

Waqf property administration in Bangladesh: Challenges and recommendations

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Abstract

Bangladesh is muddling through the delinquent of poverty since its freedom. Recent success stories of the nation in lessening poverty have been the outcome of the efforts of more than a few public and private initiatives. As a Muslim majority country, Bangladesh is yet to slot in Islamic vehicles of poverty reduction in the national development strategies. *Waqf* an Islamic charitable endowment has played significant roles in the socio-economic spheres of Muslim people all over the world since the dawn of Islam. During colonial era, *Waqf* as social institution became quiescent in Muslim majority countries and could not function appropriately. Now Muslim intellectuals and policy makers have recognized that resurgence of *waqf* as a strong social institution can act as a catalyst in mobilization of funds in poor Muslim majority countries for financing socio-economic projects including much needed poverty alleviation. As the third largest Muslim majority country in the world, Bangladesh can explore *waqf* as an operative tool in social development. Though having a large number of *waqf* in Bangladesh over the few centuries, they could not play effective roles following the maladministration and lack of proper structuring and innovation. With proper structuring and administration, *waqf* can be a boon for Bangladesh, a poor country blessed with 160 million people with 23% poor people. This study will basically focus on the history and administration of *Waqf* Property and present scenario of them in Bangladesh. It will also discuss in-depth the major challenges and obstacles to the administration of *Waqf* Property in Bangladesh. The author at last will provide some recommendations which will help the government, government agencies, lawyers and scholars to meet the challenges. In this study, there are some specific suggestions and recommendations that deserve serious consideration for the proper administration of *Waqf* property in Bangladesh.

Keywords: *Waqf* property, administration, Bangladesh, challenges, recommendations

Introduction

Waqf is the permanent dedication of any property, movable or immovable by waqif ^[1] for the benefit of human beings with the intention of attaining the ultimate pleasure of Almighty Allah. *Waqf* plays a significant role in the religious and socio-economic development of the Muslims. Islamic law though prescribes some specific provision for implementation of waqf property but in Bangladesh now this *waqf* property is governed by the *Waqf* Ordinance, 1962 ^[2]. It is a matter of great regret that the provisions of this ordinance are now not so effective to meet up the new obstacles. One of the major reasons of the weakness of *waqf* ordinance is that there are no such adequate and effective provisions for the proper management and implementation system of *waqf* property. There is a huge lack of strong and efficacious supervision provision regarding mutawallis ^[3]. Every year we found many instances of *waqf* property but the proper implementation of those *waqf* property is still the most important challenge for the *Waqf* property administration of our country.

It is high time to develop our *waqf* property administration, make the *waqf* provisions more pragmatic and effective. In order to eradicate the obstacles towards proper implementation and administration of *waqf* property we have to take time-befitting reform in the *waqf* property administration as well as *waqf* ordinance, 1962. ^[4] We have to take proper steps to improve the skill of mutawalli. Due to the incapacity and negligence of wakif many times we

see that proper implementation and administration of *waqf* property become impossible. In our country to administer all the functions of *waqf* property there is a *waqf* administration. The prime duty of this administration is to ensure the proper implementation of *waqf* property. This *waqf* property administration is not developed in a day. Gradually the *waqf* property administration is developed and our government put a lot of emphasis to improve the existing condition of *waqf* property administration. So, we have to put the highest effort to ensure proper implementation of *waqf* property. This is the central focus of my study and I hope through this research I will be able to find out the major barriers towards proper implementation and administration of *waqf* property and try to suggest some urgent and very effective steps for removing the existing challenges of *waqf* property implementation in Bangladesh. It is expected that the empirical findings of this study would be useful for the appropriate authorities in their efforts to operate and manage the *Waqf* property in an efficient and sustainable way.

Objectives of the Study

Implementation of *waqf* property is the great challenge of our country in the present context. The main purpose of this study is to critically analyze the *waqf* property administration system in Bangladesh and bring out the challenges to proper *waqf* administration. The key points of the study are as follows:

1. To evaluate the historical background and present scenario of *waqf* property administration system in Bangladesh.
2. To discover the real practice of *waqf* property implementation in Bangladesh.
3. To find out the major challenges in ensuring the proper administration of *waqf* property.
4. To find out the ways of effective and practical development of *waqf* property administration system in Bangladesh.

