

THE INSTITUTION OF WAQF


AN INNOVATIVE FINANCIAL TOOL FOR
SOCIO-ECONOMIC DEVELOPMENT

Magda Ismail A. Mohsin
Aishath Muneeza



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THE GLOBAL UNIVERSITY OF ISLAMIC FINANCE

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Foreword

It is a matter of great pride for the International Centre for Education in Islamic Finance (INCEIF) to introduce a modern textbook on waqf, which is one of the most important institutions of Islamic social finance for development. Islamic social finance is an area that needs to be developed in Islamic economics and effort has been put in this regard by the regulatory authorities. Thus, academic institutions have the responsibility to develop the required human capital for the sector. One key critical challenge we have witnessed in this regard is the lack of textbooks to rely on when teaching. To eliminate this challenge, the INCEIF had entrusted the task of writing a textbook on the subject to the authors and Alhamdulillah and they have successfully accomplished it.

Waqf is an institution that needs to be revived in this modern time. Today, paramount consideration has been given to link sustainable development goals (SDGs) and fintech with waqf and research has been undertaken on the ways synergy could be created between the three. However, gaining trust for social economic finance in a sustainable manner has been always a key challenge. Not only this, but legitimising waqf within the legal system is an area where we are deliberating to find solutions and, parallel to this discussion, we are always being told that lack of capacity among the public and the Muslim apex bodies is the main inhibition facing the development of waqf. The need to enlighten Muslims on the waqf concept is a responsibility of all and I believe that universities, such as the INCEIF, could play a leading role in this.

Classically, in most of the academic courses taught in academic institutions, waqf has been taught as a subtopic, but today waqf itself has become a subject on its own and there is a need to produce comprehensive textbooks highlighting details and issues about it. The authors of this textbook have arranged the topics in such a manner that students can acquire the knowledge easily and, at the end of each topic, questions have been provided to deepen their understanding about the subject. This textbook on waqf, I hope, will be a matter of great benefit for the

students of Islamic finance. Through this textbook, students all over the world would have the opportunity to understand that waqf is a powerful socio-economic tool that could be customised to all societies.

Professor Dato' Dr Mohd Azmi Omar
President & Chief Executive Officer
International Centre for Education in Islamic Finance (INCEIF)
Kuala Lumpur, Malaysia

Preface

In the name of Allah, the most compassionate and the most merciful. All praise be to Allah (SW) and may his peace and blessings be upon our beloved Prophet (PBUH).

The institution of waqf is an innovative financial tool for social economic development within Muslim societies that has a long history, from the time of the Prophet (PBUH) till the end of the 19th century. Historically speaking, the institution of waqf played a great role in financing almost all goods and services needed in the Islamic world, such as financing the education and the health sectors, the agricultural and industrial sectors, the basic infrastructure and transportation facilities, besides enhancing business activities through financing young entrepreneurs.

As such, we believe that knowledge about waqf needs to be comprehensively presented in this modern era to derive benefit from it for the socio-economic development of our society. This book is an attempt to close the knowledge gap in this area by providing a textbook of reference on waqf that could be used by students worldwide studying this important topic. We thank Allah (SW) for enabling us to accomplish this work.

We take this opportunity to thank the INCEIF and CIMB Islamic for providing financial grants to write and complete this textbook. In this regard, we acknowledge the assistance given by the Director of Research Management Center, Associate Professor Dr Baharom Abdul Hamid. We also thank our Research Assistants, Mr Osama Al-Sha'ar and Mr Zakariya Mustapha, who assisted us in completing the book. A very special thanks to Ms Rita Norzizana Mohd. Noor for her kind assistance in effectively managing the administrative matters. Last but not the least, our heartfelt gratitude to the publisher for their keen interest in publishing this work. Our sincere hope and *dua* (Prayer) is to spread the knowledge of waqf via this work and revive the role of waqf in socio-economic development. Ameen.

Magda Ismail A. Mohsin
Aishath Muneeza



About the Authors



Dr Magda Ismail Abdel Mohsin: Dr Magda is an Associate Professor currently teaches at INCEIF which is known as the Global University of Islamic Finance. She obtained her doctorate in Islamic Civilisation/ Islamic Economy from the International Institute of Islamic Thought and Civilization (ISTAC)/the International Islamic University Malaysia (IIUM) in 2003. Before joining the INCEIF in 2007, she taught many subjects in Islamic economics and Islamic finance at the International Islamic College (IIC); she was appointed as the Head of Economics

Department for 2 years and as Deputy Chief Executive Academic for 2 years in the same college.

