

ADMINISTRATION OF WAQFS IN INDIA : SOME SUGGESTIONS

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I. Introduction

IN INDIA, there are about one lakh *waqfs*, valued at more than a hundred crore of rupees.¹ The vast resources of *waqfs* can be a strong instrument not only for the preservation of religious, charitable and philanthropic institutions but also for the educational and economic uplift of the Indian Muslims. Unfortunately, a large number of *waqfs* have succumbed to the process of decadence resulting from neglect, misuse and malversation. It is of the utmost importance, therefore, that *waqfs* should be maintained properly and their resources be spent for the purposes to which they are dedicated.

A pragmatic and empirical approach is nowhere in the affairs of the Muslims of India needed so much as in the area of *waqf* administration. The recent Aiyer Report on the Hindu religious and charitable endowments is an eye-opener to all those sincerely interested in similar institutions, whatever religious community they might belong to. The more recent appointment, by the central government, of a special committee of enquiry² for reviewing *waqf* administration gives this author a hope that something tangible would be done to put the administration of *waqfs* on a sound footing. The present paper aims at examining briefly the existing set-up of *waqf* administration in the country with a view to pointing out the drawbacks and to suggesting improvements.

II. Administrative machinery

The legislation

The subject of *waqf* concerns entries No. 10 (trust and trustees) and No. 28 (charities and charitable institutions, charitable and religious endow-

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1. These figures were mentioned by the late Humayun Kabir, former Union Minister of Scientific Research, Cultural Affairs and *Waqfs*, while addressing the Muslim members of Parliament, on 6 September, 1963 in New Delhi. See the mimeographed circular issued by the *waqf* section (as it was then called), Ministry of S.R. & C.A., New Delhi, September 1963, p. 1.
 2. The Waqf Inquiry Committee appointed under Resolution No. F. 10 (4)/69-Waqf, dated 9 December, 1970, Ministry of Law, Legislative Department, Government of India. The Committee consists of three persons, who are members of Parliament.

ments and religious institutions) in the Concurrent List under the seventh schedule of the Constitution. Supervision over the administration of *waqfs* is, therefore, the responsibility of both the central as well as the state governments.

The (central) Wakf Act 1954 is in force all over the country except the states of West Bengal, which has its own Wakf Act (No. XIII of 1934); Bihar, where the local Wakf Act (No. VIII of 1947) applies; Uttar Pradesh, which has the U.P. Muslim Wakf Act (No. XVI of 1960); Maharashtra, (excluding the districts of Aurangabad division) and, Gujarat (excluding the district of Kutch). In the last two states all endowments including *waqfs* are governed by the Bombay Public Trusts Act 1950. In Kutch and Aurangabad divisions, however, the central Wakf Act 1954 applies. In Rajasthan, the central Act is not applicable to the Dargah of Ajmer which is governed by a special central law, namely, the Dargah Khwaja Saheb Act 1955.

The central government has a special *waqf* section, headed by a deputy secretary attached to the Ministry of Law, to look after the *waqf* affairs in the country.³ The state governments have generally entrusted the supervision over administration of *waqf* to the revenue secretaries or some other senior officials. In discharging its functions, the central government is aided and advised by a central *waqf* council constituted for this purpose by the central government under the provisions of the Wakf Act 1954. No such body exists under any of the state *waqf* laws. The main responsibility of directly supervising the administration of *waqfs*, however, is that of *waqf* boards which are constituted in every state and union territory under various *waqf* Acts. The primary function of the boards is to maintain a close watch on the actions of *mutawallis*, who directly administer the *waqfs*. A brief and critical appraisal of these administrative and advisory agencies follows.

The *waqf* section

Up to 1958, there was no *waqf* section and the *waqf* affairs were the concern, first, of the union Ministry of Home Affairs, and later, of the Ministry of Law. After the enactment of the Wakf Act 1954 the need for a separate section was felt to supervise *waqf* administration. The *waqf* section was, therefore, created in 1958. The officer-in-charge of the *waqf* section (a senior I.A.S. officer) undertakes extensive tours for inspecting *waqf* boards for making on-the-spot studies of various problems facing *waqf* administration.

At present the Wakf Act 1954 does not confer any power on the central government to call for any information or papers from the state *waqf* boards.

