



## THE PURPOSE AND PILLARS OF A VALID WAQF UNDER ISLAMIC LAW IN INDIA

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### ABSTRACT

*A waqf (Islamic endowment), also known as a waqf (the senses differing across languages), is a distinctive legal and religious institution in Islamic law that consists of permanently assigning property by a Muslim toward something pious, religious, or charitable. This is one of the main notions of Islamic charity as it benefits mosques, schools, orphanages, and welfare projects in the community. To achieve validity of waqf, there are prerequisite requirements usually termed the pillars of waqf that must be adhered to strictly. These involve: The waaqif (donor) must be a competent Muslim, the mawquf (the subject/property) must be a given object or something that can be transferred, the mawquf-alaih (beneficiary) must be able to benefit from the dedication and the niyyah or intention must reflect that this dedication is irrevocable with lawful and Islamic purpose. The paper examines that the objectives of formulating waqf have been based on several factors and some of the motivations have been spiritual gain, popular rights, and community building and it also discusses the key legal elements needed to make a waqf by the classical Islamic legal tradition and under the Indian legal statute specifically, the Waqf Ac Act of 1995. It is also indicative of judicial views and case laws that have influenced the working knowledge of waqf in India. The research article sheds light on the importance of waqf in the modern legal practice and how it allows the continuity of charitable influence long-term and using structured endowments.*

### INTRODUCTION

The waqf (plural: Awqaf) concept is one of the longest-standing legacy charitable mechanisms within the jurisprudence of the Islamic faith, and it is intended to establish a long-term system of social welfare. Waqf, or the English version of this, is created using the

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Arabic root word waqafa, meaning to stop, to detain, or to preserve. It is thus a religiously dedicated, pious, and charitable property that is dedicated permanently according to Islamic law. It is like a type of sadaqah jariyah, an ongoing charity, whereby the good of the charity is supposed to follow the donor after him and benefit the community long after his death.<sup>1</sup> Waqf has religious and legal aspects in India. Despite its spiritual basis, it is guided by the strong statutory framework, the Waqf Act, 1995 (amended in 2013), and is supplemented by court interpretations. India also has more than 6 lakhs registered Waqf properties, which makes it one of the largest custodians of the Islamic endowments in the world. Nonetheless, a large percentage of Waqf lands are being mismanaged, overutilized, or unlawfully encroached despite this expansive existence.<sup>2</sup> As it will be discussed in this article, the Islamic law has core elements (pillars) that should be fulfilled to make a Waqf, and this law and its understanding by Indian courts and statutes will be discussed and identified, in addition to the motive of such endowment and what they are expected to achieve. With the help of these, we can enjoy the transformative nature of the Waqf and its endurance in the Indian socio-legal environment today.<sup>3</sup>

### THE WAQF ACT, 1995 (AS AMENDED IN 2013)

**Section 3(R):** It deals with the Definition of Waqf. In India, the statutory definition of waqf is defined in section 3(r) of the Waqf Act 1995. According to it, a waqf would be the indefinite disposition of any property movable or immovable, whatever, by a professed person of the Islamic faith, to the endowment of any object whatever, which the Muslim law considers religious, pious, or charitable. This can contain properties that are in the name of constructing mosques, madrasas, graveyards, or welfare works such as assistance to the poor, financing of education, or healthcare. Waqf by user is also in this section, so are the properties that have by lapse of time, have become used continuously to certain religious or charitable use although there was no actual dedication. It also accepts the legality of waqf alal aulad, which is a kind of waqf established in favour of descendants of the waqif if the final and irreducible goal is charitable. The law becomes a codification of the key Islamic standpoint that once a property is donated as waqf, it becomes inalienable and forever held in

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<sup>1</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003) 285

<sup>2</sup> The Waqf Act 1995 (India) (as amended by the Wakf (Amendment) Act 2013)

