

SOCIO-LEGAL SIGNIFICANCE OF FAMILY *Waqf* IN ISLAMIC LAW: ITS DEGENERATION AND REVIVAL

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ABSTRACT

From a Shari'ah perspective, no essential difference is noticed between public welfare *waqf* and a *waqf* created for the benefit of individuals such as descendants and family of a person, and both are treated as recommended avenues for voluntary gratuitous transfer of benefits. Over the centuries, family *awqaf* have degenerated due to various social and political factors. Under the influence of the English law that regards family trusts as non-charitable, family *awqaf* have been treated as non-charitable institutions, and have been deprived of the privileges and immunities granted to charitable *awqaf*. In this context, the current article discusses the essential nature of such *awqaf* with regard to their position in Islamic law and history as well as their social significance, and attempts to shed light on the degeneration that took place in the recent past, while exploring means of revival. It finds that the creation of endowments for specific beneficiaries such as *waqf* for those related to the endower is a recognised form of charity in Islamic law, that function as public serving entities directly or indirectly. Issues encountered in such *awqaf* do not necessitate denying their multiple advantages. Providing the necessary legal regulation and administrative framework as well as tax exemption for all *awqaf* could go a long way in promoting the cause of *waqf*.

Keywords: family, *waqf*, endowment, Islamic trust

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KEPENTINGAN SOSIO-PERUNDANGAN WAKAF UNTUK KELUARGA DALAM UNDANG-UNDANG ISLAM: KEMEROSOTAN DAN KEBANGKITANNYA SEMULA

ABSTRAK

Tiada perbezaan yang ketara daripada perspektif Shari'ah di antara *wakaf* am dan *wakaf* yang diwujudkan untuk manfaat individu seperti untuk keturunan dan kaum keluarga seseorang itu, dan keduanya dilihat sebagai satu pendekatan yang *afdhal* untuk memindahkan manfaat secara sukarela. Dalam beberapa abad, wakaf untuk ahli keluarga telah mengalami kemerosotan disebabkan beberapa faktor sosial dan politik. Di bawah pengaruh undang-undang Inggeris di mana amanah untuk keluarga dikategorikan sebagai amanah yang bukan amal ('non-charitable trust'), *wakaf* untuk keluarga telah di pandang sebagai institusi bukan amal dan telah dilucutkan daripada menikmati keistimewaan-keistimewaan dan imuniti-imuniti yang diberikan kepada *awakaf* amal. Dalam konteks ini, makalah ini membincangkan ciri-ciri penting *awakaf* sebegini dengan merujuk kedudukannya di bawah undang-undang Islam dan sejarah dan juga kepentingan sosialnya. Makalah juga cuba menerangkan tentang kemerosotan yang dialami pada masa lalu baru-baru ini dan dalam masa yang sama meneroka cara-cara untuk membangkitkannya semula. Kajian ini mendapati bahawa kewujudan wakaf untuk mereka yang ada hubungan dengan pewakaf adalah sejenis amal jariah yang diiktiraf di dalam undang-undang Islam, yang berfungsi sebagai entity yang berkhidmat kepada masyarakat secara langsung dan tidak langsung. Isu-isu yang dihadapi dalam *awakaf* berkenaan tidak seharusnya digunakan untuk menidakkan kelebihan-kelebihan yang ada padanya. Memperuntukkan perundangan dan kaedah-kaedah dan kerangka pentadbiran yang diperlukan serta pengecualian cukai untuk semua *awakaf* akan melangkah jauh dalam perjuangan wakaf.

Kata kunci: keluarga, wakaf, endowmen, Islam, amanah.

INTRODUCTION

Waqf is a versatile mechanism that could be used at various levels for multifarious functions and objectives recognised as permissible in Shari'ah. In the vibrant history of Islamic nations, *waqf* played the role of a third economic sector for the advancement of communities and civilisations. It spearheaded the development of educational institutions and the advancement of knowledge in all its fields, including legal and human sciences as well as natural sciences. It supported a number of public services including healthcare, conserving environment as well as care for animals, in addition to its primary avenues of ensuring the welfare of diverse classes of the poor and the needy and the establishment and maintenance of places of worship.¹

From among the diverse modes of specifying the beneficiaries for whom a *waqf* is created, the Shari'ah recognises as valid an endowment in favour of one's relatives and progeny. Instead of assigning the beneficiary as a class of people who do not have a particular family relationship with the endower, a *waqf* can be expressly created for the benefit of one's family and descendants, either in an all-inclusive and general manner, or with qualifications restricting its scope. In such endowments that are generally referred to as family *awqaf*, the first beneficiaries of the endowment are specific persons, even though it may be assigned to an avenue of public welfare after them. Thus, it is an institution that could lead to public benefit ultimately. It has also been claimed to be a superior avenue of charity, as such *awqaf* endeavour to prevent the descendants of the endower from becoming needy of others, thus eliminating poverty and need at the root.

Following the decline of Muslim power in the last few centuries, some governments in Muslim countries had chosen to impose various degrees of restrictions on the creation and functioning of family *awqaf*, or to resort to their total abolishment. To some extent, this policy has been based on the conventional approach that charity in general should be directed to the public, rather than one's relatives and family. Mismanagement of such *awqaf* and the failure to fulfil their objectives are commonly cited as the arguments favouring such restrictions/abolishment. In this context, the current article

¹ Monzer Kahf, *al-Waqf al-Islami* (n.d.), vol. 1, 9.

explores the position of such *awqaf* in Islamic law and history, their degeneration and means of revival.

ISLAMIC LAW AND THE CONCEPT OF ENDOWMENT FOR THE FAMILY

In regard to its beneficiaries, *waqf* is divided into *zurri* and *khayri*, although commonly found in later writings, is not noticed in the major works of Islamic law. However, Islamic law recognises the creation of a *waqf* as valid, wherein the beneficiaries constitute a specific person or a group of individuals, even though it may be assigned to an avenue of public welfare such as the poor in general, along with them or after them. In what is known as family *waqf*, the first beneficiaries of the endowment are specific persons such as the children, descendants, or relatives, of the *waqif* (settlor/endower) or of another person, whereas in public welfare *waqf*, the first beneficiary is specified as an avenue of public welfare, even though it may be assigned to specific persons or a group thereafter.² In the latter type, the *waqf* is initially endowed for public utilities and services such as schools and mosques, or for the benefit of a class of people such as the poor, scholars or students. Thus a *waqf* formed for the benefit of the relatives of the endower, his children, grandchildren and progeny (*dhurriyyah*) is generally referred to as *waqf ahli* (family *waqf*) or *waqf dhurri/zurri*. In contrast, endowments for the benefit of avenues of public welfare and particular segments of the society in general such as mosques, educational institutions, scholars, and the poor have been known as *waqf khayri* (public welfare or charitable *waqf*).³

Another type of *waqf* that is recognised in some schools of Islamic law and considered to come under family *waqf* is where the endower assigns himself as a beneficiary, either exclusively or along with others, as long as he remains alive. This form of *waqf* is recognised as valid only in some schools of Islamic law. The Maliki and the Shafi'i schools do not recognise its validity, as the benefit is in the ownership of the endower even prior to the creation of the

² Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuh* (Damascus: Dar al-Fikr, 2008), vol. 8, 159.