Since 2007, Dr Magda presented many papers at international and national conferences held in countries such as the United States, the United Kingdom, Singapore, the Maldives, India, Indonesia, Turkey, the United Arab Emirates, Kuwait, Qatar, Algeria, Tunisia, South Africa and Sudan, besides local conferences in Malaysia. Moreover, she has conducted many trainings on waqf and zakah (Islamic tax) locally and internationally – locally, with Redmoney, the International Centre for Waqf Research (ICWR) and the International Federation of Red Cross and Red Crescent (IFRC) and internationally, with the Islamic Research and Training Institute (IRTI) and the National Awqaf Foundation of South Africa in South Africa, the Singapore Institute of Management (SIM) in Singapore, Le Centre Nationale de la Recherche Scientifique in Algeria, Indonesian Zakat Authority BAZNAS in Indonesia and Bilim Ve Sanat Vakfi in Turkey.

With reference to research, she is the author of two books on waqf entitled *Cash Waqf: A New Financial Product* and *Corporate Waqf: From Principle to Practice*, both published by Pearson Malaysia Sdn. Bhd. 2009 and 2014, respectively. She is also the editor of the latest book on waqf entitled *Financing the Development of Old Waqf Properties: Classical Principles and Innovative Practices Around the World*, Palgrave Macmillan, 2016. Moreover, she has published many articles

on waqf, zakah, Islamic microfinance, Islamic economics and, more recently, on fintech and blockchain. Furthermore, she is the recipient of two awards for waqf publications – the best/outstanding paper award for the paper ‘Financing Through Cash-Waqf: A New Innovation for the 21st Century’, Emerald Group 2013, and the best book for *Corporate Waqf: From Principle to Practice*, which has been translated into Arabic by Imam Muhammad ibn Saud, Islamic University, Riyadh/Saudi Arabi under Sheikh Rashid bin Dail Research Chair for Endowments Studies 2015.

In 2016, she received the Outstanding Women Achiever for her contribution and achievements in the field of Islamic economics and finance, given under the seal of Venus International Foundation, India. In 2018 and 2019, she was recognised by Cambridge Analytica Islamic Finance IF as one of the top 30 most influential women in Islamic finance. In 2020, she received the Lifetime Achievement Award from the Global Learners Academy of Development of Tamil Nadu/India.



Dr Aishath Muneeza: Dr Muneeza is associate professor at INCEIF, Malaysia, which is also known as the Global University of Islamic Finance. She has had more than 10 years of experience in the Islamic finance industry. She has served as the first female Deputy Minister of Islamic Affairs in Maldives; Deputy Minister of Finance and Treasury in Maldives; Head of Islamic Finance of Capital Market Development Authority of Maldives; member of Islamic Fiqh Academy (National Fatawa Council

of Maldives); first chairman of Hajj pilgrimage fund, Maldives Hajj Corporation Limited; chairman of Maldives Center for Islamic Finance Limited, which was set up by the government of Maldives to position Maldives as the hub of Islamic finance in South Asia; Islamic Finance consultant, who developed the first Shariah-compliant Islamic microfinance scheme offered in Maldives, ‘Faseyha Madadhu’; Shariah Adviser, who structured all the corporate sukuks offered in Maldives; Shariah Adviser, who structured the private sukuk and Islamic treasury instruments for the government of Maldives; and the consultant who drafted the legal framework governing the Islamic capital market for the country.

Since 2013, Dr Muneeza has been the only registered Shariah Adviser with the Capital Market Development Authority of Maldives to structure Islamic capital market products and is a registered Shariah Adviser at Securities Commission Malaysia. Since 2011, she has been the chairman of the apex body, Shariah Advisory Council of Capital Market Development Authority of Maldives, and she is the chairperson of different in-house Shariah advisory committees. She is also a member of the Board Shariah Committee of CIMB Islamic, Malaysia.

Dr Muneeza has also published more than 60 research papers in various academic journals and has authored 6 books. She has won gold and silver medals for research papers that she presented at IIUM Research Invention and Innovation

Exhibition in 2012 and 2013. In 2010, she won the first place in the international essay competition of Kuala Lumpur Islamic Finance Forum (KLIFF). She is invited to speak at various events held on Islamic finance around the world.

