

CASH WAQF

A NEW FINANCIAL PRODUCT



Magda Ismail Abdel Mohsin

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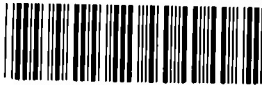
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A NEW FINANCIAL PRODUCT



Magda Ismail Abdel Mohsin
INCEIF
International Centre for Education in Islamic Finance

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Cash Waqf : A New Financial Product

Magda Ismail Abdel Mohsin

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Foreword

I wish to congratulate the author Dr. Magda Ismail Abdel Mohsin for writing this book entitled "Cash Waqf: A New Product" which I believe is a timely contribution to the body of literature on the subject of waqf. I am also pleased to note that this book was conceived, researched and written whilst the author was at INCEIF and this bodes well for our young institution. At INCEIF we are always supportive of our faculty members who engage in research in areas of Islamic economics and finance.

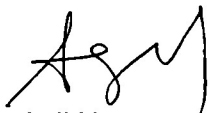
The importance of the institution of waqf cannot be overemphasised. Since the time of the Prophet (pbuh) right to the present day, history has shown that this institution has been successful in providing the necessary impetus for growth in all areas of the economy without the need to tap funds from the public sector. Unfortunately over time, due to selfish acts, management weaknesses and corruption perpetuated by a few, this has lent a bad name and resulted in a weakening of confidence amongst Muslims in this institution. But the concept of the waqf as an institution is not at fault! Since then, there has been a revival of sorts. More new waqf models are being mooted and researched and today we are beginning to see some success stories permeating through the system.

In this book, the author has painstakingly argued a very strong case for Cash Waqf models. She starts with a legal overview, examines the successful practises in various jurisdictions, moving on to propose the setting up of a cash waqf financial institution and its possible impact on society. The potency of the cash waqf model is that it is appealing to the small man but yet capable of mobilizing large amounts of monies to create impactful investments.

This book would be useful reading to policy planners, teachers, students and researchers. I do hope that the ideas in this book can trigger a lot more research in this important subject.

May Allah bless us in our efforts.

Wassalam



Agil Natt

President and Chief Executive Officer

INCEIF - The Global University in Islamic Finance

Kuala Lumpur

3rd September 2008/ 3 Ramadan 1429



Abstract

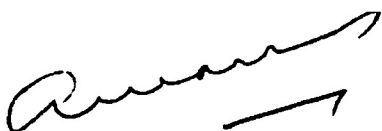
I am indeed pleased to write the “Abstract” to this book entitled **Cash Waqf: A New Financial Product** by Dr. Magda Ismail Abdel Mohsin. This book will be a valuable addition to the growing literature on the subject. In this book, an attempt is made to explain the concept of Cash-waqf, its mechanism, operations and management in the light of Shariah. As this book deals with both theory and application of cash-waqf concept in Muslim countries as well as in non-Muslim countries, this book will serve as a basis for further research work.

In this context, it is pertinent to mention that the cash-waqf certificate was first introduced and operationalized by the Social Investment Bank Ltd. Dhaka, Bangladesh in 1997 and subsequently adopted by all three Islamic banks in Bangladesh as well as in Indonesia. The concept is gaining popularity in Malaysia, Singapore and the U.S.A.

Cash-waqf can help in monetizing the Islamic Voluntary Sector, accumulating of Social Capital and National Wealth, implementing strategic social investment programs that reinforces family values, family heritage and stimulating economic, social and moral foundation of a caring society. Cash-waqf provides new opportunities to transfer liquid assets and make connection with one another on a global scale and open up new possibilities for developing Social Capital Market for the first time in the history of Islamic Voluntary Sector Banking. There is a need for global mobilization and creation of Cash-Waqf fund to expand as well as open up new frontiers of human freedom that includes freedom from educational, social and economic deprivations.

Lastly, I must say that Dr. Magda Ismail Abdel Mohsin deserves our deep appreciation for her efforts in promoting the cause of social capital in Islam.

May Allah guide us to serve His *Deen*.- Ameen.



Prof. Dr. M. A. Mannan
Founder Chairman
Social Investment Bank Ltd. Dhaka,
Dhaka, Bangladesh.
Former Chief Economist
Islamic Development Bank (IDB), Jeddah
Ex- Professor, King Abdul Aziz University, Jeddah.

About the Book

Cash waqfs, a dynamic Islamic financial institution envisaged first during the eighth century and flourished under the Ottomans, have re-emerged as completely riba-free and powerful financial instruments in our times. Magda Ismail Abdel Mohsin has provided valuable addition to our knowledge by investigating how this institution actually functions in the Arab world, South East Asia, India and the West. For any one interested in the present re-emergence of the cash waqfs, this is a must-read.

Prof. Dr. Murat Cizakca,
INCEIF – The Global University in Islamic Finance
Kuala Lumpur.
15rd September 2008 / 15 Ramadan 1429

Dedication

This book is dedicated to Bank Negara and to INCEIF students, who in one or the other way have been involved in reviving the Islamic Institutions and putting it in practice.

Acknowledgements

First and foremost, I must thank the Almighty Allah, Most Gracious and Most Merciful for enabling me to see this book to completion. Second, I would like to express my profound thanks and deepest gratitude to the President & Chief Executive Officer of INCEIF, En. Agil Natt, Prof. Datuk Dr Syed Othman Al Habshi, the Chief Academic Officer and Prof. Dr. Syed Abdul Hamid al-Junid, Head of Economics and Governance Department, for giving me the opportunity to further my research in this area through giving talks, participating in roundtable discussions and attending international conferences. I am greatly indebted to Professor Dr. Murat Cizakca, who enlightened us about this institution, and whose comments and continuous support helped to improve this book. I am most grateful to Professor Dr. Mannan who paved for us the way to put cash waqf in practice as in the case of the Social Investment Bank Ltd. in Bangladesh.

To my family, I owe a special debt, especially to my husband Prof. Dr. Nasr El-Din Ibrahim and my children Ibrahim, Tasneem and Mohammad. Last but not least, for those whose names I have not mentioned but have contributed directly or indirectly to this book, I have this to say "May Allah Reward You All".

