
Waqf and its role in achieving the objectives of Shari'ah:
An analytical and applied study

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Abstract

Prosperity of the humanity is one of the main purpose of Islamic Sharia. To achieve this objective, different instructions and guidelines have been issued in the form of obligatory as well as optional charity. *Waqf* is also one of the optional donation which may be made for the society to alleviate poverty and accomplish the supreme objectives of Sharia (*Maqasid Sharia*) which is based on benefit (*Maslahah*) to mankind and prevention it from Corruptive (*Mafsadah*). Although the practice of *waqf* is also found in pre-Islamic era but it was considered the monopoly of religious entities, like priest etc. Islam endorsed the practice on humanitarian bases for the benefit of the whole society. In this study, the *waqf* model of charity along with some contemporary issues that hamper the continuation of the charity is examined. Solution of the issues in the light of Sharia is also proposed. Role of *waqf* to achieve the objective of sharia is also deliberated in detail. It is observed that *Waqf* has very important role on attaining the objectives of Sharia.

Keywords: Maqasid al-sharia'h, Waqf, Humanity, Islamic law, Charity,

1.1. Introduction

The literal meaning of *Waqf* is "detention" while in *Sahrai'ah* context, it means "while maintaining the real ownership of something in the ownership of Allah, and the profits can be given away.¹ In other words, *Waqf* is a charity instrument that is formed by providing a movable and immovable property to spend its income perpetually to meet public or family needs, in the light of the details and conditions set by the founder. According to most jurists' opinion, if *Waqf* took place once, it will enter the ownership of Allah Almighty. The main catalyst for the establishment of *Waqf* is seeking the countenance of Allah, which could be achieved only after sacrificing the most beloved thing for the will of God. As Allah almighty said: in Surat Al-Imran "you shall never attain righteousness unless you spend from what you love. Whatsoever you spend, Allah is fully aware of it."(3:92)

Muslim jurists have deduced the legitimacy of *waqf* from the general verses of Qur'an that urge on spending money for the sake of Allah in charity, *waqf* is one of them. Clear evidence of legitimacy of *waqf* is derieved from Umar's *Hadith*. When Umar got a piece of land in *Khaybar*, he came to the Prophet (ﷺ) saying, "I have got a piece of land, better than which I have never got. So, what do you advise me regarding it?" The Prophet (ﷺ) said, "If you wish you can keep it as an endowment to be used for charitable purposes." So, `Umar gave the land in charity (i.e. as an endowments on the condition that the land would neither be

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sold nor given as a present, nor bequeathed, (and its yield) would be used for the poor, the kinsmen, the emancipation of slaves, Jihad, and for guests and travelers.²

Waqf and Shari'ah objectives are interlinked to each other, because Shari'ah defines protection of human life, wealth, religion and race as its primary purposes and goals. While Waqf, appears as the root cause and basic tool to achieve these objectives through providing financial and material support.

So, we can say that waqf is a practical reflection or phenomenon of achieving the Shari'ah objectives. It plays an essential role for preservation of humans in all aspects. This is what Shari'ah Law aims for. From this point of view, it appears that Waqf and Shari'ah objectives have quite deep and strong interrelationship.

Although in pre-Islamic domain the concept of Waqf is existed but it had always been considered as a part of prevailing religious establishment and had always been controlled by priests and those people who are attached to Temples. Islam provided it humanitarian grounds and made it a civil contract.

It is quite true that Endowment and Shari'ah objectives are well known subjects in Islamic jurisprudence and its methodology. Both chapters are separately discussed in detail in different languages, whereas the amalgam of both "Maqasid al shariah and waqf: is least discussed. In Arabic language to some extent combined literature is available, but in English and other languages a lot of work is needed to be done. The present study aims to concentrate on both subject matters-Maqasid and Waqf- simultaneously while determining the importance of Waqf in Muslim society, however objectives of Shari'ah are potentially achieved through utilization of waqf and solving the jurisprudential issues that being faced by Waqf in several regards. Therefore, this paper first gives a brief Introduction of waqf, its definition and its importance in the Muslim society. It also discusses the objectives of waqf, objectives of Shari'ah briefly. Through reviewing the related literature that presented by honorable scholars regarding both topics this work is compositely shedding light on issues related to waqf and its founder's conditions, their solutions and the role of waqf in achieving the objectives of Shari'ah. In the last phase the paper ends with conclusion and some recommendations.

As for as the objectives (the goals and targets that waqf is established for) of Waqf are concerned, it is true that apparently these objectives are may be various, depending on the intentions of devotees, but the basic and general aim of Endowment is to provide benefits in the way of Allah (charity), and serving the human beings, whether is it a religious, social, civil or family/ private cause. The Endowment funds are either used directly to achieve its objectives or indirectly as the Waqif (the founder of Waqf) takes the property/ asset of waqf out of his ownership and holds it in order to utilize its returns/ usufruct for a particular purpose. Furthermore if we study in details, we could find that potentially objectives of waqf can be divided into four categories as below.

