

The Issues related to *Awqāf* ♦

Establishment of Endowments (*Awqāf*), with some welfare purpose in view, has been considered a very pious act in Islam, which almost enjoys a perennial reward from the heaven. There exist elaborate guidelines in the Islamic jurisprudence regarding establishment, maintenance and governing Endowments in a Muslim society. However, several new issues have emerged in the past centuries especially in countries where the Muslims were politically dominant some time back and now have become a minority, such as in India. Therefore, the need was felt to clarify various doubts on the matter and provide explicit directives pertaining to *Awqāf* properties spread in various parts of the country. The theologians propounded the following guiding principles as regards Endowments in their Tenth Seminar held at Mumbai.

22.1 It is indeed an immensely rewarding act and a *Sadqa-e-Jaaria* (perpetual charity) in Islam to do deeds of welfare and to endow (*Waqf*) land, property and riches for charitable purposes. That is precisely why the Muslims all over the world, even in the remotest parts of the globe, endow land, property and riches for welfare purposes. The history of Islam and Muslims is considerably old. The Muslims have dwelt in different parts of the country for centuries together. In this perspective, a number of Muslim *Awqāf* have been operative on religious, reformatory and charitable lines in almost every nook and corner of the country. It is indubitably the foremost responsibility of the Muslims of India and that of the Indian government to protect these *Awqāf*, to work for their development and expansion, to spend income of the '*Awqāf*' in accordance with the intentions of the Endower (*Wāqif*) and the last but not the least to get the *Awqāf* properties liberated from the clutches of usurpers.

22.2 The Islamic viewpoint on *Awqāf* is that they are permanent and they certainly should not be sold or transferred under normal circumstances. In this regard, Prophet Muhammad (pbuh) said: "It can neither be sold off, nor gifted away and nor can be inherited"

Therefore, efforts should be made keeping it in mind that the *Waqf*, apart from maintaining and looking after its properties, ought to reap profits and grow. In this connection, appropriate rules and laws need to be framed which could ensure complete protection and sanctity of the institution called *Waqf*; besides the utility, enhancement and growth of the *Waqf* taking due care of the objectives and intentions of the endowers (*Wāqifs*).

♦ 10th Fiqhi Seminar (Hajj House Mumbai) 24-27 Oct 1997.

22.3 We notice that the mosques garner greater sanctity and veneration in comparison to other *Awqāf*. In this regard, the sale and transfer of mosques is not valid under any circumstances. It is strictly prohibited. Even if the mosque happens to become deserted and forsaken with *Salaat* (Prayer) not being performed there, still the piece of the land where such a mosque stands remains a mosque, whatsoever be the situation. Moreover, it still commands the sanctity and veneration of a mosque. Sincere efforts ought to be carried out to reconstruct or repair the mosque and rehabilitate it afresh.

Allah says:

"وَأَنَّ الْمَسَاجِدَ لِلَّهِ فَلَا تَدْعُوا مَعَ اللَّهِ أَحَدًا"

And that the mosques are for Allah; Therefore, do not call upon anyone else in them along with Allah. (Jinn: 18)

"إِنَّمَا يَعْمُرُ مَسَاجِدَ اللَّهِ مِنْ آمَنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ"

Only he should visit or tend God's houses of worship that believe in God and the Last Day. (Tauba: 18)

22.4 It is an enormously sinful act and a cruelty of the worst kind to prohibit people from offering Prayers in a mosque.

Allah reveals:

"وَمَنْ أَظْلَمُ مِمَّنْ مَنَعَ مَسَاجِدَ اللَّهِ أَنْ يُذَكَرَ فِيهَا اسْمُهُ وَسَعَى فِي خَرَابِهَا"

And who could be a greater wrongdoer than the one who forbids the mention of Allah's name in places of worship and strives for their ruin? (Baqarah: 114)

In the eyes of Shariah, "Once a mosque is always a mosque", no matter for how long period the Muslims have been disallowed from offering *Salat* inside the mosque or it has been forcefully usurped or the mosque building have been demolished.

22.5 According to the Shariah, it is practically an act of tyranny to stop the offerings of *Salat* in archaeologically protected mosques.

