

# PROBLEMS AND PROSPECTS OF *AWQAF* IN BANGLADESH: A LEGAL PERSPECTIVE

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## Abstract

As experienced often by the non-philanthropic and other corporate organizations the *awaqf* in Bangladesh also experience problems and enjoy prospects all the way through their operation and management. Unlike those non-philanthropic and other corporate organizations, however, the Bangladesh *awaqf* own a huge amount of underutilized national asset, which has the potential to contribute immensely to the overall socio economic development of the country. This paper shares and explores the current status of the *awqaf* sector in Bangladesh from socio-legal perspective and underlines the areas that need a fresh look for revitalization and utilization of *awqaf*. The paper primarily argues, among others, that the assets held by the Bangladesh *awaqf* could be utilized more efficiently to bring out the poor segment of the population out of the ocean of poverty. And this can be done by bringing in the necessary changes in the administration and management of *awqaf* in order to make it suitable to the present day need. The paper recommends, among others, that empowering the poor through *waqf* based on various Islamic finances, and not by donation grants, thereby making the poor segments of the society an integral part of the development process should be the primary goal of the *Waqf* Administration in the country. The paper comes with some more specific suggestions and recommendations that deserve serious consideration for the development of *awqaf* in the country.

**Keywords:** Problems, prospects, *Awaqf*, Bangladesh, socio-legal perspective, and *Waqfs Ordinance 1962*.

## 1. INTRODUCTION

Bangladesh has an approximate population of 140 million, 87% of which is Muslim, being the third largest Muslim population in the world. *Waqf*, as a religious charitable institution, has been in existence in this South Asian Muslim country for centuries. Bangladeshi Muslims have high regard for religious activities and thus have a rich tradition of establishing *awqaf* for various types of religious, educational and social welfare purposes. *Awqaf* properties in Bangladesh consist of Mosques, *Madrasah*, *Eidgahs*<sup>1</sup>, Graveyards, Pharmaceuticals, cultivable agricultural lands, barren lands, forests, hillocks, and urban lands. There are a lot of urban real estates in the major cities such as the capital city of Dhaka and the port city of Chittagong. Such *waqf* estates include, for instance, Baitul Mukarram (the National Mosque) Complex in the capital city and the Andar Qillah Shahi Jame Masjid Complex in the commercial city of Chittagong. Both the estates have huge

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<sup>1</sup> Large open fields designed and dedicated for congregational *Eid* prayers.

shopping complexes which are let out in consideration of rents. Besides, there are real estates in the form of residential buildings that are mostly used by the descendant beneficiaries of the *waqifs*. *Dargahs* and *Mazars*<sup>2</sup> constitute a big portion of the *waqf* estates in Bangladesh. Most of these estates are recognized as *waqf* by long user.<sup>3</sup> Such estates include, for instance, Shah Jalal(R) and Shah Poran(R)'s *Mazars* in the north-eastern district of Sylhet. These estates earn a huge income, albeit, without any apparent investment. The main sources of income for these estates are various kinds of offerings, *hadiyah* and consecration of charities made. Usually people would go to such *mazars* and *dargahs* to seek Allah's blessings through those saints who are buried in those *maqbarahs* and offer valuables such as livestock and domestic animals, poultries and vegetables, money in cash and jewelry etc. These offerings come in enormous volume particularly during the annual celebration of *Urs Mahfil*<sup>4</sup> which is held on a regular basis.

As far as registration with the Office of the *Waqf* Administrator (OWA) is concerned, *awqaf* properties in Bangladesh can be categorized into three broad categories. First, *awqaf* that are registered with OWA; second, *awqaf* that are created as private trusts and are not listed in the Office of the *Waqf* Administrator (OWA) in the Ministry of Religious Affairs; and third, *awqaf* that are managed by *Mutawallis* or committees without registering with OWA. Only *waqf* properties that fall under the first category fall under the *waqf* administrative system of the government. Since *waqf* properties under the second and third categories are not registered they are not under the direct control of the Office of the *Waqf* Administrator as the OWA is not directly involved in various types of dealings, decision making and day to day activities of these two categories of *waqf* estates.

Recent years have also seen the emergence of a new trend, which is relatively new in Bangladesh, of making *waqf* of money in cash or better known as cash *waqf*. It is encouraging to note that in Bangladesh a couple of private banks have pioneered in introducing cash *waqf*. Dedicating intellectual properties as *waqf* is another interesting development in Bangladesh that has been found to be in practice recently. Some Islamic scholars have initiated this noble tradition by dedicating the copyrights of the religious books that they have either themselves authored or they have translated other great Islamic scholars' works.

