

# Impact of Waqf Property at Primary to Higher Islamic Educational Institutions in Bangladesh: A Study

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**ABSTRACT:** Since the arrival of Islam in the Indian subcontinent, the waqf has been playing a vital role in spreading the spirit of Islam. It is a Muslim's religious endowment to a religious, educational, or charitable cause. It is also an ongoing charity (Sadaqah Jariyah). Muslims, inspired by the Prophet Muhammad (p.b.u.h.) and his traditions, offer their belongings and property in the name of Allah in order to please the Almighty Allah and find peace in the afterlife. Since the early days of Islam in the Indian Subcontinent, the waqf property has developed social, educational, economic, health, and many other philanthropic organizations throughout Bangladesh. The importance of educational institutions stands out among hundreds of waqf institutions. People donate generously to teach and promote Islamic knowledge and institutions. In most situations, waqf property results in the preaching and promotion of Islam, as well as the production of practicing Muslims and Islamic philosophers. Thousands of Islamic educational institutions, mosques, maktabas, and hospitals have been formed as charitable organizations in the country's different localities through the asset of waqf. The majority of waqf properties are managed by locals. People have been inspired for centuries to expedite such endowments around the country. The paper focuses on how the waqf property plays an important role in Islamic educational institutions and how it affects the people and society of Bangladesh.

**KEYWORDS:** Waqf; Religious Institutions; Literacy and education; Bangladesh

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#### HOW TO CITE:

Islam, Mohammad Saiful & Md. Masudur Rahman, "Impact of Waqf Property at Primary to Higher Islamic Educational Institutions in Bangladesh: A Study" (2024) 5:2 Indonesian Journal of Law and Society 249-278, online: <<https://doi.org/10.19184/ijls.v5i2.45116>>.

Submitted: 22/12/2023 Reviewed: 08/08/2024 Accepted: 19/09/2024

## I. INTRODUCTION

As an Islamic terminology waqf indicates the "religious bequest for charity purposes."<sup>1</sup> Waqf is being integrated into Muslim religious and social life; hence every Muslim community has advanced with waqf endowment wherever it has been formed. As similar arrangements have been discovered during the times of many earlier civilizations of Egyptian, Persia, Byzantine, Turkish, and Roman Empires, it is clear that the notion of waqf existed in past human civilizations, such as Mesopotamia, Macedonia, and Greece.<sup>2, 3</sup> In Islamic history, the prophet Muhammad (p.b.u.h) constructed the waqf. In this regard, Ibn Sa'ad narrates an incident that provides such indication of waqf: "Umar got some land at Khaiber and went to the prophet and have him command in it. Umar said, I got land in

<sup>1</sup> Basharat Hossain, "Islamic Microfinance and Rehabilitation Program for the Slum and Floating Population by the Waqf Funds: A Proposal Based on Empirical Evidences for the Muslim Countries" in Revitalization of Waqf for Socio-Economic Development, k. m. ali et al ed (Palgrave Macmillan Cham, 2019) 267.

<sup>2</sup> M Çizakça, A history of philanthropic foundations: The Islamic world from the seventh century to the present (Istanbul, Turkey: Boğaziçi University Press Istanbul, 2000).

<sup>3</sup> Abu Umar Faruq Ahmad & Mohd Fazlul Karim, "Opportunities and challenges of waqf in Bangladesh: the way forward for socio-economic development" in Revitalization of Waqf for Socio-Economic Development, k. m. ali et al ed (Palgrave Macmillan Cham, 2019) 193.

Khaiber and I did not get any property dearer to me than it. What do you command me to do with it? The prophet said, If you wish, make it a waqf and give it as sadaqah. Umar gave it as sadaqah.”<sup>4</sup>

Waqf has been practiced in Bangladesh since the arrival of Islam in the early 13th century.<sup>5</sup> Bangladesh being 87% of the Muslim population has a significant enthusiasm for religious actions and discovered a lovely habit of generating waqf for many forms of educational, religious, and social welfare devotions.<sup>6</sup> As a result, even though Bangladesh is a developing country in the global economy, the status of waqf property is quite impressive. It plays an influential role in the educational, socio-economic, and cultural advancement of the Muslim civilization. Thus, large waqf properties have existed throughout Bangladesh since ancient times. It includes a mosque, madrasah (religious educational school), eidgah (large place for Eid prayers), mazars and Dargahs, pharmaceutical, graveyard, barren land, woodland, agricultural land, urban land, hillock, and real estate.<sup>7, 8</sup> Unfortunately, the government of Bangladesh has not properly registered or regulated ordinary people's waqf endowments. The government's careless attitude undermines the possibility of future waqf initiatives and economic development. Aside from charitable and humanitarian operations, the waqf is also important in financial and commercial development. Hundreds of non-government employees are employed in the field.

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<sup>4</sup> Maulana Fazlul Karim, *AL-Hadith: An English Translation and Commentary of Mishkatul-Masabih With Arabic Text* (New Delhi: Islamic Book Service, 2009) vol. 2, P. 316.

<sup>5</sup> Mohammad Thowhidul Islam, “Historical development of waqf governance in Bangladesh: Challenges and prospects” (2018) *Special Issue Intellectual Discourse* 1129–1165.

<sup>6</sup> *supra* note 3 (p. 194).

<sup>7</sup> *supra* note 5.

<sup>8</sup> *supra* note 3 (p. 195).

