



An Assessment of Using Sukuk for Waqf Property Development in India

Mohammed Meeran Jasir Mohtesham^a, Syed Marwan^b, Abdul Hai^c, Mohd Shahid^d

^a*Institute of Islamic Banking and Finance, International Islamic University Malaysia, Kuala Lumpur, Malaysia*

^b*Institute of Islamic Banking and Finance, International Islamic University Malaysia*

^c*Institute of Islamic Banking and Finance, International Islamic University Malaysia, Kuala Lumpur, Malaysia*

^d*Institute of Islamic Banking and Finance, International Islamic University Malaysia, Kuala Lumpur, Malaysia*

Abstract

The purpose of this study is to assess the viability of using Sukuk as a tool for financing the development of waqf properties in India. Using different reports, literature, and considering Indian Waqf Act, this study introduces Sukuk for waqf property development in India. Critical analysis of case studies of successfully employed waqf property development in Saudi Arabia and Singapore is also undertaken. From the various literature and reports, this paper finds that there is a huge economic potential for Indian waqf properties. However, due to several issues, one of them being a financial issue, waqf in Indian is unable to achieve its potential. Furthermore, the study also finds that there is a possibility to introduce Mudharabah Sukuk for this purpose. As Indian Waqf Act prohibits the sale, gift, or transfer of the waqf properties, Mudharabah can be the best suitable tool for financing the development of waqf properties. This study is conceptual in nature. Further studies can consider empirical research that considers factors such as awareness, knowledge, perception, and readiness to invest in Sukuk. The findings from this paper can be used to introduce Sukuk for waqf property development in India. The successful implementation will lead to the revitalisation of waqf properties in the country which will eventually result in the upliftment of Muslim society from social and educational backwardness and benefit them at-large. This paper also provides information about the potential of Indian waqf properties which very essential for the investors in Sukuk. This study is the first one to talk about the Sukuk for waqf property development in India.

Keywords: Waqf properties, capital market, Sukuk, Waqf development, Indian Waqf Act.

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1. Introduction

Sukuk has evolved as an important trade mechanism in recent ages. Recently, Sukuk has been merged with Waqf to fulfil the philanthropic financing gap (Kasri & Saeran, 2016). The merger of Sukuk and Waqf has been deemed worth pursuing by various authors as presented by Dali et al (2017). Apart from that, Sukuk has been utilised for the redevelopment of Waqf properties in several countries. The successful implementation demonstrated Sukuk as a perfect instrument for the redevelopment of Waqf properties.

Waqf is described as an eternal devotion of a specific property to Allah (SWT), by dedicating its benefit to religious and benevolent causes (Saad et al., 2017). According to the Indian Waqf Act, 'waqf means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable' (justice, 2013). Fundamentally, Waqf institutions tend to fulfil these two purposes. One, Waqf acts as a means of perpetual return for a Waqif in the hereafter, on the other hand, it attributes in the socio-economic enhancement of ummah in general and the deprived segments in particular (Abdullah, 2015; Rashid, 2011). The practice of Waqf dates back to approximately fourteen centuries back, as it is evident from the Hadith of Umar ibn al-Khattab (R.A). Historically, over the successive centuries, this prophetic model was enthusiastically simulated by Muslims across the globe. Especially, in the era of the Ottoman caliphate, as it was forecasted that threequarters of all the arable land belonged to Waqf (Hasan, 2012). In Muslim societies, the institution of Waqf was well established and served as a sustainable tool to develop public infrastructure and played a very significant role in the development of education, healthcare, socio-economic development, and public welfare (Aziz & Ali, 2018). Nevertheless, in this regard, the role of Indian Muslims should not be overlooked or underestimated, as they have donated enormous portions of estates in the form of Waqf. These Waqf properties include

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agricultural, commercial, and residential properties to Mosques, shrines, tombs, graveyards, Idghas (space to offer Eid Prayer) etc. According to the Sachar Committee report, the number of Awqaf in India is estimated to 490,000 (4.9 lac) registered Waqf properties. The overall rang of these Waqf properties is estimated at 600,000 (six lac) acres with a book value of about 6,000 crores.

