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## Historical Development of *Waqf* Governance in Bangladesh: Challenges and Prospects

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**Abstract:** *Waqf* is “the permanent endowment by a Muslim of any of his property for a purpose recognized by the Muslim Law as religious, pious or charitable.” It played a prominent role in the socio-economic and cultural development of the Muslim society in Bengal. Although *Waqf* governance could not develop into an institutional shape during the Muslim rule in Bengal (1204-1757), yet, *Waqf* contribution was the driving force behind the enlightened educational and cultural development of the then Muslim society. *Waqf* governance started to be formulated legally in Bengal during the colonial era (1757-1947). The first laws were enforced in 1894 through the declaration of the Privy Council, in which family *Waqf* was made invalid. It was repealed by “The Mussalman Waqf Validating Act 1913”, which was the first formal legal formulation to *Waqf* governance in British India including Bengal. Some changes were incorporated into it with ‘the Bengal *Waqf* Act 1934’. After 1947, it was amended in Pakistan and renamed as “the East Pakistan *Waqf* Ordinance 1962”. Since the independence of Bangladesh in 1971, the ordinance was still governing *Waqf* administration of Bangladesh with some amendments made in it by the several Ordinances and Acts of 1988, 1998 and 2013. Thus, *Waqf* governance in Bangladesh has gone through different phases. This paper aims at understanding different stages of the development of *Waqf* governance in Bangladesh with a view to identify its basic challenges and then recommend further development to get the best results from *Waqf* in the country for the development of the community and society at large.

**Keywords:** Act, Bangladesh, Governance, Law, Muslim Society, *Waqf*

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**Abstrak:** Waqf ialah derma kekal yang diberi oleh seorang Muslim dari mana-mana hartanya yang diktiraf oleh undang-undang Muslim untuk memenuhi tuntutan agamanya, amalannya dan ketakwaanya. Waqf memainkan peranan penting dalam sosio-ekonomi dan pembangunan budaya masyarakat Muslim di Bengal. Walaupun begitu, tadbir urus Waqf tidak dapat dibangunkan sebagai sebuah institusi semasa pemerintahan Muslim di Bengal (1204-1757) tetapi sumbangan Waqf merupakan penggerak utama kepada kemajuan pendidikan dan budaya masyarakat pada zaman tersebut. Tadbir urus waqf bermula dan dibangunkan secara sah di Bengal pada era kolonial (1757-1947). Undang-undang pertama yang dikuatkuasakan adalah pada tahun 1894 melalui Deklarasi Majlis Privy, dimana waqf keluarga dianggap tidak sah. Undang-undang tersebut kemudiannya dimansuhkan oleh ‘Akta Pengesahan Waqf Mussalman 1913’. Akta ini merupakan tadbir urus Waqf pertama yang diformulasi menggunakan undang-undang rasmi oleh British India dan dikuatkuasa di beberapa negara termasuk Bengal. Terdapat beberapa pindaan dan penambahbaikan pada akta tersebut dan ‘Akta Waqf Bengal 1934’. Selepas tahun 1947, akta tersebut dipinda di Pakistan dan dinamakan sebagai ‘Ordinan Waqf Pakistan Timur 1962’. Sejak Kemerdekaan Bangladesh pada tahun 1971, ordinan tersebut masih digunakan bagi mentadbir dan mengurus Waqf di Bangladesh. Terdapat pindaan dan penambahbaikan dilakukan dengan memasukkan beberapa ordinan dan akta yang dibentuk pada tahun 1988, 1998, dan 2013. Dengan ini, tadbir urus waqf di Bangladesh telah melalui beberapa fasa berbeza. Kajian ini bertujuan untuk memahami beberapa fasa pembangunan dan pembentukan tadbir urus Waqf di Bangladesh dengan mengenalpasti cabaran yang dihadapi serta memberi beberapa cadangan yang boleh menambahbaik sistem waqf di Bangladesh lalu memanfaatkan masyarakat dan rakyat.

**Kata Kunci:** Waqf, Tadbir urus, Undang-Undang, Akta, Masyarakat Muslim, Bangladesh

## 1. Introduction

*Waqf* is “the permanent endowment by a Muslim of any of his property for a purpose recognized by the Muslim Law as religious, pious or charitable” (The Mussalman Waqf Validating Act, Article 2, 1913). It is a permanent arrangement, which becomes immediately effective, and cannot be kept in abeyance; and it can never be confiscated. From its inception, *Waqf* has been an integral part of the development of every Muslim society wherever it was established. In Bengal, *Waqf* has been in existence since the advent of Islam in the land in the beginning

of 13<sup>th</sup> century. It played a prominent role in the socio-economic, educational and cultural development of the Muslim society in Bengal. *Waqf* endowments in Bangladesh consist of Mosques, *Madrasahs*, *Eidgahs* (vast land for Eid congregation), Graveyards, *Dargahs*, pharmaceuticals, agricultural lands, barren lands, forests, hillocks, urban lands and real estate. Although *Waqf* governance could not develop into an institutional shape during the Muslim rule in Bengal (1204-1757), yet it was the principal driving force behind the enlightened educational and cultural development of the then Muslim society. Several big educational institutions in Bengal (i.e. Tabrizabad, Gangarampur, Pandua, Sonargaon, Bagha) flourished during that time primarily based on the *Waqf* endowments by wealthy Muslim individuals. Education was provided not only freely, but also educational materials, boarding and lodging of all the students was sponsored by the institutions with the support from *Waqf* properties. The legal aspects regarding *Waqf* governance started to be formulated in Bengal during the colonial era (1757-1947). The first laws were enforced by the British in 1894 through the proclamation of the Privy Council, in which family *Waqf* was made invalid. The declaration was repealed and replaced by “The Mussalman *Waqf* Validating Act” passed in 1913. It was the first formal legal formulation of the *Waqf* governance in British India as well as in Bengal. Some changes were incorporated into it with “the Bengal *Waqf* Act 1934” and for the first time, *Waqf* properties in Bangladesh came under direct supervision of the government (Sadeq, 2002). Following the Act, an autonomous *Waqf* Board was created which was administered by a *Waqf* Commissioner. After the independence of India and Pakistan in 1947, the Act was further amended and renamed as “the East Pakistan *Waqf* Ordinance 1962”. Since the independence of Bangladesh in 1971, the ordinance of 1962 was still governing the *Waqf* administration of Bangladesh with some minor amendments made in it by “the *Waqf* Ordinance 1988” and “*Waqf* Ordinance 1998” (Dhaka Law Reports, 1998). The latest amendment into the *Waqf* law of the country was made with “*Waqf* (estate transfer and development) *Special Ordinance Act 2013*” and “the *Waqf* (Amendment) Act 2013”, both enacted in 2013. Presently, *Waqf* administration in Bangladesh is being run under the Ministry of Religious Affairs (MRA), and is headed by an Administrator of *Waqf* (Rahman, 2003). Thus, the *Waqf* governance in Bangladesh has gone through different phases. This paper aims at explaining the different stages of the development of *Waqf* governance

in Bangladesh with a view to identifying its basic challenges and then recommends further developments to get the best result from *Waqf* governance in the country for the development of the community and society at large.

## 2. Definition and Basic Characteristics of *Waqf*

*Waqf* (pl. *Awqāf*) is Arabic word which linguistically means to withhold and to restrict (Ibn-Mandhūr, 1999), to protect or detent something, to hold still and last long. Terminologically, *Waqf* refers to the transformation of personal properties into public resources by a Muslim with benevolent intentions. According to Iman Abu Ḥanifah, “*Waqf* is withholding a subject matter (asset) to be under the exclusive ownership of the endower (*Wāqif*), and to give in charity its usufruct or dispose of its usufruct to a party chosen by the endower” (Ibn al-Humām, 1999). It is “the restricting of wealth that can be used to derive benefit from it while it remains in its original form in order to restrict its disposal to a permissible avenue” (Al-Shirbīnī, 1997). Kahf (1998) defines *Waqf* as, “A permanent or temporary dedication of some form of wealth with the aim of benefitting from it or from what it produces on a repeated basis and channeling such benefit to any form of private or public charity”. Gaudiosi (1988) defines *Waqf* as: “the detention of the corpus from the ownership of any person and the gift of its income or usufruct either presently or in future, to some charitable purpose and the ownership of the *Waqf* property was thereby relinquished by the funder, it was not acquired by any person rather, it was ‘arrested’ or detained.” Syed Ameer Ali defines *Waqf* as: “A dedication in perpetuity of some specific property for a pious purpose or a succession of pious purposes. When a *Waqf* is made of a property, the proprietary right of the grantor is divested there from, and it remains thenceforth in the implied ownership of the Almighty. The usufruct alone is applied for the benefit of the human being and the subject of the dedication is rendered inalienable and non-heritable in perpetuity” (Ali, 1912). “It is holding an asset and averting its consumption for the purpose of repeatedly extracting its usufruct for the benefit of an objective representing righteousness and philanthropy” (Kahf, 1999). According to dictionary of Legal Terms, *Waqf* is “extinction of the proprietor’s ownership in the property and the creation of trust of the property for religious purposes” (Agarwal, 1975). Islamic Encyclopedia says, “*Waqf* is such a property which is disowned by the owner on condition that a trust will own that property



