

**WAQF AND ITS SOCIOPOLITICAL ASPECTS**

**BY**

**MONZER KAHF**

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Waqf, in Arabic language, means hold, confinement or prohibition. The word waqf is used in Islam in the meaning of holding certain property and preserving it for the confined benefit of certain philanthropy and prohibiting any use or disposition of it outside that specific objective. Waqf (pl. awqaf) is called habs (pl. ahbas) in North and West Africa. This definition accords perpetuity to waqf, i.e., it applies to non-perishable property whose benefit can be extracted without consuming the property itself. Therefore waqf widely relates to land and buildings. However, there are waqf of books, agricultural machinery, cattle, shares and stocks and cash money.

The idea of waqf is as old as humanity. Muslim jurists argue that the first waqf ever is the sacred building of ka<sup>6</sup>bah in Makkah (in the western part of the Arabian peninsula) since the Qur'an (III: 96) mentions that it is the first house of worship set for people. Practically, all societies set aside certain lots of land and buildings, as places of worship. For ages, temples, churches and other forms of constructions are built and devoted for religious practices. Moreover, Pharaohs of Egypt devoted land properties for the benefit of monks and ancient greeks and romans knew the dedication of properties exclusively for libraries and education. Today, the idea of awqaf is known and practiced all over the world. it exists in North America under the name of foundations, especially religious and charitable foundations. There are tens of

thousand foundations in the United states alone.

### **Beginning and kinds of waqf**

In the history of Islam, the first religious waqf is the mosque of Quba' in Madinah, a city 400 kilometer north of Makkah, which was built upon the arrival of the Prophet Muhammad in 622. It stands now on the same lot with a new and enlarged structure. Six months later, Quba' was followed by the mosque of the Prophet in the center of Madinah. Mosques and real estates confined for providing revenues to spend on mosques' maintenance and running expenses are in the category of religious waqf.

Philanthropic waqf is the second kind of waqf. It aims at supporting the poor segment of the society and all activities which are of interest to people at large such as libraries, scientific research, education, health services, care of animals and environment, lending to small businessmen, parks, roads, bridges, dams, etc. Philanthropic waqf began by the Prophet Muhammad too. A man called Mukhairiq made his will that his seven orchards in Madinah be given after his death to Muhammad. In year four of the hijrah calendar (a lunar calendar which begins with the migration of the prophet Muhammad from Makkah to Madinah in 622), the man died and the Prophet took hold of the orchards and made them a charitable waqf for the benefit of the poor and needy. This practice was followed by the companion of the prophet and his second successor ʿUmar, who asked the prophet what to do with a palm orchard he got in the northern Arabian peninsula city of khaibar and the Prophet said "If you like, you may hold the

property as waqf and give its fruits as charity." many other charitable waqf were made by the Prophet's death in 632.

A third kind of waqf started shortly after the death of the prophet during the reign of °Umar ( 635-645), the second successor. When °Umar decided to document in writing his waqf in khaibar, he invited some of the companions of the prophet to attest this document. Jaber, another companion, says that when the news broke out every real estate owner made certain waqf. Some of those put a condition that the fruits and revenues of their waqf be first given to their own children and descendants and only the surplus, if any, should be given to the poor. This kind of waqf is called posterity or family waqf. Therefore, unlike foundations in america which are restricted to religious or philanthropic purposes, waqf in Islamic society may also be for one's own family and descendants.

### **Ownership of waqf**

From legal point of view, the ownership of waqf property lies outside the person who created the waqf. Some Muslim jurists argue that the right of ownership of waqf belongs to Allah. Others believe that it belongs to the beneficiaries although their ownership is not complete in the sense that they are not permitted to dispose of the property or use it in a way different from what was decreed by the founder of waqf. In this regards waqf differs from a foundation since the management of a foundations is usually able to sell its property. This implies that perpetuity is stronger in waqf than in foundations.

### **Characteristics of waqf**

As a special kind of benevolence waqf has the following two characteristics:

#### **I- perpetuity**

It means that once a property, often a real estate, is dedicated as waqf it remains waqf for ever. Elimination of waqf character of a property requires difficult and lengthy process. It needs exchange against another property of equivalent value with approval of the local court. Upon completion of such an exchange, the new property immediately becomes waqf for the same purpose and beneficiaries of the former one. Hence theoretically perpetuity implies that waqf properties should not decrease.

Waqf founders and courts made extra precaution in documenting and preserving waqf deeds. One may be astonished to find that courts in many cities and towns kept detailed records of awqaf properties as early as the 15 and 16 centuries. Many of these records are still maintained and historians explore them in Istanbul, Cairo, Fez, Damascus, Jerusalem, Isfahan, etc.

#### **II- Permanence of stipulations of waqf founder**

Since waqf is a voluntary act of benevolence, conditions specified by the founder must be fulfilled to their letter as long as they do not contradict or violate any of the Shari'ah rulings. This implies that revenues of waqf should exclusively be used for the objective

stipulated by its founder and this may not be changed by management or supervisory courts as long as the objective is compatible with Shari'ah on one hand and is still feasible on the other hand. If a waqf purpose becomes infeasible, the revenue of this waqf should be spent on closest purpose available and if not it goes to the poor and needy. Permanence covers all founder's stipulations whether they relate to purpose, distribution of revenues, management, supervisory authority, etc.

