

Intellectual Discourse

Volume 26

Special Issue

2018



International Islamic University Malaysia

<http://journals.iium.edu.my/intdiscourse/index.php/islam>

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A Comparative Study of Waqf Institutions Governance in India and Malaysia

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Abstract: Waqf denotes an Islāmic endowment institution. According to Islāmic law, a Waqf property is permanently dedicated to Allāh Almighty and is to be used, as specified by the wāqif (the endower), for permissible purposes. India and Malaysia, two countries of unique importance to the Muslim world, have an enormous number of Waqf properties. This study explores immovable Waqf, rather than movable and cash Waqf assets. The huge Waqf properties have significantly supported the development of the economic and social order of the Muslim community in the past. However, it is widely believed that due to inefficient governance and mismanagement, Waqf assets in both countries have not been optimally utilized for the betterment of local Muslim societies. This comparative study attempts to analyze the governance of Waqf institutions in India and Malaysia in the past and present, so as to highlight the main issues pertaining to governance. This will help each country to look at their respective merits and demerits and to learn from each other's governance model. The methods used in this study are analytical and comparative in nature.

Keywords: Waqf, Endowment, Governance, India, Malaysia

Abstrak: Waqf merupakan sebuah institusi berteraskan Islām yang mentadbir urus derma-derma yang disumbangkan. Mengikut undang-undang Islām, harta-harta Waqf adalah harta kekal kepunyaan Allāh yang Maha Besar dan digunakan mengikut aturan yang ditetapkan oleh wāqif (penderma) untuk

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tujuan yang dibenarkan. Negara India dan Malaysia, merupakan negara yang sangat penting di dalam dunia Islām kerana mempunyai harta-harta Waqf yang banyak. Kajian ini akan membincangkan berkenaan harta-harta Waqf yang tidak dapat dipindahkan berbanding harta-harta Waqf yang boleh dipindahkan dan aset tunai Waqf. Terdapat banyak hartanah Waqf yang memberi sumbangan yang sangat penting dalam menyokong pembangunan ekonomi dan sosial komuniti Muslim di masa lalu. Walaubagaimanapun, didapati terdapat sistem tadbir urus Waqf yang dipercayai tidak efisien dan disalah urus lalu menyebabkan aset Waqf dikedua-dua negara tidak dapat digunakan secara optimum untuk kebajikan masyarakat setempat. Kajian perbandingan ini akan cuba untuk menganalisis sistem tadbir urus institusi Waqf di India dan Malaysia pada masa lalu dan sekarang serta melihat isu berkaitan tadbir urus Waqf. Ini akan membantu kedua-dua negara untuk melihat merit dan demerit berkenaan isu ini dan mempelajari model pengurusan Waqf masing-masing. Kaedah yang digunakan adalah kajian analitikal dan perbandingan.

Kata kunci: Waqf, Derma, Tadbir Urus, India, Malaysia

Introduction

The literal meaning of '*Waqf*' in Arabic is to stop, prevent, hold, detain, or to take custody. Technically, Waqf is defined as a perpetual dedication of a certain property to Allāh (SWT), by devoting its benefit to religious and charitable causes (Saad et al., 2017). In other words, the benefits of a Waqf asset are dedicated to philanthropic purposes while the actual asset is preserved, and the ownership is transferred to Allāh (SWT) (Ibn e Abdin, 2000). The institution of Waqf mainly aims to realize two objectives. One, Waqf serves as a means for perpetual reward for a wāqif (donor) in the Hereafter, and the other, it contributes in the socio-economic development of society in general, and the underprivileged sections in particular (Rashid, 2011; Abdullah, 2015).

The practice of Waqf dates back to the Medinan period of the Prophetic Mission (622-632 CE). One of the most frequently quoted Ḥadīth regarding Waqf is the story of 'Umar ibn al-Khattab when he acquired some land at Khaibar and came to Allāh's Apostle (ﷺ) to seek his advice, whereupon the latter (ﷺ) said: 'If you like, you may keep the corpus intact and give its produce as charity'. Thus 'Umar gave it as charity, declaring that the property must not be sold, inherited, or given

away as a gift, and he ‘devoted it to the poor, to the nearest kin, and to the liberation of slaves, dedicated to the way of Allāh and guests...’ (Sahih Muslim, Ḥadīth no:1632). Waqf is also considered a continuous charity (*ṣadaqah jāriyah*) which continues to benefit its donor even after death unlike other charities, since even spending a substantial amount of wealth on poor does not ensure their prosperity for long. Once that wealth is consumed, they will again turn needy. Thus, the best form of charity in terms of its longevity would be to preserve the principle asset and dedicate its profit to be spent on the poor and needy (Waliullah, 2005).

