

**LEGAL FRAMEWORK OF
WAQF MANAGEMENT AND
ADMINISTRATION IN
BANGLADESH: ISSUES,
CHALLENGES AND WAY
FORWARD**

Md. Tuhin Mia

Md. Zahidul Islam

INTRODUCTION

- Waqf refers to a special **voluntary charity** which is one of the sources of the Islamic economic system.
- Bangladesh is a Muslim-majority country with the third largest population (87%) on the earth. As a Muslim country, there are some Islamic principles such as zakah, waqf and so on. As an institution, waqf has existed in the country for a long time. Most of the waqf properties in Bangladesh include **mosques, madrasha, eidgahs, mazars, dargahs, pharmaceuticals, land, remote areas, small hills and real estate.**
- Recently, a wave of secure innovation called '**cash waqf**' has introduced in the country.
- The census of the waqf properties was conducted by the **Bangladesh Bureau of Statistics in 1986**. It found that the total annual income of the registered waqf estates was 708,293,652 Taka which is approximately US\$8,853,670. This amount is only from a bequest from registered waqf but there are **still many waqf properties that have not been registered or managed by Waqf organizations.**

- Regarding the registration of the waqf property in Bangladesh can be divided into three general categories.
 - First, waqf registered with Office of the Waqf Administration (OWA);
 - second, waqf as a private trust which is not recorded in the OWA under the Ministry of Religious Affairs;
 - third, waqf is managed by Mutawallis or the management but has not enlisted with OWA.

The second and third categories of waqf properties are not enlisted, they are not directly controlled by the Waqf Administrator's Office.

- Bangladesh has about 21,000 waqf lands, of which only 12% have been fully progressed. Due to the inability of waqf management to record with no reliable information, there are still loopholes in the rest.

- Waqf in Bangladesh also faces problems entirely through their management and activities. The development of Waqf has further involved on issues such as lack of **financial resources, lack of inefficiency of Waqf land, gaps in the legal system, unregistered Waqf land and Waqf on leased land.**
- Thus, this article plans to find out the issues and challenges that arise on the Waqf and hinder the improvement of waqf management and administration.
 - Bangladesh's existing legal framework and administration in Waqf management
 - Waqf's role on Bangladesh in terms of financial measures and poverty reduction
- Qualitative research
- The findings of this study suggests a real thought to improve the country's Waqf as well as to **introduce a new law** that relies on a mixture of traditional religious belief and modern management tools to better manage, unite and organize the Waqf properties in Bangladesh.

HISTORICAL DEVELOPMENT OF WAQF MANAGEMENT IN BANGLADESH

- **Mughal period:** A large number of mosques, Islamic schools, social organizations and institutions used to be administered by the bequest of waqf propertise.
- **Mohsin Fund:** In 1806, Haji Muhammad Muhsin of Hughli, India, and a Zamindar from the Saidpur Territory used all of his bequest income to support the religious and educational institutions in Hughli Imambarah.
- **British occupation:** The waqf estate was controlled by the Muslim personal law (Islamic law) that governed the main part of waqf. The chief judge was the protector of waqf estates within his jurisdiction. Despite this, the chief district judge did not have legal control and clear system to manage and process the waqf propertise.
- **Pakistan in 1947:** The Bengal **Waqf Act 1934** was used in East Pakistan and continued to manage waqf propertise. Then, **the Waqf Ordinance** was enacted in 1962 without repealing the Waqf Act 1934.
- **After freedom:** Bangladesh government retained and adapted the Waqf Ordinance 1962. Recently in 2013, a law called "**Waqfs (Transfer and Development of Property) Special Provisions Act, 2013**" has been recognized as Waqf law.

- Ministry of Education - Ministry of Land Reform and Land Administration (1972) - the Ministry of Religious Affairs.
- In accordance with the **section 7** of the Waqf Ordinance 1962, the government authorities can appoint a **Waqf Administrator for a term of five years**. He should be a Muslim.
- The Ordinance also can establish a waqf committee to help the administrator. There are similar arrangements in the Ordinance that **the deputy and assistant administrator can be appointed** if it is considered important.
- The Office of the Waqf Administrator (OWA) is located in Dhaka, the capital, because it is clearly required by section 12 of the Ordinance. In addition to the Chief Administrator's Office in Dhaka, there are 4 departmental workplaces and 24 district-level offices. This brings the total number of offices managing Waqf issues nationwide to 29.