³ Mustafa al-Bugha, Mustafa al-Khin, Beirut, Dar al-Kutub al-Ilmiyyah, *Al-Fiqh al-Manhaji* (Damascus: Dar al-Qalam, 2011), vol. 2, 240.

waqf, and assigning the benefit to him anew through the *waqf* would be meaningless. However, he may assign for himself the management of the *waqf*. The Hanafi and Hanbali schools as well as the Zahiri scholar Ibn Hazm have upheld the validity of some forms of such endowment, as their recognition may serve as an encouragement for the creation of endowments.⁴

As far as Islamic law is concerned, family *awqaf* could be referred to as such only because of the distinct nature of the primary beneficiaries of these who are related in some way to the endower, as against other *awqaf* where the primary beneficiaries are not distinguished in a similar manner. Apart from some minor difference pertaining to certain ancillary aspects, such as the permissibility of a *waqf* for the descendants of the Holy Prophet (*peace be upon him*) in some forms of *waqf*,⁵ there is no difference between public and private endowments, and both are treated as recommended avenues of voluntary gratuitous transfer of benefits. This fact is acknowledged by the critics of Islamic law, who recognise that “under the Islamic law of *waqf*, the benefits accorded to family members would themselves fulfil a charitable end.”⁶ As will be supported through evidence below, family *awqaf* could even be considered superior avenues of charity, as they endeavour to prevent the descendants of the endower from becoming needy of others, thus eliminating need and poverty at root.

FAMILY WAQF IN THE PROPHETIC PERIOD

A number of *awqaf* created by prophetic companions, some with the express approval of the Holy Prophet (*peace be upon him*) had the relatives of their endowers as their beneficiaries. Imam al-Shafi‘i states that he is informed of eighty companions from among the *ansar*

⁴ *Mughni al-Muhtaj*, vol. 2, 380; *al-Sharh al-Kabir*, vol. 4, 80; *al-Fatawa al-Hindiyyah*, vol. 2, 397; *Kashshaf al-Qina’*, vol. 2, 444; *al-Muhalla*, vol. 9, 175, as in Abd al-Karim Zaydan, *al-Mufassal fi Ahkam al-Mar’ah*, vol. 10, 442.

⁵ Al-Muzani, Abu Ibrahim Isma‘il ibn Yahya ibn Ism‘il al-Misri, *Mukhtasar al-Muzani* (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1998), 180.

⁶ Jeffrey A. Schoenblum, “The Role of Legal Doctrine in the Decline of the Islamic Waqf: A Comparison with the Trust,” *Vanderbilt Journal of Transnational Law*, 1 Oct 1999.

who had donated restricted donations, i.e. *waqf*.⁷ It appears that many of such *awqaf* were assigned for the benefit of the relatives and progeny of the endowers, together with other beneficiaries or in an exclusive manner. No distinction appears to have been maintained between whether the beneficiaries were the public or related to the endower, based on the common approach to charity, as shall be discussed below.⁸ Creation of *awqaf* was a practice widespread among the companions of the Holy Prophet (*peace be upon him*), to such an extent that it has been narrated by Jabir (*rad.*) that there did not remain any one from among the companions who was capable but that he created a *waqf*. Thus, in one of the first endowments of this nature to be created in the history of Islam, the Holy Prophet (*peace be upon him*) himself had directed the companion Abu Talhah (*rad.*) to assign it to his close family. When the verse “*You shall never attain virtue (birr) until you spend out of that which you love*” (Holy Qur’an, 3: 92) the companion Abu Talhah (*rad.*) came to the Messenger of Allah (*peace be upon him*) and said: Surely, the most beloved of my properties to me is Bayraha’—a garden where the Holy Prophet (*peace be upon him*) used to enter and sit in the shade of its trees, and drink from its water—it is (hereby given) for Allah and his messenger (*peace be upon him*) I seek its virtue and recompense; so place it, O the Messenger of Allah, where Allah directs you. The Messenger of Allah (*peace be upon him*) thereupon said: Fine, Abu Talhah, surely that is a profitable investment; we have accepted it from you, and have returned its benefit to you. Assign it (for the benefit) among your relatives. Thus, Abu Talhah (*rad.*) donated it to his close kin.⁹

Despite the above narration, scholars have upheld that the first *waqf* where one’s family was enumerated among beneficiaries was created by ‘Umar (*rad.*), when he assigned a land that fell into his share from the lands captured at Khaybar, as an endowment for the benefit of the poor and the relatives, in freeing slaves, for *jihad*, and for travellers and guests.¹⁰ It is established that the creation of *awqaf*

⁷ “Restricted donations” (*sadaqat muharramat*) is a term used by Imam al-Shafi‘i to refer to *awqaf*. See Abu ‘Abdillah Muhammad ibn Idris al-Shafi‘i, *al-Umm* (Beirut: Dar al-Ma‘rifah, 1990), 4, 53 onwards.

⁸ See section “the concept of charity and endowments to family”.

⁹ *Al-Bukhari* (605), Chapter on Bequests.