Education, on the other hand, is the primary key to success in the modern and digital world. The constitution of Bangladesh made primary education mandatory for all inhabitants. Prior to the government's initiative, the trustee of waqf property drew the attention of illiterate people to distribute literacy teachings through waqf. The daily, weekly, and monthly cash endowments of devotees regulate the majority of waqf institutions. The shape of the waqf has changed throughout time; the Internet, Facebook, and other forms of rapid communication make it more useful and attract devotees. Small and cash donations are also increasing day by day. The waqf property marked the beginning of Bangladesh's educational development. Waqf property established hundreds of educational institutions from primary to tertiary levels, which have influenced people to this day.

For over a century, the waqf has generously supported educational institutions. Endowments funded the establishment of major religious and non-religious educational institutions throughout Bangladesh. For centuries, these institutions have produced scholars, writers, politicians, preachers, and philanthropists, as well as patriotic and civilized citizens. The waqf is crucial in the following points. Waqf is a humanitarian movement in the education sector that helps many people improve their mental health and saves many lives from the scourge of illiteracy. Furthermore, waqf has been widely used for educational advancement in the Muslim world to fund the establishment of schools, the remuneration of educators, and the provision of scholarships to students. The main reason why education is the best sector to fund with waqf is that it improves people's ability to carry

out daily activities.<sup>9</sup> “Education is the backbone of the nation,” as the saying goes, and waqf institutions help to build the nation's backbone by developing education sectors. It transforms society by eliminating illiteracy in the family and illuminating the country. In this paper, the study attempts to focus on how the waqf property influences Bangladesh's educational systems and society.

## II. METHODS

A waqf is a particular form of sadaqah (charity) named sadqah jarriyah (ongoing charity). Waqf includes using someone's wealth for pious and religious purposes.<sup>10</sup> The term “waqf” (pl. awqaf) is an Arabic word originating from the root verb “waqafa” which means to hold still and last long.<sup>11</sup> Oxford Dictionary states waqf means “cause to stop, immobilise” or “come to a standstill.”<sup>12</sup> In the Arabic language, it means to hold, confine, prohibit, hang, prevent, or stay. Legally, it denotes “to protect something, by preventing it from becoming the asset of a third person.”<sup>13</sup> Technically, waqf involves the transformation of personal properties into public resources. Waqf could be viewed as an endowment of an asset with benevolent intention.<sup>14</sup> Most researchers opine that there is no similar word or concept in English to convey the Islamic idea and meaning of waqf in

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<sup>9</sup> D. Abdulrezzak, “A study on sources of waqf funds for higher education in selected countries” (2016) 6:1 Adam Academy Journal of Social Sciences 113–128.

<sup>10</sup> *supra* note 3 (p. 194).

<sup>11</sup> Rashedul Hasan & Siti Alawiah Siraj, “Complexities of waqf development in Bangladesh” (2016) 4:3 Journal of Emerging Economies and Islamic Research 17–26.

<sup>12</sup> Oxford English Dictionaries, Waqf (Oxford University Press, 1986).

<sup>13</sup> Mochammad Arif Budiman, “The significance of waqf for Economic Development” (2014) MPRA Paper (81144) Munich Personal RePEc Archive 1–14.

<sup>14</sup> *supra* note 11 (p. 19).

the true idea of the term.<sup>15</sup> Islamic Law defines waqf as a voluntary and permanent dedication of wealth or its portion, which is disbursement for Shariah obedient projects.<sup>16</sup> Imam Abu Hanifah defines, “waqf is withholding a subject matter (asset) to be under the exclusive ownership of the donor (waqif), and to give in charity its usufruct or dispose of its usufruct to a party chosen by the donor.”<sup>17</sup>

The Legal Terms dictionary delineates waqf as the “extinction of the proprietor’s ownership in the property and the creation of trust of the property for religious purposes.”<sup>18</sup> Islamic Encyclopedia announces, “Waqf is such a property which is disowned by the owner or 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.”<sup>19</sup> The concept of waqf appears similar among all Sunni schools of thought. Accordingly, schools believe that the donation of the waqf and its value must remain integral, limited to a perpetual origin, and must be operated for charitable purposes to benefit the poor or public.<sup>20</sup> The endowment is a type of voluntary donation that Islam strongly encourages. It is endowed with an indefinite charitable goal and stands out as one of the most significant achievements in the history of Islamic civilization.<sup>21</sup> During the Ottoman period, the well-to-do Muslim

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<sup>15</sup> Md Mokhter Ahmad & Md Safiullah, “Management of waqf estates in Bangladesh: Towards a sustainable policy formulation” (2013) *Waqf laws and management* (with special reference to Malaysia) 229–262.

<sup>16</sup> *supra* note 3 (P. 194).

<sup>17</sup> Ibn al-Humām, Muḥammad ibn ‘Abd al-Wāḥid, *Sharh Fath al-Qadir*, 2nd ed (Beirut: Dar al-Kutub al-ilmiyah, 1999) P. 186.

<sup>18</sup> A Vinod K, *A Dictionary of Legal Terms with Indian Equivalent* (India: Bombay Jaico Publications, 1979).

<sup>19</sup> Abu Ayub Md Ibrahim & Shahadat Hossain Khan, “Waqf management in bangladesh: an analysis from maqasid al-shar ‘ah perspective” (2015) *International Institute of Advanced Islamic Studies (IAIS)* 1–19.

<sup>20</sup> *supra* note 3 (P. 194).

