THE SOCIO LEGAL SIGNIFICANCE OF FAMILY WAQF AND ITS REVIVAL UNDER STATE CONTROL

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ABSTRACT

Similar to waqf for the benefit of the general public, the numerous family awqaf in Islamic lands too played a key role in upraising the economic standard of the society, as these catered to the needs of extensive families and clans for generations. Various degrees of restrictions on the creation or functioning of family awqaf in many countries have lead to their gradual disappearance. Faults and excesses of waqf managers that defeated the objectives of the waqf and resulted in unlawful enrichment have been cited among the main reasons for justifying the extension of state control. Family awqaf could be better managed based on an institutional format, while safeguarding their private and local nature. Providing the necessary legal regulation and executive framework protecting against misuse by administrators and others, while allowing their operation as decentralized autonomous institutions without state interference, have been suggested as means of reviving the role of family waqf.

Keywords: Family waqf, Islamic law, endowment, development

Introduction

A large number of family endowments (*waqf ahli*) exist throughout Islamic lands as well as in countries where Muslims are a minority. As at present, there is no precise data available regarding the number or size of family awqaf (plural of waqf) that are found in Islamic and non-Islamic countries, as the surveys conducted have generally not been inclusive. In countries such as India, such awqaf have been purposely omitted from extensive surveys carried out on the awqaf in the country, as they have been treated as non-charitable avenues under the influence of the English Law of Trust that regards family trusts as non-charitable.[1] As such, family awqaf have been deprived of the privileges and immunities granted to charitable awqaf.

Waqf is a versatile mechanism that could be used at various levels for multifarious functions and objectives recognized as permissible in Shari'ah. From among the two major categories of waqf recognized as valid in shari'ah is an endowment in favour of one's relatives and progeny. Instead of assigning the beneficiary as a class of people who do not have a particular family relationship with the endower, here the waqf is expressly created for the benefit of one's family and descendants, either in an all-inclusive and general manner, or with qualifications restricting its scope.

In this context, after tracing the available literature on family waqf, the current paper discusses the essential nature of such awqaf with regard to their position in Islamic law and society. It discusses how state control extended to family awqaf which were private institutions in essence, and sheds light on how they contributed to the society. The paper attempts to shed light on the degeneration that took place in the recent past, and explores measures that could rejuvenate and revive its socioeconomic role.

Family waqf in Islamic legal sources

Information on family awqaf and relevant law has to be obtained usually from the comprehensive *fiqh* manuals and *fatawa* collections of the major schools of Islamic law and other material dealing with various aspects of waqf in general, as well as from the legal decrees that were issued in the past century leading to their restriction/abolishment in various countries. On the whole, literature devoted to the specific topic of family waqf is hard to be traced, as the latter is discussed in the relevant literature along with other types of awqaf. Some conferences on awqaf contain material that address family waqf, albeit indirectly. Contemporary legislations on waqf usually restrict their scope to public endowments, i.e. *waqf khayri*. The Seminar on Awqaf Experiences in South East Asia held in May 1999 resolved that since waqf includes *waqf alal-aulad*, hence waqf legislation must also cover family awqaf instead of confining regulatory measures to non-family waqf, in order to protect the interests of future generations of beneficiaries. *Manhaj al-Yaqin fi Bayan anna al-Waqf al-Ahli min al-Din*, by the renowned Egyptian scholar Muhammad Hasanayn Mahloof addresses the nature of such awqaf and their importance in Islamic law. It sheds light on the arguments put forward by the Egyptian government for the abolishment of family awqaf with responses to them both from the Islamic as well as from a social perspective. The Manual of Egyptian Judicial Orders details the laws pertaining to awqaf with special reference to family waqf, and provides an important insight into their abolishment. In addition, various *fatawa* have been issued by al-Azhar, the Supreme Authority for Religious Affairs in Saudi Arabia, the Council of Islamic Scholars of Yemen, as well as by scholarly bodies in various other Muslim and non-Muslim countries pertaining to the legal nature of family awqaf, while addressing its abolishment that took place in a number of countries. Awqaf experiences in South Asia by Prof. Syed Khalid Rashid addresses family waqf briefly, yet provides arguments supporting its revival.