- Section 47 of the 1962 Ordinance, all waqf propertise (whether existing or formulated after the regulation begins) **will be registered in the office of the administrator.** After receiving a waqf registration application, the waqfs administrator will measure the application by looking at the waqf contract, records and objects.
- Application for registration can be made by **waqif (the settler), mutawalli (manager) or the waqf committee.**
- This **registration is compulsory** under the Ordinance and it provides penalties for mutawallis who neglect to register waqf propertise at the Waqf Office.
- Gradually, the waqf organization in Bangladesh was managed by a **waqf administrator who was helped by 111 officials and workers.** This department is responsible for the management of different religious and socio-economic institutions including mosques, Islamic schools (Madrasha), orphanages, generous pharmacies, etc. All Waqf estates in Bangladesh is supervised by an established committee.

LEGAL FRAMEWORK OF WAQF MANAGEMENT AND ADMINISTRATION

- As pointed out by the Department of Waqf Bangladesh, the current standards and guidelines related to the operation, control and management of waqf property are the *Waqf Validating Act 1913*, the *Waqf Validating (Amendment) Act 1930*, the *Bengal Waqf Act 1934*, the *Waqf Ordinance 1962*, the *Waqf Administration Rules 1975*, the *Bangladesh Waqf Admin Employees Service Rules 1989*, and the *Waqfs (Transfer and Development of Property) Special Provisions Act, 2013*.
- In the absence of government rules, especially with regard to Waqf Ahly (family waqf), the Privy Council in *Abul Fata Mohamed Ishak v Rusomoy Dhur Chowdry* case held that the property assurance for family settlement through waqf was invalid. The controversial verdict in this landmark case has caused widespread unease among Muslim communities across the Indian subcontinent.
- The Waqf Validating Act was promulgated in 1913 where the basic goal was to eliminate obstacles caused by the Privy Council's decision. The act formulates Muslims to settle their property for their families, children and relatives through waqf. This is how the waqf property in Bangladesh (then Bengal) began to receive government supervision.

- Nevertheless, it was impractical to fund waqf organizations from government finances. As a result, the government passed **the Bengal Waqf Act 1934**. To supervise and ensure the waqf field, a legal independent organization is adopted which is led by the Bangladesh Waqf Administrator.
- The Bengal Waqf Act 1934 adopted the collection from the total income bequeathed by waqf. One of the main goals of the act is to protect the waqf field **from mutawallis mismanagement, misappropriation and unpredictable demonstrations about waqf organizations**.
- According to section 103 of the Waqf Ordinance 1962 , if any arrangement conflicts with the ordinance, the provisions of the Ordinance will prevail over the Bengal Waqf Act 1934.
- If it is confirmed that the official registration of Waqf estate is not enforced, then the organization and management of waqf propertise will be an incredible challenge for the country.

ISSUES AND CHALLENGES OF WAQF MANAGEMENT AND ADMINISTRATION

- The corrupt phenomenon of waqf management are seen throughout the history of abuse, mismanagement, plundering, infringement and illegal confiscation of waqf property. The reform and development of waqf in Bangladesh has been affected by various difficulties. These include an unified waqf organization, lack of organizational and regulatory skills, insufficient employees, no provisions in relevant laws, lack of social awareness, unregistered waqf property, illegal occupation, lack of Shariah advisory board, misappropriation of waqf property, malfunctions and lack of Mutawalli's integrity and ability. These difficulties fundamentally affected the trust among donors and limited waqf's contribution to reduce poverty in Bangladesh.
- **Less Employees:** Compare to the absolute number of waqf estate, very few administrators are dealing waqf sector. In order to legally organize and manage the particularly large number of waqf estate scattered throughout the country, a large number of qualified staff are needed in this sector. **Due to the lack of officials, only 29 district offices supervise waqf estates among the 64 districts.** Only one administrator in the office of these districts manage nearly 800 waqf estate.