1- Religious objectives

Religious objectives mean spreading, teaching and preaching Islam to non-Muslims and enlightening them with its strong, moderate and beautiful principles and teachings, as well as educating people and raising religious awareness in Muslim societies. Although this purpose is achieved by many individuals and institutions, but the mosque is a wonderful

source for that. That is why Muslim in past and present have been devoting their wealth to build mosques and pay salaries to its employees, more than other charitable activities. In that time, the mosque was not only a place of prayer but also a social center and a religious, intellectual, spiritual and moral school as well.

2- Social Objectives:

The social objectives of Endowment mean to care for the poor, orphans and needy peoples, give them charity, distribute alms among them in various occasions and provide medical assistance to both individuals and hospitals for the purpose of providing free treatment.

Muslims are obligated by Shari'ah law to take care of needy people, their health, via providing them basic needs, like food, clothes and free treatment and medical facilities by building hospitals and pharmacies. So that a human being can live enjoying fully with freedom, health and dignity in a society. In this regard, a huge number of fund for the medicine and nursing, is generously spent on the development of medicine, pharmacy and other related sciences as well. In addition, there are many types of endowments that provide assistance to those who are affected by disasters such as floods, earthquakes etc.

3. Cultural objectives.

The role of waqf is also praiseworthy for keeping the Islamic culture alive, as there were many endowments that dedicated their profits only to the teaching and memorizing of the Holy Quran; And thousands of other books of sciences has been devoted to educate people and provide them enough knowledge about Islamic culture and tradition.

4. Economic objectives

It is meant here by economic objectives of the endowments, a set of activities undertaken to establish or strengthen the industry, business and agriculture. In Muslim history, these activities have been manifested extensively in the form of drilling wells in different places, extending canals for irrigating agricultural land. Furthermore, providing interest-free loans to people who are working in the agricultural and industrial sectors and need financial support, so all of these were the objectives of endowment.

In the light of aforementioned objectives of waqf, it could be stated that its objectives are various, and along with all these goals, it plays very important and great role for the survival of humanity.³

2.1. Maqasid al shari'ah (Shari'ah objectives)

The term "Maqasid" (plural: maqasid) is an Arabic word. Literally it is derived from *قصد*, which means straightness of the way and *المقصد* refers to a purpose, objective, principle, intent and goal.⁴ There are many definitions for the objectives of Shari'ah, which have been defined by earlier scholars like Shah waliyyullah Al- Dahlawi⁵, and Taher bin Ashour⁶, and Hamadi al-Obeidi⁷ and Muhammad Saad al-Yubi⁸, and others, but we can summarize it as follow: "The Maqasid of Shari'ah are objectives/purposes/intents/ principles behind its rulings or Wisdoms and goals that the Shari'ah seeks to achieve through its law".

Almighty Allah sent down Shari'ah to make human beings prosperous and beneficiaries at both individual and community levels. So, that is why its laws are formulated for

preservation and improvement of human beings in all aspect.

Though Muslim scholars counted in their books five objectives namely preservation of the life, wisdom, religion, property, and the lineage as main and famous fields. It does not mean that Shari'ah's objectives are limited in these five Numbers, because the freedom of human beings, his dignity and many more other things preservation is also main objective of Shari'ah as well.

2.2. Literature review

In this regard the available literature is the University of Al-Haj AL khidar's scholar's thesis namely "the objectively dimension of the waqf (Arabic) by Dr Prof Humaid Qahwi's assertion "The role of waqf in the activation of Shari'ah objectives (Arabic) and "the contribution of waqf system in achieving the objectives of Shari'ah, by Dr Nouredine Mokhtar Khademi (Arabic). "The role of Islamic endowments in the preservation of Shari'ah purposes by Dr. Omar Saleh bin Omar (Arabic). "Contribution of the waqf system in achieving the purposes of Sharia by Nooruddin Mukhtar Khademi (Arabic), Waqf Provisions in Islamic Jurisprudence and its Legal Purposes: Applying to the Nigerian North 2015 PhD thesis (Arabic). Another study in this regard is done by Roshayani Arshad with the name of "Modelling Maqasid Waqf Performance Measures in Waqf Institutions' (English) are well-known and notable. But in the aforementioned studies although the waqf and shariah's objectives are discussed in detail in very enhance manner, however performance of waqf in Shari'ah's objectives and some other issues rise about Waqif's conditions in present era, are not discussed. So, the study gap is role of waqf for achieving the Shari'ah objectives, and some basic issues which come in the way of waqf.