Dr Muneeza has won numerous national and international awards and has been recognised for her relentless efforts to create a full-fledged Islamic finance industry in Maldives. Among these are the highest recognition award conferred on women in Maldives, the Rehendhi Award, in 2018, in recognition of her outstanding service to the development of Islamic finance; the WOMANi Award for the Top 50 Most Influential Women in Islamic Business and Finance 2018 and 2019, Cambridge IFA; Inspirational Women of the Year 2018 by Women in Management; Upcoming Personality in Islamic Finance in 2017 by Flemingulf; Ten Outstanding Young Persons' Award 2016 by Junior Chamber International Maldives Junior Chamber International; Service Recognition Award by Maldives Islamic Bank for the key role played in introduction and structuring of Islamic treasury instruments to Maldives and assisting the Maldives Islamic Bank in sustaining a jurisdiction where there was no halal avenue for investments; service recognition award by Housing Development and Finance Corporation PLC for her work in introducing HDFC Amna; service recognition award by Amana Takaful Maldives to celebrate the individuals who contributed to the development of the Islamic Finance industry for 15 years; Honorary Award for her contribution to the development of the Islamic Finance Industry by UTO EduConsult of Sri Lanka. She has also been recognised in Islamica 500 as an influential personality in Islamic economics. Dr Muneeza holds an LLB (HONS), LLM (Banking) and PhD in law from International Islamic University of Malaysia.



Organisation of the Textbook

For easy reference by the students, this textbook is divided into four parts, covering a total of nine chapters. Each chapter begins with the learning outcomes and ends with a summary of the chapter, followed by multiple choice questions and review questions to make sure students have understood each chapter.

Part I presents the Shariah framework for immovable waqf and the socio-economic role of immovable waqf. This part is divided into three chapters: Chapter 1 covers the Shariah framework of the institution of waqf followed by providing a discussion on the administration and the socio-economic role of immovable waqf during the past and the present and concludes with the transforming of idle waqf properties into modern waqf properties besides highlighting their socio-economic roles.

Part II presents the Shariah framework for movable waqf, with special reference to cash waqf, and the socio-economic role of the movable waqf. This part is divided into two chapters: Chapter 4 covers the Shariah framework for cash waqf and Chapter 5 covers the cash-waqf models and their roles.

Part III links waqf with innovation, SDGs and technology. This part consists of two chapters: Chapter 6 presents the potential of waqf in ending poverty through providing the Islamic Microfinance Scheme and through linking the role of waqf with the SDGs and Chapter 7 discusses the innovation side of waqf and its financial credibility towards fintech.

Part IV deals with the legal framework and the dispute resolution aspect of waqf. This part is divided into two chapters: Chapter 8 covers a model legal framework for waqf and Chapter 9, the final chapter, covers some cases on dispute resolution.



List of Abbreviations

APIF	Awqaf Properties Investment Fund
BOT	Build Operate Transfer
BLT	Build Lease Transfer
IDB	Islamic Development Bank
IRTI	Islamic Research Training Institute
JAWHAR	Department of Awqaf, Zakat and Hajj
SPV	Special Purpose Vehicle
SW <i>Subhanahu wa ta'ala</i> , Arabic for	'The most glorified, the most high'
MAIPk	Perak Islamic Religious and Malay Customs Council
NGO	Non-Governmental Organisation
PBUH	Peace Be Upon Him
SRA Pulau Indah	Indah Island Religious Primary School
UDA	Urban Development Authority



Glossary of Terms

<i>Ahli</i>	Literally means 'family'; waqf <i>ahli</i> means family waqf
<i>Al-Qur'an</i>	Divine Book of Islam
<i>Al-Sunnah</i>	The way, guidance and saying of Prophet Muhammad (PBUH)
<i>'Ayn</i>	Property
<i>Awqaf</i>	Plural of waqf (religious endowment); waqf now exists as a noun in the English language.
<i>Dinar</i>	Originally, a currency used in the Prophet's time, it was made of gold. The nomenclature is now used in some so-called Muslim countries as the denominator of their fiat money or currency.
<i>Dhurri</i>	Literally pertaining to the descendants; <i>waqf dhurri</i> also known as <i>waqf al-awlad</i>
<i>Dirham</i>	As in Dinar, except that it was made of silver.
<i>Eid</i>	Two Islamic celebrations one at the end of Ramadhan and at the other for the fulfilment of Hajj.
<i>Fuqaha'</i>	Muslim jurists
<i>Ghair Sahih</i>	Unsound
<i>Habs</i>	Another word for waqf (religious endowment)
<i>Hadith</i>	Sayings attributed to the Prophet (PBUH)
<i>Hajj</i>	Pilgrimage to Makkah
<i>Hayat</i>	Body, council, board
<i>Hijrah</i>	Emigration – normally used to refer to migration from a non-Islamic abode to an Islamic one, for example, pre-Islam Makkah to Medina.
<i>Hikr</i>	Long lease right
<i>Hirman</i>	Dispossession
<i>Ijaratayn</i>	A type of long lease involving an initial down payment with regular payments thereafter
<i>Imam</i>	Leader of the prayers in a mosque, often the chief functionary as well

