

**Management of Waqf Estates in Bangladesh: Towards a Sustainable Policy
Formulation**

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Abstract: ‘Waqf’ is an important Islamic institution. It is one of the greatest sources of charity devoted for the overall development of the Muslim society. Traditionally it has been playing a significant role for the nourishing & flourishing of various religious, educational, economic, social, and cultural dimensions of Islam. In this way ‘Waqf’ emerged as a vital institution in the Muslim society serving the purpose of maintaining various Islamic and social organizations as well as assisting poor individuals of the society leading to a significant reduction of poverty. Its origin dates back to the time of Prophet (peace be upon him) who himself practiced it and, upon his promotion, a number of his companions followed him in this noble task. The first instance of 'waqf' in Islam is the establishment of the ‘Masjid al-Qubā’ near Madīnah followed secondly & subsequently by 'Al-Masjid al-Nababī', built by the prophet (peace be upon him) himself. Quite enthusiastically this tradition has thus been overwhelmingly undertaken by almost every Muslim country albeit with slight variations in the system of management, organization and administration. Though initially there was no set & clear-cut methodology and/or rule to govern the waqf properties, but with the emergence of huge waqf properties alongwith their concomitant complicacies the traditional Sharīah scholars of Islam felt the need to formulate specified rules and methodologies to regulate their management, organization, and administration which latter on resulted in voluminous books, treatises and write-ups. Despite this, the Muslim countries the world-over are following heterogeneous rules for the management of waqf properties. Bangladesh is no exception in this regard. According to a survey conducted by the Bureau of Statistics of the Government of Bangladesh, total number of ‘Waqf’ estates in Bangladesh is 1,50,593 including 1400 estates around different ‘mazars’. According to 1983 Mosque census, out of about two hundred thousand mosques 123,006 are 'waqf' properties. It is also claimed that almost one third lands of Dhaka city is waqf properties. Though the government of the then Pakistan promulgated an ordinance titled as 'The Waqfs Ordinance, 1962' (East Pakistan) which was latter on amended by the then government of Bangladesh in 1972, the laws therein are rather obscure, ineffective and have nothing effectively deterrent to check the corruptions of the Mutawallis and officers. It becomes immediately evident from the fact that although staggering number of 1,50,593 mosques out of about two hundred thousand are maintained by waqf properties, only 15,300 are registered with the ‘Waqf’ Administration of the Government. Thus this is the need of the time for Bangladesh to formulate a law based on an admixture of clear cut traditional waqf rules and modern management tools for the sake of better management, organization, and administration of waqf properties in Bangladesh.

Introduction:

Waqf management and development have been a tremendous concern for the Muslim scholars since long. The phenomenon of corruption in the waqf management can be discerned across history through misuse, mismanagement, looting, encroachment, and unlawful seizure upon awqaf properties.¹ Bangladesh is no exception in this case. Most of the awqaf properties in Bangladesh are either unregistered, not properly recorded and left idle, neglected and unmaintained or undeveloped, underdeveloped, and devoid of any dynamic futuristic developmental plan. Some of these valuable awqaf properties, especially the lands, are being leased out with nominal charges or sold out for insignificant prices.

The trend of waqf endowments in Bangladesh is pathetically negative at present, as most of the waqf endowments have been made in the past, thanks to an ineffective and inefficient handling, mismanagement and bad administration of the existing waqf properties which created an apprehensive stereotype among the devout native Muslims towards new waqf initiatives. Besides, mismanagement of awqaf in Bangladesh is sometimes attributed to the absence of any proper documentation for most of the old waqf properties. In addition to the above mentioned scenario, abuse of *waqf alal awlad* through creating waqf in favor of the sons and depriving the daughters of their due share in inheritance is very commonplace in Bangladesh.

There is no dearth of law in Bangladesh for managing and administering awqaf properties. The people of this country saw the emergence of waqf law in different stages initiated by the British for the first time in 1894 through the declaration of the Privy Council *waqf alal awlad* or family awqaf as invalid which was subsequently repealed and replaced by 'The Mussalman Waqf Validating Act in 1913' followed latter on by 'The Mussalman Wakf Act, 1923', 'The Bengal Waqf Act, 1934', and finally 'The East Pakistan Waqf Ordinance, 1962'. 'The East Pakistan Waqf Ordinance, 1962 is the cornerstone of waqf management in Bangladesh barring some minor amendments made in it by the Waqf Ordinance 1988 and Waqf Ordinance 1998. Quite interestingly, these Acts were formulated with the purpose of checking the growing mismanagement and corruption and ensuring accountability and transparency in Waqf administration which resulted only in the tightening of government control and restricting the authorities of the original founders or their appointees. But across the decades, no sustainable policy was thought out or formulated for ensuring good governance and better management of such a huge awqaf properties which could have, like in the past, contributed for the dissemination of Islamic education, development of Islamic science, spread of Islamic culture, and extending social welfare services.

Thus, for the sake of sustaining the existing waqf endowments and revitalizing this rich Islamic heritage through creating new avenues for further waqf endowments, the need of the hour is streamlining the managerial, administrative, developmental, and more profitable investment process of waqf properties through formulating a sustainable policy in this regard.

Literature Review:

In a recent study, Dr. Syed Khalid Rashid, a well-known authority on Waqf management, showed that during a period of last thirty years-1977-2007, 40 materials (literatures) on Waqf have been produced by and/or on Bangladesh, the majority of which deal with Waqf laws, both classical and modern, without giving much attention to the contemporary issues like development and

¹ Ibrahim Ghanim, *Features of the historical formation of the waqf management* (معالم التكوين التاريخي لنظام الوقف), Awqaf Journal, Experimental Issue, November 2009, p. 66

management.² Of these literatures, 10 are books, 4 are partial books, 4 are published papers, 1 is an unpublished Ph.D thesis, 6 are newspaper/magazine articles, 9 are reports and 6 are on-line materials.³ Rashid observed that he did not come across any academic writing on *awqaf* written between 1971 and 1982, and the bibliography of waqf literature by Abdul Azim Islahi of King AbdulAziz University, published in 2003 mentioning only 6 references on *awqaf* in Bangladesh between 1986 and 2002 well-testify the fact the most of the literatures on Waqf were written in the last decade.⁴ But the revered author acknowledged that that study was not exhaustive as the search was confined to prominent libraries, waqf institutions and universities. Besides, there is no statistics on the literatures produced on Waqf earlier than this period. According to the learned author, the first work on Waqf administration in Bangladesh appeared in 1982 in the form of a Ph.D thesis submitted to the University of London by certain Muhammad Nazmul Haque titled as '*A Critique of the Law of Waqf in Bangladesh*' (pp.711, unpublished). Another Ph.D was going on in IIUM (International Islamic University, Malaysia) relating to 'Waqf Laws and Administration in Bangladesh, which, the author expressed his dismay, could not be finished due to some financial constraints.⁵ Enough, Rashid says, has been written on waqf laws, and what is needed now are studies aimed at improving the management of awqaf, their development and better utilization of their resources.⁶

The available literature on Waqf, observed Rashid, especially the Ph.D. thesis, explored the history of Waqf in Bangladesh covering almost all periods, the roles of the *kazis* and the *mutawallis*, and also briefed the events leading to various Waqf enactments or Ordinances. The two statistical reports published by Bangladesh Bureau of Statistics, one in 1983 on the census of mosques and the other in 1987 on the '*Census of Waqf Estates 1986*', showed that there existed 131,641 mosques in Bangladesh out of which 123,006 have in their favour dedicated waqf properties and 150,593 waqf estates out of which 97,046 are registered and 45,607 are non-registered while the rest 7,940 are *waqf* by user.⁷

According to the author, ten books have so far been written on Waqf of which five deals purely on waqf laws with special reference to Waqf Ordinance, 1962 and their interpretations.⁸ The need for further legislation on awqaf in Bangladesh has been very commonly stressed in all available literature on the pleas that the existing laws are less than satisfactory.⁹ Cash Waqf has also come up in different write up, especially in the two books written by M. A. Mannan and Siddiq Abdelmageed, and published by Islamic Development Bank.¹⁰ A few newspaper articles have widely reported instances of mismanagement, illegal occupation, and various irregularities relating to awqaf, while some books and articles tried to promote philanthropy, some others highlighted the roles of awqaf for poverty alleviation, and the rest are devoted to discussing ways to invest awqaf in non-profit sectors. Besides, the translation of classical literature of awqaf like *Fatawa-e Alamgiriyya* in Bengali is a big achievement.¹¹

Bangladesh Islamic Economics Research Bureau in collaboration with IDB jointly organized an International Conference on Poverty Reduction in the Muslim Countries in Dhaka in November 24-26, 2006. This is the first such type of initiative in either national or international level organized for

² Dr. Syed Khalid Rashid, Bibliography of Waqf Literature Produced in India, Pakistan, Bangladesh, Malaysia and Indonesia during the period from (1977-2007), *Awqaf* (Refereed Biannual Journal Specialized in Waqf & Charitable Activities), No. 15, Year 8, November 2008, p. 13

³ Ibid, p. 22

⁴ Ibid, p. 29

⁵ Ibid, p. 16

⁶ Ibid, p. 16

⁷ Ibid, p. 29-30

⁸ Ibid, p. 30

⁹ Ibid, p. 30

¹⁰ Ibid, p. 30

¹¹ Ibid, p. 31

an academic study of awqaf, though most of the papers presented in the Conference did not specifically address the Waqf system in Bangladesh and its further development. Twenty three papers were presented in that conference of which five papers were related to waqf. The first paper titled as 'Role of Zakah and Awqaf in Reducing Poverty: A Case for Zakah-Awqaf-Based Institutional Setting of Micro-finance' was presented by Monzer Kahf, the world renowned Islamic Economist, and the paper focused on the main shariah rulings on Awqaf, precedents of Awqaf in the first generation of Islam (i.e., the period of the Prophet and his Companions), kinds of Waqf, Awqaf and poor, main fiqh characteristics of waqf, and finally a policy for developing a Zakah and Waqf Foundation for organizing the provision of Micro-Finance. Here the author did not make a specific reference to the awqaf system of Bangladesh but proposed a general policy for awqaf in creating a Micro-Finance system for poverty reduction here and there. The second paper styled as "Possibility of 'waqf money' (as a new productive instrument in Islamic economics)" was presented by Dr. Y. Dadgar, Associate Professor in economics of economics department at Beheshti University, Tehran. But this paper does nothing related to Bangladesh. The third paper styled 'Incorporating Zakat, Awqaf and Islamic Micro-Finance into a Single Model: An Islamic Alternative to Poverty Alleviation' was presented by Ali Ashraf, Assistant Director of Bangladesh Bank. In this paper the author gave an introduction to Zakat, Awqaf and Micro-Finance, proposed a single model integrating Zakat, Awqaf and Micro-Finance, sketched an Organizational Frameworks and Operational Procedure for this integrated model, mentioned a proposed Financial Management Framework, and finally discussed its compliance with Islamic Principles and its role, then, for Poverty Alleviation. The context of the paper is Bangladesh but it has not discussed the problems, prospects and failure of the present waqf system in Bangladesh. The fourth paper titled as 'Islamic Alternative to Poverty Alleviation, Zakah, Awqaf and Microfinance: Bangladesh Perspective' was presented by Mohammad Zafor, Vice Principal for Foreign Service Academy, Dhaka-Bangladesh. This paper is the most relevant one and it focused on a brief statistical data on Waqf properties in Bangladesh, the problems of waqf administration in Bangladesh and their prospects. He then proposed a policy for poverty alleviation in Bangladesh with the collective funds from these three sources (Zakat, Awqaf and Micro-Finance). The final one was 'Application of Awqaf and Islamic Microfinance in a Post-Soviet-Secular State: A Hypothetical Model of Awqaf based credit loan', presented by Fuad Aliyev, a lead researcher at Center of Economic Reforms, Ministry of Economic Development of the Azerbaijan Republic. This paper is purely concentrated on hypothesizing in great details a model for Awqaf-based Credit Unions in the context of Azerbaijan, and it is quite remotely, if any, related to Bangladesh.

