

***Fiqh al Awqāf*: Exploring Perspectives and Dimensions in Islāmic Texts**

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Abstract: This paper explores the *sharī'ah* basis of waqf (Islāmic Endowment), examining it as both a concept and a legal institution and delving into the key elements of classical *fiqh al-awqāf* (the Islāmic Jurisprudence of Endowments/Waqf jurisprudence). It analyzes *Qur'ānic* and Prophetic perspectives, as well as the views of the Ḥanafī [1], Mālikī [2], Shāfi'ī [3], and Ḥanbalī [4] schools of fiqh (Islāmic Jurisprudence). The aim is to maintain coherence with classical methods for deriving waqf rulings, enabling waqf stakeholders to innovate and contextualize waqf applications in contemporary settings while remaining rooted in authentic Islāmic jurisprudence. The study emphasizes the meticulous care taken by classical jurists to align waqf rulings with established *sharī'ah* (Islāmic Law), avoiding contradictions with other legal institutions such as *mawārith* (inheritance) and *sadaqah* (charity). It highlights the importance of *maṣlahah* (public interest) and *istiḥsān* (juristic preference) in formulating waqf principles, arguing that these considerations often achieve equity and fairness more effectively than strict *qiyās* (analogy). The study also highlights the contemporary relevance of waqf.

Research Methodology

To examine the jurisprudential aspects of classical *fiqh al-awqāf*, the paper employs textual analysis, focusing on the *Qur'ān*, *Ḥadīth*, and related areas of Islāmic jurisprudence. This approach ensures that contemporary interpretations and applications of Waqf address modern challenges while adhering to the tradition of Islāmic law.

Implications

- i. Theoretical Contributions: This paper provides a comprehensive examination of the various perspectives and dimensions of waqf within Islāmic texts, offering a deeper understanding of the theoretical foundations of *fiqh al-awqāf*.
- ii. Practical Applications: By elucidating the principles and guidelines derived from Islāmic texts, the research can guide contemporary waqf practices, helping to align them more closely with classical jurisprudence.
- iii. Legal Framework Development: The insights gained from the analysis can assist in developing a robust legal framework for waqf management and governance, ensuring that it adheres to traditional Islāmic principles while addressing modern needs.
- iv. Policy Implications: Policymakers can utilize the findings to create regulations and policies that support the effective administration and growth of waqf institutions, promoting socio-economic development in Muslim communities.

Findings

The study highlights the critical role of charity in Islām, emphasizing waqf as a means to support those in need, purify wealth, and achieve social justice. While the *Qur'ān* does not explicitly mention Waqf, its principles are

derived from Islāmic values and Prophetic traditions, with *Ḥadīth* providing legitimacy and practical guidelines. Jurists have further developed waqf law using secondary sources like *qiyās* and *istiḥsān*, adapting it to socio-political contexts. The paper notes significant variations among jurists regarding waqf ownership, with the majority attributing ownership to Allah and benefits to beneficiaries, while some, like Imām Abū Ḥanīfa, give ownership to the *wāqif* (donor). Integrating various legal concepts, the paper underscores the use of *maṣlaḥah* and *istiḥsān* to achieve equity and fairness in waqf principles. Emphasizing the need for coherence with classical methods and innovation for contemporary challenges, the study concludes that waqf is vital for promoting social justice, community welfare, and public good, aligning with Islāmic principles and founder objectives. Moreover, the study finds the institution of waqf very much relevant in contemporary times.

Originality of research

The research paper's value and originality lie in its comprehensive exploration of waqf through primary Islāmic sources, its development of legal doctrines, its integration with broader Islāmic concepts, its discussion of juristic diversity, and its relevance to both historical evolution and contemporary socio-economic landscapes.