## 2. GENESIS OF *AWQAF* LEGISLATIONS IN BANGLADESH

During the British occupation, *waqf* estates used to be administered under Muslim personal law (*shariah*) dealing with fundamental aspects of *awqaf*. The Chief Qadi of a District used to be the guardian of *waqf* estates in the district of his jurisdiction. However, the District Chief Judge did not have proper control and constructive, well articulated mechanism to supervise and manage the *waqf* estates. In the absence of a governing legislative guidelines, particularly on *Waqf Ahly*(family *waqf*), the Privy Council held in the case of *Abul Fata Mohamed Ishak v Rusomoy Dhur Chowdry*<sup>5</sup> that the dedication of property by way of *waqf* for family settlement was invalid. This controversial judgment given in this land mark case created wide spread discontentment among

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<sup>2</sup> *Dargahs* and *Mazars* are the shrines of great Islamic personalities.

<sup>3</sup> Where there is no formal deed on the *waqf* estate but the owner of the estate has for long allowed the estate to be used for some religious or charitable purposes such *awqaf* are known as *waqf* by user.

<sup>4</sup> A huge annual anniversary get-together of the followers and devotees to commemorate the saints.

<sup>5</sup> 23 November 1894, PCJ on Appeals from India, 572; ILR 22 Cal. 619,68.

Muslim community all over the Indian subcontinent.<sup>6</sup> Consequently the *Waqf* Validating Act of 1913 was enacted, of which the main objective was to remove the disability created by the decision of the Privy Council. This Act paved the way for the Muslims to make settlement of their property by *waqf* in favour of their families, children and descendants. This was how *awqaf* properties in Bangladesh (the then Bengal) started to come under government supervision.

However, it was not possible in the then Bengal to make provisions for financing the *waqf* administration from public exchequer and as such for the first time the government passed a special enactment in 1934, known as the *Waqf* Act of Bengal 1934 for supervision and protection of the *waqf* estates through a statutory autonomous organization headed by an officer designated as *Waqf* Commissioner of Bengal. The Bengal *Waqf* Act 1934 made the way to meet the expenditure incurred by the *waqf* administration by collecting contributions from the net income of the *waqf* estates.<sup>7</sup> One of the main objectives of the Act was to safeguard the *waqf* estates from mismanagement, misappropriation and indiscriminate acts of the *mutawallis* concerning administration of *waqf* estates.

After Pakistan was created in 1947, the Bengal *Waqf* Act of 1934 was adopted for East Pakistan (now Bangladesh) and was followed in administering the *awqaf*. Then in 1962 the *Waqf* Ordinance of 1962 was enacted without repealing the Bengal *Waqf* Act of 1934 and to date the status of the Act so remains. Section 103 of the *Waqf* Ordinance 1962, however, provides that this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any document, decree or order of any Court, deed, enactment other than this Ordinance. Therefore, by virtue of section 103, the provisions of the Ordinance shall prevail over the Bengal *Waqf* Act of 1934 in the event of any provision thereof comes in clash with the Ordinance. Some of the major changes that the Ordinance brought about include; firstly, that a uniform rate of *waqf* contribution was fixed for the first time. And secondly, that the very post of the *Waqf* Commissioner was re-designated as *Waqf* Administrator giving him some quasi-judicial and administrative powers.

Bangladesh became an independent state in 1971 and the *Waqf* Ordinance 1962 which governed *awqaf* in the then East Pakistan, was adapted and retained by the government of Bangladesh as such in accordance with Article 5 of the Adaptation of Existing Bangladesh Laws (PO 48) of 1972.<sup>8</sup>

### **3. THE PRESENT LEGAL AND ADMINISTRATIVE STRUCTURE OF *WAQF* ADMINISTRATION IN BANGLADESH**

Initially, the *awqaf* sector in Bangladesh used to be under the Ministry of Education. Then in 1972 it was brought under the Ministry of Land Reforms and Land Administration. Currently *Awqaf* affairs in Bangladesh are governed under the Ministry of Religious Affairs. By virtue of Section 7 of the *Waqfs* Ordinance 1962<sup>9</sup>, the government appoints an Administrator of *Waqfs*<sup>10</sup> for a five

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<sup>6</sup> The judgment given by the Privy Council, being the highest court of law sitting in London, used to be binding on all the Courts in the then British Empire, including India.