Preface

During the early period of the Islamic civilization, the role of the institution of waqf covered almost all service sectors, such as, health, education, the basic infrastructures, jobs, commercial business, food for the hungry and the animals, shelter for the poor and needy, besides supporting the agricultural and industrial sectors, without any cost to the government. However, this role had deteriorated since the end of the 19th century up to the present time. Since then, the situation of all waqf properties have become idle, neglected, unproductive, and a burden to all the Muslim countries and hence deterioration of all the services in almost all Muslim countries has been realized. This situation forced the governments to be responsible for providing all these services, a matter which exhausted their budget and hence forced them to borrow from western countries under interest rates. This in turn deteriorated the situation more. Consequently, poverty, disease, illiteracy, poor infrastructure facilities, etc., became widespread in the Muslim countries. Reviewing the role of the institution of waqf especially the role of cash waqf and adjusting it within the present situation, we are assured that the cash waqf can be a successful financial institution in financing all sectors and in promoting economic development and alleviating poverty from the Islamic countries without any cost to the government.



About the Author

Dr. Magda Ismail Abdel Mohsin was born in Khartoum, the capital of Sudan. She obtained her Bachelor of Economics from the Khartoum Branch of the University of Cairo in 1984, her Master in Economics from International Islamic University Malaysia in 1996 and her PhD in Islamic Civilization (Islamic Economics) from the International Institute of Islamic Thought and Civilization-International Islamic University Malaysia (ISTAC-IIUM) in 2003.

Currently, she is a lecturer at the Economics and Governance Department and the secretary of the Publication and Research Committee at the International Centre for Education in Islamic Finance (INCEIF). Prior to this, she taught both Economics and Islamic Economics and held two administrative posts which included Deputy Head for Economics and Quantitative Programme and Deputy Chief Executive Officer – Academic Affairs at the International Islamic College Malaysia.

Among her publications are the following articles: “Review of Sudanese Socio-Economic Development: Case Study: Sudan” in *Journal of Economic Cooperation among Islamic Countries*, Ankara, Vol. 23 No. 3, July 2002; “The Revival of the Institution of Waqf in Sudan” in *Al-Awqaf Journal*, Kuwait, 2005; “The Practice of Islamic Banking System in Sudan” in *Journal of Economic Cooperation among Islamic Countries*, Ankara, Vol. 26 No. 4, July 2005 and “Cash-Waqf: A Financial Institution” in *Al-Risala Journal*, IIUM/Malaysia, No. 7, December 2007.

Table of Contents

Foreword	iii
Abstract	iv
About the Book	v
Dedication	vi
Acknowledgements	vii
Preface	viii
About the Author	ix
INTRODUCTION	1
CHAPTER 1 OVERVIEW OF THE INSTITUTION OF WAQF	5
1.1 The Legal Framework of the Institution of Waqf	6
1.1.1 Definition of Waqf	6
1.1.2 Legitimacy of Waqf	9
1.1.3 Evidence from the Qur'an	10
1.1.4 Evidence from the Sunnah	11
1.1.5 Evidence from the Acts of the Companions	12
1.1.6 Classification of Waqf Property	14
• Subject to The Beneficiaries (<i>al-Mawquf 'Alaihim</i>)	15
• Subject to the Endowment Assets (<i>al-Mawquf</i>)	15
1.1.7 Rules Necessary for the Validity of Waqf	16
• Conditions for the Validity of Waqf	16
• Key Restrictions of Waqf	17
• Ten Stipulations for the Creation of Waqf	18
1.2 Modes of Financing Waqf Properties	20
1.2.1 Immovable Waqf	20
1.2.2 Movable Waqf	22
1.3 Management of the Institution of Waqf Past and Present	24
1.3.1 Waqf during the Early Period of Islam	24
1.3.2 Destruction of the Institution of Waqf	30

1.3.3	Management of Non-Profit Institution in Non-Muslim Countries	34
	• Role of Non-Profit Institutions in the Developed Countries	35
1.3.4	Concluding Remarks	37
CHAPTER 2 WHAT IS CASH-WAQF?		39
2.1	Legal Framework for Cash-waqf	40
2.1.1	Definition of Cash-Waqf	40
2.1.2	Legitimacy of Cash Waqf	40
2.1.3	Conditions Necessary for the Validity of Cash-Waqf	41
2.1.4	Creation of Cash-Waqf by Non-Muslim	42
2.1.5	Key Restrictions on Cash-Waqf	42
2.1.6	Beneficiaries of Cash-Waqf	43
2.1.7	Ten Stipulations for the Creation of Cash Waqf	43
2.2	Investment of Cash-waqf	43
2.3	The Economic Dimension Of Cash Waqf	44
2.3.1	Enhancing the Different Sectors in the Muslim Countries	44
2.3.2	Reduction in Government Expenditure	44
2.3.3	Solving the Problem of Under Supply of Public Goods	45
2.3.4	Solving the Problem of Unemployment	45
2.3.5	Creation of Commercial Activities	45
2.3.6	Interest-Free Financial Institution	46
CHAPTER 3 CURRENT APPLICATION OF CASH WAQF		47
3.1	Waqf Shares Model	47
3.1.1	Waqf Shares Model in Malaysia	48
3.1.2	Waqf Shares Model of YADIM	50
3.1.3	Waqf Shares of YPEIM	51
3.1.4	Waqf Shares Model in Indonesia	52
3.1.5	Waqf Shares Model in Sudan	53
3.1.6	Waqf Shares Model in Kuwait	54
3.1.7	Waqf Shares Model in the United Kingdom	55
3.2	Waqf Takaful Model	59
3.3	Direct Cash Waqf Model	61
3.3.1	Direct Cash Waqf Model in Malaysia	62
3.3.2	Direct Cash Waqf Model in Singapore	62
3.3.3	Direct Cash Waqf Model in Bahrain	63
3.3.4	Direct Cash Waqf Model in the United Arab Emirates (UAE)	63
3.3.5	Direct Cash Waqf Model in India	64
3.3.6	Direct Cash Waqf Model in South Africa	65

