National Waqf Development Corporation has been established with authorized capital of INR 500 *crores* (USD 80 million), which is less than 0.35 percent of asset value.

A question therefore arises: How do we meet the massive capital needs for *waqf* development in an efficiency-enhancing manner?

The first mechanism following from successful international experiments seems to be private capital contribution for limited periods. This would, however, call for a relaxation of leasing rules, and more specifically, to allow subleasing to facilitate *sukuk* issues, since no other form of Shariah-compliant borrowing is possible in India. Without permitting subleases, many of the modern *awqaf* financing mechanisms would fall flat.

One may draw here a parallel with the widely acclaimed success in *waqf* development in Singapore by the state agency Majlis Ugama Islam Singapura (MUIS). MUIS has been highly successful in transforming and significantly enhancing the incomes of *awqaf* assets in Singapore. MUIS now manages 68 *waqf* assets directly and an additional 33 *waqf* assets indirectly through *mutawallis*. MUIS appoints *mutawallis* for privately managed *awqaf* and approves any development or redevelopment or purchases by them. It holds the title deeds of all, including the privately managed *awqaf*. Observers attribute this success to a very progressive regulatory change that has allowed leasing *waqf* property for up to 99 years without transferring the ownership to the lessee; and has allowed selling *waqf* properties completely and replacing them with new, higher-yielding free-hold properties (*istibdal*). Because of this flexibility, MUIS could issue participation *sukuk* called Musharaka bonds to finance the development of endowed assets on a fairly large scale.¹²

The second mechanism to finance the development of new *waqf* is through creation of new *waqf*. However, the *waqf* laws in India in their present form do not provide for explicit rules for cash *waqf* and *waqf* shares.

Laws are also silent on rules pertaining to investment of cash *waqf*.

It is a matter of common observation that there is need for level playing field for *awqaf* as compared with other forms of not-for-profit organization, such as societies, trusts, and Section 35

¹² See Shamsiah Bte Abdul Karim (2010), Contemporary *Shari'a* Compliance Structuring for the Development and Management of *Waqf* Assets in Singapore, *Kyoto Bulletin of Islamic Area Studies*, 3-2.

Companies. However, *waqf* involves significant financial and non-financial costs as compared to the above structures, leading to lack of interest among Muslim philanthropists for using the *awqaf* for establishing of education, healthcare, and other socially useful projects. A striking example is that of Azim Premji Trust, which transferred 295.5 million equity shares, valued at USD 2.3 billion, representing 12 per cent of the shares of Wipro Ltd, to an *irrevocable* trust (the Azim Premji Trust) that finances the activities of the Azim Premji Foundation.¹³ The irrevocability of the trust takes care of the most significant difference between a *waqf* and a trust; therefore, the Azim Premji Trust can be legitimately called an innovative case of corporate *waqf*. There are strikingly similar examples of corporate *waqf*, such as the WANCorp by Johor Corporation in Malaysia and the Vehbi KoC Foundation in Turkey,¹⁴ and there is no reason why Indian laws cannot provide for the possibility of corporate *waqf*.

Interestingly, there is very little mention of the term *waqif* or donor in the Indian *waqf* laws. It appears that these laws are meant for *awqaf* created many centuries ago, not for newly created ones. It is worth considering giving *waqif* an option to create *waqf* outside the purview of board (which is where most non-financial costs come from). Without such changes, the problem of funds will continue to haunt the prospects of *waqf* development.

4. Conclusion

This article traced the trajectory of the laws of *awqaf* in India and examined how different provisions of the laws were enacted to address the societal concerns about preservation of endowed assets with a view to retaining its expected benefits for the intended beneficiaries, or developing the assets with a view to enhancing the expected benefits for the intended beneficiaries. The former seems to have dominated the minds of lawmakers in India so far, though of late there seems to be growing recognition of the significance of the latter. The search for efficiency-enhancing rules must continue. One must not shy away from considering and experimenting with innovations in *waqf* financing, which is essential for taking the development agenda forward. Undoubtedly, it makes no sense to allow the endowed properties to remain as they are, without being of any value or providing benefits to anyone.

Further, the modes to address society's concerns (preservation or development) must be correctly identified. For example, extreme concern for preservation has led to seeking state protection without recognizing its adverse impact on the institutionalization of voluntarism. Indeed, state protection is sought to curb private corruption while state apathy, corruption, and interference has discouraged voluntary acts. Recent philanthropic action by members of the community seems to have preferred non-*waqf* forms, perhaps because of excessive government control over *waqf* under existing laws in place.

Waqf was always meant to be in the voluntary sector and not in the government sector. Efficient laws must be formulated and implemented to ensure a reversion to the original status of Islamic endowments as a mechanism that encourages voluntarism, benevolence, and philanthropy.

¹³ See "Azim Premji donates USD 2.3 billion after signing giving pledge," *Forbes*, February 23, 2013, <http://www.forbes.com/sites/naazneenkarmali/2013/02/23/azim-premji-donates-2-3-billion-after-signing-giving-pledge/>

¹⁴ See Obaidullah, M. (2013) *Awqaf Development and Management*, Islamic Research and Training Institute, Jeddah, Saudi Arabia, ch. 2.