The Almighty says:

"وَمَنْ أَظْلَمُ مِمَّنْ مَنَعَ مَسَاجِدَ اللَّهِ أَنْ يُذَكَرَ فِيهَا اسْمُهُ وَسَعَى فِي خَرَابِهَا"

And who could be a greater wrongdoer than the one who forbids the mention of Allah's name in places of worship and strives for their ruin? (Baqarah: 114)

22.6 During the tragic time of partition, a sizable part of Muslims from India (especially from Punjab, Haryana, Delhi, and Western U. P.) migrated to Pakistan leaving behind various kinds of huge *Awqāf* (mosques, madrasas, monasteries, graveyards, inns, etc.) in these areas. The local Muslim populace, whatever their number is, should take the responsibility of maintaining and protecting these *Awqāf* making them profitable and functional. Also, the respective Waqf Boards should shoulder responsibilities in protecting and looking after the *Awqāf* in places and localities, which have been eventually deserted by the Muslims. As a corollary to it, the Muslims from neighboring localities need to strive for their protection.

22.7 In case of those *Awqāf*, excluding mosques situated quite distant to the nearest Muslim habitation, if appears that it would be justifiably difficult to rehabilitate and maintain them besides failing in complying with the objectives laid down by the *Waqif* (endower) and if fear of usurpation of the *Awqāf* property is looming large, then it would be correct and advisable to sell off those *Awqāf* and establish the Endowments of similar nature at other places under the above-mentioned circumstances provided that:

- (a) It has been thoroughly investigated that those localities or places have been wholly deserted by the Muslims and there exists no probable chance of the Muslims resettling in these places once again.
- (b) The endowed property is sold off at rates, which are at par with its market value. Of course, it should not be sold off at such a meager price, which cannot be estimated by experts.
- (c) The Caretaker (*Mutawalli*) or the officer-in charge of the Endowment should not sell off the Endowment to his close relatives, hoping to reap some sort of benefit from the deal. In this way, he should also not strike a deal with a person whom he is indebted to.
- (d) The endowed property should be most preferably bartered with another property instead of purchasing it for a monetary sum. However, if the latter course could not be adopted due to any legal or practical impediment, then the immovable property should be purchased out of the proceeds as early as possible for establishing the alternate *Waqf*.
- (e) The permission for the exchange or sale of *Waqf* should be given only after a thorough investigation of the conditions of the transaction by a Shariah Qazi or a Shariah Committee of *Awqāf*, comprising of pious and God-fearing scholars, Muslim think-tanks and jurists professionally acquainted with the laws appertained to *Awqāf*. The permission of the respective Waqf

board or the Waqf officer is not enough for the sale or exchange of the *Awqāf* properties from the Shariah point of view. The permission given by the Waqf Tribunal would be binding and shall hold good from the Shariah angle, once it has sought the opinions of at least three renowned *Muftis* (religious scholars) and acted in accordance with their advices.¹

- 22.8 a) The proceeds of deserted and desolate *Awqāf* should be spent as per the intentions and objectives of the endower as laid down in the Deed of Endowment (*Waqfnaama*). If such heads no longer exist in which the money can be spent the nearest channels should be considered. However, it would be unfair and unjust to spend the proceeds on other heads being unmindful of the endower's intention and motives.
- b) In case the deserted and desolate *Awqāf* are to be sold off, then it would be incumbent to establish other *Awqāf* in place of them.

22.9 It would be obviously right and permissible to use the surplus *Waqf* land endowed to the mosque in establishing a madrasa or a school for religious education rather than spending frugally on further constructions and expansion of the mosque which it does not require for the time being nor at a later stage in near future, provided that:

- (a) The mosque remains deserted and the establishment of a madrasa or school might possibly act as a catalyst in making the mosque functional and rehabilitated once again.
- (b) There exists an enormous fear of forceful usurpation of the surplus *Waqf* land endowed to the mosque and the establishment of a religious madrasa or school could bring the mosque out of such a danger.
- (c) There is hardly any permanent or proper bandobast in sight for the establishment of a religious madrasa or school for Muslim children in a place or locality where a mosque does exist. However, before taking such a step, the consent of the *Mutawalli* (Caretaker) or the managing committee of the mosque in question must be obtained. Furthermore, it would be certainly better if the mosque committee itself goes ahead and makes adequate arrangements for such a Madrasa or school.