Moreover, this book value is half a century old, and the existing value will be many times more whereby market value has been estimated to be at 1.2 lacs crores. The report further discloses that the yearly income from these assets is only about 163 crores which amount to 2.7% of book value. If these properties are placed to an effective and marketable use, they can produce at least a minimum return of 10 per cent which is about Rs (rupees – Indian Currency) 12,000 crores per annum (India G. o., 2006). However, due to the lack of development initiatives by the administrators and the poor financial condition of waqf boards, the Waqf in India has not entirely survived the test of its purpose (Rasool, 2017). Nonetheless, to resolve the problems currently faced in the development of Indian waqf premises, this study will assess the viability of using Sukuk as a tool for financing the development of waqf properties in India which will eventually result in the socio-economic development of Indian Muslims. The inspiration behind conducting this study has been the success stories of Singapore and Saudi Arabia in the evolution of the waqf properties through Sukuk issuance. The paper will examine the issues related to development in the administration of Waqf in India.

2. Literature Review

2.1 An overview of Sukuk

Sukuk is a plural of Sakk which means "certificate" in the Arabic language. According to AAOIFI (2008), Sukuk is the "certificates of equal value representing undivided shares in ownership of tangible assets, usufructs, and services or (in the ownership of) the assets of particular projects or special investment activity..." Unlike traditional debt-based securities with an interest payment, a Sukuk is a sharia-compliant investment arrangement typically based on a profit-sharing agreement or property ownership.

In 1988, The International Islamic Fiqh Academy released a declaration saying that "Any combination of assets or the usufruct of such assets can be represented in the form of written financial instruments which can be sold at a market price provided that the composition of the groups of assets represented by the Sukuk consist of a majority of tangible assets" (Oubdi & Raghbi, 2018).

The origin of Sukuk can be traced back to the 1st century A.H. during the Umayyad Caliphate Under the rule of Caliph Marwan ibn al-Hakam. A narration quoted by Imam Malik in al-Muwatta (hadith no. 44) Refers to Sukuk as a certificate -more precisely, product or grain coupons- entitling its owners to obtain commodities/grains upon maturation of Sukuk. Until taking delivery of the commodities or grains upon maturity, the holders of these certificates used to sell the Sukuk in money (COMCEC, 2018).

There are many types of sukuk based on different Sharia'h contracts, i.e. Musharakah, Mudharabah, Murabaha, Salam, Ijarah and Wakalah etc. Simultaneously with that, other hybrid models of Sukuk also can be traced with the combination of different shari'ah contracts. There are five main parties which generally involves in the issuance of Sukuk. They are

- i. Originator: Typically, the organisation that is desiring to raise funds.
- ii. Issuer: Usually Special Purpose Vehicle (SPV).
- iii. Lead Arranger: A body that arranges and manages the whole process.
- iv. Trustee: An appointed body to protect the interest of Sukuk holders.
- v. Sukuk Holders: Investors in Sukuk project (Oubdi & Raghbi, 2018).

2.2 Brief overview of Sukuk in the Indian capital market:

The Indian financial market is divided into the capital market, which deals in long-term securities and the money market, which deals in short-term securities. There are three regulatory bodies that govern the capital market in India, i.e. Ministry of Finance, Reserve Bank of India and Securities and Exchange Board of India (SEBI) (Elearnmarkets, 2017). According to Singh (2014), the capital market has a significant role in the economic development of the country. It provides a fundraising opportunity that is very crucial for the economic development of the country. One of the roles of the Indian capital market is that it provides an opportunity to raise funds for projects which focuses on the development of the backward areas in the country.

According to Bloomberg (2009), Kerala had planned to launch India's first Sukuk in 2009 to finance the development of infrastructure projects in the state. The finance minister of the state Thomas Isaac said: "We need long-gestation funds to build airports, high-speed trains and expressways. Islamic finance promises unexplored potential in that context". However, the authors did not get any source of information discussing the implementation of this project. Ali, Oravampurath, & Ziyaad (2020) proposed Social Impact Sukuk for the State Government of Kerala to support the GCC returnees who returned to their homeland due to the oil crisis in 2014-2016. INX, a subsidiary of India's famous BSE (Bombay Stock Exchange) and India's first international exchange in the International Financial Services Centre (IFSC), has recently announced that they will shortly start trading Islamic bonds on their platform. V Balasubramanian, CEO and managing director of INX added that "We are talking to a number of companies and once we could identify an issuer, we

may add Sukuk as another trading instrument on our platform" (Kanungo, 2019). According to INX, their debt listing framework comply with the conditions required to issue Islamic securities (INX, n.d.).