Thus it became clear from the foregone analysis and literature review that the available works on awqaf, national or international and published or unpublished, focused generally on the legal aspects, both statutory and non-statutory. And the papers presented in the first ever Conference (International or National) were closely related with the strategies for poverty alleviation through an integrative system of Zakah, Awqaf and Micro-Finance, and these papers are remotely related with waqf system in Bangladesh except the one presented by one Bangladeshi Mohammad Zafor. Now, study is required in the areas of management of awqaf, their development and better utilization of their properties.¹²

Waqf: A Historical Perspective & Islamic Overview:

Waqf (verbal root: waqafa) is a word in its singular form which is pluralized as awqaf. Linguistically, it means 'forbidding movement, transport or exchange of something'.¹³ Hasanuddin asserted that there is no equivalent word or expression in English to convey the Islamic concept and

¹² Ibid, p. 17

¹³ Ahmed Raissouni, *Islamic "Waqf Endowment" Scope and Implications*, ISESCO, Rabat, Morocco, 2001, p. 13

meaning of Waqf in the true sense of the term.¹⁴ Bewley explains that in the Arabic language, the word Waqf literally means 'confinement or prohibition'. In legal usage it means the non-negotiability of property ownership which is of employable value, and the direction of its benefits to a certain charitable purpose, once and for all.¹⁵ According to the definition given in the Mussalman Waqf Validating Act 1913 in India, waqf means the permanent endowment by a Muslim of any of his property for a purpose recognized by the Muslim Law as 'religious, pious or charitable'. Kahf defined waqf as 'a perpetual or temporary holding of *Mal* (asset or usufruct) that produces repeated services, products or revenues for an objective of general or private righteousness'.¹⁶ It is in Muslim Law what nearly is 'bequeath' and 'bequest' in the Roman Law and 'dan' in Hindu Law. All are endowments in some form or other.

Personal property is endowed in waqf for religious, educational, or any other benevolent purpose under specific terms and conditions. In general, these terms and conditions in case of a valid waqf are: (1) it is a permanent arrangement, and cannot be done for a certain period; (2) it becomes immediately effective, and cannot be kept in abeyance; (3) it is an irrevocable legal contact; and (4) waqf property can never be confiscated.¹⁷

The Qur'an does not contain any specific reference to waqf and its legal parameters have been developed by jurists across centuries. It is inspired from repeated emphasis upon charity in the Qur'an. As a special of dispensing charity, Awqaf is certainly included under the general terms of Sadaqah and Infaq. Sadaqah is mentioned in the Qur'an some 19 times and Infaq some 64 times.¹⁸ But the Sunnah of the Prophet (saas) does have some explicit or implicit references in the forms of his sayings and actions to the awqaf system. Kahf mentioned a few sayings of the Prophet (saas) in this regard.¹⁹ The Messenger of Allah (saas) said in a Hadith reported by Muslim, Tirmidhi, Abu Dawud, Nasa'i and Ibn Majah from Abu Hurairah that: Whence a child of Adam dies, his/her deed comes to an end except for three things: a running/continuous Sadaqah, knowledge that benefits (others) and a righteous child who prays for him/her." Ibn Majah's report adds a few details: "a mosque that he/she built, a house for the wayfarer, a river/canal he/she dug or a Sadaqah given during his/her life that continues [giving its benefits] after his/her death."²⁰ This is further augmented by another Hadith reported by Ahmad from Abu 'Umamah: The Prophet (saas) said: "Four persons will have their rewards continued to them after death: ... and a human who made a Sadaqah, its [Divine] rewards continues for him/her as long as it continues running;..."²¹

Many actions of the Prophet (saas) also make clear-cut reference to the establishment of this unique Islamic institution. As 'Awqaf, Kahf says,²² includes properties used to produce religious services as well as charitable services/revenues', one can rightly argue that the first Waqf-creating action by the Prophet Muhammad (saas) was the purchase of the land and the construction of his mosque in Madinah (Al-Masjid al-Nabawi). Besides, building the mosque was one of the earliest things the Prophet (saas) did after his arrival.²³ Many of such historical mosques established by the awqaf properties in Madinah in the first centuries on Islam are still surviving, like: Prophet's Mosque,

¹⁴ Hasanuddin Ahmed, *Strategies to Develop Waqf Administration in India*, Research Paper No. 50, Islamic Research and Training Institute, Islamic Development Bank, Jeddah, Saudi Arabia.

¹⁵ Mufti Abdalhaqq Sayf Al-Ilm Bewley, *Zakah The Fallen Pillar Of Islam*, Dar al-Hijrah, Cape Town, South Africa, 2001, p. 62

¹⁶ Monzer Kahf, *Al-Waqf al-Islami, Tatawwuruhu, Idaratuhu, Tanmiyatuh*, (Islamic Endowments, Its growth, Management, and Development), p. 62-63

¹⁷ http://www.banglapedia.org/httpdocs/HT/W_0018.HTM

¹⁸ Kahf, *Al-Waqf al-Islami*, p. 62-63

¹⁹ Kahf, *Role of Zakah and Awqaf in Reducing Poverty: A Case for Zakah-Awqaf-Based Institutional Setting of Micro-Finance*, (Paper presented in the International Conference on Poverty Reduction in the Muslim Countries, Nov. 24-25, 2006, Dhaka, p. 12

²⁰ Jami' al 'Usul V 11, p 180 and Ibn Majah V 1, pp 88-89, See: Kahf, *Role of Zakah and Awqaf in Reducing Poverty*, p. 12

²¹ Majma' al Zawa'id V 3, p 137, See: Kahf, *Role of Zakah and Awqaf in Reducing Poverty*, p. 12

²² Kahf, *Role of Zakah and Awqaf in Reducing Poverty*, p. 12

²³ Al Sirah al Nabawiyah, pbuh, by Ibn Hisham V 1, p 496, See: Kahf, *Role of Zakah and Awqaf in Reducing Poverty*, p. 12

Masjid Qubā, Masjid Banī Harām, Masjid Banī Dīnār, Masjid Banī Tufrah, Masjid al-Jum'ah, Masjid al-Rāyah, Masjid al-Sabaq, and Masjid al-Sajdah etc.²⁴ Kahf mentions from Ibn Hisham that seven orchards were left to the Prophet by his Companion Mukhayriq upon the latter's death in the battle of Uhud,²⁵ which had the Prophet (saas) assigned as Waqf and he used to spend their fruits on his household and for buying defense weaponry and equipment.²⁶

The most important and illustrious role played for the construction of the idea, policy, and principles of waqf is the incident to Umar (r) who got a land in Khaybar and then went to the Prophet (saas), and said: Messenger of Allah! I got a land in Khaibar. I never got a property more precious to me than this. What do you advise me? He said: "If you want, you can make *habs*²⁷ on (bequeath) it, and give it as *sadaqah* (charity); provided that it should not be sold, bought, given as gift or inherited." Ibn Umar, the narrator of the incident, said, "then Omar gave it as charity for the poor, relatives, slaves, wayfarers, and guests. There is no harm for the person responsible for it to feed himself or a friend from it but for free, without profiteering."²⁸ Abu Dāwud reports from the narration of Yahya bin Sa'id that a great grand son of 'Umar gave him a copy of the written deed that 'Umar created, during his reign, about this Waqf whereby he added to this plot a few other lots of land in some other areas.²⁹

Imam Tirmidhī and Nasa'ī recorded two such kind of waqf made by the third Caliph Uthman (r). The first one is: 'When the Prophet (saas) arrived in Madinah he realized that the city had very little drinking water except the water of *Bi'r Rumah* (Rumah Well). He asked: "Who will purchase *Bi'r Rumah* to equally share the water drawn therefrom with his fellow Muslims and shall be rewarded with a better well in the Jannah?" Uthman (r) then bought half of it from its owner, who was a Jew, with his own money on the condition the Jew would draw water for the day and the Muslims would draw for the next day. This agreement continued for two days when the Jew came and said that the water had been polluted by the Muslims and asked Uthman (r) to fully purchase the well who then purchased it and made it waqf for the use of the Muslims.³⁰ The second report is regarding a land purchased by Uthman (r) for the extension of the Prophetic Mosque and making it an endowment.³¹

Islamic endowments are not confined to religious one, but incorporate other areas. According to Kahf, the waqf of that Rumah Well by Uthman (r) is the first civil waqf which was then augmented by Umar (r) through his famous waqf of land in Khaybar.³²

Many other Awqaf, especially lands with trees were created by the companions of the Prophet (saas). Muslim reports from the narration of Thābit bin 'Anās that when the verse "By no means shall you attain righteousness unless you give (freely) of that which you love" (3: 92) was revealed, Abu Talhah said: Be my witness, oh Messenger of God, that I made my land (orchard) Bayruha' for God..."³³

Ibn Hazm reports that 'Ali made Awqaf out of lands he owned in Yanbu' and Wadi al Qura. Talhah, Al Zubair, Hakim bin Hizam and Fatimah the daughter of the Prophet (saas), all created Awqaf too.³⁴

²⁴ For more detailed discussion and list of these mosques, see: Muhammad Ilyas Abdul Gani, *Kitāb al-Masājid al-Athariyyah fī al-Madīnah al-Munawwarah*, Matābi' al-Rashid, 1999

²⁵ Kahf, *Role of Zakat and Awqaf...*, Referring to "Al Sirah al Nabawiyyah V 2, p 87-88"

²⁶ Kahf, *Role of Zakat and Awqaf...*, Referring to "Al Kettani, 'Abd al Hayy, al Taratib al Idariyyah, V 1, pp 401-401"

²⁷ The word 'Habs' is interchangeably used to mean 'waqf'. This word is the original word used in the Sunnah to refer to waqf.

²⁸ Muhammad Ibn Ismā'īl al-Bukhārī, *Jāmi'*, Kitāb al-Shurūt, Hadith no. 2737, Muslim Ibn al-Hajjaj, *Jāmi'*, Kitāb al-Wasāyā, Hadith no. 2764, Besides, the Hadith is mentioned in other Hadith Books, all on the authority of Ibn Umra, the son of Umar (r).

²⁹ Jami' al 'Usul V 11, p. 639-40, See: *Role of Zakah and Awqaf in Reducing Poverty*, p. 12-13

³⁰ Tirmidhi, *Sunan*, Abwab al-Manaqib (Bab Manaqib Uthman), Hadith no. 3787

³¹ Nasa'I, *Sunan*, Kitab al-Ahbas, (Bab Waqf al-Masajid), Hadith no. 360

³² Kahf, *Role of Zakah and Awqaf in Reducing Poverty: A Case for Zakah-Awqaf-Based Institutional Setting of Micro-Finance*, Paper presented in the International Conference on Poverty Reduction in the Muslim Countries, held in Dhaka between 24-26 Nov. 2006

³³ Sahih Muslim, Saying no. 7780.

³⁴ Ibn Hazm, *Al Muhalla*, V 9, p 180

Ibn Qudāmah reports from the narration of Jabir bin ‘Abdullah that once people heard of the written document of ‘Umar “there was not a single able (rich) companion who did not make Waqf.³⁵ All the great Companions of the Prophet (saas) made waqf like Uthmān, Talha, Al-Jubayr, ‘Ali, Ibn Umar, Abdullah Ibn Amr Ibn al-‘Ās etc. Khālid Ibn al-Walīd is reported to have endowed his armors and weaponry.³⁶

The tradition of making waqf was in vogue before Islam. The first waqf known to the Arab was the construction of the Mosque which has been declared by Allah to be the first mosque built for the pure purpose of His worship.³⁷ This was the place even in the ancient Arabia where people of all social strata and country could gather for divine purpose and they were supposed to be hospitalized by the people in Makkah. The Jews, the Christians, the Romans, and the followers of other religions were also in the habit of making donation for some religious purposes. The ‘idea of the waqf is as old as humanity’³⁸. Professor Timur Kuran, an expert on the ‘origins and development of ‘Waqf’ made the following remarks:³⁹

The institution did not have to be developed from scratch because various ancient peoples—Persians, Egyptians, Turks, Jews, Byzantines, Romans, and others—had developed similar structures. Just as Islam it did not emerge in a historical vacuum, so the first founders of Islamic trusts and the jurists who shaped the pertinent regulations almost certainly drew inspiration from models already present around them.

It is also claimed that Islamic ‘Waqf influenced the development of trusts in Western Europe—most notably the establishment of such venerable educational institutions as the University of Oxford and Merton College,⁴⁰ ‘where the institution of the trust emerged only in the 13th century, a half millennium after it struck roots in the Islamic Middle East.’⁴¹

Awqaf is a unique Islamic intuition which grew larger over time and covered huge areas, like about one third of the Islamic Ottoman Empire and a substantial part of Muslim lands elsewhere. After the demise of the Prophet (saw), Waqf grew by leaps and bounds. Waqf endowment became a pillar in the religious, social, cultural, scientific, economic and political life of Islamic society. Even non-Muslims in Muslim countries established Waqf for the benefit of their communities.⁴² In the meantime, waqf permeated all conceivable social enterprises including mosques, universities, schools, hospitals, orphanages, houses for the poor, food for the poor, the blind, battered/abused women, soup kitchens, wells, aqueducts, fountains, public baths, watchtowers, bridges, cemeteries, salaries, pensions, guest houses, libraries, books and animal welfare.⁴³ It flourished so much that ‘the Ottoman society left the financing of health, education and welfare entirely to the Waqf system... thanks to the Waqfs that flourished during the Ottoman Empire, a person would have been born into a Waqf house, slept in a Waqf cradle, eaten and drunk from Waqf properties, read Waqf

³⁵ Ibn Qudamah, Al Mughni, the Chapter on Waqf.