After the Prophetic period, the practice of Waqf evolved with time and it was an integral socio-economic institution in the Islāmic world by the eighth century CE, and it flourished in the subsequent centuries (Ahmed & Khan, 1998; Hennigan, 2003). In Muslim societies the institution of Waqf was well known and considered as one of the foundational blocks of social infrastructure. It played a crucial role in the development of the society in terms of education, healthcare, socio-economic development, and public welfare. Nevertheless, it was generally considered as merely a charitable and non-profit provision; emphasis and interest in its worldly commercial and corporate dimensions is a more recent phenomenon (Saad et al., 2017), initially introduced by British imperialists who aimed to liquidate the assets of the Muslim ummah by introducing a commercial dimension to the Waqf discourse, together with modernized structures of Waqf management (Oberauer, 2008). It is to the credit of British, perhaps against their own wishes, that the legislation they introduced to manage Waqfs, led to a better governance of Waqf properties and endowments.

India and Malaysia, two countries with important status in the Muslim world and a shared legacy of British colonial rule, have an enormous number of Waqf assets in various forms. However, despite being huge in number, the Waqf assets in both countries have not been fully utilized for the betterment of Muslim societies. The reason is believed to be inefficiency in the governance of Waqf institutions and mismanagement by their administrators or *mutawallis* (trustees). Nevertheless, the last few years have witnessed an emerging awareness of the potential to revitalize the Waqf institutions among Muslim communities around the world. Along with the revival of this historic institution, the attention to the call for good governance and best practices of Waqf has also emerged.

It is commonly agreed that the best practices of good governance should be adopted as a necessary prerequisite in revitalizing Waqf institutions (Ihsan & Ayedh, 2015).

The primary objective of this comparative study is to analyze the governance of Waqf institutions in India and Malaysia in the past and the present with the aim to highlight the main issues pertaining to governance and management of Waqf institutions. This will help each country to learn from another's governance model and look into their respective advantages and disadvantages.

History of Waqf in India and Malaysia

It is rational to claim that the history of Waqf endowments in India is as old as Islām itself to the country, although there is no documented evidence for the existence of the earliest *Waqf* deed in the country (Hasnain, 2017). Presently, Awqaf in India collectively accounts for one of the largest Islāmic endowments in the entire world, as Indian Muslims have donated extensively to Waqf. History is witness to the fact that, successive Muslim sultans had been very generous in funding *Awqāf* from as early as the thirteenth century. With the arrival of Mughal Empire in the subcontinent, in the sixteenth century, the scale and magnitude of *Awqāf* grew to unprecedented levels. (Husain & Rashid, 1979; Habib, 1992; Abdullah, 2015). The Waqf managed by the Mughal empire benefitted mosques, educational and religious institutions (Ansari, 1974). However, after the collapse of the Mughal empire and the rise of British colonial rule in the Indian subcontinent, in the eighteenth century, this socio-economic institution fell into disarray along with the other Islāmic institutions and lost its potential growth except in rare cases (Ahmed & Khan, 1998; Abdullah, 2013).

Following independence, in the 1954 Waqf Act the Indian Government assumed the main role in directing and managing the Waqf properties in the length and breadth of this vast country. The door for unnecessary political interference and illegal exploitation in this sacred Islāmic institution was intentionally kept ajar. In 1995, in response to the growing discontent in the Muslim society which demanded the return of Waqf administration to them, the Indian Government altered the existing Waqf Act, and although it tries to portray that it was democratizing the procedure and working of Waqf management, the real objective of Waqf still remains unrealized (Rashid, 2005).