<sup>3</sup> Sachar Committee Report, *Social, Economic and Educational Status of the Muslim Community of India* (Government of India 2006) 201–203

trust, i.e., it can no longer be sold, given as a gift, or inherited, and should always be employed according to the specified religious or charitable aim.<sup>4</sup>

**Section 36:** It deals with the mandatory registration of Waqf. The Waqf Act, 1995 specifies (Section 36) that all the waqfs are to be registered compulsorily with the State Waqf Board. Such provision is essential in exercising official supervision and ensuring that waqf properties are safeguarded against any abuse or unlawful interference. Based on the contents of this section, all waqf (regardless of whether they were drafted before or after the Act started) shall be registered. The mutawalli (custodian of the waqf) is obliged by law to apply to the Board to have it registered through a detailed registration application. Major features that must be provided by the application are:

- An explanation of the waqf property (movable or immovable).
- The projected revenues and expenditure.
- The nature of the purpose and destination of the waqf (e.g., religious, charitable).
- The information about the waqif (founder).
- Details of the beneficiaries and succession, particularly in the instance of waqf alal aulad.

Upon receiving the application, the Board makes the necessary investigations, and when it has the conviction that it is so, it flags the waqf in its records. Notably, although non-registration does not nullify the waqf itself (established by court rulings), it may cause administrative problems in the provisions of rights over the property, preventing encroachment of the property, or settling the disputes. Thus, transparency, legal aspects, and long-term protection of waqf assets would be possible only through registration. This is because this provision enhances the institutional governance in that it helps provide an official and updated list of all the waqf properties under the care of the State Waqf Board.<sup>5</sup>

**Section 32:** It deals with the powers and duties of the State Waqf Board. Section 32 of the Waqf Act, 1995 confers the major responsibility and authority in the form of administration and supervision of all waqfs in the State upon the State Waqf Board. The section compels the Board to provide a complete and up-to-date register of waqf properties, that the income of waqf resources should be spent in strict compliance with the objects of waqf, and that no

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<sup>4</sup> The Waqf Act 1995, s 3(r) (as amended by the Wakf (Amendment) Act 2013)

<sup>5</sup> The Waqf Act 1995, s 36 (as amended by the Wakf (Amendment) Act 2013)

mismanagement, abuse, or exploitation of waqf should be allowed. This comprises monitoring of the activity of mutawallis (waqf managers), investigating their activity in the event of any misconduct, and corrective steps like dismissal or appointment of new managers in the event of any misconduct or neglect. The Board can also be authorised to approve budgets, audit accounts, and the hiring of waqf monies towards the intended purpose of being religious, pious, or charitable. Essentially, Section 32 provides that the Waqf Board be the statutory custodian of waqf property so that the community assets are maintained, guarded, and utilised in a way that is morally upright and legally acceptable in the best interest of society.<sup>6</sup>

**Section 51:** Alienation of 1 [waqf] property without the sanction of the Board to be void. The provision under section 51 of the Waqf Act, 1995, is held to be a vital provision in the safeguarding and sanctity of the waqf properties. It makes it clear that those sales, gifts, exchanges, or mortgages of all waqf properties are not valid unless it has been first sanctioned by the written sanction of the State Waqf Board. It implies that the transfer or disposal of waqf property by any means other than the consent of the Board shall be illegal, null, and void in any case. This is supported by the fact that the provision is aimed at being able to gift property to the Islamic faith, which once done becomes inalienable and is always held in trust under Islamic law, being held for a specific religious or charitable purpose. Section 51 safeguards this character by ensuring that their occurrence of unauthorised or even fraudulent transactions aimed at depriving the waqf of its assets. Although in instances when there appears the necessity or desirability of a transfer, a measure of the scrutiny and official sanction by the Board is still to be insisted on, so that this would guarantee openness and be in the interest of the waqf and its beneficiaries. This is one of the provisions that have been very helpful in reducing the widespread vice of illegal alienation and the misappropriation of the waqf lands in India.<sup>7</sup>