<sup>7</sup> *Management and Development of Awqaf Properties*, proceedings of the seminar held in 1984, edited by Dr. Hasmet Basar, p. 81- 85.

<sup>8</sup> This Article required that the word 'Bangladesh' shall replace the words 'East Pakistan' throughout.

<sup>9</sup> Herein after may be mentioned as the Ordinance.

years term who must be a Muslim.<sup>11</sup> The Ordinance also provide for a *Waqf* Committee,<sup>12</sup> to assist the Administrator. There are also provisions in the Ordinance for Deputy and Assistant Administrators<sup>13</sup> the government may, in consultation with the Administrator, appoint as may be deemed necessary. In pursuance to this, the Administrator of *Waqfs* is assisted by two Deputy Administrators, six Assistant Administrators, eighteen *Waqfs* Supervisors, eighteen *Waqf* Auditors, and fifty four other staff members.<sup>14</sup> That brings the total number of staff to ninety eight. The Office of the Administrator of *Waqfs* is located in the capital city of Dhaka, as it is specifically required and provided for in section 12 of the Ordinance. Apart from the Office of the Administrator in Dhaka there are four divisional offices and 24 district level offices. This brings the total number of offices to twenty nine that are dealing with *awqaf* affairs throughout the country.<sup>15</sup> However, the *waqf* administration in Bangladesh is highly centralized. The divisional and district level officers do not have power to make decisions and pass order. The power to make decisions and to give orders lies solely with The Administrator sitting at the Headquarter in Dhaka. At present, however, the *awqaf* sector in Bangladesh is governed under the *Waqf* Ordinance 1 of 1962 which is the sole legislation in force in the country.

In accordance with section 47 of the Ordinance, all *awqaf* whether existing or created after the commencement of the Ordinance, are to be enrolled at the office of the Administrator. Once an application for the enrolment of a *waqf* is received, the Administrator of *Waqfs* processes the applications by examining the *waqf* deed, account and objects. The application for enrolment may be made by the *waqif* (the settlor), *mutawalli* (manager), or the *waqf* committees. Although such enrolment is required and compulsory by virtue of this section, and the Ordinance prescribes penalty for those *mutawallis* who fail to enroll their *awqaf* with the *Waqf* office, many *mutawallis*, however, do not enroll and somehow escape punishment. The estates that are not enrolled are managed by the *Mutawallis* according to the provisions of the *waqf* deed.

#### **4. THE MAIN BARRIERS TO THE DEVELOPMENT OF *AWQAF* IN BANGLADESH**

*Waqf* sector in the country represents an underdeveloped, underutilized segment of the national asset, which is waiting for proper and better utilization. The problems, which the *waqf* institutions face in the country are numerous and of enormous magnitude. Some of the major problems that the *waqf* sector is currently facing in Bangladesh are as follows:

##### **4.1. Inadequate Manpower**

As cited earlier, compared to the magnitude of the total number of *waqf* estates, a very small number of officials are managing the *awqaf* sector. Only 98 officers and employees are managing nearly 100,000 *waqf* estates of the whole country. For proper administration and management of such a huge number of *waqf* estates scattered all over the country the *awqaf* sector needs a sizable

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<sup>10</sup> Herein after may be cited as the Administrator.

<sup>11</sup> See section 7, subsection 2 & 3. *Waqfs* Ordinance, 1962.

<sup>12</sup> See Sections 19-25, *Ibid*.

<sup>13</sup> See Sec.13, *Ibid*.

<sup>14</sup> Sadequr Rahman, *Waqf Shompotti Proshonge* (An appraisal of *waqf* properties) an article published in six installments from 17.06.2003 to 24.06.03 in The Daily Sangram (a Bengali news paper published daily from Dhaka), see <http://www.dailysangram.com>

<sup>15</sup> *Ibid*.

number of qualified staff. Bangladesh has 64 administrative districts. Due to lack of manpower, only 29 districts offices are managing *waqf* estates of all 64 districts. These district offices have only one supervisor to cover nearly 800 *waqf* estates. If and when he goes to audit or inspect a *waqf* estate the office of the supervisor remains closed. The divisional offices of Dhaka, Khulna, Rajshahi and Chittagong Divisions have been brought under direct control of the Head Quarter, again, due to lack of manpower.<sup>16</sup>

