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MANAGEMENT AND DEVELOPMENT OF WAQF IN AFGHANISTAN



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ABSTRACT

This research delves into the importance and pertinence of Waqf in Afghanistan, charting its historical administration across time and emphasizing its customary utilization only for mosques and religious instruction across the country. It examines a number of aspects of Waqf in Afghanistan, such as its historical development of Waqf, the existence of Waqf laws in the country, its evolution throughout time, common difficulties of Waqf, a lack of awareness among the general public even on institutional level, and the required and necessity of updating Waqf customs in the nation. Amidst Afghanistan's ongoing problems with extreme poverty and high jobless rates brought on by years of hostilities and civil war. We believe that there is a chance to revive the Waqf tradition and modify it for use in modern settings. Afghanistan might learn from other prosperous Muslim countries by using Waqf as a tool for economic growth and creating a structure and plan that support charitable endeavors and self-sufficient Waqf-based institutions in the nation. Waqf is well-positioned to assist governmental initiatives in meeting community needs and achieving development goals within Waqf institutions in Afghanistan by fostering social welfare and promotes growth and development of the economy. Afghanistan's Waqf institution is excellent; it can help the government with a wide range of official duties.

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INTRODUCTION

In Arabic language, the word Waqf literally means 'confinement or prohibition'. It is used with different words and different titles for same word in different regions like the word habs or tasbil. Literal meaning of words, Waqf and habs is to hold, detain, confine, or restrain as explained by Azliza, Rose and Zurina and technically they defined "Waqf" as the dedication of property either in express terms or by implication for any charitable or religious object or to secure any benefits to human beings, while legally, they translate; as "to protect something, by preventing it from becoming the property of a third person". The term Waqf can be translated as 'religious endowment' in English but this translation may not suffice the true sense of devotion and elegance with which Waqf is associated in Islam. Hasan Uddin proclaimed that no equivalent word or expression in English is comprehensive enough to convey the Islamic concept and meaning of Waqf in the true sense of the term.

Waqf today can play an important role given the needs of the Muslim Ummah are complex and growing. The potential of the institution of Waqf is great; it can assist the government in countless state-responsibilities. Nevertheless, and unfortunately the great potential of the institution of Waqf has not been, yet, fully realized by Muslims including their governments around world. There are still a great number of Muslims who think that Waqf requires immovable property to be donated. The governments in many countries still have colonial mindset as they generally consider Waqf to be a problematic institution that has been inherited by them from the old times. It has been neglected and not only wasted the potential of this time-proven institution of great benevolence, but also excluded society from the vast benefits of this blissful institution.

Considering the classical definition of Waqf in the Islamic Law, the holding and preservation of property as common, whose usufruct and revenues are exclusively used for the defined aims and objectives, and prohibiting the use and/or disposition outside the defined purposes.

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In order for Waqf to play an important role in the development of the society, we consider this article to be an introduction to Waqf, which can promote and encourage the human values of giving and cooperation. In this research, the history, nature and investment possibilities of Waqf in general will be discussed along with the role of the Mutawalli (trustee) in managing Waqf properties and the changes and evolution that has occurred through Islamic history. Moreover, we will include a Conclusion summarizing the research.

Objectives of the study

- Assess the current state of Waqf properties in Afghanistan, including their extent, condition, and ownership.
- Examine the management practices employed for Waqf properties in Afghanistan, focusing on organizational structures, financial management, and maintenance efforts.
- Evaluate the development initiatives undertaken for Waqf properties in Afghanistan, analyzing past projects, ongoing efforts.
- Propose recommendations and strategies to improve the management and development of Waqf properties in Afghanistan, aiming to maximize their socio-economic impact and benefit for the community.

Research questions

- What is the current status of *Waqf* management and development in Afghanistan and what role is it playing in development of society?

DISCUSSIONS

Throughout the Islamic history since its commencement, the institution of Waqf had been developed during the time of Prophet Muhammad (pbuh) until today. The Mosque of Quba' in Madinah al Munawwarah is the first Islamic Waqf in 622 A.D which was built upon the arrival of the Prophet Muhammad (PBUH) (Laldin, 2008). This was followed by many other Waqf activities during the time of the Prophet (PBUH) and was further developed during the reign of the Khulafa' al-Rashidin and subsequent period of Islamic ruling. This Waqf is normally referred as the religious Waqf while there are other kinds of Waqf such as philanthropic Waqf which also include the Waqf for educational purposes and posterity of family Waqf (Laldin, 2008).