According to the Sachar Committee Report (2006) the total value of the *Waqf* properties in India in 2006 was estimated to number at around 500,000 assets, encompassing a total area of 600,000 acres, with a market value of more than 60 billion Indian rupees. According to the Report, if these properties were better utilized, they could generate, at a minimum, a return of ten per cent, which would amount to approximately 1200 billion Indian rupees per annum (Sachar Committee, 2006).

In Malaysia, *Waqf* is believed to have existed since the advent of Islām in Peninsular Malaysia in the 14th century (Nooraini, 2015). According to Mahamood (2006) The practice of *Waqf* brought dramatic changes to the region, particularly to the way of life and worldview of its inhabitants. The most notable example of early *Waqf* establishments in Malaysia is the construction of mosques such as Kg. Hulu Mosque in Malacca, Sultan Abu Bakar Mosque in Johor, and Kg Laut Mosque in Kelantan (Nooraini, 2015).

Before the emergence of British colonial rule, Islāmic law prevailed in Malaysia and it governed the institution of *Waqf*. During British rule, many laws were passed to regulate the administration of *Waqf* in Malaysia. Mahamood (2001) found that the first codified laws relating to *Waqf* in Malaysia were the Pahang Laws, enacted in 1596 CE. According to Yacoob (2013) and Nooraini (2015), Johor was the first state in Malaysia that documented a written legal provision for *Waqf*, called *Enakmen Larangan Wakaf 1911* (*Waqf Prohibition Enactment 1911*). Subsequently, Kelantan introduced the *Kelantan Majlis Ugama Islām dan Adat Istiadat Melayu Enactment 1938* (Kelantan Islāmic Religious Council and Malay Customs Enactment 1938), and then Perak passed *Enakmen Kawalan Wakaf 1951* (Control of *Waqf* Enactment 1951). As noted by Ismail et al. (2015), Selangor was the first state to appoint the State Islāmic Religious Council (SIRC) as the administrator of *Waqf* properties in 1952.

At present, according to the Department of Awqāf, Zakāh and Hājī (*Jabatan Wakaf, Zakāh dan Haji* or JAWHAR), there are over 8,861.15 hectares of *Waqf* land in Malaysia. A total of 4,543.27 hectares of the land have been categorized as ‘Wakaf Khusus’ or special *Waqf* (the kind of *Waqf* precisely declared for specific purposes or special beneficiaries) while 4317.88 hectares have been categorized as ‘Wakaf Aam’ or general *Waqf* (Ismail et al., 2015).

Waqf Laws and Administration

Malaysia is a federal country with constitutional monarchy. It comprises 13 states and three federal territories (Rashid, 2011). Each state has its own local government that enjoys certain administrative autonomy (Ahmad et al., 2012). The Federal Constitution of Malaysia is the supreme law of the country, which positions the king as the supreme authority for matters related to Islām. These matters include Zakāh, Bāit al-māl, and Waqf, among many others. In each state, the SIRC and Majlis Agama Islām Negeri (MAIN) have been constituted to advise the rulers on all Islāmic religious matters, and each state has the right to enact its own laws for Islāmic matters. The legislation concerning regulation of Waqf is mainly contained in Article 74 of the Constitution, read together with the state list (II list) of the 9th schedule (Nooraini, 2015; Husin, 2018). The provision of Waqf under Article 74(2) states that it pertains to:

“Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islāmic religious and charitable endowments, institutions, trusts, charities, and charitable institutions operating wholly within the state” (Husin, 2018).

At present, five states in Malaysia, namely Terengganu, Selangor, Malacca, Negeri Sembilan, and Perak, have enacted their Waqf legislation with a number of administrative and substantive provisions. Moreover, in order to make collaborative efforts in the development and utilization of Waqf assets, the Federal Government of Malaysia formed JAWHAR, which works under the prime minister’s department. JAWHAR has thus successfully furnished a platform to synchronize SIRC’s of different states of Malaysia on matters concerning Waqf (Husin, 2018). The objective of constituting JAWHAR is to coordinate the management of Waqf, Zakāh, and Ḥajj and enhance the effectiveness and efficiency of its service delivery; it was not meant to take over the role and function of MAIN, SIRC’s, or other related departments (Rani & Aziz, 2010).