#### **4.2. Unregistered *Waqf* Properties**

Although section 47 of the Ordinance requires that “all *waqfs* existing at or created after the commencement of this Ordinance shall be enrolled at the office of the Administrator”, more than one-third of the total *waqf* properties in Bangladesh remains unregistered. According to the Census of *Waqfs*, out of 150,593 *waqf* estates in the country, only 97,046 are registered, 45,607 are verbal and the rest 7,940 are *waqf* by tradition. These shows as many as 53,547 *waqf* estates are not registered. The reason for not enrolling the *waqf* estates is not known. However, it could be due to various factors. First, the existence of the *waqf* administration is not known to many people particularly in the rural areas. Second, there might be a deliberate attempt not to register to evade being controlled by the *waqf* administration. Third, to evade payment of 5% levy as this payment is imposed upon all registered *waqf* estates. As such the *Waqf* Administration has no control whatsoever over these estates.<sup>17</sup> This is a very disappointing state of affairs which must be addressed seriously. Bringing these estates under the direct control of the office of the Administrator would, among many other benefits, definitely increase the *waqf* income in the country.

#### **4.3. Illegal Occupation and Misappropriation of *Waqf* Properties**

Many of the *awqaf* properties are illegally occupied by private individuals and or organization and groups or even by government agency. It has been reported, just to mention one prominent example, that the country’s Police Headquarter in Dhaka stands on a *waqf* land.<sup>18</sup> This area (that the Police HQ occupies) is in the heart of the capital city. It could be developed into huge profit earning business enterprise. Many *waqf* properties are under-utilized such as being leased at a very low rental rate while many others are being misappropriated.<sup>19</sup>

There are innumerable cases of neglect and encroachments and illegal occupations. There is hardly any machinery to detect this and to recover the property in and outside the courts of law. No social pressure exists for such recoveries. Adequate and competent staff are lacking and as a result the single *Waqf* Committee for the whole country cannot make frequent and thorough inspections to prevent the mismanagement of *waqf* properties. The 5% contribution from *waqf* income which is diverted towards the Committee has not benefited the country very much. Nearly the whole amount is spent in administration. Nor is the contribution realized effectively and very

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<sup>16</sup> Md. Azharul Islam, *Waqf Masjid, Mondir O Majar Bebothapona Proshongay* (On the Management of *Waqf* Mosques, Temples and Tombs), Office of the Administrator of *Waqfs*, Dhaka, n.d. p.4-6.

<sup>17</sup> A. H. M. Sadeq, op.cit. p.166.

<sup>18</sup> Sadequr Rahman, op.cit.

<sup>19</sup> For details of such misappropriation see “IN PURSUIT OF POWER: LOCAL ELITES AND UNION-LEVEL GOVERNANCE IN RURAL NORTHWESTERN BANGLADESH” CARE BANGLADESH. August 2002, p 17

large realizable balances are reported to have accumulated. Therefore it can be said to the minimum that the Waqf Committee of Bangladesh have not delivered any good for the country and so is the case with the *mutawallis*.

#### **4.4. Uncollected Arrears**

The recovery of arrears of contribution is another inherent problem. The Ordinance makes this recovery under its S.71. Moreover, it provides a punitive method of realizing contribution. But, despite these provisions, huge amounts of arrears have piled up during recent years. In order to put the finances of the *Waqf* Committee on an even keel, it is necessary that unpaid contributions shall be speedily recovered. In this respect, the experiences faced and procedure adopted under the Indian *Waqf* Acts 1995 may be taken into consideration.

#### **4.5. Operational Inefficiency and Problem of *Waqf* Disputes.**

Hundreds of *waqf* related disputes are adjudicated by the various Courts and the *Waqf* Administrator's office.<sup>20</sup> This number is increasing everyday. The *Waqf* Administrator performs quasi-judicial functions. Disputes related to illegal possession or transfer of *waqf* estates, misappropriation, improper management, and so on, are referred to the *Waqf* Administrator. He conducts the hearings like a Judge, and delivers judgment, which is binding unless it is overruled by an Appeal Court. In cases of illegal possession or transfer a *waqf* property, or illegal interference in the management of *Waqf* estates, *Waqf* Administrator enforces his order with the help of the local administration of the Government at the district level. However, as mentioned above, compared to the total number of *waqf* estates in the country, a very small number of officials are managing the *waqf* sector and as such the *waqf* administration in is over-burdened not only with a large number of cases but also many other relevant matters that require due attention. This results in slow and inefficient operation.<sup>21</sup>

The statutory set up of *waqf* administration in Bangladesh is empowered to look after *awqaf* and to administer *awqaf*. But in many instances *mutawallis* bring the *waqf* cases to the Court where every trick is employed to get them decided in accordance with the convenience of parties. The Courts do not have the means to make proper investigation into the affairs of *waqf* estates and go by records that are tempered, and evidences given by hired witnesses. The *waqf* administration is thus sidelined. However, sadly enough, the *waqf* administration is also accused of giving less than impartial and just decisions, and complaints of bribery against the *waqf* officials are not uncommon. In many cases, the integrity of the *waqf* officials is questioned. The statutory checks imposed to check corrupt practices are found to be inadequate and the amount of autonomy granted to the *waqf* administration is one of the causes of cover-ups.

