

AWQAF IN INDIA

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Waqf is earmarking of a part of one's property in perpetuity for charitable purposes, as an act of piety in the eye of Allah. It is most significant for the development of any community or country. In India, the most popular objectives of awqaf include:

1. Establishing, maintaining and fostering educational institutions, hostels, libraries, sports facilities and so on;
2. Awarding of scholarships so as to promote education;
3. Providing health care, relief and financial aid to all poor, including the victims of communal riots and natural disasters;
4. Construction of *musafirkhanas* and marriage halls for community use;
5. Maintenance of mosques, *dargahs*, graveyards and consolidation of waqf properties
6. Financial support to poor widows, indigent and physically handicapped persons; arranging the marriage of indigent girls and maintenance of divorced women;
7. Payment of salary to Imams and *muezzins* as ordered by the Supreme Court of India

These waqfs are generally in the form of agricultural land, commercial and residential properties, mosques, *dargahs*, *khanqahs*, *maqbaras*, *ashoorkhanas*, *qabristans* (graveyards), *takiyas* (sufi hospices), *idgahs*, *imambaras*, *anjumans* and so on.

Possibilities of better use

The market value of India's waqf properties, as reported in 2006, was Rs. 1.2 lakh crore (Rs. 1,200 billion). Put to efficient and marketable use, they can generate a minimum return of 10 per cent, which is about Rs. 12,000 crore per annum. Experience has shown that wherever the waqf lands have been put to efficient use they have generated an average return of about 20 per cent. As per point no. 6 above, the loans provided by the Central Wakfs Council to State Wakf Boards for investment and development produced a rate of return of about 20 per cent as the 21st century unfolded [Sachar Committee Report, p.219, 2006]. Now its value and income can grow to facilitate upgrading of educational status and the economic and social wellbeing of Muslims. The Committee has, however, put a caveat saying, "The optimum utilisation of Wakf properties would require proper administrative back up by the central and state governments as well as legislative support by way of crucial amendments to the Wakf Act and some other pieces of existing legislation".

Hurdles in the fulfilment of waqf objectives

1. Inadequate empowerment of the waqf boards
2. Waqfs are treated by mutawallis as their personal properties

3. From dargahs the offerings are appropriated by mutawallis
4. Mutawallis do not come forward to seek grants or loans from Central Waqf Council
5. or Wakf Boards for the development of the waqf properties
6. Proposals for educational institutions are replaced by them for construction of shops
7. Rental is negotiated at low level in lieu of extraneous considerations

Ailments and treatments

1. Waqf properties which sub serve larger public interest should be protected as such a policy will lead to effective social cohesion and economic development. Therefore, an effort should be made not to include such properties for land acquisition.
2. The records of waqf properties are not well maintained and are prone to the vagaries of weather, mutilation and loss, and, therefore, call for immediate remedial action like digitisation under a government programme. The Central Government may consider special grants through the Central Waqf Council to undertake this task and supervise the quality of documentation.
3. In spite of listing in statutory surveys, often these properties are not registered as waqfs in revenue records and in the records of the local self governments resulting into a lot of prolonged litigation.
4. Encroachments on the waqf properties are made not only by private persons but also by the government and its agencies, either without rent or other payments of any sort or on nominal rent which has not been revised for decades. The number of private encroachments is large. They are scattered all over the country and are often involved in litigation. Focussed attention is, therefore, called for on encroachments by the State that is the custodian of the waqf interests.
5. The attitude of the state governments and their agencies has resulted in large-scale abrogation of the cherished and charitable objectives of the waqfs for which such endowments were created. In fact, encroachment by the State on the waqf lands, besides causing embarrassment to the authorities and emboldening private encroachers, has stood in the way of reform and reconstruction. As early as nineteen seventies Prime Minister Indira Gandhi wrote a letter to the chief ministers asking them to either vacate or pay to the Waqf Boards the market value of the waqf properties. Alternatively, the directive was to pay lease rent at market rates for the waqf properties encroached upon by governments and their agencies.
6. Need for fresh institutional support for optimum use of property is being severely felt. Presently, state Waqf Boards comprise Muslim MPs, MLAs and some others. They may not be necessarily equipped with the technical expertise and knowledge required to exploit the waqf resources optimally. The importance of stricter monitoring of the use of technology and modern management techniques in management of awqaf in general and the vacation of encroachments in particular cannot be overemphasised.