¹⁰ *Al-Bukhari* (2586), Chapter on Stipulations; *Muslim* (1632), Chapter on Bequest. Ibn Hajar al-Haythami, *Tuhfat al-Muhtaj*, chapter on *waqf*, vol. 25, 308, al-Maktabah al-Shamilah.

for the benefit of one's relatives and descendants was an original innovation by Islam, as affirmed by the Encyclopaedia Americana.¹¹ It was not known in western legal systems until the later part of the 20th century. It is evident that the creation of a *waqf* for the benefit of family members as advised by the Holy Prophet (*peace be upon him*) was based on revelation and not on any information he had regarding similar institutions among the Egyptians, Greeks or Romans, as there was hardly any possibility of him having known about public institutions among them. Moreover, Arabs are not known to have had any public foundations prior to Islam, as reiterated by Imam al-Shafi'i, who had stated that the legal concept of *waqf* was unknown in the period of *jahiliyyah*.¹²

RELEVANCE AND SCOPE OF THE REFERENCE TO BENEFICIARIES IN TEXTS RELATING TO FAMILY WAQF

As an institution that factually existed on a large scale and thrived in Islamic communities and countries for long centuries, there had been ample opportunity for the derivation of legal aspects relevant to application from the sources of law. Thus, works of Islamic law contain detailed rules on every conceivable aspect of *waqf* that are documented in major manuals of Islamic law as well as compilations of *fatawa*, providing legal solutions to specific situations that occurred in practice. Family *waqf* is no exception, where various aspects of legal importance related to *awqaf* for the benefit of family and progeny have been dealt with in detail in works of Islamic law. From among many areas so analysed, one of special importance in the context of family *waqf* concerns the *waqf* declaration (*waqfiyyah*) made by the endower and its legal significance. In their effort to conform to the aspirations of the endower in creating the *waqf*, scholars have taken especial pains in discussing the relevance and scope of the text of the endower in specifying the beneficiaries of the

¹¹ *Encyclopedia Americana*, vol. 11, 646, as in Monzer Kahf, *al-Waqf al-Islami*, vol. 1, 18.

¹² Ibn Hajar al-Haythami, *Tuhfat al-Muhtaj*, chapter on *waqf*, vol. 25, 308, al-Maktabah al-Shamilah.

endowment created by him or her. Some of these rules that pertain to the text of family *waqf* are given below succinctly.¹³

An important aspect in designating the beneficiaries relates to terms used by the endower in specifying the parties, whether their entitlement to the benefits of the *waqf* would be concurrent or whether various parties would become entitled in succession. In this regard, scholars have ruled that when the endower states, “I have made this house an endowment for my children (*awlad*), and the children of my children,” all of them would be entitled to the endowment together, concurrently. Its income and benefit would be divided among them equally, without a difference between a male and a female or a child and a grandchild, as the text is not indicative of preference of any over the other. However, if he had mentioned that the house is “an endowment on my children,” the grandchildren would not be entitled to the *waqf*, as the term “child” does not apply to them directly. This is when the endower had children as well as grandchildren. If he had grandchildren only, they would be included in the meaning and be entitled to the *waqf*.

If the endower had said, “this garden is an endowment on my progeny (*dhurriyyah*),” or “on my descendants (*nasl*),” or “on my posterity (*aqb*),” it would include the children of daughters as well as the children of sons, near and distant, male and female, as the text encompasses them all.¹⁴ In the above instances, where the endower had specified the beneficiaries as the grand children who carry his lineage, the *waqf* is assigned to the grand children through his sons to the exclusion of children of daughters, as the latter would carry the lineage of their own fathers.¹⁵ The Hanbali school records some difference regarding whether the children of daughters would be included when the term grandchildren is used.¹⁶ There is a degree of reprehension in designating a *waqf* for the male children to the exclusion of females, despite its validity if done, as it resembles the pre-Islamic practice of depriving the daughters a share in the inheritance of their father.¹⁷

¹³ For a detailed specimen of a *waqfiyyah* as provided by al-Shafi'i in his *al-Umm*, see al-Shafi'i, *al-Umm*, 4, 62-63.

¹⁴ *al-Fatawa al-Hindiyyah*, vol. 2, 375.

¹⁵ *Mughni al-Muhtaj*, vol. 2, 388; *al-Fatawa al-Hindiyyah*, vol. 2, 375.

¹⁶ *Al-Mughni*, vol. 5, 554.

¹⁷ *Al-Fiqh al-Islami wa Adillatuh*, vol. 8, 213.

If the endower states, “I have endowed my properties on the poor among my relatives,” it would include all those who are related to the endower in lineage, both the near and the distant, of males and females, irrespective of whether they inherit the endower, are among close relatives with whom marriage is prohibited (*mahram*), or otherwise. The income from the endowment will be divided among them equally, irrespective of the age or gender, as the term is equally applicable to all of them. Endowment is permitted for the benefit of relatives who are non-Muslim *dhimmis*, as their capacity to ownership of property is recognised. It is narrated in hadith that Sayyidatna Safiyyah (*raḷ.*) made an endowment for a brother of hers who was a Jew.¹⁸

Any characteristic or qualification that precedes in mention a connected series of beneficiaries would be deemed applicable to all; thus, when the endower says, “I have endowed this land on the needy of my children, grandchildren, and brothers,” the qualification of need will be a required condition in all of them. Similar would be the case of any qualification mentioned subsequent to a series, as when the text reads, “This house is an endowment on my children, grandchildren, and brothers, that are needy,”¹⁹ where the condition would apply to all of them.

THE CONCEPT OF CHARITY AND ENDOWMENTS TO FAMILY

Before discussing the Islamic approach to charity, it would be pertinent to briefly look at conventional perceptions regarding charity and philanthropy. It is noteworthy that charity is primarily understood to involve the public, i.e. those other than one’s relatives or family, in the Western concept of altruism. The English term “charity” carries meanings such as; benevolent goodwill toward or love of humanity, generosity and helpfulness especially toward the needy or suffering, aid given to those in need, and a gift for public benevolent purposes.²⁰ Thus, even the linguistic meaning of the term apparently carries connotations of giving to the public in the English

¹⁸ *Kashshaf al-Qina’*, vol. 4, 274-277, as in *Al-Fiqh al-Islami wa Adillatuh*, vol. 8, 190.

¹⁹ *Al-Fiqh al-Manhaji*, vol. 2, 239.

²⁰ Accessed March 20, 2016, <https://www.merriam-webster.com/dictionary/charity>

language. With regard to Western legal approaches to charity, we may look at the law in the United Kingdom as being representative of the common law jurisdictions. In the context of UK, the Charities Act 2011 provides a list of 13 charitable purposes, which are to some extent shared by other common law jurisdictions as well. The initial five purposes mentioned are the prevention or relief of poverty, the advancement of education, the advancement of religion, the advancement of health or the saving of lives, and the advancement of citizenship or community development. The Act clarifies that “a charity must also provide a public benefit.” Further discussion on legal developments pertaining to charity and trust involving family is found elsewhere in the article.²¹

In considering the concept of charity in the Islamic legal tradition, it is apparent that the limits of charity are not confined to those outside ones social or family circle. The Holy Prophet (*peace be upon him*) had stressed on the importance of one leaving one’s inheritors well provided for. Al-Bukhari has recorded the *hadith*

“surely, your leaving your inheritors affluent is better than your leaving them poor, asking from people stretching their palms.”²²

The Islamic approach to charity has always been that similar to spending in public avenues, spending on one’s relatives too is charity. It appears in a *hadith* that,

“Charity to the needy is charity (alone), while (charity) to a blood relative is two; charity and maintaining kinship.”²³ (*Tirmizi* and others)

Thus, charity to one’s relatives is a superior avenue of charity. In *Surah Al Baqarah*: 177, in citing spending in charity as a form of righteousness, giving to one’s relatives is mentioned first.