<sup>21</sup> *supra* note 13 (P. 2).

people, particularly statesmen and affluent people, generously supported the growth and construction of public facilities, which in other contemporary systems had been the sole accountability of the state. Waqf facilities funded and managed almost all state services such as religious, social, scientific, and modern life necessities. Even until the twentieth century, a wide range of public or municipal services in many Muslim communities were established, funded, and maintained almost entirely by waqf.<sup>22</sup> In addition to zakat, Islamic teachings strongly advise people to give alms to the poor or spend money through the waqf mechanism for the benefit of the general public. Through such charitable mechanisms, individuals assist the authorities in improving the social condition.<sup>23</sup>

Furthermore, the definition of Waqf in the traditional legal context has been investigated. The Waqf Ordinance defines a Waqf as a permanent endowment or grant made by a Muslim “of any movable or immovable property for any purpose recognized” by Islam as charitable, pious, or religious.<sup>24</sup> Moreover, according to the Mussalman Wakf Validating Act, Waqf denotes a Muslim person's permanent dedication “of any property for any purpose recognized” by Muslim law as pious, religious, and charitable.<sup>25</sup> The thinking of waqf actually comes from the core of the heart of the person. The ownership of waqf assets is dedicated to Allah, and the beneficiaries are only entitled to obtain an allowance.<sup>26</sup> Waqf establishment necessitates “three parties: a donor, a manager, and beneficiaries.”

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<sup>22</sup> Ibid (P. 5).

<sup>23</sup> Ibid (P.7).

<sup>24</sup> The Waqf Ordinance, Bangladesh Code 1962, Ordinance No. I of 1962, s. 2(10) at <http://bdlaws.minlaw.gov.bd/act-details-326.html>

<sup>25</sup> The Mussalman Wakf Validating Act, Bangladesh Code 1913, Act no. VI of 1913, s. 2(1) at <http://bdlaws.minlaw.gov.bd/act-details-101.html>

<sup>26</sup> *supra* note 4 (vol. 2, P. 315).

The donor bestows waqf assets, and the waqf administrator or mutawalli is in charge of overseeing the properties and distributing the benefits of those estates to the needy and poor in accordance with the donor's wishes.<sup>27</sup>

### III. ENCOURAGEMENT OF WAQF ACTIVITIES IN BENGAL FROM THE TIME OF THE INITIATION OF ISLAM

Endowment is a unique contribution in the history of world civilization. There is no charitable work by Christians or Jews that can be compared to the characteristics of waqf. Waqf activities were widely accepted in both Muslim and non-Muslim countries around the world. Waqf is a religious foundation that was established by Muslims. Muslim jurists traced the institution back to the Prophet (p.b.u.h). Although the Holy Quran does not directly identify waqf or make any specific reference to it, however, it does encourage Muslims to provide aid and assistance. Allah has promised numerous rewards to those who lavishly spend material goods in His path.<sup>28</sup> From the beginning, Prophet (p.b.u.h) successfully taught his followers the importance of charitable giving in family, society, neighbor, and ordinary people. Muslims have willingly spent their property for the benefit of others in the form of waqf since the advent of Islam. Throughout the history of Islamic culture, it is clear that the scope, effect, magnitude, and feasibility of waqf have been far greater than the scope, effect, magnitude, and feasibility of any other charitable institutions in Islam such as sadaqah, hibah, wasiyah, qard, and nadhr.<sup>29</sup>

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<sup>27</sup> supra note 3 (P. 194).

<sup>28</sup> Al Quran, Surah al-Baqarah, verse: 245.

<sup>29</sup> supra note 13 (P. 1-2).



Reciting the holy Quran in everyday life is a common practice among Muslims, and it inspires them to give up their property, intellect, time, and labor for the benefit of the common people. The Holy Quran encourages the numerous benefits of waqf: "The likeness of those who spend their wealth in the way of Allah, is as the likeness of a grain (of corn), it grows seven ears, and each ear has a hundred grains. Allah gives manifold increase to whom He will, and Allah is All-Sufficient for His creature's needs, All-Knower."<sup>30</sup> Muslims believe that life on earth is not the only goal to pursue, but life after death is the most important goal to achieve. The slaves of Allah may remove sins from their lives by donating in the way of Allah, and He may increase Rizk (food): "And whatever you spend for spending (in Sadaqah, charity for Allah's cause) or whatever vow you make, be sure Allah knows it all. And for Zalimun (wrong-doers) there are no helpers. If you unveil your sadaqah (alms-giving), it is well; but if you hide them and give them to the destitute, that is better for you. Allah will make up you some of your sins. Allah is well-Acquainted with what you do."<sup>31</sup> The Devil frequently instigates people regarding waqf and donation, as well as the fear of poverty and economic crisis. However, Allah also warned the people about the devil's conspiracy in the Quran. Regular donors and endowers in Allah's path who have rewards for Allah and have no fear or anxiety: "Those who spend their wealth (in Allah's cause) by night and day, in secret and in public, they shall have their reward with their Lord. On them shall be fear, nor shall they grieve."<sup>32</sup>

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<sup>30</sup> Muhammad Taqi-ud-Din Al-Hilali & Muhammad Muhsin Khan, *The Noble Qur'an: The English Translation of the Meanings and Commentary* (Madina, K.S.A.: King Fahd Complex for the Printing of the Holy Quran, 1998) Surah al-Baqarah, verse: 261-262.

<sup>31</sup> Ibid (Surah al-Baqarah, verse: 270-272).

<sup>32</sup> Ibid (Surah al-Baqarah, verse: 270-274).

