

Legal And Financial Solutions For Strengthening Waqf: The Case of Pakistan

* *Zohra Jabeen*

***Muhammad Aziz*

Abstract

The institution of National waqf/awqaf loses its efficacy in countries where the awqaf system is nationalized and the system is poorly managed. As a result, such awqaf directorates are neither self-sustaining nor contributing to the exchequer. Instead, they require funding from the government to pay salaries and maintain the assets and programs. The case of awqaf system in Khyber Pakhtunkhwa, Pakistan is an example of this type. Developing a regional awqaf system for synchronizing social development with economic progress must have two things; a) an enabling legal system and b) suitable financial solutions (funds and products). Both require some innovative approaches. The paper discusses these in the context of Pakistan for development of economically backward areas and socio-economic uplift. Regarding financial products, the case for sukuk-based waqf is presented in detail.

Keywords: Waqf, Awqaf, Socio-economic development, Legal system, Islamic, financial product, Sukuk

* Assistant Professor, Institute of Management Sciences, Peshawar.

**Lecturer in Islamic Studies, Department of Islamic Theology, Islamic College University, Peshawar.

Introduction

The system of waqf is of immense importance to the government as well as the general public because it compliments government expenditure and allocation, particularly for meeting the basic needs of the public. It can be for the needy and the general public alike (Cizakca, 2000). For example, Kahf (2003) discussed that there are many mosques whose land is a waqf land and whatever people contribute towards financing its construction also becomes part of the waqf¹. Such mosques are part of a waqf system. These are beneficial for all and sundry.

According to the system of governance in Pakistan, the awqaf properties become part of the provincial administration under the Chief Administrator of Awqaf². Its management, upkeep and revenues, all belong to the provincial government. However, based on review of the provincial awqaf system of the province of Khyber Pakhtunkhwa (KP), the revenues from the awqaf properties are less than the cost of their upkeep and the salaries to their staff.

According to THE KPK WAQF PROPERTIES ORDINANCE, 1979. section (2), subsection (e), Explanation V; Property permanently dedicated for the purposes of a mosque, takia, khankah, dargah, or other shrine shall be deemed to be waqf property. In addition, it is stated in the ordinance (ibid. section (18), sub-section (1)) that, he Chief Administrator shall maintain a complete record of all properties under his control and management, and shall keep accounts of income and expenditure of such properties, including expenditure on the Chief Administrator and his establishment, in such manner as may be prescribed. The Chief administrator can further appoint a custodian in charge of a waqf property for discharging these duties, on behalf of the chief administrator.

¹ According to THE KPK WAQF PROPERTIES ORDINANCE, 1979. section (2), subsection (e), Explanation

IV. The income from boxes placed at a shrine and offerings, subscriptions or articles of any kind, description or use presented to a shrine or to any person at the premises of a shrine, shall be deemed to be waqf property.

² According to THE KPK WAQF PROPERTIES ORDINANCE, 1979. section (3), subsection (1) Government

shall appoint a Chief Administrator of Auqaf for the [Khyber Pakhtunkhwa] and may, by order, vest in him, the waqf properties situated in the Province including all rights, assets, debts, liabilities and obligations relating thereto.

According to Ahmed (2007), these are two main issues in the waqf management system and waqf's legal status. Firstly, a waqf property's poor upkeep, either directly under the chief administrator or under the designated custodian makes the institution of waqf lose its efficacy. Secondly, the government's ownership of any asset declared as waqf, discourages, the people in declaring an asset as waqf. In addition, the institution of waqf is considered to be only the assets and properties dedicated to religious practices (ibaadaa't) and very little is understood about the waqf assets for welfare of the public and other forms of waqf such as cash waqf and other innovative examples cited in the paper.

Regarding waqf management system, if mosques and shrines of spiritual leaders are under the operational control of designated Maulvis and families of custodians respectively, the contributions of the public and the spending of the custodians are not properly documented and accounted for.