“Righteousness is not that you turn your faces to the East and the West. But righteousness is that one believes in Allah and the Last Day and the angels and the Book and the Prophets, and gives wealth, despite its love, to relatives, orphans, the destitute, the

²¹ See section on “Government intrusion affecting *awqaf* for family”.

²² *Al Bukhari* (1233), Chapter on Funerals; *Muslim* (1628), Chapter on Bequest.

²³ *Al-Tirmidhi* (658), Chapter of *Zakah*; *ibn Majah* (1844), *Zakah*.

wayfarer, and to those who ask, and (spends) in (freeing) slaves and observes the prayers and pays the Zakah.”

Imam Ibn Kathir, commenting on this verse, says,

“...*dhawi-l qurba* refers to relatives of a person, who are the foremost of those to whom charity is given, as established in hadith. These are the most entitled of all people to your benevolence and giving, goodness to whom has been commanded by Allah in many places in the Qur’an.”²⁴

We may refer to some other narrations that bear out the above position.

- i. “A dinar you spend in the path of Allah; a dinar you spend in freeing a slave; a dinar you spend on a poor person; a dinar you spend on your family; greatest of them in reward is what you had spent on your family.” (*Muslim* 1661).
- ii. “The best dinar a person spends is a dinar he spends on his dependants, and a dinar he spends on his animal in the path of Allah, and a dinar he spends on his fellows in the path of Allah.” (*Muslim* 1660) “When a person spends an amount on his family expecting its reward (from Allah), it is charity for him.” (*Bukhari* 53)
- iii. “Start with yourself and donate to it; if something remains then to your family; if something remains after your family then to your relatives; if there remains something after your relatives then like this and this, (i.e. spend in all directions).” (*Bukhari* 6763, *Muslim* 997)

Based on this, it is clear that creating a *waqf* for the benefit of specific persons, be they outsiders or of the family of the endower, is charity in Islamic terms, when done for the pleasure of Allah ta’ala. Also noteworthy in this respect is the fact that in creating such a *waqf*, the ownership of the endowed property is irrevocably severed from the endower in a gratuitous manner that it may not return to his ownership ever in the future. Nor could it be owned by anyone thereafter, as transfer of its ownership has finally ceased.

²⁴ *Ibn Kathir, Tafsir Ibn Kathir*, vol. 1, 486.

BENEFITS OF FAMILY WAQF

In addition to religious motives of the endower, *awqaf* in general fulfils a significant social and economic function in the Islamic society. We may analyse here the social significance of *waqf* for individuals and relatives, as an avenue of charity carrying distinct objectives and benefits. In assigning *awqaf* for the benefit of descendants and relatives, the endowers generally have the welfare of their progeny in mind, a matter emphasised in Shari'ah. Although primarily directed at the family of the endower or a group of individuals, *Waqf Ahli* or family *waqf* is an institution that ultimately leads to public benefit. It involves preventing fixed assets and real property as well as the related rights and usufructs from individual control and consumption, directing their benefit to specific beneficiaries, usually comprising of the offspring of the endower and his family. Thus, it leads to growth of fixed assets that are productive, and ensuring the welfare of the future generations of the endower's children and those related to him. In this sense, family *waqf* is a form of investment that serves the objectives of economic development and welfare of future generations, and thus is a type of economic benevolence and charity, even though limited to the progeny of the endower. As such, a number of western nations have paid attention to regulating this type of endowments and providing them tax and management privileges.²⁵

The prophetic companions were foremost in perceiving the diverse merits of *awqaf* for specific groups of individuals including relatives and descendants. In their laying the foundation of this form of endowment, a new type of legal institution came into being, that could be termed as "inter-generation investment institutions."²⁶ A family *waqf* institution represents charity and social welfare, as it is charity directed at future generations, leading to ensuring their welfare and removing hardships. Most of the issues encountered with regard to such *awqaf* pertain to shortcomings committed in its management, functional complications arising due to length of its lifespan and the dispersion of the beneficiaries in different locations, lack of institutional management for regulating this type of endowment, absence of bodies that could advise and provide

²⁵ Monzer Kahf, *al-Waqf al-Islami*, vol. 2, 138.

²⁶ *Ibid*, vol. 2, 138.

guidance on practical aspects, etc. It is apparent that many of these are common to endowments in general, and as such do not necessitate such *awqaf* being regarded in a negative perspective or deny their multiple advantages. What is required is to provide the necessary legal regulation and executive framework that result in its promotion while providing safety against misuse by the administrators, beneficiaries or other third parties.²⁷

While making one's property reach the offspring and relatives through the default means of inheritance, as well as through alternative avenues such as bequest, gifts and grants during lifetime would succeed in making the property benefit them, such benefit is usually limited to the specific parties who are the recipients. Although the needs of those specific individuals and their families could have been met, it did not ensure provision of continued benefit to later descendants of the endower, as the possibility that the property could be exhausted by the initial recipients always existed. As such, *waqf* for family and descendants facilitated a viable means of converting one's wealth and riches into a source of continued benefit to one's family and progeny for many years to come, ensuring that they remain needless of others' assistance. As the *awqaf* created by Muslims necessarily involve a religious dimension, the endowers could also expect to gain from the prayers and gratitude of their descendants who were thus left well-provided for and needless of the aid of others. Also, utilising one's wealth in charity on one's own needy relatives is seen as an act of greater virtue in Shari'ah than using it for fulfilling the needs of other poor in general, as the former had the twin claims of blood-relationship and need, as different from the latter, whose claim was limited to need alone.²⁸

Another ancillary motive the endowers may have in mind in the creation of family *awqaf* is to preserve the property from being wasted away in the hands of descendants who may be prone to squandering. Rather than allow such descendants to gain control of the property whose irresponsible or ill-advised actions may result in reducing fortunes to something negligible, the endowers may wish to convert it into a *waqf*, so that its benefits may continue to accrue to his or her descendants in general for a long time to come. Although the Shari'ah has other mechanisms to deal with situations where irresponsible spending is manifest, such as rules restricting the

²⁷ Ibid. vol. 2, 138.