#### **4.6. Absence of Provisions in the Waqfs Ordinance 1962 Relating to the Development of *Awqaf***

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<sup>20</sup> *Ibid.*

<sup>21</sup> Office of the Administrator of Waqfs, Dhaka, "Bangladesh Sharkar Kortrik Gothito Waqf Komitir 20-04-95 Tarikhey Onushtitabya Prothom Shobhar Karjopotro". P.7 – 9.

The *Waqfs* Ordinance 1962 contains no provision concerning the development of *waqf* properties. This is a stagnant situation due to which many of the *waqf* properties are not utilized fully or remain idle. Those estates that are in use are under-utilized, i.e. they are not developed to their optimum level. The Indian *Waqf* Act 1995, for instance, regards the issue of development of *waqf* properties as a function of the *Waqf* Board of every state in India to undertake the development of *awqaf*. Section 32 of the Indian *Waqf* Act 1995 provides in its sub-sections (4) to (6) as follows:

*"(4) Where the Board is satisfied that any waqf land, which is a waqf property, offers a feasible potential for development as a shopping center, market, housing flats and the like it may serve upon the mutawalli of the concerned waqf a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.*

*(5) On consideration of the reply, if any, received to the notice issued under sub-section (4) the board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may, with the prior approval of the Government take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from waqf funds or from the finances which may be raised on the security of the properties of the waqf concerned and control and manage the properties till such time as all expenses incurred by the Board under this section together with interest thereon the expenditure on maintenance of such works and other legitimate changes incurred on the property are recovered from the income derived from the property: Provided that the Board shall compensate annually the mutawalli of the concerned waqf to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.*

*(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned waqf.*

The absence of a similar provision in the *Waqf* Ordinance 1962 is a serious lacking and an impediment to the development of *awqaf*. Many *waqf* estates in Bangladesh have a lot of potential to be developed into shopping and housing complexes, office and residential buildings that may bring in large amounts of income. Likewise, unused cultivable lands may be brought under cultivation and dairy farming. *Waqf* estates that are in the hilly areas like Chittagong and Sylhet could be used for tea plantation, while those in the costal areas could be utilized for fishery and salt industries. The income generated from these projects could then be utilized for the benefit of *waqf* beneficiaries and thus for the benefit of the *ummah* at large.

#### **4.7. Integrity of the *Mutawallis* and Their Qualification**

Cases of dishonesty on the part of some *mutawallis* are not uncommon.<sup>22</sup> Dishonesty may be in the form of incorrect accounts of income, fabrication of bogus vouchers for amounts not spent, subscription not accounted for, illegal alienation of *waqf* properties, rents at high rates realized from the tenants but receipts for lower amounts issued and the balance pocketed as black money and so on. The Ordinance has a number of provisions to prevent such occurrences. For instance, a *mutawalli* is debarred from making compromise in any suit or proceedings in respect of any *waqf* property without the Administrator's approval and the sanction of the trying court.<sup>23</sup> But very often these statutory checks prove inadequate.<sup>24</sup> The ordinance provide for the imposition of fines on an erring *mutawalli*. It is, however, to be noted that the Ordinance has given the power of imposing fines to the courts of law<sup>25</sup>, acting upon a complaint made by the Administrator. Thus, in every case of default by a *mutawalli*, they have to knock at the door of a court where the process of complaints, counter complaints and explanations generally consume much time and money. This is why more often than not; the authorities prefer not to make use of the penal provisions. Many *waqf* estates are headed by *mutawallis* who are near illiterate or not educated enough to keep and maintain accounts of income and expenditure. This sometimes may open the door for corruption.<sup>26</sup>

#### **4.8. Unauthorized Alienation**

The Ordinance debars *mutawallis* from transferring in any way immovable *waqf* property over a specified period of time without the previous sanction of the Administrator. As to the recovery of such property, the Administrator may institute a suit or proceeding in a court under S-83 of the Ordinance, which provides:

*"If there is no mutawalli or the mutawalli refuses or neglect to act in the matter, within a reasonable time, the Administrator may, in his own name, institute a suit or proceeding in a court against a stranger to the waqf or any other person (a) for the establishment if right, title and interest in a waqf property, or (b) for confirmation of possession in a waqf property, or (c) for the recovery of any waqf property wrongfully possessed, alienated or leased. or (d) for having any waqf property discharged of an encumbrance or obligation wrongfully created, or (e) for the recovery of any money belonging to waqf. or (f) for any other relief in the interest of a waqf he may consider necessary."*

Moreover, the general procedure which is usually followed appears to be that, in case the *mutawalli* or the stranger defies this provision, the Administrator may send a requisition to the Deputy Commissioner within whose jurisdiction the property is situated to obtain and deliver possession of the property to him. On receipt of such requisition, the Deputy Commissioner shall take action. Any person aggrieved by the order of the Deputy Commissioner may prefer an appeal to the District Judge within whose jurisdiction the property is situated. The decision of the District

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<sup>22</sup> For details please see, for instance, the case of Hafiz Mohamed Fateh v Swarup Chand HUKUM Chand. AIR, 1948, PC 76.

<sup>23</sup> See sections 60 – 80 of the Ordinance.

<sup>24</sup> Sadequr Rahman, op.cit.

<sup>25</sup> See for details, section 61(1) of the Ordinance.

<sup>26</sup> A. H. M. Sadeq.op.cit.

Judge or when there is an appeal the decision of the High Court shall be final. Surely, the above procedure involves delay and costs. Therefore, a tribunal could be set up to handle these matters more efficiently.

#### **4.9. Personal Use of Waqf's Compensation Money**

Complaints are often heard that the compensation money derived from the acquisition of *waqf* properties are kept for the personal use of the officials. The Ordinance provides that where any *waqf* property is acquired under the Land Acquisition Act, 1894, (Act I of 1894) or any other law for the time being in force, the compensation money payable for such property shall be paid to the Administrator and shall be kept in deposit in the *Waqf* Fund till it is invested for the purposes stated in sub-section (3) of section 74.<sup>27</sup> This provision should be reviewed and amended to prevent possible corrupt practices on the part of the Administrator. Such amendment will surely build public confidence in *Waqf* Administration in Bangladesh and ensure that the *Waqf* institutions are above corruptions and irregularities.

#### **4.10. Lack of Progressive and Innovative Ideas**

It is sadly observed that progressive and innovative ideas for the development and extension of *waqf* properties are not much in evidence, neither from public nor from private sector. The great majority of *mutawallis* and managers do not think in terms of suitably adjusting the objects of the *waqfs* in these changing times. *Mutawallis*, even those who are known and believed to be honest, have no concept of property maintenance and development. The idea of investment in man, that is, upgrading of Muslim human capital through education and training has not been given any attention. Most *waqf* deeds do not have a built-in-provision for maintaining property.

The above mentioned sad state of affairs raise doubts about the efficacy of the existing *waqf* legislation, the *waqf* administration which operates under it, and the way in which the management of *waqf* properties is handled. The problems mentioned above are deep rooted. The *waqf* administration is far from being satisfactory and efficient. If the Ordinance was enacted to eradicate the evils tormenting the holy purpose of the *waqf* institution in Bangladesh, it has failed to achieve its purpose. The Ordinance in the present circumstances is not potential enough to become the model *waqf* legislation in Bangladesh. It must be replaced by a new one. In this respect, a legal and administrative analysis is necessary.

### **5. THE PROSPECTS OF UTILIZING THE POTENTIAL OF *AWQAF* IN BANGLADESH**

*Waqf* properties in Bangladesh have immense potential of being developed into income earning ventures generating enough income to support social welfare programs in the area of education, health and social sectors, thereby reducing the expenditure of the government in these areas. It is estimated that proper development of *waqf* estates could generate an income of at least one hundred million Taka<sup>28</sup> a year, which could meet part of socio-economic needs of the Muslims.<sup>29</sup>

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<sup>27</sup> Section 85 of the Ordinance.

<sup>28</sup> The Bangladesh currency is called Taka. US\$ 1= 70 Taka (approximately).

<sup>29</sup> Sadequr Rahman, op.cit.,

This is a substantial amount of income, not worth ignoring, particularly for a populous third world country like Bangladesh.