Waqf is continually linked with poverty alleviation i.e. in enhancing the welfare in general & serving the poor in particular. Waqf provides the material foundation for supporting religious, social, cultural and economic activities (Alias, 2011). For public utilities, education and healthcare, various kinds of Awqaf were established (Ahmed, 2007). According to Islahi (1996) the scope, effect, magnitude and viability of Waqf is much greater than any other voluntary institution in Islam such as sadaqah, hibah, Wasiyyah, Qard and cooperative association. Economically speaking, the Waqf system had historically offered a number of essential services such as health, education, municipality services, etc., at no cost at all to the government (Cizakca, 2000)

Wiley (2003) in its exhaustive study of land tenure systems, only briefly deals with Waqf property, though it is well known that vast amounts of land have been dedicated as religious endowments. As such, these lands may not be bought or sold by are held in perpetuity for the charitable or purpose they were dedicated for.

The Taliban 2000 Decree (Justice Decree N. 795) operationally deals with Waqf in its Chapter 9, Article 86:

"The property or land that becomes Waqfi is no longer recognized as private property. Selling, gifting, giving for occupation or inheriting of Waqf property or land is not permitted. A property which has been given for Waqf for a specific purpose must be used only for that purpose."

In Afghanistan most Waqf land is now under the control of the State, originally controlled by religious institutions and virtually indistinguishable from other government land or public land though some Waqf lands are given to local mosques for the specific religious purposes. The Waqf land represent a gap even in the rudimentary land information system, as often no one really knows which among all lands are Waqf (except for locals) and how they are administered. The Afghan land study points out those Waqf properties are not administered by the Ministries of Housing or Land or even by the municipalities. In Afghanistan, they are centrally managed by the Ministry of Pilgrimage, which has departments at a provincial level only throughout Afghanistan (D'Hellencourt et al: 16). This study discusses the widespread misuse of Waqf properties with the Ministry of Pilgrimage lacking capacity to deal with illegal occupation, with the powerful warlords retaining use, income or selling the property (despite the prohibition to do so) (D'Hellencourt et al 2003:16).

History of Waqf in Afghanistan

Throughout history, the Waqf was intended as a third sector of civil society, which existed independently of both the state and the profit-making private sector. Afghanistan is a country, which has been devastated by endemic war and political unrest. Its major problems include high levels of unemployment, corruption, weak government and infrastructural decay. GDP is \$19.85 billion, while Per capita GDP is \$1,000 ranking 216th in the world. Poverty rate is 53% while Unemployment rate is 35%. And external debt is \$3bn (Raimi, 2013). Going back to the history, one can find evidence and remains of Mosques (*Masajid*), Shrines (*Madaris*), Cemeteries (*Maqabir*), Tombs (*minarets*), and mausoleums in the Ghaznavid and Ghourid periods, which are signs of advance civilization and education, but no evidence of Waqf and Waqf's influence on education is available (Mohmand, 2012).

The Ghaznavid period (962-1148), especially the reign of Sultan Mahmud of Ghazna, which is known for its development of Persian poetry and literature, was influenced and shaped by the Perso-Islamic tradition of maintaining state power and absolute monarchical rule, did not allow any alternative circles to work within the area of literature and education. The general population, the peasants, the artisans, and the traders were expected to be obedient, respectful of the ruling elite, and pay their taxes to support the court life. Despite all this, Ghazni was considered as the political and cultural center of Islamic civilization and the Ghaznavids were famous for their Central Asian architectural style and Persian Literature. Great mosques, palaces, mausoleums, and minarets were built during this period, some of which were also endowed to public, but all these were the works of the Ghaznavid rulers. Mosques did play an important role in the education of people, but they were run by the state. Sultan Mahmud of Ghazna "built in Ghazni a magnificent mosque of marble and granite. In close vicinity to it he erected a university, and, after supplying it with books in various languages, and a fine museum, he endowed it for the benefit of the rising youth in the country.

One main reason for the lack of Waqf in the Ghaznavid period probably was the ruler's strict following and their interpretation of the Hanafi school of jurisprudence. Non-Hanafi and Sufi orders were suppressed. Not only that there were no opportunities for individuals to establish Waqf and independent learning and teaching institutions, people such as Ibn Sina (born in Balkh in 1080 CE) had to leave Afghanistan.