²⁸ See hadith quoted above.

transactional powers of spendthrift and imprudent (*safih*) persons, these apply to specific instances of proven ineptitude only. Thus, in the case of properties that are of significant proportions, creating *awqaf* could provide a viable option. With regard to properties such as large estates where the income generated also depends on the size, rather than allow the division of the whole property through inheritance, even though among his kith and kin, an endower could resort to converting a significant part of it into a *waqf*, while ensuring the welfare of the same.²⁹ However, unless suitable means are adopted to develop and expand such assets, the income received by the beneficiaries may dwindle over time, with the increase of descendants and recipients of succeeding generations, an eventuality that has to be weighed against fragmentation through inheritance. This aspect is addressed through controls related to appointment of competent trustees (*mutawallis*), an issue treated with particular attention in directives pertaining to *waqf* in Islamic law.³⁰

WAQF AHLI VIS-A-VIS RULES OF INHERITANCE

Some Western critics have taken effort to portray family *waqf* as “an attempt to bypass the restrictive succession laws, which was approved by Islamic jurisprudence,”³¹ ignoring the fact that it was the Holy Prophet (*peace be upon him*) himself who advised the companions on their creation on several occasions. This effectively indicates that *waqf* for one’s relatives and descendants has been part of the Islamic economic and social system as revealed to the Holy Prophet (*peace be upon him*) and not a remedial measure introduced at a later point of time. Thus, along with the emphasis on the application of inheritance rules where the property would be divided among the immediate family, it appears that the Shari‘ah has at the same time kept open the option of creating *awqaf*, for relatives or others, during the lifetime of the endower.

²⁹ Syed Khalid Rashid, “Statutory and Judicial Deviations in the Law of *Waqf* in India”, in Syed Khalid Rashid (ed.) *Awqaf Experiences in South Asia* (New Delhi: Institute of Objective Studies, 2002), 50.

³⁰ See the detailed specimen of *waqfiyyah* as provided by al-Shafi‘i in his *al-Umm*, 4, 62-63.

³¹ Jeffrey A. Schoenblum, “The Role of Legal Doctrine in the Decline of The Islamic *Waqf*: A Comparison with the Trust,” *Vanderbilt Journal of Transnational Law*, 90.

However, if the *waqf* thus created involves a significant portion of the property, this could prevent division of family property and appear to favour concentration of wealth. Thus it is pertinent to analyse whether there is a contradiction in the Shari'ah recognition of both the laws of inheritance as well as the permission for establishment of family *awqaf*. It should be appreciated here, that being a beneficiary of an endowment is fundamentally different from proprietorship. Through the application of the laws of inheritance, a level of distribution is achieved, albeit within the close relatives of the deceased, thus checking the possibility of wealth getting concentrated under a single ownership in an ever-increasing manner generation after generation, possibly leading to the creation of feudal systems with all their inherent negative aspects. However, family *awqaf* offered an alternative means through which the evils of concentration were avoided, at the same time protecting the property from fragmentation, which could result in affecting its revenue and performance. As pointed out above, in creating a *waqf*, the ownership of the endowed property is irrevocably severed from the endower as well as all mortal owners, that it could not be owned by anyone thereafter. The *waqf*, by its nature, is not in the ownership of any one, in a way that rights of ownership could be exercised. In this manner, all undesirable consequences through individuals becoming the owners of vast amounts of wealth and real estate, that could possibly give them the opportunity to exercise the resultant power and authority in manners oppressive and harmful to other human beings, are eliminated *ab-initio*. Thus, while the property remains as a single unit more or less, concentration of its advantages that could possibly be misused under a single hand is precluded. This leaves the possibility of reaping the multifarious benefits accruing through large units of property, which could be managed and exploited more efficiently and at relatively lesser cost, leading to enhanced revenue. Consequently, it could be said that while the default means of succession in Shari'ah is based on the laws of inheritance, it has permitted the creation of *waqf* during lifetime as a choice made by the individual freely depending on the circumstances, subject to general rules that are relevant in this regard.

Upon comparison, this provision appears to be no different from other measures a person could undertake during lifetime that involve transfer of his property, based on rights of ownership held sacred in Islamic law. A person of sound mind and not in a state of terminal

illness is free to transfer or donate his property to anyone or any cause, against a consideration or otherwise, within the general framework for such transactions in Shari'ah. If such transfer is gratuitous and results in reduction of his property, it will not be construed to conflict with the rules of inheritance, as the latter apply only to what remain in ownership at the point of death. It is recommended that every person leave behind what is sufficient for meeting obligations such as outstanding debts, and also for the needs of all his dependants. Leaving ones dependants needy is condemned in prophetic traditions.³² Thus, even when an endowment has been arranged for taking care of the needs of one's offspring and other relatives, it would appear that a portion of wealth should be left out for division based on inheritance, which would accrue to the inheritors as their own property.

GOVERNMENT INTRUSION AFFECTING AWQAF FOR FAMILY

Although government involvement in *awqaf* dates back to the Abbasid period when registers of *waqf* assets in the land were prepared, there is no evidence of any central authority that controlled *waqf* affairs, which left the managerial powers of the trustees and superintendents intact to a large extent. With the establishment of a ministry for *waqf* affairs in Turkey in 1830s followed by the enactment of laws on *waqf*, government control on *awqaf* gained a definitive shape, so that within a short period, *waqf* properties in many Islamic lands came under direct government authority.³³ Charitable institutions were suppressed and marginalised during the waning years of the Ottoman Empire, the colonial era, and the period of nationalisation that followed. Traditional charitable institutions were suppressed as part of the governments' broader move against the private sector and private voices in favour of state-led development.³⁴ While some of the reasons cited for the extension of state control over

³² See hadith quoted in the preceding section on "Concept of charity."

³³ Monzer Kahf, *al-Waqf al-Islami*, vol. 4, 347

³⁴ Jennifer Bremer, "Islamic Philanthropy: Reviving Traditional Forms for Building Social Justice," paper presented at CSID Fifth Annual Conference on Defining and Establishing Justice in Muslim Societies, Washington DC, 28-29 May 2004.

waqf assets in general may not be relevant with regard to family *awqaf*, such as the desire of the rulers to control the masses through having a say over mosque affairs, many other reasons appear to be common. Thus, complaints regarding *waqf* managers and *mutawallis* with regard to both excesses committed by them, as well as their inability to safeguard *waqf* properties from intruders and usurpers, provided a ready excuse for the state taking over their management responsibilities and gradually eradicating family *awqaf*. The explanatory note to the Syrian Ordinance No. 28 that established state control over all public *awqaf* in Syria mentions the reason for the enactment as the complaints regarding the faults and excesses of *waqf* managers that resulted in defeating the objectives of the original endowers and making the revenue of such *awqaf* a source of illegal enrichment. It also cites the need for laying down new rules for *waqf* management as dictated by the social and economic changes.³⁵