### **5.1. *Waqf* Income and the Program for Community Development and Eradication of Poverty.**

History tells us that *awqaf* played the role side-by side with the Islamic State to fund important community and state services. *Awqaf* sector in Bangladesh can play similar role in contributing to the social and community development of the rural population of Bangladesh. *Awqaf* as an institution may mobilise community capital and provide *qard hassan* which may be used to establish projects such as Islamic micro lending and micro financing on *mudaraba* or *musharaka* basis. There can be established self-reliance programmes; imarets and skills training centres; small business and bursary grants; youth development and activity programmes; student exchange programmes; training; general education and awareness programmes e.g. aids/drugs; dedicated women institutions; literacy & *dawah* programmes; township *masajid* and *madrasahs*; community empowerment; poverty alleviation, and related programmes; and in fact any imaginable programme that could further Muslim interests in the country could be implemented and supported.

Several case studies, past and present, suggest that income from *awqaf* investments and properties are used for a variety of purposes provided that these are *shariah* compliant. Examples of uses include: payment of teachers salaries; provision of free food; assistance to *hujjaj*; provision of students' tuition fees; fully paid hospitals and free medical services; publishing literature; schools and guilds for skills training; free trading market; centers for learning the art of recitation of the holy Quran; supporting *masjid* and *madrasah*; *dawah*; art and culture; research; seminars and conferences; assistance to needy traders; helping to start up enterprises and establishing factories.

## **6. RECOMMENDATION AND PLAN FOR ACTION**

There appears a clear need to refurbish and review the whole *awqaf* sector in Bangladesh. The socio-economic role that *awqaf* can play in the betterment of Muslim society is very significant. Therefore, in order to revitalize *awqaf* and to make it more relevant to the overall development process in Bangladesh we would like to recommend the followings:

### **6.1. Need for a New *Waqf* Act.**

A fresh *Waqf* Act is the need of the day in Bangladesh. The existing "*Waqfs* Ordinance of 1962" emerged as a poorly drafted piece of legislation in the face of the present day needs. Many of its important provisions are poorly drafted. The machinery of administration it laid down in those days of Pakistan Martial law is now incompatible in the new framework of Bangladesh.<sup>30</sup>

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<sup>30</sup> The Ordinance originated during Martial Law. It came into force on 19<sup>th</sup> January, 1962 when there was no Parliament. Pakistan's 1962 Constitution was promulgated on March 1, 1962. East Pakistan became independent Bangladesh in 1971.

A resolution was adopted at a recently held seminar on ‘*Awqaf* Experiences In South Asia’<sup>31</sup> in New Delhi, where it was resolved, with regard to Bangladesh, that the implementation of *Waqf* Ordinance 1962 without repealing the Bengal *Waqf* Act 1934 has brought uncertainty to the law of *waqf* and that the enactment of a new *waqf* law is necessary. Another resolution specifically highlighted the need for amending section 86 of the *Waqf* Ordinance 1962 which empowers the Administrator to realize from an individual *waqf* all costs and legal expenses incurred by the Administrator.<sup>32</sup> This, again, shows the need of a thorough and critical appraisal of all the laws applicable to *awqaf* in Bangladesh to evaluate their appropriateness of meeting the current need of effective *waqf* management.

As mentioned earlier that *waqf* plays an important role in the religious and socio-economic development of the Muslims. The vast resources of *waqfs* can, in theory become a strong instrument not only for the preservation of religious, charitable and philanthropic institutions but also for the educational and economic boost up of the community. It is of utmost importance that *waqfs* should be maintained properly. So the need of a pragmatic and empirical approach in the area of *waqfs* is obvious. The Ordinance cannot fulfill this task in today’s changed situation, it has become ineffective. Hence, an ideal Act is essential.

## **6.2. Development of Urban *Waqfs* and Issuance of *Waqf* Bond**

The urban *waqf* properties situated in busy commercial areas possess immense potentials for development. There is no scheme to develop these properties. These properties being more secure, financing may be easily available. It seems to be the need of the hour that the government should have on contract basis the services of some consultant engineer to help in developing these *waqf* properties. In order to remove the hesitation on the part of financing institutions to advance money on the security of *waqf* property (because of its inalienability), a suitable clause may be added to the future *Waqf* Act. The procurement of necessary finances for such ventures could be negotiated by the Administrator with various banking institutions locally and internationally. Moreover, the *Waqf* Administration should be empowered to issue bonds and debentures for making available necessary finances. This venture may attain a bright prospect. Therefore, adequate attention must be paid to the development of urban *waqf* properties.