Keywords: Fiqh, *Qur'ān*, *Ḥadīth*, *Maṣlaḥah*, *Istiḥsān*

1. Introduction

Unlike other religions, Islām is not only a religion but a *dīn* also. A *dīn* is a comprehensive system that provides us guidance on all aspects of life, be it political, religious, economic or social¹. So far as the financial aspect is concerned, in order to uplift the downtrodden and destitute of society, Islām has given the institutions of *zakāt* and waqf. While *zakāt* is the *ṣadaqa* (Charity) that is obligatory in nature², waqf is the *ṣadaqa* that is voluntary in nature³. The concept of waqf holds a profound place in the history and development of Muslim societies because of its unique features, the most important being continuity and permanence. This institution is deeply embedded in *sharī'ah* and has played a pivotal role in shaping the socio-economic and religious landscapes of Muslim civilizations. The origins of waqf date back to the early days of Islām, with its practices established and promoted by the Prophet Muḥammad (PBUH) and his companions⁴. Over centuries, waqf has evolved into a multifaceted institution encompassing various forms, including religious endowments for mosques and *madaris* (religious schools), charitable endowments for hospitals and orphanages, and family endowments designed to support the founder's descendants while ultimately serving a broader societal good. The influence of waqf extends beyond the spiritual and charitable domains; it has been instrumental in the development of educational institutions, healthcare facilities, and public infrastructure, significantly contributing to the welfare and stability of communities⁵. It is imperative to examine *fiqh al awqāf* in the context of the *Qur'ān* and *Ḥadīth*, as well as through secondary sources such as *'ijmā'* (consensus), *ijtihād* (independent reasoning), and *qiyās* (analogical reasoning).

Fiqh al awqāf is a pivotal aspect of Islāmic law that governs the establishment, management, and utilization of waqf properties. It refers to the set of Islāmic rules and principles that govern the terms and conditions of a valid waqf and help achieve its objectives⁶. The specific jurisprudential principles of *fiqh al awqāf* are crucial for the proper functioning of waqf, outlining the necessary conditions and criteria for its establishment and management. *Fiqh al-awqāf* outlines the conditions and criteria for a waqf, the *wāqif*, *mawquf alayh* (beneficiaries), *mawquf bihi* (subject matter), and the *mutawallī* (Waqf manager)⁷.

2. Fiqh *Al Awqāf*: A Study Primary Sources

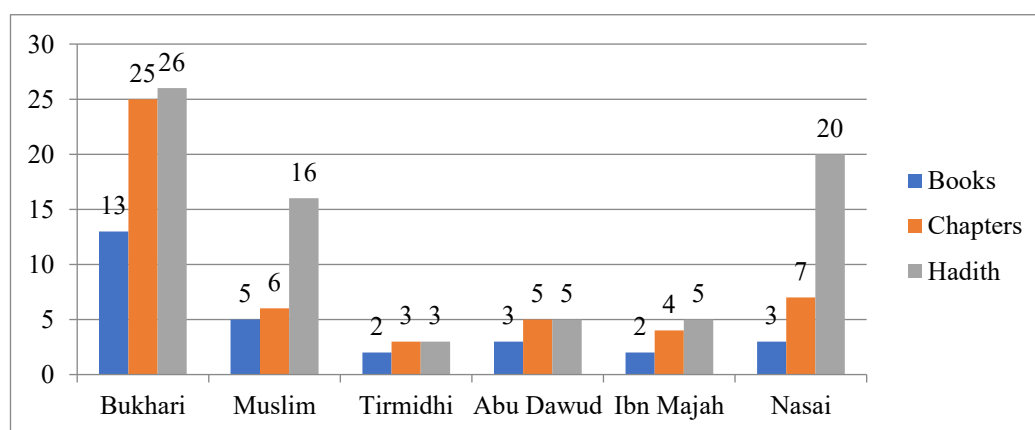
Islām strongly emphasizes charity as a core principle, encouraging Muslims to support those in need through acts of generosity. The *Qur'ān* and *Ḥadīth* frequently highlight the virtues of giving, such as *zakāt* (mandatory almsgiving) and *ṣadaqa* (voluntary charity), which help to alleviate poverty and foster a sense of community and compassion among believers. These practices demonstrate ways to purify wealth, seek Allah's blessings, and achieve social justice⁸. The Institution of waqf is not explicitly mentioned in the *Qur'ān* but is established based on *Qur'ānic* principles of charity and Prophetic traditions⁹. It has been an integral part of Islāmic law since early Islām, inspired by *Qur'ānic* concepts of righteousness and morality, and is considered a crucial aspect of Islāmic charitable practices¹⁰. *Ḥadīth* provides the foundational basis for the legality and practice of waqf, offering practical examples of management guidelines and ensuring alignment with Islāmic principles, thus playing a crucial role in legitimizing and contextualizing waqf within Islāmic jurisprudence¹¹.