**Section 54:** Section 54 of the Waqf Act, 1995, is very crucial in safeguarding the waqf properties against encroachment, as it is a common and consistent problem in the entire country. This portion allows the State Waqf Board to file a suit against these unauthorised individuals/institutions/even governmental organs that have encroached on waqf land. The Board will have the right to notify an encroacher when encroachment is detected, and the notice gives the encroacher a chance to substantiate his/her claim. In case the Board is not

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<sup>6</sup> The Waqf Act 1995, s 36 (as amended by the Wakf (Amendment) Act 2013)

<sup>7</sup> The Waqf Act 1995, s 51 (as amended by the Wakf (Amendment) Act 2013)

satisfied by the explanation or no reply is given, then it can file a petition before the Waqf Tribunal, which can order eviction and revocation of the waqf. This exercise will make sure that the encroachers will not have an illegal advantage over the community resources that are destined to be used for religious, charitable, or pious intents. The clause is a legal instrument to repossess waqf land that is very valuable and has, in the past, been the target of illegal occupation. Section 54, therefore, reaffirms the position of the Waqf Board as the custodian and custodian in law of the waqf lands so that the properties are maintained to fulfil their intended purpose.<sup>8</sup>

**Section 83:** Section 83 of the Waqf Act, 1995, provides for the establishment of specialised Waqf Tribunals to deal exclusively with disputes, questions, or matters relating to waqf properties. This provision was introduced to ensure speedy, focused, and expert adjudication of waqf-related issues, which often involve complex questions of religious law, public interest, and property rights. The Tribunals have the same powers as a civil court in matters such as summoning witnesses, examining evidence, and enforcing decisions. Importantly, Section 85 bars the jurisdiction of civil courts, meaning that only Waqf Tribunals—not regular courts—can hear and decide waqf disputes. These may include conflicts over ownership or possession of waqf property, disputes between mutawallis and the Waqf Board, or allegations of mismanagement. Appeals from Tribunal decisions lie directly to the High Court, providing a limited but significant review mechanism. By establishing these tribunals, the law ensures that waqf matters are handled by dedicated forums with legal and religious sensitivity, thereby reducing delays and minimising jurisdictional confusion that often plagues civil litigation involving religious trusts.<sup>9</sup>

## **WAQF BOARDS AND CENTRAL WAQF COUNCIL**

**State Waqf Boards:** These are government boards authorised under the Waqf Act, 1995, in respect to the administration, supervision, protection, and development of waqf properties in the respective states. Every Board is the main agency that is supposed to keep records of waqf properties and ensure that the income generated by the waqf is utilised in line with the intentions of the waqf when it was endowed, as well as preventing misuse, encroachment, or unlawful sale. The Boards also control the appointment of mutawallis (managers), budgetary handling, audit, and initiation of mismanagement action. Their role in protecting the interest

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<sup>8</sup> The Waqf Act 1995, s 54 (as amended by the Wakf (Amendment) Act 2013)

<sup>9</sup> Ibid

of the community is a significant one through managing the development of waqf properties and putting them into productive activities, e.g., renting housing to generate income, funding of schools, hospitals, or mosques, acting as a jibl, i.g, referring to waqf tribunals. Simply, the State Waqf Boards are guardians to Muslim charitable endowments and must walk the line between the religious ethics and the legal responsibility.<sup>10</sup>

**Central Waqf Act, 1995:** The Waqf Act, 1995 provides a statutory body called the Central Waqf Council (CWC), and the statutory body works under the administrative control of the Ministry of Minority Affairs, Government of India. Its main duty is the settlement of uniform and efficient administration of the waqf properties in the country, as well as advising the Central Government and State Waqf Boards on matters about legal as well as administrative issues. The Council also looks towards the accomplishment of State Waqf Boards, raises awareness on the transparency, and gives financial as well as technical support in developing waqf properties. It also contributes to the digitisation processes, capacity-building programs, and plans enhancing the socio-economic contribution of waqfs (in particular to education and healthcare for minority groups). In being a central coordinating state, CWC assists in normalising the functions of governance and enhances the quality of waqf institutions throughout the country.<sup>11</sup>