In the context described above, many governments in Muslim countries had chosen to impose various degrees of restrictions on the creation or functioning of family *awqaf*, or to resort to their total abolishment. Thus, with regard to modern laws of Middle-Eastern and Arab countries, *Awqaf-e-Dhurri*, which have been painstakingly preserved by the South Asian legislation, have been greatly restricted in some, and altogether abolished in some other.³⁶ Thus, Egypt had initially restricted the tenure of family *awqaf* to two generations through Law 48 of 1946. Lebanon prescribed their compulsory termination in 1947 if they become uneconomic, irreparably damaged or extensively fragmented due to increased number of beneficiaries.³⁷ Syria abolished family *awqaf* through Legislative Decree on *Waqfs* 1949. Kuwait restricted family *awqaf* to two generations through Law on Rules relating to *waqfs* 1951. The Iraqi law permitted the liquidation of family *awqaf* upon a complaint made by any beneficiary of or an inheritor, through Act No. 28 on liquidation of family endowment of 1954 that was amended on several occasions thereafter. Egypt finally abolished family *awqaf* altogether through Law 180 of 1952, while Tunisia did so through Law 46 of 1954,

³⁵ Ahmad al-Hajji al-Kurdi, "*Ahkam al-awqaf fi al-fiqh al-Islami*," presented at the Seminar on Islamic Law for Economists organised by the IRTI, Kuwait, 29.11.1416H.

³⁶ Tahir Mahmood, Inaugural Address, in Syed Khalid Rashid, *Protection, Maintenance & Development of Awqaf in India*, 294.

³⁷ Law on Family *Waqfs* 1947

Libya through Law 16 of 1973, and UAE through Decree of *Waqfs* 1980.

It is also pertinent to outline the legal history of family *waqf* in India, as it may serve as an example of the attitude of modern legislation towards *waqf*. In India, *waqf ala'l-aulad* was especially targeted since mid-19th century by the foreign judges obsessed with western legal concepts and suffering from anti-Muslim prejudices. This was symptomatic of an outright imperialist rejection of *awqaf* in general, seen by the colonialists as a hindrance to a proper growth in market economy.³⁸ Thus, although *waqf 'ala al-awlad* or family *awqaf* were invalidated initially by the Abul Fata ruling of 1894³⁹ by the highest British court in India, an Act was passed in 1913⁴⁰ overturning its effect, expressly “*to declare the rights of Mussalmans to make settlements of property by way of waqf in favour of their families, children and descendants.*” It recognised the right of a Muslim to create a *waqf*, among other purposes, “*for the maintenance and support wholly or partially of his family, children or descendants,*” and also with regard to Muslims following the Hanafi school, “*for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated.*”⁴¹ Thus family *awqaf*, both when the primary beneficiaries comprise one’s family as well as where the endower himself is the primary beneficiary, were given legal recognition. Enactment of these validating laws was a singular achievement of the late Qaid-e-Azam Muhammad Ali Jinnah, founder of the Islamic Republic of Pakistan, who had acted on the advice of the *Ulama* and *Fuqaha* of the time.⁴²

The subsequent *Waqf* Act 1995 (which repealed the Central Wakf Act 1954), largely following the 1913 Act, defines *waqf* as “permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable,” and specifically mentions that it includes “*waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable.*” While the Act does not provide details of

³⁸ Tahir Mahmood, 290.

³⁹ (1894) 22 I.A. 76.

⁴⁰ Mussulman *Waqf* Validating Act of 1913.

⁴¹ Section 3, *ibid.*

⁴² Tahir Mahmood, 291.

the nature of such family *awqaf* as found in the Act of 1913, mention of the term *waqf-alal-aulad* and reference to Muslim law removes any ambiguity from its essential character. However, as mentioned above, despite of this recognition, family *awqaf* were omitted from the coverage of the thorough survey that was carried out on *waqf* properties in India as required in section 4 of the Act, and thus were exempted from the statutory supervision. The Burney Committee Report of 1976 that was published subsequent to the disputes that arose after the Central Wakf Act 1954 is silent on family *awqaf*.

Similar to the Indian scenario, provincial legislation in many parts of Pakistan exclude family *awqaf* from the purview of *waqf*. In countries like India, Pakistan, Bangladesh, Myanmar, Malaysia, Indonesia, Sri Lanka and Singapore, as well as in Kenya, South Africa, etc., though family *waqf* is allowed, privileges granted to other institutions of charity are not generally allowed for them.

DISCRIMINATORY TREATMENT OF FAMILY AWQAF

A large number of family *awqaf* are noted to exist, throughout Islamic lands as well as in countries where Muslims are a minority. As at present, there is no precise data available regarding the number or size of family *awqaf* that are found in Islamic and non-Islamic countries, as the surveys conducted have generally not been inclusive. In countries such as India, such *awqaf* have been purposely omitted from extensive surveys carried out on the *awqaf* in the country, as they have been treated as non-charitable avenues under the influence of the English Law of Trust that regards family trusts as non-charitable.⁴³ As such, family *awqaf* have been deprived of the privileges and immunities granted to charitable *awqaf*.

In many common law jurisdictions, charitable organisations, including charitable trusts, are eligible for a complex set of reliefs and exemptions from taxation as in the UK. These include reliefs and exemptions in relation to income tax, capital gains tax, inheritance tax, stamp duty land tax and value added tax. However, such concessions do not apply to family *awqaf* in general, which are subject to various government taxes. In the case of India, they are subject to the laws of Income Tax, Land Reform and Estate Duty and

⁴³ Syed Khalid Rashid, *Protection, Maintenance & Development of Awqaf in India* (New Delhi: Institute of Objective Studies, 2005), xi.

the Evacuee Property laws, that have had a crippling effect on them. The Income Tax Act exempts from tax, religious and charitable *awqaf*, but by virtue of section 13 of the Act, income tax is levied not only from pure *waqf 'alal-awlad* but also on such portion of the income of such *awqaf* which are partially reserved for religious or charitable purposes and partially for the family. In addition, estate duty is payable on the passing of the *waqf* property from one beneficiary to another in *waqf 'alal-aulad*. Despite of *waqf* property not belonging to the beneficiaries, which is the essential nature of *awqaf* in Islam, a beneficiary succeeding another upon the latter's death is treated as the property itself passing to the latter legally. Thus, passing of property on the death of the *waqif* to his descendants and then from generation to generation attracts the imposition of estate duty.⁴⁴

Thus, only institutions categorised as public charities are entitled to various forms of direct tax. In the Indian context, despite of the persistent demands by the Muslims of India, the government has refused to exempt family *awqaf* from the purview of such tax enactments.⁴⁵ With the continuous burden of taxes coupled with the unenviable state in which many of the *awqaf* exist with meagre incomes generated and lack of proper supervision and management, many family *awqaf* could die a slow death.