SIRC’s act as the sole trustees of all Waqf assets in their respective states in Malaysia. However, each state has its own management practice and legislation for governance of Waqf (Ali & Noor, 2014). The

“Selangor Share Scheme” introduced by Waqf Management of Selangor and the “Waqf Jemba” project initiated by Majlis Agama Islām Kedah can be cited as examples of independent Waqf practices of different states (Isa et al., 2011). The purpose of appointing the councils as the sole trustee is to ensure that the management of Waqf is effective and efficient. It is also to enhance the ability of Waqf properties to generate better revenue for the beneficiaries and for the welfare purposes. Furthermore, it also helps to avoid many possible problems that may arise through appointment of private trustees by the endower (*wāqif*). These problems include the negligence of private trustees and intrusion of the heir, which could lead to the loss of Waqf property, and violation of the specifications set by the endower or violation of the principles of Islāmic law (Rani & Aziz, 2010).

In India, the institution of Waqf during the Mughal rule was supervised and managed by mutawallīs who were invariably respected scholars and high caliber jurists, well-versed in the jurisprudence of Waqf (Çizakça, 2000; Pearson, 2008). However, with the establishment of British rule in the Indian Subcontinent, the department of the Waqf fell into disarray and lost its special quality in that it was largely being supervised by qualified individuals (Rashid, 1997; Abdullah, 2015).

In post-independence India, the Government of India passed the Waqf Act 1954 with the aim of promoting better administration of Waqf properties in the country (Ahmed & Khan, 1998). As mentioned previously, this was superseded by the Waqf Act 1995. At present, Waqf administration in India is governed by the Waqf Act 1995 which was amended by the Waqf Amendment Act 2013 (Karimi, 2014). A central-level Waqf Council and state-level Waqf boards were constituted under the Waqf Act 1954 that regulate the Waqf properties scattered throughout the country.

Central Waqf Council: Presently, awqāf in India are under the Ministry of Minority Affairs, which is ex-officio Chairman of Central Waqf Council (Rasool, 2017). In 1965, the Central Waqf Council was set up what is called the Waqf Act of 1954 (now section 9 (1) of Waqf Act 1995) for the express purpose of advising the Central Government on matters concerning the working of boards (Waqf Act, 1954; Rashid, 1997). The Waqf amendment Act 2013 requires that council shall consist of 21 members, including at least two women members, and be

chaired by a Union minister (Ahmed & Khan, 1998). The Act provides the Waqf council greater power of supervision over state Waqf boards. Disputes will be referred to a Board of Adjudication to be constituted by the central government and headed by a retired Supreme Court Judge (Siddiqui, 2014). As per the official directives, every Waqf board is required to pay 1% of its total annual income to the Waqf Council fund (Husain, 1990; Çizakça, 2000).

State Waqf Boards: Under the Waqf Act 1995, the state Waqf Boards were established by state governments for the general superintendence of all Waqf in those states for five-year terms of office (Husain, 1990). The Board is a body having perpetual succession and a common seal with power to acquire, hold and transfer property, and it can sue and be sued (Rasool, 2017). Under the Waqf Act of 1995, the Waqf board of a specific state, including the Union Territory of Delhi, must be represented by 7 to 13 members, including at least two women, of whom the majority are elected from amongst the Muslim members of Parliament, State Legislatures, State Bar Councils and Mutawallī of Awqāf which have report an income of 100,000 rupees annually or more (Çizakça, 2000; Rashid, 2012; Rasool, 2017). The nominated members of the Boards are supposed to be selected from among prominent Muslim organizations of the state, well-known scholars of Islāmic religion and a “representative of the state government not below the rank of Deputy Secretary” (Waqf Act 1995, Sec. 14). Notably, in a state where the Shia Waqf constitutes more than fifteen percent or more of the total Waqf properties, there should be legally a separate Waqf board for them (Husain, 1990; Ahmed & Khan, 1998). Otherwise, at least one of the board members may be nominated from the Shias. As per the official directives, a mutawallī is necessarily required to pay 6% of the Waqf’s total annual income to the respective State Board for the services rendered (Husain & Rashid, 1979; Çizakça, 2000).

All in all, the powers of administrating the Waqf are not just vested with the boards themselves, but are shared with the Chief Executive Officer of Waqf, who is appointed by the central government to interact with the Waqf Boards (Wani, 2005).