As mentioned above, the cash collected through cash collection boxes in mosques, and madaaris and shrines do not have any accompanying receipt and are left at the disposal of the in charge at the facility. While the public gives generously at the mosques as well as shrines, this system is very vague and not well documented. Hence the revenue is always less than the expense, and the government is required to spend further on them for their upkeep. As a result, there are many examples of government owned public waqf assets, which are getting ruined due to lack of funds for upkeep and maintenance. Some are abandoned eventually. For example, water pumps and tube wells for supply of drinking water and for household use eventually close down. The government or awqaf department does not get net revenues from them and are often in need of government funding for their maintenance and upkeep. Hence there is a need for running the waqf property in a manner that it is able to generate funds for its maintenance and does not need funds from the government. On the contrary, the method of collecting funds for private welfare awqaf, based on private donations by means of bank transfers, cheques as well as cash have a receipt for the donations. These institutions are also audited for checking their cash flows and disbursements for their operations (Khan & Sulaiman, 2015).

Given the operational impediments at hand, the study of Rashid (2015) presents models of private waqf. These needs to be registered as foundations or societies that are run as separate entities, each by a group of people who run it professionally and employ the funds in a judicious manner. The models under discussion require, endowments that are not declared as endowments or “waqf” and therefore are not confiscated by the government’s awqaf department. For this purpose, they have to be registered as foundations or societies or trusts. A few examples of successful and famous organizations with different organizational types but working as charitable welfare institutions are presented below. These are filling the gap of welfare system for the needy and poor, ranging from basic needs to free treatment of cancer and other health needs.

One of the examples of successful charitable societies is the Shaukat Khanum Memorial Trust under which the Shaukat Khanum Cancer Hospitals and research centre are established. The trust is established under the Societies Registration Act XXI of 1860 of Pakistan. It is a successful venture with an annual budget of Rs. 11 Billion and 75% of the patients are treated free of charge. The setup is run by contributions are philanthropic contributions from the general public, nationally and internationally. This is the only such charitable world class cancer hospital and research center in the world. Another example is that of Hamdard. It was a pharmaceutical company, which was converted to Islamic irrevocable trust in 1953 and named Hamdard Laboratories (Waqf) Pakistan. Later in 1964, Hamdard Foundation, Pakistan was established to separate the charitable and philanthropic work from the business unit. It was the first NGO of its nature that came into being in Pakistan. Profits from the laboratories accrue to the trust for research and development after deducting the expenses. Any surplus is also given for other philanthropic activities in the country. Yet another success story is that of Edhi foundation. It is a welfare organization established through people’s donations for serving humanity in caring for their basic needs in many forms. It is declared as a Non-profit Organization under section 2 (36) C of Income Tax ordinance 2001. However, any income accruing from any of its business activities shall not be exempt from income tax.

The examples cited above are a testimony of successful operations of private run awqaf systems or modified general waqf (Edhi foundation). These are established by the individuals (public) for the public but they are all named as foundations or Trusts or societies, in order to protect them from being taken over by the government and to run them as private organizations. If they are declared as waqf organizations or waqf property, the government will take control of these properties and organizations.

Waqf Assets for Public Welfare and Other Forms of Waqf

In addition to the awqaf properties in the form of mosques, madrassas and shrines, dedicated to religious practices (ibaadaa't), very little is understood about the waqf assets for welfare of the public and other forms of waqf such as cash waqf and other innovative examples. There is a dire need for further innovations and developments in awqaf setups and awareness about them.