- **Unregistered Waqf Property:** Although section 47 of the Waqf Ordinance 1962 requires registration, **more than 33% of absolute waqf properties in Bangladesh are still unregistered.** According to the Waqf census, among the 150,593 waqf estate in the country, only 97,046 were enlisted, 45,607 were verbal and the remaining 7,940 were waqf by tradition.
 - First, many people are not aware of the waqf organizations, especially in rural areas.
 - Second, to avoid being controlled by the waqf organization.
 - Third, avoid paying 5% levy, because this payment is mandatory for all waqf estate enlisted in the administration.
- **Misappropriation of Waqf Property and Illegal Occupation:** Many waqf property has been occupied illegally by private or public individual or institutions, even by the government offices. Also, many waqf properties are underutilized and misappropriated. For example, many properties were leased out at very low rents.
- In addition, there is no social burden for this restoration. Without sufficient and capable staff, **a single national waqf committee cannot conduct continuous and detailed inspections** to prevent mismanagement of waqf property.

- **Uncollected Debts:** The recovery of unfulfilled commitment obligations is another problem. Regardless of regulations, in the past few years, a large number of measures have not fulfilled their obligations. In order to balance the accounts of the Waqf committee, it is vital to restore debts.
- **Operational Inefficiency and Waqf Dispute Complications:** The lack of organizational and regulatory skills to achieve the most use of accessible human and monetary assets is another problem. Many waqf-related disputes are arbitrated by different courts and Waqf administrators' offices, and the number is increasing day by day.
- Disputes that were deemed illegal attribution or transfer of the waqf propertise, misappropriation, mismanagement, etc. are referred to the waqf administrator. As a result, the waqf organization is overwhelmed by countless cases which leads to slow and wasteful activities while there are many other major issues need to be considered.

- **Unapproved Transfer:** The Waqf Ordinance 1962 prohibits mutawallis from moving any waqf property without the administrator's approval.
- **Personal Use of Waqf Income:** It is often heard that the income obtained from the Waqf property is kept for personal use by the authorities. The Ordinance stipulates that if any waqf property is obtained in accordance with the Land Acquisition Act 1894 or other laws in force at the time, the cash payable for such property will be paid to the administrator. The money will be kept in the Waqf Fund until it is deposited for the reasons stated in section 74(3).
- **Lack of Progressive and Innovative Ideas:** Whether it comes from the public or private spheres, there is almost no evidence that progressive and creative ideas have changed the state of affairs and expanded waqf estate. The possibility of interest in people that is the possibility of updating Muslim human resources through education and training has not received any consideration.

- **Centralized Waqf Management System:** The Waqf organization in Bangladesh is explicitly centralized where every order and decision depends on the administrator of the headquarter.
- **No Shariah and Advisory Board:** There is no shariah committee to explore, evaluate or encourage waqf management and to monitor the rules and regulations of Shariah law throughout the activities including organization and investment.
- **Inadequate Census of Waqf Estates:** Bangladesh Bureau of Statistic took the lead in conducting the first complete census of Waqf Estates in 1986. Since then, the country has not fully focused on Waqf assets.
- **Lack of Regulations in Related Laws:** Waqf administration departments are very weak because there are no necessary regulations in related laws and there are **no skilled employees** in all district-level offices. Also, there is **no social awareness** regarding the actual capacity and utility bequeathed by waqf.

PROSPECTS AND WAY FORWARD

- Under the current circumstances, the regulations can no longer meet the tasks and it has **become insufficient**. This is an excellent time for the waqf administration and the beneficiaries of the Mazar, Dhargah and Mosques **to introduce another law** concerning how to deal with these issues and how to use their assets and property, specially the aid of Muslim society and human culture.
- The Waqf administration authority does not have any policy for monitoring Cash-Waqf. For defining the policy in this way, it is possible to elaborate and **assign a skilled advisory board with experts in legal, financial issues and Shariah law** to complete the formulation of the proposed strategy within a specified time. The government authority may approve the return of all property to the waqf administration with or without compensation.
- The establishment of the Waqf tribunal will be a huge step forward in achieving the goals of waqf. It should have a separate legal adviser or a free lawyer panel. Under its sole position, arrangement and control, it will be particularly proficient in handling and managing waqf related laws and prosecutions. Waqf institutions **should be excluded from paying court fees and enlistment fees**.