3.3.7	Direct Cash Waqf Model in the United States of America	66
3.3.8	Direct Cash Waqf Model in International Organizations	67
	• IDB Waqf Fund	67
	• OFID Waqf Fund	68
3.4	Mobile Cash Waqf Model	69
3.5	Compulsory Cash Waqf	70
3.6	Corporate Cash Waqf Model	71
3.6.1	Johor Corporation Cash-Waqf Model	72
3.6.2	Corporate Cash-Waqf in Turkey	73
3.6.3	Corporate Cash-Waqf Model in Pakistan	74
	• Education: Establishment of Educational Institutes	74
	• Financial Assistance	75
	• Research	75
	• Publication	75
	• Seminars	75
	• Welfare	76
	• Health	76
3.7	Deposit Cash Waqf Model	78
3.8	Co-operative Cash-waqf Model	80
3.9	Waqf Mutual Fund Model	81
CHAPTER 4	CASH-WAQF FINANCIAL INSTITUTION	85
4.1	Rules and Regulations Governing the Cash-waqf	86
4.2	Policy and Guidelines	87
4.3	Administration of Cash-waqf Financial Institution	89
4.3.1	Role of Government and Religious Council	89
4.3.2	Supervisory Institution	90
4.3.3	Right of the Founder	90
4.3.4	Human Capital Development	91
4.3.5	Proper Preservation of Cash-Waqf Accounts	91
4.3.6	Activating the Role of Community Development	91
4.3.7	Incorporated within the Education System	92
4.4	Creation of Cash-waqf	92
	Case One: Sudan	93
	Case Two: Egypt	93
	Case Three: Pakistan	94
	Case Four: Indonesia	94
4.5	Cash-waqf Deed (<i>Waqfiah</i>)	95

4.6	Structure of the Cash-waqf Financial Institution	95
4.7	Investment of Cash-waqf	98
4.7.1	Low Risk Investment	98
	• <i>Murabahah</i> Financing Mode	98
	• <i>Salam</i> Financing Mode	98
	• <i>Istisna'</i> Financing Mode	99
	• <i>Bai' Bithaman Ajil</i> (BBA Financing)	99
	• <i>Ijarah</i> Mode	99
4.7.2	High Risk Investment	100
	• <i>Al-Qard al-Hasan</i>	100
	• <i>Mudarabah</i>	101
	• <i>Musharakah</i>	101
4.8	The Beneficiaries	101
4.9	Role of Cash-waqf in the Muslim Societies	102
4.9.1	Service Sector	102
4.9.2	Agricultural and Industrial Sectors	103
4.9.3	Social Sector	103
	CONCLUSION	105
	BIBLIOGRAPHY	109



Introduction

Muslim countries claim that their lack of economic success was due to the oppression, humiliation and bad policies which had been imposed upon them since colonization in almost all the Muslim countries although they led the world for centuries in science, philosophy, culture and prosperity during the golden days of Islam. Others related this lack to the incompetence and the corruption on the part of their governments.

We cannot deny the above mentioned factors as the main catalyst for the lack of development. However, a great role has been impeded from among the Muslims themselves since they neglected their Islamic institutions and they blindly imitated the developed and the non Muslim countries which separated religion from their daily life. A glance at the current situation of the Muslims today we realized that Muslims are divided into two categories, Muslims with very high level of living standards leaving the majority of Muslims suffering from illiteracy, lacking good health care, high level of unemployment, a lack of good food and good sanitation, etc.

For Muslim countries which seek a better living standard for all, and a well developed society, Muslims have no choice except to return to their Islamic teaching and to their Islamic institutions, which is definitely the accurate solution to solve their entire economic problems starting from wealth creation and ending with the re-distribution of wealth as has been highlighted clearly in the following Quranic verse:

إِنَّ اللَّهَ لَا يُغَيِّرُ مَا بِقَوْمٍ حَتَّى يُغَيِّرُوا مَا بِأَنْفُسِهِمْ

Verily never will Allah change the condition of a people until they change it themselves (with their own souls).

(Sura Al Ra'd13:11)

Hence, if Muslims really demand a better living standard and a better society, they have to start changing themselves first before depending on their government to provide everything for their societies. A Muslim, as an individual must be responsible for the welfare of his/her society. Citizens must also be responsible and must

have a caring role in their societies. The Imam must have a great role towards his Ummah through Friday Talk/*Khutbah*. Only then must the role of the government come in as a supervisory body to monitor the overall progress of its societies. This responsibility and the caring role for the Ummah have been highlighted in the following *ahadith*.

The following *hadith* highlights the responsibility of each individual in this world.

عن عبدالله بن عمر أنه سمع رسول الله صلى الله عليه وسلم يقول :
كلكم راع ومسؤول عن رعيته ، فالإمام راع وهو مسؤول عن
رعيته ، والرجل في أهله راع وهو مسؤول عن رعيته ، والمرأة في
بيت زوجها راعية ، وهي مسؤولة عن رعيته ، والخادم في مال
سيده راع وهو مسؤول عن رعيته . قال : فسمعت هؤلاء من رسول
الله صلى الله عليه وسلم ، وأحسب النبي صلى الله عليه وسلم قال :
والرجل في مال أبيه راع ، وهو مسؤول عن رعيته ، فكلكم راع
وكلكم مسؤول عن رعيته.

Narrated 'Abdullah bin 'Umar: Allah's Apostle said, "Surely! Everyone of you is a guardian and is responsible for his charges: The Imam (ruler) of the people is a guardian and is responsible for his subjects; a man is the guardian of his family (household) and is responsible for his subjects; a woman is the guardian of her husband's home and of his children and is responsible for them; and the slave of a man is a guardian of his master's property and is responsible for it. Surely, everyone of you is a guardian and responsible for his charges."

(*Sahih Bukhari*)

The following *hadith* encourages the Muslim society to be a caring society as one body.

"يقول رسول الله المسلم للمسلم كالجسد الواحد إذا اشتكى منه
عضو تداعى له سائر الجسد بالسهر والحمى"

Narrated An-Nu'man bin Bashir: Allah's Apostle said, "You see the believers as regards their being merciful among themselves and showing love among themselves and being kind, resembling one body, so that, if any part of the body is not well then the whole body shares the sleeplessness (insomnia) and fever with it."

(*Sahih Bukhari*)

In this book, our main focus will be to revive one of the Islamic institutions which had been neglected by the Muslims themselves for a century since the decline of the Ottoman Empire and the colonization which took place in almost all Muslim countries that led to the separation between religion and daily life.