The most prominent institution of Waqf one encounters during the Saljuk period in Afghanistan was the famous Nizamia Masjid and Madrasa built by Nizamul Mulk. In contrast, during the Timurid period (1370-1507) there were numerous endowments and public facilities established by the state and individuals. The Timurids promoted religious thinking and civilization elements that served their political tradition and cultural preferences. Of these, the two important were the Hanafi School of jurisprudence of the Sunni Islam, which made it easier to assign both movable and non-movable property as Waqf, and the Naqshbandi Sufi order, which closely worked with the ruling elite. During the era of Timur and thereafter, the Timurids and their spiritual allies, the Naqshbandi Sufi order founded many Waqfs. "These included Timur's endowment for the shrine of Shaikh Ahmad Yasavi, Ulugh Beg's waqf for his madrasa and khanagah in Samarqand, Sultan Husain Baiqara's endowment in Balkh and Herat, and the numerous Waqfs of the leading late fifteenth-century Naqshbandi Shaikh, Khawaja Ubaidullah Ahrar (d. 1490) in Marwarannah and Kabul." The Ahrari Waqf played an important role in the spread of the Naqshbandi Sufi order in Afghanistan, Central Asia, and South Asia.

Before the Ahrari Waqf in Kabul, According to Daulatshah, the private property, which Mir Ali Shir Nava-ee converted into Waqf, amounted to approximately 30 buildings, both in Herat and Khorasan. The value of this property was estimated to be five million Kapaki Dinar. The type of endowments Mir Ali Shir Nava-ee constructed and then dedicated as Waqf were not limited to the teaching institutions, but also included Masjid-i Jami, which also served as teaching institution, Madrasa, Khanaqah (hostel), Darul-Shifa (hospital), and Hammam (public bath).

The rise and development of endowment during the Timurid period was mainly due to land grants awarded to prominent individuals by the state and the states policy of exempting endowment and some personal property from taxes. The individuals who dedicated their property as Waqf were still entitled to receive benefits from these. Jo-Ann Gross quotes A. A. Molchanov in her article *The Economic Status of a Timuride Sufi Shaykh*. "Large-scale landownership by amirs, intellectuals, and religious figures was on the rise in the fifteenth century. The acquisitions of Abd al-Rahman Jami, Ali Shir Navai, and Khwaja Ahrar are conspicuous examples of its tendency. Not only were Jami and Navai granted large amounts of land, but they were also exempted from tax on some of their private land as well. Sultan Husayn (1470-1505) suspended the ushr on Jami's private land, and another edict excluded several sections of Mir Ali Shir's state land from kharaj tax." Aside from Ali Shir Nava-ee, Mohammad Burundiq was another prominent figure who built numerous building and structures and dedicated them as Waqf.

Waqf Laws in Afghanistan

In February of 1970, the government of Afghanistan created the department of Waqf in the Ministry of Justice, and the Waqf Bylaws were officially instated on 19 January 1970. After its establishment, the Waqf office mainly dealt with building and the maintaining Maqabir and Masjid, and the organization of Hajj. The government of Afghanistan did not develop a working structure and created guidelines for Waqf, which could have helped, influenced, or developed higher education, as it did in many other Muslim countries. Article 3 of the Waqf Bylaws state that the office of Waqf has the following duties:

- According to the ordinance of the laws, in addition to the keeping, maintenance and building of Waqf building and holy places, the Waqf office is also responsible for the organization and control of Waqf property.
- The organization and management of Masjid.
- The transportation of Hujaj and providing assistance with pilgrimage procedures.
- With the assistance of Jamiat al-Ulama, the organization of Islamic principles.
- The organization of Zakat, Sadaqah and other charities.

The remainder of the bylaw is about administrative and financial procedures and the responsibilities of the bureaucrats and financial administrators.

The second Waqf Bylaws were published as a part of the civil law on 5 January 1976. (15-10-1355 H.S.). The second chapter in the new bylaw is about Waqf, which starts with article 343 and ends with article 402. Waqf in this period had the same responsibilities as that of the 1970. The bylaws are little more elaborative on the part of administration and responsibilities, but do not provide any encouragement or incentives for individuals to engage in Waqf activities. Not only that there are no indications or incentives that people will be attracted to establish Waqf in Afghanistan, the law sets out

some limitation, how much property one could dedicate to Waqf. Article 365 states that waqif is not allowed to Waqf more than one-third of his property to non-heirs, some limited heirs, or charities.