[1] Syed Khalid Rashid, *Protection, Maintenance & Development of Awqaf in India*, xi.

Endowments, rulers, and community: Waqf al-Haramayn in Ottoman Algiers by Miriam Hoexter discusses the awqaf in Algeria dedicated to the Haramayn Sharifayn in Saudi Arabia, indirectly alluding to the flourishing nature of the family awqaf that were found in abundance in Algeria and other Muslim lands. In addition, some conference papers on related issues written by contemporary writers as well as various internet sources provide information about the past and existent endowments in various Muslim lands, among which are family awqaf, and issues relevant to them.

Nature and background of waqf ahli in Shari'ah

A waqf formed for the benefit of the relatives of the endower, his children, grandchildren and progeny (*dhurriyyah*) is known in Islamic law as *waqf ahli* (family waqf) or *waqf dhurri/zurri*. In contrast, endowments for the benefit of avenues of public welfare and particular segments of the society in general such as mosques, educational institutions, scholars, and the poor have been known as *waqf khayri* (public welfare or charitable waqf).[2] In family waqf, the first beneficiaries of the endowment are specific persons as given above, even though it may be assigned to an avenue of public welfare after them, whereas in public welfare waqf, the first beneficiary is specified as an avenue of public welfare, even though it may be assigned to specific persons or a group thereafter.[3]

Imam al-Shafi'i says that he had been informed of eighty companions from among the *ansar* who had donated restricted donations, i.e. Creation of awqaf was a practice widespread among the companions of the Holy Prophet (*sal.*), to such an extent that it has been narrated by Jabir (*rad.*) that there did not remain any one from among the companions who was capable but that he created a waqf. waqf.[4] It appears that many of such awqaf were assigned for the benefit of the relatives and progeny of the endowers, together with other beneficiaries or in an exclusive manner. A number of awqaf created by prophetic companions, some with the express approval of the Holy Prophet (*sal.*) had the relatives of their endowers as their beneficiaries. Thus, in one of the first endowments of this nature to be created in the history of Islam, the Holy Prophet (*sal.*) himself had directed the companion Abu Ùalhah (*rad.*) to assign it to his close family.[5] However, scholars have upheld that the first waqf for family was created by 'Umar (*rad.*), when he assigned a land that fell into his share from the lands captured at Khaybar as an endowment for the benefit of the poor and the relatives, in freeing slaves, for *jihad*, and for travellers and guests.[6]

As far as Islamic law is concerned, family awqaf are referred to as such only because of the distinct nature of the primary beneficiaries of these who are related in some way to the endower, as against other awqaf where the primary beneficiaries are not distinguished as such. Apart from this, there is no difference among the two categories, and both are treated as recommended avenues of voluntary gratuitous transfer of benefits. This fact is acknowledged by the critics of Islamic law, who recognize that "under the Islamic law of waqf, the benefits accorded to family members would themselves fulfil a charitable end."[7] As discussed below, family awqaf could even be considered superior avenues of charity, as they endeavour to prevent the descendants of the endower from becoming needy of others, thus eliminating need and poverty at root. However, some difference is noted with regard to family waqf from other forms of charity, in that the former could be permissible for the descendants of the Holy Prophet (*sal.*) in some forms, as against the latter.[8]

It is established that the creation of awqaf for the benefit of one's relatives and descendants was an original innovation by Islam, as affirmed by the Encyclopaedia Americana.[9] It was not known in western legal systems until the latter part of the 20th century. It is evident that the creation of a waqf for the benefit of family members as advised by the Holy Prophet (*sal.*) was based on revelation and not on any information he had regarding similar institutions among the Egyptians, Greeks or Romans, as there is hardly any possibility of his having known about public institutions among them. Moreover, Arabs are not known to have had any public foundations prior to Islam, as reiterated by Imam al-Shafi'i, who had stated that the legal concept of waqf was unknown in the period of *jahiliyyah* i.e. the pre-Islamic period of ignorance.[10]

Forms of declaration of family waqf

An area of special importance in the context of family waqf concerns the waqf declaration made by the endower and its legal significance. In their effort to conform to the aspirations of the endower in creating the waqf, scholars have taken especial pains in discussing the relevance and scope of the text of the endower in specifying the beneficiaries of the endowment created by him or her. Some of these rules that pertain to the text of family waqf are given below succinctly.