Methodology

In order to get optimum result from the study, the author has followed some definite methodology and approach. Basically, this article is analytical and study-based. The author has tried to analyze the underlying facts of obstacles towards implementation of *waqf* property in Bangladesh. The study data are collected from various research articles, books, legal instruments and websites of Bangladesh and from both primary and secondary sources. This article is mainly written on the basis of qualitative technique.

Literature Review

During the preparation of this article, author has studied through a decent number of legal instruments and research articles in order to acquire deftness and avoid all sorts of duplicity. The author has deeply analyzed a number of qualitative research articles, laws and policies of the government on *waqf* and waqf property administration. So far as the author is concerned, there are very few articles written on the waqf property administration Bangladesh.

Conceptual Issues: Waqf, Waqf Property and Waqf Administration

In this study some technical terms are used which expresses special meanings. For the clarification and better understanding, explanation of some important terms is given below;

Waqf: The term *waqf* originated from the Arabic word 'wakafa', which means bound up or detained. 'Literally waqf means to stop, contain, or to preserve. In shari'ah, a waqf is a voluntary, permanent, irrevocable dedication of a portion of one's wealth – in cash or kind – to Allah. Once a waqf, it never gets gifted, inherited, or sold. It belongs to Allah and the corpus of the waqf always remains intact. The fruits of the waqf may be utilized for any shari'ah compliant purpose.' [5] On the other, 'it means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by Muslim Law as pious, religious or charitable, and includes any other endowment or grant for the aforesaid purposes, a *waqf* by user, and a *waqf* created by a non-Muslim.' [6] A waqf must have specific fundamental features as revealed from its definition viz, 'the purpose of the waqf must be lawful and pious from the viewpoint of the shari'ah, it must be made in perpetuity and inalienable' [7]. Again, waqf can be of three types [8] such as- i) Al-Waqf Ala Al-Awlad (Family or Private Waqf), ii) Waqf Lillah (Charitable or Public Waqf) and iv) Mixed/Multi-Purpose Waqf (Quasi-Public Waqf).

Waqf Property: waqf property actually means the subject matter of a waqf whether moveable or immovable. [9] 'waqf property includes property of any kind acquired with the

sale proceeds of, or in exchange of, or from the income arising out of, waqf property, and all offerings made, or charities consecrated or contributed, on or to waqf property.' [10] Again it includes the waqf estates and the benefits derived from it. 'Waqf estate means the totality of immovable properties, as well as movable properties, in respect of which the waqf is made by a deed; and no waqf property shall be designated as waqf estate if it consists of only movable properties.' [11]

Waqf Administration: Any person, authority, board or committee entrusted with the duty for the execution of a waqf is called waqf administrator who are in religious term known as *nāzir* or *mutawallī* or *qayyim* and the activities done by him for the execution of the waqf within the purview of shari'ah and domestic law is called waqf administration. In case of unregistered waqf, the waqif is the sole authority to appoint the mutawalli i.e. the administrator. On the other, in case of registered waqf the government is the authority to appoint the administrator who must be a Muslim [12]. In Bangladesh the duty of public waqf administration is entrusted with the waqf board which works under the control and supervision of ministry of religious affairs [13].

History and Evolution of Waqf and Waqf property in Bangladesh

There is no specific proof of introduction of *waqf* in Bangladesh but it is presumed that the history of creating *Waqf* and *Waqf* property in Bangladesh is as old as the introduction of Muslim rule in this region, between the '8th and 18th centuries' [14]. The doctrine of waqf has been recognized and enforced in the Islamic legal system from the earliest times. Its origin is traced back to the direct prescriptions of Allah and the prophet (peace be on him). The Quranic provisions available in favor of charity i.e. waqf, which can be treated as the basis of Waqf. The provisions are

1. 'And in their (rich persons) wealth the beggars and outcasts. (deprived) have due share.' [15]
2. 'By no means you shall attain righteousness unless you give (freely) of that which you love; and whatever you give of a truth Allah knows it well.' [16]

Besides the above provisions, there is a strong Hadith on waqf viz- Hazrat Umar (R) sought an advice from the prophet regarding his intention to make the most pious use of a piece of land (waqf) of his own situated at Khaibar, which was allotted to him. At this the prophet advised him, 'Tie up the property (corpus) and devote the usufruct to human beings, and it is not to be sold or made the subject of gift or inheritance, devote its produce to your children, your kindred and the poor in the way of Allah' [17]. 'In accordance with the advice of the prophet, Hazrat Umar dedicated (waqf) the property in question and it continued in existence for several centuries until the lands became waste' [18]. Thus the above verses of the Holy Quran and the stated Hadith laid the foundation of waqf (charity) and so the institution of waqf is interwoven with the entire religious life and social economy of the Muslims [19]. 'Though the institution of waqf owed its origin to the first century of Al - Hizri i.e. after the demise of the prophet, but rigid legal shape took place in the second century A.H. Some western writers consider that this institution was prevalent even before the time of the last

prophet. But this view is not acceptable. The fact is this that the institution of waqf has developed with Islam and there is no evidence that such a complex system of appropriating usufruct as a life interest to varying and successive classes of beneficiaries existed prior to Islam^[20].