Historically speaking, the institution of waqf, a redistribution institution and a non-profit institution, played a remarkable role in developing the Islamic societies

as well as in assisting the Islamic State in providing all the essential services such as providing the basic infrastructure, educating the people, providing health care not only for people but for animals too, offering national security, facilitating transportation, providing jobs for the mass of people, feeding the hungry, and sheltering the orphan and the travellers, etc. However, this role started to decline from the beginning of the 19th century up to the present time. Many scholars related this decline to a number of factors. Some of them attributed it to the fall of the Ottoman Caliphate and some attributed it to government interference in the management of waqf. On the other hand, others connected it to colonial rule, which replaced Islamic laws with secular ones including the law of this institution. Others related this decline to the mismanagement which occurs within this institution since centralization¹ of its administration took place in all Muslim countries².

Owing to the above-mentioned reasons, the creation of waqf in almost all the Muslim countries has been limited to real estate such as mosques, houses and small shops created by pious and rich people. Its role in providing the above-mentioned services has declined. This has forced the governments in nearly all the Muslim countries to provide those services, which in turn, forces the government to borrow under interest from the developed countries besides, imposing the conventional system of taxation in the Islamic world in order to be able to provide such facilities to the society.

The last two decades witnessed the revival of this institution in almost all Muslim countries in terms of improving the situation of the old waqf buildings and in widening the concept of waqf to include cash-waqf as an instrument to improve the current situation of the Muslim societies and as a vehicle for economic development.

The main objective of this book is to provide an Islamic financial institution, the institution of cash-waqf, that can finance all sectors in Muslim societies, without any cost to the government and even without the need for the government to impose the system of income tax for those who contributed to this institution. The success of this financial institution will in turn improve all societies and hence promote economic development and help to alleviate poverty in the Muslim countries.

¹ Here centralization of waqf means that the supervisor and the management of the waqf properties came under the control of the government or state rather than the *qadi* (chief judge) and individuals (trustees) who were appointed by the founders of the waqf.

² For more details on the declined role of waqf at the present time, please refer to the following; Salih 'Abdullah Kamil, "Dawr al-Waqf fi al-Nimo al-Iqtisadi," in *Nahwa Dawr Tanmawi Il-Waqf*, (Kuwait: Ministry of Awqaf and Islamic Affairs, 1993), 39. See also Omar Altalib, "Islamic Foundations Waqf: A Grassroots Socio-Economic Institution {The Case of the Ottoman Empire}", Paper presented at the International Conference on *Islamic Political Economy*, Universiti Sains, Penang, 1996, 16. Murat Cizakca, *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present* (Istanbul: Bogazici University Press, 2000), 119–128.

To achieve this, this book is divided into four chapters plus the introduction and the conclusion. The first two chapters provide the legal view and the Shariah aspects for both the institution of waqf and cash-waqf. Chapter three presents the current application of cash-waqf in different Muslim and Muslim minority countries. Chapter four focuses mainly on the proposed cash-waqf financial institution and is followed by the conclusion.

Overview of the Institution of Waqf

The institution of waqf¹ (pl. *awqaf*) has played a significant role throughout Islamic history, from the time of the Prophet (pbuh) till the present time. Although this institution existed before the coming of Islam,² yet, Islam was the first religion to develop its legal system from the Islamic *Shari'ah* (Islamic law) and to regulate it. Thus, it became the main device created by the Muslims to fulfill most of their social services that are today financed by the state or the government. For example, it provided many services, such as education, health care, national security, transportation facilities, the basic infrastructure, which provided jobs for the masses, etc.

The institution of waqf involves every aspect of the socio-economic life in the Muslim world. 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 laws. Being a deduced law, this allows a certain measure of flexibility in deriving its law from the different schools of law in addition to the Islamic approaches in encouraging the Muslim to take the simplest way in their life as long as it is in line with the Islamic law. This has been clearly mentioned in the following Qur'an verse;

يُرِيدُ اللَّهُ بِكُمْ الْيُسْرَ وَلَا يُرِيدُ بِكُمْ الْعُسْرَ

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

From the above-mentioned Quranic verse, it is realized that Muslims are encouraged to take the simplest way to solve their problems as long as it does not contradict the Islamic law, and it will benefit Muslim society. This draws to

¹ Since the word "waqf" has been used throughout the whole thesis, it will not be italicized, and its plural will be written as "waqfs."

² For those who are interested on the history of waqf before Islam please refer to Randi Carolyn Deguilhem Schoem, "History of Waqf and Case Studies from Damascus in Late Ottoman and French Mandatory Times" (Ph.D. diss., Michigan, 1986), 49–55.

our attention the fact that the law of waqf gives flexibility to Muslims in different countries to choose from any school of law as long as there is a need to improve the situation of their own waqf properties.

The main objectives of this chapter are to draw the legal framework for this institution, to highlight its development since the time of the Prophet (pbuh) and to provide the different modes of investment in its properties.

1.1 THE LEGAL FRAMEWORK OF THE INSTITUTION OF WAQF

Although, the term “waqf” does not appear in the Qur’an nor in the Hadith, Muslim jurists deduced its legitimacy and its law from the Qur’an and the Sunnah. In this section the legal framework of this institution will be presented, from the four Islamic schools of law. To achieve this, the section is divided into five sub-sections. The first, will define the term “waqf” according to the different schools of law. The second will provide the evidences from the Qur’an and the Sunnah to legitimize this wonderful Islamic institution. The third will classify the waqf properties. Rules necessary for the validity of waqf will be presented in the fourth section and the ten stipulations for waqf will conclude this section.

1.1.1 Definition of Waqf

The terms, waqf (plural *awqaf*) and *habs*³ (plural *ahbas*), are *masdar* (verbal nouns, infinitives, in Arabic), and literally they both mean ‘to stop, to prevent, to restrain’ i.e. *al-habs wa al-man’*. The word *tasbil* is also used in the same sense, i.e. 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. Although the two terms, waqf and *habs*, carry the same meaning, different countries prefer different usage. For example, the term waqf is used in Lebanon, Israel, 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 *awkaaf*).⁴ All these terms have the same meaning, which is the holding and preservation of a certain philanthropy – *sadaqah* (charity) with the

³ Ibn Nujaim, Kamal al Din Muhammad b. Abdul Wahid, *Sharh-Fath al-Qadir*, Beirut: Dar al Sadir, n.d. 37.