In addition, there is no statutory supervisory control over family *waqf* institutions. It is expected that the beneficiaries of such *awqaf* may get their remedies through the avenue of normal civil litigation, despite of the higher costs involved and the inevitable delays. In India, a large number of family *awqaf* once comprised of agricultural lands. A majority of family *awqaf* came to an end in the wake of land reforms, when the land held by such *awqaf* was acquired by the government on payment of nominal compensation in the form of bonds to the beneficiaries. These lands were given away to the tenants who were tilling them on behalf of the *mutawallis*, and such *awqaf* thus came to an end.⁴⁶

⁴⁴ Syed Khalid Rashid, *Statutory and Judicial Deviations in the Law of Waqf in India*, in Syed Khalid Rashid (ed.), *Awqaf Experiences in South Asia* (New Delhi: Institute of Objective Studies, 2002), 50.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.* and Syed Khalid Rashid, *Protection, Maintenance & Development of Awqaf in India*, xi.

REVIVAL OF FAMILY AWQAF

The eclipse of the endowment (*waqf*) has left a vacuum in the arena of public services, which the State has been unable to fill easily in many Muslim countries.⁴⁷ However, both the idea of the endowment (*waqf*) and its doctrine remain influential and there are clear signs of its reinvigoration. Awqaf for specific groups of beneficiaries such as family members and descendants are no exception, in that many of the legal and practical issues faced by these are common to *awqaf* in general. The Seminar on *Awqaf* Experiences in South East Asia held in May 1999 resolved that since *waqf* includes *waqf alal-aulad*, hence *waqf* legislation must also cover family *awqaf* instead of confining regulatory measures to non-family *waqf*, in order to protect the interests of future generations of beneficiaries.⁴⁸ In Malaysia, Shari'ah Courts whose exclusivity in Shari'ah matters was stressed in the constitutional amendment of 1988, are not legally bound by the Privy Council's judgment. In a significant development pertaining to family *waqf* in Malaysia, under the Labuan Islamic Services and Securities Act 2010-2012, Muslims are allowed to use the Labuan Islamic foundation to create trusts based on the principles of family *waqf*.

As Islamic societies emerge from dictatorship to more democratic systems of governance, state-dominated models are beginning to give way before a revival of older, private models, now often blending international experience, traditional structures, and modern forms.⁴⁹ Some researchers have proposed individual management as the best suited for *awqaf*. They propose management of each *waqf* separately, without combining *waqf* properties together, and without there being a centralised management that takes decisions on the investment *awqaf*, be it in the form of a ministry, trust or organisation. Each *waqf* should have a fulltime or part-time manager as necessitated by the size of the *waqf* or nature of investment, who is based in the location of the *waqf* and is well aware of the objective of the *waqf* and its beneficiaries. This has been the traditional model that had been in existence for centuries, which supported the historic success of *awqaf* in diverse social fields such as education, healthcare, research and

⁴⁷ UN Habitat paper on *Waqf* (endowment) & Islamic Philanthropy 2005.

⁴⁸ Syed Khalid Rashid, *Awqaf Experiences in South Asia*, 299.

⁴⁹ Jennifer Bremer, *Ibid*, 2.

public services, and provided the necessary independence and flexibility needed in *waqf* management over long periods. However, at the same time, it is the model that had drawn a lot of criticism, ultimately paving the way for the creation of ministries of *waqf* and joint management of *awqaf* by governments from the middle of the 19th century.⁵⁰

In considering weaknesses observed in the traditional model in practice, it is evident that the primary reason could be traced to poor adherence to the prescribed structure for creation of *waqf* in Shari‘ah as well as implementation thereof. Muslim jurists have emphasised on the *waqf* declaration (*waqfiyyah*) containing provisions that require management of *awqaf* being assigned to capable and honest *mutawallis*, and that when the case is found to be otherwise, administration of the *waqf* transferring to one more suitable, out of those nominated by the endower. Thus, in the detailed specimen of *waqfiyyah* provided by al-Shaf‘i in his *al-Umm* the following is portion is notable (abridged).

“...Administration of the *waqf* shall go to the one who is most able and honest of the descendants or persons as nominated by the endower in every generation, and in the event of such an administrator proving to be incapable or dishonest, will transfer to the next person who fulfils the requirements. If no such person is found among the nominated, the judge of Muslims shall nominate one who possesses the above from the relatives and then from the associates of the endower, otherwise the Muslim ruler shall appoint one chosen by him. If one with capability and integrity is found later among the nominated parties the ruler shall withdraw the administration from the one appointed by him and return it to the former. No Muslim ruler should remove a nominated party from administration as long as he proves to be capable and honest and appoint another...”⁵¹

Thus, the possibility of incapable or dishonest caretakers holding on to management of the *waqf* is minimised, provided legal backing is available for implementation of the provisions in the *waqf* declaration.

⁵⁰ Monzer Kahf, *al-Waqf al-Islami*, vol. 4, 379.

⁵¹ See Abu ‘Abdillah Muhammad ibn Idris al-Shafi‘i, *al-Umm* (Beirut: Dar al-Ma‘rifah, 1990), vol. 4, 62-63.

Rectification and improvement of *awqaf* management that had been the purpose in state intrusion into *awqaf* was based on diverse social reasons, some of which have been pointed out by Ibn Abideen, the famous Hanafi jurist who lived in the latter part of the 19th century. He had drawn attention to weaknesses in the judicial system as well as state governance that had led to the deterioration in *awqaf* in addition to mismanagement.⁵² Thus, some researchers are of the opinion that the modern efforts at improving *awqaf* management had not provided a fair opportunity for the development of the institutional management model for *awqaf*, due to the premature intervention by *waqf* affairs by the state.⁵³ Institutional management is expected to result in better production capacity, safeguarding existent *waqf* assets and serving its objectives. They point out that the shortcomings in management did not arise due to the *waqf* being individual and decentralised, so that the situation could be rectified through centralised management provided by the state. *Awqaf* management had failed due to it not possessing an institutionalised form, ensuring flexibility and managerial capabilities, while being subject to a higher level of auditing leading to realising the goals of investment *awqaf*. Thus they propose that *awqaf* are better managed based on an institutional format, safeguarding the decentralised and local nature of *awqaf*, as borne out by the historical record of *awqaf*.⁵⁴

Recent efforts at rejuvenating *awqaf* appear to have given importance to a centralised role played by the government. However, state management is usually affected by problems such as lack of expertise and production oriented approach, as well as lack of transparency, which may not be overcome even when such state management takes place in the form of a ministry, divisional authority or department.⁵⁵ Based on this, it is suggested that management of investment-oriented *awqaf* should be handled by institutions apart from the state, that preserve its nature as a third sector, dissociated from the private sector. This could be pertinent with regard to family *awqaf* of this nature as well. Thus, it has been proposed that the management of such *awqaf* should be decentralised and local, operating for a limited duration, that is subject to financial and system

⁵² Muhammad Amin Ibn Abidin, *Radd al-Muhtar 'ala al-durr al-Mukhtar* (Beirut: Dar al-Fikr, 1992), vol. 4, 388.