#### **Legal conditions of waqf**

Waqf creation requires certain conditions, the most important among them are the following:

- 1 - The property must be a real estate or a thing which has some meaning of perpetuity. Muslim societies has waqf land, buildings, camels, cows, sheep, books, jewelry, swords and other weapons, agricultural tools, etc.
- 2 - The property should be given on a permanent basis. Some jurists approve temporary waqf only in the case of family waqf.
- 3 - The waqf founder should be legally fit and apt to take such an action, i.e., a child, an insane or a person who does not own the property cannot make waqf.
- 4 - The purpose of the waqf must, in the ultimate analysis be an act of charity from both points of view of Shari'ah and of the founder. Hence waqf on the rich alone is not permissible because it is not charity.
- 5 - Finally, beneficiaries, person(s) or purpose(s), must be alive and legitimate. Waqf

on the dead is not permissible.

### **Management of waqf**

In principle, the waqf founder determines the type of management of his\her waqf. The waqf manager is usually called mutawalli and his\her responsibility is to administer the waqf property to the best interest of the beneficiaries. The first duty of mutawalli is to preserve the property then to maximize the revenues of the beneficiaries. The waqf document usually mentions how the mutawalli is compensated for this effort and if the document does not mention a compensation for the mutawalli, he\she either volunteers the work or seeks assignment of a compensation from the court.

The judicial system, i.e. courts, is the authority of reference with regard to all matters and disputes related to waqf. In the early part of the of the eighth century, a judge in Egypt established a special register and office to record and supervise awqaf in his area. This culminated in the establishment of an awqaf office for registration and control which was linked to the supreme judge who used to be called the "judge of judges."

Since the early nineteenth century, a special ministry was established for awqaf in the ottoman empire and laws of awqaf were enacted. The most important among them was the Law of Awqaf of Nov. 29, 1863 (19/6/1280 of the hijrah calendar). This law remained in application in several countries (Turkey, Syria, Iraq, Lebanon, Palestine, Saudi Arabia) for many years after

the dismemberment of the Ottoman Empire in 1918. Presently, most Muslim countries have either Ministries or departments of awqaf and religious affairs combined together.

On the other hand, Muslim communities in non Muslim countries have organized their awqaf in accordance with Islamic Shari'ah within the limits of prevailing laws and regulations. For instance in India, where there is a relatively large Muslim minority, a waqf act was adopted at the federal level in 1954 and the Union Minister of Law was made the supervisory authority on waqf. Each state in the Union of India has a waqf board which consists of eleven Muslim members.

In the United States of America and in Canada, Muslim communities administer their waqf properties in accordance with the foundation acts and regulations. The Usual practice is that each Muslim community establishes a non Profit organization which in turn owns the waqf property which consists in most cases of the local mosque or Islamic center. In 1975 The North American Islamic Trust (NAIT) was registered in the state of Indiana. One of the main objectives of this non Profit Islamic organization is to own and promote the Awqaf of Muslims in North America. A few years later a sister organization under the same name was registered in the state of Ontario in Canada. NAIT and its canadian counterpart own and maintain many mosques, Islamic centers and Islamic schools in the United States and Canada.

### **Sociopolitical role of waqf**

The permanent nature of waqf resulted in the accumulation of waqf properties all over the Muslim lands and the variety of its objectives provides support for widespread religious and philanthropic activities. The size of waqf and its objectives play important role in the sociopolitical life of Muslim societies and communities.

Information extracted from the registers of awqaf in Istanbul, Jerusalem, Cairo and other cities indicates that lands of awqaf cover considerable proportion of total cultivated area. For instance, in the years 1812 and 1813 a survey of land in Egypt showed that waqf represents 600,000 feddan (= 0.95 Acre) out of a total of 2.5 million feddan (Ramadan, p. 128); in Algeria the number of deeds of awqaf of the grand mosque in the capital Algiers was 543 in the year 1841 (Ajfan, p. 326); in Turkey about one third of land was awqaf (Armagan, p. 339); and finally in Palestine the number of waqf deeds recorded up to middle of the sixteen century is 233 containing 890 properties in comparison with 92 deeds of private ownership containing 108 properties (IRCICA, p. L).

With regards to use of waqf revenues the most frequent purpose is spending on mosques. This usually includes salaries of imam [prayer leader and speaker of friday religious ceremony], teacher(s) of Islamic studies, preacher(s). With the help of this independent source of financing religious leaders and teachers have always been able to take social and political positions independent of that of the ruling class. for example, upon the occupation of Algeria by french troops in 1831, the colonial authority took control of the awqaf property in order to suppress

religious leaders who fought against occupation (Ajfan, p. 325).