and its profit would be utilized in a noble purpose. The process or method which conducts this donation can be termed as *Waqf*' (Rahim, 1989). Clause no. 2(10) of Bangladesh *Waqf* ordinance 1962 defines *Waqf* as: "*Waqf* is the donation of any property by any Muslim with a view to accomplishing religious or charitable activities" (Hamid, 2009). *Waqf* includes any movable or immovable property, any right, interest, title, claim, choice of action, whether present or future or which is otherwise of value (Zakaria, Samad & Shafii, 2013). It allows the inclusion of land and construction for religious purposes, its utilization for agricultural or any other productive industry with a condition that the net revenues be exhaustively devoted to the philanthropic causes. To acquire land property as per the condition of *Waqf* in such a way that nobody can sell it anywhere, donate or enjoy it as inheritance (Maidi, 2002). *Waqf* is irrevocable gift of a corporal property for the benefit of donors' family or someone else or something, in perpetuity, as a charity promised and normally executed during the lifetime of the donor, which is not capable of transfer, gift and transmission thereafter (Mohammad, Iman & Hamid, 2006). By the act of *Waqf*, the founder relinquishes all his property rights, transforming it into a *Haqq-Allāh*, an inalienable 'claim of God' (Ali, 2009). *Waqf* assets cannot be disposed, its ownership cannot be transferred, only its benefits are to be used for the particular purposes, which are mainly charitable in nature and it is a voluntary charity characterized by perpetuity (Sadeq, 2002). The four major components of *Waqf* are: the founder, the beneficiaries, the trustees and the endowed property. From the definitions above, the basic characteristics of a valid *Waqf* can be summarized as below:

- The donor should have an unrestricted legal ownership in the object of the endowment.
- The *Waqf* must be made in perpetuity and inalienable.
- The *Waqf* is primarily concerned with real estate of permanent nature; movable or immovable as it is a permanent arrangement.
- The purpose of the *Waqf* must be lawful and pious from the viewpoint of the *Sharī'ah*.
- The *Waqf* is generally considered to be an irrevocable legal transaction.

- It becomes immediately effective, and cannot be kept in abeyance.
- *Waqf* is for the benefit of the larger members of the community.
- The overall supervision and administration of *Waqf* remains in the hand of the state, the first administrator is usually appointed by the founder.
- If the founder abandons his Islamic faith, the endowment becomes invalid and it passes on to his heirs, although endowment by the non-Muslim is acceptable, if the purpose for which the endowment is made is compatible with the principles of *Shari'ah* (Gibb & Kramers, 1981, pp. 624-625; Mannan, 1984).

*Waqf* are of three types:

1. *Al-Waqf 'Ala Al-'Awlādor Family Waqf*: This type of *Waqf* is dedicated to the endower himself or his offspring or a combination of the two, or a specific person. Besides that, it could be used for any philanthropic purpose.
2. *Waqf lillah* or Charitable *Waqf*: This type of *Waqf* is created solely for the purpose of religious or charitable nature such as building schools, mosques and hospitals.
3. Mixed/Multi-purpose *Waqf*: This is established for a combined purpose of serving offspring and philanthropy at the same time (Al-Mahmadi, 2015).

Though, *Waqf* looks similar to *Ṣadaqah* (Islamic charity) in nature, but in case of *Ṣadaqah*, the substance and profit are transferred to the recipient unlike in *Waqf*, where only the profits go to the beneficiaries but the substance is retained. Similarly, in case of gift, the substance is transferred from one person to another unlike *Waqf*. *Waqf* also could not be regarded as *Zakāh* which is obligatory and its eight heads of expenditure are also specified in the Holy Qur'an. *Waqf* is also different from Trust. In a *Waqf*, the property is vested in Allāh, while in a Trust it is vested in the Trustee. Unlike a *Waqf*, in a Trust, it is not necessary that a Trust must be perpetual, irrevocable or inalienable or made with a pious or religious motive.

### 3. History of the Development of *Waqf* Governance

The concept of *Waqf* in Islam is regarded as an empirical embodiment of Islamic attitude towards promoting philanthropic activities. Syed Ameer Ali (1849–1928) said, ‘the doctrine of *Waqf* is interwoven with the entire religious life and social economy of the Mussalmans’ (Ali, 1976). In different courses of the history of development of *Waqf*, besides the positive aspects, some negative circumstances had also emerged, particularly concerning its management and governance. Due to the lack of good governance of the system, sometimes the *Waqf* did not produce the desired result, rather created confusion and mismanagement, while the vastness of the landed properties of *Waqf* gradually increased and in some Muslim countries it occupied half of the total cultivable land. For example, in Algeria about half of the cultivable land was endowed as *Waqf* in the mid-19<sup>th</sup> century, while it was one third in Tunis (1883), three fourth in Turkish Empire (1928) and about one seventh in Egypt (1935) and Iran (1930). With this historical necessity, various administrative strategies were adopted to achieve the objectives of *Waqf* (Gibb & Kramers, 1981, pp. 624–628), which resulted in the development of *Waqf* governance. The legal structure of *Waqf* was firmly established during the last decades of 8<sup>th</sup> and early decades of 9<sup>th</sup> centuries (Köprülü, 1942), which continued and flourished during the Umayyad (661-750) and Abbasid (750-1258) Caliphates. Imam Abu Yousuf (738-798) is said to be the pioneer of *Waqf* governance for introducing new legislation regarding the management of *Waqf*. Since the 16<sup>th</sup> century, perpetual leases were granted in some cases in different Muslim territories to encourage personal incentives in the governance of *Waqf*, as the condition of some *Waqf* estates deteriorated so much that the revenues were not even sufficient for the maintenance of the estates. Under these perpetual leases, particularly in Turkey and Egypt, tenant used to pay nominal rent so that the right of ownership may not lapse. Perhaps Turkey, having one of the longest histories of *Waqf* governance, reached its peak during the Ottoman era, where *Waqf* properties were estimated to be three quarters of the whole arable land in 1925. Egypt with a long history of *Waqf* management, enacted a law in 1946 to make family *Waqf* temporary and issued a decree in 1952 to limit the private *Waqf* only for charitable purposes. Egypt allowed bank credit as a subject of *Waqf* endowment. The family *Waqf* was prohibited in Syria in 1949. In Lebanon, it was allowed but limited only to two generations

in duration after which ownership reverts to *Wāqif* or heirs. In these cases, *Waqf* lost its irrevocability in nature. During the French colonial rule in Tunisia (1881-1956) and Algeria (1830-1962), the legal position of land was brought completely under French law and the sale of *Waqf* was recognized in practice (Gibb & Kramers, 1981, p. 628). In Central Asian Muslim territories, the vast land of *Waqf* endowment came under the state control during the Communist rule in Soviet Union (1717-1991). Although there is a general tendency to have state control over the governance of *Waqf* properties, there are also notable exceptions (e.g., Uganda, South Africa, Philippines) where *Waqf* is still designed as a purely privately-managed institution. From the historical point of view, the most significant contributions made by the institution of *Waqf* are primarily in the development of following fields:

- (a) Promotion of Islamic Ideology
- (b) Development of Education and Research
- (c) Development of Medical Science
- (d) Development of Art and Architecture
- (e) Promotion of Humanitarian Assistance, and
- (f) Recovery of Islamic Values from Colonialism (Mannan, 2005).

#### 4. *Waqf* Governance in Bangladesh

*Waqf*, as a religious charitable institution, has been practiced in the territories of Indian subcontinent including Bengal for centuries since the very beginning of Islam in this land. It may be said that *Waqf* was the single most important and crucial institution upon which Muslim society depended and developed in Bengal. There is an enlightened practice of establishing *Waqf* estates for diverse types of educational, religious and social welfare purposes such as Mosques, *Madrasahs* etc. No definite governance system was developed during the Muslim rule in Bengal (1204-1757); rather it was managed individually under the supervision of *Qādī*. The formal *Waqf* governance started legally during the colonial rule (1757-1947) with the passing of “The Mussalman *Waqf* Validating Act 1913.” Accordingly, several acts were enacted and ordinances were promulgated during the colonial and post-colonial era, which laid down the basis of *Waqf* governance of Bangladesh.