- The Waqf government should **democratize and decentralize** power to make it stronger and more effective. Local or regional administrations should be given power or independence to work freely but obviously, this should be met and agreed with the central organization. In addition, a multifaceted agency may contribute to the proper management of waqf in Bangladesh.
- Waqf management should not be satisfied with collecting its contribution from waqf but **should set specific rules for waqf's mutawalli** regarding where and how or at what rate they should contribute waqf income under their supervision.
- Bangladesh should **set up a national waqf advisory committee or an advisory board of Shariah law** to work together with the administration of waqf organizations. It may become a think tank and a key driving force.
- Waqf management **should have a substantive method** to guide the overview and evaluation of waqf property including how, when and how long it will take to conduct a thorough census and update its status. Government **should have some experts** to develop these waqf assets with their consent. In order to eliminate the delay in the promotion of money by financing institutions on the security of waqf properties, **a reasonable provision may be added to the future waqf Act**. Waqf management should be able **to provide debentures and bonds** to access essential finances. Afterwards, full consideration should be given to improving waqf estates in urban.

- The government authority should **crack down propertise** for moving waqf money and make progress in collecting estates under illegal occupation. In this way, the waqf administration department should make an **absolute decision to enact a substantive law** stating that any waqf property should not be sold or moved. It should try to make a fairly formative approach to its commercial use.
- The waqf board in Bangladesh should let the people understand the financial significance of these estates. **Stimulating rich people** to make waqf is crucial otherwise this tool will gradually fail. Therefore, **ulamas including the imams of the mosque and the educators of religious institutions should act quickly** because people trust them and they have a huge influence on these people. In this way, if they talk to the rich and tell them about the earth and divine benefits of waqf, it can bring positive changes to the people. In addition, **Islamic researchers should write** on this issue and give speech on it wherever possible.
- The waqf governing body **may arrange training** for its officials, representatives and mutawallis on the basic Islamic laws, current rules and regulations for waqf management. The purpose of this training is to provide them appropriate information and rules for the use of waqf attributes. It should also let them know that they hold trusts and they should show higher trustworthiness.

- The microfinance drive is widely regarded as another way to solve poverty and achieve progress. Hence, **Islamic microfinance institutions based on waqf should be established.**
- The **website should be furnished with design, updated data, activities and promotion** performed by the waqf management department. It may also contain a unique write-up of waqf management spirit and progress.
- In addition **to building up houses for orphans, mosques, religious schools or madrasha, schools, colleges** may contribute to make a better society. A portion of the income of waqf property in Bangladesh can also be constructed to public hospitals so that these institutions can use these assets for the poor and needy patients providing better services and free medical support.

- In Bangladesh, many people **lack the financial to protect them in court**. The waqf institution in Bangladesh can also use its available monetary assets to identify such serious social problems. Many poor and needy guardians in Bangladesh also seek financial **help to allow their wed-eligible children get married**.
- It may **appoint a research department** to continuously study the pioneering ideas of waqf management and progress. The waqf administration should keep **a diverse library** where it collects various publications of waqf management around the world and researchers can enter this library freely for research. Similarly, waqf management institutions **should publish** everything related to waqf. The waqf management institutions can also **organize international and national conferences, seminars, workshops, symposiums and arrange round-table dialogues and discussions**.

CONCLUSION

- Bangladesh is facing challenges of poverty and the country has a large amount of waqf property. Therefore, it should **set basic goals focusing on the country's waqf progress** in terms of better management. In this regard, Bangladesh is to seek establishing the foundation for the aforementioned waqf-related institutions to serve, promote and consolidate the Ummah.
- The difficulties show the real situation of the management of waqf institutions in Bangladesh. Waqf institutions **should improve their practices to provide finances to poor people**. Through this practice and execution, waqf organizations can finally stay away from the breakdown of their income and livelihoods. This practice may improve their charitable goals.
- Therefore, the waqf estates **should use its current and accessible property or resources to find and develop those sectors**. The expansion of payment should increase in supporting and conducting the functions of alleviating national poverty. In this case, **national laws should be developed** for the management of religious organizations.

A 3D yellow speech bubble with a blue shadow, containing the text "THANK YOU" in blue, set against a blue background.

THANK YOU