Revitalizing Waqf for Effective and Sustainable Delivery of Social Protection in Pakistan

Dr. Salman Ahmed Shaikh

Policy Brief

Waqf, property or assets endowed perpetually for the beneficial use of recipients or causes, provides social safety and security in a decentralized way. As such, it is an important non-market institution in the Islamic economics framework. Also, Waqf funds can support a broader range of welfare services compared to Zakat. Still, the potential of Waqf remains substantially unrealized in Pakistan. This policy brief explains the challenges faced in managing Waqf and how this vital institution can be revitalized according to international best practices.

Introduction

Waqf is an important non-market institution in the Islamic economics framework to provide social safety and social security in a decentralized way. In its economic character, Waqf represents property or assets that are endowed perpetually by a Waqif (endower) for the beneficial use of identified beneficiaries or causes.

The capitalistic economic system has proven to be prone to and even a source of triggering income and wealth inequalities. Socialism's answer to deny the existence of property rights altogether is another extreme that kills incentive and drive for innovation and excellence.

In contrast, in the Islamic socio-economic framework, Waqf is a source of building common property resources from private property. It has the potential to alter wealth concentration and inequality significantly. The impulse driving Waqf is pure altruism. Such voluntary and pure altruism is highly extolled in the Islamic worldview. A hadith says that one of the three things that provide perpetual benefit to a person after death is *Sadqa-e-Jariya* (charitable endowments), which continuously benefits the person and society.

Awqaf has always played a crucial role in Muslim civilization. They are the means of providing public goods in a decentralized way. Modern trusts and endowments took inspiration from the Muslim experience of establishing and organizing Awqaf. In Muslim civilization, Awqaf helped in the provision of basic necessities and services, such as water wells, hospitals, educational institutions, and food banks.

Unlike Zakat, where the heads of Zakat spending are specifically defined, Waqf funds can be utilized more flexibly and can support a wide range of welfare services, including animal protection and environmental preservation. By transforming social capital into infrastructure, Waqf provides a permanent social safety net and helps in capacity building and wealth creation. It is an effective way to target beneficiaries, provide sustainable funding, and enhance the income-earning potential of individuals. Additionally, Waqf can be used to establish training and business support centers, promoting skills development and enabling socio-economic mobility.

Nonetheless, after colonization in the post-industrialization era, the role of Waqf has diminished in Muslim societies, and it has become stagnant. This policy brief explains the challenges encountered in Waqf management in Pakistan and how the institution

Dr. Salman Ahmed Shaikh is non-resident fellow at Institute of Policy Studies, Islamabad and Associate Professor at Shaheed Zulfikar Ali Bhutto Institute of Science and Technology (SZABIST), Karachi.

of Waqf can be revitalized, keeping the international best practices in perspective.

Waqf in Pakistan

Provincial Waqf departments are responsible for safeguarding, managing and controlling Waqf properties and assets. Provincial Waqf departments handle leasing contracts, investments, maintenance of frequently visited properties, cash collection services at shrines, and construction/renovation work. The Awqaf department manages and safeguards Waqf properties like mosques, shrines, residential plots, agricultural lands, and shopping plazas.

Waqf properties and assets remain in the ownership and control of the government. This is one reason why the private sector prefers the trust model over Waqf due to legal flexibility and more control in the trust model. The private sector prefers not to leave governance, control and ownership to the government bureaucracy. That is why most Waqf properties today are those which were endowed a long time back. New endowments from private individuals and institutions to the government's Awqaf department are rare.

The potential of Waqf in Pakistan is substantially unrealized. Corporate Waqf is almost non-existent with the exception of Hamdard Laboratories. Furthermore, the current legal framework lacks provisions for establishing Cash Waqf, Family Waqf, and Corporate Waqf.