#### 4.1 *Waqf Governance in Muslim Bengal (1204-1757)*

Although *Waqf* has been an integral part of the Muslim society of Bengal since the advent of Islam, it flourished with the foundation of Muslim rule in Bengal by Bakhtiyar *Khalji* in 1204.<sup>1</sup> All the elite in Muslim society—the *Sufis*, *Ulama*, Nobles, Officials, Chieftains, Philanthropists and well-to-do persons used to enthusiastically donate huge amount of wealth, specially landed properties, on *Waqf* basis for several charitable purposes including religious and general education, orphanages, hospitals etc. During this period, the only recorded Muslim endowments were public *Waqf* and generally used for maintaining Mosques, *Madrasahs*, *Imambarahs*<sup>2</sup> or Sufi shrines (Kozlowski, 1985, pp. 37-40). The practice of family and mixed *Waqfs* was very unusual. ‘*Bakhtiyar Khalji* and his successor *Khalji Maliks* established *Masjids*, *Madrasahs* and *Khanqahs* (Sufi centers) in the capital city Lakhnawati and other important administrative centers of their conquered territories’ (Minhaj Siraj, 1970). A good number of Mosques, *Madrasahs* (Colleges), *Maktabs* (primary educational centers), *Khanqahs*, *Majilises* (Seminaries) were established in different territories of the then Bengal such as in Gaur, Pandua, Tabrizabad, Ghoraghat, Satgaon and Sonargaon all of which were supported by *Waqf* properties. In every administrative center and other important places where there was a sizable Muslim population, the *Sultans* or wealthy persons constructed Mosques on *Waqf* basis. Of these, the most remarkable Mosques are *Adina* Mosque of Pandua built by Sultan Sikandar Shah in 1375 (Ali, 2003 p. 888), Khan Jahan’s Mosque, popularly known as *Shatgombudh* (sixty tombs) *Masjid*, of Bagerhat built by Khan al-Azam Ulugh Khan Jahan, during the reign of Sultan Nasiruddin Mahmud Shah (1435-59) (Islam, 2003, vol. 9, p. 246), Zafar Khan Ghazi’s Mosque (1298) at Tribeni, Hugli, Baba Adam Mosque (1483) at Rampal, Munshiganj, Gopalganj Mosque in Dinajpur (1460), Darasbari Mosque (1479) in Gaur built by Sultan Yusuf Shah, Masjidbari Mosque (1471-1472) at Mirzaganj, Patuakhali built by Khan Muazzam Aziyal Khan, Chota Sona Masjid in Gaur built by Wali Muhammad during the reign of Sultan Alauddin Husain Shah (1494-1519), Boro Sona Masjid (1526) in Gaur built by Nusrat Shah, Bagha Masjid (1523-24) of Rajshahi, built by Sultan Nusrat Shah (1519-32), Kusumba Masjid (1558-59) of Rajshahi etc (Islam, 2003, vol. 7, pp. 81-90).

*Maktabs* were developed in the Muslim society of Bengal as the primary education centers, which were mainly attached with the Mosque or in a house attached to the Mosque (Rawlison, 1937) and were mainly sponsored by *Waqf* endowments. ‘There were 1,00,000 primary schools (*Maktabs*) in Bengal and Bihar, such that there would be a village school (*Maktab*) for more than three hundred school going boys between the age of 5 and 12’ (Long, 1868). A Mosque is seldom found in the village area without a *Maktab*. *Madrasahs* or colleges were established by the individual scholar-*Sufi-Alim* and run with support from the *Waqf* properties, as formal educational institutions. Ghiyath-al-Din Iwaz Khalji built a superb *Madrasah* and a caravanserai at *Lakhnauti* soon after his accession (Law, 1916, p. 106). Among the famous *Madrasahs*, *Dar-asbari*<sup>3</sup> of Gaura, *Dar al-Khayrat* (the house of benevolence) of Triveni, Hoogly founded by Qāḍī Nasir Muhammad in 1298 during the reign of Sultan Rukn al-Din Kay-ka’us (1291-1301) were remarkable (Ali, 2003 p. 832). The Navagrama inscriptions<sup>4</sup> support the idea of having a *Madrasah* together with a Mosque in the Khittah Simlabad<sup>5</sup> during the reign of Sultan Nasir al-Din Mahmud Shah (1442-1459) (Ali, 1985). Ghiyath al-Din Azam Shah (1392-1410) founded two *Madrasahs* at the two holy cities of *Makkah* and *Medina* (Karim, 1987).

Besides *Madrasah*, another kind of learning center was developed with *Waqf* properties known as *Majilis* or seminary. Abu al-Fadl said, “All civilized nation have schools for the education of their youth, but Hindustan is particularly famous for its seminaries” (Law, 1916, p. 161). They provided higher educational facilities in different branches of Islamic science. Having generous support from *Waqf* properties, the *Majilises* turned into very big learning centers. Among famous *Majilises*, Tabrizabad, Gangarampur, Sonargaon, Pandua and Bagha were remarkable (Islam, 2017). To maintain these learning centers, the rulers and Muslim wealthy individuals granted lands as *Waqf* endowments. Tabrizabad, the learning center of Shaikh Jalaluddin Tabrizi at Deotala of Pandua was supported by several *Waqf* endowments including *Bais Hazari* estate (twenty-two thousand *bighas* of land) by the government. Sonargaon near Dhaka was founded by Shaikh Sharf al-Din Abu Tawama, who travelled from Bukhara in the early 80s of 13<sup>th</sup> century (Ali, 2003 p. 834). A seminary attached with a hospital was organized by Shaikh Ala-al-Haque and his son Shaikh Nur Qutb al-Alam in Pandua, for which Sultan Ala al-Din Husain Shah endowed 42 villages as *Waqf*

(Ali, 2003 pp. 836-837). Shaikh Taqi al-Din Arabi founded a *Majilis* at Mahisun (Rahim, 1963), identified as Mahisantosh<sup>6</sup> of Rajshahi of present Bangladesh in the mid 13<sup>th</sup> century (Ali, 1984). Shaikh Ata founded a *Majilis* at Gangarampur of Dinajpur which received support from several *Waqf* properties from Sultan Sikandar Shah, Sultan Jalal al-Din Fath Shah, Sultan Shams al-Din Muzaffar Shah and Sultan Ala al-Din Husain Shah (Ali, 2003 pp. 835-836). Another *Majilis* of *Husain Shahi* period was founded by Shah Muazzam Danishmand known as *Shah Daula* at Bagha, Rajshahi (Ahmad, 1960). Having generous support from *Waqf* properties, lodging-boarding-clothing-medical facilities together with educational materials including books and stationery were provided free to the students.

Although an enthusiastic environment for *Waqf* endowment was cultivated during the Muslim rule in Bengal, no integrated system of *Waqf* governance was developed. The rulers and wealthy individuals used to contribute to the educational development and charitable activities by *Waqf* endowments. The state generously assigned the income of *Waqf*-endowments for the maintenance of educational and other charitable institutions. *Waqf* properties were managed by the individually appointed *Mutawallis* (trustees) subjected to a hierarchy and were supervised by the *Qāḍīs* (judges) in accordance with *Sharī'ah* law. At the ground level, the *Imam* of the Mosque in a village was entrusted with the supervision of the *Waqf* estates and was accountable to the regional *Qāḍī* in disputes. The regional *Qāḍīs* were required to report the functions and administration of regional *Waqf* to the Sultan during the Sultanate period (1204-1576) or provincial governor during the Mughal period (1576-1757). The governors supervised and advised on the functionality of the provincial *Waqf* management and were directed to report to the *Sadr as-Sudur*, the highest religious authority of the state. In this method of governance, *Waqf* properties were in the hands of high caliber trustees-cum-Islamic jurists, who, along with being pious and honest, were well-versed in the law governing *Waqf*. Through this mechanism, *Waqf* witnessed efficient growth and their corpus were highly protected from decay, dilapidation, encroachment, misuse or abusive exploitations. As an effect, the confidence of the community was sustained through the provision of social benefits and the productivity of the institutions. However, with the fall of Muslim rule and the beginning of colonial regime in Bengal, huge changes occurred

concerning the governance of *Waqf* properties. In the transition period, the institution of *Waqf* suffered enormously and lost many of its special features.