Property is the most beloved and appealing thing to human beings by nature, and Allah emphasizes spending the most beloved things on His path; otherwise, he will not receive the expected rewards: “By no means shall you attain Al-Birr (piety, righteousness—here it means Allah’s Reward, i.e. in Paradise), unless you spend (in Allah’s cause) of that which you love, and whatever of good you spend, Allah knows it well.”<sup>33</sup> Aside from Allah’s worship, the responsibility to one’s kin and near and dear is an essential obligation for the people in the eyes of the Quran: “Worship Allah and join none with Him (in worship); and do good to parents, kinsfolk, orphans, the poor, the neighbors who is near of kin, the neighbor who is a stranger, the companion by your side, the wayfarer and those (slaves) whom your right hands possess.”<sup>34</sup> Allah clearly states that the poor and deprived have adequate rights in the property of the rich. “And in their properties there was the right of the beggar who asks and the poor who does not ask others.”<sup>35</sup> Allah encourages the people by saying that Allah receives unending charity from His slaves: “Verily, whose give sadaqah, zakat and alms men and women and lend Allah a goodly loan, it shall be increased manifold and theirs shall be an honorable good reward.”<sup>36</sup>

Allah creates both rich and poor people, and He desires that both get to Heaven by following His rules and commands. The wealthy will enter Heaven through donating, while the poor will enter Heaven through patience. Both are His servants and both will receive rewards in Heaven. Everyone feels the impact of the cruel death and wishes for a peaceful life in the grave after passing away.

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<sup>33</sup> Ibid (Surah al-Imran, verse: 92).

<sup>34</sup> Ibid (Surah al-Nisa, verse: 36).

<sup>35</sup> Ibid (Surah al-Zariyat, verse: 19).

<sup>36</sup> Ibid (Surah al-Hadid, verse: 18).

The Holy Quran instructs the owner of the property to donate before death. The following verse also motivates donors to create waqf: "And spend (in charity) of that with which we have provided you before death come to one of you, and he says: My Lord! If only You would give me respite for a little where, then I should give Sadaqah and be among the righteous and other good deeds. And Allah grants respite to none when his appointed time (death) comes. And Allah is Well-Acquainted with what you do."<sup>37</sup>

These Quranic instructions inspire Muslims to start waqf activities in Bangladesh. Every Muslim has a direct or indirect connection with waqf activities such as mosques, graves, educational institutions, and so on. There is a Hadith about waqf: "Ibn Omar reported that Omar acquired a land at Khaiber and came to the Messenger of Allah and said: O Messenger of Allah, I acquired a land at Khaiber. I did never acquire before a land so valuable to me than this. What do you enjoin it about it? He said: if you like, you may keep the corpus intact and make a gift of it. Omar made a gift of it on condition that its corpus shall neither be sold, nor be made a gift, nor be inherited. And he gave it in charity to the poor and to the nearest of kin, and to those in bondage and in the way of Allah and guests, there is no sin for one who is a Mutawalli over it to eat there from with equity or feed without hoarding wealth."<sup>38</sup> Waqf activities, according to historians, were institutionalized by the companions of the Prophet (p.b.u.h). Later, the Prophet's companions extended it to where they preached Islam.

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<sup>37</sup> Ibid (Surah al- Monafiqun, verse: 10-11).

<sup>38</sup> supra note 4 (vol. 2, P. 316).

#### IV. THE PRESENT SITUATION OF WAQF IN BANGLADESH AT A GLANCE

Many waqf properties have existed in Bangladesh since the advent of Islam in Bengal. The wealthy people gave up their property for the sake of Allah. The Holy Prophet (p.b.u.h) indicates, "It is a never-ending charity." The waqf property has engaged the people in social activities such as establishing orphanages and hospitals and carrying out educational activities. Although waqf management did not grow into a structural shape throughout the Muslim rule in Bengal, nevertheless it was the key "driving force behind the enlightened educational and cultural development of the Muslim society."<sup>39</sup> Over eight thousand educational establishments operate within the framework of waqf. Education was not only free, but materials for learning, boarding, and accommodation for all students had been funded by institutions with the aid of waqf properties.<sup>40</sup> Waqf has founded over 1,23,000 mosques, which serve as centers of moral and religious education, and its self-earned fund manages them.

Day by day people are becoming more accepting of waqf activities. The majority of madrasahs founded and run through waqf are approved by the Bangladesh Madrasah Education Board. Students from those madrasahs are pursuing higher education at various public and private universities throughout the country and establishing themselves. It is an approach by which waqf positively contributes to the country's educational development.<sup>41</sup> Personal assistance to relatives and neighbors helps to strengthen waqf activities in Bangladesh. Ordinary people are being motivated by the

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<sup>39</sup> supra note 5.

<sup>40</sup> Ibid.

<sup>41</sup> supra note 19.

inspiration of religious leaders, Imam, Khatib, and preachers, and they are bestowing property to have a peaceful eternal life. A large amount of property is being donated, but the majority of it is unregistered and being captured by cheats and land grabbers.