<i>Istibdal</i>	Substitution, an exchange of waqf property usually for another of equal value
<i>Ibdal</i>	Exchange
<i>Idkal</i>	Addition
<i>Iftar</i>	Breaking of the fast, usually with a light meal, during the month of Ramadhan or another supererogatory fast
<i>Ikhraj</i>	Removal
<i>Ijarah</i>	Leasing (sale of usufruct of an asset)
<i>I'ta' Granting</i>	
<i>Istisna'</i>	Refers to a contract whereby a manufacturer (contractor) agrees to produce (build) and deliver a well-described good (or premise) at a given price on a given date in the future
<i>Janazah</i>	A funeral or a late person's prepared body
<i>Jumu'ah</i>	Literally Friday; also denotes the Friday prayers
<i>Mudharabah</i>	A form of partnership business where one party provides capital and the other party provides technical/managerial know-how or expertise
<i>Murabahah</i>	Sale at a specified profit margin with the cost price known to the buyer
<i>Musharakah</i>	Joint venture, an agreement between two or more partners
<i>Musharakah Mutanaqisah</i>	Diminishing Partnership
<i>Mutawalli</i>	Administrator/Trustee
<i>Hafiz Class</i>	A class of Qur'anic memorisers
<i>Khayri</i>	Literally charitable, means public
<i>Waqf khalwah</i>	A small class for teaching Qur'anic science/Islamic school
<i>Madrasah</i>	Traditionally a religious school, in contemporary usage it refers to any secondary school
<i>Madhhab</i>	Schools of Islamic thought (pl. <i>madhahib</i>)
<i>Majlis</i>	Council
<i>Mawquf</i>	Property dedicated as a waqf
<i>Miri</i>	Tenanted land of the state
<i>Mutawalli</i>	Manager of public or private waqf property
<i>Nuqsan</i>	Decrease
<i>Nazir</i>	Supervisor over all <i>awqaf</i>
<i>Nazara</i>	<i>Custody</i>
<i>Qadi</i>	Muslim chief judge of the <i>Shariah</i> court
<i>Qardhul Hasan</i>	Benevolence loan
<i>Qur'an</i>	The Noble Book of Islam, the most truthful speech (of ALLAH)
<i>Sadaqah</i>	Charity

<i>Sadaqah Jariyah</i>	Recurring charitable deeds
<i>Salah</i>	The Prayer; a combination of postures
<i>Sahih</i>	Sound
<i>Shariah</i>	Islamic law; the way of Allah as shown by the <i>Qur'an</i> and the <i>Sunnah</i> of the Prophet Muhammad (PBUH)
<i>Sijil</i>	Register of the <i>Shari'ah</i> courts
<i>Sukuk</i>	A fund-raising financial instrument that involves securitisation of assets
<i>Thawab</i>	Reward
<i>Taghyir</i>	Replacement
<i>Tabdil</i>	Conversion
<i>Vakif</i>	Waqf in Turkish
<i>Waqf, pl. Awqaf</i>	Islamic endowment
<i>Waqfiyyah</i>	Waqf document authenticated by a <i>qadi</i> containing details and conditions of endowment
<i>Waqif</i>	Founder of the waqf
<i>Ziyaadah</i>	Increase



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PART

I

Shariah Framework for Immovable WAQF and Socio-economic Role



Shariah Framework of the Institution of WAQF

LEARNING OUTCOMES

At the end of this chapter, the students must be able to:

- Understand what is waqf, its origin, its legitimacy and its objectives
- Know how to create waqf
- Distinguish between the different types of waqf
- Identify the conditions imposed on creating waqf
- Recognise the importance of the 10 stipulations for the creation of waqf; and
- Acknowledge the creation of waqf by non-Muslims

