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# *Intellectual Discourse*

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***Book Review***

Oliver Leaman, *Islam and Morality: A Philosophical Introduction*.

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Reviewer: *Amilah binti Awang Abd Rahman*

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***Conference Report***

The International Symposium on Preventing and  
Countering Violent Extremism in Malaysia and  
Southeast Asia (ICVE 2021)

*Danial Mohd Yusof*

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# Waqf and Its Legal Framework in Sri Lanka: A Preliminary Study<sup>1</sup>

**Muhammed Buhary Muhammed Thabith\***  
**Nor Asiah Mohamad\*\***

**Abstract:** *Waqf* or religious endowment refers to an institution with the religious intention to do good acts for the benefit of the beneficiaries. However, the implementation and management of *Waqf* all around the world (Muslim and non-Muslim countries) have witnessed a deterioration since the fall of the Ottoman Empire. Many researchers and experts speak about the *Waqf* revival. In this relation, the *Waqf* institutions in Sri Lanka in particular, have gone through several reforms including the introduction of the ministry of *Waqf*. This paper examines the historical evolution as well as the status quo of *Waqf* governance in Sri Lanka. The study employs doctrinal analysis based on past literature as well as the laws governing *Waqf*. This study also explores the origin of the *Waqf* under Islamic law. It also discusses the application of the *Waqf* Act in Sri Lanka and identifies the current challenges and issues of the *Waqf* legal framework for the Muslim Mosques Charitable Trusts or *Waqf* Act (MMCTWA) in Sri Lanka. The findings reveal positive development in *Waqf* management, but overall awareness is necessary. The legal framework requires sustainable support and cooperation from the community, private sector, and the government.

**Keywords:** *Waqf*, *Waqf* Act, Legal Framework, Charitable Trust, Sri Lanka.

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<sup>1</sup>An initial version of this paper has been presented under the topic of “A Preliminary Study of *Waqf* Legal Framework in Sri Lanka” at the 7th Global *Waqf* Conference, on 10th to 13th of November 2019 in Kula Lumpur, Malaysia.

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**Abstrak:** *Waqf* atau wakaf agama merujuk kepada institusi yang mempunyai matlamat agama untuk melakukan perbuatan baik untuk manfaat penerimanya. Walau bagaimanapun, pelaksanaan dan pengurusan wakaf di seluruh dunia (negara Islam dan bukan Islam) telah menyaksikan kemerosotan sejak kejatuhan Khilāfah Uthmaniyyah. Pada hari ini, ramai penyelidik dan pakar bercakap tentang kebangkitan semula institusi wakaf. Dalam hubungan ini, institusi wakaf di Sri Lanka khususnya, telah melalui beberapa pembaharuan termasuk pengenalan kementerian wakaf. Artikel ini mengkaji evolusi sejarah serta status quo tadbir urus wakaf di Sri Lanka. Kajian ini menggunakan analisis doktrin berdasarkan literatur serta undang-undang berkaitan wakaf. Kajian ini juga meneroka asal usul wakaf di bawah undang-undang Islam. Ia juga membincangkan penggunaan Akta Wakaf di Sri Lanka dan mengenal pasti cabaran dan isu semasa rangka kerja perundangan wakaf untuk Amanah Amal Masjid Islam atau Akta Wakaf (MMCTWA). Kajian menunjukkan perkembangan positif dalam pengurusan wakaf, tetapi kesedaran umum pelbagai pemegang taruh adalah perlu. Rangka kerja undang-undang ini memerlukan sokongan dan kerjasama yang mampan daripada masyarakat, sektor swasta dan kerajaan.

**Kata kunci:** Wakaf, Akta Wakaf, Rangka kerja undang-undang, Sri Lanka, pertubuhan amal

## Introduction

*Waqf* or Islamic donation as an organization begins along with a religious and pure intention to do good deeds for the benefit of societies and beneficiaries. In other word, one of the best theological dedications of wealth is *Waqf* or Islamic endowment. It involves the dedication of part of one's wealth or its benefit for other people who are in need with good intentions that the dedicator (*Wāqif*) will receive a continuous reward from Allah (SWT). Furthermore, *Waqf* institutions have contributed to society by supporting social organizations and playing significant roles in economic and social development (Sadique, 2010).