One innovative setup being proposed is the use of sukuk based waqf setups for projects where the financing is provided by philanthropists and the projects are run by private professional management which has the commitment and human resource capable to run the projects. (*See Annexure*)

This setup is particularly recommended for developing the infrastructure and facilities of less developed areas. For example, in Pakistan, the areas of previous FATA region which have now legally become part of the Khyber Pakhtunkhwa (KP) province, need to be developed. There is dire need for funding their development. According to Ahmed (2015) more than 60 percent of the FATA population lives below the poverty line. A survey report mentions that there is only one health care facility for every 4,200 people and only one doctor for every 7,800 people (Butt, 2015). Also, the adult literacy rate in FATA is just 28 percent, which is far below the national average of 75 percent, as of 2013–14 (Ali, 2018). The unemployment rate in FATA is also higher than in the rest of the country. Many areas were previously badly affected by the war on terror for uprooting militancy. Hence the basic infrastructure needs to be developed for welfare and facilitation of the local population. This would entail projects'-based work for development of the areas for providing basic life facilities, like water, roads, health, education, and allied activities (Bureau Report, 2016).

Multiple benefits of Waqf

The institution of Waqf is of immense importance and can be put to multiple uses. They range particularly from providing for the basic needs to infrastructure development to social sustainable development such as awqaf banks and microfinance waqfs for helping people get out of poverty and sustain themselves by earning their living through their business setups (The World Bank, 2013). Waqf projects are definitely needed for education and health through schools and hospitals. According to Biswas, (2010), many social projects including microfinance for socio-economic uplift require large amounts of social waqf based capital collected from people and the need for setting up trusts and foundations with efficient capable and honest operational setups.

For business enterprises, no matter how small scale, initial funds are inevitably required (Silva, 2013). In addition, the current microfinance models where the recipients are charged either through conventional interest on loans or through Islamic finance with a return on investment as well as repayment schedule, there are two main impediments, first, the lack of any collateral to give and avail the facility, and second, the fear of losing everything and having the added burden of debt (Buncombe, 2010). Many suicides committed³ as an aftermath of bank's micro finance loans in India and Bangladesh are stark examples of the helplessness of the poor people who had to pay back and could not do so⁴ (Mosheri, 2012; Sophie, 2013). In many cases of microfinance loans, the recipients could not pay back. A large number of the poor would have spent their loan money on treating family illness and other exigencies, because they were not in a welfare state (Hulme, 2000).

Waqf Money collected for welfare as initial startup money for microenterprise as well as for poor families' support would be required in order to bring people out of poverty and provide them a backup service for their basic needs, including treating illness and sending their children to school.

³ <https://www.bbc.com/news/world-south-asia-11997571>

⁴ Journalist Sophie Cousins reports on an alarming consequence of the microfinance revolution. Kalai, like many other villages in Bangladesh, appears a rural idyll at first sight. But several villagers here have resorted to selling organs to pay back microcredit loans that were meant to lift them out of poverty (Sophie, 2013).

Sukuk are another product structure which can be utilized for waqf. (See Annexure) Sukuk represent receipts of investment (Accounting and Auditing Organisation for Islamic Financial Institutions, 2016). They are usually issued for certain duration and are redeemed and paid back after that (Jabeen & Javed, 2007).

Although the commercial use of sukuk is for generating returns for the investors of sukuk, waqf based funds can be generated for philanthropic purposes whereby most of the sukuk funds shall not be redeemed but will be reinvested in the underlying business generated and would have the option to be convert to common stock of the welfare organizations. It is proposed that a portion, say, a quarter of the sukuk financing can be invested for limited time period and withdrawn upon expiry of the designated term, if the contributors want to pull back their funds. Such sukuk can enable the community people to contribute their savings to the sukuk also and withdraw them after small periods of time such as three months with or without returns. Those who save money for pilgrimages may be the right audience for contributing to the short-term cycles of sukuk. For example, Yahaya et al., (2016) concluded that Tabung Haji of Malaysia was created solely for facilitating pilgrims but it grew into a far larger enterprise which contributes to the welfare of the public. Another option in the sukuk models can be on the footings of the Awqaf development Bank explained earlier, in which some investors could contribute funds as Waqf and others investors could contribute funds on the basis of returns from the underlying projects, if profit generating projects are undertaken (Annexure, figure 3). Such investors can be paid a return on the basis of the returns form underlying business ventures. The same entity can then raise further funds through sukuk for working capital and expansion of the projects. In all the cases of the sukuk for welfare, the multiplying rewards of the initial sukuk funds shall be documented on the accounting books of the enterprises to enable the contributors to see the fruits of their contributions growing for their satisfaction also.