3. Although the *waqf* section is attached to the Ministry of Law, yet the Minister of Law has nothing to do with it. The *waqf* affairs are, at present, looked after by two Muslim ministers having some other portfolios. See Circular No. 55/1/1/71-OF, dated 12 May, 1971 issued by the Cabinet Secretary, Department of Cabinet Affairs, Cabinet Secretariat, Government of India.

Consequently, the *waqf* section sometimes finds it impossible to function effectively. It is, therefore, suggested that a clause granting power to the central government to call for information and records from the state *waqf* boards be added to the (central) Wakf Act 1954. In case of non-compliance by a board, the central government may be empowered to take appropriate action in consultation with the state government concerned.

The state government should also take more interest in *waqf* affairs by nominating competent persons to the state *waqf* boards, keeping a watch on the activities of the board and maintaining close contacts with the Government of India and the central *waqf* council. In a recent case,⁴ failure of the Mysore Government to take action for more than three years on a petition regarding the affairs of the Mysore *waqf* board was criticized by the Mysore High Court.

The central waqf council

Section 8A of the Wakf Act 1954 provides for the establishment of a twenty-member central *waqf* council "for the purpose of advising (the central government) on matters concerning the working of boards and the due administration of *waqfs*".⁵ Since its establishment in 1965, the council has met nine times and has constituted fourteen committees. Even a casual study shows that by constituting too many committees, the matters which could have otherwise been speedily dealt with by the council itself or by its secretary, were unnecessarily allowed to linger on for years together.⁶ Efforts must be made to improve this situation. The central *waqf* council has to work hard in order to make itself more effective and useful. There should be more frequent meetings of the council than the present one or two meetings per year. The council's recommendations should be followed up by its secretary so that their implementation may be better secured. The council should raise substantial amounts through donations and grants for financing educational schemes. Similarly, it should start productive pilot projects of its own which could build up its own finances and set a healthy

4. *Hajee Abdul Majeed Khan v. State of Mysore*, W.P. No. 1494, decided on 19 August, 1970 (unreported).

5. Every *waqf* board constituted under the Wakf Act 1954 is required to pay annually to the Council 1/6 of the 6% contribution it realizes from *waqfs* in the state. The union minister in charge of *waqfs* acts as the ex-officio chairman of the council. In view of his multifarious activities, he could hardly be expected to devote much time to attending routine matters concerning council's activities. The effectiveness of the Council, therefore, much depends upon the dynamism, drive, initiative and experience in *waqf* affairs of the council's secretary.

6. For example, the loan scholarship committee, the committee on securing loans for the development of urban *waqf* properties, and the committee on mosques under the archaeological department, were unnecessary because a note for the council's consideration on these matters could have easily been prepared by the secretary or any member of the council.

example for *waqf* boards. The council should, it is suggested, acquire the services of a consultant engineer to help the *waqf* boards in developing urban *waqf* properties. The procurement of necessary finances for such ventures could be negotiated by the secretary of the council with various banking institutions. Moreover, the council should be empowered to issue bonds and debentures for procuring necessary finances. Even if ten thousand *waqfs* in the country could be persuaded to purchase bonds or debentures of Rs. 100 each, a sum of ten lakhs would be available for development programmes. Further, it would be useful to make the council a body corporate with powers to borrow and transfer any *waqf* property subject to appropriate restrictions to be laid down in the Wakf Act 1954.

Waqf boards

At present, every state and each union territory has a *waqf* board constituted either under the central Wakf Act or the corresponding local law. The boards may broadly be divided into two categories: (i) those constituted by members nominated by the local governments (as constituted under the Wakf Act 1954) and (ii) those constituted partly by elected members and partly by nominated ones (as in Uttar Pradesh, Bihar and West Bengal).

Neither the system of nomination nor of part nomination and part election have succeeded in putting *waqf* administration on a sound footing. The functioning of the *waqf* boards is far from satisfactory and calls for replacement of the present outmoded set-up by a new vigorous and effective system. We may have a powerful *waqf* commissioner, competent to perform all functions entrusted at present to the *waqf* boards and a board consisting of four experts nominated by the government concerned and presided over by the commissioner. The board may determine the objects on which the surplus *waqf* funds should be spent, give assent to compromise of suits by or against *mutawallis* and appoint them in disputed cases and in cases where no suitable person within the terms of the *waqf* deed is available.