*Waqf* institution has witnessed deterioration since the end of the Ottoman Empire in Turkey (Dafterdar, 2016). Nevertheless, since then, *Waqf* institutions have gone through several reforms such as the introduction of the Ministry of *Waqf* or *Awqaf* or a specific department of *Waqf* has been created independently or with the support of the Muslim jurists. Presently, many countries have introduced specific *Waqf* statute

to legally manage and maintain *Waqf* properties.<sup>2</sup> In Sri Lanka, *Waqf* properties are being managed and maintained by one legal framework for the whole Island and known as the Muslim Mosques and Charitable Trusts or *Waqfs* Act (Widger, 2018).

This paper attempts to analyse the Sri Lankan *Waqf* legal system with the aims to explore and appreciate the implementation, challenges and provide recommendations when necessary. The study involves understanding the concept of *Waqf*, the conflict of jurisdiction between *Sharī'ah* court and civil court as well as the issue where endowment has to be administered either as an endowment or as a charitable trust. Moreover, this study creates awareness about the existing *Waqf* legal framework in Sri Lanka and deliberating on the challenges in the enactment of the policy and law especially in the context of Sri Lanka as a minority Muslim country.

### **Meaning of *Waqf***

In Arabic lexicons, *Waqf* is used to denote 'stop', 'contain', or 'preserve'. In Islamic purview, however, it means a religious endowment, such as the voluntary and irrevocable dedication of one's wealth or a portion of, movable and immovable property. For an example, a dedication of a piece of land or a horse and cow-like cattle, as well as its disbursement for *Sharī'ah* compliant projects like mosques and Islamic educational institutions.

The *Waqf* and charity (*Sadaqah*) are both a means of worshipping Almighty Allah, but there is a difference between them, the charity is only permissible for those who need it among the poor. In addition, it is valid to own, sell, and dispose it as a gift, or to derive benefits from all of it, whether it remains for a period or finishes once used as food and clothing (Fahmīyy, 2013). Furthermore, al-Nawawīyy (1996. Vol. 6), stated that the charity is permissible for the rich people without dispute. So, it is permissible to give to all, but the poor are the most deserving for it (p. 225).

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<sup>2</sup> For example, in Malaysia, there are 7 states which have their own *Waqf* Enactments including Selangor, Melaka, Negeri Sembilan, Terengganu, Johor, Sabah dan Perak. Some states are working closely to introduce a specific *Waqf* enactments including Pulau Pinang and Wilayah Persekutuan Kuala Lumpur.

However, the *Waqf* is a permanent donation once it is created it can never be rescinded or donated as a gift nor inherited and sold. This is supported by the *Ḥadith* of Khaybar narrated by al-Bayhaqīyy that, “Nāfi‘ Ibn ‘Umar (RD) said: ‘Umar came to the Messenger of Allah said: O Messenger of Allah, I have found land in Khaybar, Wāllahi (I swear by Allah), I have never acquired property more valuable for me than this, what do you command me, he said: “If you like, endow it as a *Ṣadaqah* for them and hold their origin”. Thus, ‘Umar (RD) did not sell, donate or inherit the land, but he donated charity to the poor people, the needy, and the traveler, and in the way of Allah” (al-Bayhaqīyy, *Ḥadith* No. 12012, Vol. 9, 134, 1996). This is very important *Ḥadith* related to *Waqf*. It is the first *Ḥadith* that provides the rules and regulations on *Waqf*.

Accordingly, the majority of Muslim jurists agreed that the character of perpetuity is important in the *Waqf*, and it should be always possible to use permanence. This opinion was also clarified by al-Sharbīniyy (1995. Vol. 2), who said that one of the significant conditions of *Waqf* is the perpetuity of the property, and it is intended for permissible use (p. 511). Hence, the *Waqf* property cannot be temporary in nature (Mohamad & Abdul Kader, 2017), but it is always as continually on the beneficiaries and needy people. Moreover, its disbursement of returns is done following the endower’s wishes. On the contrary, charity is a much wider concept. It encompasses grants (it grants) alms inheritance and even *Waqf*.

### **Definition of *Waqf***

The definition of *Waqf* has been interpreted differently by various academics, but the principles remain the same. The Kufan school headed by Abu Hanifā dictates *Waqf* is defined as the holding of a particular thing in the ownership of its founder or creator and dedicating its usufruct in charity to the impoverished or other good goods through loan, lending, or commodity loan. (Mahamood, 2006). Furthermore, the Māliki school of thought as defined by (al-Sāwī, 1988, vol. 2), commands *Waqf* as the improvement of a special thing, even by lease, where the ownership of the thing remains to the founder or creator (*Wāqif*) (p. 296-297). Nevertheless, the owner is just an owner of a trustee who has to carry out the duty as trustee. According to the concept of *Waqf* lease, the beneficiaries only can take any declaration of *Waqf* for the whole period with agreement by the *Waqif*. When the specific period of lease is over,

the *Waqf* property returns to its original status. The same concept is applicable in *Waqf Mu'qqat* or temporary *Waqf*.