KEY TERMS AND CONCEPTS

waqf, waqif, mawkuf, waqf khairy, waqf ahli, waqf mushtarak, mutawalli, nazir, irrevocable, perpetuity, inalienable

PREVIEW

The institution of waqf (religious endowment) has played a major role in early Islamic civilisations. It covered every aspect of socio-economic life in the early Muslim world. However, this significantly reduced over time because there is no clear legal reference to the waqf in the *Qur'an*. Early Muslim jurists relied on the *Sunnah* of the Prophet (PBUH) and the actions of his companions to derive its rules. Being a deduced law, this allows a certain degree of flexibility in deriving its law from the different schools of jurisprudence. Moreover, Islam encourages Muslims to take the simplest way as long as it is in line with the Shariah (Islamic law), as stated in the *Holy Qur'an* in the following verse:

God intends every facility for you; He does not want to put you to difficulties (Surat al-Baqarah, 2:185).

Having said that Muslims are encouraged to take the simplest way to solve their problems as long as it does not contradict the Islamic law and as long as it benefits different Muslim societies at large, this draws attention to the fact that the

law of waqf is flexible in accommodating the needs of different Muslim societies, regardless of time, place and space.

This chapter briefly defines waqf and discusses its origin and legitimacy besides stating the conditions for the creation of waqf. The chapter also identifies waqf properties, states the key restrictions, discusses its 10 stipulations, highlights its economic and social impact as well as provides some issues for further discussion in the following chapters.

DEFINITION OF WAQF

The terms waqf (plural *awqaf*) and *habs* (plural *ahbas*) are verbal nouns, infinitives, in Arabic and both literally mean ‘to stop, to prevent, to restrain’, that is, *al-habs wa al-man’*. The word *tasbil* is also used in the same sense, that is, devoting in the way of Allah (*fi sabil Allah*). In English, the term waqf can be translated as ‘religious endowment’, but this translation may not convey the sense of devotion and grace with which waqf is associated in Islam.

Geographically speaking, although the two terms waqf and *habs* carry the same meaning, different countries prefer different usage. For example, the term waqf is used in Saudi Arabia, Syria, Lebanon, Jordan, Iraq and the United Arab Emirates, while the term *habs* is more commonly used in North Africa. In Turkey, the term *vakif* (plural *evkaf*) is used, and in Malaysia, the term waqf is spelt as *wakaf* (plural *awkaf*). All these terms have the same meaning, which is the holding and preservation of a certain philanthropy, *sadaqah* (charity), with the intention of prohibiting any use or disposition of property outside the specific purposes to which the property is dedicated, in a way that it cannot be bequeathed or sold (Mohsin, 2009).

There is a consensus among the *fuqaha*’ (Muslim jurists) regarding the definition of these terms. According to them, all these terms mean the confinement of the *‘ayn* (property) from the ownership and the dedication of its usufruct to charitable purposes. However, they disagree upon the permissibility and revocability of waqf. The disagreement in opinions between the Muslim jurists in this regard created an unclear view in certain Muslim countries, which tried to abolish the waqf especially during the end of the 19th century and the beginning of the 20th century (Mohsin, 2009). For example, with reference to the Hanafi school of fiqh, the definition given by Imam Abu Hanifah (80–150 A.H.), who is the founder of the school, is, ‘The detention of a specific property from the ownership of the *waqif* (founder of the waqf), and dedicating its revenue to charitable purposes in the manner of a loan’. According to him, the founder has the right to return the waqf property to his ownership and he can also sell it, that is, the waqf is revocable. However, he is of the opinion that movable properties cannot be dedicated as waqf (i.e. it is not valid). Taking these views, it means that a *waqif* who created the waqf can reclaim and resell the properties that he had earlier declared as waqf. Besides, no movable properties, such as books, weapons, horses, money, can be created as waqf.