2.3. Some core issues related to waqf contract and conditions of Waqif (the founder of Waqf)

1. In recent years, financial rights have expanded considerably, and the benefits accrued in financial markets, for example, intellectual property rights such as copyright, innovation, trade name and trademark, have varied.⁹ In such funds, if the owner intended the revenue of his waqf, he has right to do so, but if he does not intend as it is the case of most of classical authors, when they definitely had not wanted their prestige scientific work, which was Nest Egg of their whole lives to be made and dealt as a source of income! The only thing they were keen of, is pleasure of Allah almighty through counseling and serving the humanity. Nowadays, publishers control these scientific assets, in the name of copyright, merely they spend a larger amount of money on the manuscripts, researching and publishing.

No doubt, acquiring a manuscript, and making it readable, after passing it through a long and exhausting process, like research, typing and publishing, is not a cup of tea, as it is managed only with a great exertion. In fact the authors are doing tremendous efforts and providing great services for the Umma, so they deserve a gratitude from creation and best reward from the Almighty Creator. However this does not mean that they hold the heritage of the precious ancestors of this Ummah and inherit it as their own property.

2. Sometimes the *Waqif (the founder of Waqf)* dedicate a building or a land to a community or group of people, but they are no longer benefiter of it, due to their negligence or they do

not have enough expenses to make it worthwhile by renewing or re-constructing. Sometime a person/group revert from Islam- God forbiddin- or becomes a part of a movement, yet giving the opportunity to benefit from waqf, in cooperation, is sin and aggression. In all cases, Legal Maxim of Islamic Jurisprudence clearly states that the condition of *Waqif* (the founder of *Waqf*) has an equal obligatory as statement of shari'ah, but on the other hand, if the waqf is retained in this situation, it will gradually lose its existence, or it will be used in a process that contravenes objectives of Shari'ah and the intention of *Waqif* as well.

3. Those people to whom a *Waqf* is dedicated are no longer legally able to enjoy its usufructs, due to some legal problems of that country, forexample what is happened with certain political Islamic movements in some Islamic countries. So, if someone had dedicated a *Waqf* to such parties, which is physically intact, but the country law - regardless of whether it is fair or crueller -does not allow such people or groups to benefit from that waqf, so there are three possible results.

1st the government takes it in his custody and spends its revenues in its discretion. If the government is fair and transparent, it may not be so difficult, but if the government is non-Muslim or oppressive so it would be quite difficult that the government will spend the fruits of waqf to straight its unjust activities or at least does not care about Shari'ah rules and *Waqif's* conditions.

2nd - *Waqif* (founder of *Waqf*) in such situations redees his waqf.

3rd - *Waqif* (founder of *Waqf*) changes the nominee for whom he dedicated the waqf.

Which option is acceptable according to Shari'ah law?

Before we embark the discussion of these issues, we should know some basics that will be helpful in this regard as below :

A. Most of the waqf provisions refer to opinion and analogies of honorable Scholars, hence such judgments are subject to opinion and *ijtihad* (as Mustafa Zarqa- said ⁻¹⁰) "the only stance that the jurists have agreed upon is that the *Waqif* (the founder of *Waqf*) by this action should have the intention of worship, sake of Allaah."

It is not permissible to make something waqf for what is not a worship, whether it is sin or non-sin, for example to dedicate and specify waqf just for the rich people not for the poor. This is opinion of Hanafi and Hanbali schools of thoughts, while according to some other school of thoughts it is permissible.¹¹

B. The Legal Maxim of Islamic Jurisprudence شرط الواقف كنعص الشارع the condition of the founder of waqf has an equal obligation to be fulfilled as the text of the shari'ah, regardless of the difference in its interpretation- most likely is the concept and significance and the obligation to work.¹²

C. The condition of the founder of waqf is divided into three sections:

C.1: The condition contravenes the requirements of the waqf, its rules and its intention like conditioning that the founder shall be able to sell the subject of waqf or gift it to someone.

C.2: The condition does not contravene the requirements of the waqf, but it either violates the Shari'ah law or effects the interest of those to whom the waqf is been dedicated. for example, conditioning that the founder of waqf shall not depose the guardian(Mutwally) of waqf even if he betrays, or condition that some of the waqf funds shall be used in illegitimated acts, or the condition that any part of revenues of the waqf shall not be spent for re-construction/ repairing of waqf objects.(building or anything els.)

C.3: The condition that violates none of them, (the requirements of the waqf, Shari'ah rules and beneficiaries' interest) for example, the founder has stipulated that founder- himself- will be the custodian of condition of endowment.

The first and second kind of conditions are void by consensus of scholars, but the question raises here that why it also effects such kind of conditions.?