Measures to overcome problems

1. Assess, ascertain and identify the waqf properties in the country
2. Identify the waqf properties which have been encroached upon in various States and Union Territories and to suggest ways to retrieve the properties
3. Identify the waqf properties illegally gifted, transferred, mortgaged, leased or sold etc. and to suggest ways to fix responsibility and to retrieve the property
4. Suggest ways and measures for proper utilization of the waqf properties
5. Ascertain the status of implementation of the Waqf Act 1995 by various State Governments
6. Suggest such amendments to the Waqf Act 1995 as may be considered necessary, so as to achieve its objectives including retrieval of the waqf properties encroached upon
7. To examine the functioning of the Central Waqf Council and suggest suitable measures for making it effective
8. To look into the working of the State Waqf Boards and recommend suitable measures for their proper and smooth functioning
9. Suggest suitable measures to realise all or any of the above objects

Mechanism for the protection, management and development of awqaf in India

The legislation on the subject beginning from Waqf Act of 1913 and continuing up to the Act of 1995 proved only either quite counterproductive or largely inadequate to attain the goals. Now the Waqf (Amendment) Act, 2013 has made certain effective provisions for strengthening the waqf institution and to streamline its functioning as expected. However, the Awqaf Ministers, Chairpersons of Waqf Boards and other stakeholders need to remain aware of their assigned roles and functions assigned to them for proper implementation of the policies under the Amendment Act of 2013. This is indispensable for the attainment of the envisaged objectives of awqaf. Additionally the existing status of awqaf protection, management and development needs serious consideration and discussion to put the institution back in to its lost glory. This national seminar is, therefore, being organised to look into the relevant issues and evolve better mechanism for the protection, management and development of awqaf in India.

The discussions in conference shall mainly focus on following vital issues:

1. Encroachment and Illegal Occupation of waqf properties
2. Treatment of waqf properties by mutawallis as their personal properties
3. Identification and declaration of waqf properties - functions of tribunals
4. Strengthening of waqf administration - use of modern technologies and methods
5. Statutory waqf laws and shariah' principles applicable to waqfs - role, position and powers of mutawallis etc.
6. Development of waqf properties in India - prospects of the Waqf Development Corporation, lease rules etc.
7. Judicial trends/case law on waqfs - land reform, cultivation rights, payment of annuity etc.

8. Land acquisition - non-observance of procedures, non-payment of compensation, recovery of waqf land and other related matters
9. Any other relevant issues as may be found necessary

Detailed consideration may be given to following practical aspects of awqaf advancement:

- 1) Basic issues about awqaf protection, management and development
- 2) Waqf (Amendment) Act, 2013 and Waqf Properties (Eviction of Unauthorised Occupation) Bill 2014
- 3) Survey, identification, notification and illegal occupation or encroachments on waqf properties
- 4) Improving financial performance of Waqf institutions and Waqf Boards and bringing accountability and transparency in management of awqaf.
- 5) Deployment of waqf resources in service of community and the role of National Waqf Development Corporation (NAWADCO) in development of waqf properties.
- 6) Resource raising for development of waqf properties and issues of waqf properties under ASI
- 7) Shariah issues in waqf propertie's Management
- 8) Improving stake holders engagement in awqaf and best practices in management of awqaf.
- 9) Application of right to Fair Compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act to waqf properties and issues of acquisition under the old Land Acquisition Act
- 10)The issue of 123 waqf properties of Delhi
- 11)New leasing rules for waqf properties: opportunities & safeguards
- 12)Important case laws on awqaf and strengthening of legal system in the Waqf Boards
- 13)Waqf Tribunals: their functioning, transition from single-member to multimember and expansion of the role of the tribunals.
- 14)Role of Central Waqf Council under the new amended act as regulator

Note: A shorter version of this was delivered as welcome address by Dr. M. Manzoor Alam, Chairman, Institute of Objective Studies in a seminar on "Awqaf in India" organised by K.K. Educational & Charitable Trust, Bangalore in association with Institute of Objective Studies, New Delhi; and Karnataka State Board of Awqaf, Bangalore on June 25-26, 2015 at Hotel the Lalit Ashoka, Bangalore