Role of Mutawallīs in the Administration of Waqf

Mutawallīs are mainly responsible for Waqf management and their role is of central importance in this religiously-motivated, pious

philanthropic institution. However, it has been observed that the root cause for majority of the problems associated with the Waqf Board is the negligence on behalf of the mutawallīs (Asisah & Rashid, 2015).

Traditionally, the founder of the Waqf would himself act as a mutawallī or he would choose an individual known for his piety, honesty, and dignity as a mutawallī (Ibn e Abdin, 2000; Mujahid, 2001). The primary responsibilities of the mutawallī *include* putting the property to best productive uses, safeguarding the corpus of the Waqf, protecting it against any sort of encroachments, and distributing its revenues among beneficiaries proportionately (Al-Zuhaili, 1998; Al-Tantawi, 2007).

The mutawallī is only a manager and a caretaker of Waqf property, not its owner (Waqf Act, 1954). After payment of 7% of the Waqf Fund to the Waqf Board, the mutawallī should spend the rest on the fulfilment of “Maqāsid-e-Waqf” (Objectives of the Waqf) (Abdullah, 2015). The mutawallī is entitled to take a percentage by way of remuneration, as specified by the *Wāqif*. If the *wāqif* does not specify anything about the mutawallī (as is true in many cases, since Muslims would traditionally feel ashamed to request remuneration for the honor of administering sacred duties), his remuneration may be fixed by the Board, which should not exceed 10% of the Waqf income of the property (Rule 20 of A.P. Waqf Rules 2000).

At present, many mutawallīs treat Waqf endowments as their personal property, disgracefully using them for ulterior motives and self-enrichment. Such misuse by the mutawallīs is widespread and contributes towards maladministration and mismanagement of Waqf properties. The Waqf Amendment Act 2013 places numerous checks on mutawallīs, who can be removed by the Board on the grounds mentioned in the Act (Waqf Act, 1954; Khan, 2014). They are barred from instituting, defending and compromising suits relating to Awqāf without the sanction of the Board (Waqf Act, 2013).

Great damage has been done to the Waqf properties as the mutawallīs have been leasing out the properties without following procedures, ruining the economic position of Waqf. Waqf Boards across the country have been turning a blind-eye to the illegal activities of mutawallīs, or actively aiding and abetting the nefarious activities of the mutawallīs. The amended Waqf Act 2013 clearly lays down that a mutawallī is entitled to give Waqf property on lease for one year with the permission

of the Waqf Board, and the Waqf Board alone is competent to lease the property up to 3 years and up to a maximum period of 30 years, with the permission of State Government (Waqf act 2013, sec, 56). Neither the mutawallī nor the Board has any power under the Act to sell the Waqf land. The State Governments should ensure that leasing activities of mutawallīs and the Board are reviewed and see that it is in accordance with the law and procedure, and also that it is promoting the interests of Waqf and Muslims.

In Malaysia, only the SIRC's of each state are rendered as valid mutawallī by the Constitution. Before the enactment of the modern Waqf laws, Muslims who wanted to donate their property for Waqf would go to community organizers that people could trust, such as Qāḍīs, Imāms, q religious teachers, and penghulus (village heads), and they would be asked to act as mutawallī of the Waqf (Ibn e Abidin, 2000; Mujahid, 2001). The role and responsibility of the mutawallīs included the administration, control, and management of Waqf for the benefit of the beneficiaries (Al-Zuhaili, 1998; Al-Tantawi, 2007).

. In most cases, the endower would rely on verbal declaration of Waqf in the presence of two Muslim witnesses, and thereafter no written documents or records were created to serve as evidence on the declaration of the property as Waqf. Thus, the problems arose after the mutawallī died and a new mutawallī appointed, as the descendants of the deceased sometimes would not disclose the status of the Waqf property and used it as their personal property (Yaacob, 2013; Nooraini, 2015).