Table 1: Waqf estates position in Bangladesh

Name of the Division	Registered waqf	Unregistered waqf	Total waqf property
Dhaka	28,422	12,895	41,317
Chottogram	17,562	8,824	26,386
Rajshahi	30,419	14,740	45,159
Sylhet	6,024	5,243	11,267
Khulna	6,395	8,138	14,533
Barisal	8,224	3,707	11,931
Total	97,046	53,547	1,50,593

Source: Statistics of Bangladesh Bureau of Statistics (BBS)

As per the survey conducted in 1986, the total number of waqf properties in the country was 150,153. Among these, 97,046 were registered, 45,607 were verbally donated, and the remainder of 7,940 was acquired traditionally. These waqf properties can provide five benefits to the general public, inheritors, religious institutions, educational institutions, and others. Religious institutions occupied the greatest proportion of waqf property, accounting for 93.5 percent. These waqf properties are carried out and managed by the heirs, trustee boards, committees, government officials, and so on. Among

those, 92.5% are administered by a local committee or caretaker, while the remainder is governed by a trustee board.<sup>42</sup> Waqf is not just used for religious ceremonies in Islam; it also has a widespread application for the well-being of the people regardless of caste, creed, or religion. Islamic endowments are not limited to religious ones but also include various other fields.<sup>43</sup> All sects, groups, races, and religious people have access to general education. Waqf donation became a position in the religious, social, cultural, scientific, financial, and political life of Islamic society. Even, waqf has been established by non-Muslims in Muslim countries for the advancement of their communities.<sup>44</sup> The decision to donate property for waqf is a noble, very admirable, and commendable initiative for the common people of Bangladesh. According to statistics, more than 8,000 educational institutions and more than 1,23,000 mosques serve as waqf institutions in Bangladesh.<sup>45</sup> It grows by the day. Even though a few waqf institution have been closed due to a lack of care by the expert Motawalli.

Though the waqf properties are used for a variety of purposes, Islamic educational institutions and students benefit the most from waqf activities. Many Islamic saints and personalities established waqf in their communities. Following their demise, their followers focus on maintaining such institutions, believing that this initiative will result in the forgiveness of his sins and allow them to enter Heaven. Along with the many mosques and madrasahs that have emerged, many dargahs and maqbarahs of great saints have been recognized as Waqf by long usages. People go to these

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<sup>42</sup> Ibid.

<sup>43</sup> *supra* note 15.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

maqbarahs and dargahs and offer cash, food, and other items, such as cattle and poultry. These contributions become Waqf properties, which then serve for Islamic propagation and other charitable endeavors, such as the construction and upkeep of mosques, madrasahs, darul hifz, darul qirat, orphanages, and so on.<sup>46</sup> The real outcome of the great sacrifice cannot be observed because of gross corruption on the endowment side. However, due to our society's corrupt practices and the administration's negligence, most of the endowments have completely vanished. Land developers, corrupt government officials, and political figures have illegally occupied and sold off religious or educational properties.<sup>47</sup> Corruption is the most significant impediment to progress in Bangladesh. It also had an impact on waqf management and destroyed many primary waqf attempts.

## V. LEGAL FRAMEWORK OF WAQF IN BANGLADESH

### *A. Statutory root of creating waqf*

The primary reason for a person's waqf for an educational institution is his religious mind, piety, and ultimate ambition of Allah's appeasement/gratification. According to the Prophet, a human's death will leave him with nothing but three belongings. The Prophet's company, Abu Huraira described: The Prophet (p.b.u.h) said, "When the human being dies, his deeds end except for three: ongoing charity, beneficial knowledge, or a righteous child who prays for him."<sup>48</sup> The waqf is a type of sadaqah (charity). The

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<sup>46</sup> Ibid.

<sup>47</sup> Md Shahnawaz Khan Chandan, "WAQF - A FORGOTTEN LEGACY", The Daily Star (23 February 2018), online: <<https://www.thedailystar.net/star-weekend/waqf-forgotten-legacy-1538539>>.

<sup>48</sup> Hadith, Ṣaḥīḥ Muslim, the book of wasaya, hadith no- 1631.

permanent endowment for educational institutions is a *sadqah-e-zariyah* (ongoing charity), which inspires a Muslim to make waqf his property for this purpose. Before the enactment of statutory laws governing waqf regulation, Muslim pious people in Bangladesh were made waqf based on Muslim Shariah provisions. Due to the lack of prevailing legislative rules on waqf, the Privy Council ruled that the dedication of property through waqf for family reimbursement was invalid.<sup>49</sup> This decision was divisive and infuriated Muslim communities throughout the Indian subcontinent.<sup>50</sup>

Since the British regime to the Bangladesh rule, the government has enacted several waqf regulations in order to effectively administer the waqf estate and ensure the beneficiary's actual and proper benefit. As a result, the British ruler passed the first waqf-related statutory legislation in 1913, titled *The Mussalman Waqf Validating Act 1913*.<sup>51</sup> This law paved the way for a Muslim to make waqf a portion of his assets for the benefit of his family, children, and descendants. Following that, *The Mussalman Waqf Validating Act 1930* was enacted to give the previous Act of 1913 retroactive effect. In 1934, the government passed the *Waqf Act of Bengal* to oversee and protect the waqf properties through an officially established autonomous institution led by a waqf Commissioner.<sup>52, 53</sup> Following the establishment of Pakistan in 1947, the *Bengal Waqf Act of 1934* was implemented for East Pakistan, which is now Bangladesh, and used to administer the waqf. During the Pakistan period, then in 1962, the government passed *The Waqfs Ordinance 1962*. Bangladesh

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<sup>49</sup> The decision was held based on the case *Abul Fata Mohamed Ishak vs Rusomoy Dhur Chowdhury*, 1894 PCJ, ILR 22 Cal. 619, 68.

<sup>50</sup> *supra* note 3 (P. 197).

<sup>51</sup> *supra* note 5.

