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CONTENTS

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Waqf 'Ala Al-'Awlād A Case of Colonial Intervention in India

Ishtiyaq Ahmad Zilli*

India has a very rich and vibrant tradition of *awqaf*. During the long period of Muslim rule in India, a large number of charitable endowments were created by individuals as well as governments (Bilgrami 1984: 88-96). However, after the downfall of the Mughals and establishment of British hegemony in the Subcontinent, the situation underwent a drastic change and most of such properties were embezzled by various ways and means by the colonial rulers. Hunter for example, speaking of the Muslims of Bengal, described the "misappropriation on the largest scale of their educational fund" (Hunter 1984: 87). This was part of an outrageous and shameful assault on the historic charitable endowments of India, many of which were established for the upkeep of students, the advancement of education, and the maintenance of educational institutions. This practice, obviously, was not confined to Bengal.

After the failure of the First War of Independence in 1857, the revenge of the British was terrible. Properties of those who were suspected to have been involved in the struggle were confiscated, and there is no evidence to suggest that charitable properties were spared in this wholesale looting of Muslim property. Besides confiscating and misappropriating *waqf* properties at large, the British rulers under the subsequent imperial regime also effectively reorganized the management of *waqf* and promulgated laws designed to liquidate or control Muslim *waqf* properties. The loss would have been much greater had these schemes not been firmly resisted by the Indian Muslims. Their tenacious and sustained resistance forced the hands of the British rulers

* Retired Professor of History, Centre of Advanced Study in History, Aligarh Muslim University Aligarh. Email: zilliamu@gmail.com

to revoke laws that were clear interventions against Sharia, spearheaded by great Islamic scholars, thinkers, and reformers, such as Allama Shibli Nomani (1857-1914) (Nadwi 2015: 510-18)

Waqf is divided into two broad categories as practiced under Hanafi jurisprudence in India:

- Public *waqf* [*waqf khayrī*], meant for supporting the poor and general good as well as religious, pious or charitable purposes; and
- Family *waqf* [*waqf dhurī*], which is generally referred as waqf 'Ala Al-'Awlād, which benefits children and descendants of the maker of the *waqf*. The maker of the *waqf* could also include himself among the beneficiaries, with the provision that it ultimately reverts to the benefit of the poor after the extinction of the family, howsoever remote the period of time in which this occurs.

Both the categories of *waqf* are fully sanctioned and provided in the Sharī'ah and have been in practice from the very beginning of Islamic history. Both these categories were prevalent among the Indian Muslims and both kinds of *waqf* were made by them. However, British lawmakers and judges viewed the *waqf* endowments in light of the legal ethos, practices, and guidelines known to them in European contexts, predicated on personal property rights rather than social welfare. Clearly as unwelcome foreign occupiers, all of their administrative affairs were ultimately conditioned by their political interests. They also had little regard or interest in the intricacies of Islamic law. Judges in India, enabling the occupation and asset stripping of India under their solemn oath of allegiance to Queen Victoria and her heirs and successors, found the idea of making an endowment for the benefit of one's own children and descendants abhorrent and unlawful; free disposal of property was the order of the day for Indian Muslims' possessions. As a result, the Indian courts began to deliver judgments which declared the endowments made for the benefit of the descendants, children and the progeny as void and unlawful.

The Privy Council, which was the final Court of Appeal for litigations in the country, declared it void and declined to revise their opinion. In 1894 hearing the case of Abul Fata Ishak and others v. Russomoy Dhur

Chaowdhry and others, it issued a definitive ruling that endowments could be only for religious and public benefit and not for private benefit. It held that charity cannot be for the benefit of one's own progeny, and must be for the poor, and they had the effrontery to rule that it cannot be a part of (Islamic) religion. It expressed the view that: "in the family *waqf* the element of charity was 'illusory' hence they could not be held as valid". Lord Arthur Hobsouse observed:

> "a gift may be illusory whether from its small amount or from its uncertainty or remoteness, if a man were to settle a crore [million] of rupees and provide ten for the poor, that would be at once recognized as illusory. It is equally illusory to make a provision for the poor under which they are not entitled to receive a rupee till after the total extinction of a family, possibly not for hundreds of years; possibly not until the property has vanished… Their Lordships agree that the poor have been put into this settlement merely to give it a colour of piety and so to legalise arrangement meant to serve for the aggrandisement of the family" (Nomani 1911: 152-53).