This issue forced the government to interfere in the governance of Waqf in order to prevent misuse and mismanagement. As a result, official mutawallīs were appointed by the government to manage and control the administration of Waqf in the country. It is also worth noting that although SIRC's have been empowered to manage Waqf properties as the sole trustee, the management of real estate Waqf is controlled by a special committee formed by SIRC's to ensure transparency in the administration (Rani & Aziz, 2010; Nooraini, 2015). From the legal aspect, SIRC's have the authority to make agreements, and to purchase, hold and possess, convert, transfer and develop all the Waqf land (whether movable or immovable), in compliance with the Islāmic law. In fact, SIRC's have exclusive jurisdiction over the management and development of any Waqf land (Ismail et al., 2015).

Legal Constraints in the Administration of Waqf

In Malaysia, although the SIRC's are regarded as the sole trustees of the governance of Waqf, in practice, however, Waqf assets are still subjected to the act which was passed by the parliament (Rani & Aziz, 2010). The clauses concerning the registration of Waqf land by the SIRC are always bound by NLC (National Land Code 1965), and as a result the power lies with the Land Administrator, although the NLC has clauses which exempt Waqf; Section 4(2)(e) of the NLC states that provisions of the NLC are not applicable in respect of Waqf lands except if otherwise stated (Mohamad, Kadar, & Ali, 2012). In fact, NLC does not specifically stipulate the provisions concerning Waqf, as compared to special specifications mentioned for trusts. Therefore, all the Waqf lands do not get endorsement of their title as Waqf land. As a result, the status of Waqf lands stay vague and there are high possibilities of such lands being converted to other purposes, in violation of the donor's intention and the perpetuity requirement for Waqf by Islāmic law.

Similarly, the Local Government Act 1976 indicates that Waqf properties are still taxable, like private land. Another legal issue is that although Waqf is an Islāmic matter, in many cases Waqf-related disputes are heard in the Civil High Court or Court of Appeal, and tried according to the civil law. The Malaysian Constitution gives higher authority to the Civil High Court than the Shari'ah Court, which can cause problems when a Shari'ah-related matter is brought to the court and heard by judges who are incompetent in Shari'ah law, as they were trained in the secular law (Rani & Aziz, 2010; Kader & Dahlan, 2013; Yaacob, 2013).

Compared to this, the legal issues present in the Indian Waqf laws can be highlighted as follows:

1. There is special provision in law to vacate Waqf properties for public purposes. A similar kind of law was promised by the government to tackle illegal encroachments on the Waqf lands, but unfortunately this was not included in the Waqf Act or any special bill separately presented in this regard (Rehmani, 2014).
2. In the event of any conflict regarding the Waqf properties, appeal is to be made to Waqf Tribunal (Waqf Act, 1954; Rashid, 2011), But no time period is determined for the Tribunal to the judgment.

Although, the time period for the Tribunal to issue the judgment should be bounded to six months or not more than a year. (as demanded by All India Muslim Personal Law Board) (AIMPLB) (Rizwi, 2014).

3. According to the law, if the government acquires any Waqf property, they need to pay for it as per its market value. The government has recently passed the Land Acquisition Act, according to which the compensation for the land acquired in urban areas would be two times the market value, and four times if the land acquisition is in a rural area, which should be applicable to Waqf land as well (Rehmani, 2014).
4. The structure of Waqf Boards instituted by the government consists of more of its nominated representatives compared to the number of the representatives elected from among the Muslims themselves. The bitter experience of the Muslims so far in this regard leads them to rightly consider this structure a danger to their Waqf properties (Rehmani, 2014).

Accountability and Disclosure

Accountability is one of the prime considerations of the noble institution of Islāmic Waqf. Mutawallīs must be answerable and accountable in discharging their responsibilities (Husain & Rashid, 1979). The contractual relation between the endower and the mutawallī is a relationship based on trust, whereby the mutawallī has to manage and act on behalf of the endower (Hassan, 2017). As a trustee, it is mutawallī's responsibility to report to the Waqf endower and beneficiaries how the Waqf endowments are fully used to generate the revenue for the beneficiaries (Farook, 2007). The mutawallīs should keep account of every penny and submit statements of income and expenditure every year to the Waqf Board (Husain & Rashid, 1979; Khan, 2014).