## **6.3. Collaboration with Other Countries**

In Bangladesh, what really remains to be done in this important and interesting area is to undertake collaboration and comparative study of *waqf* administration with countries where an administrative set-up for *waqfs* exists. Such countries include almost all the Middle-Eastern countries, Malaysia and Indonesia just to name a few. Among countries where Muslims are minorities, India and Singapore have made considerable development in *awqaf* sector. Obviously, such a study would go a long way towards the betterment of *waqf* administration in Bangladesh.

## **6.4. Establishment of National *Waqf* Advisory Board (NAWAB)**

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<sup>31</sup> Held in May 1999, jointly organized by the Institute of Objective Studies, New Delhi, the Islamic Development Bank, Jeddah, the Kuwait *Awqaf* Public Foundation, Kuwait and *Ta’awun* Trust, New Delhi.

<sup>32</sup> Resolution No. 17 & 18 of above mentioned seminar.

Bangladesh should establish a National *Waqf* Advisory Board (NAWAB) that would work in collaboration with the Waqf Administration. It may serve as a Think-Tank and a key driving force that would have, *inter alia*, the following strategic functions:

- To establish branches of NAWAB in District and *Thana* (Sub-District) level. Its aim, among others, would be to encourage, attract and strive to solicit every able Muslim to create *waqfs*;
- To provide consulting services to the *Waqf* Administration and its various chapters;
- To help establish various community development projects and institutions that would be supported primarily from *awqaf* revenues and resources.
- To promote and establish stronger cooperation and coordination with Islamic NGOs and financial institutions nationally and internationally in order to find and determine common and innovative ways of finance for better utilization of *awqaf*.
- To establish cooperation and collaboration with World *Waqf* Foundation (WWF) established by the Islamic Development Bank (IDB).

It is an admitted fact, that in order to improve the situation, there must be a *Waqf* Administrator competent to perform all functions entrusted to him. Government should nominate experts in law, finance and administration as member of NAWAB to help the Administrator. The body will advise in matters such as compromising suits by or against *mutawallis* and appoint *mutawallis* in cases where *mutawalliship* is in dispute or no suitable person is available according to the *waqf* deed.

### **6.5. Education and Training for *Mutawallis***

The *mutawallis* have to be educated and adequately trained. The objective of such training would be to equip them with proper knowledge and guidelines for productive utilization the *awqaf* properties. The training should also serve them to realize that they are holding a trust and they must exhibit a high standard of trustworthiness. This can be achieved by holding regular Training Camps at the district and divisional levels. Booklets and brochures containing instructive material can be issued by the Waqf Administrator's Office and distributed free to the *mutawallis*.

### **6.6. Increasing Staff Benefit**

Social security, adequate salary and other benefit for the staff are not available and this sub-standard situation fails to attract young talented persons to this sector. There is no Insurance Scheme which can help the employees in different situation in their career.

### **6.7. *Waqf* Tribunal**

*Waqf* disputes and their resolution are another area that must be improved. If litigation and litigation alone is the mode of resolving such disputes, it is wastage of time, money and vital *waqf*

resources. Therefore, establishing *Waqf* Tribunals would be a huge step forward in dispute resolution of *awqaf*. Such tribunals, for instance, are operating in India and have been found to be effective. It may be made mandatory for the disputing parties who must go to the *Waqf* Tribunal for mediation and arbitration before the dispute may be taken to a court of law. Then, *waqf* institutions must be exempted from paying court fees and registration charges, and preferably, any legal action against a religious or charitable *waqf* may be defended at the cost of the state, because the state is the custodian of public interest, and the *waqf* is a public matter. Only cases relating to family *waqf* need to be defended by the beneficiaries themselves, as it is their private matter.

## 7. CONCLUSION

Bangladesh has a huge wealth of *awqaf* properties as mentioned above that could be utilized to bring out the poor segment of the population out of the ocean of poverty. And this can be done by bringing in the necessary changes in the administration of *awqaf* in order to make it suitable to the present day need. Empowering the poor through *waqf* based on various Islamic finances, and not by donation grants, thereby making the poor segments of the society an integral part of the development process should be the primary goal of the *Waqf* Administration in the country. Bangladesh should set up its strategic goals with top priority given to *awqaf* development in the country and arrange and organize institutions that will serve those goals. *Awqaf* as a deeply rooted *shariah* institution offers a built-in developmental and empowerment tool. It is indeed a vehicle explicitly designed in the *shariah* to pursue noble and creative goals and to elicit goodwill and positive tendencies within the community. The benefits of *awqaf* projects are far reaching. The challenge for Bangladesh thus is to pursue the establishment of *awqaf* related institutions as outlined above to serve the greater *ummah* and promote and protect the cause of Islam.

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