There are different point of views. A group of scholars say that such conditions invalid themselves and make the waqf prohibited as well, such as Hilal Rai and Abu Bakr al-Iskaf and others (Hilal Rai, Hilal bin Yahya bin Muslim head, book provisions of the waqf)¹³

Another group of scholars states that the invalidity of the condition does not affect the endowment. So, it is valid, but the condition is invalid. This is the view of Abu Nasr, Abu al-Qasim and Yusuf ibn Khalid al-Semti.¹⁴

According to the Imam al-Khassaf, this is view of Imam Abu Yusuf, but Al-khassaf himself didn't agree with it, he prefers the opinion of Imam Muhammad Ibn al-Hassan al-Shaibani and majority of Hanfi scholars, as well as Maliki, Shafii and Hanbli scholars. According to their opinions the condition of Waqif (the founder of Waqf) must be given priority if they are not contradicted to shari'ah law and requirements of Waqf.¹⁵

C.4. Usually, the condition of founder (where the condition that is neither violating the shrai'ah law, requirements of waqf nor the interest of beneficiaries) such kind of conditions must be preserved, but in some cases, they are could be left out.

There is some principle to explain that where it is permissible to violate the condition of the *Waqif (the founder of Waqf)* and where it is not; as bellow:

Principle1:

A condition that may result in damage to the waqf or the beneficiaries can be violated

Principle2:

If a condition is impossible to be preserved, it can be aliened. This is one of the case in which the jurists have consensus on the Omission of a condition because it does not refer to nullification of the decision of *Waqif (the founder of Waqf)* .

Principle 3:

Any condition that may lead to the injustice to employees of the endowment in their wages, the judge may omit it.

Principle 4:

When the opposing is more favourable for the beneficiaries rather than to keep that condition, it does not affect the purpose of waqif, so it would be suitable to breach such conditions.¹⁶

The scholars who are familiar with the views of the late Maliki school scholars, know that the real fulfilment of conditions of waqif are preservation of their purposes, not mere words. So, they permit to leave every condition of Waqif that if he had alive, he would have pleased with its alienation.

As it is stated in the famous book of Maliki jurisprudence "Almiyarulmurib": "when a Maliki jurist asked about the issue of changing the features of the waqf, he replied that it is permissible. Further added that: this fatwa should not be considered as an increment or amendment in waqf without the permission of its founder, hence, it is forbidden, because this fatwa neither contravene the words of founder nor his intention, but most probably even almost categorically if the Waqif had alive, he would have pleased with its alienation.¹⁷

It is also noteworthy that shove off some acceptable conditions of Waqif for its best interest .It is the stance of Imam Abu Yusuf and other Hanfi scholars who approved that, which is - later on-also has been chosen by Ibn Taymiyah and Ibn al-Qayyim.¹⁸

The nutshell scholars have different views on the permissibility of shove off the conditions of Waqif ,the Maliki -particularly classical- jurists have a widest view, while the Shaafa'is and Hanbalis have the bounded one, when they emphasise that the conditions of Waqif are should be abided, and not violated except some unavoidable Situations. The Hanafi school (and it is adopted by Ibn Taymiyyah, and his disciple Ibn al-Qayyim) looks to such conditions more widely, when they are linking it with Maslah (public interest) so, the shove off such conditions are permissible where is a valid and legitimate interest(المصلحة) is existed.

It has been cited by Kamal ibn al-Hammam and said: ¹⁹مخالفة شرط الواقف إلى خير جائزة

And the same thing written by Al-ramly in his fatawas (Decrees):

²⁰والحاصل أن تصرف القاضي في الأوقاف مقيد بالمصلحة، لا أنه يتصرف كيف شاء.

For choosing a best option, the condition of Waqif can be ignored.²¹

And Ibn Taymiyya said:

²²ويدار مع المصلحة حيث كانت.

“The condition of Waqif is linked with the interest where it is.

Replacement of Waqf

In regard to replacement of Waq, the Maliki and Shafii schools had adopted a very strict way, because they did not permit to replace the subject of Waqf, with the difference that the Shafii School has narrowed their scope more than Malikis, since Maliki School excluded some indispensable situations, such as expansion of the mosques, roads and cemeteries.²³ While Shafiis have almost closed the chapter of replacement.²⁴

On the contrary, The Hanafi and Hanbali schools , Ibn Tamiyya and Ibn qayyim had a broad way²⁵ with the difference that Hanafi have chosen a broader opinion than the Hanbalis.²⁶

Appraisal of opinions

As it is mentioned earlier that all concerns are satisfied according to their own Ijtihad and Analogy, rather than Nusus. For example, the strongest evidence of the inhibitors is the hadith of Sadaqat 'Umar (may Allah be pleased with him) in which the messenger of Allah

²⁷ said that: لا يباع ولا يوهب ولا يورث: "this waqf shall not be sold neither be gifted nor inherited."