Earlier, in another case Justice Trevelyan has observed:

> "I use the word "charitable" in English sense, as that is the sense in which it is used in decisions in the English Courts and in the translations into the English. We have been invited to use the term 'charitable' in what is called the Mohammedan sense i.e. to use word in another language which may mean other things" (Nomani 1909: 2).

Thus, in making their decision, the British judges did not approach Sharī'ah on its own terms, but with concepts derived from the practice of British law (Kozlowskim 1985: 132-33). However, the Muslim law was very clear on this point, and Islam imparted a different dimension to the meaning of charity. According to Islamic provisions, a charitable gift is not only valid but even better and more pious if it is settled on one's family, kindred, and descendants. In Islamic law the charity is not restricted to the poor in general, rather one's parents, kindred and relatives are more entitled to it, which is clearly borne out from the teaching of the Qur'ān and Ḥadīth.

For example, the poor in general have rights on one's property, and the *Zakāh al-māl* poor-due, one of the five pillars of Islām, is mainly

intended for them. In terms of general charitable giving, if a poor person is also one's neighbour (traditionally understood as residing within 40 houses' difference), it is more incumbent upon one to help that poor person. If the poor person is a widow or an orphan, she also has particular special rights and privileges due to the emphasis Allah placed on supporting such disadvantaged categories of people in the Qur'ān. Another way of understanding this concept is that one will be interrogated more closely on the day of judgement for failing to fulfil the rights of those to whom one has more obligations.

For example, if two people are in need of charity, one in Kuala Lumpur and one in the Amazon rainforest, we have essential obligations to both but we are more accountable for helping the one we have more means and ability to help (i.e. the one who is closer to use). Similarly, a man is obliged to spend on his wife and offspring, and if he denies them their fundamental rights to his property (e.g. sufficient and appropriate clothing and food etc.) in order to spend on the general poor, he is blameworthy for depriving his family rather than praiseworthy for helping the stranger.

Naturally if he provides for his family and then donates lavishly to the general poor, this is entirely praiseworthy and commendable in Islām. An exemplar of this was Abu Bakr as-Siddiq, (radhiallahuanhu), whose love for Allah and His Prophet (ﷺ) was peerless:

> Umar ibn Al-Khattab reported: The Messenger of Allah, peace and blessings be upon him, ordered us to give charity and at the time I possessed some wealth. I said to myself, "Today I will outdo Abu Bakr, if ever there were a day to outdo him." I went with half of my wealth to the Prophet and he said, "What have you left for your family?" I said, "The same amount." Then, Abu Bakr came with everything he had. The Prophet said, "O Abu Bakr, what have you left for your family?" Abu Bakr said, "Allah and His Messenger." I said, "By Allah, I will never do better than Abu Bakr" (Sunan al-Tirmidhī: 3675).

Returning to the British interpretation of Islām, Indian courts began to pronounce their judgments according to the imperative to liquidate the Muslim *awqaf*, often with the connivance of money-grubbing Muslim litigants. After leading the uprising against the British in 1857, the Muslim community of India suffered enormously in terms of life and

property, it was a great blow for them and spelt destruction of many families who held family *waqfs* or sought to safeguard their properties through this means.