Socio-economic progress by the people for the people: In this setup, Waqf sukuk will be utilized on the model of collecting waqf contributions in which public utility works are combined with income generating works. Such an arrangement shall help generate funds for public benefit. The model can be extended to include the local public in

reaping the financial benefits of the projects as well. This would form a people's based governance setup which shall be more effective in collecting public utilities' usage funds and correct usage of the funds.

Summary and Conclusion

The study highlighted the failure of awqaf system running under govt. in Pakistan. It highlighted the need and benefits of establishing a legally sound awqaf system that provides suitable financial solutions for the socio-economic development of the society. Conditions where the state legally owns all waqf properties and fails to maintain and streamline them into profitable and successful ventures compels the people with philanthropic mind set to set up and run private philanthropic set ups as foundations and societies outside the awqaf jurisdictions of the state.

Some of the problems and issues with the government based awqaf system were highlighted. Firstly, the waqf properties' revenues are less than their costs, due to poor management and poor demarcation and accountability. Unused awqaf lands are either unutilized or are confiscated by land mafias. Secondly, a large portion of charity donated by people is left untraced because it is undocumented and loosely managed, especially in mosques and shrines where there is no documenting system and no receipts of donations given unlike the receipts provided by foundations and donations through the banking system (Nafees & Haider, 2014).

Given the current legal system for awqaf, the study suggested establishing organizations that remain as efficient entities such as foundations and trusts run by private management and not owned and run by the government. Some examples are Shaukat Khanam Memorial Cancer Research Hospital, Edhi Foundation and Hamdard Foundation, which deliver free services to general public, are run by donations from public and groups and most importantly have a clear documentation of inflow and outflow of funds. As a result, the general public have trust in them and are eager to donate to them and become part of the "sadqa e jaariya".

The paper suggested other models for socio economic progress by the people and for the people. It suggested combining economic goals with public good for generating sufficient funds needed for health, education, support of poor students, infrastructure building etc. Such models are particularly useful for under developed areas of the

country like, Baluchistan, Northern areas and FATA areas of KP, rural Sindh where government is facing shortage of funds.

Conclusion

Failure of the state in setting up a nationwide welfare system and provision of basic amenities like health care, schooling, basic shelter and basic food free of cost, creates a big gap which needs to be filled through philanthropy and social entrepreneurship. The existing legal system of the government, takes over any property declared as waqf, within three months of its declaration. Nationalization of Waqf properties and their poor funds management leads to loss of efficacy of waqf. Given the existing setup, the paper suggests improving awqaf system of country. The paper suggests some measures to utilize waqf effectively. Firstly, it is necessary to document and track the donations from different sources by making proper system of donations and distribution. Second the philanthropists need to set up private enterprises based on their waqf contributions and which are foundations or private trusts outside the jurisdiction of the government. Once their credibility is established through transparent system, the public contribution to such enterprises will increase tremendously. The innovative ways suggested, such as waqf sukuk, social entrepreneurs and others will provide further impetus to the waqf based system for public welfare and development.

References

- Accounting and Auditing Organisation for Islamic Financial Institutions. (2016). *AAOIFI Sharia Standards on Investment in sukuk*. Manama Bahrain.
- Ahmed, A. (2015, October 1). Short Cuts for FATA. *The News*. Retrieved from www.thenews.com.pk/print/65370-shortcuts-for-fata.
- Ahmed, H. (2007). Waqf-based microfinance: realizing the social role of islamic finance. *International Conference on Integrating Awqaf in the Islamic Financial Sector*. Singapore.
- Ali, I. (2018). *Mainstreaming Pakistan's Federally Administered Tribal Areas*. Retrieved from www.usip.org/sites/default/files/2018-03/sr-421%0Amainstreaming/pakistan-federally-administered-tribal-areas.pdf
- Biswas, S. (2010). India's micro-finance suicide epidemic. Retrieved January 26, 2010,