#### 4.2 *Waqf Governance in Colonial Bengal (1757-1947)*

The East India Company was primarily a trading concern and its main goal was to maximize profit. When the company assumed political power of Bengal after the battle of Palashy (Plessey) in 1757, it modified the existing policies of the then Bengal with a view to securing commercial interest of the company. This colonial policy adversely affected the social institutions, specially the institution of *Waqf*. At the beginning of the Company rule in the late 18<sup>th</sup> century, the colonial authority left religious and personal matters out of colonial jurisdiction. Warren Hastings stated in 1772: "In all suits regarding inheritance, succession, marriage, castes and other religious usages or institutions, the laws of the Koran with respect to the Mohammedans and those of the Shaster with respect to Gentoos shall invariably be adhered to" (Anderson, 1993, p. 167). This statement clearly guaranteed that the religious and personal affairs would not come under the jurisdiction of the colonial state and the religious scriptures of the respective community would continue to provide the basis for personal laws. This system was practiced by the colonial authority in the late 18<sup>th</sup> and early 19<sup>th</sup> centuries (Hussain, 2003), when *Waqf* properties used to be regulated under Muslim personal law. The Chief *Qāḍī* of a District was the custodian of *Waqf* estates in the district of his jurisdiction. But gradually this policy started to be changed with the establishment of company's absolute control over all the state institutions.

Control over landed property was a central concern of colonial authority, as the new rulers grew desperate to generate more revenues and land was the principal source of revenue. The British East India Company obtained the control over *Diwani* administration of Bengal in 1765, which provided the company absolute authority to collect land revenue of the region. The Permanent Settlement of 1793 concluded by Lord Cornwallis created a system to regulate the ownership of land. It entitled the *Zamindars* with permanent ownership of landed property, unlike previously practiced, to collect agrarian revenues on behalf of the ruler. The physical size of a land became the basis of taxation, while previously it was the agricultural production that served as the basis.



It created a fundamental change in the land revenue administration of Bengal and adversely affected the *Waqf* properties as properties fell into the ownership of individuals who were responsible to protect and cultivate them.

Separate administration of Muslim personal law had steadily been interrupted by the colonial authority and interventions were made with respect to control over *Waqf* property. The Bengal Code of 1810 upheld the responsibility of the East India Company in superintendence over Hindu and Muslim endowments and benefactions (Husain & Rashid, 1968, pp. 17-18; Qureshi, 1990). Haji Muhammad Mohsin of Hughli, endowed the whole income of his estate to the maintenance of religious and educational institutions in 1806. A member of his family challenged the legal validity of the *Waqf*. Consequently, the government attached the estate under the Regulation XIX of Bengal Code of 1810 until the suits were disposed of at the *Sadar Diwani Adalat*. The case went up to the Privy Council where it was resolved in 1835 in favor of the testator's right to endow property in the manner he did (Islam, 2003, vol. 7, p. 59). Because of disagreement among the *Mutwallis* of the fund, it was started to be managed by government. The Fund grew enormously and even its surplus income crossed a million Taka. With the support of Mohsin Fund, the Hughli *Madrasah* was founded in 1817 and the Hughli College was established in 1836; scholarships were introduced for Muslim students, hostels were established at many schools, colleges and universities (Islam, 2003, vol. 7, pp. 59-60).

With the passing of the Religious Endowments Act in 1863, the colonial government confirmed its position as superintendent of endowments enacted by the Bengal Code of 1810 and the Madras Code of 1817. The Act placed these properties in the hands of managers from the religious communities to which they belonged and the *Waqf* endowments became subject to lawsuits. The 1863 Act was limited in jurisdiction only to public religious properties, not family *Waqf* estates (Husain & Rashid, 1968, p. 18). The *Qazi* Act was passed in 1864 which dismissed all 'native law officers' (Anderson, 1993, p. 174), and thus, *Muftis* were removed and *Qādis* were replaced with newly appointed judges who were trained in English law and almost all of them were European Christians. They got the authority to deliver judgments on the cases relating to *Waqf* endowments without the consultation of *Muftis* who were indigenous experts in the matter. But, in practice, the

District Chief Judge had no proper control over the *Waqf* estates due to lack of a well-articulated mechanism. In the absence of a governing guideline, the Privy Council delivered judgment in the case of “Abul Fata Mohamed Ishak v Rusomoy Dhur Chowdry”<sup>7</sup> that invalidated the Family *Waqf* in 1894. This controversial judgment created wide-spread dissatisfaction among the Muslim community throughout the Indian subcontinent.<sup>8</sup> Syed Ameer Ali reacted in his 1899 Presidential Address to the All-India Muhammadan Educational Conference saying:

“In the religion of India provision for one’s family is a pious act, a religious duty; and the Arabian Prophet accordingly provided that property may be made non-portable, non-heritable for the maintenance of families so long as they exist; but when they cease its benefits should go to the poor. This is the institution of *Wakf* which has shed flour in every Musalman country for the last 13 centuries ...and was recognized in India until recently. On this institution the general prosperity of the Mahomedan population was founded, it was this institution that prevented the pauperization of the well-to-do classes, and that helped materially in the diffusion of knowledge. Unfortunately it has been swept away in India and the effect of this is visible in every direction” (Ali & Muhammad, 1989).

Furthermore, the Civil Procedure Code of 1908 opened the way to file law-suits against *Waqf* property by private parties claiming possession of such properties in exchange for unpaid debts. This led to further disquiet among the Muslims. A Muslim delegation met the government of India in response of which a new act “the Mussalman *Waqf* Validating Act” was passed in 1913 (Islam, 2003, vol. 10, pp. 344-345) to remove confusion created by the judgment of the Privy Council. It validated ‘Family *Waqf*’ for the Muslims and also granted its protection under law. With this act, *Waqf* properties of Bengal legally came under government supervision (Kozlowski, 1985, pp. 144–50, 177–91). In 1934, the colonial government passed ‘the Bengal *Waqf* Act 1934’ to govern the *Waqf* properties by a constitutional autonomous organization led by “*Waqf* Commissioner of Bengal”. The main goal of the Act was to protect the *Waqf* properties from misconduct, and indiscriminate the acts of *Mutawallīs* concerning management of *Waqf* properties. It allowed meeting the expenditure for *Waqf* governance from the net income of the *Waqf* estates (Basar, 1984). This continued to govern the

*Waqf* administration of the region until the dissolution of colonial India and the independence of India and Pakistan in 1947.

#### 4.3 *Waqf governance in Bangladesh during Pakistan Rule (1947-1971)*

After the independence of Pakistan in 1947, “the Bengal *Waqf* Act 1934” was adopted for the then East Pakistan (present Bangladesh) to govern the *Waqf* estates and its administration. In 1962, it was renamed as “the East Pakistan *Waqf* Ordinance 1962”, which offered some amendments and consolidated the law concerning the governance and administration of *Waqf* estates. But it did not repeal “the Bengal *Waqf* Act of 1934” and thus, the status of the Bengal *Waqf* Act of 1934 remains. Furthermore, section 103 of the *Waqf* Ordinance of 1962 provides that “this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any document, decree or order of any Court, deed, enactment other than this Ordinance.” By virtue of section 103, therefore, the provisions of the Ordinance shall exist over “the Bengal *Waqf* Act of 1934” in the circumstance of any section coming in conflict with the Ordinance. The major amendments that the Ordinance of 1962 brought comprise: firstly, a uniform charge of *Waqf* payment was set; secondly, the designation of the “*Waqf* Commissioner” was renamed as “*Waqf* Administrator” attaching him with some quasi-judicial and administrative power.

#### 4.4 *Waqf Governance in Independent Bangladesh (1971-2015)*

After the independence of Bangladesh in 1971, the *Waqf* Ordinance of 1962 was retained by the government of Bangladesh in accordance with Article 5 of “the Adaptation of Existing Bangladesh Laws (PO 48)” of 1972. This Act is still governing the *Waqf* administration of Bangladesh with some amendments made into it by “the *Waqf* Ordinance of 1988”, “*Waqf* Ordinance of 1998”, “the *Waqf* (estate transfer and development) *Special Ordinance Act (2013)*” and “the *Waqf* (Amendment) Act of 2013”. *Waqf* Ordinance of 1988 and 1998 are dealing with the *Waqf* management in Bangladesh, while *Waqf* Special Act of 2013 sets up a methodology for handing over and development of *Waqf* property in the country.