<sup>52</sup> *supra* note 11 (P. 20).

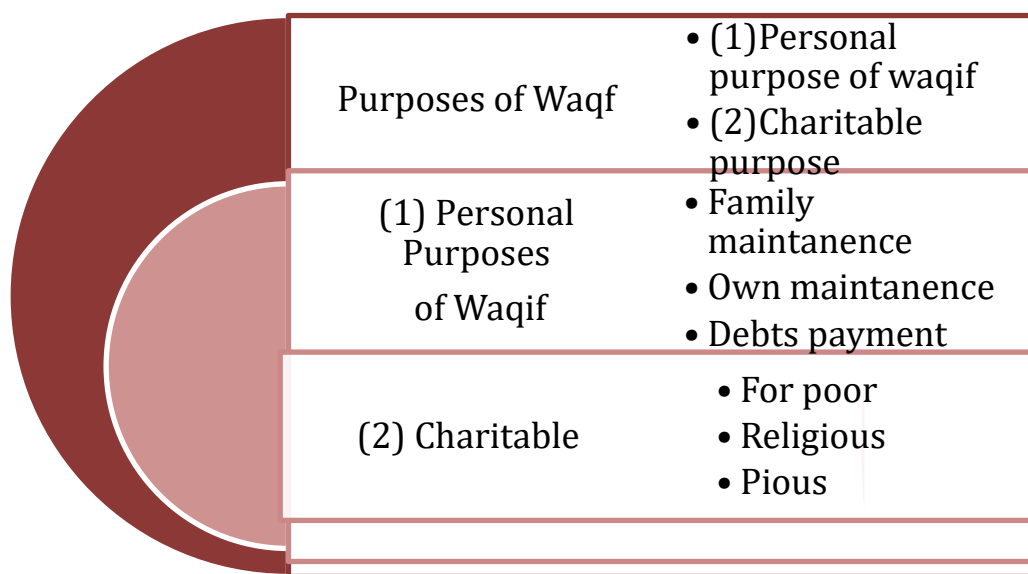
<sup>53</sup> *supra* note 3 (P. 197).



attained independence and became an independent state in 1971, and the Waqf Ordinance 1962, which administered waqf in East Pakistan, has been adopted and kept by the Bangladesh government.<sup>54</sup> Lately, the government of Bangladesh approved new law titled The Waqf (property transfer and development) Special Provisions Act 2013.

### *B. Legitimate purpose and nature of waqf*

Figure 1: Legitimate purpose of waqf



According to the statutory law, the purposes of waqf creation can have two aspects. First, the personal purposes of waqif (the person making a wakf), which include the following substances:

- wholly or partially maintenance of waqif's "family, children, or descendants"
- waqif's own maintenance throughout his lifetime
- payment of waqif debts

<sup>54</sup> The Bangladesh (Adaptation of Existing Laws) Order, Bangladesh Code 1972, President's Order 48, art. 5 at <http://bdlaws.minlaw.gov.bd/act-details-388.html>

The notable content of such waqf is that the eventual benefit is explicitly or implicitly kept for the poor or any charitable purposes after the extermination of the waqif's children, family, or descendants.

Second, any purpose recognized by Muslim law as pious, religious, or charitable.<sup>55</sup>

Waqf for pious, religious, and charitable purposes must be perpetual in nature. To put it another way, the assets of a waqf must be permanently devoted to any religious, pious, or charitable purposes accepted by Muslim law.<sup>56</sup> The waqf endowments for educational institutions are reflected in the ongoing charitable purpose, according to the statutory and religious legal framework.

## VI. THE WAQF FOR PRIMARY TO HIGHER EDUCATION IN BANGLADESH

### *A. Moktab (informal primary religious) education*

In Bangladesh, approximately 16 million people live within a 56 thousand square kilometer boundary. Bangladesh, on the other hand, has 87316 villages. Each village has several mosques and educational institutions under the waqf property. These waqf institutions are managed by the villagers through local donations. Every mosque has an attached moktab (primary religious institution) where the imam and moajjin of the mosque educate kids from the community as part of their noble profession. By collecting current donations, the administrators of the waqf property organize salary and other

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<sup>55</sup> The Mussalman Wakf Validating Act, Bangladesh Code 1913, Act No. VI OF 1913, s. 2- 4 at <http://bdlaws.minlaw.gov.bd/act-details-101.html>

<sup>56</sup> Ibid.

logistical support for the teachers and students. Ordinary people give generously to support and patronize the waqf institution.

Table 2: Mosques under waqf property in Bangladesh<sup>57</sup>

Name of the Division	No of Mosques
Dhaka	2,099
Chittagong	3,818
Rajshahi	2,135
Sylhet	515
Khulna	149
Barisal	679
Total	9,429

### *B. Religious educational institutions*

The waqf property established hundreds of secondary and higher secondary Islamic educational institutions known as Qawmi and Alia Madrasah. Thousands of students receive Islamic education from such institutions. These institutions produce Quranic and Sunnatic experts, scholars, imams, and preachers who guide Muslims' religious and daily lives throughout Bangladesh. Hundreds of Hifjul Quran institutions (an Islamic school for memorizing the Quran) are affiliated with Qawmi and Alia Madrasah, from which thousands of Hafizul Quran (Quran memorizers) graduate each year. The scholarship should be given to the poorest students, such as destitute, poor, and orphan students, as well as high-achieving students. These scholarships may cover tuition fees, housing and

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<sup>57</sup> supra note 11.

living expenditures, health care costs, and all other teaching requirements.<sup>58</sup> Dr. Kodrot-e-Khoda, Mowlana Mohammad Akrom Khan, and National Poet Kazi Nazrul Islam came studied in such institutions.