The present 6% rate of contribution which the boards realize as administrative charges from every *waqf* is inadequate. The boards have to pay one-sixth of this to the central *waqf* council, the remainder is inadequate to engage efficient and adequate office and field staff or to initiate any constructive scheme. Most of the enactments governing Hindu endowments prescribe a 7% rate of contribution (even though the bodies concerned do not pay anything to any other superior body). It is, therefore, suggested that the rate of contribution by the charitable *waqfs* having annual incomes of Rs. 1000 or more, be raised to 9% of which 1% may be earmarked for granting educational scholarships.

The huge amount of arrears of contribution lying unrealized at present⁷ should not be written off and the *waqfs* should be made to pay it. Section 59 of the Bombay Public Trusts Act 1950 empowers the charity commissioner to direct the bank in which money belonging to a public trust is deposited, to pay the amount of contribution from such money to the commissioner. This provision may be usefully adopted by the various laws of *waqf* administration.

In the U.P. Muslim Wakf Act 1960 there is a provision which directs the state government to deduct the contribution to the *waqf* board from the annuity payable to all *waqfs* covered by land reform laws, and to pay it directly to the board. This provision if adopted by other *waqf* laws will go a long way in minimizing the arrears of contribution.

In order to build up their own finances, the *waqf* boards must pay adequate attention to the development of urban *waqf* properties under their direct management. In order to remove the hesitation on the part of lending agencies to advance money on the security of *waqf* property because of its inalienability, a clause may be added to the *waqf* laws empowering the *waqf* boards concerned to mortgage such properties, with a rider that in case the mortgagee forecloses, the board should be responsible to purchase fresh property of the same value and to dedicate it for the same object as the old one.

If these amendments and improvements are made, it will be the fulfilment of those hopes which were raised when the Waqf Act 1954 elevated the *waqf* boards from being mere instruments of administrative supervision to the level of creative agencies for educational, social and economic development of the community.

Waqf tribunals

One of the serious challenges faced by the *waqf* boards in their job of day-to-day supervision over the administration of *waqfs* is heavy expenses of litigation. Creation of *waqf* tribunals is necessary to stop the constant drain on *waqf* income on account of protracted litigation.

Section 72 of the U.P. Muslim Wakfs Act 1960 requires the *waqf* tribunals to follow the procedure provided in the Civil Procedure Code 1908 and the Indian Evidence Act 1872. This is what brings the delay and expenses of litigation into proceedings before the tribunals. Almost every order passed by the *waqf* board is challenged and referred to the tribunal by the *mutawallis*. They do so in order to obtain stay orders for continuing in office till the final adjudication. Experience shows that *waqf* tribunals in U.P. generally take not less than three years to decide a reference. This defeats the very purpose of establishing the tribunals. The only way out is

7. At present the *waqf* boards in the country have to realize more than thirty five lakh rupees as arrears of contribution.

to lay down a simplified procedure which may conform to the four recognized principles of natural justice, namely, notice; hearing; impartiality; and orderly course of proceedings. Only one tribunal for a state will be enough and it may visit divisional headquarters of the state to dispose of the local cases.

District waqf committees

The *waqf* boards of Mysore, Andhra Pradesh, Tamil Nadu, Madhya Pradesh, Bihar and Kerala have set up district *waqf* committees in many districts⁸ in order to supplement the efforts put up by its "field-staff" so as to maintain a close check on *mutawallis*, and to supervise and safeguard the *waqf* properties and the interest of the board in the districts. In response to a questionnaire sent by this author to various *waqf* boards, six out of eight respondents feel that the district *waqf* committees are not functioning effectively. The majority of the respondents feel that instead of setting up *waqf* committees, the boards should employ inspecting staff and the secretaries of the boards should take extensive tours to inspect the working of the field-staff. However, it must be conceded that no efforts made by field-staff could equal the efficiency of *waqf* committees, provided they are manned by right persons.

The powers of the district *waqf* committees should be carefully determined so that they may not clash with those of the *waqf* board. The boards should be encouraged to give token grants to these otherwise honorary committees, to meet their necessary expenses.

Mutawallis

Mutawallis are the basic unit of *waqf* administration, which cannot be placed on a sound footing unless they discharge their obligations conscientiously. No doubt, some *mutawallis* are doing so, but what has to be ensured is that this insignificant minority is turned into a substantial majority.