Immediately after independence, the governance of *Waqf* estates of Bangladesh was placed under “the Ministry of Education”, and then in 1972 it was brought under “the Ministry of Land Reforms and

Land Administration”. Presently, it is governed under the Ministry of Religious Affairs. As the principal trustee for all registered *Waqf* estates in Bangladesh, the Ministry determines the policies to govern *Waqf* estates, gives directions to the proper administration, investigates the conducts and determines the remuneration of *Mutawallīs*. In 1988, a separate institution ‘Office of the Administrator of *Waqf* (OAW)’ popularly known as ‘*Waqf* Bangladesh’ was established under the Ministry of Religious Affairs to bring efficiency in administering the *Waqf* estates. The Administrator of *Waqf* should be a Muslim and is appointed by the government for a five-year tenure (The *Waqf* Ordinance, section 7, subsection 2 & 3, 1962). The *Waqf* Ordinance of 1962 provides for a *Waqf* Committee, to assist the Administrator, which consists of Administrator, Deputy and Assistant Administrators (The *Waqf* Ordinance, section 13, 19 & 25, 1962). Currently, there is one Administrator, two Deputy Administrators and six Assistant Administrators (OAW, 2018). Everyone is assigned specific duties and supervising divisional and district offices. The OAW, with its head office in the capital city of Dhaka, looks after all registered *Waqf* estates in all eight divisions of Bangladesh, while the practical management is executed by the concerned *Mutawallī* committee through its 38 regional offices around the country (OAW, 2017). The *Mutawallī* is appointed orally or under a deed by which a *Waqf* is created. The *Wāqif* himself may become the *Mutawallī* or he may lay down, in the *Waqf* instrument, the manner as to the succession of *Mutawallī* (Islam, 2003, vol. 10, p. 345). Although OAW has operations in all divisions, the *Waqf* administration is highly centralized as the divisional and regional offices have no power to make decisions. According to section 47 of “the *Waqf* Ordinance of 1962”, all *Waqf* properties whether existing or created after the commencement of the Ordinance, are to be registered with the OAW by the *Wāqif*, *Mutawallī*, or the *Waqf* committee. A description of the *Waqf* properties consisting of its gross annual income, the total rent, rates, annual payable taxes, annual expenses incurred in the realization of *Waqf* income, the salary of the *Mutawallī*, allowances to individuals, religious and charitable purposes of the *Waqf* estates and any other expenses should also be submitted to the OWA (Khair & Khan, 2004, p. 385). Although such registration is compulsory and there are options of punishment for those *Mutawallīs* who fail to register their *Waqf* estates with the OAW, there are thousands of unregistered *Waqf* estates in the country. These unregistered *Waqf* properties are privately managed by

the *Mutawallīs* appointed by the *Wāqif*. Thus, the *Waqf* properties in Bangladesh can be grouped into three: first, *Waqf* estates registered with OAW; second, *Waqf* created as private trusts and are not registered with OAW; and third, *Waqf* managed by *Mutawallīs* or committees without registering with OAW (Karim, 2010). Only the *Waqfs* of first group fall under the *Waqf* administrative structure of the government. The *Waqfs* of the second and third groups could not be brought under the direct control of the OAW as these are unregistered. According to the *Waqf* ordinance of 1962, the general power and functions of the *Waqf* Administrator are mainly:

- a) “investigating and determining the nature and extent of *waqfs* and *waqf* properties, and calling, from time to time, for accounts, returns and information from *Mutawallīs*.
- b) ensuring that the *waqf* properties and income arising there from are applied to the objects, and for the purposes and for the benefit of any class of persons for which such *waqfs* were created or intended.
- c) giving directions for the proper administration of *waqfs*.
- d) managing himself, or through the officers and servants employed under this Ordinance or persons authorised by him, any *waqf* of which he may take or retain charge under this Ordinance and doing all such acts as may be necessary for the proper control, administration and management of any such property.
- e) fixing the remuneration of a *Mutawallī*, where there is no provision for such remuneration in the *waqf* deed.
- f) investing any money received as compensation for the acquisition of *waqf* properties under any law for the time being in force, by himself or by issuing directions for proper investment by the *Mutawallī* and
- g) generally doing all such acts as may be necessary for the due control, maintenance and administration of *waqfs*” (The *Waqf* Ordinance, section 27, 1962).

And the function of the Deputy Administrator and Assistant Administrator is mainly to provide support and assistance to the Administrator. The *Waqf* Ordinance of 1962 says:

“The Deputy Administrator and the Assistant Administrator shall, subject to the control of the Government and of the Administrator, be competent to discharge such duties and exercise such powers of the Administrator under this Ordinance or the rules made thereunder as may be assigned and delegated to him by the Administrator by notification in the official Gazette with the prior approval of the Government” (The Waqf Ordinance, section 31, 1962).

The *Waqf* (Amendment) Act of 2013 provides the Administrator, Deputy and Assistant Administrators the power to act as Executive Magistrates as may be necessary “for due administration, management, maintenance and protection of properties of a *waqf* estate... While exercising the powers of Executive Magistrate under this section within the territorial jurisdiction of a particular district or metropolitan area the Administrator, Deputy Administrator and Assistant Administrator, may, if necessary, ask for assistance of police and district Administration of that district or metropolitan area, as the case may be, and, if so asked for, such assistance shall be provided” (The Waqf Ordinance, section 31A, 1962). And the power and functions of the *Waqf* Committee include:

- a) “in the absence of any directions by the *Wāqif* or any lawful authority, declaring what proportion of the income or other property of the *waqf* shall be allocated to any particular object of the *waqf*.”
- b) declaring in what manner any surplus income of a *waqf* shall be utilized.
- c) settling, altering or revising schemes for the proper administration of a *waqf* in a manner not inconsistent with the terms and conditions of the *waqf* deed or the wishes of the *Wāqif*, and
- d) exercising and performing such other powers and duties as are expressly conferred or imposed on the Committee by or under this Ordinance” (The *Waqf* Ordinance, section 28, 1962).

It further includes:

- a) to appoint *Mutawallī* in vacant positions and even eliminate *Mutawallī* if necessary for any kind of mistrust, mismanagement, unfair activity, forfeiting of fund etc.

- b) to give permission of handing over of any part of *Waqf* property for its development.
- c) to defend the lawsuit, if any case is filed against the *Waqf* administration.

Administrator of <i>Waqf</i> Bangladesh						
Deputy Administrator			Deputy Administrator			
Assistant Administrator (Administration)	Assistant Administrator (Finance)	Assistant Administrator (Dhaka)	Assistant Administrator (Chittagong)	Assistant Administrator (Khulna)	Assistant Administrator (Barishal)	Assistant Administrator (Rangpur)



Thirty Eight Regional Offices around the country (OAW, 2018).

The main source of fund of the *Waqf* administration is the annual 5% subscription from the *Waqf* committee of the *Waqf* estates. The collected amount in the last few fiscal years is as follow (OAW, 2017):

Fiscal Year	Amount Collected
2008-2009	2,83,19,045 BDT
2009-2010	3,29,81,809 BDT
2010-2011	4,13,43,409 BDT
2011-2012	4,82,92,215 BDT
2012-2013	5,41,20,888 BDT
2013-2014	5,20,10,362 BDT
2014-2015	5,86,62,287 BDT

## 5. The Statistics of *Waqf* Properties in Bangladesh

Although laws concerning the *Waqf* governance were introduced during the colonial period and modified during the Pakistan period, but no specific survey was made to identify the *Waqf* properties. And even after the independence of Bangladesh, no particular survey was conducted to determine the statistics of *Waqf* properties until 1986. In 1986, Bangladesh Bureau of statistics (BBS)<sup>9</sup> conducted a survey at the request of Ministry of Religious Affair. The census was started in January 1986 and completed within two months. The survey accounted the total number of *Waqf* estates of the country as 150,593. According to the statistics of BBS conducted in 1983, there were 131,641 mosques around the country, among which 123,006 were managed as *Waqf* estates according to the survey of 1986 (Khan, 2012). The highest number of *Waqf* estates was in the district of Comilla: 9,841 and the lowest was in the district of Bandarban: 201 and at the divisional level the highest was in Rajshashi and the lowest in Sylhet. But Chittagong is leading in terms of income and expenditure of *Waqf* estates. 1,19,265 acres of landed properties were maintained as *Waqf* estate. It is to be noted that, during the time of aforesaid survey, Bangladesh had six divisions, i.e. Dhaka, Rajshahi, Chittagong, Khulna, Barisal, and Sylhet. According to the census of 1986, division-wise statistics of *Waqf* estates are given below (BBS, 1987):

Name of the Division	Number of <i>Waqf</i> Estates					% of total <i>Waqf</i> properties
	Total	Registered	Unregistered			
			Verbal	Traditional	Total (unregistered)	
Dhaka	41,317	28,422	11,225	1670	12,895	27.45%
Chittagong	26,386	17,562	7132	1692	8,824	17.52%
Rajshahi	45,159	30,419	12,809	1971	14,740	30.06%
Sylhet	11,267	6024	4,499	744	5,243	7.50%
Barishal	11,931	8224	2877	830	3,707	7.95%
Khulna	14,533	6395	7055	1083	8,138	9.52%
<b>Total</b>	<b>150593</b>	<b>97,046</b>	<b>45,607</b>	<b>7,940</b>	<b>53,547</b>	<b>100%</b>

In terms of the beneficiaries of *Waqf* properties, religious institutions such as mosque, *Madrasah*, *Maktab*, orphanage, educational institutions, heirs and public are the most prominent. The religious institutions occupied the dominant position accounting for 76% of the total



beneficiaries, while 18% were public institutions, 3% other educational institutions, 2% heirs and 1% others. More than Eight thousand educational institutions are running on the basis of *Waqf*, while most of the *Madrassahs* are founded and run through the *Waqf* estates. In terms of management, 94% of total *Waqf* estates are currently managed by the *Mutawalli* committee, while 5% are managed by the heirs of the donor and only 1% is by the trustee board, government or others (BBS, 1987).