from BBC News website: <https://www.bbc.com/news/world-south-asia-11997571>

- Buncombe, A. (2010). Suicides and pressure tactics tarnish image of micro-finance lending. Retrieved from Independent-Asia website: <https://www.independent.co.uk/news/world/asia/suicides-and-pressure-tactics-tarnish-image-of-micro-finance-lending-2140314.html>
- Bureau Report. (2016). Survey Paints a Bleak Picture of Social Indicators in FATA. *The Dawn News*. Retrieved from <https://www.dawn.com/news/1234160/newspaper/column>
- Butt, Q. (2015). FATA Health Care in Sorry State. *Express Tribune*. Retrived from <https://tribune.com.pk /story/937093/ill-equipped-fata-health-care-in-sorry-state/>.
- Cizacka, M. (2000). *A History of Philanthropic Foundations: The Islamic World From the Seventh Century to the Present*. Istanbul: Bogazici University Press.
- Hulme, D. (2000). Is microdebt good for poor people? A note on the dark side of microfinance. *Small Enterprise Development*, 11(1), 26–28.
- Jabeen, Z. (2016). Exploring New Initiatives for Financial Inclusion. *Abasyn Journal of Social Sciences*, 9(Special).
- Jabeen, Z., & Javed, M. . (2007). SUKUK-Structures: An Analysis of Risk-reward Sharing and Wealth Circulation. *Pakistan Development Review*, 46(4), 405–419.
- Kahf, M. (2003). The role of waqf in improving the ummah welfare Trusts and wealt. *International Seminar on Waqf as a Private Legal Body*. Medan, Indonesia: The Islamic University of North Sumatra.
- Khan, Z., & Sulaiman, J. (2015). Does Microcredit Help the Poor and Financially Marginalized Communities? Experience of Pakistan. In A. Heshmati, E. Maasoumi, & G. Wan (Eds.), *Poverty Reduction Policies and Practices in Developing Asia* (pp. 31–52). https://doi.org/10.1007/978-981-287-420-7_3
- Mosheri, M. (2012). Being kicked out of Bangladesh’s Grameen Bank. *Aljazeera.Com*. Retrieved from <https://www.aljazeera.com/blogs/asia/2012/09/35941.html>
- Nafees, S., & Haider, A. (2014). Quantum jump in donations to charities. *The Dawn News*. Retrieved from <http://www.dawn.com/news/1120755>
- Rashid, S. K. (2015). *Certain Legal and Administrative Measures for the Revival and Better Management of Awqaf* (No. 1432–2). Jeddah.

Silva, K. D. (2013). The City Imageability: A Framework for Defining Urban Heritage Dimensions. In K. D. Silva & N. K. Chapagain (Eds.), *Asian Heritage Management Contexts, Concerns, and Prospects* (1st ed., p. 386). Routledge.

Sophie. (2013). The Bangladesh poor selling organs to pay debts. *BBC News*. Retrieved from <https://www.bbc.com/news/world-asia-24128096>

The World Bank. (2013). *Inclusion Matters: The Foundation of Shared Prosperity*. Washington DC.

Yahaya, H., Majid, M. S. A., Talaat, A. Z. M. A., Zulkifli, M. Z., & Talaat, N. S. M. A. (2016). Tabung Haji Malaysia as a World Role Model of Islamic Management Institutions. *International Journal of Business and Management Invention*, 5(11), 45–55.