Qur'ān, the book of guidance, has no mention of waqf as an Institution; however, the derivatives of the word waqf have been used in the *Qur'ān* in a number of verses¹². On the other hand, the rulings on charity and doing good actions stressed in the *Qur'ān* are regarded as the legal authority for establishing a waqf¹³. The validity of Waqf is supported by *aḥadīth* advocating recurring charity (*Ṣadaqa al-jārīya*) and by early Islāmic practices. The Second Caliph, 'Umar ibn al-Khaṭṭāb, and other early Islāmic figures established various waqf initiatives, demonstrating its application and significance. This combination of Prophetic endorsement and historical implementation by key leaders provides a strong foundation for the enduring importance of waqf in Islāmic jurisprudence¹⁴. So far as the sources of *fiqh al-awqāf* are concerned, Muḥammad 'Abdullah¹⁵ says that:

“The primary sources for the jurisprudential aspects of waqf are mainly prophetic actions and statements, along with the practices and statements of the companions. The key prophetic statement used in Fiqh al-awqāf comes from the story of 'Umar (R.A.), providing concise, clear, and authentic guidelines”.

The edifice of waqf, in the context of its validity and legality, rests on about three dozen Prophetic traditions of *al-Kutūb al-Sittah*. According to the analysis of Ishak Suliaman and Mohd Ashrof Zaki Yaakob, there are 36 *aḥadīth* about waqf in *al-Kutūb al-Sittah*, with 27 of them focusing on waqf infrastructure and nine deal with waqf management, covering different types of *awqāf* including waqf of land, waqf of garden, waqf of well *Bayruha*, waqf of land for mosque and waqf of military weapons. Out of 27, some are for religious motives, some specified to public service, while the rest are general charities¹⁶.

2.1. Distribution of *aḥadīth* on Waqf Across Major *Ḥadīth* Collections, including repetition



Source: Suliaman.I. and Yaakob,M.A.Z. 2019.

The *Ḥadīth* of Ibn ‘Umar regarding the land of *Khaybar* is the most critical *Ḥadīth* so far as the legality of the waqf is concerned. The following doctrines pertaining to waqf can be deduced from various *aḥadīth* of the Prophet (PBUH) :

The donor has the authority whether to donate his property or not. If donated, it is then irrevocable, inalienable, and perpetual because once a waqf is always a waqf, and what belongs to waqf belongs to God. The benefits of the donated asset can be disbursed to the poor, the relatives, the emancipation of enslaved, *Jihād*, and guests and travelers. The administrator of any waqf could eat in a reasonable and just manner, and he also could feed his friends without intending to be wealthy by its means. This *Ḥadīth* of ‘Umar is also a shred of evidence for the terms of the waqf deed because Imām Bukhārī has discussed under the chapter: How to write the endowment in *Kitāb al waṣīyah* in Shaiḥ Bukhārī¹⁷. The *mutawallī* of a waqf can be paid for his services¹⁸. Any benefit-generating asset, be it land, well, or logistics for military operations, can be made waqf¹⁹. The *mutawallī* of the waqf has the authority to make decisions about how the resources or profits from the waqf are utilized. This power includes the discretion to purchase an enslaved person for labour, suggesting the administrator has significant control over resource allocation. It is to be noted here that the *mutawallī* can even be a woman²⁰. There is a limit on charitable bequests to one-third of the wealth because it is better to leave one’s heirs well-off rather than make them dependent on others²¹. Whatever the Prophet (PBUH) left behind is waqf, and it is not distributed among his children²². Last but not least, giving charity on behalf of a deceased person is not only permissible but beneficial for the deceased²³.