In recent years, a new trend of making money as *Waqf*, better known as 'Cash *Waqf*' has started to be practiced in the country. Some private Islamic banks have pioneered the introduction of the concept of Cash *Waqf*. Dedicating intellectual properties as *Waqf* is another interesting recent development in Bangladesh. A number of Islamic scholars have introduced this decent practice by donating the copyrights of their contributions, which they have authored or translated, as a *Waqf*.

## 6. Challenges of *Waqf* Governance in Bangladesh

An effective governance mechanism can play a significant role in ensuring efficient performance of any institution (Grove, Patelli, Victoravich, & Xu, 2011). But, the *Waqf* governance in Bangladesh has been facing significant challenges to ensure efficient performance of the institution. These are mainly related to administration, law or society. The major challenges are elaborated below:

### 6.1 Challenges Concerning Administration

**6.1.1 Centralized *Waqf* Administration:** *Waqf* administration in Bangladesh is being conducted by the Office of the Administrator of *Waqf* (OAW) under the Ministry of Religious Affairs in a very strict centralized manner. Although the OAW has its operations in all divisions, but the divisional and regional offices have no power to make decisions. The OAW offices look after all the registered *Waqf* estates in the country, while the practical management is executed by the *Mutawalli* committee. Because of this centralized nature, there are many complaints that have been raised by the *Mutawallis* against the officials of *Waqf* administration (Karim, 2009).

**6.1.2 Inadequate Manpower:** Currently, there are only 111 employees to look after the entire *Waqf* administration of the country with the responsibility of supervising about 1,50,000 *Waqf* estates throughout the country (OAW, 2017). It seems remarkably inadequate to ensure

proper administration, governance and control over such a big number of *Waqf* estates. Although Bangladesh has 64 administrative districts, but only 38 regional offices are supervising *Waqf* estates of all districts due to the lack of manpower. A regional office has only one supervisor to supervise about 800 *Waqf* estates on an average. The office remains closed, when the supervisor leaves office to visit or inspect a *Waqf* estate. Inadequate manpower creates several mismanagement issues in the *Waqf* administration and it has become a fundamental problem for the *Waqf* administration in Bangladesh.

**6.1.3 Lack of Information and Code of Governance:** It has, very sadly, been observed that the performance of the *Waqf* administration of Bangladesh in maintaining documentation and data is remarkably poor. The only survey on *Waqf* properties which was conducted by BBS is thirty years old. Due to the lack of information and management, hundreds of *Waqf* properties are still being managed privately without registration with the *Waqf* administration. Many *Waqf* estates are still being donated verbally. Although a website is managed by the OWA, the available data is minimal and outdated. There is also absence of code of conduct and ethics for the governance of *Waqf* administration, due to which mismanagement is rampant in every sphere of the administrative mechanism.

## 6.2 Challenges Concerning Law

**6.2.1 Weakness of Concerned Law:** Many Muslim countries i.e., Middle-Eastern countries, Malaysia, Indonesia and even Muslim minority countries like India and Singapore made considerable progress in *Waqf* law, while Bangladesh is lagging far behind. The *Waqf* law of the country still could not get rid of its colonial legacy. The *Waqf* Ordinance of 1962, which is still working as the main law concerning the *Waqf* administration, is only a modified version of ‘the Mussalman Waqf Validating Act 1913’ and ‘the Bengal *Waqf* Act 1934’ of the colonial era. Although some changes have been incorporated with the *Waqf* Ordinances of 1988, 1998, *Waqf* (estate transfer and development) *Special Ordinance Act 2013* and the *Waqf* (Amendment) Act of 2013, the *Waqf* administration of Bangladesh is still unable to address several related issues to ensure good governance in the field. For example, the existing law made mandatory to report the statement of accounts by the *Mutawallīs* only to the Administrator. As a result, performance

measurement of *Waqf* institutions has become difficult for stakeholders. Unavailability of financial reports might have a negative impact on the donors as well as public trust in *Waqf* institutions, which could adversely affect the sustainability of this charitable institution.

**6.2.2 Sloth in Settling Disputes:** There are hundreds of *Waqf*-related cases waiting for years to be adjudicated by the various Courts and the OAW (Care Bangladesh, 2002), while several more are being filed every day. Although the *Waqf* Administrator performs quasi-judicial functions, but in several instances *Mutawallīs* file the cases in the Court with the intention of delay where every step is taken in accordance with the expediency of parties. Neither the Courts nor the OAW has own means to investigate the affairs, rather it has to go by records that are alleged to be tampered. However, the number of *Waqf* officials is too low to give proper attention to a large number of cases resulting in sloth. The *Waqf* officials themselves are also accused of involvement in misconduct and bribery. The statutory checks imposed to curb the corrupt practices of the officials are quite inadequate. Although some provisions are incorporated in the *Waqf Special Ordinance Act 2013*, but these, too, are inadequate to stop the corrupt practices.

**6.2.3 Weakness of Registration System:** According to the census of 1986, more than one-third (53,547 out of 1,50,593) *Waqf* estates were unregistered. Undoubtedly, many more *Waqf* estates have been created around the country after the census, which are not registered. Though the average annual rate of registration of *Waqf* estates is 110 (OAW, 2017), the number is very few compared to the existing *Waqf* estates. Besides the weakness of registration system, ignorance about it, 5% levy on the income of the estate, tendency of escaping from being controlled are among the main causes of low registration. There is no mandatory implementation of registration process which is required by section 47 of the *Waqf Ordinance of 1962* stating “all *Waqfs* existing at or created after the commencement of this Ordinance shall be enrolled at the office of the Administrator.” If there is no obligatory registration, the proper management and governance of *Waqf* properties will become a great challenge.

**6.2.4 Development Scope in the *Waqf* Ordinances:** The *Waqf* estates in Bangladesh could be used in many prospective ways such as establishment of multi-purpose complexes including shopping

malls, residential complexes, administrative buildings, car parking. Similarly, unused cultivable lands may be brought under cultivation that may bring good revenue. But the *Waqf* Ordinance of 1962 contains no option in regard to the development of *Waqf* properties, while the Indian *Waqf* Act 1995 addressed the issue with proper importance and regarded the development of *Waqf* properties a responsibility of *Waqf* Boards of the states (The Indian *Waqf* Act, Section 32, Sub-sections 4-6, 1995). This created a serious impediment to the development of *Waqf* properties. Only in 2013, with the enactment of ‘*Waqf* (estate transfer and development) *Special Ordinance Act (2013)*’, the provision of development of *Waqf* properties was incorporated with article 14. It states:

“The following financing can be done for enhancing the *Waqf* property: a) by investing the own fund of *Waqf* administration; b) by investing the own fund of *Waqf*; c) by government contribution; d) by taking loan from Bank or financial institution e) by taking security deposit or advance rent from the shop-holder or tenants; f) by selling the shops, residential flat or commercial space; g) by investing money with developer h) by investing the money of any foreign country or organization with prior approval of the government” (The *Waqf* estate transfer and development *Special Ordinance Act*, section 14, 2013).

During this gap, many *Waqf* properties were not utilized fully or continue to remain idle or not developed to their optimum potential.

### 6.3 Challenges Concerning Society:

**6.3.1 Unlawful Acquisition and Mismanagement:** Huge number of *Waqf* properties have been unlawfully captured by powerful individuals, organizations, social groups or even by the government agencies. This illegal acquisition is still ongoing. It has been reported, for example, that the Police Headquarter of the country in Dhaka situates on a *Waqf* land (Rahman, 2003). There have been many instances of *Waqf* properties being often neglected and leased out at a very low rent or sold for a low price while many others are being misappropriated (Ahmad & Safiullah, 2012). There are numerous examples of such negligence, mismanagement and illegal occupation of *Waqf* properties in the country. It is also found that a considerable number of heirs are benefiting from the *Waqf* estates donated by their predecessors.