Although religious education is usually covered by waqf on mosques, education in general has been the second largest user of waqf revenues. Since the beginning of Islam, in the early seventh century, education has been financed by waqf and voluntary contributions. Even government financing of education used to take the form of constructing a school and assigning certain property as waqf of the school. Awqaf of the Ayubites (1171-1249) and the Mamalik (1249-1517) in Palestine and Egypt are good examples. According to historical sources, Jerusalem had 64 schools at the beginning of the twentieth century all of them are waqf and supported by awqaf properties in Palestine, Turkey and Syria. Of these schools 40 were made awqaf by Ayubites and Mamalik rulers and governors (Al °Asali, pp. 95-111). The University of al Azhar is another example. It was founded in Cairo in 972 and was financed by its waqf revenues until the government of Muhammad Ali in Egypt took control over the awqaf in 1812 (Ramadan, p. 135).

Waqf financing of education usually covers libraries, books, salaries of teachers and other staff and stipends to students. Financing was not restricted to religious studies especially at the stage of the rise of Islam. In addition to freedom of education this approach of financing helped creating a learned class not derived from the rich and ruling classes. At times, majority of Muslim scholars used to be coming from poor and slave segments of the society and very often they strongly opposed the policies of the rulers (al Syed, pp. 237-258).

The third big beneficiary of waqf is the category of the poor, needy, orphans, persons in prisons, etc. Other users of waqf revenues include health services which cover construction of Hospitals and spending on physicians, apprentices and patients. One of the examples of the health waqf is the Shishli Children Hospital in Istanbul which was founded in 1898 (al Syed, p. 287).

There is also waqf on animals whose example is the waqf on cats and the waqf on unwanted riding animals both in Damascus (al Siba<sup>ci</sup>). There are awqaf for helping people go to Makkah for pilgrimage and for helping girls getting married, and for many other philanthropic purposes.

### **Waqf in the twentieth century**

During the colonial period of the nineteenth and good part of the twentieth centuries, the management of awqaf continued to follow inherited patterns in most Muslim countries and communities which were subjected to colonial system with a few exception such as Algeria and Indonesia. However the general atmosphere of underdevelopment and backwardness which was prevailing in the Muslim world also enveloped the awqaf property and the western system of education which was introduced by colonial authorities and supported by newly created economic opportunities gave a strong blow to the traditional education which was financed by an

already underdeveloped awqaf.

With the independence of most Islamic countries came the establishment of national states and the new leadership took a different stand towards awqaf which was often negative. For instance many waqf properties in Syria, Egypt, Turkey, Tunis and Algeria were added to the public property of the government and were distributed through land reforms and other means and methods while governments in those countries took responsibilities of spending on mosques and some religious schools including al Azhar university in Cairo. For this Purpose many Muslim countries established a branch of the government for awqaf and religious affairs. After stripping it of the developmental and productive content, the word awqaf is now mostly used to refer to mosques only.

However, Some countries such as Lebanon, Turkey, Jordan and recently Algeria wanted to revive and develop the properties of waqf. They enacted new laws of awqaf which helped in recovering, preserving and developing the property of awqaf and encouraging people to create new waqf in these countries.

(2607 words)

### References

- 1- Abu al Ajfan, Muhammad, "al Waqf ʿala al masjid fi al Maghrib wa al Andalus" [waqf on mosques in North West Africa and Andaluthia], in Dirasat fi al Iqtisad al Islami, International Center for Research in Islamic Economics, King Abd al Aziz University, Jeddah, 1985, pp. 315-342.
- 2- Armagan, Servet, "Lamhah ʿan halet al awqaf fi Turkia" [a glance at the state of awqaf in Turkey], in al Amin, Hasan ʿAbd Allah, ed. Idarat wa Tathmir Mumtalakat al Awqaf, Islamic Research and Training Institute (IRTI) of the Islamic Development Bank, Jeddah 1989, pp. 335-344.
- 3- Al ʿAsali, Kamil Jamil, "Mu'assat al awqaf wa madaris Bait al Maqdis, [Awqaf institution and the schools of Jerusalem], in Symposium of Awqaf Institution in the Arab and Islamic World, Institute of the Arab Research and Studies, Baghdad 1983, pp. 93-112.
- 4- Basar, Hasmal, ed. Management and development of Awqaf Properties, IRTI, Jeddah 1987.
- 5- Islamic Research Center for History, Culture and Arts (IRCICA), The Muslim Pious Foundations [Awqaf] and Real Estates in Palestine, Istanbul 1982.
- 6- Ramadan, Mustafa Muhammad, "dawr al awqaf fi daʿm al Azhar", in Symposium of Awqaf Institution, *op.cit.*, pp.125-148.
- 7- Al Sibaʿi, Mustafa, Min rawaʿi hadaratina, al Maktab al Islami, Beirut 1969.

8- Al Syed, °Abd al Malik, "al waqf al Islami wa al dawr al ladhi la°ibahu fi al numuw al Ijtima°i fi al Islam," [Islamic waqf and the role it played in social development in Islam], in Idarat wa Tathmir Mumtalakat al Awqaf, op.cit., pp. 225-304.

9- Zarqa, Mustafa, Ahkam al Awqaf, Damascus University Press, Damascus 1947.