The school of Shāfi defines *Waqf* as the detention of *Waqf* property by taking advantage of that and it remains in perpetuity by detaining the property in the ownership of Allah SWT (al-Nawawīyy Y. S., 1988, p.247). Based on this definition, the ownership of the *Waqf* property should not give anyone a right of that *Mawqūf al-Fīyyh*, and the usufruct is given to the beneficiaries or the charity that the founder (*Wāqif*) is mentioned in his agreement. Similarly, this *Waqf* property cannot be sold, made a gift or passed to the next of kins through the law of inheritance. Moreover, the Ḥanbali school of thought defines the definition of *Waqf* is that the detainment of useful property by somebody who has a full breaking point by suspending the breaking point of working the property, and to commit its usufruct towards blessing Allah (SWA) (al-Bahuti, 1982, vol. 4, p.240 - 241). It seems that this definition does not differ much in comparison to the definition of the Shāfi School. As well as, 'Abu Zahrā', states the definition of *Waqf* as follows: "the prevention of a benefit-generating estate from corporal disposal from movable and the donation from immovable property respectively but its management is in anyone, as a *Mutawallī* or *Nāzir*, on behalf of Allah which he legally owns, and its usufruct and benefit may be used as charity for the needy and other beneficiaries" ('Abu Zahrā', 2007). He further clarifies in his definition of *Waqf* that the donation must be an immovable property, thus the opinion that the given *Waqf* should be in perpetuity. This includes the fundamental ideas proposed by various jurists.

In all the definitions, the common principal matter of discussion among jurists scholars is the ownership of the *Waqf* property, which is divided into two categories; first, the ownership that belongs to Allah, and second, the ownership that belongs to the *Wāqif*. Abu Ḥanīfah opined that the ownership remains with the *Wāqif*. However, two of his disciples held a different view, stating that the ownership is transferred to Allah. Correspondingly, the majority of the scholars such as Shāfi, Ḥanbalī, and 'Abu Zahrā' accepted the same thought that ownership is with Allah, as well as Mālik, who leaned with the majority of jurists in his one view and in another opinion with Abu Ḥanīfah. So, the analysis of the argument among all the jurists is that "the ownership of the *Waqf* property belongs to Allah", which means it is absolute in nature and this is a principal matter in the law of *Waqf*.

In short, the ownership of *Waqf* property (*Mawqūf al-Fīyyh*) is subject to various debates and opinions among the jurists. This conversation may be divided into two categories. The first is the view of the Ḥanafī school of thought that the ownership of *Waqf* property remains with the donor (*Wāqif*). The second category is the view of the majority school of thought that the ownership of the *Waqf* property does not remain with the owner, but it goes to Almighty Allah SWT. Therefore, after donation of the *Waqf* property, the donor (*Wāqif*) or his any family member does not have any right to the property, but he can appoint anyone as a manager or *Mutawallī* to manage the *Waqf* property in order to realize the intention of the *Wāqif*.

The *Waqf* Act of Sri Lanka has a very long history. Traditionally, the donor makes a gift such as a land title or any other wealth, etc. with a condition that they either managed the property by themselves or their successors had to have the interest to manage the gift under the management of mosques. Sometimes, the public had requested that the donor should manage the mosque's property but there was no proper law to govern them. After some years, three laws were vitally amended to manage the mosque's property. In 1931, the Muslim Intestate Succession and *Waqf* Ordinance had been amended and known as Act of Muslim Charitable Trust (Mahroof M. M., 1985). However, the Trust law of Sri Lanka had firstly come from three laws which were the Trust Ordinance (No. 9 of 1917), the Indian Charitable Trust Act and English Trust Act.