The Muslim preachers from Arabia entered into the coastal regions of the then Bengal. The Muslim rule was consolidated in the then Bengal with the conquest of Ikhtiyaruddin Muhammad Bin Bakhtiyar Khalji^[21]. Moreover, The Sufi saints and preachers had a large share in the spread of Islam in Bengal. By their religious fervor, exemplary character and humanitarian activities, they greatly influenced the mind of the masses and attracted them to the faith of Islam. The Khanqahs^[22] of the sufis which were established in every corner of Bengal were great centers of spiritual, humanitarian and intellectual activities and these had a significant role in the development of the Muslim society in this country. Islam, thus, spread throughout Bengal, even to the outmost villages, and the Khanqahs and dargahs of these sufis grew up everywhere in the country. The Bengal region during Mughal period had a very rich tradition of 'waqf'. Most of the Mosques, Madrasahs and other socio-religious organizations and institutes used to be managed by the income of the 'waqf' estates. The colonial powers that ruled it for about two hundred years devastated this convention along with other Muslim institutions. Because the British govt. always ill-treated the culture and tradition of the Muslims. The religious rites and norms of the Muslims are also degraded by the then British ruler.

The most remarkable public waqf is the Mohsin Fund. Haji Muhammad Mohsin^[23] of Hughli, India and a zamindar of Saidpur estate, endowed in 1806 the whole of his estate income to the upkeep of religious and educational establishments of the Imambarah^[24], Hugli^[25]. As the Muslim preachers encouraged people for charity and they themselves as well as the rulers also practiced big philanthropic activities, a general trend of Waqf endowment developed among the mass people. This is why innumerable Waqf properties are lying scattered in every corners of the country. At that period waqf is treated as the best medium to uphold the religious and humanity development. Most of the rich Muslim family was encouraged to make waqf for the spiritual benefit. Traditionally, the Muslim populations of Bangladesh are religious in nature having great attachment to the Islamic institutions and culture. These traits are more prominent in the eastern districts of the country due to influence of Muslim preachers and saints who worked in these areas comparatively more extensively. This explains the reasons for greater number of waqf in the eastern districts. Though Waqfs imply dedication of property in the name of Allah, in Bangladesh, we have the following nature of Waqf. In some cases total income of the Waqf goes to the maintenance of mosques, madrasahs, Eidgah's, graveyards, feeding of poor and celebration of different Islamic festivals, while in other cases, the income is divided in different proportions for the above-noted purposes on one hand and for the benefit of descendants of the waqif on the other. Where more than 50% of the net available income of a Waqf is exclusively applied for religious and charitable purposes, such a waqf is considered a Public Waqf. Waqf properties in Bangladesh consist of cultivable agricultural land, uncultivable agricultural land, forests, hillocks, urban lands and buildings. Most of the waqf in Bangladesh were

created in the past. The British Rule in Bengal made the first assault on this rich Islamic heritage. Before Partition this tradition of religious endowments, namely waqf, continued though in a slow motion, but after that the erosion started to surface which was only intensified after the Liberation of Bangladesh.

Amount of Waqf property in Bangladesh

The concept, extent and nature of Waqfs in Bangladesh is mainly based on the rules laid down by the Holy Prophet (PBH). Waqf in Bangladesh are created mainly as a family settlement of the Waqifs or dedicator's family or descendants with the main objectives for charity and religious activities as well as security for posterity.

Traditionally, the Muslim population of Bangladesh is profoundly religious in sentiment having great affection to the Islamic institutions and culture. These traits are more prominent in the eastern districts of the country due to the influence of Muslim preachers and saints who worked in those areas comparatively more extensively, as such, vast endowments for several religious and social well-being activities exist there.