In the case of Mir Mohammad Ismail Khan v. Munshi Churn Ghoshe, heard by the Calcutta High Court, Justice Ameer Ali very strongly and cogently argued in favour of family *waqf*, citing Islāmic texts, but he could not persuade his British colleagues to accept his point of view. Justice Ameer Ali subsequent wrote a cogent argument on the subject in the well-know journal of the time *Nineteenth Century*, but his rational argument was ignored by the Colonial Government (Nomani 1909: 311). He had earlier dealt with the issue in detail in his book *The Personal Law of Mohammedans*, published in London in 1880. Even Sir Syed Ahmad Khan had thought about introducing a bill on the subject during the tenure of his membership of the Legislative Council, but he abandoned the idea as it attracted criticism from the ʿUlamā' (Halli 1909: 239). Moreover, his colleagues in the Council convinced him that, due to the strong opposition of the law experts in England to the idea of family *waqf*, the Government would not accept it at any cost.

In 1877 Sir Syed wrote an article entitled "*Ek Tadbir Musalmanon ke Khandanun ko Tabahi awr Barbadi se Bachane ki*" ("A Plan for Saving Muslim Families from Annihilation and Destruction") in his journal *Tahzib al Akhlaq*, which included the first draft of "A Law of Family *Waqf* for Muslims" (Endowment: 158). Among other things it aimed to remove the bad effects of the law of inheritance that was being rigorously implemented by the British courts as one of the main threats to the *waqf* properties and the cause of family discord that led to frequent litigation. Under the Mughal aristocracy, it was inconceivable that the Muslim elite would attempt to embezzle charitable property, thus donations were often made and implemented on an ad hoc basis. Consequently, under British colonial law, the basic problem was that the *waqf* documents were not written properly and carefully, resulting in serious legal flaws.

Sir Syed wanted to provide a model to eliminate the possibility of such differences in future, but some ʿUlamā' thought it was an attempt to bypass the Sharī'ah law of inheritance. Even Ameer Ali, who was still an advocate at Calcutta, opposed it on the grounds that it went far beyond the provisions of Sharī'ah. The Government also did not show

any particular enthusiasm in this regard, as it thought that Sir Syed was "so far in advance of his coreligionists that he cannot be said to altogether represent their views", thus the proposal did not materialise (Nomani 1909: 511).

An eminent barrister of Calcutta, Maulvi Muhammad Yusuf, submitted an application on the subject on behalf of Bengal Association but it proved of no avail (Nomani 1909: 511). Imadul Mulk Syed Husain Bilgrami also tried to correct this situation during his membership of the India Council, but the opposition of the government against it was so strong that even a man of his standing did not succeed in his efforts (Nomani 1909: 511). It was feared that the Indian Muslims who had suffered greatly as a consequence of the upheavals of 1857 would be exposed to huge loss as many of their family endowments which were made with a view to safeguard the properties from extinction would perish. Consequently, this issue acquired great importance as it was calculated to affect the fortunes and well being of a large number of Indian Muslim families. This involved both existing endowments as well as those properties which were likely to perish unless saved by this means.

Waqf served as an instrument for saving Muslim properties from extinction through recklessness and profligacy, but after 1857 the situation became desperate and fundamentally threatened the continued existence of the Indian Muslim community as a substantial demographic in Indian affairs. After initial efforts, there was a lull as nobody knew how to break this impasse and how to ensure restoration of a right that was unjustly taken away from them. The Muslim community at large was not aware of the situation, particularly the class of ʿUlamāʾ who could be legitimately expected to play an important role in this regard, who were largely unaware of the existence of this grave problem and its implications (Nomani 1909: 511).

The basic reason for the failure of the earlier efforts was the fact that these initiatives constituted individual endeavours and the class of ʿUlamāʾ considered to represent the religion did not participate in it. When Shibli came to know about the issue in 1908, he felt that despite the best intentions, the right approach was not adopted to achieve the objective. In the opinion of the Privy Council it did not constitute a part of religion, thus the foremost need was to convince the Government that it was indeed a matter that was integral to religion and which constituted

an important aspect of the religious life of Muslims. Secondly, the Government should also be convinced that it was not the voice of individuals but the voice of the entire Muslim community of India, otherwise they would conspire to ignore the Muslim cause.