⁴ For the definition of waqf pl.check, Al-Zubidi, *Taj al-'Arus*, 4:125–368. Mukarrm, *Lisan al-'Arab*, 2:752 and 6:4898. Heffening, “Wakf”, in *First Encyclopedia of Islam 1913–1936*, (1987), 8:1096. Monzer Kahf, “Waqf,” in *The Oxford Encyclopedia of Modern Islamic World*, (1995), 4:312–313. Mohd. Zain bin Haji Othman, *Islamic law with Special Reference to the Institution of Waqf*, (Kuala Lumpur: Islamic Center), 21.

intention of prohibiting any use or disposition of the property outside the specific purposes to which the property is dedicated, in such a way that it cannot be bequeathed or sold.

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.⁵ The disagreement in opinions between the Muslim jurists, in this regard, created an unclear view in certain Muslim countries that tried to abolish the waqf especially during the end of the nineteenth century and the beginning of the twentieth century.

For example, the definition given by Imam Abu Hanifah⁶ (80–150 A.H.), the founder of the Hanafi school of law,⁷ is “the detention of a specific property from the ownership of the *founder* (founder of the waqf), and dedicating its revenue to charitable purposes in the manner of a loan”.⁸ According to him, the founder has the right to return the waqf property to his ownership and he can also sell it, i.e. the waqf is revocable.⁹ However, his opinion regarding movable properties to be dedicated as waqf is not valid.¹⁰ Taking these views, it means that a founder who created a waqf can reclaim it and can sell it. Besides, no movable properties such as books, weapons, horses can be created as waqf. In contrast to Abu Hanifah's opinion, his disciple Abu Yusuf¹¹ (d.182 A.H), developed a system of legal doctrine which became the Hanafi definition of waqf. Abu Yusuf stated that waqf is only valid if it is irrevocable i.e. cannot be reverted back to the founder, but must be made in perpetuity.¹² Regarding the movable properties to be made into waqf, Abu Yusuf agreed that no movable property can be endowed as waqf, but weapons of war, cattle and implements of animal husbandry attached to the dedicated waqf land and books can be dedicated as waqf.¹³ He based his opinion on the *hadith* of the

⁵ Ibn Nujaim, *Sharh-Fath al-Qadir*, 37. See also Zaki al-Din Sha'ban, and Ahmed al-Ghandur, *Ahkam al-Wasiah wa al-Mirath wa al-Waqfi'l- Shari'ah al-Islamiah*, (Kuwait: Maktabat al-Falah, 1989), 455.

⁶ Abu Hanifah al-Nu'man b. Thabit b. Zuwti al-Tumai al-Kufi.

⁷ Hanafi *madhhab* became the second official school of law in Sudan after the Malki *madhhab* since 1902 when the Anglo-Egyptians governed Sudan.

⁸ Ibn Nujaim, *Sharh-Fath al-Qadir*, 40.

⁹ Al-Sarakhsi, *Kitab al-Mabsut*, 27–28, See also Al-Zuhaili, *Al-Fiqh al-Islami wa-Adillatuh*, 153.

¹⁰ Ibn Nujaim, *Sharh-Fath al-Qadir*, 49. See also Zaidan, *Al-Mufasal fi Ahkam al-Mar'ah*, 423. See also Muhammad 'Ubaid-Allah al-Kubaisi, *Ahkam al-Waqf fi al-Shari'ah al-Islamiyyah*, (Baghdad: Maktabat al-Irshad, 1977), 68.

¹¹ Ya'quob b. Ibrahim al-Ansari known as Abu Yuauf. It is related that Abu Yusuf diverged from the doctrine of Abu Hanifah during his pilgrimage to Makkah with Harun al-Rashid when he saw numerous *awqaf* of the companions of the Prophet (pbuh) everywhere in Madinah. See Al-Sarakhsi, *Kitab al-Mabsut*, vol. 30: 28, and al-Zuhaili, *Al-Fiqh al-Islami wa-Adillatuh*, 153.

¹² Ibn Nujaim, *Sharh-Fath al-Qadir*, 40–48.

¹³ Ibid, 49–50. See also Hashiat b. 'Abidin, *Rad al-Mukhtar 'ala al-Dur al-Mukhtar*, 16 vols. (Beirut: Dar 'Ihya' al-Turath al-'Arabi), 3: 376.

Prophet (pbuh) which stated as follows, 'The Prophet (pbuh) said; Khalid b. al-Walid has appropriated his horse and armour for the cause of Allah'.¹⁴ According to him waqf of movable property is valid only if it was customary during the time of the Prophet (pbuh).¹⁵ In contrast to the last view, another disciple of Abu Hanifah, Imam Zufar¹⁶ approved all movable properties to be dedicated as waqf. He also included the waqf of *dirham* (pl. *darahim*) and *dinar* (pl. *dananih*)¹⁷ i.e. 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 Hafsa, the wife of the Prophet (pbuh) and the daughter of 'Umar b. al-Khattab, who dedicated her jewellery to her relative.¹⁸ In addition, both Imams Muhammad¹⁹ (d.189 A.H.) and al-Sarakhsi²⁰ (d.490 A.H.) had approved all movable properties not only subject to the existence of custom during the time of the Prophet (pbuh), but customs arising in another time and country.²¹ Furthermore, Imam Malik b. Anas (93–179 A.H), the founder of the Maliki school of law²² considered waqf as confinement for the cause of Allah, which agrees with the view of Abu Yusuf in terms of the irrevocability and perpetuity of the waqf. Moreover Imam Malik also agreed on both immovable and movable properties as a subject matter of waqf even if it was cash-waqf.²³

With respect to the other two schools of law, both Imams al-Shafi'i²⁴ (150–204 A.H.) and Ahmad b. Hanbal²⁵ (164–239 H), defined waqf as the confinement of the property and the pledge of its usufruct in perpetuity for the cause

¹⁴ Narrated by 'Omar b. al-Khattab, *Sunan al-N'isa'i*, Kitab al Zakah, Hadith No. 2420.