³⁶ Abdul Qadir al-Khatib al-Husaini, *Nizam al-Waqf fi al-Islam: Bayn al-Hadir wa al-Madi*, (The Waqf Administration in Islam: Between Present and Past)

³⁷ Al-Qur’an, Sura al-Baqarah, verse: 2/127

³⁸ Monzer Kahf, ‘Waqf and its sociopolitical aspects’ (1992) [published by Islamic Research and Training Institute (IRTI) of the Islamic Development Bank (IDB), Jeddah, Saudi Arabia] <<http://monzer.kahf.com/papers/english/WAQF%20and%20its%20Sociopolitical%20Aspects.pdf>> at 20 June 2005

³⁹ Timur Kuran, ‘The Provision of Public Goods under Islamic Law: Origins, Impact, and Limitations of the Waqf System’ (2001) 35 Law and Society Review 841, 848.

⁴⁰ AbdulHasan M. Sadeq, ‘Waqf, perpetual charity and poverty alleviation’ (2002) 29 (1/2) *International Journal of Social Economics* 135, citing at 139, Gaudiosi and M. Cizakca, ‘Awqaf in history and implications for modern Islamic economics’ (Paper presented at the International Conference on Awqaf and Economic Development, Kuala Lumpur, 2-4 March 1998).

⁴¹ Kuran, ‘The Provision of Public Goods under Islamic Law...’, 848

⁴² Intiaz B. Ali, *Waqf: A Sustainable Development Institution for Muslim Communities*, Takaful T&T Friendly Society 2009, Valsayn, Trinidad and Tobago, P. 12

⁴³ Ibid., P. 12

books, been taught in a Waqf school, received his salary from a Waqf administration, and when he died, placed in a Waqf coffin and buried in a Waqf cemetery'.⁴⁴

Waqf enjoyed enormous growth and popularity throughout Islamic history, where a remarkably large proportion of lands were dedicated as waqf lands and the awqaf were responsible for much of what comprised the classical Islamic city and society.⁴⁵ Various studies indicate that fully three-fourths of the lands consisting of the Ottoman Empire were established as waqf lands; in the mid-19th century, waqf 'agricultural land constituted half of the size of land in Algeria' and one-third in Tunisia; and even in the mid-20th century, one-eighth in Egypt.⁴⁶ Today, more than 8,000 educational institutions and more than 123,000 mosques in Bangladesh alone are waqf institutions.⁴⁷ A University in Karachi is financed by a waqf.⁴⁸ A large shopping complex in Dakha is a waqf, providing employment to a large number of people and even financing a publication house, a large auditorium, and a mosque.⁴⁹

Through there was no division or categorization of awqaf in the Prophetic period. But subsequently it was categorized into three types by the scholars of Islam: the religious waqf (*Waqf li-Allah*), the philanthropic waqf (al-Waqf al-Khayrī), and the family waqf (*Waqf li al-awlad*). Religious awqaf or *Waqf li-Allah* establish mosques and provide revenues for the maintenance and operation of mosques. In Islamic history, 'the first religious waqf is the mosque of Qubā' in Madinah ... which was built upon the arrival of the Prophet Muhammad in 622 ... [and which still] stands now on the same site with a new and enlarged structure.'⁵⁰

Philanthropic awqaf or al-Waqf al-Khayrī are broader in their scope than merely religious awqaf: they are established for the benefit of the poor, as well as for wide-ranging public interests such as basic social services, education, health care, libraries, roads and bridges, and parks - and even for the care of animals.⁵¹ The first of such type of waqf was created by the Prophet (saas) himself through making the seven orchards into a charitable waqf for the benefit of the poor which he inherited by Will from one Companion. The Hadīth that speaks of Prophet's directing Umar (r) to establish a waqf out of a land he got in Khaybar, and there the Prophet sets forth clearly many of the conditions of this form of charity is again an example in this case. According to Tradition, after making the above-described waqf, 'Umar decided to declare it in writing and he invited some of the Prophet's Companions to attest the document.⁵² According to Jaber, one of the Companions, when word got around of what 'Umar was doing, other real estate owner's starting creating their own awqaf.⁵³

Quite supposedly, the third type of waqf or *waqf alal awlād* came into existence when some started to create awqaf not only for the benefit of the needy, but also included a condition that their own children and descendants should have priority to the waqf revenues, with only the surplus going to benefit the poor.⁵⁴ Soon, Islamic jurists rested authority for this type of waqf institution on sayings attributed to the prophet (saas) such as, 'It is better to leave your heirs rich than to leave them

⁴⁴ Ibid., P. 12-13; see for details: Birol Baskan, *Waqf System as a Redistribution Mechanism in Ottoman Empire*, 2002, p. 18: www.awqafsa.org.za

⁴⁵ Andrew White, *The Role of the Islamic Waqf in Strengthening South Asian Civil Society: Pakistan as Case Study*, *International Journal of Civil Society Law*, Volume IV, Issue 2, April 2006, p.18-19

⁴⁶ AbdulHasan M. Sadeq, 'Waqf, perpetual charity and poverty alleviation' (2002) 29 (1/2) *International Journal of Social Economics* 135, citing at 139

⁴⁷ Ibid. p. 140-41

⁴⁸ Ibid., p. 141

⁴⁹ Ibid.

⁵⁰ Monzer Kahf, 'Waqf and its sociopolitical aspects' (1992) [published by Islamic Research and Training Institute (IRTI) of the Islamic Development Bank (IDB), Jeddah, Saudi Arabia] at 20 June 2005

⁵¹ Andrew White, *The Role of the Islamic Waqf in Strengthening South Asian Civil Society: Pakistan as Case Study*, *International Journal of Civil Society Law*, Volume IV, Issue 2, April 2006, p.17

⁵² Ibid., p.17

⁵³ Ibid., p.17

⁵⁴ Ibid., p. 18, citing Kahf, 'Waqf and its sociopolitical aspects', IRTI, IDB, Jeddah, KSA, 2005

destitute, begging from others⁵⁵ and ‘One’s family and descendents are fitting objects of charity ... To bestow on them and to provide for their future subsistence is more pious and obtains greater reward than to bestow on the indigent stranger.’⁵⁶ Indeed, a Hadīth reports that, at the express recommendation of the Prophet, a certain Abu Talha created a waqf of his expansive date-palm garden from which the wealth was to be distributed among his relatives.⁵⁷

There is another category of waqf that is 'Cash and investment Awqaf' which are exclusively an invention of the Muslim society. Cash investment Waqf dates as early as the turn of first century of Hijrah. Al-Bukhārī gave a title to one of his sub-chapters “making a Waqf out of domestic animals, personal weapons, goods and money” under which he reported from al Zuhri (Circa 125H) an incident of cash Waqf given to a merchant to use for trade (on Mudarabah basis) and its profit to be used for charity.⁵⁸ Imam Malik bin Anass (Circa 179 H) also mentioned the cash Waqf.⁵⁹ Cash Waqf may have either of two forms: 1) cash may be made into Waqf to be used for free lending to the beneficiaries; and, 2) cash may be invested and its net return is assigned to the beneficiaries of the Waqf.⁶⁰

There is sufficient evidence that both forms of Cash Waqf existed in our history especially in areas where either the Maliki school or Hanafi School prevails (this practically covers all the Muslim land in Africa and Asia west of Malaysia except for the Arabian peninsula). We have in the Fatwa books of these schools numerous questions, discussions and opinions given on Cash Waqf. Murat Çizakça argues that the cash investment Waqf became very common in the later stage of the Ottoman Empire as well as in the early period of the Republic of Turkey.⁶¹ The practice of cash investment Waqf also dominates the establishment of “Waqf Project” in Sudan and “Waqf Funds” in Kuwait in the nineties of the past century. It also exists today in Saudi Arabia in the form of a cash investment Waqf, accumulated through small donations, whose revenues are to be used for charity. It takes the name of “Sanabil al Khayr.”⁶²

On the other hand, the cash-for-lending Waqf can be used to help ease the liquidity stress of consumers and producers, beneficiaries of the revenue of cash and investment Awqaf can be any philanthropic, religious or private entities as may be assigned by the founder. Revenue generating Waqf can provide investment necessary to finance the logistic services of the micro finance organization and increase its cash flow needed to provide financing and the cash Waqf is its main direct tool to help raising the productive capabilities of the poor.⁶³

Shariah Rules on 'Waqf: A Historical Overview of the 'Waqf Canons in the Traditional Fiqh Literature:

⁵⁵ The Hadith is narrated by Sa'd (r) and recorded in *Sahih al-Bukhari*, Kitab al-Manaqib, In *Sahih Muslim*, Kitab al-Wasiyyah

⁵⁶ The Hadith is narrated by Ibn Mas'ud (r) and recorded in *Sahih al-Bukhārī* and In *Sahih Muslim*

⁵⁷ Al- *Bukhārī*, Hadīth 4:30 < http://www.sacredtexts.com/isl/bukhari/bh4/bh4_29.htm>; see also, White, The Role of the Islamic Waqf in Strengthening South Asian Civil Society..., p.18

⁵⁸ Bukhari with the commentary of Fath al Bari by Ibn Hajar al ‘Asqallani, Al Rayan Publishers, Cairo 1986, V 5, p 475. See also Sahih al Bukhari, V 4, p.14, See: Kahf, *Role of Zakah and Awqaf in Reducing Poverty...*, Paper presented in the International Conference on Poverty Reduction in the Muslim Countries, held in Dhaka between 24-26 Nov. 2006, p. 13 (unpublished)

⁵⁹ Al Dardir, Ahmad (Circa 1201 H), al Sharh al Saghir ‘ala Aqrab al Masalik, Ministry of Justice, UAE 1989, V 1, p 651. See: Kahf, *Role of Zakah and Awqaf in Reducing Poverty...*, Paper presented in the International Conference on Poverty Reduction in the Muslim Countries, held in Dhaka between 24-26 Nov. 2006, p. 13 (unpublished)

⁶⁰ See: Kahf, *Role of Zakah and Awqaf in Reducing Poverty...*, Paper presented in the International Conference on Poverty Reduction in the Muslim Countries, held in Dhaka between 24-26 Nov. 2006, p. 13 (unpublished)

⁶¹ Murat Çizakça, “Waqf”, upcoming in the Encyclopedia of Islamic Economics, V II.

⁶² See: Kahf, *Role of Zakah and Awqaf in Reducing Poverty...*, Paper presented in the International Conference on Poverty Reduction in the Muslim Countries, held in Dhaka between 24-26 Nov. 2006, p. 13-14 (unpublished)

⁶³ See: Kahf, *Role of Zakah and Awqaf in Reducing Poverty...*, Paper presented in the International Conference on Poverty Reduction in the Muslim Countries, held in Dhaka between 24-26 Nov. 2006, p. 14 (unpublished)

The Hadith of Umar (r) where he was advised by the Prophet (saas) to make endowment of the land he owned in Khaybar is the milestone for Waqf rules developed by the traditional fiqh scholars. On the basis of that report, the Islamic jurists organized the legal and shariah issues related to waqf into the following chapters:⁶⁴

- a) Definition, sharī'ah basis, characteristics, and pillars of waqf
- b) Kinds of waqf and their places
- c) The ruling of waqf and when the ownership of the waqif is terminated.
- d) Conditions of waqf
- e) Establishment of waqf in the Islamic sharī'ah and modern laws
- f) Nullifiers of waqf
- g) Expenditures of waqf
- h) Exchange of waqf and its selling at the time of its dilapidation
- i) Waqf at death-bed
- j) Nazir (Mutawalli) of waqf: his appointment, conditions, responsibilities, and termination)

Kuran⁶⁵ observes that 'interestingly, the institutional structure of the waqf has remained relatively uniform throughout most of its history'. The basic elements are:

- 1) a declaration of the waqf made by the legal owner of property – usually made in writing, according to a form supplied by a notary, although oral forms appear to have been acceptable,
- 2) that he is immobilizing that property in perpetuity,
- 3) for a particular purpose,
- 4) to be managed according to certain criteria and priorities established by the founder,
- 5) for the benefit of a selected class of beneficiaries, and
- 6) designating a mutawalli (essentially the trustee) to manage the waqf, and prescribing the appointment of successor mutawallis;
- 7) any employees, if necessary, hired and managed by the mutawalli;
- 8) a fiduciary duty on the part of the mutawalli to manage the waqf according to the founder's declaration and in the interests of the beneficiaries, and
- 9) judicial oversight of the mutawalli's appointment and activities by a local judge.