In contrast to Abu Hanifah's opinion, his disciple Abu Yusuf (d.182 A.H.) developed a system of legal doctrine that became the Hanafi definition of waqf. Abu Yusuf stated that waqf is only valid if it is irrevocable, that is, cannot be reverted back to the founder but made in perpetuity. Regarding the movable properties to be created as waqf, Abu Yusuf agreed that no movable property can be endowed as waqf with the exception of books, weapons, cattle and implements of animal husbandry attached to the dedicated waqf land. He based his opinion on the following Hadith: 'The Prophet (PBUH) said: Khalid bin al-Walid has appropriated his horse and armour for the cause of Allah' (*Sunan al-Nisa'i - Kitab al-Zakah*, Hadith No. 2420). According to Abu Yusuf, that waqf of movable property is valid only if it was customary during the time of the Prophet (PBUH). Nevertheless, Imam Zufar, another disciple of Abu Hanifah, approved all movable properties to be dedicated as waqf. He also included the waqf of *dirham* and *dinar* (silver and gold coins, respectively), that is, *waqf al-nuqud* (cash waqf). Moreover, Imam Zufar deduced that jewellery could also be dedicated as waqf. He based his opinion on the act of Hafsah (may Allah be pleased with her), the wife of the Prophet (PBUH) and the daughter of 'Umar b. al-Khattab, who dedicated her jewellery to her relatives. Furthermore, both al-Shaybani (d.189 A.H.) and al-Sarakhsi (d.490 A.H.) had approved all movable properties not only subject to the existence of customs during the Prophet's (PBUH) time, but also to customs that arise at any time, as long as there is a need for it and as long as it is within Shariah boundaries.

With reference to the Maliki school of fiqh, Imam Malik bin Anas (93–179 A.H.) considered waqf as confinement for the cause of Allah. The school agrees on both immovable and movable properties as the subject matter of waqf, even if it is cash waqf (Al-Amin, 1989). Moreover, the Maliki school defines waqf as giving to charity the benefit of a specific asset, for as long as the asset is in existence and constructively owned. This is based on a Hadith: 'Preserve the origin of the asset and stream its produce'. The meaning of preserve or hold here is not to end the ownership of the endower and it would remain within his ownership. However, although the ownership of the asset remains with the endower, the ownership is restricted, in that he cannot sell the asset and, most importantly, he cannot deal with the asset as he does with all his other assets (Magribi, 2002).

As to the other two schools of fiqh, both Imams, al-Shafi'i (150–204 A.H.) and Ibn Hanbal (164–239 A.H.), defined waqf as the confinement of property and the pledge of its usufruct in perpetuity for the cause of Allah. Moreover, they both agreed on the validity of both immovable and movable properties as a subject matter of waqf (Al-Zuhaili, 1985).

The Shafi'i school of thought defines waqf as holding assets whose benefits can be used by preserving its essence by terminating the endower's right of management, and its produce used for providing goods and services and to have a closer relationship with Allah (Al-Manawi, 1998). The Hanbali school of thought defines waqf as physically restricting an asset and donating its benefits for welfare, as well as having a closer relationship with Allah. The interpretation given by this school of thought is looser compared with that of the Shafi'i school of thought.

This is because the word *Sadaqa* in this interpretation can also mean giving the waqf asset to the beneficiary, whereas the rule of waqf is that only the benefit or produce can be enjoyed (Al-Husaini, 2012).

In general, all the four schools of fiqh agreed upon the irrevocability and the perpetuity of the waqf once it is established. Hence, in general, waqf can be defined as follows:

The confinement of an asset, movable or immovable, by a founder and the dedication of its usufruct in perpetuity to the beneficiaries.

And the economic definition of waqf can be as follows:

Waqf is a financial charitable institution established by withholding one's property to eternally spend its revenue on fulfilling different goods and services needed in different Muslim societies depending on the choice and conditions made by the founder.

ORIGIN AND LEGITIMACY OF WAQF

The idea of waqf is as old as humanity. Muslim jurists understand that the first waqf ever is the sacred building of Ka'bah in Mecca. Even though the origin of philanthropy endowment is much older than Islam, yet Islam is the first religion to formulate a legal framework for it and regulate it.

Although the term 'waqf' does not appear in the *Qur'an* or even in Hadith, Muslim jurists deduced its legitimacy and its law from the *Qur'an* and the Sunnah as explained next.

Evidence from the *Qur'an*

The *Holy Qur'an* contains some verses that carry the essence of waqf, for example:

By no means shall ye attain righteousness unless ye give (freely) of that which ye love; and whatever ye give, of a truth God knoweth it well (Surat Al-Imran, 3:92).