Jaldeem M. S (1993) notes that under the Sri Lankan law system, it does not even contain a definition of the term *Waqf*. The reason is that the rest of the Act appears to have been derived from civil law sources (p. 324). Mahroof (1998) also notes that the Sri Lankan *Waqf* Act statute does not contain a definition of the term "*Waqf*", unlike the corresponding Indian and Malaysian legislation. Furthermore, it is clear from the provision of the Sri Lankan *Waqf* legislation, which is the Muslim Mosques and Charitable Trusts or *Waqfs* Act (MMCTA), that the *Waqf* term is used here to refer to any Islamic charitable purpose generally: this would include poverty elimination among the Muslim community, education of Muslim and promotion of Islam in general. On the other hand, according to a scholar of Sri Lanka, who is a member of All Ceylon Jamiyyathul Ulama (ACJU) and its incorporated council,

this council is also not mentioned about *Waqf* and its definition with the ownership of the *Waqf* property in their proper document. If anybody, however, refers to them the *Fatwa* (definition or interpretation) relating *Waqf*, their answer (*Fatwa*) may be based on the thought of Shāfi school. This school of thought has influenced statutory provisions and laws which can be also applied to religious charity law governing Muslim affairs. Dou to, the majority of Muslims in Sri Lanka are Sunni Muslims, and most of them follow the Shāfi school of law (Mahroof M. M., 1995, Vol 6, No. 1).

### **History of *Waqf* and its Legal Framework in Sri Lanka**

The first legislation governing Muslims was the Code of Muhammadan Laws which was introduced in 1806. However, it did not cover *Waqf* or Muslim charitable trusts (Zarook, 2018). The statute covered Muslim marriages, divorces, and inheritance. In 1931, The first attempt to establish a *Waqf* legal framework in Sri Lanka was made. The legislation was passed as an ordinance by the Muslim representative of the Legislative Council. Prior to this enactment, *Waqf* was governed by the Trust Ordinance, 1917 as a Charitable Trust. In 1921, some issues were later identified and resulted in the introduction of another Ordinance. Mahroof M. M., (1985) explained the need for a separate ordinance for *Waqf* since the Charitable Trust Ordinance of 1917 initially adopted from the Indian Charitable Trust Act and The English Trustee Act. Therefore, it had several issues and challenges. For instance, the manager (*Mutavalli*) of the trust cannot manage the *Waqf* properties directly. The manager, however, can manage the person who is in charge of the Mosques. Therefore, the 1931 Muslim Charitable Trust or *Waqf* Ordinance came to fruition. Nevertheless, this Ordinance too was not comprehensive enough to manage *Waqf* (Jaldeen, 1993).

Having acknowledged the shortcomings of the Muslim Intestate Succession and *Waqf*, Justice M.T Akbar recommended for the establishment of a special committee of justice. In 1952, a committee consisting of a representative from Muslim Parliamentarians and Senators was formed to examine the issues comprehensively. As a result, the Muslim Mosques and Charitable Trusts or *Waqfs* Act (No.51 of 1956) appeared as the first legal document providing a preliminary legal framework for *Waqf* and trusts in Sri Lanka. This regulation came into effect in 1957 (Zarook, 2018).

The governing body of Muslim Mosques and Charitable Trusts or *Waqfs* Act (MMCTWA) came under the Department of Muslim Cultural Affairs and managed by the office of the Commissioner. The implementation of this Act proved to be difficult after it came into effect. Lack of manpower resulted in a gradual decrease in the litigation of *Waqf* properties. At the same time, Muslim scholars disputed with the Act as it did not fully reflect the *Shai'ah* principles (Mahroof M. M., 1985).

This Act was amended twice since then, in 1962 and 1982. Hence, the current law of MMCTWA in Sri Lanka is Act No. 33 of 1982. The major improvement in 1982 was to establish *Waqf* Tribunal to settle disputes regarding *Waqf*. The introduction of the Tribunal was a visionary effort done by the government in 1982 while such tribunal may be still an early bell in some Asian countries. Prior to this amendment, the hearing took place at the District Court where the *Waqf* property was located. The major drawback was some of the judges were primarily lacked in *Shai'ah* knowledge. Hence, there was a need to separate the *Waqf* related disputes from the District Court. Therefore, the Honorable Minister M.H. Mohammed brought this amendment and passed it in the parliament to settle *Waqf* Tribunal under the Muslim Mosques and Charitable Trusts/*Waqfs* Act (No.33 of 1982). The *Waqf* Tribunal was established to resolve any disputes relating to *Waqf* properties under the *Waqf* Act. The first *Waqf* Tribunal was established in 1985 in Colombo, the capital of Sri Lanka.