White⁶⁶ claims that 'over time, one more crucial element could be said to be added to his list: the role of the state'. Especially in more modern times, the state has exerted considerable pressure on judges and mutawallis, and has heavily regulated the creation and operation of the waqf. But otherwise, even though, the rules for forming awqaf somewhat 'have varied across regions, time, and the schools of Islamic law'. Dr. Yaseer Abdul Karīm Al-Hourani has extensively diagnosed the causes of the state intervention into Waqf administration and management and identified the following reasons:⁶⁷ (a) change in the structure of regimes, an air for change towards sharing a common Communist ideology and seizure upon awqaf properties with the plea of nationalization & (perceived) reformation (Egypt is a case in point); (b) trend of modern states to have dominance over all urban social institutions and make those subservient to the state's laws plus maintaining prevailing

⁶⁴ Wahbah Al-Zuhayli, *Al-Fiqh Al-Islāmī wa-Adillatuh* (The Islamic Jurisprudence and Its Evidences), Dar Al-Fikr, Beirut, Lebanon, 1997, Vol. 10, p. 7597-7693

⁶⁵ Kuran, 'The Provision of Public Goods under Islamic Law...', 861

⁶⁶ Andrew White, The Role of the Islamic Waqf in Strengthening South Asian Civil Society: Pakistan as Case Study, *International Journal of Civil Society Law*, Volume IV, Issue 2, April 2006

⁶⁷ Dr. Yaseer Abdul Karīm Al-Hourani, *Institutional Problems in the Historical Islamic Experience*, Awqaf (Refereed Biannual Journal Specialized in Waqf & Charitable Activities), No. 14, Year 8, May 2008, p. 77-78

bureaucracy; (c) colonial intervention for controlling awqaf properties; and (d) overriding intervention into the politics of the small states by the big powers and associating their welfare organizations with terrorism. Dr. Al-Hourani also listed a few institutional imbalances for causing state's interference: (a) lack of efficiency, qualification, and performance on the part of Waqf administration; (b) break of trust by the responsible; (c) not honoring the original intents of the waqif; and (d) emergence of welfare activities as a substitute to the role of the state for benevolence and fulfilling people's needs.⁶⁸

History of 'Waqf and the Evolution of its Laws in Bangladesh:

Though there is no certain record on the first 'Waqf initiative and/or instance in Bangladesh, but it may be safely said that the history of creating 'Waqf in Bangladesh is as old as the introduction of Muslim rule in this region, between the 8th and 18th centuries. The Muslim preachers from Arabia infiltrated into the coastal regions of the then Bengal just immediately after the consolidation of the Muslim rule in Arabia and the adjacent areas. The coin of Khalifs Harun'-ur Rashid, dated 172 H/788 A.D. found at Paharpur in the Rajshahi district, and the coin of one of his successors discovered at Mainamati in the Comilla show that the Arab Muslim used to come to Bengal as traders or preachers from the eighth century. Besides, the Muslim rule was consolidated in the then Bengal with the conquest of Ikhtiyaruddin Muhammad ibn Bakhtiyar Khalji who established his control on North and West Bengal. Moreover, The Sufi saints and preachers had a large share in the spread of Islam in Bengal. By their religious fervor, missionary zeal, exemplary character and humanitarian activities, they greatly influenced the mind of the masses and attracted them to the faith of Islam. The Khanqahs of the sufis which were established in every nook and corner of Bengal were great centers of spiritual, humanitarian and intellectual activities and these had a significant role in the development of the Muslim society in this country. Islam, thus, spread throughout Bengal, even to the remotest villages, and the Khanqahs and dargahs of these sufis grew up every where in the country. All of these Khanqahs and dargahs were invariably established through awqaf properties.

The Bengal region during Mughal period had a very rich tradition of 'waqf'. Most of the Mosques, Madrasah and other socio-religious organizations and institutes used to be managed by the income of the 'waqf' estates. But the colonial powers that ruled it for about two hundred years destroyed this tradition along with other Muslim institutions.

The most notable public waqf is the Mohsin Fund. Haji Muhammad Mohsin of Hughli, India and a zamindar of Saidpur estate, endowed in 1806 the whole of his estate income to the maintenance of religious and educational establishments of the Imambarah, Hugli.⁶⁹

As the Muslim preachers encouraged people for charity and they themselves as well as the rulers also practiced big philanthropic activities, a general trend of Waqf endowment developed among the mass people. This is why innumerable Waqf properties are lying scattered in the nooks and corners of the country. Traditionally, the Muslim population of Bangladesh are religious in nature having great attachment to the Islamic institutions and culture. These traits are more prominent in the eastern districts of the country due to influence of Muslim preachers and saints who worked in these areas comparatively more extensively. This explains the reasons for greater number of Awqaf in the eastern districts. The districts of Chittagong Hill Tracts and Bandarban (and Khagrachhari) are inhabited by aboriginals who are non-Muslims and therefore, no waqf exists in these two districts.⁷⁰

⁶⁸ Ibid, Al-Hourani, *Institutional Problems*, Awqaf Journal, No. 14, Year 8, May 2008, p, 77-78

⁶⁹ http://www.banglapedia.org/httpdocs/HT/W_0018.HTM

⁷⁰ Dr. Hasmet Basar, *Management and Development of Awqaf Properties*, Proceedings of the Seminar held on 07 to 19 Dhul Qada, 1404H (04-16 August, 1984), Islamic Research and Training Institute, Islamic Development Bank, Jeddah, Saudi Arabic, 1407H-1987. P. 81

Though Waqfs imply dedication of property in the name of Allah, in Bangladesh, we have the following nature of Awqaf. In some cases total income of the Awqaf goes to the maintenance of mosques, madrasahs, Idgahs, graveyards, feeding of poor and celebration of different Islamic festivals, while in other cases, the income is divided in different proportions for the above-noted purposes on one hand and for the benefit of descendants of the waqif on the other. Where more than 50% of the net available income of a Waqf is exclusively applied for religious and charitable purposes, such a waqf is considered a Public Waqf.⁷¹

Waqf properties in Bangladesh consist of cultivable agricultural land, uncultivable agricultural land, forests, hillocks, urban lands and buildings. Many urban real estates of awqaf properties in Dhaka and Chittagong have been developed into fashionable commercial areas, super markets whereas many uncultivable agricultural lands which were unused earlier are nowadays being increasingly utilized for setting up cattle and poultry farms, and for other pisciculture activities.⁷²

Another significant phenomenon of Waqf is seen everywhere in Bangladesh. This is somehow unknown or even unheard of in many other countries of the world. There are many dargahs and maqbarahs of great saints alongside those many mosques and madrasahs emerged and these have been recognized as Waqf by long usages. People go to these maqbarahs and dargahs and offer cash money, eatables and other things including cattle and poultries. These offerings become Waqf properties which are then used for the propagation of Islam and other charitable purposes, such as, construction and maintenance of mosques, madrasahs, darul hifz, darul qerat, orphanages etc.⁷³

It is a commonplace knowledge to every one that most of the awqaf in Bangladesh were created in the past. The British Rule in Bengal made the first assault on this rich Islamic heritage. Before Partition this tradition of religious endowments, namely waqf, continued though in a slow motion, but after that the erosion started to surface which was only intensified after the Liberation of Bangladesh. This is now reduced almost to naught except a slimmer and meaner emergence of new awqaf in the forms of some mosques alongwith some shops for the mosques to be maintained and the imams, muazzins and others to be paid. It is to be noted that this significant reduction and deterioration in the emergence of new awqaf is often attributed to mismanagement and unproductive handling and/or government's excessive interference into the governance of awqaf properties, as well as an unprecedented wave of materialism, consumerism and hedonism, and the supremacy of secularism and erosion of humanistic social values.

The rules for governing Waqf properties in the Indian subcontinent were the same rules developed by the traditional scholars of Islamic Jurisprudence. Following the end of the Muslim rule in the undivided India, classical Islamic rules of establishing and managing awqaf continued to be operational. During the period of Sultans of Delhi and Moghuls, or Independent Sultans and Shahs of Bengal, the situation remained same. But neither these Sultans nor the Shahs created any separate department for Waqf administration. The Waqf administration in that period was a combined supervision of the District/Provincial Qazis, local Mullas and appointed mutawallis.⁷⁴ The East India Company did not interfere in the Waqf administration until it was 1810 when it, for the first time, intervened through the promulgation of Regulation XIX of 1810 of Bengal Code where, according to Ammer Ali, 'the general superintendence was vested in the Board of Revenue and Board of Commission in the several districts subject to the control of the Board of revenue'.⁷⁵ Then came the famous Religious Endowment Act, 1863 which declared that all properties relating to mosques,

⁷¹ Ibid. P. 81

⁷² Ibid. P. 82

⁷³ Ibid. P. 82

⁷⁴ See for details of the evolution of Waqf laws in the Indian Subcontinent: Dr. Hasanuddin Ahmed & Prof. Ahmedullah Khan, *Strategies to Develop Waqf Administration in India*, Research Paper Series, 50, Islamic Development Bank, Islamic Research and Training Institute, 1418H

⁷⁵ Ameer Ali, Vol. 1, p. 441 (1882 Ed.)

temples, and other religious establishments under the possession of the Board of Revenue or local agents, too, were to be transferred to Trustees, managers, or superintendents and local Committees were appointed to exercise the powers of the Board of revenue.⁷⁶ Notwithstanding all these, prior to 1913, awqaf in British India were simply created and managed in accordance with traditional Shari'ah and fiqhi principles, and the state maintained a fairly 'hands-off' approach. Even the colonial government's venture of promulgating the first major law for 'registering the voluntary associations' (the Societies Registration Act of 1860) did not make any mention of awqaf. Similarly, the Trusts Act, 1882, expressly provided that 'nothing herein contained affects the rules of Muhammadan law as to waqf.'⁷⁷

The first major strike over Waqf management by the colonial power in the then India was the declaration of the Privy Council of Great Britain, the highest judicial authority for Indian sub-continent, that *waqf alal aulad* or family awqaf invalid in 1894 in the famous case of *Abdul Fata Mohamed-versus-Russomoy*.⁷⁸ It is thought that the Privy Council decision was based upon its observation that family awqaf were created by the wealthy and politically powerful Muslims in British India merely for the aggrandizement and economic benefit of the founders' families as well for tactfully avoiding paying tax to the government. The decision of the Privy Council caused considerable stir among the Muslims who believed that the verdict was an infringement of the Muslim personal law. A representation was made to the government of India thanks to which a new act called the Mussalman Waqf Validating Act was passed in 1913, which eliminated the disability created by the Privy Council decision.⁷⁹

In 1923 the colonial government enacted the first legislation to actually regulate awqaf in British India. It was styled as 'The Mussalman Wakf Act, 1923', and it was enacted with the expressed purpose making 'provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties.' This Act comprised of 13 contents where relevant details were furnished. The first content gave the title, extent and date of commencement of the Act discussed, whereas the second content defined different terminologies, the third content discussed the responsibilities of the mutawallis to furnish to the local court, within six months of the creation of any waqf, a 'statement of particulars' containing an identifiable description of the waqf property, the gross annual income as well as the gross amount of such income for the last five years or since creation of Waqf, the amount of revenues, local taxes and rents annually payable to the Government, an estimate of annual expenses, an accounting of amounts set apart for mutawalli's salary, individuals' allowances, for purely religious purposes, for charitable purposes, and for any other purposes; and to provide any other prescribed particulars. The next contents talked respectively about the obligation of court to publish the afore-mentioned particulars or requiring further particulars, providing a 'statement of accounts' to the court by the mutawallis with three months after the thirty-first day of March of each year, the responsibility of the court for making audit of the accounts furnished by the mutawallis, the obligation of the mutawallis to pay the cost of audit, every statement and particulars given by the mutawallis will be written the language of the court and verified in the Code of Civil Procedure, 1908, all particulars may be obtained by any person for inspection with a nominal payment, for any failure on mutawallis' part to provide particulars or true particulars or other mismanagement they would be fined with an amount of five hundred to two thousand rupees, the State Government was authorized to make any law for realizing the fore-gone laws. It finally discussed a few exceptions and exemptions.⁸⁰

⁷⁶ Dr. Hasanuddin Ahmed & Prof. Ahmedullah Khan, *Strategies to Develop Waqf Administration in India*, 1418H, p. 40

⁷⁷ Andrew White, The Role of the Islamic Waqf in Strengthening South Asian Civil Society: Pakistan as Case Study, *International Journal of Civil Society Law*, Volume IV, Issue 2, April 2006

⁷⁸ http://www.banglapedia.org/httpdocs/HT/W_0018.HTM

⁷⁹ http://www.banglapedia.org/httpdocs/HT/W_0018.HTM

⁸⁰ *The Mussalman Wakfs Act, 1923*, <http://www.tnwakfboard.org/1923.42.htm#Obligations>