### 6.3.2 Absence of Qualified *Mutawallīs* and Their Misconduct:

A number of *Mutawallīs* are frequently involved in dishonest activities and misconduct. These occur in different forms such as filing incorrect accounts of income and expenditure, illegal alienation of *Waqf* properties, false documentation, etc. The provisions for penalty to deter such occurrences are also inadequate. Section 61 (2) of the *Waqf* Ordinance 1962 provides:

“If a *Mutawallī* furnishes any statement, return or information referred to in clause (b) [to maintain clear and accurate accounts and furnish statements of particulars or of accounts or returns as required by this Ordinance] or clause (c) [to supply information or particulars as required by the Administrator or a person authorised by him] of sub-section (1) which he knows or has reason to believe to be false, misleading, inaccurate or untrue in any material particular, he shall be punishable with fine which may extend to 20 [twenty thousand] taka and in default with simple imprisonment which may extend to six months.”

Section 17 of the *Waqf* (estate transfer and development) *Special Ordinance Act 2013* states:

“While performing the duties under this Act: a) if any member of the special committee does any activity contrary to the interest of *Waqf* property or its beneficiary willingly to get himself benefited or help any other person to be benefited illegally; or b) if any *Mutawallī* responsible for the management of the waqf property, receiver or government officer transfers Waqf property without taking recommendation of special committee under this act and government approval; or c) if any person appointed for the management of Waqf property uses the money earned from the transfer of Waqf property in any purpose other than the necessity, welfare and interest of the Waqf property or its beneficiary and thus violates the regulation of section 6. He will be regarded to have committed offence under this act. If anybody does the offence mentioned in the sub section (1), he will be given maximum 3 (three) years of imprisonment or monetary fine or both penalties together” (The *Waqf* estate transfer and development *Special Ordinance Act*, section 14, 2013).

It is, however, to be noted that the Ordinance has attached the authority of charging compensations only to the Courts, depending on the Administrator's complaint, which may take a long time. A good number of *Waqf* properties are administered by the *Mutawallis* who are almost illiterate or not educated enough to keep and maintain the financial record of income and expenditure and manage the estate efficiently.

**6.3.3 Lack of Development Initiatives:** There is plenty of scope to develop *Waqf* estates as these are permanent in nature and created for common objectives. But it has, regrettably, been observed that no noteworthy initiatives were taken to develop the *Waqf* properties, either by the Government or by the private sector. There has also been a lack of consciousness about the broad scopes of using the *Waqf* properties. The *Waqf* administration is far from being satisfactory and efficient in this regard. No project, innovative or development initiative or research has been undertaken yet to find the best use of the *Waqf* properties to get better benefits for the society. These properties have been managed only through traditional ways without adapting to the changes of time, demand and environment. A majority of the *Mutawallis* are either not aware about ways to develop their *Waqf* estates or are lacking knowledge of effective property management. Obviously, there are diverse and progressive options to use the *Waqf* estates while complying with the objective of the donor. For example, to operate a broadcasting channel to disseminate the teachings of Islam. Even before passing the *Waqf* (estate transfer and development) *Special Ordinance Act 2013*, there was no legal authority to develop the *Waqf* properties. This led to poor development and management of *Waqf* estates.

## 7. Prospects of *Waqf* Governance in Bangladesh and Suggestions

*Waqf* properties and their governance in Bangladesh have enormous potential of being developed into an efficient institution by taking some initiatives to remove the existing impediments and improve the current governance system. *Waqf* properties should be developed into income-generating ventures, which can provide support to various social development programmes including education, health, poverty alleviation, ethical development and such other sectors. It is anticipated that at least one hundred million Taka could be earned every year from the *Waqf* estates, if these are developed appropriately, which could meet a large portion of the socio-economic needs of the community (Rahman,

2003). In order to transform *Waqf* governance and estates into effective and beneficent institutions, the following recommendations may be taken into consideration:

### **7.1 Suggestions Concerning Administration:**

**7.1.1 Establishment of an Efficient Administration:** The OAW is the principal authority to administer *Waqf* properties of Bangladesh. The power and functions of this institution should be decentralized and distributed among the divisional and regional offices according to their levels so that they can perform their responsibilities effectively and efficiently. There should be at least one office in every district with adequate functional power, personnel and facilities to supervise the *Waqf* estates. There are several allegations against the officials of OAW for being involved in corrupt activities. In many cases, *Waqf* properties are leased at a very low rent or illegally occupied with the connivance of the officials. The administration should take strong steps to save this noble institution from corrupt practices.

**7.1.2 To Ensure Transparency and Accountability:** Ensuring transparency and accountability are the two preconditions for the success of any administrative system. But these are almost absent in the *Waqf* governance system of Bangladesh. There are some weaknesses in the concerned law, on the one hand, but on the other hand, the proper application of existing law is also very poor. The accounting system, income and expenditure of *Mutawalli* committee, branch office, central office, leasing process of *Waqf* estates and their supervision are not beyond question. There are plenty of unanswered questions about the accountability of *Waqf* administration. Moreover, *Waqf*, as a religious and charitable institution, is expected to be transparent. So, it is necessary, to ensure transparency and accountability in the administrative system of *Waqf* governance by taking proper steps including the amendment of existing law and its timely implementation.

**7.1.3 Appointment of Adequate Manpower:** Inadequate manpower is major impediment in the way of establishing good administrative control over the *Waqf* estates scattered all over the country. For proper administration and governance of huge number of registered *Waqf* properties as well as bringing unregistered *Waqf* estates under the registration authority, the *Waqf* administration needs adequate number of qualified personnel. Though it has been mentioned in the development

report that a complete proposal for *Waqf* administration comprising 1048 people is being currently processed under the Ministry, it is uncertain when it will be realized (OAW, 2017). With a view to accelerating the administrative mechanism, adequate and competent manpower should be appointed. The salary structure and other benefits should also be in line with industry standards to attract talented and competent persons to this sector.

**7.1.4 Formation of an Advisory Board:** For an efficient *Waqf* administration, a national advisory board may be formed with certain rights and responsibilities under the ministry consisting of specialist scholars, lawyers, economists and administrators who will provide necessary support to the *Waqf* administration. The board would function as an advisory council to the OAW as well as create consciousness among the people about the *Waqf* properties. The board will give legal and *Shari'ah* explanations regarding any *Waqf* issue as required and advise in settling law suits. The board may be empowered with auditing the activities of *Waqf* administration and provide recommendation for its improvement, implementation of *Waqf* law and so on. It will also conduct research activities to discover innovative and useful projects to develop existing *Waqf* properties. It can also develop collaboration with *Waqf* institutions around the world such as the World *Waqf* Foundation (WWF) of Islamic Development Bank (IDB). Thus, such a board can play an effective role in reducing mismanagement in *Waqf* administration.

**7.1.5 Formation of Separate Ministry of *Waqf* Affairs:** Currently, *Waqf* administration of Bangladesh is being regulated under the Ministry of Religious Affairs. It is very difficult for the *Waqf* administration, under the existing structure, to manage and control about 200,000 *Waqf* estates. Several studies recommended that an independent ministry be formed to properly manage the huge amount of known and unknown *Waqf* estates throughout the country. There are a good number of examples in the Muslim world which have separate Ministry of *Waqf* affairs such as Saudi Arabia, Kuwait, Egypt, etc. Thus, formation of ministry of *Waqf* affairs is a must to govern the *Waqf* properties efficiently, and achieve the objectives of *Waqf* more fully.

**7.1.6 Training for the *Mutawallis*:** The *Mutawallis*, the practical driving force of the *Waqf* estate and administration, are primarily



appointed by the *Wāqif* and are maintained mostly through a heritable manner. Several studies found that a good number of *Mutawallīs* are not well-educated, nor are they aware about the *Waqf* laws and regulations, and have no skills in administration and management. They should be trained adequately to enrich them with proper knowledge and guidelines to establish good *Waqf* governance. Such training activities will create consciousness and responsibility among the *Mutawallīs* as trustees as well as make them confident to hold the high standard of trustworthiness.

## **7.2 Suggestions Concerning Law:**

**7.2.1 To Enact a Fresh *Waqf* Act:** The fifty-five years old ‘*Waqf* Ordinance of 1962’<sup>10</sup> has been working as the principal law for the *Waqf* administration of the country. Although some changes were incorporated into it with the *Waqf* Ordinances of 1988, 1998, ‘*Waqf* (estate transfer and development) *Special Ordinance Act 2013*’ and the ‘*Waqf* (Amendment) Act 2013’, all the emerging issues could not be addressed perfectly. There are still a good number of questions related to *Waqf* management to be addressed for the establishment of an efficient administration. Many provisions of the ‘*Waqf* Ordinance of 1962’ are incompatible within the framework of independent Bangladesh. Several articles of the act have led to legal controversies. So, it is time to evaluate the appropriateness of all existing sections and articles of the Acts and Ordinances and then to frame a new Act to meet the emerging issues and demands of time. The new Act should ensure accountability and transparency; curb corrupt activities; accommodate all the policy supports to develop this charitable institution into an effective one for the welfare of the society.