The current Waqf laws in Afghanistan aside from the permanent Waqf, i.e. Masajid and Madaris has also provided for temporary Waqf. The law states that "special Waqf is temporary and more than two generation of Waqif is allowed to benefit from it." This law discourages some segments of the society to get involved in Waqf activities. Private Waqf, which is also referred to as special Waqf, is an important element of social participation and individuals' or families contribution to the society. This type of Waqf not only helps the individuals and families but also contributes to the growth and development of the community and society. Changes could be brought to the institution of Waqf, if the laws would include *al-habs fi sabil Allah*, *Habs Mawquf Sadaqah Mawqufa*, *Sadaqah Muharrama*, and *permanent Waqf*.

The third kind of Waqf which was contested by Imam Abu Hanifa, but his disciples were in disagreement with him started shortly after the death of the Prophet (PBUH), during the reign of the second successor `Umar ibn Al-Khattab (635-645). When `Umar decided to document in writing his Waqf in Khaibar, he invited some of the Companions of the Prophet (PBUH), to attest to this document. Jaber, another Companion, says that when the news broke out every real estate owner made certain Waqf. Some of those put a condition that part of the fruits, revenues of their Waqf must be distributed to their own children and descendants, and another part should be given to the poor. This kind of Waqf is called posterity or family Waqf. Therefore, arguments could be established about the validity of the third type of Waqf.

Waqf Management in Afghanistan

Afghanistan's Ministry of Hajj and Endowments (Awqaf) is responsible for the registration and management of Awqaf. All Waqf in Afghanistan are supposed to be registered and administered by the ministry, after the passage of a law in the past decade. Awqaf department works as Mutawalli/Nazir of Awqaf in Afghanistan. The founder of Waqf appoints the ministry of Awqaf to be Mutawalli/Nazir of its Waqf land. Although the country is said to have significant Waqf assets that funded social assistance, none are currently registered with the ministry. As a result, and in an environment of extreme tenure insecurity, Waqf lands have simply dissolved into the larger category of public lands. More lands, similarly, are said to be controlled by local leaders, have been occupied by squatters or neighbors, or continue to be managed privately. However, the procedures to manage and register Awqaf and charitable endowments are unclear and unknown. For example, donors wishing to legally register a Waqf cannot find information to do so. As of 2006, no Waqfs were registered at the ministry, according to officials there. Ministry reports state that the government lost authority over Waqf lands, over the last few decades of war. Private charitable organizations such as Bunyad Bayaat and NGOs have replaced religious Awqafs for the provision of social services to the needy. In Afghanistan today, Waqf land is almost entirely indistinguishable from government or public land. Several studies point out that powerful parastatal leaders have used Waqf land for their own benefits, facilitated by the low capacity of the Ministry of Hajj and Endowments to manage and monitor assets (Bernadette Baird-Zars, Rana Amirtahmasabi, & Associates).

Ministry of Hajj and Endowment in Afghanistan is working on the issues related to Hajj and management of mosques and endowment at all 34 provinces of Afghanistan with having staff and sufficient annual budget in consideration. The main task of this ministry is delivering governmental services in religious affairs, the research center for Islamic educations, scholars' forum, department of Hajj affaires, department of mosques and Khaniqahs and two publications for Haq and Islamic guidance messages are the major sections of the ministry (Islamic Republic of Afghanistan, 2008-13).

Waqf Development in Afghanistan

For centuries in Afghanistan existing Waqfs (or more properly in plural: Awqaf) were revisited and new Waqfs created by civil society to fill the gap in state or external funds. Waqf was intended as a third sector of civil society, which existed independently of both the state and the profit-making private sector. The oldest civil society institution, the Waqf or Islamic endowment, combined the features of a philanthropy, a social service agency, and albeit indirectly, a political voice competing with that of a ruler. The Waqf model applied in Afghanistan was previously used in Aceh to purchase land for educational institutions, graveyards, mosques, and community centers. Waqfs emerged as an important resource to offer tsunami victims support during the emergency and beyond (Sait, Siraj, 2013).