## THE LEGAL AND RELIGIOUS FOUNDATIONS OF WAQF

**Historical and Doctrinal Roots:** The Waqf concept is well-rooted in the Islamic theology, tradition, and history. It has an Arabic root word (waqafa), which means to stop, to detain, or preserve. Within Islamic law, it is specifically the pledging of a property or asset towards a charitable or religious cause, to create an ongoing benefit (Sadaqah Jariyah). This shows the Islamic theme of deeds of continuous charity that exceed the short lifetime of an individual. This has been summarised in a common paraphrase of a Hadith of the Prophet Muhammad (PBUH) as follows;

*“When a man dies, his acts cease except three, namely, a continued charity (Sadaqah Jariyah), the use of knowledge, and a righteous son who prays on his behalf.”*

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<sup>10</sup> The Waqf Act 1995, s 54 (as amended by the Wakf (Amendment) Act 2013), [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_4\\_21\\_00006\\_1995\\_1517807320626&sectionId=5959&sectionno=9&orderno=9](https://www.indiacode.nic.in/show-data?actid=AC_CEN_4_21_00006_1995_1517807320626&sectionId=5959&sectionno=9&orderno=9)

<sup>11</sup> *The Waqf Act 1995, s 9* — Establishment and role of the Central Waqf Council

This hadith is in Saheeh Muslim Book 13, Hadith 4005. Waqf is deemed as one of the most relevant types of Sadaqah Jariyah, a charity that never exhausts. It enables a Muslim to spend his/her money on the improvement of society in a manner that will last past generations to guarantee not only material gain but also spiritual recompense in the afterlife.<sup>12</sup> As it is historically known, the institution of Waqf has existed since the period of the Prophet Muhammad (PBUH). The first documented case involves the second Caliph of Islam, Umar ibn Al-Khattab. When he bought one of the lands of Khaybar, which was fertile, he asked the Prophet for the best advice on how to use it. The Prophet suggested that he should devote it to a Waqf, and he said, “And render the property inalienable, and its fruit in charity, at your pleasure.” This is according to the Sahih al-Bukhari, Book 53, Hadith 7, as quoted in the Quran<sup>13</sup>. Umar subsequently issued a Waqf on the territory, according to which it was not to be sold, given away, or inherited, and its income would be divided among the needy. This form of precedent laid down several essential norms of Waqf (perpetuity, irrevocability, and dedicating to the good of people). Thereafter, Waqf was institutionalised by several followers of the Prophet and other Muslim rulers and scholars in the support of some mosques, schools (madrasas), hospitals, water wells, and orphanages. To the extent that Waqf came to provide the backbone of Islamic public infrastructure, a parallel welfare system was established, which supplemented government work. Therefore, the roots of Waqf are spiritual and most practical at the same time, since personal piety and social responsibility are combined. Such background beliefs still determine the modern-day thinking and legislation of Waqf, especially in nations where it is accorded a religious and a legal status, such as India.<sup>14</sup>

## PURPOSE OF WAQF IN ISLAMIC LAW

**Broadened Objectives of Waqf in Indian Today:** Waqf, as an institution based on Islamic religious and philanthropic ideals, is not meant to build a mosque or to operate a madrasa only. It is an inter-dimensional socio-economic means which in the past and still in the present retains the ability of transforming communities through meeting a broad band of human needs. The extended roles of Waqf are mentioned below, which do not only have the conventional roles but especially in the Indian context.<sup>15</sup>

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<sup>12</sup> Mohammad Hashim Kamali, Principles of Islamic Jurisprudence (3rd edn, Islamic Texts Society 2003) 285

<sup>13</sup> Sahih Muslim, Book 13, Hadith 4005 <https://sunnah.com/muslim:1631> accessed 15 June 2025