Though Waqfs imply dedication of properties in the name of Allah, in Bangladesh, keeping the spirit of Divine bliss we have different Purpose oriented waqfs. In some cases total income of the waqfs goes to the maintenance of Mosques, Madrasahs, Idgahs, Graveyards, feeding the poor and celebration of different Islamic festivals, while in other cases, the income is divided in various proportions for the purpose mentioned in the waqf documents such as charity, redemption of obligation, benefit of descendants of the waqifs. Where more than 50% of the net available income of a waqf property is utterly applied for religious and charitable purposes, such a waqf is deemed to be a Public Waqf. Similarly, Endowments where more than 50% of the net available income is meant for waqif's descendants, such a waqf is treated to be a Waqf-al-Awlad^[26].

As there was no survey conducted for finding out the waqf properties before 1986, Ministry of Religious Affairs have had a survey by the Bangladesh Bureau of Statistics and staggering number of 1,50,593 waqfs establishment were found out to have existed by that year. Of course, new waqf estate is being born with the passage of time out of intense reasons, department of Waqf could only manage to enroll about 14000 waqf estates- mainly big ones.^[27]

Waqf Property Administration in Bangladesh: Laws and Reality

The rubrics for governing Waqf properties in the Indian subcontinent were the same rules developed by the traditional scholars of Islamic Jurisprudence. Following the end of the Muslim rule in the undivided India, classical Islamic rules of establishing and managing waqf continued to be operational. During the period of Sultans of Delhi and Mughals, or Independent Sultans and Shahs of Bengal, the situation remained same. But neither these Sultans nor the Shahs created any separate department for waqf administration. The waqf management in that period was a combined supervision of the District/Provincial Qazi's, local Mulla's and appointed mutawallis. Then came the famous Religious Endowment Act, 1863 which declared that all properties relating to mosques, temples, and other religious establishments under the possession of the Board of Revenue or local agents, too, were to be transferred to

Trustees, managers, or superintendents and local Committees were appointed to exercise the powers of the Board of Revenue. The first major strike over *waqf* administration by the colonial power in the then India was the declaration of the Privy Council of Great Britain, the highest judicial authority for Indian sub-continent, that *waqf Al-Waqf Ala Al-Awlad* or family *waqf* invalid in 1894^[28]. The decision of the Privy Council caused considerable turmoil among the Muslims who believed that the judgment was an encroachment of the Muslim personal law. A new Act called the Mussalman *Waqf* Validating Act was passed in 1913, which eliminated the disability created by the Privy Council decision.

In 1923 the colonial government enacted the first legislation to actually regulate *waqf* in British India. It was styled as 'The Mussalman Wakf Act, 1923', and it was enacted with the expressed purpose making 'provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties.' This Act comprised of 13 sections where relevant details were furnished. The first content gave the title, extent and date of commencement of the Act discussed, whereas the second content defined different terminologies, the third content discussed the responsibilities of the mutawallis to furnish to the local court, within six months of the creation of any *waqf*, a 'statement of particulars' containing an identifiable description of the *waqf* property, the gross annual income as well as the gross amount of such income for the last five years or since creation of *Waqf*, the amount of revenues, local taxes and rents annually payable to the Government, an estimate of annual expenses, an accounting of amounts set apart for mutawalli's salary, individuals' allowances, for purely religious purposes, for charitable purposes, and for any other purposes; and to provide any other prescribed particulars. The next contents talked respectively about the obligation of court to publish the afore-mentioned particulars or requiring further particulars, providing a 'statement of accounts' to the court by the mutawallis with three months after the thirty-first day of March of each year, the responsibility of the court for making audit of the accounts furnished by the mutawallis, the obligation of the mutawallis to pay the cost of audit, every statement and particulars given by the mutawallis must be written on the language of the court and verified in the Code of Civil Procedure, 1908, all particulars may be obtained by any person for inspection with a nominal payment, for any failure on mutawallis part to provide particulars or other mismanagement they would be fined with an amount of about six hundred to two thousand four hundred taka.

Like the Mussalman *Waqf* Validating Act of 1913, the Mussalman Wakf Act, 1923 is contradictory with Shari'ah or fiqh. This Act of 1923 is actually the basis of all Acts or Ordinances promulgated later on for governing *Waqf* properties. Then came the well-known 'The Bengal *Waqf* Act, 1934' which can rightly be considered a pioneer in as much as it introduced for the first time the idea of formation of *Waqf* Board and appointment of *Waqf* Commissioner. *Waqf* estates in Bangladesh (the then Bengal) used to be administered under the provisions of the personal law of the Muslims i.e., Shariah law dealing with fundamental aspects of *Waqf*. In the light of the provisions of the Shariah Law, the Chief qadi of the District, i.e., the District Judge was acting as the guardian of the *Waqf* estates of his jurisdiction.