Therefore, before launching the movement for the restoration of the right of the Muslims to be able to make family *waqf*, he thought carefully over the various aspects of the problem and held wide ranging consultations with the Muslim legal luminaries of the country, and then very carefully and meticulously formulated his strategy. His antecedents made him most suited to shoulder this onerous responsibility (Nomani 1909: 511). He could serve as a bridge between different sections of the Muslim society of India, particularly between the ʿUlamā' and modern educated Muslims. For the next five years his attention remained mainly focused on this issue until it was realized.

To achieve the objective he made an all out effort and left no stone unturned. He contacted law experts and eminent Muslim personalities, wrote letters to them to solicit their views on the subject and persuade them to support the cause. He wrote a well argued and well documented treatise on the issue and proved it beyond doubt that it was a religious issue, with the help of evidence gleaned from the Qur'ān and Ḥadīth and authoritative works of *fiqh*. He wrote about it constantly in his monthly journal *al-Nadwah*, delivered speeches, toured the country very extensively to contact and persuades the people and wrote reports. This campaign was in addition to his normal responsibilities regarding Dār Al-'ulūm, Nadwatul ʿUlamā', and his intellectual and academic engagements, and one is amazed as to how he could manage all this simultaneously. No doubt there were others who supported and helped him in this task and he very graciously acknowledged their contribution to the movement, but there could be no doubt that the main burden of leading the movement rested on his shoulders (Nomani1909: 510-18).

After carefully examining the issue in its entirety, Shibli came to the conclusion that success could be expected only if the problem was tackled in a systematic way. In this regard three issues emerged as central to the problem:

- Is *Waqf 'Ala Al-'Awlād* sanctioned by the religion?
- If yes, then how the Government could be convinced of it?

- Does the Government have the power to reverse a decision made by Privy Council (Nomani1909: 512)

There was no ambiguity about the first issue as for as Muslim law was concerned. On the second issue wide ranging consultations were held with the Muslim legal experts (Nomani 1911: 11). Since the first requisite for the solution of the problem involved convincing the Government about the religious nature of the issue, it was decided to bring it to the notice of the ʿUlamā' who as a group seem to have been unaware of the gravity of the problem. It was therefore discussed at the meeting of the Managing Committee of Nadwatul ʿUlamā' and it was decided to seek a fatwa from religious scholars on the issue. This proposal was reiterated at the annual open session of Nadwah in November 1908. Later, Shibli published an open letter in the December 24, 1908 issue of *al-Nadwah* giving details of the plan consisting of six distinct steps:

- To prepare a well documented treatise in Urdu showing that Waqf 'Ala Al-'Awlād was fully provided in the Islāmic law and it was an integral part of the religion.
- Signatures of all important *ʿUlamā'* of the country should be obtained on it.
- It should be rendered into English language as well.
- Satisfactory answers should be provided to the questions raised by the High Courts and Privy Council in this regard.
- A petition should be prepared to the effect that since family *waqf* is a religious issue, the doubts that the decision of the Privy Council has raised in this regard needed to be corrected through legislation.
- Signatures of all important Muslim associations as well the general Muslim public should be obtained on this petition and it should be submitted to the Government through a powerful deputation (Nomani 1909: 512-13).

Later, Shibli further suggested that a *Waqf* Association should be established with members from all districts of the country. It was set up in 1909 and he was appointed its secretary. It was now his mission to secure support of the community for movement (Nomani1909: 512-13).