Like the Mussalman Waqf Validating Act of 1913, the 1923 Act avoids direct conflict with Sharī'ah or fiqh. This Act of 1923 is actually the basis of all Acts or Ordinances promulgated later on for governing Awqaf properties. This 1923 Act was promulgated with the purpose of ensuring transparency and accountability in the awqaf management and administration, and to check institutional corruption and the apparent perversion of Islamic principles of philanthropy and charity.⁸¹

Then came the well-known 'The Bengal Waqf Act, 1934' which can rightly be considered a pioneer in as much as it introduced for the first time the idea of formation of Waqf Board and appointment of Waqf Commissioner.⁸² Waqf estates in Bangladesh (the then Bengal) used to be administered under the provisions of the personal law of the Muslims i.e., Shariah law dealing with fundamental aspects of Waqf. In the light of the provisions of the Shariah Law, the Chief qadi of the District, i.e., the District Judge was acting as the guardian of the Waqf estates of his jurisdiction. But the District Judge had no machinery to supervise, control or manage the Waqf estates. For the first time, the Government passed this special enactment in 1934 for supervision and protection of Waqf estates through a statutory Autonomous Organization to be headed by a Waqf Commissioner.⁸³

The Bengal Waqf Act, 1934 consisted of 93 sections divided into thirteen Chapters. The first and second Chapters talk about the Waqf Commissioner's background, appointment, tenure, and State Government's right to depose him. Chapter III enumerates the functions of the Board and Commissioner which include (for Commissioner) inter-alia investigation and determination of Waqf properties, ensuring proper application of Waqf funds, and preserving particulars, and the functions of the Board include inter-alia, utilization of surplus income, in case of no particular direction from the waqif, declaring proportionate income allocation for different objects, constituting committee and advising the Commissioner. Chapter IV provide Waqf enrolment policy with relevant details, Chapter V requires the submission of Waqf's accounts duly audited, Chapter VI mentions statements of *waqf alal-Aulad* giving full information regarding its income, expenditure, tax etc. Chapter VII imposes a bar on any transfer of Waqf property by way of sale, gift, mortgage, exchange, or lease for more than five years without the previous permission of the Commissioner. Chapter VIII deals with matters relating to mutawallis, their rights, responsibilities, penalties, and dismissal policy. Chapter IX is concerned with finances, annual contribution payable to the Board, Waqf fund and its application, accounts, and audit. Chapter X is concerned with judicial proceedings and the State Government's empowerment to make any rule to be followed in all suits and proceedings. Section 74 discusses the policy of Acquisition. Chapters XI, XII, and XIII deal with amendments/repeal, Rules/Bye-law, and miscellaneous matters respectively.⁸⁴

The whole purpose of this special legislation was to safeguard the Awqaf by putting a sort of control upon the indiscriminate acts of mutawallis concerning the administration of Waqf estates.⁸⁵ But, for political reasons, it was not possible in this Act to make provisions for financing the Waqf administration from public exchequer and as such provisions were made in that Act for meeting the expenditure by collecting contributions from the net income of the Waqf estates.⁸⁶

At the time of the creation of Pakistan, the Bengal Act of 1934 was adopted for East Pakistan and was allowed in administering the Waqf. It was further amended under the East Pakistan Waqf Ordinance 1962, which consolidated and amended the law relating to the administration and

⁸¹ White, *The Role of the Islamic Waqf in Strengthening South Asian Civil Society: Pakistan as Case Study*

⁸² Dr. Hasanuddin Ahmed & Prof. Ahmedullah Khan, *Strategies to Develop Waqf Administration in India*, Research Paper Series, 50, Islamic Development Bank, Islamic Research and Training Institute, 1418H, p. 45

⁸³ Dr. Hasmet Basar, *Management and Development of Awqaf Properties*, P. 83

⁸⁴ Dr. Hasanuddin Ahmed & Prof. Ahmedullah Khan, *Strategies to Develop Waqf Administration in India*, p. 46-7

⁸⁵ Dr. Hasmet Basar, *Management and Development of Awqaf Properties*, P. 83

⁸⁶ *Ibid*, P. 83

management of waqf properties.⁸⁷ But the Bengal Waqf Act of 1934 has not been repealed. However, in Awqaf Ordinance, 1962, a section has been inserted providing that in case of inconsistency or clash with any other law or enactment, the provisions of Awqaf Ordinance will prevail. The basis changes made in the Awqaf Ordinance, 1962 are that:

- a) A uniform rate of Waqf contribution has been fixed.
- b) The post of Waqf Commissioner was re-designated as Waqf Administrator giving him certain quasi-judicial and administrative powers.

The ordinance is still in operation barring some minor amendments made in it by the Waqf Ordinance 1988 and Waqf Ordinance 1998. The waqf properties are administered by the government through a Waqf Directorate.

Management & Administration of Awqaf in Bangladesh: An Analysis:

The most important feature of the Waqf Ordinance, 1962 is the creation of an independent Waqf Administration to be headed by a Waqf Administrator for the sake of management, maintenance, administration, controlling, and development of the awqaf properties. The Waqf Administration of Bangladesh is a religious regulations-based social welfare and social service oriented autonomous organization. It was created through the Bengal Waqf Act, 1934. Now it is run on the basis of the Waqf Ordinance of 1962 with the avowed objectives of helping realizing the purposes of the Waqif, supervision of the Waqf estates, and their appropriate controlling, maintenance and administration. In addition to these, the following functions are supposed to be done by the Waqf Administration:⁸⁸

- a) Investigating and determining the nature and extent of waqfs properties, and calling, from time, for accounts, returns and information from Mutawallis;
- b) Ensuring that waqf properties and income arising there from, are applied to the objectives and for the purpose and for the benefit of any class of persons for such waqfs were created or intended;
- c) Giving directions for the proper administration of waqfs;
- d) Managing himself, or through the officers and servants employed under this ordinance or persons authorized by him, any waqf of which he may take or retain charge under this Ordinance and doing all such acts as may be necessary for the proper control, administration and management of any such property;
- e) Fixing the remuneration of a mutawally, where there is no provision for such remuneration in the waqf deed;
- f) Investing of any money received as compensation for the acquisition of waqf properties under any law for the time being in force, by himself or by issuing directions for proper investment by the mutawalli; and
- g) Generally doing all such acts as may be necessary for the due control, maintenance and administration of waqfs.

Waqf administrator does not manage any Waqf property directly, but supervise the management of the estate and control the activities of the mutawallis. Each estate maintains its separate entity and is managed by a mutawalli. Some of the estates are managed by more than one mutawalli designated as

⁸⁷ http://www.banglapedia.org/httpdocs/HT/W_0018.HTM

⁸⁸ Basar, *Management and Development of Awqaf Properties*, P. 83

joint mutawallis while some others are managed by a group of persons designated as mutawalli committee.⁸⁹

Besides this, the Administrator may, on his own motion or on an application of any person, remove a mutawalli.⁹⁰

- 1) for breach of trust, mismanagement, malfeasance or misappropriation; or
- 2) for any act of the mutawalli causing loss of waqf property or affecting the proper administration, control or preservation of the waqf; or
- 3) if the mutawalli has been convicted more than once under section 61 of this Ordinance; or
- 4) if the existing mutawalli is found unsuitable, incompetent, negligent or otherwise undesirable:

Provided that no such order for removal of a mutawalli shall be made without giving him an opportunity of being heard...

When a mutawalli commits a breach of trust or does any wrongful act causing loss to the waqf property, he shall be liable to make good the loss sustained by the waqf property or its beneficiaries.

Moreover, a proviso has been incorporated in this Ordinance that in Articles 19-26 under Chapter Two: 'The Government shall establish a Committee to be called the Waqfs Committee for assisting and advising the Administrator in administering the waqfs and their funds and in the exercise and performance of his powers and duties in accordance with the provisions of this Ordinance'.⁹¹ But the application of this provision is yet to see the light of day. Notwithstanding, the waqf administration and management in Bangladesh are facing a lot of problems in terms of their inadequacy, obscurity, lack of proper technical, technological and human infrastructure, absence of clearer, deeper, futuristic, and developmental goals, and want of dynamic, pragmatic and far-sighted policies. The followings are typical of these types of problems:

Manpower Distribution:

The most significant of these problems is the shortage of adequate manpower for the management and administration of the awqaf in Bangladesh. The following figure shows that how meager is the personnel working for the waqf administration in Bangladesh. It will also transpire from the figure that though a few posts are created for the waqf administration, many of them are yet to be filled up.

SL	Position/s	Approved posts	Employed	Vacant
01	1 st Class	09	08	01
02	2 nd Class	-	-	-
03	3 rd Class	58	40	18
04	4 th Class	32	29	3
05	Total	99	77	22

Source: Office of the Waqf Administrator, Bangladesh

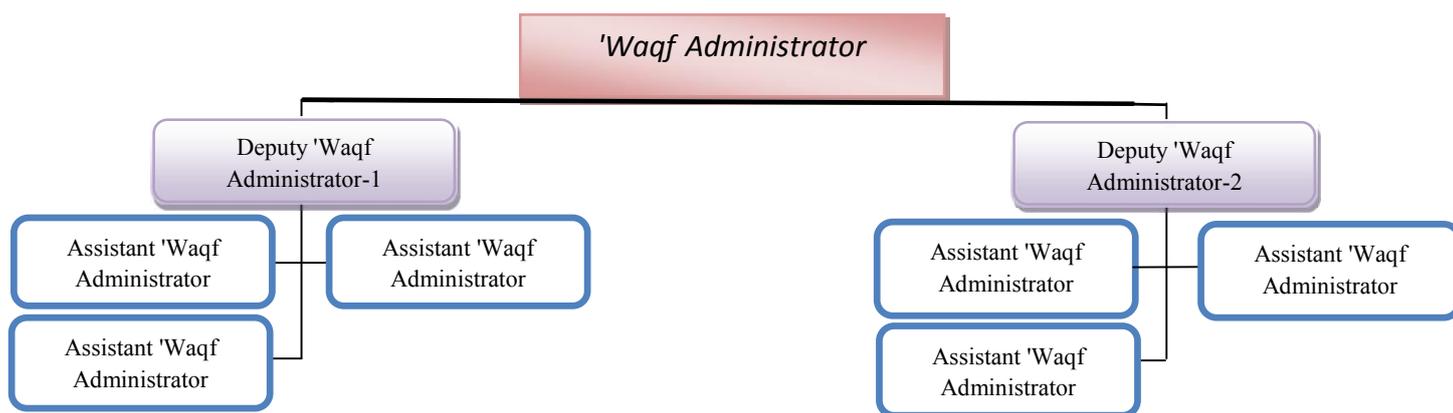
The people in the first and second classes are officers whereas those who are in the third and fourth classes are supporting staffs.

⁸⁹ Basar, *Management and Development of Awqaf Properties*, P. 82

⁹⁰ http://bdlaws.gov.bd/sections_detail.php?id=326§ions_id=16824

⁹¹ http://bdlaws.gov.bd/sections_detail.php?id=326§ions_id=16797

Organizational Structure of the 'Waqf Administration:



The whole Bangladesh is divided into 26 administrative zones having separate zonal local office. These are: (1) Dhaka (North) (2) Dhaka (South) (3) Narayangong (4) Mymensingh (5) Kishorgong (6) Faridpur (7) Chittagong (South) (8) Chittagong (North) (9) Cox's Bazar (10) Comilla (11) Noakhali (12) Laxmipur (13) Rajshahi (14) Noagaon (15) Dinajpur (16) Thakurgaon (17) Bogra (18) Rangpur (19) Pabna (20) Khulna (21) Kustia-Jessore (22) Barguna (23) Barisal (24) Patuakhali (25) Moulvibazar & (26) Sylhet.

Quite ironically though, all of these zonal offices are stuffed with one 3rd Class waqf supervisor or accountant and another 4th Class employee (MLSS), and these zonal offices are devoid of any officer which made the functioning of these offices ineffective.

Department of Waqf is headed by the Waqf Administrator and the Department with all its resource Constraints looks after various religious and Socio-Economic institutions Including 10,000 Mosques, 500 Madrashes, 10 Orphanages, 5 charitable dispensaries. In addition, the department also administers a Welfare Fund from where stipends and scholarship were awarded to poor and meritorious students as well financial grants to destitute Muslims and newly converted Muslims for their instant assistance and Rehabilitation.⁹²

Non Enrolment of Awqaf Properties:

According to a survey conducted in 1986 by the Bureau of Statistics of the Government of Bangladesh under the supervision of the Ministry of Religious Affairs, total number of 'Waqf' estates in Bangladesh is 1, 50,593 including 1400 estates around different 'mazars'. According to 1983 Mosque census out of about two hundred thousand mosques 123,006 are 'waqf' properties. Among these Waqf Estates only approximately 14,000⁹³ are registered with the 'Waqf' Administration of the Government, mainly the big ones. The following diagram will give us a clear picture of the registration level of this Waqf estates:

Name of the Division	Number of 'Waqf Estate/s	Total amount of Land (In Acre/s)
Dhaka	3,027	32,547.46
Chittagong	4,470	1,46,633.14

⁹² <http://www.waqfbd.com/index.html>

⁹³ This is not even an exact figure, and thus it varies. It is also alleged that the survey conducted earlier faced a few problems; hence the exact figure of awqaf in Bangladesh may rise up.