<sup>14</sup> Sahih al-Bukhari, Book 53, Hadith 7 <https://sunnah.com/bukhari:2737> accessed 16 June 2025

<sup>15</sup> Sachar Committee Report, Social, Economic and Educational Status of the Muslim Community of India (Government of India 2006) 201–203



**Healthcare Services to the Less Fortunate:** Healthcare is a human right, and what has been happening is that it is not accessible to all the people in a marginalised society. Giving to Waqf institutions has long financed hospitals, clinics, and dispensaries. In India, this potential is underused but is getting more attention. The properties of Waqf could go towards the construction of:

- Hospitals run by charity provide free or subsidised treatment to the poor.
- Medical units in rural locales.
- Care clinics that offer maternity, vaccinations, and screening for diseases.
- Logistics of accessing necessary medicines, particularly during a pandemic or public health crisis.

This group of healthcare Waqfs adheres to the Islamic principles of healthcare and the well-being of individuals in society.<sup>16</sup>

**Educational Empowerment beyond Religious Instruction:** Though Waqf has traditionally supported madrasas and Islamic learning, its scope extends far into secular and modern education, which is crucial in lifting communities out of poverty.

For Example: Establishing schools and colleges for general education, open to all communities, Scholarship programs for meritorious but financially disadvantaged students, Vocational training institutes for youth, including IT, mechanics, nursing, etc. Adult literacy programs, particularly for women in rural areas, support special needs education, often neglected in the mainstream system. In India, where minority education still faces systemic gaps, educational waqfs can bridge these divides by funding quality institutions and digital learning initiatives.<sup>17</sup>

**Social Welfare “Aid for Women, Orphans, and the Elderly”:** Waqf can also be one of the most humane applications in the field of social security, especially for the vulnerable population. Waqf is capable of financing:

- Women widows, single mothers, and abandoned women will get shelters/stipends.
- What Muslims need is a marriage assistance plan (waqf al-nikah) to help poor girls marry with dignity.

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<sup>16</sup> Hasanuddin Ahmed, *Waqf: A Sustainable Development Institution* (Institute of Objective Studies 2004) 18,19

<sup>17</sup> Sachar Committee Report, *Social, Economic and Educational Status of the Muslim Community of India* (Government of India 2006) 45–50



- Orphanages and foster families and children have a chance to obtain education, food, and emotional support.<sup>18</sup>
- Old age homes are where older people, who are mostly neglected by their families, can reside with pride.

It is consistent with the Islamic tradition of taking care of the weaker element, of the orphan, of the poor, and this is also Article 41 of the Indian Constitution (Right to Public Assistance).<sup>19</sup>

**Environmental and Ecological Protection:** Green Waqf, a new field that involves dedication to keeping the environment safe, is an emerging field. For example, the Use of waqf land in planting trees to prevent deforestation, the Preservation of parks, green belts, and city gardens, sponsoring solar water systems or clean water systems in the regional institutions, and sponsoring animal shelters (or veterinary clinics) in connection with the Rahma. Islamic philanthropy can be a frontrunner in climate responsibility using such eco-friendly waqfs.<sup>20</sup>

## ESSENTIAL PILLARS OF A VALID WAQF UNDER ISLAMIC LAW

**The Waqif (Donor):** The Waqif is the person who establishes the Waqf because he is the person who donates the property with the intention of a religious, charitable, or public cause. In Islamic law of Waqf, as well as in Indian law of statutory interpretation, the validity of Waqf is established with the legal competence of the Waqif and the intent. There are the following key requirements that must be met by a Waqif.

### Legal and Mental Capability –

The following requirements, as defined below, are to be a Waqif.

- Waqif must be a Muslim (Islamic Waqf, because Islamic waqf is a religious act, peculiar to the Islamic religion).
- Waqif must be of a perfect mind capable of grasping the character and effect of the vow.