¹⁵ Regarding the difference of opinion between Abu Hanifa and Abu Yusuf, Al-Tarabulsi stated that if Abu Hanifa had known the hadith of 'Umar (which will be mentioned in the following subsections) he would have agreed on the irrevocability of the waqf once it is created. See Burhan al-Din Ibrahim b. Musa b. Abu Bakr b. Ali Al-Tarabulsi, *Kitab al-Is'af fi Ahkam al-Awqaf* (Beirut: Dar Al-Ra'id Al-'Arabi, 1401–1981), 7.

¹⁶ Zufar b. Hudhail Abu al-Hudhail al-'Ambari, companion of Abu Hanifa (d.158), See also Shams al-Din Muhammad b. 'Uthman al-Dhaahabi (748), *Sir A'lam al-Nubala'*, vol. 8 (Beirut: Mua'sasat al-Risalah, 1985), 38.

¹⁷ The Dirham is the silver unit of the Arab monetary system from the rise of Islam down to the Mongol period, and the Dinar is the name of the gold unit of currency used during the time of the Prophet (pbuh). Ibn 'Abidin, *Rad al-Mukhtar*, 3: 374.

¹⁸ Ibn Qudamah, *Al-Mughni*, vol. 6, (Beirut, Dar al-Kutob al-'Ilmiyyah, n.d.), 235. See also Al-Mufasal fi Ahkam al-Mar'ah, 10: 423. See also, Abu al-Su'ud, *Risalah fi Jawaz Waq al-Nuqud*, 20.

¹⁹ Muhammad b. Hussan al-Shaybani, disciple of Imam Abu Hanifa.

²⁰ Shams al-'Ammah Muhammad b. Ahmad b. Sahl known as al-Sarakhsi. Abu al-Sa'ud, *Risalah fi Jawaz Waq al-Nuqud*, 25.

²¹ Ibid 20. See also Cizakca, A History of Philanthropic Foundation, 33.

²² The Maliki *madhab* had become the official school of law in Sudan since 1504, during the Funj Sultanate/al-Sultanah al-Zarqah.

²³ Hassan Abdullah al-Amin, "Introduction", in *Idarat wa Tathmir Mumtalakat al-Awqaf*, ed. Hassan Abdullah al-Amin (Jeddah: Islamic Research and Training Institute, 1989), 96–99, hereafter cited as *Idarat wa Tathmir Mumtalakat al-Awqaf*

²⁴ Al-Shafi'i Muhammad b. Idris al-Matalabi al-Qorashi.

²⁵ Imam Ahmed b. Hanbal.

of Allah. Moreover they both agreed on the validity of both immovable and movable properties as a subject matter of waqf.²⁶

From the above and considering the different views of the Muslim jurists, we realize that in general all the four schools of law agreed upon the irrevocability and the perpetuity of the waqf once it is established. Moreover, regarding movable properties as a subject matter of waqf gives the flexibility in creating such property as waqf, especially “cash-waqf”. Since most of the economic problems in the Third World countries stem from the shortage of funds, we believe that the creation of cash-waqf is most needed in the Muslim countries at the present time for the accumulation of capital in order to finance development. Moreover, with the introduction of Islamic banks in the Islamic world, cash-waqf can be invested in a similar way as recommended by the Muslim jurists. This will be explained in more detail in the following chapters.

1.1.2 Legitimacy of Waqf

There is a consensus among the majority of Muslim jurists regarding the legitimacy of waqf. However, and as a result of the objections of three Muslim jurists, Abdullah b. Mas'ud, and Abdullah b. 'Abbas²⁷ and qadi Shuraih²⁸ to the creation of waqf, the abolishment and the confiscation of waqf properties which took place during the nineteenth century was based on these objections.²⁹ Since one of the main objectives of this book is to encourage people to create waqf including cash-waqf, it is important to clarify this issue in order to avoid any abolishment or any confiscation that might take place in the future. First, let us highlight the main reasons for the objections of these three Muslim jurists on the subject matter of waqf and how other Muslim jurists respond to these objections. Second, evidence to legitimize the institution of waqf will be presented.

For the first objection which had been stated by the above-mentioned three Muslim jurists, their objection was based in the following Qur'an verse;

مَا جَعَلَ اللَّهُ مِنْ بَحِيرَةٍ وَلَا سَائِبَةٍ وَلَا وَصِيلَةٍ وَلَا حَامٍ وَلَكِنَّ
الَّذِينَ كَفَرُوا يَفْتَرُونَ عَلَى اللَّهِ الْكَذِبَ وَأَكْثَرُهُمْ لَا يَعْقِلُونَ

It was not Allah (swt) Who instituted (superstitions like those of) a slit-ear she-camel, or a she-camel let loose for free pasture, or idol sacrifices for twin births in animals, or stallion-camels freed from work

(Surat al-Ma'dah, 5:103)

²⁶ Al-Zuhaili, *Al-Fiqh al-Islami wa-Adillatuh* 154. Abu Zuhrah, *Muhadrat fi al-Waqf*, 5. Qureshi, *Waqf in India*, 6. See also *Idarat wa Tathmir Mumtalatat al-Awqaf*, 96–99 and Abu al-Su'ud, *Risalah fi Jawaz Waqf al-Nuqud*, 19.

²⁷ Al-Sarakhsi, *Kitab al-Mabsut*, 11: 29.

²⁸ Al-Zubidi, *Taj al-'Arus*, 4:125. See also Ibn Mukarm, *Lisan al-'Arab*, 2:752.

²⁹ Abu Zuhrah, *Muhadarat fi al-Waqf*, 24–25.

To clarify this issue, other Muslim jurists clearly explained that the objection to the ‘confined property’ as mentioned in the above Quranic verse was related merely to the ancient Arab society’s custom of setting aside certain camels and sheep and tabooing their slaughter; and it was in that context that Allah (swt) said: Allah has decreed neither Bahira, Sayima, Wasila nor Ham (those being names given to certain species of livestock).³⁰

For their second objection which was based on the following *hadith*,

“There is no confinement after Surat al Nisa”.³¹

Some Muslim jurists clarified that this *hadith* refers to the practise of the people during pre-Islam who used to confine the money and the wives of a person who had died and that the Prophet (pbuh) prohibited such practice. Other Muslim jurists have mentioned that this is a weak *hadith*.³²

From the above objections we realized that it is very important to provide evidence from the Qur’an and the Sunnah of the Prophet (pbuh) regarding the legitimacy of this institution in order to encourage people to create more waqf and to avoid any further confiscation or abolishment of any type of these properties in the future.