Annexures

Waqf Based Sukuk Model

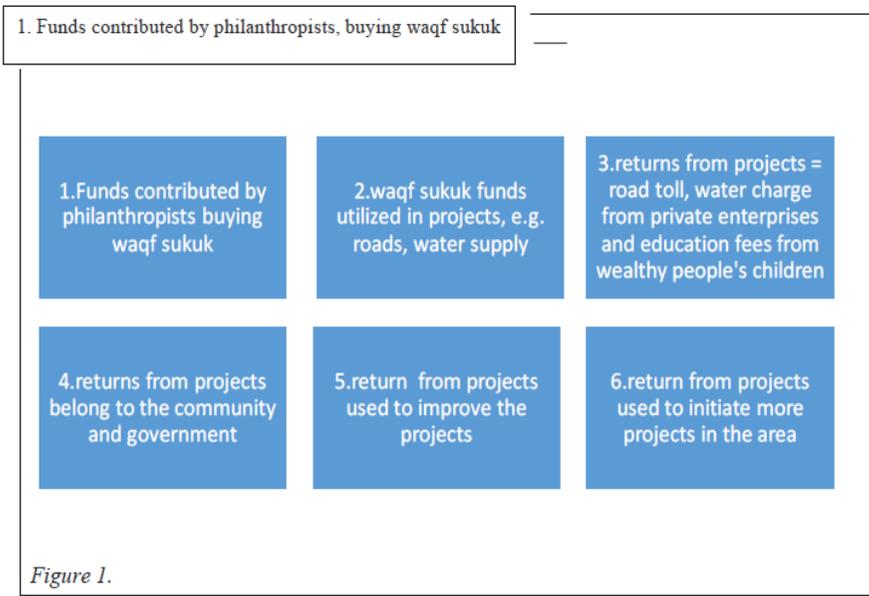


Figure 1.

Source: Jabeen (2016)

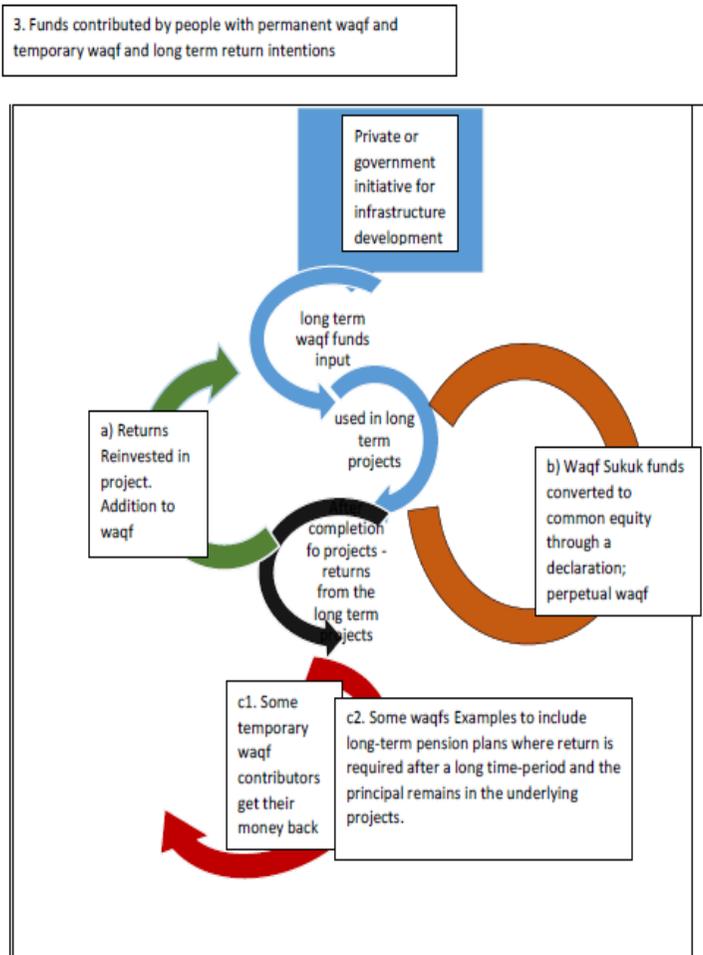


Figure 3.