But the District Judge had no machinery to supervise, control or manage the *Waqf* estates. For the first time, the Government passed this special enactment in 1934 for supervision and protection of *Waqf* estates through a statutory Autonomous Organization to be headed by a *Waqf* Commissioner.

At the time of the establishment of Pakistan, the Bengal Act of 1934 was taken on for East Pakistan and was allowed in administering the *Waqf*. It was further amended under the East Pakistan *Waqf* Ordinance 1962, which consolidated and amended the law relating to the administration and management of *waqf* properties. The basic changes made in the *Waqf* Ordinance, 1962 are that:

- a. A uniform rate of *Waqf* contribution has been fixed.
- b. The post of *Waqf* Commissioner was re-designated

As *Waqf* Administrator giving him certain quasi-judicial and administrative powers.

The ordinance is still in operation barring some minor amendments made in it by the *Waqf* Ordinance 1988 and *Waqf* Ordinance 1998. The *waqf* properties are administered by the government through a *Waqf* Directorate in the Ministry of Religious Affairs.

The Department of *Waqf* inherited by the Government of Bangladesh was a very small Organization. The number of officials is 111 only in the *waqf* administration. In line with the new policy of the Govt. a re-organized set up was conceived in 1988, as a result, a workable *Waqf* Administrative set up will now be operational with Divisional and District level offices and it done in several times with interval. Department of *Waqf* is headed by the *Waqf* Administrator and the Department with all its resource Constraints look after various religious and Socio-Economic institutions including 10,000 Mosques, 500 Madrasah's has, 10 Orphanages, 5 charitable dispensaries etc^[29].

A Welfare Fund is established at the head office of *waqf* administration from where stipends and scholarship are awarded to poor and meritorious students as well financial grants to destitute Muslims and newly converted Muslims for their instant assistance and Rehabilitation. But practically we yet not saw any such approaches and implementation of those things.

Statutory Laws relating to *Waqf*

During British regime several laws on *waqf* were enacted for proper administration and management of *waqf* property. During Pakistan period some Acts were also passed. Some of the important Acts passed by Central and state or provincial legislature for the recognition, protection, administration and management of *waqf* property are as follows

- The Mussalman *Waqf* Validating Act, 1913
- The Mussalman *Waqf* Act, 1923
- The Mussalman *Waqf* Validating Act, 1930
- The Bengal *Waqfs* Act, 1934
- The U.P Muslim *Waqf* Act, 1936
- The Punjab Muslim *Waqif* Act, 1952
- The *Waqfs* Act, 1954
- The *Waqfs* Ordinance 1962

The above laws were enacted by Central or Provincial legislature and were in force either for whole of India or for a particular State or province. The *Waqf* Ordinance, 1962 was promulgated in Pakistan to amend and consolidate the

laws relating to *waqf* The *Waqf* Ordinance, 1962 is in force now in Bangladesh and Its applicable for *waqf* created before or after this Ordinance. Large number of *waqf* estates in Bangladesh are administered by this Ordinance.

Challenges to the Administration of Waqf Property

Waqf sector in the country epitomizes an underdeveloped, underutilized segment of the national asset, which is waiting for proper and better utilization. The problems, which the *waqf* institutions face in the country are numerous. Some of the major challenges that the *waqf* sector is currently facing in Bangladesh are as follows:

Inadequate Manpower

As cited earlier, compared to the magnitude of the total number of *waqf* estates, a very small number of officials are managing the *waqf* sector. Only 111 officers and employees are managing nearly 150,000 *waqf* estates in Bangladesh. For appropriate administration and management of such a huge number of *waqf* estates scattered all over the country the *waqf* sector needs a sizable number of qualified staff. Bangladesh has 64 administrative districts. Due to lack of manpower, only 38 districts offices are managing *waqf* estates of all 64 districts. Due to lack of manpower it become very difficult to control and combine the divisional offices of Dhaka, Khulna, Rajshahi and Chittagong Divisions^[30].