Some of the new insertions made in 1982 are shown below:

| Section | The Amendment of Waqf in 1982                                       |
|---------|---|
| (a)     | The relief of poverty among Muslims or any section thereof;         |
| (b)     | The advancement of the education of Muslims or any section thereof; |
| (c)     | The advancement of Islam generally;                                 |

|     |   |
|-----|---|
| (d) | The management of any mosque or Muslim shrine or place of religious resort or performance of religious rites or practices as such mosque, shrine or place or in any other place whatsoever; |
| (e) | Any purpose beneficial to Muslims or any section thereof; and   |
| (f) | Any other purpose recognized Muslim law as religious, pious or charitable <sup>3</sup> .  |

The new matters incorporated in 1982 shows the improvement made for better management of *Waqf* in Sri Lanka. Apart from having the Tribunal, the emphasis on objective or *Waqf* intention is crucial to help the Department to smoothly realize the *Waqf* objectives.

**Muslim Mosques and Charitable Trusts or *Waqfs* Act**

By the introduction of the MMCTW, all mosques or any other Muslim shrines and places of religious resorts, whether incorporated or not, come under the purview of MMCTW. MMCTW also prescribes the powers, duties, and functions of the trustees of registered mosques and Muslim Charitable Trusts or *Waqfs* (Zarook, 2018, p. 7).

Provision the *Waqf* Act is divided into 7 parts, namely as follows below on the table:

Table No 1

| <b>Muslim Mosques and Charitable Trusts or <i>Waqfs</i> Act</b> |  |
|---|--|
| Part-I  | The Staff, the Board, and the Tribunal     |
| Part-II   | Registration of Mosques                    |
| Part-III  | Appointment, Power, and Duties of Trustees |

---

<sup>3</sup> The Muslim Mosques and Charitable Trusts or *Wakfs* Act No. 51 of 1956 as amended by Act No. 21 of 1962 and Act No. 33 of 1982.

|          |   |
|----------|---|
| Part-IV  | Muslim Shrines and Places of Religious Resort |
| Part-V   | Muslim Charitable Trusts or <i>Waqfs</i>      |
| Part-VI  | Muslim Charitable Fund                        |
| Part-VII | General Provisions                            |

The first part of the Act specifies in detail the responsibilities of the Director and the *Waqf* Board as follows:

- a) The Director means the Director of the Mosques and Muslim Charitable Trusts or *Waqfs* (MMCTW) and the Deputy Director shall be appointed by the Minister of Muslim Affairs (Sec 58). The Act clearly provides that a non-Muslim person shall not be appointed as the Director or Deputy Director (Section 2 (2)).

The Director of the Department of Muslim Cultural Affairs is different from the Director of MMCTW. The Director of the CTW is the one eligible to attend the meeting of the *Waqf* Board. (*WT/220/2014 (Zahira Mohammadan School, Badhulla)*). Furthermore, the Director or Deputy Director can personally inquire or investigate matters related to *Waqf* properties or through an authorized officer appointed by him. The Director or his Deputy can bring any action to the Board and defend any action or proceeding as may be necessary for the Tribunal or in any Court (Sections 20A, 21.22, and 29 of the Act.)

The Director authorizes to manage the Muslim Charities Funds (MCF) and he can take action against the person who interferes with the *Waqf* property. Director must attend all the Board meetings and carry out the management given by the Board. When the Board has dissolved or completed its period, the Director must hold office and discharge the works of the Board until a new Board is appointed. (Section 39 of the Act).

- b) The *Waqf* Board means the Board of the Mosques and Muslim Charitable Trusts or *Waqfs* (MMCTW) (Section 5 (1)). This Board is established for the purpose to manage the MMCTW. The Board comprises of the Director and seven other members

with a chairman appointed by the Minister. Only a Muslim can be appointed as a Board member. When one of the Board members becomes a Member of Parliament, he loses his membership of the Board inevitably. The Minister shall appoint the members of the *Waqf* Board and this appointment is valid for three years from the date of their appointment. The Minister may appoint one of the members, other than the Director and seven members, to be the Chairman of the Board (Sec 15(3). Moreover, this appointment will be disqualified by their earlier vacates, dies or removed by the Minister (sec 8).

- c) The Chairman of the Board shall lead every meeting, and during his absence, any member of the Board can preside over the meeting. The responsibilities of the Chairman are as follow:
  - (a) to summon and compel the attendance of witnesses.
  - (b) to compel the production of documents; and
  - (c) to administer any oath affirmation to witnesses.

If the Chairman or any Board Member fails to attend three meetings consecutively, the Minister may dissolve the Board. The table describes the duties of the *Waqf* Board and the Director based on the Act.