An important aspect in designating the beneficiaries relates to terms used by the endower in specifying the parties, whether their entitlement to the benefits of the waqf would be concurrent or whether various parties would become entitled in succession. In this regard, scholars have ruled that when the endower says "I have made this house an endowment for my children (*awlad*), and

[2] Mustafa al-Bugha et al., 2, 240.
[3] al-Zuhayli, vol. 8, 159.
[4] "Restricted donations" (*sadaqat muĺarramat*) is a term used by Imam al-Shafi'i to refer to awqaf. *Al-fiqh al-Manhaji*, vol 2, 215.
[5] *Al-Bukhari* (605), Chapter on Bequests.
[6] *Al-Bukhari* (2586), Chapter on Stipulations; *Muslim* (1632), Chapter on Bequest. al-Haythami, 25, 308.
[7] Jeffrey A. Schoenblum, op. cit.
[8] Al-Muzani, 180.
[9] *Encyclopedia Americana*, vol. 11, 646, as in Kahf, 1, 18.
[10] al-Haythami, 25, 308.

the children of my children," all them would be entitled to the endowment together, concurrently. Its income and benefit would be divided among them equally, without a difference between a male and a female or a child and a grandchild, as the text is not indicative of preference of any over the other. However, if he had mentioned that the house is "an endowment on my children," the grandchildren would not be entitled to the waqf, as the term "child" does not apply to them directly. This is when the endower had children as well as grandchildren. If he had grandchildren only, they would be included in the meaning and be entitled to the waqf. If the endower had said that "this garden is an endowment on my progeny (*dhurriyyah*)," or "on my descendants (*nasl*)," or "on my posterity (*'aqb*)," it would include the children of daughters as well as the children of sons, near and distant, male and female, as the text encompasses them all.[11] In the above instances, where the endower had specified the beneficiaries as the grand children who carry his lineage, the waqf is assigned to the grand children through his sons to the exclusion of children of daughters, as the latter would carry the lineage of their own fathers.[12] The ×anbali school records some difference regarding whether the children of daughters would be included when the term grand children is used.[13] There is a degree of reprehension in designating a waqf for the male children to the exclusion of females, despite of its validity if done, as it resembles the pre-Islamic practice of depriving the daughters a share in the inheritance of their father.[14] If the endower says that "I have endowed my properties on the poor among my relatives," it would include all those who are related to the endower in lineage, both the near and the distant, of males and females, irrespective of whether they inherit the endower, are among close relatives with whom marriage is prohibited (*mahram*), or otherwise. The income from the endowment will be divided among them equally, irrespective of the age or gender, as the term is equally applicable to all of them. Endowment is permitted for the benefit of relatives who are non-Muslim *dhimmis*, as their capacity to ownership of property is recognized. It is narrated in hadith that Sayyidatna Øafiyyah (*rad*.) made an endowment for a brother of hers who was a Jew.[15]

How family waqf contributed

In the vibrant history of Islamic nations, waqf played the role of a third economic sector for the advancement of communities and civilizations. It spearheaded the development of educational institutions and the advancement of knowledge in all its fields, including legal and human sciences as well as natural sciences. It supported a number of public services including healthcare, conserving environment as well as care for animals, in addition to its main goals of ensuring welfare of diverse classes the poor and the needy and the establishment and maintenance of places of worship.[16] Similar to awqaf established with the primary objective of public welfare, the numerous family awqaf too played a key role in upraising the economic standard of the society in general, as these catered to fulfilling the needs of extensive families for generations. Thus, a considerable number of people had their economic needs secured through such awqaf.