22.10 The endowed lands for the mosque, which are supposed to generate income for the mosque, can be given away at an appropriate rent for the establishment of institutions imparting religious, contemporary or technical

¹ It is worth mentioning here that the aforesaid properties, viz. shops, houses, land, etc. which are sold off and the new shops, houses, land and property purchased against them shall also fall under the same objectives of the *Waqf* as had been in the first case.

education. Nevertheless, the agreement and terms should be finalized taking due care to ensure that the ownership rights of the mosque are not jeopardized.

- 22.11 Those mosques which have a much larger income than their total expenditures and whose incomes are going on accumulating endlessly year after year and there is virtually no probability for the mosque concerned to utilize such an accumulated surplus wealth in the near future, then under such circumstances, the surplus proceeds of the mosque should be diverted to other places (where there is a need) for constructing a mosque or to help the dilapidated and needy mosques because even today there are numerous dwellings in India which are devoid of any mosque or religious school. The Muslims crave to hear the call for Prayer (*Adhan*) in such places. The excess funds of the rich mosques ought to be utilized for building mosques in such areas.
- 22.12 In addition to this, an important head of expenditure from the funds obtained from the lands and properties endowed for the mosque comprises of the *Imams*, *Muazzins* and other workers. The participants of the Seminar do feel that in certain instances, the *Imams*, *Muazzins* and others do not get adequate salaries despite the mosques having sufficient income. Henceforth, it is urged to the members of the managing committees of mosques to provide sufficient honorarium and perks to the *Imams*, *Muazzins* and other workers of the mosque.
- 22.13 The surplus income of other *Awqāf* which they no longer need for the time being or in the near future, the security and protection of which is a growing headache for the *Mutawallis* and the fear of usurpation looms large over it from the government machinery or from unrighteous or unscrupulous persons, then the surplus amount should be spent for that particular purpose only. To site an example, the surplus income of the Madrasas needs to be spent for the causes of Madrasas alone, that of inns for inns and the like.
- 22.14 In a situation where the income of a *Waqf* is quite sufficient, it is not suitable to sell it off just for the purpose of generating more and more income because there is ample risk of loss of the original *Waqf*. Albeit, if the income generated out of the endowed property is so insufficient and meager that even the necessary expenses of the *Waqf* property remain unfulfilled and funds need to be borrowed to make it functional and, moreover, there lies no other alternative in question to enhance its income under such grim circumstances, the endowed property might be sold off under the conditions mentioned in Clause 7 (b, c, d & e) above to buy a more beneficial and profitable property. However, if the Endower is alive, his consent should also be obtained before striking a deal.

- 22.15 The *Awqāf* buildings which have become old and are in a dilapidated condition and the *Awqāf* does not have enough funds of its own to repair it, neither is there any promising chance in the near future, then the *Mutawallis* of the *Awqāf* can, enter into an agreement with some builder with a precondition that he should construct the building and then keep the whole building or a part of it on rent for a certain defined period of time. In this way he would get the benefits of his investments. Nonetheless, it would be of course, inappropriate to pass off the ownership rights of one or two storeys of a multi-storied building to the builder forever.
- 22.16 In case, there is a paucity of funds for the construction of a boundary wall or fence around a graveyard, for the sake of its protection, shops can be allowed to be constructed in it's premises. However, the passage to these shops should be from outside the graveyard. For this purpose, the rent can be collected in advance and the money can be used for constructing the shops. The income from these shops should be utilised for the security and other requirements of the graveyards. However, it should be initially ensured that the construction of the shops might not affect those graves whose identities still exist.
- 22.17 The Seminar requests the Secretary General of the Islamic Fiqh Academy, Qazi Mujahidul Islam Qasmi, to form a committee which would present a memorandum to the Parliamentary Committee formed by the Government of India for Muslim *Awqāf* for recommending necessary amendments in the *Waqf* Act along with valuable suggestions. The committee ought to execute its plans as soon as possible and represent the Academy in this connection.