Rajshahi	3,337	1,23,622.062
Khulna	341	4,230.10
Sylhet	553	2,36,999.75
Barisal	1,972	61,904.72
Total	13,700	6,05,937.232

Source: Office of the Waqf Administrator, Bangladesh

Large numbers of Waqf estates are still lying unregistered. There is no such vigorous campaign from the part of Waqf administration to bring these Waqf estates under registration procedure. Though sometimes the mutawallis are not coming forward for enrollment, but extensive and effective campaign throughout the country could make the scenario different. In the initial phase after commencement of the Bengal Waqf Act, 1934, a survey was conducted by the Special Officer appointed by the State Government who by making extensive tours in the undivided Bengal tried to organize Public opinion. As a result during the period of 14 months about 4,000 interested persons voluntarily applied for enrolment.⁹⁴ But after passing of more than 70 years the enrolled Waqf estates do not even exceed 14,000.

Subscription Collection from Division-Wise Waqf Estates:

According to Bangladesh 'Waqh law, 'Waqf' Administration receives 5% of the income of the registered 'Waqf estates as annual subscription and meets its official and other expenses from this income. The following figure shows that in the fiscal year of 2008-09 the annual subscription collection was also not quite satisfactory.

Name of the Division	Claimed Annual Subscription @ 5% (In Bangladesh Taka)	Realized Annual Subscription (In Bangladesh Taka)
Dhaka	1,80,47,386	1,13,93,429
Chittagong	1,25,21,562	80,49,456
Rajshahi	1,14,38,869	57,92,796
Khulna	27,78,510	6,81,949
Sylhet	25,69,992	13,82,540
Barisal	49,25,785	11,09,159
Total	5,22,82,104	2,84,09,329

Source: Report presented to the Parliamentary Standing Committee of the 9th Parliament for the Ministry of Religious Affairs, Bangladesh

This figure shows that almost 45.66% of the annual subscription remains unrealized. But it is also to be noticed that the annual subscription collection rate has increased in the fiscal year 2008-09 than that of the fiscal year 2006-07 and 2007-08. In 2006-07 the proposed annual subscription was 5, 20, 99,071 and the realized amount was 2, 30, 70,691, whereas in 2007-08 the claimed annual subscription was estimated to be 5,09,88,707 and the realization was 2,82,15,793. Still the collection rate for 2006-07 was 44.28% and for 2007-08 it was 55.33%.

Income and Expenditure of Awaqf Properties:

⁹⁴ Dr. Hasanuddin Ahmed & Prof. Ahmedullah Khan, *Strategies to Develop Waqf Administration in India*, 1418H, p. 40

Though, the collection of annual subscription rate is not enthusiastically positive, still there seems to remain a large portion of the money unutilized in the 'Waqf Administrative office. The following picture shows the statistics:

Fiscal Year	Total Income (from annual subscription) (In BD Taka)	Total Expenditure (In BD Taka)	Surplus
2006-07	2,29,00,000	1,35,53,570	1,30,59,860
2007-08	2,82,58,850	1,56,83,104	1,25,75,746
2008-09	3,32,10,796	1,92,68,238	1,39,42,558

Source: Office of the Waqf Administrator, Bangladesh

It shows that a huge amount of money remains unutilized every year, but there is no visible pragmatic policy for the proper and productive utilization of this surplus money.

The Waqf Ordinance, 1962 provides for the creation of a Waqf fund made up of income received by the Administrator from the properties under his control and management. The Waqf funds are to be applied to:

- a) payment of the cost of survey of Waqf properties;
- b) repayment of any loan incurred;
- c) payment of cost for audit of the Waqf fund
- d) payment of the salaries and allowances of the Administrator, Deputy Administrator and Assistant Administrator;
- e) payment of the salaries and allowances of the officers and staff of the office of the Waqf Administrator;
- f) payment of travelling allowances to the Administrator, Deputy Administrator, Assistant Administrator, other officers and servants of the office of the Administrator;
- g) payment of the cost of the establishment employed by the Administrator;
- h) payment of all expenses incurred by the Administrator in the performance of the duties imposed and the exercise of the powers conferred by this Ordinance, and
- i) payment of construction and repairs of mosques;

This policy for the application of Waqf funds shows that how the whole fund is planned to be inherently consumed in non-historical and non-original purposes. Least or no attention has been delineated in the undertaken plans for setting up educational institutions, Medical Centers, and other institutes of public use and benefit as that were the original ideas and/or historical practices of awqaf endowments. The entire cost of the office of the Administrator of Awqaf is met from Waqf fund. Sometimes subsidies are reportedly taken from the Government for meeting the salaries and other expenditures of the Administrator's office. Presently the office of the Waqf Administrator gets nearly 4 million Bangladesh Taka per annum from the government for mitigating its expenses.

Though, the Department of Waqf, according to its declaration,⁹⁵ with all its resource Constraints looks after various religious and Socio-Economic institutions Including 10,000 Mosques, 500 Madras has, 10 Orphanages, 5 charitable dispensaries. In addition, the department also administers a Welfare Fund from where stipends and scholarship were awarded to poor and meritorious students as well financial grants to destitute Muslims and newly converted Muslims for their instant assistance and Rehabilitation. But virtually, it invests a meager half a million Bangladesh Taka (five lac Taka) per annum for construction & maintenance of mosques and other charitable activities, which is though laudable but is evidently insufficient even to maintain one hundred mosques. It also takes care of some service-oriented activities under its large estates: like Hazrat Shah Ali Baghdadi

⁹⁵ <http://www.waqfbd.com/index.html>

General Hospital under Hazrat Shah Ali Baghdadi Waqf Estate provides free medical service, Hamdard Laboratories (Waqf) plays a pioneering role for herbal treatment in Bangladesh, Hajigong Great Mosque Waqf Estate, Haji Golam Rasul Sowdagor Waqf Estate Chittagong, Pagla Masjid Waqf Estate, Kishoregong Waqf Estates and other large Waqf Estates are disseminating religious education and spending in charity.⁹⁶

Corruption in the Awqaf Properties and their Gradual Disappearance:

The awqaf in Bangladesh are going gradually into oblivion because of the corruption and irregularities in the system of leasing or selling out of valuable waqf estates. There is practically no attempt to encourage development of awqaf properties in more profitable ventures like building commercial complexes, establishing real estate sector etc. Instead, the Waqf administration appears to be more interested in granting sanction for transfer of Waqf properties by way of sale or lease which becomes immediately manifest when we say see that a large amount of lands in Mirpur of Dhaka and other places have already been sold out through direct or indirect contracts. The newspapers in Bangladesh make periodical reporting on the corruption in this sector and gradual disappearance of awqaf estates by illegal occupation, encroachment by the political and business giants, and sometimes because of the government's acquisition.

Waqf Administration remains preoccupied with litigation:

The Waqf Administration is to remain much more preoccupied in litigation. Thus it could invest the valuable time for productive thinking of awqaf properties. This author visited several times the Waqf Administration for the sake of collecting data. But to his utter dismay, he found that Deputy Waqf Administrator remained most of the times occupied with litigation over awqaf properties. A huge number of Waqf estates are engaged in litigation over various matters ranging from their titles, natures, and appointment of mutawallis to misappropriation of funds by the mutawallis or committee members etc. As the disputed cases arising out of the affairs of Waqf estates require to be disposed of judicially on recording evidences and giving proper hearing like judicial courts and the decisions given by the Administrator are appealable before the District Judge and Supreme Courts, to meet the grievances of the aggrieved persons the Administrator is to remain very busy. This nature of jobs constitutes 80% of his works. The assistant Commissioner is required to examine each and every file besides keeping vigilance on the output of the staff, accounts and pass on the files to the Administrator for the final decision. One Inspector/Auditor/U.D. Assistant or L.D. Assistant in-charge of the files of one District at the Head Office in Dhaka. Four files viz: Enrolment case file, Account file, Demand file and Law file are maintained for each case.⁹⁷ This state of the affairs shows that how the whole office of the Administrator is engrossed in meeting or mitigating lawsuits where their invaluable time and energy are extinguished which are supposed to be invested for some dynamic and productive thinking.

Waqf Administration is highly centralized:

The Waqf administration in Bangladesh is highly centralized. The Inspectors/Auditors posted in the districts cannot give decision or pass any order. All the decisions and orders lie with the Administrator at the Headquarters.⁹⁸ This speaks of why the office of Waqf administration remains always packed up with visitors, complainers, plaintiffs, defenders, inquirers, registration seekers, and people with many more significant and insignificant issues.

Waqf trend is negative:

⁹⁶ According to the Report presented before the Permanent Committee of the Religious Ministry for the 9th National Parliament.

⁹⁷ Dr. Hasmet Basar, *Management and Development of Awqaf Properties*, Proceedings of the Seminar held on 07 to 19 Dhul Qada, 1404H (04-16 August, 1984), Islamic Research and Training Institute, Islamic Development Bank, Jeddah, Saudi Arabic, 1407H-1987. P. 84

⁹⁸ Dr. Hasmet Basar, *Management and Development of Awqaf Properties*, P. 85

Waqf is playing a very comprehensive role for the overall development of the Muslim society since long. In a study⁹⁹ about Islamic Waqf endowment in some Islamic countries, the researcher concludes that bequest funds are allocated to charity activities as follows:

- 27% for comprehensive mosques
- 11% for regular mosques
- 11% for schools
- 9% for wayfarers
- 8% for Qura'nic schools
- 7% for asylums and small mosques
- 5% for the two Holy Places
- 5% for the poor and the needy
- 17% for miscellaneous matters.

Though this study is purely based on only some 104 Waqf endowments from a few countries like Egypt, Syria, Palestine, Istanbul, Anatolia spanning over a specific period of 1340-1947 AD, it is, however, obvious that more than half of the amount of Waqf endowments has been devoted to the spiritual, scientific and behavioral development of man as well as satisfaction of his materialistic needs on the basis of equality and brotherhood, charity and kindness, not on the basis of profit, exploitation and blackmail.

This historical role of Waqf for the overall development of the Muslim society is almost forgotten by the contemporary Muslims and ironically so, there does not exist or does not seem to exist any significant stimulus among them for religious endowments. The meager endowment initiative which is found in the contemporary Bangladesh like other Muslim societies is almost devoted and limited to masjid whereas other remarkably significant areas like construction & management of schools, libraries, orphanages, hospitals, guest houses and shelters as well as the provision of water, health-care and sanitation, building roads, bridges and walls around the cities are being ignored.

Thus necessary attention is to be given by all relevant quarters for the improvement, consolidation, and ultimate re-immersion of Waqf endowment so that it may perform its historically desired roles and to give it a better shape. The rich people, the religious scholars, and the government agencies should respectively come forward for revitalization of the waqf tradition. The rich people should encourage others through more philanthropic activities and waqf endowments, the religious scholars should orient the people about the virtues of waqf endowments and mobilize grass-root level campaigns, the academicians should organize seminars, symposiums and conferences inviting people's attention to the historical roles played by the waqf endowments, and the government agencies should ensure better formulation of simple laws, transparent and accountable management of waqf properties by the concerned designated authorities, and provide worthwhile managerial infrastructures.

Other problems:

Zafor investigated into the problems of Bangladesh Waqf Administration and Management, and identified a few other reasons, listed below, for its setback:¹⁰⁰

- The misappropriation of incomes coming from this source and leaving almost nothing to be spent for other purposes.

⁹⁹ Towards a Developmental Role of Waqf Endowment, Research papers of a Seminar organized and published by the Kuwaiti Ministry of Waqf (The seminar was held on 1-3 /05/ 1993)

¹⁰⁰ Mohammad Zafor, *Islamic Alternative to Poverty Alleviation, Zakah, Awqaf, and Micro-Finance: Bangladesh Perspective*, Paper presented at the International Conference on Poverty Reduction in Muslim Countries, (Nov. 24-26, Dhaka), p. 7 (unpublished)

- The ‘Waqf’ Administration is very weak in its power and function due to lack of required provisions in the relevant laws and absence of skilled manpower and its offices at all district headquarters.
- The laws and regulations regarding ‘Waqf’ estates are not clear and effective making the matter more complicated. In the absence of proper law to punish the corrupt ‘Mutawallis’ they remain unpunished. In most of the cases they resort to legal protection whenever they find them in any problem taking the advantage of legal loopholes.
- Corrupt practices in handling the affairs of these estates made them disorganized and not capable of delivering the services expected of them.
- Absence of proper planning to develop unused or underused ‘Waqf’ estates.
- There is no social awareness about actual function and utility of these estates.
- The ‘Ulemas’ and mainstream policy planners do not have any idea regarding this vast and prospective sector.