Existing Waqf lands are given on Ijarah basis for two to three years and the proceeds of the same are spend to build Mosques, Religious deeds, Madrasah and also helping the poor and the needy. The other plans for development through Waqf also include scholarship to students willing to pursue religious studies, but this has not been implemented and is still in the development pipeline. Waqf Land in Afghanistan are dedicated but not limited to;

- Mosques
- Ziyarat (زیارت)
- Graveyard (قبرستان)
- Agriculture lands
- Inn (like guest house, shops, motor parking, super market and so on)

Although the country is said to have significant Waqf assets that funded social assistance, none are currently registered with the ministry as per records till 2006. Later on, the data is not available to comprehend present record of registration of Waqf assets. As a result, and in an environment of extreme tenure insecurity, Waqf lands have simply dissolved into the larger category of public lands. More lands, similarly, are said to be controlled by local leaders, have been occupied by squatters or neighbors, or continue to be managed privately.

Waqf Problems and Issues in Afghanistan

Legal Issues

In Afghanistan, Awqaf is not an independent department or Ministry rather, it is commingled with ministry of hajj and religious affairs which eventually give Waqf secondary importance being a subsection of this institutions. There is no particular Waqf related policy and it is much neglected on legal and religious grounds. The regulation framework does not complement Waqf much in their statutes while various modifications and amendments are needed in bylaws to further enlighten the people about Waqf and the changes will help Waqf at policy level to get more attention and focus at the National level. Furthermore, as long as the land policies are concerned, several successive governments in Afghanistan have adopted land allocation policies as a means of rewarding and consolidating their own support. Comprehensive land policy has not yet been formulated. However, several major policy documents have emerged in the six years since the fall of the Taliban. To counter the widespread distribution of public lands to undeserving beneficiaries the Government issued Decree 99 in April 2002 to freeze distribution of public land. Thus, Decree 99 of 2002 froze all sales or transfers of government owned land. Whereas 2003 saw a stream of edicts striking at the perpetrators of "land grab" and demanding that various organs of the government attempt to recover land that belonged to the government but which was no longer in their possession; The Decree 83 of 2004 introduced rules making government land the default form of land holding, in the event that no other holding could be proven. It also acted against government exploitation of its power to appropriate land. The Constitution itself contains articles guaranteeing respect for property and ensuring that state appropriation only occurs in strictly regulated contexts subject to full compensation. As per article 41 Ch. 2, of the constitution foreign persons do not have the right to own immovable property in Afghanistan. However, lease of immovable property for the purpose of investment and the sale of estates to diplomatic missions of foreign countries and to those international agencies, of which Afghanistan is a member, is permissible in accordance with the provisions of law (Khan, 2010).

Illegal occupation of Land & Municipality Problems

In Afghanistan, much of the land is currently being illegally occupied or controlled by powerful commanders. Afghanistan has frozen the redistribution of barren land because of a lack of distribution mechanisms; the creative transformation of Waqfs is largely undocumented. The land administration is under the Amlak and Municipalities. Mortgaging seems to be less common than expected (less than 2%). The land administration system is ineffective, centralized, dominated by the courts and no Ministry of Land has ever been created (Sait, Siraj, 2013). City development authority in Afghanistan has taken over all the lands except those which are with legal papers with the owner. This includes Waqf lands and after possessing such property, no developments have been made in such land parcels. There are many land disputes that arise in this case. Land disputes sometimes spill over into violence and represent a stumbling block to peace. With the exception of relatively limited religious lands (Waqf), all classes of real property are affected; from homes and shops to farms and pastures. Claimants are wide ranging, from widows to farmers to whole communities. Immediate causes of dispute are multiple, from conventional causes (domestic disputes, farm boundary disputes, rent and mortgage disputes) to a plethora of cases concerning alleged wrongful occupation of houses, farms and pastures and conflicting rights over common and public lands, whereas in rural areas, the focus of dispute are farmland and pasture rather than houses or other buildings (shops, mills) (Khan, 2010). For reasons of fear, futility or lack of means, many land disputes are never brought to court. The poor do not take their cases outside the community because they do not possess the status, financial means documents or knowledge to pursue the matter successfully.

Economic Issues

As discussed earlier, Afghanistan had been severely disturbed by political and social unrest while decades also taken by different movements which dragged the country to Stone Age. The country is economically much destabilized due to these factors, improper budgeting and lack of funds was also one of the reasons that hindered the growth of Waqf institutions in Afghanistan. In fact, the Waqf department under ministry of hajj has no funds to promote their activities or to manage the registered assets rather; the department is not even capable enough to accommodate the salaries of its employees and their salaries are paid by Ministry of Finance.