An ancillary motive the endowers may have in mind in the creation of family awqaf is to preserve the property from being wasted away in the hands of descendants who may be prone to squandering. Rather than allow such descendants gain control of the property whose irresponsible or ill-advised actions may result in reducing fortunes into something negligible, the endowers may wish to convert it into a waqf, so that its benefits may continue to accrue to his or her descendants in general for a long time to come. Although the Shari'ah has other mechanisms to deal with this problem such as rules restricting the transactional powers of spendthrift and imprudent (*safih*) persons, there could be no way to ensure their implementation in practice. Thus, in the case of properties that are of significant proportions, creating family awqaf could provide a viable solution. In addition, with regard to such properties such as large estates where the income generated also depends on the size of the assets, rather than leave room for possible fragmentation of the property through inheritance, an endower may resort to converting into a waqf, thus eliminating this possibility, while ensuring the welfare of his progeny.[17] However, unless suitable means are adopted to develop and expand such assets, the income received by the beneficiaries may dwindle over time, with the increase of descendants and recipients of succeeding generations, an eventuality that has to be weighed against fragmentation through inheritance.

In assigning awqaf for the benefit of descendants and relatives, the endowers generally have the welfare of their progeny in mind, a matter emphasized in shari'ah. The Holy Prophet (*sal*.) had stressed on the importance of one leaving one's inheritors well-provided for. Al-Bukhari has recorded the *hadith* "surely, your leaving your inheritors affluent is better than your leaving them poor, asking from people stretching their palms."[18] While making their property reach the children and relatives through means such as inheritance, bequest, as well as through gifts and grants during lifetime would succeed in making the property benefit them, such benefit is usually limited to the specific parties who are the recipients. Although the needs of those specific individuals and their families could have been met, it did not ensure provision of continued benefit to later descendants of the endower. As such, waqf for family and descendants facilitated a viable means of converting one's wealth and riches into a source of continued benefit to one's family and progeny for many years to come, ensuring that they remain needless of others' assistance. As the awqaf created by Muslims necessarily involve a religious dimension, the endowers could also expect to gain from the prayers and gratitude of their descendants who were thus left well-provided for and needless of the aid of others. Also, utilizing one's wealth in charity on one's own needy relatives was an act of greater virtue in Shari'ah than using it for fulfilling the needs of other poor in general, as the former had the twin claims of blood-relationship and need, as different from the latter,

[11] *al-Fatawa al-Hindiyyah*, vol. 2, 375.
[12] *Mughni al-Muĺtaj*, vol. 2, 388; *al-Fatawa al-Hindiyyah*, vol. 2, 375.
[13] *Al-Mughni*, vol. 5, 554.
[14] *Al-Zuhayli* 8, 213.
[15] *Kashshaf al-Qina'*, vol. 4, 274-277, as in *al-Zuhayli* 8, 190.
[16] Monzer Kahf, 1, 9.
[17] Syed Khalid Rashid, Statutory and Judicial Deviations p. 50.
[18] *Al Bukhari* (1233), Chapter on Funerals; Muslim (1628), Chapter on Bequest.

whose claim was limited to need alone. It is narrated in a *hadith* that "charity on a poor person is charity (alone); whereas (charity) on a blood-relative is two, charity and maintaining family ties."[19]

Family waqf institution constitutes charity and social welfare as it is charity directed at future generations, leading to ensuring their welfare and removing hardships. Issues encountered with regard to such awqaf such as shortcomings committed in its management, legal complications arising due to length of its lifespan and the dispersion of the beneficiaries in different locations, lack of institutional management for regulating this type of endowment, absence of bodies that could advise and provide guidance pertaining to practical aspects, etc. do not necessitate such awqaf being regarded in a negative perspective or denying their multiple advantages. What is required is to provide the necessary legal regulation and executive framework that result in its promotion while providing safety against misuse by the administrators, beneficiaries or other third parties.[20]