Challenges Faced by Waqf in Pakistan

The following are major challenges in the administration of Waqf in Pakistan:

- ❑ **Limited Revenue Generation:** Revenue generation is limited to rents, financial income from passive bank investments and voluntary cash collections at some shrines. Rents are usually not market-based and the Waqf properties are not invested and developed with a value-creating perspective. Besides, the properties are sometimes auctioned at below-market prices. Passive investment management overlooks the opportunity to develop Waqf lands into shopping complexes, markets, and multi-story apartments to increase land value and rental income. This lack of development leads to depreciation and maintenance challenges for scattered Waqf land.
- ❑ **Absence of Cash Waqf in the System:** The law does not recognize Cash Waqf. Even though a lot of people pay to charity in Pakistan, their mode of charity is cash since they do not own enough real estate. Cash collection requires a sound background check and licensing scheme to filter cash flows. A licensing regime with detailed requirements needs to be developed first before a license to establish Cash Waqf can be allowed. Sound governance is also necessary. The majority of people do not have bank accounts and the handling of currency is even more prone to the risk of appropriation and misutilization as compared to the immovable property.
- ❑ **No Reporting Standards:** There is no standardized periodic reporting of revenues, expenditures and assets on a regular basis. Usually, the provincial department is only involved in dormant management, maintenance and protection of Waqf assets. There are no specific operational and governance standards for the active investment management of Waqf. Hence, by and large, the dormant model of 'hold and lease' is used with no significant development of Waqf properties.
- ❑ **Lack of Public-Private Partnership and Corporate Sector Engagement:** There is no public-private partnership and an absence of private corporate sector engagement. People who may potentially dedicate property for public welfare remain skeptical that after giving the ownership and controlling rights to the government's Waqf department, the purpose for which Waqf property is dedicated may or may not be followed subsequently. The current regulatory framework is not inclusive of private corporate sector engagement. Public-private partnership models require flexibility in administration and sound governance.
- ❑ **Usurpation of Land by Private Land-grabbers:** Cases of usurpation of Waqf lands by private land grabbers have also been noticed. This land grabbing leads to the loss of control and revenues. Given the governance issues, if Cash Waqf is introduced, it may have more risk. When even physical lands are appropriated, avoiding misappropriation and misutilization of Cash Waqf capital is hard to ensure.
- ❑ **No Orientation of Using Waqf for Social Protection:** The Waqf Department currently works as a watchdog. The main mandate is guarding against illegal occupation and encroachment and ensuring proper renovation and maintenance. The budget details of expenditures also reflect that major expense heads refer to different kinds of maintenance and repair work. The only examples

of the use of Waqf in social protection are limited to a few dispensaries, madrasas and food distribution on the occasion of urs in shrines.

Recommendations

To utilize the Waqf institution and realize its potential to uplift the institution of Islamic social finance in Pakistan, there is a need to bring some amendments to the Waqf law, as well as in its management and administration. The following steps are recommended to achieve the required results:

Legislative Recommendations

- **Recognition of Different Forms of Waqf:** The Waqf law should provide a comprehensive definition of Waqf that is not limited to immovable tangible assets like real estate, but also explicitly recognizes movable and financial assets like cash, shares, equipment, transportation vehicles, etc. The legal framework needs to recognize different types of Waqf like Property Waqf, Family Waqf, Cash Waqf and Corporate Waqf.

- **Acknowledgment of Cash Waqf in Legal Framework:** Cash Waqf is the most prominent type of Waqf in several Muslim countries, including Malaysia and Indonesia. The fundamental rationale behind the allowance of Cash Waqf, as viewed from a juristic perspective, is to ensure the preservation of Waqf assets or capital for their perpetual existence. The capital within Cash Waqf itself should not be directly utilized to provide benefits and services to the beneficiaries. However, the returns from invested funds can be used to support beneficiaries. Additionally, Cash Waqf's ability to facilitate crowdfunding makes it an essential tool for financing vital infrastructure and welfare services.

- **Incentives and Benefits for Establishing Waqf:** Different tax benefits can be introduced for the establishers of Corporate Waqf, for example:

  - The taxes related to the registration and transfer of Waqf property, whether existing or new, should be waived.

  - A tax amnesty scheme should be introduced by allowing exemptions from previous taxes in total or in part on the property that is perpetually donated as Waqf.