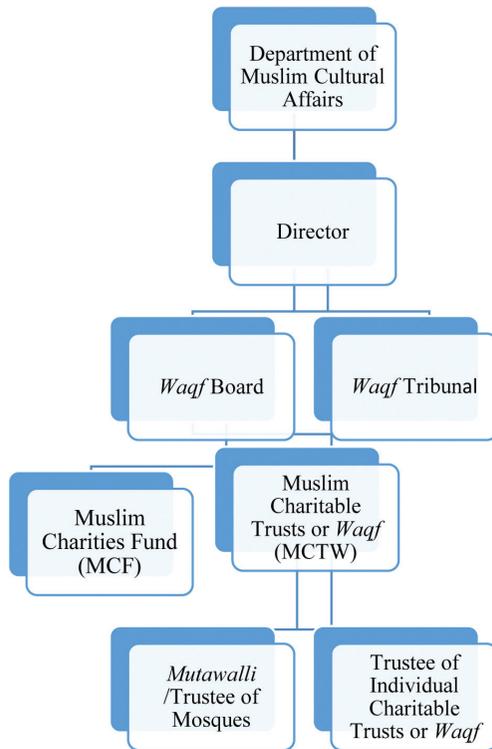
Table No. 2: Scope of Power

| No | Scope of Powers           | Director        | Board of Waqf |
|----|---------------------------|-----------------|---------------|
| 1  | Appointed by the Minister | Yes             | Yes           |
| 2  | Non-Muslim Member         | Not allowed     | Not allowed   |
| 3  | Appointment of Deputy     | Yes             | No            |
| 4  | Power of Inquiry          | Yes             | No            |
| 5  | Number of People          | Only One Person | Seven Members |

|   |                         |  |         |
|---|-------------------------|--|---------|
| 6 | May manage the MCF      | Yes  | No      |
| 7 | May manage the MMCTWA   | Yes  | Yes     |
| 8 | Duration of Appointment | 3 Years and Until the New Board Takes Over | 3 Years |

The Director is also the principal executive officer, subject to the direction of the Board (sec 3). He should be in charge of the Department of MMCTW. Since he has the manpower, the machinery of the law is put under his purview.

*Chart No 1: Structure of the Current Management of Waqf System*



The structure above shows that the organization of the cycle of the *Waqf* management in Sri Lanka. Moreover, the preceding discussion shows the details of the MMCTWA. It has clear provisions about the appointment, roles, and responsibilities, suspension and removal of trustee or trustees of Mosques. Hence, revealing the fact that laws governing the management of *Waqf* in Sri Lanka are in place.

Referring to the MMCTWA, the appointment of the trustees is made by the *Waqf* Board based on the selection done by the *Jamā‘at*<sup>4</sup> or the local society (Jaldeen, 1993, p. 340). In the case of a private trust (*Waqf Khās*), the creator may appoint their family member as the trustee of their *Waqf*. However, if the *Waqf* Board deems the appointed person ineligible to act as trustee then the Board may appoint an eligible person as a trustee whom it deems suitable for it (Jaldeen, 1993, p. 335).

### **The Current Practice of *Waqf* in Sri Lanka**

The practice of *Waqf* in Sri Lanka, the *Waqf* legal framework has been created by the Muslims Mosque Charitable Trusts or *Waqf* Act (MMCTWA). Under this Act, the *Waqf* Board has been appointed by the Minister to monitor and manage all mosques and its *Waqf* properties. This Board comprises with the in-active director and seven other members including the chairman,<sup>5</sup> and they have the authority to act as a regulator (*Qādi*). Furthermore, the Manager (*Mutawallī*), of *Waqf* property either under the management of mosque or charitable trust respectively, are referred to as a manager (*Mutawallī*) managing the *Waqf* property. This is the existing law of the administrators of *Waqf* property in Sri Lanka (Jaldeen, 1993, p. 307).

Under this Act, every mosque has a board to manage the mosque and its properties, this board comprises the president and nine members in a *Zāvīyyah* and *Takkīyyah* mosques and eleven or thirteen members in the Jummah mosques with a president, deputy president, trustee, deputy trustee, and other members. Similarly, the charitable trust also has a board to manage its properties. This board may constitute ten members where some of the members are from the endower’s family and others

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<sup>4</sup> *Jamā‘at* meaning here is that the people who are living surround of the areas of the Mosques.