### 1. Waqf of books

Waqf is a common practice in Muslim society. Ordinary people, in particular, donate copies of the Quran and Hadith books in mosques and Madrasahs, believing it is a holy participation and act of charity. Because of the low cost of the book at this time, many people can participate in this type of waqf; additionally, it is easy to find and disseminate. Thus, the public can be encouraged to make this type of donation in a variety of ways, such as waqif (donor) buying a set of useful books and then sending certain copies to libraries in the name of waqf. Furthermore, the writer makes an endowment for the copyrights of the book and publishes it to those who wish to publish it free of charge; hence he would be endowed with the incorporeal rights of the book.<sup>59</sup> Although nowadays the government currently supplies a variety of academic books in primary, secondary, and higher secondary institutions according to curriculum, in previous times, students used to manage books through donations from the public.

### 2. Waqf of libraries

Each District and Police Station in Bangladesh has hundreds of public libraries and free reading rooms. On the other hand, the prerequisite for opening any educational institution is to establish a library with a large number of books and a librarian. Waqif is going

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<sup>58</sup> Mohamed Ibrahim Negasi, "Financing Higher Education in the Islamic World Through Waqf (Endowment)" (2017) 2:5 *European Journal of Multidisciplinary Studies* 131–137.

<sup>59</sup> *Ibid.*

to construct a library and stock it with books that institutions of higher learning require for various reasons or specializations determined by the waqif.<sup>60</sup> Many philanthropists contribute books, including rare books, to such libraries.

### *C. General educational institutions*

During its 200 years of colonial rule, the British introduced the concept of general education, as well as the curriculum and syllabus of this educational system. Despite the fact that this system was not based on Islam, people donated and made waqf their property for the benefit of society and the country. Hundreds of educational institutions spread conventional education throughout the country. Waqf property has supported 90% of government and private educational institutions over the last 250 years. On the other hand, the government of Bangladesh approved and designated many waqf institutions as People's Republic of Bangladesh institutions. The government regulates and pays the salaries of many Islamic and general higher education institutions.

Bangladesh has been a poor country for the last two centuries. In this situation, the waqf property provides common logistical support for education for the poor. It also benefits the government, particularly in terms of financial assistance. Waqf was previously only used for spiritual purposes such as the construction of mosques, orphanages, and burials. The roles of waqf have recently become apparent and have been expanded to include other public purposes such as maintaining education schemes, ending poverty, caring for animals, agriculture, horticulture, and water resources. The role of waqf in financing educational institutions began a few decades ago in both Muslim and non-Muslim countries. Many disadvantaged

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<sup>60</sup> Ibid.

people are being financially supported by waqf.<sup>61</sup> In this way, the mentality and spirit of waqf creates waiting areas, shade, ponds, tube wells, and many other amenities for the benefit of the community.

Waqf has the power to change the fate of slums and impoverished people in a region. As a result, the waqf system has proven to be a well-known key to boosting a country's economy. In this regard, waqf has prepared a platform for the poor to broaden their interest in education and become educated in the future through the education system.<sup>62</sup> Waqf assists governments, especially weak governments, in developing education budgets. It has improved education and reduced reliance on government funding.<sup>63</sup> Waqf also balances rich and poor students in educational institutions. Accordingly, the rise in education costs around the world has made it more difficult for low and middle-income students to continue their education at a higher level. As a result, those who do not receive a scholarship and must be self-sufficient are also affected.<sup>64</sup> Technically, it can be defined as the act of holding money for public purposes where it is used to influence poor people to develop better people and foster benevolence.<sup>65</sup>

## VII. IMPACT OF WAQF PROPERTY TO EDUCATIONAL INSTITUTIONS IN BANGLADESH

The impact of waqf property can still be felt in various organs of society. Some of them are hidden, while others are revealed:

### *A. A vast land and a specious place for the beneficiaries*

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<sup>61</sup> supra note 9 (P. 113-114).

<sup>62</sup> Ibid (P. 114).

<sup>63</sup> Ibid.

<sup>64</sup> Ibid (P. 115).

<sup>65</sup> Ibid.

Every moment, the Muslims get inspiration from the sayings of the Prophet (p.u.b.h): "When a man dies, all his dealings are cut off from him except three: except ever recurring donations or knowledge from which benefit is derived, or a righteous son praying for him."<sup>66</sup> Our prophet (p.u.b.h) recommending the generous says: "The generous is near Allah, near Paradise, near men and far off from Hell; and the miser is far off from Allah, far off from paradise, far off from the people and near Hell; and the illiterate charitable man is dearer to Allah than pious miser."<sup>67</sup> Many Muslims demonstrate their generosity by donating land, which is an important source of waqf property.

Donors provide enough space and land to meet the needs of the pertinent institutions. The land of the waqf estate in local and rural areas is comparatively more extensive than the city's waqf endowment. Unfortunately, most waqf endowments are not adequately cared for by local leaders. In certain instances, people used their muscle power to seize and occupy waqf property. Endowments by Bangladeshi philanthropists include yards, graveyards, mosques, madrasahs, children's football fields, ponds, hostels, charitable hospitals, schools, colleges, and universities. For centuries, all people have reaped the benefits of such endowments, regardless of caste, creed, religion, or wealth. A waqf property played an important role in the development of Bangladesh.