Management Issues

Waqf is a specialized field that requires expertise of well trained and skilled individuals to manage and maintain Waqf assets. However, Afghanistan lacks in specialized human resource as well as there are no capacity building institutions that focus on Waqf. Not many policy makers are available to formulate policy which may assist in development of Waqf in Afghanistan. Lack of education and computer literacy is indeed another obstacle in case of registering the Waqf lands. There is sheer need of educational and training institutions to educate and familiarize people with the benefits of Waqf and train them to make this work smoothly.

Lack of Public awareness and Government Interdepartmental Coordination

In Afghanistan, not many people have the knowledge and information about Waqf and its importance. This is because of the fact that the government and other concerned departments are not well connected and have no proper coordination in promoting and managing this institution which eventually result in lack of public awareness and despite the fact the country recognizes Waqf, just because of carelessness and negligence, people are unable to enjoy the benefit of this noble institution and public Waqf is losing its value and importance.

In Afghanistan, most Islamic court judges (qadis) are products of a twelve-year Islamic education. The elites who studied law at the Faculty of Islamic Law at Kabul University seem to be reluctant to enter the Afghan Islamic judiciary, in part because of their lack of specialization in the field. With support and training, the Islamic courts have the potential to respond to housing, land, and property issues. Islamic and customary institutions seem to often act in concert. Courts are careful not to encroach on the power of local religious or tribal leaders, and they often refer matters to the village elders or tribal councils for resolution according to customary law. The judges then incorporate the decisions of tribal councils into their formal opinions. Only when resolution of a dispute is not possible at the village council level does the case enter the primary courts. Unfortunately, statutory and indigenous dispute resolution methods relating to different tenure systems create multiple and potentially contradictory layers. And despite their popularity and efficiency, customary dispute resolution mechanisms should not be romanticized because they often favor wealthier elites, men, and dominant ethnic groups. Thus when any land dispute pertaining to Waqf arises, no court of law is approached or will be approached in the absence of proper comprehensive law rather the loya jirga (grand council) or the regular jirga's will make the decision which eventually may be unfair and unjust. This prediction is due to the fact that the jirgas are usually made up of people with good reputation in the society while knowledge and wisdom or expertise of all social or political matters is a secondary thing. Since Afghanistan is not familiar these days about Waqf and its rudiments, decision regarding such cases will either be biased or unfavorable to some and might also be set as precedence in court of law due to structural hierarchy and mechanism. Once a wrong or false precedence is set in tribal mindset people like Afghanistan, it would indeed be much difficult to revert it back for correction.

The Need for Waqf Reforms in Afghanistan

Land reform is a controversial subject in Afghanistan today, but the problem of land disputes is clearly linked to the inequitable system of land ownership and the huge, and growing, number of landless people. Most property in Afghanistan has never been surveyed. A majority of landowners do not hold legally recognized deeds to their property, but rather have customary land deeds with poorly defined property descriptions. The lack of clear boundaries is a major factor in the pervasive, bitter and often fatal land disputes. Courts play an important role in land relations, which prepare and archive legal deeds, and adjudicate on land claims. The ownership of real property is regulated by a complex of customary, religious and statutory law (Khan, 2010).

Judicial reforms are also even the most neglected part of the reform process since the international intervention in Afghanistan. This lack of attention to the justice sector is not surprising given the short-term security goals as compared to a long-term investment in the criminal justice system. Little effort has been made to reconcile the formal and informal justice systems, leaving the system in the shambles (Riaz, 2011). Hence one can expect the same treatment for Waqf law reforms. Waqf is indeed not a short term project to accomplish rather it's a perpetual system for benefiting the society at large through diverse projects. One of the main thing that is required by Waqf are strong judicial and land system or their reforms so that country like Afghanistan can proper through this nonprofit institution. It is important that the government of Afghanistan and the people with religious, political, and social influence to present Waqf not only as a mean of building and maintaining mosques and tombs, but also as an institution which should be aiding the poor segment of the society, and supporting activities that will benefit and serve the society at large. Waqf, as religious and charitable institution, should not only be designated as the source of building Mosques (*Masajid*) and cemeteries (*Maqabir*), but also as a source of building and developing schools (*Madaris*), libraries, hospital (*Darul Shifas*), and other learning and research institutions. At the same time, it should be made clear that Waqf is not a replacement for many different government departments and entities, but a supplement, which can help the state to fulfill its obligation of providing public goods. Waqf needs to be presented to the common man as an act of good deed in the cause of Allah (SWT). It is stated in Surah al-Baqarah:

"The parable of those who spend their substance in the way of Allah is that of a grain of corn: it groweth seven years, and each year hath a hundred grains. Allah giveth manifold increase to whom he pleaseth: And Allah careth for all and He knoweth all things. (2:261)"

The current governing laws of Waqf in Afghanistan are designed to allow the state Waqf offices to pursue with their affairs of building and maintaining Mosques and Shrines (*Masajid and Maqabir*), and organizing the Hajj affairs. Furthermore, it is mainly directed toward persons to establish individual or family Waqfs. There is very little direction or support for groups to organize and establish Waqf foundations. In order to promote and develop the institution of Waqf as an institution, which could include individuals and groups, new laws and legal reforms should be enacted to promote and prefer organizational Waqf institutions. Organizational Waqfs will involve large segment of the community in their activities and will also assure the continuity of Waqf. Organizational Waqf compared to state run Waqf would be more sufficient, better accountable, and transparent. The management team, which will be comprised of different element of the society, with different connections and power relations, would be better equipped to raise fund and organize the affairs of the Waqf more responsibly (Mohmand, 2012). In an interview with the Director of Entailment affairs in Kabul on June 28th, 2015 at Ministry of entailment they stated that they are currently working on couple of new statutes or circulars that includes Zakat policy reform to be spent in Waqf for good deeds and second is the mechanism on how to invest in Awqaf properties. The new statutes will certainly help in promoting Waqf properties and would familiarize the people with new mechanism.

Afghanistan nowadays is planning to fulfill the budget deficit for Waqf institution through fund raising from member Muslim countries to promote Waqf. Ministry is in coordination with several member countries and few of them have shown their interest in helping Afghanistan to rise in promoting Waqf and help the institution grow.

Some significant points shows below:

- The current status of Waqf properties in Afghanistan indicates a significant number of properties spread across the country, ranging from mosques and madrasas to land parcels and other assets.
- Management practices for Waqf properties vary widely, with some properties being well-maintained and effectively managed, while others suffer from neglect and mismanagement.
- Development initiatives for Waqf properties in Afghanistan have been limited, with sporadic projects undertaken by various stakeholders but lacking a comprehensive strategy for systematic development.
- Challenges hindering the effective management and development of Waqf properties include legal ambiguities, lack of financial resources, inadequate infrastructure, and limited awareness among the population.
- Recommendations to improve the management and development of Waqf properties include establishing clear legal frameworks, enhancing financial sustainability through innovative funding mechanisms, investing in capacity building for Waqf managers, and raising awareness about the potential socio-economic benefits of Waqf among the public and policymakers alike

CONCLUSIONS

The historical background of Waqf in Afghanistan reflects a complex interplay of political, cultural, and religious factors. Despite the nation's rich architectural heritage, the impact of Waqf on education and society in earlier periods was limited due to authoritarian rulers and strict religious interpretations. During the Ghaznavid era, characterized by centralized monarchical power, alternative educational avenues were restricted. However, the Timurid period witnessed a surge in Waqf establishments, particularly influenced by the Hanafi School of jurisprudence and the Naqshbandi Sufi order. Over time, the legal framework governing Waqf in Afghanistan has developed, yet challenges persist in its application and administration. These challenges include ambiguous procedures for registration and management, insufficient incentives for individuals to create Waqf, and restrictions on the extent of property that can be allocated to Waqf. Additionally, the Ministry of Hajj and Endowments grapples with capacity and financial limitations, resulting in ineffective management of Waqf assets. Various issues, ranging from legal and economic hurdles to management deficiencies, impede the advancement of Waqf in Afghanistan. Problems such as land disputes, unlawful land occupation, a shortage of specialized personnel, and low public awareness contribute to the obstacles confronting Waqf institutions. Furthermore, the integration of Waqf into broader governmental strategies and the coordination among different departments remain inadequate. To overcome these challenges and foster the growth of Waqf in Afghanistan, reforms are imperative. These reforms should encompass legal adjustments to clarify regulations and encourage the establishment of Waqf, along with judicial and land reforms to address disputes and ensure transparent management of Waqf assets. Enhancing public awareness and governmental backing for Waqf initiatives, including community-oriented Waqf organizations, are also crucial. Efforts are underway to tackle some of these issues, such as reforming Zakat policies and devising mechanisms for investing in Waqf properties. Collaboration with other Muslim nations for fundraising and support could further fortify Waqf development in Afghanistan. Ultimately, advocating for Waqf as a tool for societal welfare beyond religious institutions could enhance its broader acceptance and impact on Afghanistan's socio-economic landscape.