The Wakf Act 1954 and the corresponding Acts of Bihar, Bengal and U.P. place many checks on *mutawallis* to prevent them from misappropriating *waqf* funds and properties. But very often these statutory checks prove inadequate. Sections 36A and 36B were added to the Wakf Act 1954 in 1964 to check unauthorised alienation of *waqf* properties by *mutawallis*. Part of section 36B reads as follows :

If the board is satisfied, after making an inquiry in such manner as may be prescribed, that any immovable property of a wakf entered as such in the register of waqfs maintained under section 26, has been transferred without the previous sanction of the Board in

8. See Government of India (*waqf* section), *Review of Waqf Administration*, 2 (1962-63).

contravention of the provisions of Section 36A, it may send a requisition to the collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

It is evident that the condition for the exercise by the board of the power given by this section is that such property should be "entered as such in the register of *waqfs*" maintained under section 26. There may be several cases in which *waqf* properties are not so registered. There is, thus, a need for the amendment of section 36B.

The fact that section 36B has retrospective effect greatly reduces its usefulness. The section was included in the Waqf Act 1954 through an amendment which became effective on 10 October, 1964. Since a great majority of the cases of unauthorised alienation had occurred prior to October 1964, no improvement in the position can occur as a result of the addition of section 36B. It would be much better if section 36B is made retrospectively operative relating to alienations made after 14 August, 1947. Further, in view of the great utility of this provision, it must be adopted in all those states where at present it does not exist.

The Waqf Act 1954 and so also the Bihar, Bengal and U.P. *waqf* laws, provide for the imposition of fine on a defaulting *mutawalli*. These provisions seem to be illogical. Any amount of fine imposed on a *mutawalli* will come not out of the pocket of the *mutawalli*, but from the income of the *waqf* itself. So, in the ultimate analysis the income of the *waqf* is used to its own disadvantage. It may, therefore, be worth considering whether instead of imposing fine on a *mutawalli*, he should be placed under suspension for some time and a receiver or care-taker appointed in his place. This may have considerable effect on the *mutawallis*.

The *mutawallis* have to be educated to realize that they are holding a sacred trust and that they must exhibit a high standard of rectitude. This can be achieved by issuing booklets and folders containing instructing materials.⁹ The *waqf* boards may also organise annual conferences of *mutawallis* where the participants may discuss their difficulties and be given advice and guidance.

Family waqfs

Today, family *waqfs* (*waqf ala'l-aulad*) are faced with many problems. Neither is their number in the country known nor is there any effective administrative supervision over them. The callous indifference of beneficiaries and *mutawallis* towards the maintenance and improvement of such *waqfs* has thrown them into a pitiable condition. What really discourages

9. One such pamphlet entitled *Waqf Administration* and two other booklets were issued by the Government of India. Madras state *waqf* board has also published two such useful booklets entitled: *Code and Conduct of Mutawalli* and *Audit of Waqf Accounts—Instructions*.

Muslims to create family *waqfs* is the growing awareness of the disadvantages of tying up property in perpetuity where succeeding generations obtain smaller fractions of the income, part of which is often squandered in vexatious and frivolous litigation and duly 'absorbed' by unscrupulous lawyers.¹⁰

The adverse effects of the laws of estate duty, income tax and land reforms, *etc.*, are crippling the institution of family *waqfs*. It is high time Muslims of India made a choice between this fast decaying institution and something more useful. It may not be advisable to abolish altogether the institution which finds strong religious and public support and has successfully salvaged many families and properties from ruin, but its tenure and texture may be changed. A possible substitute may be a limited kind of family *waqf* created for a specified time, say, for a period of two generations, at the end of which it may be reconstituted provided the beneficiaries agree to do so.¹¹

III. Conclusion

In order to make the *waqfs* a useful institution for the social, economic and educational uplift of the Muslims of India, effective steps are to be taken to prevent the surplus *waqf* income from being wasted on frivolous matters like distribution of sweets, illuminating the *dargahs* or unnecessarily decorating the places of worship. The surplus income of all *waqfs* must be used for constructive purposes. If all the surplus *waqf* money in the country is pooled together and spent on granting scholarships to students, running schools, colleges and professional institutes and removing unemployment it will not only improve the image of *waqfs* but also help raise the Muslims of India from the abysmal depths of economic and educational backwardness into which they have fallen.

10. Fyzee, *Outlines of Muhammadan Law*, 258 (1964).

11. See S.A. Majid, 'Waqf as Family Settlement among the Muhammadans', IX *Journal of the Society of Comparative Legislation*, 138.