1.1.3 Evidence from the Qur’an

Even though Allah (s.w.t) does not specify the term waqf in the Holy Qur’an, there are some verses on matters regarding charity which carry the essence of waqf as stated in the following Qur’anic verse:

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

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. ‘Obid Allah, one of the companions of the Prophet (pbuh), who endowed his most lovely garden called Bi’ruha’, full of date-palm trees which was in front of the mosque of the Prophet (pbuh). The Prophet (pbuh) used to go there and drink from its nice water. So when this verse was revealed, Abu Talha said to the Prophet (pbuh):

³⁰ Hassan ‘Abdullah al-Amin, “*Waqf in Islamic Jurisprudence*”, ed. Hasmet Basar, *Management and Development of Awqaf Properties*, (Jeddah: Islamic Research and Training Institute, 1987), 16.

³¹ Ibn Mukarm, *Lisan al-‘Arab*, 2:752.

³² Ibid.

'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.³³

Another Qur'anic verse;

لَيْسَ الْبِرُّ أَنْ تُوَلُّوا وُجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلَكِنَّ الْبِرَّ مَنْ آمَنَ
بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَالْمَلَائِكَةِ وَالْكِتَابِ وَالنَّبِيِّينَ وَآتَى الْمَالَ عَلَى حُبِّهِ
ذَوِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينَ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي الرِّقَابِ
وَأَقَامَ الصَّلَاةَ وَآتَى الزَّكَاةَ وَالْمُوفُونَ بِعَهْدِهِمْ إِذَا عَاهَدُوا وَالصَّابِرِينَ
فِي الْبَأْسَاءِ وَالضَّرَّاءِ وَحِينَ الْبَأْسِ أُولَئِكَ الَّذِينَ صَدَقُوا وَأُولَئِكَ هُمُ
الْمُتَّقُونَ

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 practise regular charity

(Surat al-Baqarah, 2:177)

The above-mentioned Quranic verse highlights that our faith should be true and sincere and we must be prepared to show it by performing deeds of charity to our fellow men. It also highlights that this can be done by supporting social institutions.³⁴ Moreover, if we believe that the term 'spend', in this verse, has the essence of waqf, this means that the two types of waqf have been recommended, i.e. waqf for your kin means family waqf and for the orphans, needy wayfarers and those who ask and for the ransom of slaves, means public waqf.

1.1.4 Evidence from the Sunnah

Evidence for the legitimacy of waqf can also be deduced from the following hadith;

³³ Narrated by Anas b. Malik, *Sahih al-Bukhari*, Kitab al-Zakah (The Book of Zakah), No. 24, trans. Muhammad Muhsin Khan, (Jeddah: Maktaba Dar us-Salam 1994) 367. See also *Sahih Muslim*, Kitab al-Zakah, Hadith No. 1664, 1665.

³⁴ Abdallah Yousuf Ali, trans., *The Glorious Kur'an* (Tripoli: Islamic Society, 1973), 69.

عن ابو هريرة رضي الله عنه عن الرسول (ص) قال- قال رسول الله (ص):
 " إذا مات الانسان انقطع عمله إلا من ثلاث؛ صدقة جاري
 وعلم يُنتفع به وولد صالح يدعو له"

Abu Hurairah (Allah be pleased with him) reported Allah's messenger (pbuh) as saying: 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.³⁵

The majority of the Muslim jurists understood that 'recurring charity'³⁶ serves as the basis for waqf. Moreover, other scholars also believed that it is the institution of waqf which enables the believers to perform all the three good deeds which had been mentioned in the above *hadith*. For example, Cizakca believes that the institution of waqf can indeed assure ongoing, recurring charity for many years, even centuries, after the death of the founder. Moreover, he added that 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. Finally, he concluded that 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.³⁷ From these explanations people should be encouraged to create more waqf since the creation of waqf will multiply their rewards.

1.1.5 Evidence from the Acts of the Companions

Evidence regarding the legitimacy of waqf can also be found in the traditions of the companions of the Prophet (pbuh), regarding this institution.

Narrated ibn 'Umar (pbuh): 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, nor 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,

³⁵ Narrated by Abdel Raham in *Sahih Muslim*, (Kitab al-Wasiyyah), Hadith No. 3084, in *al-Ni'sa'i*, (Kitab al-Wasayah), Hadith No. 3591, in *al-Tirmidhi*, (Kitab al-Ahkam), Hadith No. 1297, and in *Abu Dawud (Kitat al-Wasayah)*, Hadith No. 2494.

³⁶ *Sahih Muslim bi-Sharh al-Nawawi*, vol. 11: 86.

³⁷ Cizakca, "Awqaf: in History and implications for Modern Islamic Economics," 9.

and could let a friend of his eat from it provided he had no intention of becoming wealthy by its means.³⁸

As we have realized, the above-mentioned *hadith* not only provided the legitimacy of the creation of waqf but it highlighted many of its rules as follows:

- ♦ In the first instance, once the property becomes a waqf it must not be sold or inherited or given away as a gift;
- ♦ It is up to the founder to give it to anyone whom he feels needs it more, either of the public, or of his family or to any specific person. In this case, Caliph ‘Umar devoted it to both;
- ♦ The administration of the waqf can be entrusted to the founder himself; and
- ♦ The founder can benefit from his own waqf in a reasonable manner as long as he lives.

More evidence can be derived from the Sunnah to show how the Prophet (pbuh) encouraged his companions to create waqf whenever he realized that there was a need in the society, for example;

Uthman b. ‘Uaffan narrated: that when he was encircled (by the 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 army of ‘Usra’ i.e. Tabuk’s Ghazwa’ (the Raiding Party of Tabuk) will be granted Paradise ” and I equipped it?’ they attested to whatever he said”.³⁹

From the above *hadith* it is clear that the companion of the Prophet, Uthman b. ‘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: 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”.⁴⁰

³⁸ Narrated by Abdallah b. ‘Umar, Sahih Bukhari, *Kitab al-Shurut* (The Book of Conditions), Hadith No. 2532, see also *Kitab al Wasaya* (Wills and Testaments) No. 52, trans. Muhammad Muhsin Khan, (Jeddah: Maktaba Dar us-Salam 1994) 576. Also see *Sunan al-Ni’sa’* (*Kitab al-Ahbas*), Hadith No. 3541.