Waqf institutions and state control

With the establishment of a ministry for waqf affairs in Turkey in 1830s followed by the enactment of laws on waqf, government control on awqaf gained a definitive shape, so that within a short period, waqf properties in many Islamic lands came under direct government authority.[21] Charitable institutions were suppressed and marginalised during the waning years of the Ottoman Empire, the colonial era, and the period of nationalization that followed. Traditional charitable institutions were suppressed as part of the governments' broader move against the private sector and private voices in favour of state-led development.[22] While some of the reasons cited for the extension of state control over waqf assets in general may not be relevant with regard to family awqaf, such as the desire of the rulers to control the masses through having a say over mosque affairs, many other reasons appear to be common. Thus, complaints regarding waqf managers and *mutawallis* with regard to both excesses committed by them, as well as their inability to safeguard waqf properties from intruders and usurpers, provided a ready excuse for the state taking over their management responsibilities and gradually eradicating family awqaf. The explanatory note to the Syrian ordinance No. 28 that established state control over all public awqaf in Syria mentions the reason for the enactment as the complaints regarding the faults and excesses of waqf managers, that resulted in defeating the objectives of the original endowers and making the revenue of such awqaf a source of illegal enrichment. It also cites the need for laying down new rules for waqf management as dictated by the social and economic changes.[23]

In the context described above, many governments in Muslim countries had chosen to impose various degrees of restrictions on the creation or functioning of family awqaf, or to resort to their total abolishment. Thus, with regard to modern laws of Middle-Eastern and Arab countries, *Awqaf-e-Durri*, which have been painstakingly preserved by the South Asian legislation, have been greatly restricted in some, and altogether abolished some other.[24] Thus, Egypt had initially restricted the tenure of family awqaf to two generations through Law 48 of 1946. Lebanon prescribed their compulsory termination in 1947 if they become uneconomic, irreparably damaged or extensively fragmented due to increased number of beneficiaries.[25] Syria abolished family awqaf through Legislative Decree on Waqfs 1949. Kuwait restricted family awqaf to two generations through Law on Rules relating to waqfs 1951. The Iraqi law permitted the liquidation of family awqaf upon a complaint made by any beneficiary of or an inheritor, through Act No. 28 on liquidation of family endowment of 1954 that was amended on several occasions thereafter. Egypt finally abolished family awqaf altogether through Law 180 of 1952, while Tunisia did so through Law 46 of 1954, Libya through Law 16 of 1973, and UAE through Decree of Waqfs 1980.

In India, *waqf ala'l-aulad* was especially targeted since mid 19th century by the foreign judges obsessed with western legal concepts and suffering from anti-Muslim prejudices. This was symptomatic of an outright imperialist rejection of awqaf in general, seen by the colonialists as a hindrance to a proper growth in market economy.[26] Thus, although *waqf 'ala al-awlad* or family awqaf were invalidated initially by the Abul Fata ruling of 1894[27] by the highest British court in India, an Act was passed in 1913[28] overturning its effect, expressly "to declare the rights of Mussalmans to make settlements of property by way of waqf in favour of their families, children and descendants." It recognized the right of a Muslim to create a waqf, among other purposes, "for the maintenance and support wholly or partially of his family, children or descendants," and also with regard to Muslims following the Hanafi school, "for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated."[29] Thus family awqaf, both when the primary beneficiaries comprise one's family as well as where the endower himself is the primary beneficiary, were given legal recognition.

Enactment of these validating laws was a singular achievement of the late Qaid-e-Azam Muhammad Ali Jinnah, founder of the Islamic Republic of Pakistan, who had acted on the advice of the *Ulama* and *Fuqaha* of the time.[30] The subsequent Waqf Act

[19] *Al-Tirmidhi* (658), Chapter of *Zakah*; *ibn Majah* (1844), *Zakah*.
[20] Ibid. vol. 2, 138.
[21] Monzer Kahf, 4, 347
[22] Jennifer Bremer, op. cit.
[23] al-Kurdi, op. cit.
[24] Tahir Mahmood, Inaugural Address, in Syed Khalid Rashid, *Protection, Maintenance & Development of Awqaf in India*, 294.
[25] Law on Family Waqfs 1947
[26] Tahir Mahmood, above, p. 290.
[27] (1894) 22 I.A. 76.
[28] Mussulman Waqf Validating Act of 1913.
[29] Section 3, ibid.
[30] Tahir Mahmood, above, p. 291.