3. Fiqh Al Awqāf: A Study Of Secondary Sources

Although the above mentioned primary source provided the foundation for waqf law, the Jurists played a critical role in the development of waqf law by interpreting primary sources like the *Qur’ān* and *Ḥadīth*, utilizing secondary sources such as *qiyās*, *ijmā’*, *istiḥsān*, *istiṣḥāb*, and *urf* to refine the laws, adapting the statutes to socio-political contexts, applying the principle of *istiṣlāḥ* (public good) to legitimize new practices like cash waqf, and providing detailed regulations and guidelines to ensure the establishment, management, and use of waqf properties aligned with Islāmic principles and benefitted society²⁴, and finally the *sadd al dharī‘ah* (prevention of harmful means)²⁵. So, the main contribution of *fuqahā* (Jurists) to the *Fiqh al awqāf* can be summarised in the words of Muḥammad ‘Abdullah in the following words:

“The conceptual basis and premises of waqf are sanctioned through the primary sources of *Sharī‘ah*, but the framework of waqf doctrines, or the jurisprudence of waqf, is essentially reliant on the secondary sources of *sharī‘ah*.”²⁶

Rooted in the primary sources of Islāmic law, the *Qur’ān* and *Ḥadīth*, *fiqh al awqāf* provide a framework for the perpetual dedication of property for religious, educational, and charitable purposes. This legal concept not only underscores the irrevocability and inalienability of waqf but also ensures that the benefits derived from these properties serve the stipulated objectives of their founders in accordance with *sharī‘ah*²⁷. After the time of the Prophet (PBUH), the development of legal regulations governing waqf started, leading to the emergence of expertise in waqf administration. This involved skills in drafting, verifying, and safeguarding waqf documents. Scholars recorded the jurisprudential aspects of waqf as early as the second century A.H., featured in discussions on waqf and charity within *Ḥadīth* collections, *Fiqh* texts, and legal interpretations²⁸.

Furthermore, Secondary sources such as *‘ijmā’*, *ijtihād*, and *qiyās*, which adapt their principles to contemporary contexts and challenges, enrich the application and interpretation of *fiqh al awqāf*²⁹. Waqf emerged and developed in early Islāmic society due to religious motivations for charity and altruism. It gradually and solidly

gained *sharī'ah* legitimacy among early jurists. Jurisprudentially, waqf has been likened to various legal mechanisms. Its evolution was significantly influenced by features from pre-existing legal institutions such as *ṣadaqa* (charity), *mawarith*, *wasīyyah* (wills), and *hadiyyah* (gifts), which together formed the basis of *fiqh al-awqāf*. The legal foundation for waqf jurisprudence relies heavily on secondary *sharī'ah* sources, especially the rules of analogy³⁰.

The frequent use of *qiyās* and *istiḥsān* is apparent in the discussions of *fiqh al-awqāf*. Generally, the sources for *fiqh al-awqāf* rulings include many legal concepts. The current waqf structure is built on various doctrinal principles borrowed from similar *sharī'ah* -approved practices³¹. While developing the tenets of waqf, the jurists seem more inclined to apply the purpose of the law than the tools of the law³². The jurisprudential rulings regarding waqf derive from a fundamental principle found in all voluntary acts regulated by *sharī'ah*. This principle aims to maximize benevolence, equity, and justice and alleviate hardships for all parties involved. This theory is strengthened by the argument that in formulating waqf principles, considerations of *maṣlahah* and *istiḥsān* are frequently employed. Applying *istiḥsān* can better achieve the goals of equity and fairness compared to strictly applying *qiyās* based on textual principles³³.

The classical works of *fiqh al-awqāf* show a perfect blend of *naṣṣ* (textual evidence), *maṣāliḥ*, *istiḥsān*, *qiyās*, and *urf*³⁴ where the jurists handled the concept of waqf with meticulous care. They were especially mindful of preventing any loopholes that might allow the circumvention of established rules regarding *mawarith* and *ṣadaqa*. Given that the jurisprudence of waqf evolved subsequent to these institutions, maintaining coherence with their regulations was essential in formulating waqf rulings.³⁵