³⁹ Bukhari, Sahih al- Bukhari, *Kitab al Wasayah* (Wills and Testaments) No. 52, trans., Muhammad Muhsin Khan, (Jeddah: Maktabat Dar-us-Salam 1994) 579.

⁴⁰ Ibid, 371.

So Khalid b. al-Walid was the first one to keep his horse and his armour for the Cause of Allah,⁴¹ in response to the encouragement of the Prophet (pbuh). This shows the validity of the creation of movable waqf during the Prophet's time (pbuh).

Moreover, the report of Jabir b. Abdullah who had said that there was no one from the companions of the Prophet (pbuh) who was capable of providing endowments, but who hadn't endowed his property⁴² shows that most of the companions had created waqf properties. This has been documented by Al-Humaidi, *shaykh* of al-Bukhari, who gave the names of the companions, their endowments and their beneficiaries. He stated that Caliph Abu Bakr endowed his house to his children, 'Omar b. al-Khatib endowed his land at Thamgh to his children, 'Uthman b. 'Affan endowed his well Bi'ru Rumah, and 'Ali b. Abu Talib his land in Yanbu', Sa'd ibn Abu Waqqas endowed his houses in Madinah and Egypt for his children, and al-Zubair ibn al-'Awwam endowed his houses in Makkah and Egypt and his money in Madinah for his children, 'Omar b. al-'As endowed his house in Makkah for his children, and Hakim b. Hizam endowed his houses in Makkah and Madinah for his children.⁴³ Moreover, most of the wives of the Prophet (pbuh) had created waqf, for example, 'Aisha, Umm Salamah, Umm Habibah, Safiah and Hafsa created their own waqf for the benefit of their kin.⁴⁴

All these are good examples that indicate the legitimacy of the institution of waqf and which at the same time encouraged people to create waqfs throughout history by following the Sunnah of the Prophet (pbuh) and his companions. Moreover, from the waqfs of the companions of the Prophet (pbuh), we realized that most of these waqfs were for the benefit of their children, and this means family waqf. This is good evidence for those countries, which have abolished this type of waqf at the present time, especially Egypt, Syria and Tunisia.

1.1.6 Classification of Waqf Property

Although the classification of waqf property did not take place during the time of the Prophet (pbuh), various schools of law classified it later in different ways. In this book it is classified into two types: according to *al-mawquf 'alaihm* (the beneficiaries) and *al-mawquf* (endowed property).

⁴¹ Ibid, 579.

⁴² *Al-Mughni wa yalihi al-Sharh al-Kabar*, 185–186.

⁴³ Ibid. For more details on the waqf of the companions of the Prophet (pbuh) see Al-Khassaf, *Ahkam al-Awqaf*, 8–17.

⁴⁴ Abu al Su'ud, *Risalah fi Jawaz Waq al-Nuqud*, 13.

Subject to the Beneficiaries (*al-Mawquf 'Alaihim*)

According to this type of classification, waqf is divided into three types, *waqf khayri* (public waqf), *waqf dhurri* (family waqf) and *al-waqf al-mushtarak* (combined public and family waqf).

- ◆ *Waqf khayri* (public waqf) is an endowment made by the founder to support the general good and welfare of the poor and the needy in society.⁴⁵ Usually the founders created such waqf in the form of buildings such as mosques, schools, hospitals, orphanage-houses, guest-houses, and providing basic infrastructure, or dedicating books, enclosing lands for use as cemeteries, dug wells, dedicating weapons, etc. As already stated, this type of waqf was created by the Prophet (pbuh) himself and, he also encouraged his companions to create such waqf too.
- ◆ *Al-waqf al-dhurri*, *al-waqf al-ahli* and *waqf 'ala'-wlad* are all the same and refer to family waqf. In this case, the founder endows his property to his children, grandchildren, relatives or to other persons whom he specifies.⁴⁶ If the beneficiaries specified by the founder are no longer alive, then only in this case will the waqf property be given for public welfare purposes. This type of waqf was approved by the Prophet (pbuh) as he encouraged his companions to make endowments to their nearest relatives, as presented above. Moreover, the Prophet (pbuh) declared that the most pious offering is to one's family in providing for their wants, which is more pious than giving alms to beggars.
- ◆ *Al-waqf al-mushtarak* (combined public and family waqf) is a waqf created by a founder to support both the public and his family, i.e. the founder dedicates a part of his property to his family and another part to the public.

Subject to the Endowment Assets (*al-Mawquf*)

We can divide this type into three, namely – 'immovable & movable property'; 'waqf sahih' & 'waqf *ghair sahih*' and direct and indirect.

- ◆ **Immovable and Movable Property.** The immovable property includes land, fields, farms, or buildings such as mosques, schools, hospitals, or basic infrastructures such as bridges, roads, water supply etc. Regarding movable property, it includes cattle and implements of animal husbandry, books, money, crops and weapons, shares of a Joint-Stock Company, etc.

⁴⁵ 'Imam, *Al-Wasaya wa al-Awqaf fi al-Fiqh al-Islami*, 187.

⁴⁶ Ibid.

CASH WAQF

A NEW FINANCIAL PRODUCT



Cash-waqf is an interest-bearing trust fund set up to promote services to mankind in the name of Allah. This book, **Cash-Waqf: A New Financial Product** will be a valuable addition to the growing literature on this finance subject. In the book, an attempt is made to explain the concept of cash-waqf, its mechanism, operations and management in the light of Shariah. As the book deals with both theory and application of the cash-waqf concept in Muslim countries as well as in non-Muslim countries, it will serve as a basis for further research work.

Cash-waqf can help monetise the Islamic voluntary sector, accumulate social capital and national wealth, implement a strategic social investment programme that reinforces family values, family heritage and stimulates the economic, social and moral foundation of a caring society.

Cash-waqf provides new opportunities to transfer liquid assets and make connection with one another on a global scale. It also opens up new possibilities for developing the social capital market for the first time in the history of Islamic voluntary sector banking. There is a need for a global mobilisation and creation of cash-waqf funds to expand as well as to open up new frontiers of human freedom. These frontiers include freedom from educational, social and economic deprivations.

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