1995 (which repealed the Central Wakf Act 1954), largely following the 1913 Act, defines waqf as "permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable," and specifically mentions that it includes "waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious or charitable." While the Act does not provide details of the nature of such family awqaf as found in the Act of 1913, mention of the term *waqf-alal-aulad* and reference to Muslim law removes any ambiguity from its essential character. However, as mentioned above, despite of this recognition, family awqaf were omitted from the coverage of the thorough survey that was carried out on waqf properties in India as required in section 4 of the Act, and thus were exempted from the statutory supervision. The Burney Committee Report of 1976 that was published subsequent to the disputes that arose after the Central Wakf Act 1954 is silent on family awqaf. Similar to the Indian scenario, provincial legislation in many parts of Pakistan exclude family awqaf from the purview of waqf.

Plight of family awqaf

Family awqaf in general are subject to various government taxes. In the case of India, they are subject to the laws of Income Tax, land Reform and Estate Duty and the Evacuee Property laws, that have had a crippling effect on them. The Income Tax Act exempts from tax religious and charitable awqaf, but by virtue of section 13 of the Act, income tax is leviable not only from pure *waqf 'alal-awlad* but also on such portion of the income of such awqaf which are partially reserved for religious or charitable purposes and partially for the family. In addition, Estate duty is payable on the passing of the waqf property from one beneficiary to another in *waqf 'alal-aulad*. Despite of waqf property not belonging to the beneficiaries, which is the essential nature of awqaf in Islam, a beneficiary succeeding another upon the latter's death is treated as the property itself passing to the latter legally. Thus, passing of property on the death of the *waqif* to his descendants and then from generation to generation attracts the imposition of Estate Duty.[31]

Thus, only institutions categorized as public charities are entitled to various forms of Direct Tax. In the Indian context, despite of the persistent demands by the Muslims of India, the government has refused to exempt family awqaf from the purview of such Tax enactments.[32] With the continuous burden of taxes coupled with the unenviable state in which many of the awqaf exist with meagre incomes generated and lack of proper supervision and management, many family awqaf could die a slow death.

Rejuvenation of the institution of family awqaf

Rectification and improvement of awqaf management that had been the purpose in state intrusion into awqaf was based on diverse social reasons, that have been pointed out by Ibn Abideen, the famous Hanafi jurist who lived in the latter part of the 19th century. He had drawn attention to weaknesses in the judicial system as well as state governance that had led to the deterioration in awqaf in addition to mismanagement. Thus, some researchers are of the opinion that the modern efforts at improving awqaf management had not provided a fare opportunity for the development of the institutional management model for awqaf, due to the premature intervention by waqf affairs by the state. Institutional management is expected to result in better production capacity, safeguarding existent waqf assets and serving its objectives. They point out that the short comings in management did not arise due it being individual and decentralized, so that the situation could be rectified through centralized management provided by the state. Awqaf management had failed due to it not possessing an institutionalized form, ensuring flexibility and managerial capabilities, while being subject to a higher level of auditing leading to realizing the goals of investment awqaf. Thus they propose that awqaf are better managed based on an institutional format, safeguarding the decentralized and local nature of awqaf, as borne out by the historical record of awqaf.[33]

Individual management has been proposed by some as the best suited method for awqaf. They propose management of each waqf separately, without combining waqf properties together, and without there being a centralized management that takes decisions on the investment awqaf, be it in the form of a ministry, trust or organization. Each waqf should have a fulltime or part-time manager as necessitated by the size of the waqf or nature of investment, who is based in the location of the waqf and is well aware of the objective of the waqf and its beneficiaries. This has been the traditional model that had been existence for centuries that supported the historic success of awqaf in diverse social fields such as education, healthcare, research and public services, as it provided the necessary independence and flexibility needed in waqf management over long periods. However, at the same time, it is the model that had drawn a lot of criticism, ultimately paving the way for the creation of ministries of waqf and joint management of awqaf by governments from the middle of the 19th century. [34]

Most of recent efforts at rejuvenating awqaf appear to have given importance to a centralized role played by the government. However, state management is usually affected by problems such as lack of expertise, production oriented approach, and lack of transparency, which may not be overcome even when such state management takes place in the form of a ministry, divisional authority or department.[35] Based on this, it is suggested that management of investment oriented awqaf should be handled by institutions apart from state, that preserve its nature as a third sector, dissociated from the private sector. Thus, it has been proposed that the management of such awqaf should be decentralized and local, operating for a limited duration, that is subject to financial and system audit undertaken by public bodies enjoying state support, thus making them institutions similar to