Prospects:

Still the Awqaf in Bangladesh have many prospects. If proper steps are taken, says Zafor,¹⁰¹ for registration of unregistered ‘Waqf’ units and developing the existing ones, this sector can be made a very viable sector for generating huge income for financing various programs and projects including poverty alleviation related ones. Following steps may be considered for this purpose-¹⁰²

- ‘Waqf’ properties in Bangladesh consist of cultivable land, forests, hillock, ponds, large water bodies, urban lands and commercial buildings. By proper cultivation of agricultural lands, utilization of other properties for pisciculture, horticulture, poultry farms and dairy farms and building commercial structures in the urban lands, a strong source of income generation can easily be made. In the Metropolis of Dhaka and Chittagong, there are valuable lands with immense commercial potentials. Multistoried buildings at those places can earn huge income.
- Restructuring the ‘Waqf’ Administration and strengthening it by involving well-reputed personalities in its activities, is urgently needed. A national ‘Waqf’ Board should be constituted for this purpose. Different NGOs can also take up plans for proper utilization of unregistered ‘Waqf’ estates and make them socially worthwhile.
- Amend ‘Waqf’ related laws and frame new laws for effective administration of the estates – both registered and unregistered.
- To make registration of ‘Waqf’ estates and keeping proper accounts of their income and expenditures compulsory.
- To take necessary steps for recovering the estates under illegal occupation and punish those responsible for plundering ‘Waqf’ money.
- To strengthen the process of settling the legal disputes quickly.
- Creating awareness among the common masses about socio-economic importance of these estates for making them conscious about their responsibility to cooperate with the process of diverting the income of these estates for socio-economic upliftment of the poor section of the society.

¹⁰¹ Ibid., p. 7-8

¹⁰² Ibid., p. 7-8

Considering an average income of Tk. 1,50,000/ per annum from each 'Waqf' estate out of total of 1,50,953 estates, it is estimated that an amount of Tk. 22,642 million-(150953 x 1,50,000 = 22642 million, US\$ 323.45million) can be easily generated by reorganizing this sector. This amount can be used for various socio-economic purposes including Micro-finance.¹⁰³

Initiatives Underway for Making 'Waqf Administration More Effective & Dynamic:

A few initiatives have already been undertaken by the Waqf Administration in collaboration with the government for further consolidation and development of Waqf Administration and for making it more dynamic, effective, and worthwhile. According to the statement of the Waqf Administration before the Parliamentary Standing Committee of the Ministry of Religious Affairs for the ninth Parliament:¹⁰⁴

- Survey: Plan has been adopted to make an up-to-date survey of the Waqf estates
- Increasing human resources: A proposal has been sent to the government for appointing 33 additional manpower for bringing effectiveness and dynamism in the 'Waqf administrative activities
- Separate Record System: To check encroachment, plan has been taken to maintain a separate Record System for the Waqf properties like government's Record no. 01
- Modernization of office management: A few initiatives are underway for modernizing the management of the office of the Waqf Administration like establishing Citizen Charter and installing Computers. In the meantime, a fund has been allocated by the government for installing three computers in the 'Waqf Administrator's office. A position has been created for Data Entry Operator who will make entry of the data for Waqf estates. In this regard, with an objective of making a broad data base, a letter has been circulated to all the District Commissioners (DC) asking them for immediately providing a comprehensive and exhaustive list of all Waqf estates.
- Modernizing Waqf laws: With an objective to make the Waqf Ordinance worthwhile a panel comprising 7 experts has been formed
- In the meantime, a panel of three renowned law-advisors have been inducted and appointed for this purpose.
- Movements for rescuing the encroached waqf properties from the illegal usurpers are on the way with much rigor and vigor.

Towards A Sustainable Policy formulation:

On the basis of all foregone analysis and in the light of the problems identified in the awqaf administration and management, and with the prospects uttered by the researchers on Bangladesh awqaf properties, we may offer the following proposals for formulating a sustainable policy in this regard:

- 1) The Waqf Administration should have a concrete policy regarding conducting survey and census on Waqf properties as to how, when and after how many years it will do so to upgrade and update their status. It is observed with total dismay that after independence of Bangladesh in 1971, only one survey and one census on mosques and awqaf properties were conducted and those were in 1983 and 1986 respectively. The Waqf Administration does not have any up-to-date information regarding exact number of Waqf properties and mosques managed by awqaf.
- 2) The Waqf Administration in Bangladesh seems to be satisfied with collecting subscription fee from the registered Waqf Estates and it does not seem to feel any urge to look into the

¹⁰³ Ibid., p. 7-8

¹⁰⁴ Waqf Administrative Office, Waqf Bhaban, 4, New Eskaton Road, Dhaka-1000

management of these estates, their development, and fulfillment of the purposes of the original waqf. It also seemingly lacks in any inherent and built-in mechanism to check into the objections of irregularities by some registered or unregistered awqaf properties.

- 3) There is no Sharī'ah Board for investigating, evaluating or advising the Waqf Administration's compliance with Sharī'ah rules and regulations in all of its activities including administration and investment. The 'International Waqf Conference-Southern Africa, Cape Town, 17-19 August 2007' also recommended to "establish a Sharī'ah Advisory Council in order to provide Waqf institutions with the necessary expertise on Sharī'ah compliance and related issues".¹⁰⁵
- 4) Keeping in sight the experience of Jordan,¹⁰⁶ the Waqf Administration in Bangladesh may invest the Waqf funds and properties especially in the real estate & housing sectors and building commercial complexes considering the soaring many times price increase of the lands in and around Dhaka. In this case, it may be done with direct financing from Waqf Administration or with financing from established Islamic Banks and Islamic Financial Institutions locally and internationally. Or it may lease out the Waqf land properties to the national and international organizations for establishing profitable projects for a certain period of time on condition that as soon as the period expires, the land alongwith the commercial complexes would go in the possession of the Waqf Administration. Waqf Fund Development Foundation (مؤسسة تنمية اموال الاوقاف) under the ministry of Awqaf in Jordan has, meanwhile in between 2003-2005, constructed 10 such profitable projects including one residential area with its own funds which saw a phenomenal return caused huge financial growth. It also came in agreement with many national and international financial institutes for constructing commercial complexes, residential areas and luxurious leisure resorts, some of which have already been finished and some others will be finished shortly. All of these projects will go to the possession of the Waqf Administration after 25 years of their launching.¹⁰⁷ These phenomenal successes led the Foundation to strike hundreds of such deal with many investment institutes and many others with its own financing for constructing commercial complexes, establishing residential areas, and launching luxurious resorts in and around Amman. This may be a good example for Waqf Administration in Dhaka to follow. In this case, a wing/body may be created in the Waqf Administrative Office tasked with preserving the awqaf properties, fulfilling the original intents of the waqf, campaigning across the whole country for revitalizing religious endowments, exploring new avenues for more profitable investment for waqf properties, striking deals with financial institutions for financing in waqf properties, and protecting waqf estates from being sold out, unduly leased out, being encroached, or mismanaged, but rather ensuring their gradual development and growth.
- 5) There is the least or no supervision of the family awqaf (waqf alal aulād) in Bangladesh. The Waqf Ordinance of 1962 does not any explicit reference to family awqaf excepting a general provision that all awqaf are to be enrolled and registered. Even there is no statistics about the quantity of family awqaf because the lone survey conducted by the Bureau of Statistics in 1986 did not include family awqaf under its jurisdiction. Thus the Waqf Administration may take a fresh initiative to have a statistics of the family awqaf in order to look into whether these are governed according to the sharī'ah and state laws and whether the original intents of the waqf in this regard is maintained. It may formulate a law and/or policy, as is implicitly authorized by

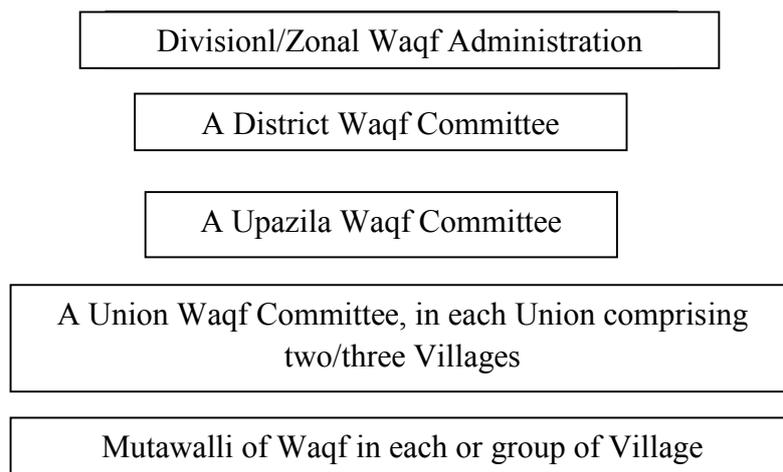
¹⁰⁵ <http://www.awqafsa.org.za/Library%20&%20Resources/Southern%20Africa%20%20International%20Waqf%20Conference%202007/Recommendations%20of%20the%20International%20Waqf%20Conference%20Southern%20Africa,%20Cape%20Town%20%202007%20.pdf>

¹⁰⁶ Mohammad M. Al-Arnaut, *Islamic Contemporary Models in Waqf Economic Practice*, (نماذج اسلامية معاصرة في الممارسة الاقتصادية للوقف) Awqaf (Refereed Biannual Journal Specialized in Waqf & Charitable Activities, No. 14, Year 8, May 2008, p, 69-73

¹⁰⁷ See for details: Al-Arnaut, *Islamic Contemporary Models...* (نماذج اسلامية معاصرة في الممارسة الاقتصادية للوقف) Awqaf (Arabic) (Refereed Biannual Journal Specialized in Waqf & Charitable Activities, No. 14, Year 8, May 2008, p, 69-73

Article 49 of 1962 Waqf Ordinance,¹⁰⁸ through a body comprising of shariah scholars and lawyers in this regard.

- 6) The Waqf Administration should be democratized and decentralized in order to make it much more effective and efficient. The local or zonal administration should be given some sort of power or autonomy to function independently, but that should, of course, be in consultation and agreement with the central administration. Besides, a multi-layer body may work for the proper management of awqaf in Bangladesh. The idea proposed by Rashid¹⁰⁹ for Waqf Supervisory Set-Up in India may function well in the context of Bangladesh with a slight variation:



The 'Central Administration' may lie at Dhaka whereas all divisional headquarters may have separate administration styled 'Divisional Administration' under the leadership of a Deputy Waqf Administrator or all zonal offices may have a separate full administrative set up styled 'Zonal Administration' to be headed by an Assistant Administrator. It may be followed by 'District Waqf Committee' headed by Deputy Commissioner and supervised by Zonal Administration, which may then be followed subsequently by 'Upozila Waqf Committee', 'Union Waqf Committee' and Mutawallis in each village for each waqf. Each of these administrative set up will be supervised and controlled by their immediately upper administration. The grass-root administration (namely the Upozila and Union Waqf Committee) may be constituted of the local leading members of the civil society and renowned local religious scholars (*ulema*) which will take care and ensure proper & efficient management of all awqaf properties, and look into whether awqaf endowments are made by the waqif maintaining all shariah and legal frameworks including proper documentation of all relevant issues. This administrative [re]organization may be established in phases rather than in one stroke on experimental basis. A Sub-Committee may be formed in this regard assigned with working out different functions, authority, administrative hierarchy, code of conduct, selection policy, and tenure of these administrative set ups.