In India, mutawallīs are liable, under Sec. 44, 45, 46, and 47 of the Waqf Act 1995, to get their accounts audited and send the statements to the Board. The Act makes it obligatory for mutawallīs to let the property and its accounts be audited by auditors appointed by the Board and at the discretion of the State Government. As per Sec. 48 of Waqf Act, the Board has to examine the auditor's report and take appropriate action and also to recover arrears under Sec. 49, in the same manner as arrears of land revenue (Ahmed & Khan, 1998).

However, since there is neither a clear-cut regulatory outline nor a strict legal administration on a timely basis, in most cases mutawallis are not following these guidelines (Ahmed & Khan, 1998). Many prior researchers disclosed massive issues related to accountability and disclosure in Waqf endowments. According to Rusni Hassan (2017), since the Waqf management takes a long time (typically 3-5 years) to provide annual reports, there are many problems in reporting, most obviously out-of-date annual reports, which are supposed to be issued yearly. Furthermore, since there is no strict action from the respective authorities, mutawallis overlook their responsibility to deliver annual reports (Hassan, 2017).

Compared to this, in Malaysia, it is the responsibility of Waqf administrative committee to report to SIRC to ensure transparency, and the SIRC publishes an annual report for the general public. In addition, SIRC is required to hire services of an audit firm to get its financial statements audited. However, performance auditing against the management of Waqf does not take place in Malaysia, as there is no such binding law in the Constitution (Shafii et al., 2015).

Conclusion

This study compared the governance system of Waqf institutions in India and Malaysia. It is evident that the Waqf has been in existence in both countries for centuries, though it started in India much earlier thanks to the early arrival of Islām. Previously, Islāmic law was predominant in both countries until they were colonized by the British and Islāmic law was replaced with secular law. At present, both countries have quite comprehensive legal frameworks for the governance of Waqf institutions, though there is still room for further improvement. The most fundamental difference between the two countries is the notion of centralized regulatory body.

While India has Central Waqf Council to monitor the functions of State Waqf Boards, Malaysia has only state level Islāmic Religious Councils as the sole trustees of Waqf assets. In the authors' view, this is something which Malaysia should consider as well, since many researchers have pointed out the vital role of a centralized body in terms of more systemized and efficient Waqf governance. One more point where India has a slightly better approach is in performance audit. The Indian Waqf Board undertakes performance audit of major Waqf

institutions and the financial transactions are audited by the government and the Accountant General, whereas in Malaysia only the auditing of financial statements takes place. However, the SIRC in Malaysia has better practice in terms of transparency as they publish annual reports for the public. The researchers believe that this practice is better in terms of ensuring more transparency, and, thus, Indian Waqf Board should also adopt this practice.

| A Quick Comparison of the Waqf Governance in India and Malaysia | |
|--|--|
| Malaysia | India |
| Department of Waqf Zakāh and Ḥajj (JAWHAR) formed by Federal Government coordinates the management of Waqf by State Islāmic Religious Councils (SIRCs). | The management of Awqāf is shouldered by the Ministry of Minority Affairs and a Central Waqf Council was set up for advising the Central Government on matters concerning the working of Waqf boards. |
| State Islāmic Religious Councils (SIRCs) act as the sole trustees of all Waqf assets in their respective states. | State Waqf Boards established by state governments perform general superintendence of all Waqf assets in those states. Additionally, Central Waqf Council monitors the functions of State Waqf Boards. |
| Each state has its own management practice and legislation for governance of Waqf. | The Waqf amendment Act provides the Waqf council greater power of supervision over state Waqf boards. Disputes are referred to a Board of Adjudication constituted by the Central government. |
| Only the SIRC of each state are valid mutawallīs as per the Constitution. | Governance of waqfs are not just vested with the State boards, but it is shared with the Chief Executive Officer of Waqf, appointed by the Central government. |
| It is the responsibility of Waqf administrative committee to report to SIRC to ensure transparency, and the SIRC publishes an annual report for the general public | It is the responsibility of mutawallī of waqf to report to waqf board to ensure transparency. |
| Performance auditing against the management of Waqf does not take place in Malaysia, as there is no such binding law in the Constitution. | Waqf Board undertakes performance audit of major Waqf institutions and the financial transactions are audited by the Central government and the Accountant General. |

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ISSN 0128-4878 (Print)

ISSN 2289-5639 (Online)