2.3 Analysis of Contemporary Sukuk Model for Waqf Property Development

It is obvious that the Waqf assets are abundant in the form of land and buildings and other properties, the issuance of Sukuk to finance the development of Waqf properties can be seen as innovative development, that will accelerate the progress and development of waqf premises. Furthermore, the integration of Waqf and Sukuk in one structure is an interesting development that is worth pursuing (Hasan, 2012). The section below explains the Sukuk models that were developed in some jurisdictions like, Saudi Arabia, Singapore to finance the development of Waqf properties.

Saudi Arabia, through Sukuk Intifa, King Abdul Aziz Waqf developed a multiplex of high towers called Zamzam Tower, situated near the Masjid Al-Haram in Makkah, Saudi Arabia. According to Ahmed (2004), Sukmana, Khalid & Hassan (2009) and Abdul-Karim (2010) Sukuk Al-Intifa was an innovative instrument to develop waqf land in Makkah in the period of 2000 A.D. The transaction flow of this Sukuk includes build-operate-transfer, lease, and sublease contract. King Abdul Aziz Waqf as a nazir of Awqaf leased the land for 28 years to the Binladin Group with the agreement to construct four towers, a shopping complex, and a hotel for KAAW based on a build-operate-transfer (BOT) contract. The Binladin Group, in turn, leased the Zam-Zam Tower project to Munshaat to operate and finance the construction of the project, and then transfer the towers back to the Waqf through Binladin at the end of the 28 year-lease-period. To finance the project, Munshaat issued US\$ 390 million Sukuk Al-Intifa'a (timeshare bond) for 24 years. Stockholders who purchased this Sukuk can rent a space for a specific time or sub-leased their space to Muslims coming to Makkah from the entire world (Hasan, 2012; Musari, 2016).

Singapore, The Musharakah Sukuk was issued by MUIS to develop a Waqf property which was donated by an Arab merchant Shaikh Ali B Omar Aljunied. Due to the economic potential of Waqf land situated at Bencoolen Street, MUIS decided to develop the land. The proposed development plan was 104 serviced-apartments, a mosque, and a 6-storey commercial complex, with an estimated cost of \$35 million. In order to finance the development, a Musharakah Sukuk was issued. The primary stage was a Musharakah venture between 3 parties, i.e., Waqf, Baitulmal and Warees (wholly owned subsidiary of MUIS). The Waqf provided the land and capital, the Baitulmal contributed \$35 million by Sukuk issuance, and Warees provided a minimal amount along with their expertise. The second stage involves a ten-year leasing contract that was entered between the Special Purpose Vehicle (SPV) and Ascott International Pte. Ltd. Hence, a steady flow of income was ensured, and this can be accompanied by returns to the Sukuk holders (Musari, 2016; Abdullah & Saiti, 2016). The structure can be easily understood by the figure below:

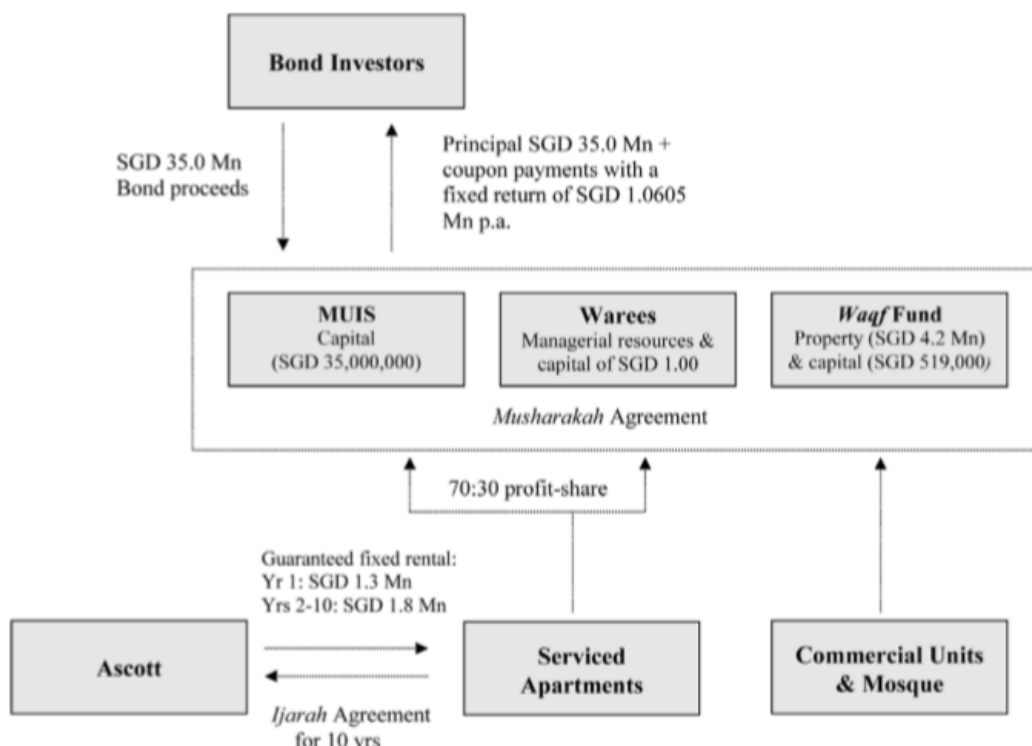


Figure 1. MUIS Musharakah Sukuk for the development of waqf property in Bencoolen street

2.4 Contemporary Issues and challenges of Waqf Property Development in India

The Indian waqf act (1995) in section 32 encourages each waqf boards of the country to develop the potential waqf properties into a shopping centre, housing flats, educational building, market and alike. The Act even permits the waqf boards to finance the development on the security of the concerned waqf property. However, according to Rasool (2017), waqf boards could not takeout this programme efficiently due to their poor financial condition.

Rasool (2017) pointed out that, an initiative by the Central Waqf Council to develop urban waqf properties is functioning since 1974-1975 in the country, but insufficient financial resources have been the key impediment in this strongly required scheme. According to her, the scheme has already disbursed 4202.41 lacs for the development of 136 waqf properties. However, considering a large amount of waqf properties in the country, the amount is too little amount for the big assignment of the development.

In 2014, National Waqf Development Corporation Limited (NAWADCO) was inaugurated after the suggestions by the Joint Parliamentary Committee on Waqf and Sachar Committee for the development of waqf properties. However, its authorised share capital was only 500 crores INR, which is 0.40% of the market value of the waqf properties in the country (Rasool, 2017).

The non-availability of Islamic banks is also a serious problem that is adversely affecting Indian Waqf in many ways. As we mentioned before, the funds released by the government for the development of waqf properties are very small compared to a large number of properties. Perhaps, it may be because of the budget constraints. It could be possible for waqf administrators to take loans from a third party for the development of waqf properties rather than going to the government. The best viable third party for taking loans is the bank. However, there are not any official Islamic banks in India that can provide shariah-compliant financing for the development of waqf properties as interest-bearing loans are unfit for the development of waqf properties. There are some small cooperative Islamic banks, but they are not capable enough of providing such significant facilities. This is also significantly barricading cash waqf practices in India which can be very useful for the development of waqf properties. The non-availability of Islamic banks makes it very difficult to find any shariah-compliant banking facility to invest cash waqf. Ultimately, this prevents the practice of a most used form of Waqf at present in India (Rashid, 2018).

Apart from the financial issues, Waqf in India also faces several other challenges such as corruption, illegal encroachment, negligence by state waqf boards and governments, lack of moral values in waqf authorities and carelessness of Mutawallis etc. Sacher committee of India stresses that "it is quite paradoxical that the present Indian State in which nearly six hundred thousand acres of Waqf lands have existed since more than one century, there still resides almost 38% Muslims in absolute or relative poverty (Nadwi, 2013)".

3. Research Methodology

This study has adopted a descriptive and analytical approach, as this research paper has employed qualitative methodology and justifies the need to use Sukuk for Waqf property development in India with a special reference to the state of Karnataka. In collecting the data, these resources were used, i.e., library research, content analysis, research articles, Indian Waqf act, Sacher committee report. The methods were applied to obtain theoretical data from secondary sources. These resources were employed to explain the significance of Sukuk for Waqf property development in India with a special reference to the state of Karnataka. Journals, conference papers and websites were used in the literature review to explain the theoretical framework of Sukuk, issues and challenges of Waqf property development in India, an overview of Sukuk in the Indian capital market and the economic potential of Indian Waqf premises with reference to Waqf act 1995, Waqf amendment act 2013 and Sacher Committee Report 2006. Overall, this study provides comprehensive and coherent material on the topic which will serve as a guiding note for Waqf administrators and investors to enhance the economic sustainability and viability of Indian Waqf properties. Further, the study will also assist the social and economic upliftment of Indian Muslims.