[31] Syed Khalid Rashid, Statutory and Judicial Deviations p. 50.
[32] Ibid.
[33] Ibid, vol. 4, 380.
[34] Monzer Kahf, 4, 379.
[35] Monzer Kahf, 4, 380.

corporations.[36] Waqfs should operate as decentralized autonomous institutions without state interference. Proponents of this view remind us that in the United States, unincorporated associations and trusts do not have to register with any state authority at all, and argue that the American approach is very similar to the original Islamic norm.[37]

Among other suggestions made for the recovery and development of family awqaf apart from treating them as full-fledged charitable awqaf is to make their function limited to a specific duration of time such as 60 years, instead of recognizing them as essentially perpetual institutions. Upon the expiry of the period thus specified, the assets of such awqaf could return to the ownership of the original endowers or their heirs. During the tenure of waqf, such properties shall be treated at par with other charitable awqaf, and will be subject to strict statutory supervision. In addition, their being recognized as charitable trusts with the limited duration shall ensure their exemption from taxes that are usually levied from non-charitable institutions.[38]

Both the 'idea' of the endowment (waqf) and the endowment (waqf) doctrine itself remain influential and there are clear signs of its reinvigoration. The eclipse of the endowment (waqf) has left a vacuum in the arena of public services, which the State has been unable to fill easily in many Muslim countries.[39] The Seminar on Awqaf Experiences in South East Asia held in May 1999 resolved that since waqf includes *waqf alal-aulad*, hence waqf legislation must also cover family awqaf instead of confining regulatory measures to non-family waqf, in order to protect the interests of future generations of beneficiaries.[40] Malaysia has taken bold steps in attempts to revive Family Waqf, with a fatwa issued in April 2013 that allows for the creation of family trusts based on the Shari'ah. Under the Labuan Islamic Services and Securities Act 2010-2012, Muslims are allowed to use the Labuan Islamic foundation to create trusts based on the principles of Family Waqf.

Conclusions

It is generally acknowledged that the creation of awqaf for the benefit of one's relatives and descendants was an original innovation by Islam. Over the centuries, family awqaf have degenerated due to various social and political factors. Under the influence of the English Law of Trust that regards family trusts as non-charitable, family awqaf have been treated as non-charitable institutions, and have been deprived of the privileges and immunities granted to charitable awqaf. They are subject to various government taxes, while there being no statutory supervisory control over them. However, issues encountered in awqaf such as shortcomings in management, legal complications arising due to length of its lifespan, lack of institutional management, etc. do not necessitate denying their multiple advantages. Providing the necessary legal regulation and executive framework can lead to its advancement while preventing misuse.

Many governments in Muslim countries had chosen to impose various degrees of restrictions on the creation or functioning of family awqaf, or to resort to their total abolishment. Among reasons cited are mismanagement of such awqaf and their failing to fulfill objectives, as well as such awqaf blocking large portions of land from entering the market. However, it has been argued that such excessive endowment of a particular form of asset could be regulated through proper guidelines. Individual management has been regarded the best suited for awqaf, as necessitated by the nature of the particular waqf. However, others argue that awqaf are better managed based on an institutional format, safeguarding the decentralized and local nature of awqaf, leading to enhanced production and serving their objectives. It is suggested that management of investment oriented awqaf should be handled by institutions apart from state, that preserve its capacity as a third sector. In addition, tax exemption for all awqaf including family waqf could go a long way in advancing the spirit of waqf, based on the fact that these are public serving entities either directly or indirectly.

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[36] Ibid, vol. 4, 382.
[37] Murat Cizakza, op. cit.
[38] Syed Khalid Rashid, *Protection, Maintenance & Development of Awqaf in India*, xi.
[39] UN Habitat paper on Waqf (endowment) & Islamic Philanthropy 2005.
[40] Syed Khalid Rashid, *Awqaf Experiences in South Asia*, 299.

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