The primary sources of Islām laid down the foundation for the institution of waqf, that is, by *Qur'ān* and *sunnah*, but jurists developed the institution and its fiqh³⁶. However, the legal theory of waqf is very inconsistent among jurists. The divergence in definitions of waqf reflects a difference of opinion among the *fuqahā*. This divergence shows that Islāmic jurisprudence is not monolithic and allows for diverse interpretations. The complexity and richness of Islāmic jurisprudence concerning waqf, with varying definitions provided by different jurists, reflects their individual interpretations and the diversity within Islāmic legal traditions. The majority of the scholars, including Shāfi's, Ḥanbalīs and Imām Abū Yūsuf and Imām Muḥammad among the Ḥanafīs in the context of waqf, gave ownership to Allah but benefit to beneficiaries with the condition that the asset will neither be valid for purchase or sale nor will it be gifted or inherited³⁷. However, Imām Abū Ḥanīfa gives ownership to the *wāqif*, unlike the majority and benefits the beneficiaries like the majority. According to him, The *wāqif* possesses the authority to both sell and gift the property. Additionally, he retains all legitimate rights of disposal, ensuring that inheritance rights will persist after his death. He also has the right to terminate the waqf as well³⁸. For Imām Abū Ḥanīfa, "Endowment is permissible but not obligatory, just as borrowing is valid where ownership and possession remain with the owner"³⁹. Imām Mālik, like Imām Abū Ḥanīfa too, gives ownership to *wāqif* and benefits to beneficiaries, but there is a difference between the definitions of these two jurists. Imām Abū Ḥanīfa considered that the waqf can be sold or purchased, while Imām Mālik considered Waqf to be something that can't be sold or purchased⁴⁰. So, there exists a divergence of opinion among the *Sunni* schools of Islāmic jurisprudence regarding the understanding of waqf. However, George Makdisi, in his book *The Rise of Colleges: Institutions of Learning in Islām and the West*, states that despite notable differences, the law of waqf was generally consistent across all Sunni schools of law⁴¹.

4. Contemporary Relevance Of The Institution

The institution of waqf is very much relevant in the contemporary times. This fact is demonstrated by its potential and presence across different countries of the world. On the one hand, waqf has the potential to

generate billions of dollars annually across the global level. On the other hand, we have millions who are below the poverty line or facing malnutrition. The worst sufferers of this challenge are the Muslims themselves, who own the institution of waqf⁴². According to the United Nations Development Program's 2017 annual report on poverty, approximately 650 million individuals globally were experiencing extreme poverty, a substantial proportion of whom were situated in developing nations. Moreover, the report highlighted that an additional 800 million people faced the risk of falling back into poverty, primarily as a result of factors including ethnicity, gender inequalities, and restricted access to community resources and opportunities⁴³. Every day, one out of every seven individuals worldwide goes to bed hungry. Annually, hunger claims the lives of 3.1 million children, and each day, 66 million children attend school without having had enough to eat⁴⁴. So, these challenges can be reduced, if not eliminated, by utilizing the potential of *awqāf*. Let me here mention the size of *awqāf* not of a Muslim country but of a country which inhabits only about 14 % Muslims, i.e. India. The size and potential of waqf in India will give us an idea of how much the waqf sector of Muslim countries can contribute to mitigate the challenges, as mentioned earlier. The *Sachar Committee Report*, issued in 2006 by the Government of India, provided statistics on the potential of Waqf Assets in India. According to the report, there are over 490,000 registered waqf s across various states and union territories in India, with significant concentrations in West Bengal (148,200) and Uttar Pradesh (122,839). These properties cover an estimated 6 lakh acres with a book value of approximately Rs 6,000 crores, but their market value is significantly higher. For example, in Delhi alone, waqf properties are valued at over Rs 6,000 crores. Despite their potential, the current annual income from these properties is only Rs 163 crores, resulting in a low return rate of 2.7%. However, if these properties are efficiently utilized, they could potentially generate much higher returns, up to Rs 12,000 crores annually, with some already achieving returns as high as 20% where effectively managed and developed⁴⁵.