<sup>18</sup> *Sahih al-Bukhari*, Book 78, Hadith 39, <https://sunnah.com/bukhari:6005> accessed 17 June 2025

<sup>19</sup> Constitution of India 1950, art 41

<sup>20</sup> *Sahih al-Bukhari*, Book 41, Hadith 4 <https://sunnah.com/bukhari:2320> accessed 20 June 2025.

Qur'an 2:60, Hasanuddin Ahmed, *Waqf: A Sustainable Development Institution* (Institute of Objective Studies 2004) 25–27

- He must be an adult in law, in that they are old enough to have and bequeath property by the civil law.

This is to make sure that the commitment becomes an aware, informed, and legitimate act, both religiously and in the area of secular law. A minor or a person who is in a state of something presupposing the lack of capability cannot make a valid Waqf, unless made on their behalf by a guardian/or someone with the aid of a court with a specific purpose of charity well-defined in its direction.<sup>21</sup>

**Free and Lifetime Dedication:** Waqf should be a purely voluntary act with no coercion, force, or undue influence. The Waqif should deal with full conscience over the property, giving it in perpetuity towards the intended purpose of religious or charitable use. After a property was declared as Waqf, the move was irreversible- the donor can no longer use such an asset again or reclaim it. The principle is an indication of the Islamic demand that a Waqf must be an honest offering in devotion done with a thorough understanding of its perpetual implications.<sup>22</sup>

**The Mawquf ‘Alayh (Beneficiary):** The Mawquf Alayh is the person or group that gets the benefit of the Waqf. The selection of beneficiaries related to the religious justification and enforceability of a Waqf, since it determines whether this dedication is carried out with a purpose that is allowed by Islamic law.

**Beneficiaries that are Qualified (Islamic Law):** The beneficiaries must include those whose welfare complements with Islamic notion of charity and the common good. They may include the following:

- The common people as of a Waqf to be used in financing a hospital, school, mosque, or a public well.
- A familiar cause in Islamic charity, the poor and needy.
- Certain individuals or groups of people, like students, widows, or orphans.
- The relatives of a donor, in the Waqf alal aulad (family waqf).

Notably, although under the Waqf alal aulad the donor is permitted to ensure that his/her descendants receive a portion of the waqf income over their lifespan, under Islamic law it

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<sup>21</sup> The Waqf Act 1995, ss 3(r), 10 and 11 (as amended by the Wakf (Amendment) Act 2013)

<sup>22</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003) 287–289

must be ultimately directed into a charitable aim. In this state, the spiritual integrity of the Waqf is maintained and distinguishes it from its inheritance or personal giving patterns.<sup>23</sup>

**Conformity to the Islamic Welfare Objectives:** The Mawquf is meant to be in the best interest of blessing and benefiting the Mawquf Alayh, which must show Islamic concepts of social justice, compassion, and social duty. This implies that the Waqf must not be misappropriated in frivolous, discriminatory, or acts against Islamic morality, and an example is a Waqf to maintain a religious school or a scholarship to level the playing field for poor students is acceptable and good. Nonetheless, a Waqf devised to play a role in pure luxury or large-scale status would be invalid in terms of both Islamic and Indian jurisprudence. The Sighah, or declaration, 3 are made by which a Waqf is formally intended. It is the contract and the gift that conveys the personal to a permanent endowment. In the absence of a good Sighah, the Waqf cannot form a recognised form under both the Islamic and the Indian statutory regulations.<sup>24</sup>

**Purpose Free Will:** The declaration should also show that the donor intends to reserve the property forever and as an irrevocable dedication to a religious, charitable, or public cause. Indefinite or dependent statements, i.e., a simple wish, a possibility in the future, do not constitute a Waqf. The Sighah must exhibit the desire to form a Waqf in mind, the purpose for which the property is being dedicated, and this is because the act is permanent, i.e., the donor (waqif) loses all rights to the property. This is necessary to guarantee that Waqf is spiritually clean and at the same time, is legally enforceable.<sup>25</sup>