<sup>5</sup> The Muslims Mosque Charitable Trusts or Wakf Act (MMCTWA) No. 51 of 1956 as amended by Act No. 21 of 1962 and Act No. 33 of 1982.

will be independent members, but the control of management will be always with the family member. This should be based on the constitution of the charitable trust. This kind of charitable trust management has several issues and challenges in the practice in Sri Lanka presently. Also, they do not have any proper provision in the Act to disqualify and terminate the position of manager of the family member from their charitable trust.

The same issue and challenges are happened in early time of the family *Waqf* management. To solve the situation, the contemporary Muslim jurists used it as a way to abolish the family *Waqf* management. This practice came out especially during the end of the nineteenth century and the beginning of the twentieth century (Mohsin M. I., 2016). The application of the abolish family management used and continued after colonization, which took place in almost all Muslim countries. Even after independence, the centralization of *Waqf* management continued with the introduction of a new law in Egypt, which abolished family *Waqf* in 1952. The same law followed on its heels in Syria and later in Tunisia in 1954 (Cizakca M. , 2016).

Based on the solution of some countries, Sri Lankan *Waqf* Act and *Waqf* Board should take an action and follow other Muslims countries' practice to solve the issues and challenges in order to the family *Waqf* management. Accordingly, the family manager removes his responsibility of *Waqf* management by himself, or the *Waqf* Board eliminate him as a regulator, while the Board take over the supervision of the *Waqf* affairs automatically. Moreover, when the manager or *Mutawallī* becomes failed on his performance of management of *Waqf* or if find out any guilty of him in related to his management, while the Board or the ruler could take action of dismissing him from his duties. In related to this regulation, al-Nawawīyy (1995. Vol. 5) mentions that the endower also has a right to dismiss immediately the manager or *Mutawallī* when he observes any kind of guilty, then he hands over his duties to another qualified person (p. 349). Hence, the regulator has the authority to disqualify the manager or *Mutawallī* who has the correct of the debauchery (*al-Fisq*), betrayal (*al-Khiyānah*), and the mentally ill (*al-Majnūn*). In the practice of Sri Lanka, the *Waqf* Board under the MMCTWA is as a possession of a regulator, and the Board of a mosque or a charitable trust is as a *Mutawallī* or manager. Therefore, the *Waqf* Board has a right to eliminate and terminate the position and duty of

the manager of the family *Waqf* of the endower or others who are found guilty under their management of the charitable trustee and *Waqf*.

### Analysis and Findings

The *Waqf* and Muslims charity legal framework in Sri Lanka has gone through several amendments in order to protect and enhance the management of *Waqf* properties and to execute the objectives set by the *Waqif*. This effort is commendable as the legal framework is developed in a minority Muslim country which represents 10% of the population. However, there are several issues in the application of the Act and thus there is a need to consider revision of the Act for further improvement.

Firstly, there is no clear definition of *Waqf* in the Act (Mahroof M. M., 1985). Having a clear definition of *Waqf* is necessary to differentiate *Waqf* with other similar acts on non-religious in nature. As practice in some other countries like Malaysia, *Waqf* is clearly associated with the element of '*Taqarrub*' or to get the blessing from Allah SWT. Similarly, a clear definition of *Waqf* shall distinguish a mere act of donation or trust or a *Waqf* which is subject to more stringent management as compared to another trust deed. The emphasis on the element of perpetual is crucial to ensure total protection of *Waqf* property and any change of use must be done with a proper procedure through *Istibdāl* (change or exchange of *Waqf* asset). Furthermore, all *Waqf* properties come under the purview of the respective mosque's committee in that area. The wide authority and lack of monitoring have resulted in mismanagement of *Waqf* properties. This study<sup>6</sup> reveals that most of *Waqf* properties are given on lease and some of the agreements have not been renewed.<sup>7</sup> This has resulted in mosques collecting low rentals, which are significantly lower rates as compared to market rates. In many cases, the lessee subleases the property and earns a significantly higher amount, and the mosque does not benefit from it. Often than not, the lessees who are also, the trustees of the mosques give more attention to their private dealings rather than acting to the benefit of the mosque. This results in conflicting

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<sup>6</sup>The study means here that the feel of the case study, but this is not recorded by newsletter, article, or court cases.

<sup>7</sup>This is observed, in the area that the *Waqf* properties are located, by the researcher's investigation, and it is found by discussing with the trustee, manager, and lessee of the *Waqf* properties.

of interest. Hence, for a better administration, the Act should specify who is eligible for the lease, matters on the bidding process of the lease must be clear, the renewal period must be transparent, calculation of lease amount and the prohibition of sub-lease must be made known, etc. The absence of all these has brought to the problem of mismanagement and other misconduct by the mosque committees or their counterparts.

