

# Laws and Provisions Related to Waqf Property and its Maintainability as Per the Waqf Act of 1995

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## ABSTRACT

Waqf is part of the ibadah that is strongly demanded by Islam. The development of waqf property has played a major role as the main factor in the community's socioeconomic development and Islamic civilization development. This study employs the four stages in conducting the SLR. It starts with identifying the research strategy where a search string is developed. The second stage is a study selection with a total of 310 papers from 2017 up to 2022 from three main academic databases, which are Scopus, Web of Science and Springer retrieved. After applying the quality assessment criteria, 67 papers were qualified for the analysis. Thematic analysis was then applied to thematically categorize the identified factors as the fourth stage in data extraction and synthesis. Several factors were found in the literature. Three broad categories were used to group the dis covered variables. The subjects include management, governance, and promotion. The study also has an empirical benefit, particularly for those looking for waqf property since it helps them understand the factors that could contribute to waqf property development. Moreover, the findings can be a component to transform the waqf property to become reproductive, sustainable, and competitive.

**Keywords:** Economic, Finance, Waqf, Islam

## INTRODUCTION

The endowment concept has been developed based on Islamic laws. Before the entry of Islam into Arabia, the concept of endowment did not exist. Although there is no mention of the endowment in the Qur'an, these Qur'anic commands are linked to provide the basis for the development and expansion of the endowment. Amir Ali shows that the law of economics is the most important branch of Muslim law, because it is included in the entire religious and social economy of Muslims.

History has shown that economic resources play an important role in the economic development of a country. The waqf property is also a tool to distribute resources to achieve economic balance in a country in a general framework by providing facilities such as education, health, places of worship, road construction, etc. With the provision of these facilities, the community's perception of the functions and benefits of waqf properties, which are only related to religious purposes such as mosques, surah's and tombs, is no longer limited. it just disappeared.

Efficient and effective management of economic resources mind and management can sustain regional economic development. Sustainable economic development can be leveraged to increase the leverage of waqf assets so that profits can be seen from time to time. Various strategies and options have been

established in various waqf in institutions either at the state or central government level. The purpose of these strategies and options is to prevent the development of waqf assets from being used inefficiently and to prevent waqf assets from being idle and non-performing. This situation leads to the depletion of available resources and the surrounding community cannot benefit from the heritage. Thus, it is important to increase research based on waqf property and its role in economic development has motivated researchers to explore waqf property.

The main objective of this study is to explore the factors affecting waqf property for economic development. In this study, a Systematic Literature Review (SLR) approach is applied to examine how scholars conducted their studies to better anticipate future research paths. As a result, the following research issues will be addressed in this study: What are the factors that affect waqf property development? Hence, this study discusses the waqf property and economic development literature as well as relevant studies related to identifying factors contributing to waqf property for economic development. To answer the points raised above, this study begins with an overview related to waqf property and economic development in the literature review section. The SLR research method is explained in the methodology section, followed by the results and discussion. The conclusion of the entire study is presented at the end of this article.

## MEANING AND THE NATURE OF WAQF PROPERTY

If we look at the word "waqf", in the meaning of the word it is related to "standing", "standing" or "closed". In the legal definition, it means donating property in accordance with the idea of religion in perpetuity. The property set aside must be available for religious or charitable purposes. Such prizes are binding in perpetuity and are non-transferable. Kazem vs. Asghar Ali, it has been observed that endowment in the legal sense is the creation of some property to fulfill a religious or religious purpose. A lot of eminent Muslim jurists have defined Waqf in their own way. According to Abu Hanifa, "Wakf is the detention of a specific thing that is in the ownership of the waqif or appropriator, and the devotion of its profits or usufructs to charity, the poor, or other good objects, to accommodate loan." As defined by Abu Yusuf, waqf has three main elements. They are: Ownership of God, The extinction of the founder's right, and The benefit of mankind. Definition under Mussalman Waqf Validating Act, 1913- Section 2 of the Act defines waqf as, "the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by Musalman Law as religious, pious or charitable. Waqf Act, 1954 defines Waqf as, "Waqf means the permanent dedication by a person professing the Islam, of any movable or immovable property for any purpose recognized by Muslim Law as religious, pious, or charitable. A waqf can be either in writing or can be made by an oral presentation. In the case of an oral agreement, the presence of words emphasizing on the intention of the parties is a prerequisite.

## ESSENTIAL CONDITIONS TO BECOME A WAQF PROPERTY

Waqf in Sunni Sharia is the basic conditions for a valid waqf according to Hanafi law (Sunni law) are: Permanent waqf of a property. The donor (Waqf) must be a believer in the Muslim religion, a person of sound mind, not petty or insane. A donation for a cause recognized by Muslim law as religious, pious, or charitable.

1. Real delivery of property the main term for valid delivery is "real delivery of property". It has the following requirements.
  - Must be offered.
  - Delivery should be stable.

- The waqf must come from a property.
- 2. The Waqif itself has the right to dispose of such property and dispose of it for purposes recognized by Muslim law. If a waqf is created for a temporary period, it cannot be considered a valid waqf.
- 3. In the case of Karnataka Wakf Board v. Mohd. Nazir Ahmad has commented on this topic: "If a Muslim gives his house to pilgrims to live in regardless of his religion and status, then according to the laws of Islam he has a religious purpose the waqf, cannot be considered a valid waqf." should be established for the benefit of the Muslim community. When a waqf is created, it is always considered that the waqf is part of the wealth that God wills. This is legal fiction.
- 4. By a person who believes in the Muslim faith a person who gives charity must be a mature Muslim. For purposes recognized by Muslim law the main purpose of creating an endowment is that the endowment should be dedicated to a purpose recognized as religious, religious or charitable under Islamic law. Waqf under Shia Laws
- 5. The necessary conditions for establishing a valid Waqf under Shia Laws: Must be present. Must be absolute and free. Specifies the status of the allocated object. The property of the endowment must be fully withdrawn from the endowment.