This Qur'anic verse had been interpreted by Abu Talha bin 'Obid Allah, one of the companions of the Prophet (PBUH), who endowed his loveliest garden, called *Bi'ruha'*, as waqf. This garden, full of date palm trees, was located in front of al-Masjid al-Nabawi and was where the Prophet (PBUH) used to drink water and perform his ablution. So, when this verse was revealed, Abu Talha said to the Prophet (PBUH):

Allah's Messenger! Allah, the Blessed, the Superior says: By no means shall you attain Al-Birr (righteousness, piety etc, it means here Allah's Reward i.e. Paradise), unless you spend (in Allah's Cause) of that which you love. And no doubt, Bi'ruha' garden is the most beloved of all my property to

me. So, I want to give it in charity in Allah's Cause. I expect its reward from Allah. O Allah's Messenger (PBUH) Spend it where Allah makes you think it feasible.' On that the Prophet (PBUH) said, 'Bikh (good) it is useful property. I have heard what you have said: O Abu Talha, and I think it would be proper if you give it to your kith and kin'. Abu Talha said, 'I will do so, O Allah's Messenger'. Then Abu Talha distributed that garden amongst his relatives and his cousins (Sahih al-Bukhari, Kitab al-Zakah (The Book of Zakah), No. 24).

Another Qur'anic verse:

It is not righteousness that ye turn your faces toward east or west, but it is righteousness to believe in Allah, and the Last Day, and the Angels, and the Book, and the Messengers, to spend of your substance out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves, to be steadfast in prayer, and practice regular charity (Surat al-Baqarah, 2:177).

These two verses highlight that a Muslim's faith should be true and sincere if he gives in charity to others what he loves. According to Muslim jurists, in these two Qur'anic verses, the phrasing spending out of love for Allah carries the essence of waqf. Moreover, in these two Qur'anic verses, two types of waqf have been encouraged: Waqf for the kith and kin means family waqf and waqf for the orphans, needy, wayfarers, those who ask and the ransom of slaves means public waqf.

Evidence from the Sunnah

Evidence for the legitimacy of waqf can also be deduced from the Sunnah of the Prophet (PBUH). For example, the following Hadith by Abu Hurairah (May Allah be pleased with him) reported Allah's Messenger (PBUH) as saying the following:

When a man dies his acts come to an end, except three things, recurring charity, or knowledge (by which people benefit), or pious offspring, who pray for him (Sahih Muslim, Kitab al-Wasiyyah, Hadith No. 3084).

The majority of the Muslim jurists understood that 'recurring charity' serves as the basis for waqf, while contemporary Muslim scholars confirm that it is the institution of waqf that enables the believers to perform all the three aforementioned good deeds. For example, Cizaka (2000) believes that the institution of waqf can indeed assure ongoing, recurring charity for many years, even centuries, after the death of the founder; besides, it can finance scholars whose lasting works would benefit mankind for a long period of time and the *thawab* (reward) that accrues to them would be shared by the founder, who had provided for their sustenance in the first place. In addition, the management of the waqf could be entrusted to the offspring of the founder so that, on the one hand, careful and loyal management is assured and, on the other, the offspring would pray for the deceased in

gratefulness for his waqf. From these explanations we see that the creation of waqf will not only double but will multiply the founder's rewards and compound them until the Day of Judgment.

Evidence from the Companions

Evidence regarding the legitimacy of waqf can also be found in the traditions and acts of the companions of the Prophet (PBUH) regarding this institution.

Narrated Ibn 'Umar (ra'): In the lifetime of Allah's Messenger (PBUH), 'Umar gave in charity some of his property, a garden of date palms called Thamgh. 'Umar, said, "O Allah's Messenger! I have some property which I prize highly, and I want to give it in charity." The Prophet (PBUH) said, "Give it in charity (i.e. as an endowment) with its land and trees on the condition that the land and trees will neither be sold nor given as a present, not bequeathed, but the fruits are to be spent in charity." So 'Umar gave it in charity, and it was for Allah's Cause, the emancipation of slaves, for the poor, for guests, for travellers, and for kinsmen. The person acting as its administrator could eat from it reasonably and fairly and could let a friend of his eat from it provided he had no intention of becoming wealthy by its means (Sunan al-Ni'sa' Kitab al-Ahbas, Hadith No. 3541).

The aforementioned Hadith confirms the legitimacy of the creation of waqf and at the same time highlights many rules, such as the conditions of waqf once created, its types and its management. In the first place, once the property becomes a waqf, it must not be sold or inherited or given away as a gift. Second, it is up to the founder to choose the type of waqf he wants to create – either public or family or both. In this case, Caliph 'Umar devoted it to both. Third, the administration of waqf has been clarified as it shows that the founder himself can administer his own waqf or he can appoint another trustee and at the same time the founder can benefit from his own waqf in a reasonable manner.