But this evidence is argued that, it is not a Definitive with respect to transmission and meanings, hence it does not clearly indicate to the case, also لا يباع...shall not be sold may have more than one possibility, like To not sell and spend its price for someone's own expenses which is not allowed. Therefore, the hadith does not definitely indicate the prohibition of Replacement of Waqf.

On the other hand, the strongest evidence cited by scholars who permit the Replacement and transfer of waqf, is Omar bin al-Khattab may Allah be pleased with him has transferred a Mosque of Kufa.

Imam Tabrani Narrates:

حدثنا علي بن عبد العزيز ثنا أبو نعيم ثنا المسعودي عن القاسم بن عبد الرحمن بن عبد الله بن مسعود قال: قدم عبد الله وفد بني سعد القصر، واتخذ مسجداً في أصحاب التمر، فكان يخرج إليه في الصلوات، فلما ولي عبد الله بيت المال، نقب بيت المال فأخذ الرجل، فكتب عبد الله إلى عمر، فكتب عمر ألا تقطعه، وانقل المسجد، واجعل بيت المال مما يلي القبلة، فإنه لا يزال في المسجد من يصلي، فنقل عبد الله وخط هذه الخطة وكان القصر الذي بني سعد²⁸ شاذر وإن كان الإمام يقوم عليه، فأمر به عبد الله فنقض حتى استوى مقام الإمام مع الناس.

This hadith was narrated by al-Tabarani in his book *Mujam al-Tabrani* with Sanad (transmission chain) of Ali ibn 'Abd al-'Azeez took this hadith from Abu'naim narrated it from al-Mas'udi he narrated it from al-Qasim ibn' Abd al-Rahman ibn 'Abd-Allaah ibn Mas'ud.(May Allah be pleased with them).

This hadith is *Muttasil* (Connected), to al-Qasim, but there is an *Inqata'a* (to be broken). between Al-Qasim and his grandfather Abdullah bin Masood, because, according to scholars of hadith Al- Qasim didn't see his grandfather. So, from this angle it could be a problem, but it is not far from that this story was famous in his family so, he took it from someone. Secondly, reasoning of Imam ibn Qudam from such Hadith indicates that, this hadith was acceptable in his opinion. In short, the evidences of both parties have strong discussions and critics, and nobody has a Definitive with respect to transmission and meaning *Nas*.

Since that is the case, we will refer to the general rulings of Shari'ah, and theoretical objectives of Shari'ah and the stance that is closer to the Shari'ah objectives and Public interest (المصلحة) will be preferable.

Therefore, in my view the second opinion is more favourable, because Stagnation on the conditions of the founder of waqf particularly in ongoing situation, is not beneficial for the Muslim Ummah. So, wherever if there is really Maslaha, and a need, the Second view can be followed because it is closer to shari'ah objectives.

4. In some Muslim countries people devote a certain period or hours or days of their time for an institution or people and some devote their whole lives for a religious mission or service. What would be the provision of Sharia in such a situation? Responding this question, we shall look at this case in a wide screen. But before that it is necessary to revise the conditions of waqf, waqif and beneficiaries.

Conditions for the Founder (Waqif)

1. Aptitude or Qualification of Waqif, means the founder of waqf must has legal capacity (Mukallaf) and full competency for making something Waqf, like being an Independent adult, sensible and have ownership of that asset also authority to dispose of it.
2. The reason behind making something waqf must not be depriving the inheritors of their due legal rights. The view of the Hanafi scholars on the debtor's endowment: According to Hanafi scholars, if the debt does not encompass all the money of the Waqif, and he still has enough Money to meet his debts, then t Waqf will be valid, otherwise (If the debt covers all his property) then the validity of Waqf shall be depended on the permission of debtors.²⁹

Conditions for the Waqf Asset (Mawquf)

The contract of waqf can only be valid if the subject matter fulfils the following condition: The asset of waqf must be protected and valuable in Shariah perspective.

- It must be 'ayn (tangible asset) because waqf of usufruct is disputed amongst scholars, but majority of scholars permit that an intangible or usufruct. Even the Money can also be endowed, but that money must be invested in income generating projects, and the revenues are donated to the beneficiaries (This was practised during the Ottoman Empire)
- Appointment of trustee (Mutawalli)
- The asset of waqf must be something from which benefit may be derived while its original essence remains. Hence things that are not remain, such as food etc cannot be devoted.
- According to some scholars the subject of waqf must be an immovable property such as land and building on most scholars permit to devote movable properties, if it is customarily practised.
- The asset of Waqf should be existed, known and specified.³⁰

Conditions for the Beneficiary (Mawquf 'Alayhi)

A Waqf can either be a specified (Waqf al-Mu'ayyan) or unspecified (Waqf al-Ghayr Mu'ayyan) but in first case.