⁵³ Monzer Kahf, *al-Waqf al-Islami*, vol. 4, 380.

⁵⁴ *Ibid*, vol. 4, 380.

⁵⁵ Monzer Kahf, *al-Waqf al-Islami*, vol. 4, 380.

audit undertaken by public bodies enjoying state support, thus making them institutions similar to corporations.⁵⁶ *Waqfs* should operate as decentralised autonomous institutions without state interference. Proponents of this view remind us that in the United States, unincorporated associations and trusts do not have to register with any state authority at all, and argue that the American approach is very similar to the original Islamic norm.⁵⁷

TAX AND FAMILY *WAQF*

Tax implications could have been a major turn-away from establishing family *awqaf* in that such *awqaf* are not granted any tax concessions in many Muslim lands. This is based on the aforementioned secular concept that charity should be directed at other than one's descendants and progeny. As these *awqaf* are not recognised as institutions for public good, tax reliefs are not provided for them. In the Malaysian context, for approval under subsection 44(6) of the Income Tax Act 1967 for tax concessions granted to charitable organisations, the word 'charitable' is classified into four categories. Three of these relate to relief of poverty, advancement of education, and advancement of religion, while a fourth category comprises of various other purposes beneficial to the community not falling under any of the preceding categories, mostly based on the UK law prior to 2006. It is stipulated that the institution or fund should serve or benefit Malaysians irrespective of race, creed or religion and that the benefit should not be confined to a specific group only. More importantly, the benefits of the institution or fund shall not be enjoyed by any member of the trust board and their families and staff of the organisation.⁵⁸ Consequently family endowments, their benefit being primarily directed towards a specific group of individuals and not towards the public, do not qualify for tax exemptions.

However, researchers have argued for tax exemption for all *awqaf*, including family *waqf*, as these are public serving entities,

⁵⁶ Ibid, vol. 4, 382.

⁵⁷ Murat Cizakca, "The New *Waqf* Law Prepared by IDB/IRTI and the Kuwait Public Foundation: A Critical Assessment," paper submitted at PNB Paribas-INCEIF Centre for Islamic Wealth Management Inaugural Colloquium, Kuala Lumpur, 19th Dec 2013.

⁵⁸ Guidelines explaining the types of institutions, organisations or funds which may be considered for approval under subsection 44(6) of the Income Tax Act 1967, issued by the Inland Revenue Board of Malaysia Technical Department.

being so with regard to the latter when the family becomes extinct. Because of their perpetuity, they represent sustained capital accumulation for serving the public.⁵⁹ It was pointed out earlier that even when the benefit is enjoyed by the children and descendants of the endower, family *awqaf* contribute to public good indirectly in various ways. As an initial step, those *awqaf* where the beneficiaries are referred to as one of the above classes could be considered for tax concessions, on the basis that the endowment could be regarded as an establishment for the benefit of an approved class of people. Defining them as such could perhaps be more in line with the purpose of the endower, as in this instance only those in need would be able to draw benefit from the *waqf*, limiting the possibility of misuse and enhancing effective use of *waqf* resources.

CONCLUSIONS

It was established that family *waqf* as an endowment in favour of one's relatives and progeny is recognised as valid in Shari'ah, that come under the general exhortation in the Qur'an and Prophetic traditions regarding giving to one's kinsfolk. It is generally acknowledged that the creation of *awqaf* for the benefit of one's relatives and descendants was an original innovation by Islam. From a shari'ah perspective, there is no essential difference between public welfare *waqf* and family *waqf*, and both are treated as recommended avenues for voluntary gratuitous transfer of benefits. Along with the emphasis on the application of inheritance rules that could act as a compulsory measure against undue concentration of wealth, it appears that the Shari'ah has permitted the instrument of family *waqf*, that could allow a portion of the property to remain as a single unit based on the choice of the endower, while eliminating individual ownership. Family *waqf* could be assigned to an avenue of public welfare after the stated descendants, and from this angle it may lead to exclusive public benefit ultimately, in addition to the benefit to the public in various ancillary ways during the lifetime of the descendants.

Over the centuries, family *awqaf* have degenerated due to various social and political factors. Under the influence of the English Law of Trust that regards family trusts as non-charitable, family *awqaf*

⁵⁹ Murat Cizakca, *ibid*, 10.

have been treated as non-charitable institutions, and have been deprived of the privileges and immunities granted to charitable *awqaf*. They are subject to various government taxes, while there being no statutory supervisory control over them. However, issues encountered in *awqaf* such as shortcomings in management, legal complications arising due to length of its lifespan, lack of institutional management, etc. do not necessitate denying their multiple advantages. Providing the necessary legal regulation and executive framework can lead to its advancement while preventing misuse.

Many governments in Muslim countries had chosen to impose various degrees of restrictions on the creation or functioning of family *awqaf*, or to resort to their total abolishment. Among reasons cited are mismanagement of such *awqaf* and their failing to fulfil objectives, as well as such *awqaf* blocking large portions of land from entering the market. However, it has been argued that if excessive endowment of agricultural lands, particularly as in Turkey, was the main reason behind their being found uneconomical, it may be made a rule that such lands could not be converted into family *waqf*.

Individual management has been regarded the best suited for *awqaf* including those for family and relatives, as necessitated by the nature of the particular *waqf*. However, others argue that *awqaf* are better managed based on an institutional format, safeguarding the decentralised and local nature of *awqaf*, leading to enhanced production and serving their objectives. It is suggested that management of investment-oriented *awqaf* should be handled by institutions apart from state, that preserve its capacity as a third sector. In addition, tax exemption for all *awqaf*, including family *waqf* could go a long way in advancing the spirit of *waqf*, based on their being public serving entities either directly or indirectly.