In pursuance of this objective, Shibli wrote an exhaustive and well documented treatise on the subject in Urdu which traced the history

of *Waqf 'Ala Al-'Awlād* from the time of the Prophet (ﷺ), and dealt in detail with the expositions of the Islāmic scholars and jurists on the point. It also dealt with the grounds on which Privy Council had held the family *waqf* to be void and bad in law quoting parts of the decision. It was entitled "*Risalah Muta'alliq Mas'ala-i Waqf-i Awlad*", published from Matba Ahmadi, Aligarh in 1327 H/ 1909 CE.

It argued that in Islām charity was not confined to the poor, and its scope was enormously extended to include charity to kinsmen and relatives, which was indeed considered more pious than general charity. The Qur'ān says:

> "People ask you what they should spend. Say: 'Whatever wealth you spend let it be for your parents and kinsmen, the orphan the needy and the wayfarer; Allah is aware of whatever good you do'" (Qur'ān: 2/215).

And elsewhere:

> "and in giving away in love of Him to one's kinsmen, the orphans, the poor and the wayfarer and those who ask for help, and in freeing the necks of the slaves" (Qur'ān: 3/92).

Clearly, in giving charity, the Book gives priority to parents and kinsmen. Prophetic traditions are also very clear on the point:

> "Once Umar asked the Prophet (ﷺ) 'O Allah's Apostle I have a property that I prize most and I want to give it in charity'. The Prophet (ﷺ) said 'Give it in charity with the condition that the land and the trees will neither be sold nor given away as present, nor it could be bequeathed but the fruits are spent in charity'. Thus Umar gave it in charity, for Allah's cause, the emancipation of slaves, for the poor, for guests, for traveller and for kinsmen. The person acting as its administrator could eat from it reasonably and fairly" (Bukhari: 388).

According to another tradition:

> "When the verse of the Qur'ān was revealed 'you shall not attain righteousness until you spend (for the sake of Allah) out of what you love. Allah knows what you spend', Abu Talha asked the Prophet (ﷺ) '"Allah says you shall not attain righteousness until you spend out of what you love"', and my most prized property

> is Biruha and now I give it in charity for the sake of Allah'. Prophet (ﷺ) said 'Allah be praised, I heard what you have said, it is a profitable property and in my opinion you dedicate it to your relatives'" (Bukhari: 388-89).

Shibli quoted a number of other traditions which clearly point out that family *awqāf* were made by the Companions with the approval of the Prophet (ﷺ). Besides the Qur'ān and Ḥadīth, authoritative sources of *fiqh* also extensively elaborated the point (Nomani1909:1-16).

An *Istiftā'* (seeking opinion of religious scholar on a religious issue) was sent to eminent ʿUlamā' of the country to seek their fatwa on whether *Waqf 'Ala Al-'Awlād* was legal in the light of Islāmic Sharī'ahh. The first response came from Maulana Lutfullah of Madrasa Aaliya, Rampur, followed by the *fatāwā* of almost all-important scholars of the country, both Sunni and Shia. All of them were unanimous regarding the legality of the family *waqf*. Some of them added further evidence on the point. This would suggest that perhaps the treatise written by Shibli was also sent to the scholars along with the *Istiftā'*. All these opinions (*Fatāwā*) were compiled by Shibli and published together under the title of "*Fatāwā* ʿUlamā*'-i Hindustan muta'alliq Mas›alah-i Waqf ala al Awlad*". A subheading says that it was done in accordance with the resolution passed in the annual meeting of Nadwatul ʿUlamā', held in November 1908.It was published from Matba Asi, Mahmud Nagar, Lucknow in 1910.

By the time of its compilation in 1910, 100 fatwas had been received in support of Shibli's position. This was perhaps the first and last time in the history of India that all the important ʿUlamā' of the Subcontinent, both Shia and Sunni, were contacted and their opinions were obtained on a religious issue thanks to the tireless efforts of Shibli.