**Oral or Written Form:** The Islamic religion has both verbal and written declarations. It can be made orally, if it is done publicly and with some deeds that show the intention (e.g., transfer of possession of the property or use it towards a charitable cause). But in the case of immovable assets, a written record and registration are necessary in the State Waqf Board (as per Section 36 of the Waqf Act, 1995). A written declaration is clear, legally binding, and easy to activate in case the Waqf, in case it is questioned by anybody. Oral declarations are

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<sup>23</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003) 288–290

<sup>24</sup> Qur'an 16:90 <https://quran.com/16/90> accessed 18 June 2025

<sup>25</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003) 284–288

therefore religiously acceptable, though Indian law favours written and registered waqfs as a way of avoiding claims and malpractice.<sup>26</sup>

**Permanence and Finality:** A Waqf, after it has been announced, cannot be repealed, changed and or retracted by the deed creator. Such non-availability of Abolition marks the difference between Waqf and other Trusts or gifts. It is further rendered inalienable, which means that such property can no longer be sold or passed on under the laws of inheritance, or can be mortgaged outside of very few exceptions (istibdal, or exchange with the consent of the Waqf Board). This rule of law promotes the concept of perpetuity, which means that the asset shall remain in perpetuity, destined to fulfil its charitable or religious purpose.<sup>27</sup>

## RELEVANT CASE LAWS

### **Radhakishan v. State of Uttar Pradesh (2013) –**

**Facts:** Here, Radhakishan, a non-government citizen, had disputed the classification of a particular piece of land as a Waqf property by the Waqf Board. He claimed that the said land had not been registered as a waqf through the dispensing of Section 36 of the Waqf Act, 1995, and thus, it was not legally possible to be registered as a waqf. Waqf Board, on its part, argued that the property was longtime used for religious purposes as it was validly dedicated under Islamic law as a property to be used for the same purpose, though formal registration was lacking.

**Observations:** The Court of Allahabad noted that, according to Islamic law, waqf is valid when there is a permanent and irrevocable gift or dedication of real estate to a religious, pious, or charitable purpose, whether the waqf is registered by the Waqf Board or not. The court also highlighted that Section 36, which makes it mandatory that properties under waqf be registered, is only a procedural or administrative section, and it does not affect the validity of a waqf in case the defined elements of waqf are defined. The court also observed that the long-standing use of the property to carry out religious or charitable activities may also help establish the user and recognition concept of the property as waqf.

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<sup>26</sup> The Waqf Act 1995, s 3(r); s 51 (alienation restrictions); s 36 (registration).

*Abdul Fata Mohamed v Rasamaya Dhur Chowdhuri* (1894) 22 IA 76 (PC), Kamali MH, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003) 287

<sup>27</sup>[https://www.indiacode.nic.in/showdata?actid=AC\\_CEN\\_4\\_21\\_00006\\_1995\\_1517807320626&sectionId=5953&sectionno=3&orderno=3](https://www.indiacode.nic.in/showdata?actid=AC_CEN_4_21_00006_1995_1517807320626&sectionId=5953&sectionno=3&orderno=3)

**Judgment:** The Court held in the affirmative: it did not consider lack of registration to be invalid for a waqf as long as it was legally executed according to Islamic law. It maintained the waqf character of the property on the grounds of evidence of past utilisation and the intention of the founder, which once again continues that there must be a substantial religious dedication and not procedural fulfilment. The ruling affirmed the legal stand on the possibility of an unregistered waqf being valid and enforceable, particularly where they are buttressed with viable historical and functional findings.<sup>28</sup>