4. Findings and discussions

4.1 Summary review of Waqf Properties for potential Development in India

Waqf in India contains agricultural, residential and commercial properties along with functional/non-functional mosques, darghās (tomb or shrine of a Muslim saint), khanqahās (building or space for Sufi brotherhood) maqbaras (tombs), ashoorkhanās (mourning place for Shias), qabristāns (graveyards), idghās (space to offer Eid Prayer), imam-baras (space for prayers and gatherings for Shias) etc. (Rasool, 2017). According to Nadwi (2013), Currently, there are around 490,000 (4.9 lac) registered waqf properties in India. The area under these properties is estimated at six hundred thousand (6 lac) acres with a book value of INR 6000 crores (INR 60 Billion) and a market value of around INR 1.2 trillion. Currently, official revenue from those properties is INR 1.63 billion per annum amounting to the 2.7% rate of return. However, according to the Sachar committee (a committee constituted by former Indian prime minister Dr. Manmohan Singh to examine the social, economic and educational status of Muslims in India), if these properties are efficiently managed and properly used, it can at least generate 10% of return which is about INR 120 billion per annum. Rasheed (2007) stated that a large number of waqf properties in urban areas are located in very busy commercial places and posh zones, and it has very good potential for development. According to the report by the joint parliamentary committee of India, awqaf in India holds the third-largest ownership of land after the Indian railways and defence department. Yet, because of worse administration, poor management,

lack of development initiatives, illegal encroachments and unnecessary political involvements these socio-religious charitable institutions are "dying slow but sure death" in India (Khan I. A., 2014).

What development of waqf properties can attain, it can be simply understood by observing in the extraordinary growth of annual return in some of the waqf properties in India after its development.

Table (1) Return to Investment on Waqf Development in ten States of India*

| State | Loan given (Rs. in Lakhs) (Rs. in'00,000) | Annual return before development (Rs. in' 000) | Annual Return after Development (Rs. in' 000) | Increase in Return after Development (%) |
|----------------|--|---|--|--|
| Kerala | 49.8 | 96 | 877.7 | 814 |
| Bihar | 23.8 | 5.8 | 459 | 7814 |
| Karnataka | 633.7 | 1087.8 | 12001 | 1003 |
| Maharashtra | 41 | 9.7 | 590 | 5988 |
| Andhra Pradesh | 58.7 | 30.7 | 1160 | 3681 |
| Rajasthan | 3.2 | - | 106 | - |
| Madhya Pradesh | 75.4 | 85 | 2512 | 2855 |
| Tamil Nadu | 191.4 | 720.3 | 3747 | 420 |
| Orissa | 188.1 | 60.4 | 4232 | 6907 |
| Punjab | 17.6 | - | 666 | - |
| INDIA | 1241.6 | 2086 | 25760.7 | 1135 |

Source: Government of India, Sachar Committee Report (2006)

5. Recommendation and conclusion

Indian Waqf Amendment Act (2013) allows every Waqf Board of the country to develop the waqf property in any manner which is deemed fit by the 2/3rd majority of the board. However, the Act also prohibits the sale, gift, or transfer of the waqf properties except in some special scenarios. For this reason, Sukuks such as Ijarah, which are considered relatively secured than others, cannot be used for the development of Indian waqf properties as it generally involves the sale of the asset.

Mudharabah Sukuk can be a good option for the Karnataka waqf board for the development of waqf properties as it does not involve the sale or transfer of any property. This initiative will serve as a pilot project for adopting this framework for the development of waqf properties in the whole country. The structure will also provide a good and secure shariah-compliant investment opportunity for the Muslim society in the country. Together with that, it will also lead to the social upliftment of the Muslim society in the region due to the development and revitalisation of the waqf properties in that province. The generic structure of the Sukuk-Mudharabah for the development of waqf properties in the state can be figured as below:

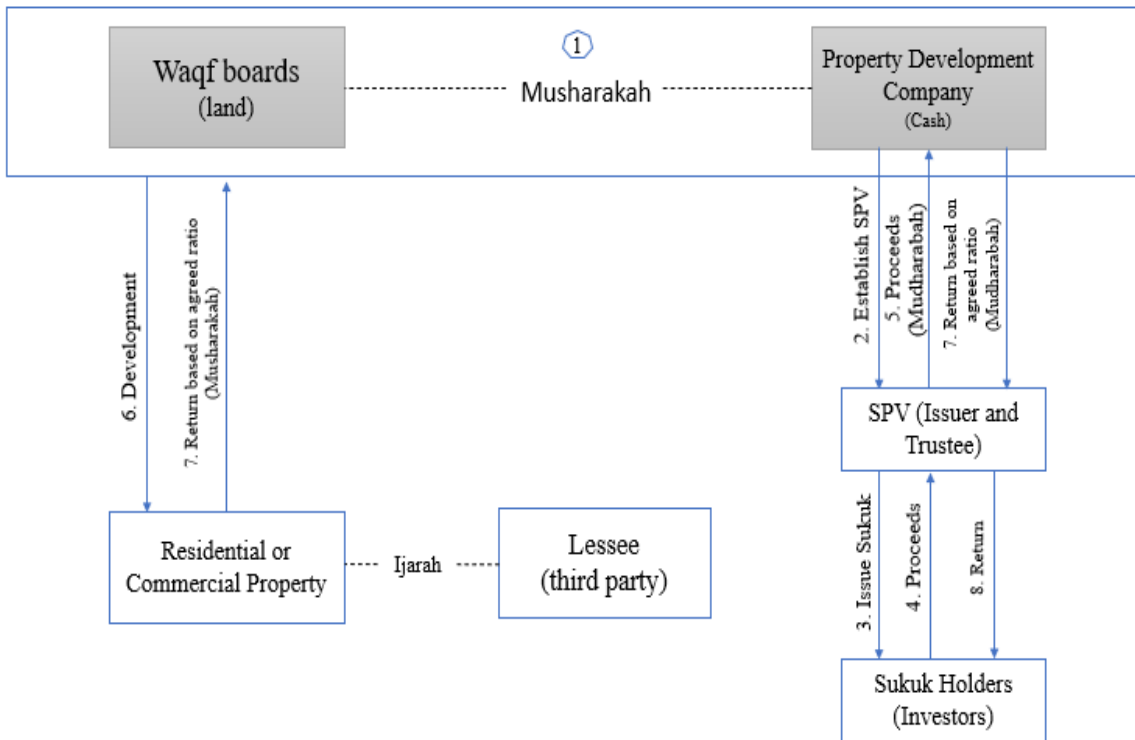


Figure 2 Generic Model of Musharakah Sukuk for the development of waqf properties in the state of Karnataka.

Description of the process:

- Waqf board and property development company will enter in Musharakah contract. Waqf board will contribute land while PDC will contribute cash which will be raised through the Sukuk.
- The PDC, as an originator, will establish SPV. Then, SPV will issue the Sukuk as an issuer.
- The investors will pay the proceeds to the SPV. Then, SPV will declare a trust over proceeds.
- SPV will then pay the proceeds to the PDC based on Mudharabah Contract. The profit ratio will be decided.
- Residential or commercial property will be built on waqf land by contribution of land by waqf board and cash by the PDC. Ijarah contract with third party will be done to secure the returns.
- The return from the property will be distributed between Waqf and PDC as per the agreed ratio in Musharakah Contract.
- PDC will then share the profit with investors through the SPV (Trustee) as per the agreed ratio in Mudharabah contract.
- At the maturity, the waqf board will purchase the asset and terminate the musharakah contract.
- The dissolution amount will be paid to investors.

The development of waqf properties will also lead to the preservation of those properties, which has been a major concern of Muslim scholars in the country. However, the structure needs advanced transparency and reporting measures to be protected from any kind of corruption and fraud. Thorough auditing and proper legal documentation should be done to protect the interest of stakeholders. The proposed model in this study is just an attempt to examine the use of Sukuk for the development of waqf properties in the state without considering many important factors, i.e. awareness of the people regarding waqf development, knowledge, perception, and readiness of the people to invest in Sukuk etc. which may affect investors decision making. A rigorous study should be conducted in this regard by the concerned authorities. The successful implementation of the Sukuk-waqf model to develop waqf properties will benefit Muslim society in the country at-large, uplifting them from social and educational backwardness in the country. The practitioners can redevelop Waqf properties based on the proposed model. The regulators can frame regulation suited for the implementation of the proposed model.

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