The movement was acquiring momentum and getting support from across the country. The length and breadth of the country people were deeply concerned and wanted to do whatever was possible in this regard, having been awakened to the gravity of the cause by Shibli's efforts. On 9 April, 1911 a conference was held at Bara Dari, Qaisar Bagh, Lucknow, at which Shibli presented a report that contained details of all that was done so far on this front since January 1908, when he had taken up the issue, until March 1911. It was prepared and presented by him in his capacity as Secretary of *Anjuman* Waqf 'Ala Al-'Awlād, and it is

dated 31 March 1911.It was entitled "*Report Karrawai Anjuman Waqf ala Awlad zir-i Himayat Nadwatul* 'Ulamā*' az January 1908 ta March 1911"*. It was published from Asahh al Matabi Asi Press, Lucknow.

The Report details the various stages through which the movement passed from its inception. One of the appendices contains letters of prominent Muslims who wrote to Shibli to extend their support to the cause (Nomani 1911: 13-20). Another contains details about the support received from Muslim societies and association in this regard from different parts of the country. The resolutions that these associations and societies passed on the subject are also reproduced (Nomani 1911: 21-30). The Muslim League passed a resolution in this regard. It was moved by Aziz Mirza, Secretary of the League. At the behest of the Prince of Aracot, Shibli talked on the issue at length (Nomani 1909: 515). It is interesting to note here that Indian National Congress had also passed a resolution in this regard two years earlier in 1906 (Endowment 167). Another appendix contains excerpts from the letters of the eminent personalities that they wrote to Shibli.

The letters of the Muslim experts of law and other eminent Muslim personalities from all over the country, quoted in the Report and in the appendixes, clearly show that the entire country was looking to him for guidance in the matter. At the end of the report names of those people have been mentioned who had evinced deep interest in the matter. These include Imadul Mulk Syed Husain Bilgrami; Justice Ameer Ali; Maulavi Muhammad Yusuf of Calcutta; Barrister Mazharul Haq, member of the Viceroy's Council; Nawab Saleemullah Khan of Dhaka; and Barrister Zahoor Ahmad, of Lucknow (Nomani 1911: 11-12). In a letter dated September 1910, Mazharul Haq advised Shibli to contact Jinnah in this regard (Nomani, 1911: 9-10), which incidentally is the first mention of the name of Jinnah in this context. It is however not clear when and how contact was established with him. He was elected as a member of Imperial Legislative Council in 1910 (Council: 336-37).

In all probability he was contacted after his election to the Council. As an eminent jurist and as a member of the Council, his help was needed for achieving the objective. It is quite possible that this contact was established through the efforts of Mazharul Haq, who himself was a member of the Council, and is on record to have talked to other members of the Council about this issue (Nomani 1911: 11). It may

be noted that the name of Jinnah appeared in this movement after it had gained acceptance throughout the country and the groundwork was done; his role was confined to the Council where he played an important role by introducing a bill on the subject.

While the agitation for restoration of the right of the Muslims to make family *waqf* was making rapid progress, the Indian Councils Act 1909, also known as the Morley Minto Reforms, was passed by the British Parliament. It sought to increase the representation of the Indians to the Governor General and provincial legislative councils. It also granted the Council power to undertake legislation. Now it had power to legislate against the ruling of Privy Council. Some members were appointed by the administration while some others were elected. Muslims received separate representation. Jinnah was among the first to have be elected to the Governor General's Council in 1910 (Endowments 178-79). The first meeting of the reorganised Governor General's Council was convened on 25 January 1910. It was in this session that Jinnah, speaking in the Council, enquired:

> "Are the Government aware that there is a strong feeling prevailing among the Mohammedans against the present state of *wakf* law as expounded by the recent decision in the Privy Council? Does the Government propose to take steps to bring the law on the subject into conformity with the text and the wishes of the Musalmans? If so, how soon? (Endowment 179).

Speaking on behalf of the Government, Sir Harvey Adamson said that:

> "though the government was aware of some agitation in the Mohammadan community, it was not prepared to take any action which overturned the Privy Council's decision. However, he added, the government would consider a legislative proposal, provided that it was generally approved by the Mohammadan community" (Endowment 179-80).