- 7) There is no serious visible effort on the part of Waqf Administration to check into or prevent illegal occupation and encroachment of the awqaf properties, especially the awqaf estates, or to recover the already grabbed properties by the illegal occupants. There is an increasing trend seen everywhere, especially in the metropolitans, to grab the waqf properties by the real estate

¹⁰⁸ http://bdlaws.gov.bd/sections_detail.php?id=326§ions_id=16884

¹⁰⁹ Dr. Syed Khalid Rashid, *Current Problems Facing Awqaf in India*, Awqaf (English), No. 12, Year 7, May 2007, p, 17-22

companies or mighty individuals with political clout, to illegally occupy or unduly lease out or winning government contract for selling waqf estates. Though the Waqf Ordinance of 1962¹¹⁰ prohibits quite unequivocally the selling or transfer of any waqf estates, this is not factually practiced. This is why we felt appalled when the invaluable waqf estates in Duaripara of Mirpur had been sold out in a namesake price. Thus the Waqf Administration should come to a resolute decision and have a concrete law that no waqf property should be sold or transferred, unless hard pressed, instead developmental policy should be undertaken for their commercial utilization, as put above. There is a visible loophole in the 1962 Waqf Ordinance where The Waqf Administrator has been given power to transfer waqf properties with an explicit sanction from the government. Article 33 of Section 3 of 1962 Ordinance reads: 'Notwithstanding anything contained elsewhere in this Ordinance or in any other law for the time being in force or in any waqf deed or in any contract, the Administrator may, with the previous sanction of the Government, transfer any part of a waqf property by sale, mortgage, exchange or lease if he considers it necessary for the improvement and benefit of the waqf.' Sometimes this loophole is exploited and valuable awqaf are sold out in cheaper price. This article as well as article 57¹¹¹ under section 6 are to be amended for the sake of creating perpetuity in the awqaf properties. It is further because, according to the majority of the traditional and modern Islamic scholars, that the waqf land should not be sold. Imām Abū Hanīfah gave a different opinion that waqf may be sold, but on some conditions¹¹² which make it nearly impossible to be fulfilled and thus any waqf property be sold.

The element of perpetuity - both in the sense of duration as well as the repeated flow of its benefits - has positive economic benefits for society, especially that part of civil society concerned with delivering important social services. As observed by leading Islamic economist Monzer Kahf, societies benefit from the establishment of 'revenues/services generating permanent assets devoted to social objectives ... [p]roviding for capital accumulation in the third sector that, over time, builds necessary infrastructure for providing social services on a non-for profit [sic] basis.'¹¹³

Besides, the Waqf Administration may adopt a policy for recovery of the illegally occupied waqf estates. It may easily be done through declaring them 'Public Premises', in line with the resolution of an International Seminar on 'Awqaf Experiences in South Asia', organized by the Institute of Objective Studies, in New Delhi in 1999. The Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance, 1970 which was amended in 1972 and named 'The Bangladesh Government and Local Authority Lands and Buildings (Recovery of Possession) Order, 1972 (President's Order No.85 of 1972) authorizes the Deputy Commissioner, upon receiving satisfactory information, about any illegal occupation may direct a notice to an illegal occupant to vacate the land or building within 30 days from the service of the notice or, in public interest, within less than 7 days. Deputy Commissioner may,

¹¹⁰ According to the Waqf Ordinance, 1962, Articles 56, 57 & 62: No transfer by a mutawalli of any immovable property of a waqf by way of sale, gift, mortgage or exchange, or by way of lease for a term exceeding 5 years shall be valid without the previous sanction of the Administrator: Provided that the sanction by the Administrator shall not validate any transfer which is in contravention of any other law for the time being in force or is otherwise invalid. Besides, any dishonest deal of mutawalli to sell or transfer of waqf in any way shall be treated with imposing a re-conveyance of the waqf by the mutawalli. (see for details: http://bdlaws.gov.bd/pdf_part.php?id=326)

¹¹¹ According to Article 57: A mutawalli or a Receiver may apply to the Administrator for sanction to transfer waqf property under sub section (1) of section 56, and the Administrator, after making such enquiry and giving notice to such persons in such manner as he thinks fit and hearing them, if they desire to be heard, may accord sanction to such transfer on such terms and conditions as he may, in his discretion, impose: Provided that where such transfer is to be made under an express power conferred by the waqf deed, the Administrator shall not refuse to accord sanction. (see for details: http://bdlaws.gov.bd/pdf_part.php?id=326)

¹¹² Abdul Qadir al-Khatib, *Nizam al-Waqf al-Islam*, (The Waqf Administration in Islam: Between Present and Past)

¹¹³ Monzer Kahf, 'Towards the Revival of Awqaf: A Few Fiqi Issues to Reconsider' (Paper presented at the Harvard Forum on Islamic Finance and Economics, Harvard University, 1 October 1999).

upon denial or failure by the illegal occupants to comply, may evict the land or building through demolition or removing structures.¹¹⁴ This is safe and speedy because going for litigation for recovering any encroached upon waqf estate is hugely time-consuming and expensive. Interestingly, Article 36 of the Waqf Ordinance, 1962 confers on the Administrator the authority to delegate the Deputy Commissioner to exercise his power.¹¹⁵

Notwithstanding, the Article 57 of Waqf Ordinance, 1962 under the sub-title 'Power of Administrator to grant sanction to transfer' may well be amended in favor of permanent prohibition of any transfer or sell of awqaf estates to check and shut any loopholes to be exploited by any vested quarter.

- 8) The Waqf Administration should not remain satisfied with collecting its subscriptions from the awqaf, but should have a specific guideline for the mutawallis of awqaf as to where and how should they or at what rate should they invest the revenues of awqaf under their supervision. This should not be done even in the slightest contravention of the original deeds of the waqifs. A well thought-out guideline in this regard will help the mutawallis administer the awqaf ensuring their best utilization.
- 9) Currently the Waqf Administration does not seem to have any idea or policy for creating Cash-Waqf. Different countries of the world have their policies and functions for Cash-Waqf and have got tremendous results out of it. It may go miles..... Even it may issue several waqf deeds with variegated values like 5000/, 10,000/, 20,000/ or 50,000/ Bangladesh Taka which will be provided to the contributor where his name, amount, purpose and other related information may be written down. For the sake of policy formulation in this regard, a competent committee (comprising legal, economics and shariah experts) may be formulated and assigned to finish the formation of proposed policy within a stipulated time.

Normally 'waqf' is done in the shape of immovable properties. But it is gratifying to note that recently some Shariah based banks of Bangladesh introduced Cash 'Waqf' system and achieved remarkable success. Social Investment Bank Ltd is the pioneer in this sector. Till July, 2006, its total Cash 'Waqf' accounts were 1,926 and an amount of Tk. 12.8 million has been deposited into those accounts. It is using this money in various welfare projects according to the wishes of the accounts holders. IBBL has also embarked upon this programme recently and its progress in this sector is encouraging. An amount of Tk. 5.3 million has been deposited into its Cash 'waqf' accounts.¹¹⁶

- 10) The Waqf Administration did not yet formulate any policy or initiate any drive for the recovery of many awqaf properties acquisitioned by the successive governments. It may be done through an understanding with the government or the government may issue an enactment to return all properties to the Waqf Administration with or without compensation. The list of these acquisitioned/confiscated properties will have to be made first and in this case a survey or study financed by the Waqf Administration may well be done with no delay.
- 11) A vibrant taxation policy for the registration of awqaf, especially the new ones, investment and investment of awqaf properties in export, import or any other area may be exempted from government taxation and charges. It will encourage creation of new awqaf and lessen the administrative and unnecessary bureaucratic hassles. In this case, the experience of Sudan may be applied where the government, through an enactment in 1994, provided a good support to

¹¹⁴ http://bdlaws.gov.bd/pdf/363____.pdf

¹¹⁵ http://bdlaws.gov.bd/sections_detail.php?id=326§ions_id=16828

¹¹⁶ Mohammad Zafor, *Islamic Alternative to Poverty Reduction, Zakah, Awqaf, and Microfinance: Bangladesh Perspective*, Paper presented at the International Seminar on Poverty Reduction in the Muslim Countries, held in Dhaka between 24-26 Nov. 2006)

the waqf institution by exempting all waqf properties from all taxes, customs, duties of the court and registration fee of the land etc.¹¹⁷

- 12) It does not have any rule and does not seem to produce someone for managing various mazars and dhargahs of Bangladesh. There are currently two hundred and one scheduled mazars and dhargahs in Bangladesh which are frequented by hundreds of thousands of devout Muslims everyday. They offer their devotion and make their monetary contribution there. Many of these mazars or dhargahs collect every day millions of Bangladesh Taka. There is a self-developed system for the management of these dhargahs and use of their funds and properties. But no check and balance system is there for whether any irregularity is taking place in the management of these dhargahs. This is why, the Bangladesh government enacted a law in 1990 titled as 'The Scheduled Dargah (Administration and Legislation) Act, 1990 (Act No. 23 of 1990)' with the objectives of controlling and managing the scheduled darghas according to Islamic shari'ah and in a more efficient and social-welfare-oriented way. But the Act was repealed in 1994¹¹⁸ with the title 'The Scheduled Dargah (Administration and Legislation) Repeal Act, 1994' due to overwhelming protest from the mutawallis and beneficiaries of these scheduled dhargahs. Now is the high time for the Waqf Administration to enact another law in agreement with the mutawallis and beneficiaries of these dhargahs as to how those should be maintained and how their funds and properties should be utilized in the better service of the Muslim society in particular and the human society at large.
- 13) The Waqf Administration should publish periodicals/magazines on regular basis highlighting the policies, development, management, new enrolment, accounts, regular, and special activities of the Waqf administration. It may also contain writes- up to motivate people for more religious endowments and philanthropic activities.
- 14) The Waqf Administration may publish a half yearly research journal where the research papers relating to Waqf administration, management and development will be published.
- 15) The Waqf Administration may also organize national and international seminars, symposiums and conferences, and arrange round-table discussions comprising policy makers, civil society members, academicians, researchers, politicians and religious scholars with the objective of developing new policies, strategies, and avenues for Waqf management and development.
- 16) The Website of Waqf, Bangladesh is not lucrative and updated, and it does not have any significant information on Bangladesh awqaf. Besides, to our utter shock and surprise, the information which it contains is, in many places, confusing at best and misleading at worst. For example, the webpage just have a brief over on waqf and awqaf in Bangladesh. It has not even updated the information and works it is undertaking for awqaf development. Besides, the number of registered and unregistered awqaf it posted on its site is misleading as that is according to a survey conducted in 1986. Thus the webpage should be furnished with decoration, updated information and the activities performed and initiatives undertaken by Waqf Administration. It may also contain different writes-up on Waqf management and development.
- 17) The Waqf Administration may arrange training sessions for its officers and employees and the mutawallis across Bangladesh to orient them about the basic Shariah and modern rules & regulations of Waqf management. It may be noted here that most of the mutawallis and even some people related to Waqf Administration are not well-oriented with or have no formal training/education about Sharaih and modern (statutory & non-statutory) rules of Waqf

¹¹⁷ Magda Ismail Abdel Mohsin, *Contemporary Sudan's Experience to Revive Waqf Institution*, Awqaf Journal, No. 8, 5th Year, 2005, p. 48-49

¹¹⁸ <http://www.sai.uni-heidelberg.de/workgroups/bdlaw/1994-a09.htm>

administration. Most of the crises relating to Waqf management are arising out of this unfortunate ignorance.

- 18) It may have a research wing assigned to constantly exploring new ideas for Waqf management and development.
- 19) The Waqf Administration should maintain a separate library wherein different publications on Waqf management throughout the world will be collected and the researchers will have free access to this library for research.
- 20) It should have individual lawyer or an independent lawyer panel, under its sole jurisdiction, appointment and control, which will be particularly expert & efficient to handle and deal with Waqf related laws and litigations.
- 21) There should be continuous initiatives/drives on the part of Waqf Administration to encourage new enrolment and registration of awqaf properties with the Waqf administration.

Conclusion:

In the light of the foregone analysis, we may safely say that the awqaf properties in Bangladesh including hundreds of scheduled and unscheduled mazar and dhargahs are of immense potentiality and can contribute profusely, if and when used properly, for the overall socio-religio-educational-cultural development of Bangladesh. In this case, the law of the country as well as the Waqf Administration will have to be developed simultaneously. Though the government alongwith the waqf administration formed a panel of lawyers to look into the prevailing laws and to propose necessary corrections, amendments, and reforms in this regard, but it will not suffice to bring in the needed amendments and reforms in the existing legal framework. A formidable policy is extremely required to let awqaf play their historical roles. Materialism, consumerism, hedonism, capitalism, sensualist obsession and secularism are wrecking serious havoc on this rich heritage of the Muslims. There was a time when making a waqf was almost inevitable for every Muslim. The scenario is now totally different. People, especially the new generations are devoid of any motivation and even idea of Islamic waqf system. Besides, those who are interested to make waqf are discouraged or afraid of making so due to an overwhelming report of mismanagement and (alleged) corruption in the administration of awqaf properties. Moreover, the awqaf properties are not directed to the playing of their historical roles of propagating Islam, giving Islamic education, preserving Islamic culture, developing Islamic science, knowledge and technology, and establishing Islamic and social institutions. The Waqf Administrative Office which is supposed to look after all these activities is suffering itself from lack of necessary funds for its own survival. A policy in line with the prescriptions mentioned and others to be explored are to be adopted and their implementations are to be ensured immediately without further delay.