1. The waqif must specify the beneficiaries of the waqf.
2. The beneficiaries must have legal capacity to own something.
3. Beneficiaries must be specified or undetermined such as the relatives or the dhimmis.

In the second case (unspecified) beneficiaries should be specified as a group of people, or categorized more broadly, like poor people, scholars of Fiqha) Shari'ah law etc).³¹

2.4. Solutions

For the aforementioned solution of first issue is:

1. In such matters, the Ministry of Waqf/Religious affairs in Muslim countries should impose a certain number or percentage of each edition of the specific book to distribute amongst poor students, scholars, Universities and religious schools.
- 2, 3. In the light of given proof it has been verified that according to a Number Jurists as per need of the time or situation benefactors' terms and conditions can be opposed. Its consumers can also be changed. In the other situation where the people are getting benefits of Waqf, either people do not need it, or they left their deen (God forbid) or maybe they are involved in wrong activities or became a part of a misleading group. Then the Ministry of Waqf can take the control of the waqf and make it work and the received revenues can be used for other Waqf.

Whereas, in the third condition, Government has no right to take control of Waqf merely on the bases of Political or ideological opposition. It will be considered a cruelty and matter will be condemned.

The caretaker of waqf should try to deliver the revenues of Waqf to deserving peoples, but in spite of that if there is looming shadow of that, the government forcefully going to take over the waqf, then caretaker should use the income of waqf at some other places temporarily, as the situation gets easy and normal then trusted amount or wealth must be returned.

In short Such terms and conditions which are conflicted with the aims of Endowment, or the

terms are not up to the needs of the people, either conditions are correct but while maintaining them the goals of shari'ah are being violated, or these rules are against the well-being of Ummah then honest, vigilant, certified scholars should search a solution for Endowment.

In this regard of finding solution waqaf' rules and regulations must be heard in mind, in case if terms are causing harm, then ministry of Endowment or authenticated scholars' team will go according to their collective decision. so that the Ummah should kept on getting benefits from Endowments, it must not be ended.

4. We shall analyse this issue from three angles:

First, as we mentioned earlier that all the conditions have been imposed by Jurists are opinions and Ijtihad.³²

So, there is always a room for negotiations and another opinion. Although such conditions and opinions are must be respected and preserved, as they are, unless the Ummah is thrown into trouble and embarrassment or affect the Public Interest then such opinions are could be alienated.

Second, let's suppose if it is done by someone, what would be the result?

Does it violate a clear and exclusive *NAS*?

Also, can it be beneficial for the Ummah? In other words, can such cases help to achieve the Sharia's objectives? In addition will such kind of waqf consider obligatory?

Before we answer the question, it should be noted that it is not a conventional *Waqf*, but rather a donation, since in this case is not necessary to be exposed to waqf conditions.

The answer of second question is this, because the specialists of various sphere of lives, such as Engineers, doctors, scientists, scholars etc., who are payed a huge sum for their work and cannot get benefit from their knowledge and experience only after spending an amount. If one of such people devoted some hours, days of his precious time, and provide free service during that specific time, it is certain that the Ummah, especially the poor, would get benefit from them in various fields, and this fully aligned with objectives of Sharia. furthermore, we could easily find many provisions in our classical jurisprudential literature that indicate the Shar'ah has given a material value to time, so that in many approved contracts any increase in the time undisputedly accepted as a reason of increase in the price. Like below:

1. The difference between the spot and delay payment: The longer the payment period, the higher the price of the item.

2. The cost of delay in work: As the Council of the International Islamic Fiqh Academy stated in its resolution No 129 (3/14) Conference held in its fourteenth session in Doha (State of Qatar) 8 - 11-16 September 2000)

If the employer agreed with the contractor on a price in a certain period, while the contractor failed to handover the commodity on the prescribed time or delayed the completion of work in that period, the employer has the right to reduce the wage of the worker by the period of delay. This indicates the importance of time and that the price of the amount depends on the period of delay.

3. Leas (Ijara) period: The price received in Ijara must be proportional to the duration of the lease. If a person rents a house for two years has a different price than the person that rents it for one year. As well as if someone hires a worker for a month the payed wages are

different from if he hires for two months.

4. Also, the four schools of jurisprudence unanimously agreed upon that a part of price in a contract is always exposed to the time, so that the price can be increased or decreased due to the time.