At the beginning of the twentieth century, while Calcutta's political and social elites were protesting the establishment of an East Bengal university that would educate the "uncouth, working class," the Nawabs of East Bengal stepped forward. Nawab Khwaja

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<sup>66</sup> supra note 4 (vol. 1, P. 349).

<sup>67</sup> Ibid (Vol. IV, P. 27).

Salimullah of Dhaka donated 600 acres of land for the university's construction. The land also included Nawab's gardens and court buildings (now Madhur canteen and Shahbagh area). Syed Nawab Ali Chowdhury of the Nawab family of Dhonbari, Tangail, even mortgaged a portion of their estate to raise funds for the university.<sup>68</sup> The nation owes the above-mentioned waqf property.

### *B. Academic building and free hostel facilities*

Donation, according to Muslims' beliefs, may be the means of escaping Hell on the Day of the Resurrection. The educational institutions are being built with the help of local philanthropists, and everyone benefits from the structure. The endowment administrators design the facilities for the beneficiaries. The continuation of waqf activities is the responsibility of each waqf administration. Sadaqah (donation), constant charity, and zakat are sources of living and logistical support for the smooth operation of academic functions.

### *C. Waqf property inspires the people to patronize the students*

For decades, people have observed how waqf property changes the fortunes of the needy and ordinary people, as well as how it rescues underprivileged people. Muslims, on the other hand, desire to spend eternity in Heaven. The Quranic verses and the traditions of the Prophet (p.b.hu.h) encourage people to participate in endowments based on their abilities. Taking such steps may pave the way to eternal peace. This belief drives both small and large donors. A Muslim feels compelled to participate in waqf activities because he contends that doing so will make it easier for him to enter the Heavens.

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<sup>68</sup> supra note 47.



*D. Graduates get inspiration to be philanthropists and patriotic for the welfare of the motherland*

As beneficiaries of waqf property, the individuals carry the spirit of waqf impact in their hearts and desire to establish such an institution in their lifetime. According to the history of waqf activities, many waqfs have been developed through such personalities who were beneficiaries of waqf properties at the early stages of their lives. They were actually motivated by waqf management, patriotism, and responsibility to Akhirah. Bangladesh now has three top higher education institutions—the University of Dhaka, Bangladesh University of Engineering and Technology, and Dhaka Medical College—established with the waqf assistance of Dhaka's Nawab family. Thanks to their selfless assistance and donations in the form of estate and funds. Although these donations are important to Bangladesh's history and sense of belonging, the Bangladeshi people have largely lost track of the customs of charity and social responsibility that once bolstered the nation's praise and identity.<sup>69</sup> These three ages-old institutions were established by the waqf property, which disseminated knowledge, patriotism, and spirit to build modern Bangladesh.

*E. Increase the speed of modern education to compete with the competitive world*

The waqf estate promotes humanitarian services in the social and family spheres. The waqf property benefited NGOs and other voluntary services. In the villages and urban areas of Bangladesh, waqf institutions not only assist poor students but also contribute to

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<sup>69</sup> Ibid.

implementing the government's plan to develop a modern educational system throughout the country.

*F. Students enjoy all kinds of logistic support like lodging, boarding and free tuition fees*

The waqf property institution invites people to contribute to lodging and boarding amenities for students and teachers. A person with a lower income gladly accepts this request and provides meals to a student three times without hesitation because people believe it is a sacred duty to the students. The Prophet (p.b.u.h) inspires us to be gentle with them: "Feed the hungry, visit the sick and free the captive."<sup>70</sup> He also says: "Whoso goes out in search of knowledge is in the path of Allah till he returns."<sup>71</sup> We can see that most waqf institutes do not charge students tuition. The donors are extremely pleased because the students study diligently and build their careers.

*G. Graduate's satisfaction of in their professional life*

Graduates hold broad minds and do not expect a luxurious life in their professional lives. They are content with their low income and salary. They are always willing to assist one another and to stand by those in need. They can be patient during any crisis in the family, society, or state. They, too, plan to give their lives for the sake of the country.

*H. Waqf property is the heart touching and lovable things to the common people*

The mosques, hospitals, clinics, cemeteries, fields, and educational institutions serve as the ordinary people's focal points.

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<sup>70</sup> supra note 4 (P. 284).

<sup>71</sup> Ibid (P. 354).

Humans can learn democracy, etiquette, proper dealings and behaviors, and friendship, all of which can help them find a suitable career. When people visit such institutions, they also feel a sense of peace and tranquility.

## VIII. CONCLUSION

The current educational system scenario in Bangladesh will rapidly change if waqf property is properly regulated. It has been observed that a significant number of endowment contributions play an important role in the development of Bangladesh. People's minds are always ready to financially and intellectually support any charitable organization. However, many waqf activity entrepreneurs face challenges due to a lack of proper monitoring and patronizing. Governments and socially responsible individuals can take the lead in motivating donors. As a result, endowments may help to increase education, research, and sustainable development in Bangladesh. We can also see that during the country's liberation war in 1971, a group of freedom fighters who were students at famous waqf institutions (DU, BUET, and DMC) sacrificed and martyred their lives. Later, former students of those institutions led the country to establish peace, harmony, and democracy. Moreover, the graduates extended their hands without hesitation for the welfare of the country. The possibility of additional waqf endowments has remained in the beneficiary's mind. The assurance of friendly upkeep and proper regulation will draw out the other endowments from their hearts.

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