### WHO CAN CREATE A WAQF ?

A person who creates a waqf of his property is known as a "waqf foundation" or waqf. The donor must qualify the property in accordance with the law. Below are the necessary conditions to become a waqf and bequeath

1. The person making the endowment must be Muslim.
2. Must be deliberate
3. must have attained the age of majority. The Madras and Nagpur High Courts have held that a non-Muslim can also establish a valid waqf, provided that the purpose of the waqf is not contrary to Islamic principles. According to the Patten Supreme Court, a non-Muslim can create a valid waqf.

However, such waqf is created under general waqf. A non-Muslim cannot create a private charity (eg, Imambara). A person without knowledge does not have the right to make a waqf because that person cannot determine the legal consequences of such an act. Therefore, a mad waqf is invalid or less. One can have the will but not the power to surrender. Such a person cannot be a valid waqf.

The subject of the bequest must be in the hands of the waqf at the same time as the bequest is made. The creation of a waqf by a person depends on having the legal authority for the waqf to transfer ownership of the property. The endowment of the widow's property to compensate for what she did not pay cannot be given by her, because she is not the real owner of that property

.If the waqf is owned by a knowledgeable woman, the beneficiaries and guardians will report it after knowing exactly the nature of the sale, and the women will use it individually to build the waqf. A person can make waqf of all his property, but for waqf pledge, no more than one third of the property can be waqf

### TYPES OF CREATION OF WAQF

Inheritance can be created in the following ways.

1. **By inter vivos action** - this type of will is made between the living languages, it is created during the life of the testator and it is valid from that time.
2. **By Will** – A will made by a will is different from a will made by death. It takes effect after the death of the donor and is also known as a "testamentary endowment".

3. **In case of illness or death (merzalmol)** - to donate during the death of the donor, up to a third of the property without the consent of the heirs. by old user - time also affects legacy creation, but legacy can be created by old use.
4. **By immemorial user**– Limitation of time also applies to the creation of waqf property, but waqf property can be established by way of immemorial use.

### NATURE OF WAQF

1. **Public Waqf**– It is created for the public, religious or charitable purposes.
2. **Private Waqf**- This type of Waqf is created for the settlor's own family and his descendants and is also known as '*Waqf-ulal-Aulad*'. It is a kind of family settlement in the form of waqf.

### WHO IS A MUTAWALLI ?

A person who has reached the age of majority, who is knowledgeable and capable of performing the tasks performed in a waqf can be appointed as a waqf trustee. A foreigner cannot be appointed as guardian in India.

### WHO CAN APPOINT MUTAWALLI ?

As a general rule, the originator of the ritual determines when the ritual is created. However, if the fund is created without appointing a guardian, the following persons may appoint a guardian: Appointing director; Guardian on the deathbed. The court will be guided by the following rules: The court may, not disregard the resident's order. A resident family member should be preferred over a foreigner. If there is a dispute between the resident's parent and non-descendant, the court will have the opportunity to consider it. In some cases, the congregation may also designate a guardian.

### POWER AND DUTIES OF MUTAWALLI

He is the administrator of the heritage and is responsible for the use of the property. He has the following rights –He has the right to use the right of use for the benefit of the grantee. He has the right to take all reasonable steps in good faith to ensure that the best interests of all economic interests are achieved. Because he is not the owner of the property, he does not sell the property. But by clearly mentioning it in the wakaf book, the wakaf gives him that right. He may obtain permission from the court to sell or borrow by showing good cause or compulsion. He can file a lawsuit to protect the interests of the Waqif. They are also authorized to lease the property for agricultural purposes for less than three years and for non-agricultural purposes for less than one year. It can be extended with the permission of the court. He deserves the proverbial reward. If the price is too low, he can ask the court to increase it.

### REMOVAL OF MUTAWALLI

From the court - after he appoints the guardian, the waqif cannot remove him. But the court can remove the order for the following reasons.

It is denied that the property is a waqf and a negative title is given to it. No matter how much money he has, he will not repair the Waqf sites and let them fall into disrepair. Damages the property of the waqf or acts knowingly and with intent to breach the trust. Bankruptcy bankruptcy. by the Waqf Board – Under Section 64 of the Waqf Act 1995, the Waqf Board has the power to remove the Trustee from his office under the conditions mentioned therein. by Vakif - There are different opinions on this topic.

According to Abu Yusuf, the waqif can remove the guardian even if he does not reserve the right to remove the waqf guardian. But Imam Muhammad had a different opinion on this matter and believed that the Waqif cannot be done without a warning.

## CONCLUSION

Waqf is the creation of property for religious or charitable purposes that is permanent. It also has legal backing, that is, binding and enforced by law. If a person believes that his right has been violated, he can seek compensation from the civil court. It is important to examine the concept of the administrator, the powers and duties related to inheritance. These rights can only be exercised if there is a clear vacancy for the position of guardian or if there is a dispute about the qualifications and qualifications of the current guardians.

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