Unregistered Waqf Properties

Although section 47 of the Ordinance requires that "all *waqfs* existing at or created after the commencement of this Ordinance shall be enrolled at the office of the Administrator", but more than one-third of the total *waqf* properties in Bangladesh remains unregistered. According to the Census of *waqfs*, out of 150,593 *waqf* estates in the country, only 97,046 are registered, 45,607 are verbal and the rest 7,940 are *waqf* by tradition. These shows as many as 53,547 *waqf* estates are not registered^[31]. The reason for not enrolling the *waqf* estates is not known. However, it could be due to various factors. First, the existence of the *waqf* administration is not known to many people particularly in the rural areas. Second, there might be a deliberate attempt not to register to evade being controlled by the *waqf* administration. Third, to evade payment of payable fixed 5% levy.

Illegal Occupation and Misappropriation of Waqf Properties

Many of the *waqf* properties are illegally occupied by private individuals, organization and groups or even by government agency. It has been reported, just to mention one prominent example that the country's Police Headquarter in Dhaka stands on a *waqf* land. This area (that the Police HQ occupies) is in the heart of the capital city. It could be developed into huge profit earning business enterprise. Many *waqf* properties are under-utilized such as being leased at a very low rental rate while many others are being misappropriated. There are innumerable cases of neglect and encroachments and illegal occupations. There is hardly any machinery to detect this and to recover the property in and outside the courts of law. No social pressure exists for such recoveries. Lack of adequate and competent and as a result the single *Waqf* Committee for the whole

country cannot make frequent and thorough inspections to prevent the mismanagement of *waqf* properties. The 5% contribution from *waqf* income which is diverted towards the Committee has not benefited the country very much. Nearly the whole amount is spent in administration.

Uncollected Arrears

The recovery of arrears of contribution is another inherent problem. Moreover, it provides a punitive method of realizing contribution. Every year a huge amounts of arrears have piled up during recent years.

Operational Inefficiency and Problem of Waqf Disputes

Hundreds of *waqf* related disputes are adjudicated by various Court and the *Waqf* Administrator's office. This number is increasing every day. The *Waqf* Administrator performs quasi-judicial functions. The *Waqf* Administrator disposes all the disputes related to illegal possession or transfer of *waqf* estates, misappropriation, improper management etc. He conducts the hearings like a Judge, and delivers judgment, which is binding unless it is overruled by an Appeal Court. In cases of illegal possession or transfer of *waqf* property, or illegal interference in the management of *Waqf* estates, *Waqf* Administrator enforces his order with the help of the local administration of the Government at the district level^[32]. However, as mentioned above, in comparison to the total number of *waqf* estates in the country, a very small number of officials are managing the *waqf* sector and as such the *waqf* administration is overburdened not only with a large number of cases but also many other relevant matters that require due attention^[33].

Absence of Provisions in the Waqfs Ordinance 1962 Relating to the Development of Waqf

The *Waqfs* Ordinance 1962 contains no provision concerning the development of *waqf* properties. Many of the *waqf* properties are not utilized fully or remain idle. Those estates that are in use are under-utilized, i.e. they are not developed to their optimum level. The absence of such provision in the *Waqf* Ordinance 1962 is a serious lacking and an impediment to the development of *waqf*. Many *waqf* estates in Bangladesh have a lot of potential to be developed into shopping and housing complexes, office and residential buildings that may bring in large amounts of income. Likewise, unused cultivable lands may be brought under cultivation and dairy farming. *Waqf* estates that are in the hilly areas like Chittagong and Sylhet could be used for tea plantation, while those in the coastal areas could be utilized for fishery and salt industries. The income generated from these projects could then be utilized for the benefit of *waqf* beneficiaries and thus for the benefit of the *ummah* (community) at large.

Lack of Integrity of the Mutawallis and their Qualification

Cases of dishonesty on the part of some *mutawallis* are not uncommon. Dishonesty may be in the form of incorrect accounts of income, fabrication of bogus vouchers for amounts not spent, subscription not accounted for, illegal alienation of *waqf* properties, rents at high rates realized from the tenants but receipts for lower amounts issued and the balance pocketed as black money and so on. Many *waqf* estates are headed by *mutawallis* who are near illiterate or not educated enough to keep and maintain accounts of

income and expenditure. This sometimes may open the door for corruption.

Unauthorized Alienation of Waqf Property

The Ordinance debar *mutawallis* from transferring in any way immovable *waqf* property over a specified period of time without the previous sanction of the Administrator. In case the *mutawalli* or the stranger disobey this provision, the Administrator may send a requisition to the Deputy Commissioner within whose jurisdiction the property is situated to obtain and deliver possession of the property to him. On receipt of such requisition, the Deputy Commissioner shall take action. Any person aggrieved by the order of the Deputy Commissioner may prefer an appeal to the District Judge within whose jurisdiction the property is situated. The decision of the District Judge or when there is an appeal the decision of the High Court shall be final. Surely, the above procedure involves delay and costs. Therefore, a tribunal could be set up to handle these matters more efficiently.