5. Conclusion

The study of *fiqh al Awqāf* reveals the intricate nature of the Islāmic endowment system, rooted in *sharī'ah* principles and enriched by centuries of juristic interpretation. By examining primary sources such as the *Qur'ān* and *Ḥadīth*, alongside the views of the Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī schools, this paper underscores the coherence and diversity within Islāmic jurisprudence on waqf . Key findings highlight the care classical jurists took to align waqf rulings with *sharī'ah* principles, ensuring practices did not contradict other legal institutions like inheritance and charity. The concepts of *maṣlahah* and *istiḥsān* emerged as pivotal in formulating waqf principles, often achieving equity and fairness more effectively than strict *qiyās*. The jurisprudence of waqf provides a robust framework for the perpetual dedication of property for religious, educational, and charitable purposes, ensuring the benefits serve the founder's objectives in accordance with *sharī'ah*. The study of *Fiqh al awqāf* emphasizes the importance of maintaining coherence with classical methods for deriving waqf rulings, enabling stakeholders to innovate and contextualize applications in modern settings, ensuring the institution continues to contribute significantly to the socio-economic and religious landscapes of Muslim societies, thereby promoting social justice, community welfare, and the public good.

Notes

[1]. The Ḥanafī School of Islāmic Jurisprudence originated from the teachings of the esteemed theologian Imām Abū Ḥanīfah, whose innovative approach to Islāmic law significantly shaped its development. His disciples, Abū Yūsuf and Muḥammad al-Shaybānī, played pivotal roles in disseminating and systematizing his teachings, thereby establishing the foundational principles and methodologies that define the Ḥanafī school.

[2]. The Mālikī school of Islāmic Jurisprudence was founded in the 8th century by Imam Mālik ibn Anas, who was based in Medina, a city of profound significance in early Islāmic history. This school is distinguished by its emphasis on the customs and practices of the Medinese community ('amal) as a primary source of legal interpretation.

[3]. The Shāfi'ī school of Islāmic Jurisprudence was founded by Muḥammad ibn Idrīs al-Shāfi'ī, who is renowned for his systematic approach to Islāmic legal theory, which sought to harmonize and stabilize the principles of Islāmic jurisprudence. Al-Shāfi'ī's methodologies, particularly his articulation of the principles of *uṣūl al-fiqh* (the roots of jurisprudence), provided a structured framework for deriving legal rulings, balancing textual sources with rational analysis.

[4]. The Ḥanbalī school of Islāmic Jurisprudence was founded on the teachings of Aḥmad ibn Ḥanbal. This legal school is particularly noted for its strict adherence to the *Ḥadīth* and the practices of the early Muslim community (the *Salaf*).

¹ Al Qur'ān, 5:3 and

Al Qur'ān, 2:208 and

Sahih Muslim, *The Book of the Merits of the Companions*, 2408a.

² Al Qur'ān, 2:43

³ Sahih al-Bukhari, *The Book of Wills and Testaments*, 2772.

⁴ Musnad Ahmad, *The Book of Musnad Abu Bakr as-Siddiq (ra)*, 25. and

Sahih al-Bukhari, *The Book of Wills and Testaments*, 2772. and

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⁶ Ghanim, I.B., Historical formation of the waqf function in the Arab society, *Awqāf*, Vol. 16, 2009, pp. 13-42.

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⁸ Al Qur'ān, 3:92 and Al Qur'ān, 2:177, 215, 267.

⁹ Hussain, Munawar.. *Muslim Endowments, Waqf Law and Judicial Response in India*, New York : Routledge, 2021, p. XIV.

¹⁰ Taher, Mohammed. *Islāmic Institutions*, Ed, New Delhi : Anmol Publications, 1998, p. 321.

¹¹ Saḥīḥ Al Bukhārī, *The Book of Wills and Testaments*, 2778, 2758, 2764, 2772. *Book of Representation, Authorization, Business by Proxy*, 2313.

Saḥīḥ Muslim, *The Book of Wills*, 1631, 1632, 4223, 4224.

Sunan Abū Dawūd, *The Book of Wills*, 2878.

Sunan Tirmidhi, *The Chapters On Judgements From The Messenger of Allah*, 1375, 1376. Sunan Ibn Majah, *The Chapters on Charity*, 2396.

¹² Al Qur'ān, 6: 27, 30; Al Qur'ān, 34: 31 and Al Qur'ān, 37: 24

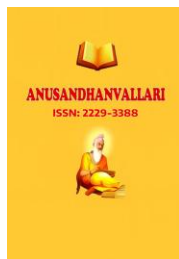
¹³ Al Qur'ān, 3: 92 and Al Qur'ān, 2:177, 215, 267.

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