From the given, it is been proved that devoting the time is permissible, whether then its name is waqf or not, but it can be in two ways. The first is that a person decided to donate a specific time for a worthy purpose without mentioning anyone.

This appears to be just an intention or a maximum vow if he uses the words of the vow.

Second, someone has pledged with an institution (such as a hospital, university, etc.) that he will be devoting a certain time per week, and the institution has made necessary arrangements accordingly, in this case to some extent this waqf is obligatory, on the other hand, he may also withdraw from his intention. But he must pre- inform the institution before the time.

As for waqf of life concerned, it is also in fact a donation of time, except there are many other people's rights relate to him, like his parents, relatives, and others, even his own rights, for example, marrying, in specific conditions (which has been explained in jurisprudential literature)

Therefore, devote the whole life is not permissible except after observing these rights.

3.1 Role of Waqf based on Maqasid Al-Shari'ah

However, the remaining question here is how does waqf contribute to achieve the Shari'ah objectives? Let us answer this question in next lines.

3.2. Waqf and its role for preservation of Deen.

Waqf plays an important role to protect Deen, because Waqf is a source of building Mosques, Islamic seminaries, publishing of good ethical books and spreading of correct faith and believes. On the other hand, Waqf is responsible to save Muslims from the wrong believes and immorality.

So, Waqf is playing a very great role in manufacturing of admonition and constructing of forts and towers services of guarding boundaries and salaries and to protect the Islamic state form the foreign endeavors and internal agitation and integrations.

So, the role of Waqf for saving the purpose of shari'ah is very commendable in both ways of its existential and inexistence. There are so many examples in Muslim history, from the Holy two Mosques of Macca and Medina and building of Masjid Aqsa and so many countless other Mosques and educational institutes are built under the supervision of Waqf and the process is still going on. Likewise, for the preservation of Islam, the role of Waqf regarding Jihad and Qital is very brilliant, and prominent.

3.3. Role of Waqf to save the human life.

In Islam how much values the life of a man? It can be imagined from this verse of the holy Quran: "whoever kills a person not in relation killed, nor (as a punishment) for spreading disorder on the earth, is as if he has killed the whole of humankind, and whoever save the life of a person is ,as if he has saved the life the whole of humankind.³³"

Thus, safety means to provide every kind of facility to the basic rights, to save from every danger that can be harmful.

Regarding safety of human life, the role of Waqf is very much more. In the history of Islam for beggars, poors and needy peoples, apart from the food, drink and clothing their medical treatment at hospitals, medicines and the provision of clean water is a grand task of Waqf.

Islamic state had Waqf in every city, from provision of Milk the small children, orphans, poor and needy people and necessities of life including food, drink and cloths.

In some Islamic cities there were specially designated Waqfs for the domestic workers, maids, poor people and children. If any precious crockery could have broken, Waqf would have compensated it. So that employers shouldn't have punished the workers and their lives, dignities and moral statues should remain unaffected.

In Islamic history the great hero Salahuddin Ayyubid had fixed two spouts on the wall of fort. Both spouts flow down milk and clean water twice a week. Ladies used to collect or store the water or milk according to their needs.³⁴

Islam treats widows and poors in such a good way that the facilitator is consider as Mujahid and fighter in the way of Allah. Caliph Umar used to say that "if Allah will give him a little more chance then he will create a better source of income for the widows of Iraq, so that they should not ask anyone for help. Another companions of Muhammad ﷺ, Zubair bin AL Awwam had dedicated his several houses for widows and daughters if anyone has been divorced.³⁵ Afterward in Baghdad, Egypt, Morocco and Persia such Waqf were established where widows need and desires were to be fulfilled.

Not just that, but Islam has given a great importance to the life of every soul, rather than human beings. In many books of the hadith, gospel of heaven for installing a thirsty dog and the punishment of hell for a woman who kept a cat hungry thirsty is very famous. In addition, there are very clear instructions given by the prophet ﷺ on how to care rights of animals during riding on, and not to oppress them. Once the prophet ﷺ was preaching about animal rights, the Companions asked: "Shall we be rewarded for showing kindness to the animals also?" He (ﷺ) said, "A reward is given in connection with every living creature."³⁶

So, if we read the following historical facts about the role of the endowments in fulfilling the guidance of Prophet (peace be upon him) and Shari'ah Objectives on animal rights.

Waqf for an immigrant type of bird.

The seasoned birds who were migrating from other areas in a certain season to the beautiful city of Morocco, Fez and stay there for a certain period, they were blessed by the generous people here, who had been arranging livelihood and victuals in some specific forests and wilderness, so that, they could comfortably spend their time. The great habitants of the city felt that though are birds but being a migrant, they have right of hospitality and accommodation!!

Waqf in Syria for homeless cats.