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REFERENCES

- Alias, T. A. (2011). Tax laws affecting Waqf in Malaysia: A comparison with the United States and Turkey. *6th UUM International Legal Conference*. Pulau Penang.
- Hussin, T. M. (2014). *Waqf Contribution Opportunity in Malaysia*. Retrieved from Inceif Academia: Retrieved from https://www.academia.edu/9071626/Waqf_Contribution_Opportunity_in_Malaysia
- Islamic Republic of Afghanistan. (2008-13). *Religious Affairs Sector Strategy - Pillar II Good Governance*. Afghanistan National Development Strategy (ANDS).
- JAWHAR. (2004). *Awqaf*. Retrieved from Department of Awqaf, Zakat and Hajj - Prime Minister's Department. Retrieved from <http://www.jawhar.gov.my/index.php/en/awqaf>
- JCORP. (2015). *Waqaf An-Nur Hospital & Clinics*. Retrieved from Waqaf An-Nur Corporation Berhad. Retrieved from <http://www.jcorp.com.my/waqaf-an-nur-corporation-berhad-37.aspx>
- Khan, A. Z. (2010). Extraction of Parcel Boundaries from Ortho-rectified Aerial Photos: A cost effective technique. *International Workshop - Spatial Information for Sustainable Management of Urban Areas*, (pp. 1-8). Germany. Retrieved June 29, 2015, from http://www.isprs.org/proceedings/XXXVIII/1_4_7-W5/paper/Khan-112.pdf

- Kichowchhwi, S. M. (2013). The Future of Afghanistan. *Third International Islamic Cooperation Conference on Afghanistan*. Istanbul: All India Ulema and Mashaikh Board.
- McChesney, R. D. (1973). Waqf under the Afghans. In *Waqf in Central Asia - Four Hundred years in the history of Muslim Shrine 1480-1889* (pp. 273-292). New Jersey: Princeton University Press.
- Mohammed, N. (2015, June 21). *IMF Assisting Afghanistan on Sukuk*. Retrieved from Sukuk: Retrieved from <http://www.sukuk.com/article/imf-assisting-afghanistan-on-sukuk-4413>
- Mohmand, A. Q. (2012). The Role of Awqaf in the Development of Islamic Higher Education: the Past, the Present, and Future Prospects. *Third international conference on Islam and higher education*. Kuantan: Pahang State Foundation. Retrieved from http://www.iais.org.my/e/attach/3rd_ICIHE/3rd_ICIHE_Conference_Programme.pdf
- Raissouni, A. (2001). *Islamic "Waqf Endowment" Scope and Implications*. Rabat, Morocco: ISESCO.
- Riaz, U. (2011). State-building in Afghanistan Are Reforms Sustainable. *Conflict and Peace Studies*, 4(2), 2-11. Retrieved from <https://www.google.com.pk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0CC4QFjAD&url=http%3A%2F%2Fsan-pips.com%2Fdownload.php%3Ff%3D168.pdf&ei=FFqTVYCFA8StUZKblKAB&usg=AFQjCNEVA5EVUVO Nm1e9aYbJZTqVr1Ihew&bvm=bv.96952980,d.d24>
- Sait, S. (2004). *Islamic Land Law in Afghanistan: Innovative Land tools and strategies*. Kenya: UNHABITAT Global Division.
- Sait, S. (2013). *Unexplored dimensions: Islamic land systems in Afghanistan, Indonesia, Iraq and Somalia*. London: Environmental Law Institute and United Nations Environment Programme. Retrieved June 2015, from http://www.environmentalpeacebuilding.org/assets/Documents/LibraryItem_000_Doc_166.pdf
- Wily, L. A. (2003). *Land Rights in Crisis: Restoring Tenure Security in Afghanistan*. Kabul: Afghanistan Research and Evaluation Unit.

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