**A.A. Faizur Rahman v. State of Tamil Nadu & Others (2018) –**

**Facts:** Here, A.A. Faizur Rahman, a former logic professor and one who served in the interest of society, filed a Public Interest Litigation (PIL) at the Madras High Court against illegal leasing of waqf property and misappropriation of waqf property by the Tamil Nadu State Waqf Board and Individuals. The petitioner claimed that there were several precious waqf properties, which were being availed on rent or running business without the required sanction of the State Waqf Board and in contravention of the Waqf Act, 1995, by particularly contravening Sections 51 and 52 of the said act, which govern the transfer or misappropriation of waqf property. The PIL made the exclusion of such unauthorised leases or alienation not only null and void in terms of the law, but that there constituted an act of being disloyal to the charitable spirit that the waqf was based on. The petitioner requested the court to order the Board to start the proceedings against the violators, such as recovery and penal action.

**Observations:** The Madras High Court observed the following points: The key point made by the court was that waqf property cannot ever be transferred and should only be used with religious, pious, or charitable intent that was meant by the waqif (founder). It observed that Section 51 of the Waqf Act sets a prohibition to sell, lease, mortgage or even transfer any waqf property without seeking prior permission of the Waqf Board, and any transfer of the property in contravention of this would void ab initio (that is, would be invalid in the first place). The court noted that such a breach is punishable in terms of S. 52-A, which imposes criminal responsibility in connection with unauthorised alienation or misuse. It also observed the easy disposition of the Waqf Board in dealing with the law, and that the board is a statutory trustee and it has to be a vigilant watchman of the waqf properties.

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<sup>28</sup> Radhakishan v State of Uttar Pradesh 2013 SCC Online All 123

**Judgment:** Madras High Court supported the complaints of the petitioner and declared that: Misuse, lease, or alienation of waqf property without the necessary procedure envisaged in the Waqf Act is unlawful, invalid, and liable to punishment. The Court asked the State Waqf Board to: Determine all unauthorised leases and mistreatment of the Waqf property. Begin the process of recovery, such as eviction of squatters. Action should be taken by the prosecution through criminal prosecution as per Section 52-A. Provide at regular intervals to foster accountability. The decision was a powerful precedent towards making the application of the law regarding waqf and securing religious endowments against commercial abuse or corruption.<sup>29</sup>

## CONCLUSION

The institution of Waqf represents one of the most long-lasting contributions of the Islamic civilisation to world civilisation, the ability to convert personal property to permanent wealth of good for the rest of the community. It is based on empathy, fairness, and ``we-responsibility and it is much more an act of charity. It is a systematic, legally identified, and theologically founded machinery developed to establish sustainable social welfare. Waqf institutions in Islamic history were designed to erect entire cities of care, where hospitals provided treatment to the poor at no cost, schools taught the knowledge, roads offered a safe stay to travellers, and the poor could be safeguarded. These were not incidental aims: rather, an ultimate appreciation of the need to make charity practical, linear and community-oriented. The transformative power in India of the Waqf property in contemporary India is similar of the Waqf property covers thousands of acres and has a value of billions of dollars. However, there are legal uncertainties, political pressure, inadequate record keeping and corruption that tend to limit this potential. To revive Waqf in India, therefore, is not merely a legal problem; it is a renaissance in the way people are socially cognizant of what Waqf is, how institutions can become more accountable and also think creatively on how to revive Waqf. Notably, Waqf needs to be broadened so that it addresses modern realities. In addition to mosques and madrasas, Waqf is supposed to aid women's empowerment, law services, environment management, skill building, disaster management, and access to healthcare. Neither does such a broader perspective diminish its Islamic nature- it is fulfilled by it. Waqf is, in other words, a living trust -an action of dedication that, even after the individual who made the dedication has passed on, lives are still being blessed. Reinventing Waqf and

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<sup>29</sup> A.A. Faizur Rahman v State of Tamil Nadu & Others 2018 SCC OnLine Mad

making it an active, responsive instrument of community development is not only a religious duty in our era, but a financial, ethical and social compulsion. Do not allow Waqf to be an orphan legacy of the past, but a redeemed future where belief is coupled with action, where charity is transformed to change.