**7.2.2 To Setup a Separate *Waqf* Tribunal:** Dispute resolutions of the *Waqf* properties have become another area of concern that must be improved. There are hundreds of cases being adjudicated in different Courts and OAW, while the number of resolved cases is remarkably few. The long process of adjudication is creating complexities in good governance of *Waqf* administration. It has not only been a waste of time and energy, but also money and valuable resource of *Waqf* estates. To ease the dispute resolution, a special tribunal may be formed and all the cases relating to *Waqf* transferred to the tribunal. Such tribunals, for example, are working in India and have been found to be very effective.

**7.2.3 To Setup of Code of Conduct:** The *Waqf* institutions and administration should be guided by a well-defined code of governance and a code of ethics that will help them to understand their role and allow them to discharge their responsibility and accountability. In the case of a non-profit religious organization like *Waqf*, a solid governance structure can improve accounting practices and performance toward enhancing accountability (Torres & Pina, 2003).

### 7.3 Suggestions Concerning Society:

**7.3.1 Public Awareness:** The ultimate objective of the *Waqf* institutions is the welfare of *Ummah*. Although there is a huge amount of *Waqf* properties scattered throughout the country, but the mass of the people are not conscious enough about the importance, use and the role of these estates. In most cases, the *Waqf* estates are being maintained perfunctorily, no due regard is paid to its proper maintenance and development. In remote areas of the country, tradition of not taking any remuneration for the maintenance of *Waqf* properties by the *Mutawallī* is practiced and thus efforts for its development are also not done with enthusiasm. So, public awareness should be developed towards *Waqf* properties. The Imāms of the mosques and Islamic scholars can play an important role in disseminating the significances of *Waqf* through lectures, writings and the media.

**7.3.2 Diverse Use of *Waqf* Properties:** The *Waqf* properties are traditionally used as mosque, *Madrasah*, orphanage etc. with few exceptions. The concept of diverse use of *Waqf* estates for public and social welfare is almost absent in the society of Bangladesh. The donors also used to donate for the said traditional purposes. But there are plenty of options to use *Waqf* properties for greater community and social development. *Waqf* properties can be used for the establishment of hospitals, training centers, schools, colleges, universities, public libraries, rest houses for the wayfarer, research centers, Islamic broadcasting channels, publication of journals and periodicals etc. The *Waqf* income can be used for variety of purposes such as providing logistic support to the poor, shelters to disastrous people, healthcare to the needy patient, assistance to distressed women and children, paying the salaries of the teachers, tuition fees of the students, publishing Islamic literature, funding good research, arranging social awareness program on the contemporary issues like drug, aids, human trafficking,

etc. It can also be used for *Qardh-al-Hasan*<sup>11</sup> to support the needy people to start up a new enterprise and poverty alleviation programs. All these establishments and activities should be conducted under strict supervision.

**7.3.3 Protecting *Waqf* Property from Illegal Occupation:** One major problem of *Waqf* properties in Bangladesh is illegal occupation by anti-social elements and other vested-interest groups. Thousands of acres of *Waqf* land have been grabbed by several people and groups by using illegal power or by preparing fake documents. According to the information presented in the meeting of parliamentary committee of the Ministry of Religious Affair about 85 thousand 672 acres of *Waqf* land had been grabbed which was formerly under the control of *Waqf* administration. According to this government information, about 90% of the *Waqf* land had been illegally occupied. Besides legal action, the society should raise their collective voice against such usurpation.

## 8. Conclusion

*Waqf* has been a very important component of the Muslim society which largely contributed to the socio-cultural development of the society. The Muslim society of Bengal has also witnessed the remarkable contribution of *Waqf* institutions. Throughout the history of Bangladesh, ‘the practice of giving to others without expecting any return and helping the distressed often began at home and formed a crucial part of the socialization process in which family values and traditions were instilled with both voluntary and religious dimensions’ (Khair & Khan, 2004, p. 49). Since the early days of Islam in Bengal, wealthy individuals of Muslim society used to provide enthusiastic contribution to the development of society through the institution of *Waqf*. But, during the Muslim rule in Bengal (1204-1757), no integrated administrative system of *Waqf* was developed, rather it was managed by the individually-appointed *Mutawallīs*, and were supervised by the *Qādīs*. The regional *Qādīs* had to submit the report of the performance of regional *Waqf* to the Sultan or provincial governor. Through this mechanism and an enthusiastic philanthropic environment, *Waqf* properties were generally protected from decay, misuse and occupation.

With the introduction of British colonial rule in Bengal in the second half of the 18<sup>th</sup> century, huge changes occurred concerning the governance of *Waqf* properties. The British colonial authority

made revenue collection as its first priority and, thus, interfered in the traditional administration of *Waqf*. It enacted several laws and acts, which formally developed a governing system of *Waqf* administration. Although *Waqf* governance got a legal shape during the colonial era (1757-1947) through ‘The Mussalman *Waqf* Validating Act 1913’ and ‘the Bengal *Waqf* Act 1934’, the institution suffered critically and lost many of its special features. After the independence of India and Pakistan in 1947, ‘the East Pakistan *Waqf* Ordinance 1962’ was passed, which has still been governing the *Waqf* administration of Bangladesh even after its independence in 1971. Though some amendments were incorporated into the ordinance, it still could not establish an efficient governance system of *Waqf* administration.

The *Waqf* governance of Bangladesh is facing several challenges relating to administration, law and society. Centralized administration, lack of adequate and skilled manpower, poor logistic support, weak governing mechanism, corrupt practices of some officials, legal weakness in curbing corruption, time-killing dispute resolving processes, lack of use of technology, lack of social awareness, illegal occupation of *Waqf* estates, traditional use of properties, mismanagement, uneducated *Mutawallī*, etc. are the major impediments in the way of establishing an efficient *Waqf* administration. However, *Waqf* holds enormous prospects and the proper utilization of it can contribute a lot to society, ranging from the development of health, education, social service, dwelling infrastructure down to overall poverty alleviation and so on. If the prevailing challenges be overcome by enacting time-befitting laws, establishing modern, transparent and efficient administration, using the property in diverse methods and most importantly, making the society conscious, it is expected that the *Waqf* estates and administration will have epoch-making consequences in the overall development of the country.

### Endnotes

1 There has been some disagreement among the scholars about the exact date of Bakhtiar’s expedition to Bengal. Charles Stewart fixed the date on the basis of contemporary Persian sources as 1203-04 (History of Bengal, 2<sup>nd</sup> edition, 1910, 16). Edward Thomas agreed with Stewart and gave the date 1202-03 (The Chronicle of the Pathan Kings of Delhi, 110). Minhajal-Din-Siraj categorically tells that the conquest took place in the second year of Bakhtiyar’s visit with Qutubuddin Aibek at Badayun in 1203 (Tabaqat I Nasiri, tr. by Elliot and

Dowson, vol. 2, 307.), while A.H. Dani concluded by fixing the correct date as 1204 (Indian Historical Quarterly, 1954, 133-147).

2 *Imambara* literally means residence for the Imam. Specially, the word stands for a house or an assembly hall built by the Shiites for observing Muharram.

3 *Darasbari*, a locality in the suburb of Gaur is now situated in Shibganj of Rajshahi of Bangladesh.

4 *Navagrama* is now a village in Tarash of Pabna. The epigraphs with ID No. 3171, are now preserved in the Varendra Research Museum, Rajshahi. It has been first published in the Journal of the Varendra Research Museum, vol. 6.

5 *Khittah Simlabad*. Generally the term *khittah* is applied to an administrative zone with a city fortified with ramparts and walls. *Khittah Simlabad* comprised with northern Pabna, south-western Bogra and south-eastern Rajshahi.

6 *Mahisantosh* is about 75 miles distant from Rajshahi city to the north.

7 23 November 1894, PCJ on Appeals from India, 572; ILR 22 Cal. 619, 68.

8 The judgment given by the Privy Council, being the highest court of law sitting in London, used to be binding on all

the Courts in the then British Empire, including India.

9 Bangladesh Bureau of Statistics (BBS) is the main institution of the government of Bangladesh to conduct the statistical survey of the country, for details, see [www.bbs.gov.bd](http://www.bbs.gov.bd).

10 The Ordinance was framed during Martial Law of Ayub Khan and came into effect on 19<sup>th</sup> January, 1962 when there was no Parliament. A new constitution of Pakistan was promulgated on March 1, 1962.

11 *Qardh-al-Hasan* is a benevolent loan extended on the basis of goodwill and social welfare and the debtor is only required to repay the principal amount borrowed without any profit of interest.

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