According to Professor Dr. Sibai (Socialism of Islam) in Syria there were many Waqf that

caring for pets that do not find anyone who feeds them, such as cats - especially those who are blind – and made a specific place for them (House of Cats). Sibai said: “It was until recently in the market (Saroja ساروجة) in Damascus and there were more than four hundred cats were enjoying the life.³⁷

3.4. The role of waqf for the preservation of human wisdom:

In Islam wit has very much important place because the assignment and completion of sharia is based on it. Without intellect neither any sharia order is imposed on a person nor can society get benefit for him. That's why scholars considered it the basic goals of shariah law.

The role of waqf for preserving the human wisdom through providing the quality education is as much important as human life. So, the waqf on one hand provides opportunity to sharpen and improve human wits by building educational institutes and skilled training centers on the other hand waqf tries to protect them from wrong beliefs, and negative thoughts.

In Islamic state every mosque had a small coaching center -Maktab- with a library, where the Muslim children are getting religious education, as well as every week/ Month or on different occasions such Educational seminars and conferences are also organized for adults. All these expenses of such activities are beard by Waqf.

A well-known visitor and tourist Ibn jubair acclaimed that there were so many Waqf in Middle East especially in Damascus, Syria which provide full-fledged scholarship for students. When he went back to his hometown Europe, he was encouraging students to move there and enjoy simultaneously such great privileges and Education. He cited: “someone wants knowledge or success, he should immediately move there.

Beside this to get rid of drug addiction there were many Awqaf were established. Some of these institutions are still existed in some Muslim countries.

3.5. The role of Waqf for preservation of wealth

wealth is an intrinsic gift of Allah Almighty, surprisingly Allah Tala Used the same word "Qiyam" means ‘ source of stability for people’ for two things, one is Ka'bah and second is legitimated wealth. thus, Money is one of the very essential factor for human life that's why Shari'ah aims to protect it. And why not, while life depends on them, along with all kinds of financial actions (Ibadat Maliyya) such as zakat al-hajj and alms, cannot be done without wealth. Even the Waqf itself needs wealth for its own existence.

The Waqf plays its role for the preservation of wealth in two aspects, existential and in-existential. The first one is that Waqf can use its assets in various purposes that generate a real wealth and maximize its capital, and second one ,it is not permissible to use Waqf property in a way that may harm it.

Moreover, the Jurist cited that the revenue of Waqf initially should be used for the construction and maintenance of Waqf if needed, so that the Waqf remain useful. Secondly the ownership of waqf cannot be transferred as it does not remain in the belongingness or possession of the giver.

3.6. Preservation of human race

Humans are unit of world, if there is no way to continuity for human race after a certain period the earth will be emptied. On the other hand through Islamic point of view growth and survival of human being is very integral source for many kinds of worship, like serving the humanity in various aspects of the life. Through providing them several services, it is very important for Jihad, which is a paragon of this Ummah, and great source of protection human beings, their wealth ,integrity and freedom. Due to which Holy prophet ﷺ stressed upon the preservation of human race and he liked the strength of his Ummah.

Islam has used various means to save human race and on the top of list is waqf. In this regard waqf plays a very pilot role to save humans to spend a well-respected life. Therefore, to endow someone with wealth or land means not only well wishing and compassionating the person but also performing his duty in saving the human future of humans. In this regard, in Islamic state there were- and still- many waqfs that manage the arrangement wedding of poor girls and boys.

4.1. Conclusion /recommendations

The present research paper presents the role of Waqf based on Shari'ah objectives also deals with issues arising out of the terms (Waqf), Founder's conditions and tries to provide a solution in the light of Quran, Sunnah and jurisprudential literature. This paper also suggests the following recommendations to be adopted and to be implemented in communities.

1. The role of Endowments in the Islamic world should be revived according the needs of each community.
2. The scholars should highlight its significance through research in contemporary era.
3. Ministry of Endowments should hire people who have enough knowledge both in Shari'ah and modern sciences, as well as they must fulfill the requirements of morality and piety
4. People and such important institutions in Islamic world must not be victimized on the base of political or ideological differences and governments should do their best to ensure the basic rights of those people.
5. It is dire need to establish and develop Endowments and to provide benefit to the deserving people, women, children and aged who suffer from hunger, poverty and war, more than ever before.
6. Preservation of the wisdom lies among the objectives of Shari'a .So it is highly needed to be developed, sophisticated minds and insightful understandings, particularly the preservation of the intellects of youngsters from the impurity and intellectual dirt, and to be utilized them in the right and rational ways.
7. This is right time for Muslim community to establish abundantly waqf for educational purpose, specifically in technological arena.
8. The waqf and charity would help in upbringing and grooming of downtrodden and poor people of community to contribute positively in the society.

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