More evidences are derived to show how the Prophet (PBUH) had encouraged his companions to endow property whenever they realised a need in his society. For example, Uthman b. 'Uaffan narrated that when he was encircled (by rebels) he said, 'I ask you by Allah, and I ask nobody but the companions of the Prophet (PBUH). Don't you know that Allah's Messenger (PBUH) said, 'Whoever will (buy and) dig the well of *Rumah* will be granted Paradise,' and I (bought and) dug it. Don't you know that he said, 'Whoever equips the arm of 'Usra (i.e. Tabuk's *Ghazwa*) will be granted Paradise,' and I equipped it' they attested whatever he said.' (*Sahih al-Bukhari, Kitab al Wasayah* (Wills and Testaments) Hadith No. 52).

The aforementioned Hadith shows that the companion of the Prophet (PBUH), Uthman bin 'Uaffan, had been encouraged by the Prophet (PBUH) to create this type of waqf.

Likewise, the following Hadith encouraged the companions of the Prophet (PBUH) to create movable waqf. Abu Hurairah (PBUH) narrated

that the Prophet (PBUH) said, ‘If somebody keeps a horse (for Jihad) in Allah’s Cause motivated by his faith in Allah and his belief in His Promise, then he will be rewarded on the Day of Resurrection for what the horse has eaten or drunk and for its dung and urine’ (*Sahih al- Bukhari, Kitab al Wasayah* (Wills and Testaments) No. 371). This shows that Khalid bin al-Walid was the first to create movable waqf in terms of donating his horse and his armour for the cause of Allah, in response to the encouragement by the Prophet (PBUH).

All these are good examples that indicate the legitimacy of the institution of waqf and at the same time have encouraged people to create waqf throughout history by following the Sunnah of the Prophet (PBUH) and his companions. Moreover, from the waqf of the companions it has been realised that most of these waqf were for the benefit of their children, and this means family waqf. This is good evidence for those countries that have recently abolished family waqf, especially Egypt, Syria and Tunisia, among others (Mohsin, 2009), which will be discussed in the following chapters.

CONDITIONS FOR CREATING WAQF

Each waqf, immovable or movable, has five conditions for its creation. First, the founder of the waqf, known as *waqif*; second, the beneficiary of the waqf, known as *al-mawquf a’lih*; third, the trustee or manager of the waqf, known as *mutawalli*; fourth, the waqf property, known as *al-mawquf*; and fifth, the supervisor of waqf, known as *nazir al-waqf*.

Founder of Waqf (*Waqif*)

The waqf donor or waqf founder is an individual or an entity that dedicates property (waqf assets) to charitable ventures such as mosques, schools, hospitals, elderly care and public drinking water. The property dedicated as endowment (waqf) is no longer owned by the waqf founder but is rather managed by him or by an appointed *mutawalli* (appointed by the founder to manage the created waqf asset).

The main motivation for a founder to create waqf is to seek the pleasure of Allah and at the same time get continuous rewards until the Day of Judgment, as mentioned earlier. There are four conditions for the founder to fulfil if he wants to create a waqf:

- He/she must be an adult.
- He/she must be a free man/woman, with free will (not being forced).
- He/she must be in full possession of his/her physical and mental faculties.
- He/she must be capable of transferring property from his/her ownership to the ownership of Allah. This means that he/she owns the property either by having bought it, or through inheritance of the property.

This book is written to meet the needs of students studying waqf and those who are keen to study modes of Islamic social finance. Parts of this book maybe useful to those studying Islamic economics at the undergraduate and postgraduate levels. Apart from students, this book can be used by professionals to refresh and update their knowledge about the subject and implement Islamic social finance via waqf practically. This book is arranged in a way that helps readers understand pertinent areas of the topic in a comprehensive manner. The topics included are the Shariah framework for immovable and movable waqf with their social, economic and financial role; waqf linked with innovation and technology; and the legal framework and dispute resolution aspect of waqf. Each chapter begins with the learning outcomes and the explanation of key terms. At the end of each chapter, students are provided with series of questions to quantify the level of understanding. The answers for the questions are also provided to guide the students.

Key Features

- Written in simple English
- Learning outcomes are stated at the beginning of each chapter
- Questions are provided at the end of each chapter to evaluate understanding of the topics
- Answers to the questions are provided
- Summary is provided to enable quick revision

“This is the most comprehensive textbook on waqf in this modern age.”

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