This awareness of the government was, no doubt, created by the efforts of the movement, and the government was now convinced that it was an issue that was related to the religion and hence needed to be brought in accordance with the requirements of the Islāmic religion. It was therefore decided that a bill on the subject should be submitted to the Council. Mazharul Haq, who was very closely associated with

the movement, wrote to Shibli in August 1910 that he was preparing a draft of the bill (Nomani 1911: 9). As acknowledged by Shibli, his role was most important in taking the issue to the Council (Nomani 1911: 9). However, the bill was introduced by Jinnah. It was probably decided after mutual consultation among the concerned people that Jinnah should present it, but Muhammad Ali Jauhar felt that the Bill was rushed, and he criticized Jinnah in this regard (Comrade 1912: 326).

Jinnah introduced the Bill in the Council on March17, 1911. (Comrade 1912: 480) In his speech he brought the entire issue in sharp focus and stressed the need to change the law that had caused much distress to the Muslim community. He said that he had wide ranging consultation with leading Muslims of the country in this regard. He referred to the agitation that was going on for years on this point. He also referred to the resolution that was passed by the Muslim League on this issue. He talked about Nadwatul ʿUlamā' and the Memorial that was sent to the Government and a copy of which was sent to him by Shibli. He said:

> "A copy of this memorial was sent to me by that great and learned Maulvi, who is known as Maulavi Shibli, and who exercises a great influence over the Musasalman community, and whose opinion is of the greatest value to this country, so far as the Mussalman community is concerned. In that memorial he quotes the authorities on the subject and points out what the feeling of the community is" (Comrade 1912: 480).

He then quoted two considerably long passages from the Memorial to show how strong the feeling of the community was on this point and what was the nature of the memorial (Comrade 1902: 481). He dwelt at some length on the damage that the decision of the Privy Council had done to the Muslim society of the country. To quote him on the point:

> "of course, the effect of this decision has been, first of all, that *wakfs* have been hunted down. Ancient *wakfs* that have been in existence and operation for years have been hunted down in all parts of India and have been declared invalid. This is one effect of the decision. The other effect of the decision is that it prevents you from making any settlement in favour of your family and children".

Clearly the decision of Privy Council was not in accordance with the Muslim law and the Muslims had been deprived of rights "given to every individual under all systems of jurisprudence to make an adequate provision for their family and children (Comrade 1912: 482-84).

Jinnah was ably supported by Hon'ble Maharajadhiraja Bahadur of Bardawan, Hon'ble Sachidananda Sinha, Nawab Abdul Majeed, Raja of Darbhanga, Moulvi Shamsul Huda, the Hon'ble Raja of Dighapatia,Nawab Syed Muhammad Sahib Bahadur, Subba Rao, Babu Bhupendranath Basu, and Gokhale (Comrade 1912: 484-490). At the end Mazharul Haq, who played a very important role in the struggle, thanked the members who had supported the Bill. He began his speech by observing that:

> "Sir, my Hindu Colleagues of this Council had laid the whole Mohammadan community of India under an obligation which we cannot and shall not forget. One after another they got up, expressed their sympathy with the Bill and supported it" (Comrade 1912: 481).

It may be remembered that it was Mazharul Haq who had mainly negotiated with the members of the Council as he himself mentioned in a letter to Shibli, as noticed earlier. Nawab Abdul Majid, referring to Shibli in his speech, said:

> "That great and learned Maulvi of Lucknow, I mean Shamsul ʿUlamā' Maulvi Shibli, has organized a committee and with a view to move the Government has taken signatures of thousands of Mohammedans. He has sent circulars all around to every district and he has obtained their signatures. I do not know whether his memorial is before the Government or not, but, so far as we know, he has got a memorial ready and he was thinking of sending it to the Government. He has given in that memorial all the reasons for persuading the Government to legislate with a view to remove the effect of Privy Council ruling. We are all very thankful to Shamsul ʿUlamā' Maulvi Shibli for all the troubles that he has taken and the efforts that he has made in this direction" (Comrade 1912: 487).