  - The contributions to Waqf by individual and corporate donors should be made eligible for tax credit, as is the case with other recognized institutions in Section 61 of the Income Tax Ordinance 2001.

  - Corporate Waqf registration can be allowed as a company limited by guarantee in the Companies Act 2017. In Malaysia, Corporate Waqf is established under the Companies Act 1965 as a company limited by guarantee. Johor Corporation, Waqaf-An-Nur, and Awqaf Holdings are some of the established Corporate Waqf registered as a corporation limited by guarantee by the Securities Commission. These corporations are engaged in various forms of business and use 30% of the profit for charitable purposes.

- **Active Waqf Management for Preservation and Growth:** In order to promote private sector involvement, it is necessary to allow flexibility in the utilization of Waqf assets through leasing and financial investments. However, it is crucial to establish risk management guidelines to safeguard the preservation of Waqf assets. Istibdal can be permitted under regulatory and compliance oversight based on considerations of Islamic jurisprudence and economic rationale. Malaysia also allows the practice of Istibdal on the basis of the fatwa of the National Fatwa Committee issued in 1999. The concept of Istibdal is utilized in several forms in Malaysia, such as:

  - Selling part of the Waqf property to develop the remaining part of the same property.

  - Selling a bundle of Waqf properties and buying a new one in exchange to be used for the same purposes as the sold properties.

  - Selling one Waqf and buying another having common purpose.

  - Selling a handful of properties belonging to various Waqf and buying a new property that has a higher income.

Administrative and Managerial Recommendations

- **Transparency in Management and Reporting:** Laws must make it compulsory to have transparent and honest reporting of financials. Punitive actions shall be taken against the abuse or usurpation of assets by the trustees, and in this regard, financial penalties should be complemented with imprisonment to act as strong deterrents.

- **Allowing Private Sector Engagement in Waqf Management:** To encourage the creation of Waqf, the private sector engagement can be increased to leverage expertise in efficient administration and sound governance. In Malaysia, Waqf land is developed through joint ventures with builders. In the joint venture model, where profit sharing is involved, a developer is engaged to develop the property. The Waqf department provides land for development. The developer develops the land for onward lease to clients. Rental revenues generated are shared on a profit-sharing basis. 'Joint Venture', 'Build, Operate and Transfer' (BOT) and 'Design and Build' models are also used. For instance, UDA Holdings is engaged by the State Islamic Religious Council in Malaysia to construct buildings over Waqf land. It builds low-cost apartments with the aim to provide affordable housing to Muslims in Malaysia.

- **Joint Ventures for Waqf Development:** Islamic banks can facilitate the development of old Waqf assets by way of Diminishing Musharakah, Sale and Leaseback, and Istisna in order to rebuild and renovate Waqf property for improved post-financing valuation as commercial buildings. State Bank shall subsidize the financing cost of building and renovating old Waqf assets by employing Islamic banks for financing the building and renovation cost. The subsidy in financing cost will pay off in terms of the post-financing valuation of Waqf property as commercial buildings. Malaysia has successfully used Waqf for building commercial malls and hotels, such as Pantai Puteri (Malacca), Regency Seri Warisan (Perak), Grand Puteri (Terengganu) and Klana Beach Resort (Negeri Sembilan). Such activities increase employment in the construction sector, which is interlinked with many other sectors.

- **Diversification of Revenue Streams:** It is important to diversify and extend revenue streams to allow larger scale of extending socio-economic and welfare services to the beneficiaries in society. Currently, the revenues come in the form of rents on shops, farmland, houses, cashbox donations, contract fees and return on passive financial investments. The revenues from these streams can be enhanced by developing the Waqf properties. For instance, converting a barren piece of land into residential apartments, shopping complexes and business centers. Carving out the land to allow fragmentation and then developing the land can help raise the value of Waqf property, create employment opportunities, spur economic activities, and, in turn, raise the rental income from the newly built assets and properties.

For queries:

Naufil Shahrukh
General Manager Operations
Institute of Policy Studies, Islamabad.
naufil@ips.net.pk | www.ips.org.pk