Personal Use of Waqf's Compensation Money

Complaints are often heard that the compensation money derived from the acquisition of *waqf* properties are kept for the personal use of the officials. The Ordinance provides that where any *waqf* property is acquired under the Land Acquisition Act, 1894, (Act I of 1894) or any other law for the time being in force, the compensation money payable for such property shall be paid to the Administrator and shall be kept in deposit in the *Waqf Fund* ^[34]. This provision should be reviewed and amended to prevent possible corrupt practices on the part of the Administrator. Such amendment will surely build public confidence in *Waqf* Administration in Bangladesh and ensure that the *Waqf* institutions are above corruptions and irregularities.

Lack of Progressive and Innovative Ideas

It is sadly observed that progressive and innovative ideas for the development and extension of *waqf* properties are not much seen, neither from public nor from private sector. The great majority of *mutawallis* and managers do not think in terms of suitably adjusting the objects of the *waqfs* in these changing times. *Mutawallis*, even those who are known and believed to be honest, have no concept of property maintenance and development ^[35]. The idea of investment in man that is upgrading of Muslim human capital through education and training has not been given any attention. Most *waqf* deeds do not have a built-in-provision for maintaining property.

Therefore, the challenges mentioned above are deep rooted. The *waqf* administration is far from being satisfactory and efficient. If the Ordinance was enacted to eradicate the evils tormenting the holy purpose of the *waqf* institution in Bangladesh, it has failed to achieve its purpose. The Ordinance in the present circumstances is not potential enough to become the model *waqf* legislation in Bangladesh. It must be replaced by a new one. In this respect, a legal and administrative analysis is necessary.

Recommendations and Concluding Remarks

There appears a clear need to renovate and review the whole *waqf* sector in Bangladesh. The socio-economic role that *waqf* can play in the betterment of Muslim society is very significant. Therefore, in order to implement the

waqf and to make it more effective to the overall development process in Bangladesh I would like to recommend the following things:

Need for a New Waqf Law

A fresh *Waqf Act* is the need of the day in Bangladesh. The existing "*Waqfs Ordinance of 1962*" emerged as a poorly drafted piece of legislation in the face of the present day needs. Many of its important provisions are poorly drafted. The machinery of administration it laid down is now incompatible in the new framework of Bangladesh. We need a thorough and critical appraisal of all the laws applicable to *waqf* in Bangladesh to evaluate their appropriateness of meeting the current need of effective *waqf* management. It is of utmost importance that *waqfs* should be maintained properly. So the need of a practical approach in the area of *waqfs* is an obvious need. The present Ordinance cannot fulfill this task in today's changed situation, it has become ineffective. Hence, an ideal Act is essential. There should be the insertion of the provision of necessary and immediate training program for the effective management of the *waqf* estate.

Inadequacy of Manpower

One of the major problem of the *waqf* administration is the inadequacy of manpower. In every level of *waqf* sector necessary officers and staffs must be appointed. Creation of new post for the convenience of achieving the ultimate target of the *waqf* administration. At least three person should be appointed in every *Waqf* Inspector office all over Bangladesh ^[36].

Development of Urban Waqfs and Issuance of Waqf Bond

The urban *waqf* properties situated in busy commercial areas possess immense potentials for development. There is no scheme to develop these properties. These properties being more secure, financing may be easily available. It seems to be the need of the hour that the government should have on contract basis the services of some consultant engineer to help in developing these *waqf* properties. The *Waqf* Administration should be empowered to issue bonds and debentures for making available necessary finances. This venture may attain a bright prospect. Therefore, adequate attention must be paid to the development of urban *waqf* properties.

Establishment of National Waqf Advisory Board (NAWAB)

Bangladesh should establish a National *Waqf* Advisory Board (NAWAB) that would work in collaboration with the *Waqf* Administration ^[37]. It may serve as a Think-Tank and a key driving force that would have, *inter alia*, the following strategic functions:

- To establish branches of NAWAB in District and *Thana* (Sub-District) level. Its aim would be to encourage, attract and solicit every able Muslim to create *waqfs*;
- To help establish various community development projects and institutions that would be supported primarily from *waqf* revenues and resources.
- To promote and establish stronger cooperation and co-ordination with Islamic NGOs and financial institutions nationally and internationally in order to find and

determine common and innovative ways of finance for better utilization of *waqf*.