On behalf of the Government, the Hon'ble Earle responded, admitting the need for further effort to be made to induce the Privy Council to

modify their decision, and that legislation in respect of the religious laws was undesirable. He said that

> "The Government of India are willing to allow the Bill to go out to local Governments to be discussed… The Government of India are content to let the Bill go forward on the understanding to which I have referred and will wait full expression of Mohammadan opinion on the subject" (Comrade 1912:4810).

At the end Jinnah expressed his thanks, particularly to Hindu members. The motion was put and agreed to.

The Memorial to which Jinnah and Nawab Abdul Majeed referred and which was sent to the Government embodied full expression of the Indian Muslims on the subject. The treatise that Shibli wrote on the subject, the fatwas of Sunni and Shia scholars, the endorsement of the Muslim associations throughout the country (including the Muslim League and Shia Conference), the opinions of eminent Muslim jurists and leading Muslim personalities, along with signatures of at least forty thousand Muslims, was no less than the "full expression" of the Muslim opinion on the subject to which Earle referred. This stupendous task was achieved by a movement that was initiated and led by Allama Shibli Nomani in his capacity as the secretary of the *Waqf* Association, which was itself formed at the initiative of Shibli.

The Bill was put on March 17, 1911. The *Waqf* conference in Lucknow was held on April 9, 1911. The Report that Shibli presented on the occasion not only referred to it but also contains Urdu version of the Bill at the end (Nomani, 1911: 34-36). Shibli himself had some reservations on certain points, particularly regarding the powers of the registrar in the matter. He felt that the power given to the registrar to reject a document of *waqf* was not proper. He also wanted that it should be drafted in such a manner that rights of inheritance were not affected. He thought that in its present form people may misuse it for their vested interest by depriving others from their share in the inheritance. For this purpose he travelled to Bombay and met Jinnah to discuss these issues with him. Jinnah agreed with Shibli and necessary changes were made in the draft (Nomani 1911: 2).

Passing through various stages that took considerable time and which saw much up and down and at some stages faced rather stiff

opposition, the Bill was passed as an Act on 7th March 1913 and came to be known as Mussalaman Wakf Validating Act 1913 (Nomani 1911: 79-80). It brought the great struggle that Shibli has launched in 1908 to a successful end. It restored the right of the Muslims to make family *waqf* and thereby a great injustice that was done to the Indian Muslim community was redressed. Muslims only wanted to be allowed to be able to practice their religion, including with regard to the charitable disposal of their property. By any standard, it was a great achievement of Shibli and it embodies a very significant contribution of his towards legislative evolution in the history of Muslim personal law in the Indian Subcontinent. Shibli expressed satisfaction on the success of the movement that saved thousands of Muslim families from extinction. It will continue to be remembered as a milestone in the long and arduous history of the struggle of Indian Muslims for the restoration of a right of which they were wrongfully deprived.

Ground realities have entirely changed since. *Waqf* properties are now in a very bad shape. No one is known to be making a family *waqf* any more, but the Act is still in force (Rashid 2006: 55). Its objectives were limited to declaring the validity of *Waqf 'Ala Al-'Awlād* and therefore it did not deal with the other aspects relating to creation and management of *Waqf*. It suffered from some serious flaws, many of which were remedied later (Endowment 1913). However, it served the essential purpose for which it was instituted. Muslims of the Indian Subcontinent were unjustly deprived of a religious right that was given to them by the religion and it was restored to them by this Act thanks to the untiring efforts of the Indian Muslims under the leadership of Allama Shibli Nomani. They succeeded in achieving what in the circumstances seemed to be unachievable.

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In This Issue

Guest Editor's Note

Articles

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2289 5639