There are instances where the *Waqif* or the person who gives the property as *Waqf* has specifically identified the trustee to deal with his *Waqf* assets.<sup>8</sup> This is commendable since it may reduce the possible mismanagement of the Mosque committee. Sometimes, after two generations, the managers of the *Waqf* property tends to take back the rights of the property as the value has immensely increased. Hence, the Act should also specify that the property should go under the management of the *Waqf* Board, or the property should be managed by those whom the *Waqf* Board considers suitable after a generation.

Furthermore, there is a lack of funds to develop the *Waqf* properties. This is a global phenomenon. Countries like Malaysia and Singapore have implemented cash *Waqf* or *Sukuk* (bond) *Waqf* to overcome this challenge and develop the *Waqf* assets. However, there are no such provisions in Sri Lanka. It is important that the Act at least give ways in which *Waqf* properties could be developed so that the objective of *Waqf* is achievable and sustainable.

Although it is commendable for having *Waqf* Tribunal as provided by the Act, but the current location of the Tribunal in Colombo only has restricted the function of the Tribunal (Thabith, 2019). *Waqf* properties are scattered in all parts of Sri Lanka and the law should provide for a better mechanism for the management such as by having a Tribunal on the move or consider having more committees in the Tribunal who can cover major areas. Alternatively, if the budget permits, the Act should allow for *Waqf* Tribunals to be established in all provinces so that to speed up the resolving of issues and also to tackle all the issues that did

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<sup>8</sup> Deed of Trust endowed by Mahath Hajjar Maraicar Mohamed Ehuthar Hajjar, Mathirisa, Registration No: D 46, No.3891, Madrasah al-Sa'diyyah, located in Kinniya eastern province was established in 1899.manager, and lessee of the Waqf properties.

not come under the purview of the Colombo Tribunal because of the logistical challenges. For this, the *Waqf* Board for each province may provide a better solution.

There is no proper accounting and auditing of *Waqf* properties and their financials (Jaldeen, 1993, p. 343). This should be made in a systematic manner and transparent. This information should be accessible to the public. This transparency will increase the accountability of the trustees and other the management Committee thus build the trust of the people. The Act should also provide for the tax exemption in order to encourage more members in the society to contribute to *Waqf*. It is important to emphasize that *Waqf* has no limit to Muslim or non-Muslim. All can contribute and the benefit should also reach all parties. No race or religion shall curtail the benefit of *Waqf*, but *Shari'ah* determines that the *Mutawalli* must be a Muslim and the activities must be *Shari'ah*-compliant.

## Conclusion

This paper elaborates on the legal framework of *Waqf* in Sri Lanka. Moreover, this study analyses the Muslim Charitable Trusts or *Waqfs* to give insights to the strength and weaknesses of the *Waqf* act. In Islam, the *Waqf* is the principal tool for poverty reduction. Although in the case of Sri Lanka, the institution of *Waqf* has not entirely been able to support the whole society, it has contributed considerably to the Muslim community. Further, the transparency of *Waqf* law and management is an issue, though this varies in degree and it may be the case for all *Waqf* institutions in Sri Lanka. As a result, the Sri Lankan *Waqfs* Act has various issues that need to be addressed particularly in terms of administration, management, and development of *Waqf* assets and manpower. This paper highlights the vital issues that need to be resolved urgently so that *Waqf* properties will be protected and developed for the benefit of all people in Sri Lanka especially the Muslims.

The significance of this study is manifold. It discusses the weaknesses in the current implementation of the MMCTW Act so that the *Waqf* Board could make significant changes in its management and operation. The study also highlights the current challenges in implementing the provisions in the Act. With a proper understanding of the law and *Shari'ah*, the Muslim community may help by self-monitoring the Mosque management or another *Waqf* trustee. A proper check and

balance either through proper government mechanism or self-help are commendable to better improve *Waqf* administration globally.

The limitation of the study is that no specific interview involving members of the *Waqf* Board was carried out due to time constraints and the current instability in the country. Future research may proceed with empirical research to gauge their day-to-day operational challenges to give more comprehensive coverage of the research. It is also acknowledged that the recent event of tensions among the Muslim and non-Muslim in Sri Lanka may slow down the effort towards improving the Act. Future research should also consider more quantitative research approaches to enhance or revise the findings of this study.

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