- To establish co-operation and collaboration with World *Waqf* Foundation (WWF) established by the Islamic Development Bank (IDB).

Education and Training for *Mutawallis*

The *mutawallis* have to be educated and adequately trained. The objective of such training would be to equip them with proper knowledge and guidelines towards the proper implementation. The training should also serve them to realize that they are holding a trust and they must exhibit a high standard of trustworthiness. This can be achieved by holding regular Training Camps at the district and divisional levels. Booklets and brochures containing instructive material can be issued by the *Waqf* Administrator's Office and distributed free to the *mutawallis*.

Increasing Staff Benefit

Social security, adequate salary and other benefit for the staff are not available and this sub-standard situation fails to attract young talented persons to this sector. There is no Insurance Scheme which can help the employees in different situation in their career^[38].

Waqf Tribunal

Waqf disputes and their resolution are another area that must be improved. If litigation and litigation alone is the mode of resolving such disputes, it is wastage of time, money and vital *waqf* resources. Therefore, establishing *Waqf* Tribunals would be a huge step forward in dispute resolution of *waqf*.^[39] Such tribunals, for instance, are operating in India and have been found to be effective. It may be made mandatory for the disputing parties who must go to the *Waqf* Tribunal for mediation and arbitration before the dispute may be taken to a court of law.

Collaboration with Other Countries

In Bangladesh, what really remains to be done in this important and interesting area is to undertake collaboration and comparative study of *waqf* administration with countries where an administrative set-up for *waqfs* exists^[40]. Such countries include almost all the Middle-Eastern countries, Malaysia and Indonesia just to name a few. Among countries where Muslims are minorities, India and Singapore have made considerable development in *waqf* sector. Obviously, such a study would go a long way towards the betterment of *waqf* administration in Bangladesh.

Concluding Remarks

Bangladesh has a huge wealth of *waqf* properties that could be utilized to bring out the poor segment of the population and this can be done by bringing immediate crucial changes in the administration of *waqf* in order to make it apposite to the present day need. Bangladesh should set up its strategic goals with top priority given to *waqf* development in the country and arrange and organize institutions that will serve those goals. *Waqf* as a deeply rooted *shariah* institution offers a built-in developmental and empowerment tool. The benefits of *waqf* projects are far reaching. The challenge for Bangladesh thus is to pursue the establishment of *waqf* related institutions as outlined above to serve the greater *ummah* and promote and protect the cause of Islam.

In the present context of our country if we want to ensure most of the *waqf* then we have to take very effective and time-befitting initiatives. We have to bring reform on our present *waqf* ordinance. The powers and functions of the *waqf* administration must be developed to meet the present challenge. Increasing manpower and competence of *mutawallis* are the key things that must be taken into deep and immediate consideration. *Waqf* creates a great opportunities to us to develop our present society at large. We have to put our best effort to eradicate all the existing major barriers and make the *waqf* system a fruitful one for the public benefit.

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15. Al-Quran, Sura Adh-Dhariyat, Ayat (Verse) 19.
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17. Ammer Ali Cited this hadith in Muhammedan Law, 1:192
18. *Ibid*
19. Ameer Ali, I, 193
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21. Ikhtiyār al-Dīn Muḥammad Bakhtiyār Khaljī also known as Muḥammad Bakhtiyar Khaljī was a military general who led the Muslim conquests of the eastern Indian regions of Bengal and Bihar and established himself as their ruler. In Bengal, his reign is responsible for the spread of Islam. Admired by Islamists, Bakhtiyar's conquests ushered Islamic rule in Bengal, most notably those of Bengal Sultanate and Mughal Bengal.
22. A khanqah. Is a building designed specifically for gatherings of a Sufi brotherhood or *tariqa* and is a place for spiritual retreat and character reformation.
23. Haji Muhammad Mohsin. (1732-1812) was a devout Muslim, a celibate, and a prominent Bengali Muslim philanthropist. His most notable contribution was to establish the Hooghly Mohsin College and

- the Hooghly Imambara. He also played a significant role during the great famine of Bengal in 1776–1777 by helping thousands of the victims.
24. An "Imambara" or an "Imambargah" means (House of Imam or Court of Imam); this word is a North Indian origin. An Imambara is also known as Hussaniya, Ashoor Khana. An Imambara is a place or a building with a hall where people assemble for "Majlis" (Mourning Congregations) of Imam Husain and Martyrs of Karbala.
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