

Wakf Administration during the British Rule

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Abstract

This research article delves into the administration of Wakfs during the British rule in India, tracing the historical evolution of Wakf institutions from their origins in Islamic tradition to their management under various rulers, including the Mughals and the British. The study highlights the significant role of *mutawallis* (trustees) in the administration of Wakfs and the challenges faced during the British colonial period, particularly the mismanagement and encroachment of Wakf properties. The article examines key legislative measures, such as the Religious Endowments Act of 1863 and the Mussalman Wakf Act of 1923, which aimed to regulate Wakf administration but often fell short of ensuring proper management. The research also explores the impact of British policies on Wakf properties, the role of local and central Wakf boards, and the judicial interventions that shaped the legal framework for Wakf administration in India. The study concludes with an analysis of the Wakf Act of 1954, which brought uniformity to Wakf administration across India, and highlights the ongoing challenges of encroachment and mismanagement of Wakf properties.

‘Wakf’ or *habs* is an Arabic word which literally means “detention, to prevent, restrain”. In Islamic concept it connotes the tying up of property of a third person. The origin of Wakf is to be sought in the strongly marked impulse to charitable deeds which is characteristics of Islam. The Quran contains no specific provision concerning Wakf, but it abounds injunctions in the matter of charity. Further the Wakf is defined as a permanent dedication of movable or immovable properties for religious, pious or charitable purposes as recognized by Muslim Law, given by philanthropists.

The grant is known as *musbrut-ul-khidmat*, while a person making such dedication is known as *Wakif*. Historically, the origin of Wakf is traced to the tradition of the Prophet Muhammad.

The earliest description of Wakf, created in India during the reign of Mahmud of Ghore probably between AD 1185-1195 is found in the *Insha-i-Mabru*, written by Aynul Mulk Multani who was an officer during the times of Jalaluddin Khilji (AD 1290-96). Evidence of the existence of Wakfs during later periods is found in many historical books and documents. Sultan Mohammad bin Tughlaq appointed Ibn Battuta, the famous Morocco traveller, as the *mutawalli* of Wakf in favour of the tomb of Sultan Qutbuddin Mubarak Shah. The *Tarikh-e-Ferozshahi* establishes the existence of a large number of Wakfs during the time of Sultan Alauddin Khilji (AD 1293-1316). Evidence relating to the existence of Wakfs during the Mughal period abounds and many of these kind Wakfs are in existence eventoday.

This research article attempts to focus the real condition of Wakf administration in India during the British Rule.

Historical Background of Wakf

According to Shibli Naumani, this tradition of the Prophet had shown that the first Muslim Wakf came into the existence in the first year of Hijra. The land on which the Prophet Muhammed laid the foundation of *Masjid Nabawi* (Mosque of Prophet) belonged to two orphans. The Prophet wished to purchase the land and insisted to pay the price, but the orphans said, "No! By God we will not take the price, we will take it from God". Thus came into existence the first Wakf of Islam. The Institution of Wakf continued to develop with Islam and assumed rigid legal form in the second century of Hijra or Islamic era. Gradually many Wakf came into existence. Their supervision and administration were totally in the handsof "*mutawallis*".

In Wakf administration, the *mutawallis* enjoyed vast power. Under the Mughals, the office of *mutawalli* carried the same prestige. When Emperor Shah Jahan made certain in favour of the Tajmahal, he himself retained the *mutawallisship*. The Wakf accounts were occasionally checked by Imperial Officers, as is presently done by Wakf Board auditors. Emperor Akbar appointed *Yaumiadaran* (persons getting daily allowances) for sending a report to the court of emperor regarding the expenditure of the dargah of Ajmer. The Mughal emperors did not interfere in the appointment of dargah trustee and they usually elected amongst the descendents of the Saint. The head of the dargah trusteeship was known as *Sajjada-nashin*. In the administration of Wakfs under Delhi Sultanate and the Mughal rule, *Qazis* continued to be the arch anchors of Wakf

administration in the same fashion as they were under the Umayyads and Abbasids. According to the Jadunath Sarkar, “a *Qazi* was also posted to every town and to most of the villages with a Muhammadan population and large enough to be classed as *Kasbas*. The other villages had no *Qazi* of their own but could carry their suits to the *Qazi* of then neighbouring town in whose jurisdiction they lay”. A *Firman* of Sher Shah throws light on how Wakfs were administered locally by the village *mulla*.

According to the *Firman* of Shersha the Hindus were also granted Wakf by the Government. They are authorized to control and manage their own school. During the reign of Aurangzeb, the public mosques and religious endowments were placed under the control of the *Sadr-e-Sarkar* who empowered to certify the *mutawallis* of *shrines*. The *Sadr-e-Subah* was the chief ecclesiastical officer of the province. The collection of the dues on charitable endowments was entrusted not to him but to the *Divan* of the province and he had only a supervisor authority of Wakf. The chief ecclesiastical officer of the Empire was *Sadr-us-Sudar*. According to *Ain-i-Akbari*, he was in charge of all lands devoted to ecclesiastical and benevolent purposes. Akbar acted rightly in separating spiritual and temporal affairs of the dargahs. He appointed *mutawalli* to look after the temporal affairs, leaving alone the *Sajjada-nashin* or descendants of the *pir* as the spiritual head and a principal beneficiary. This system is still followed in dargah administration.

Wakf Administration under the British

A *Firman* issued by Shah Alam to East India Company in August 1765 marked the beginning of the company's actual administration in India. The British official policies regarding 'native' endowments were uneven. If the East India Company embarked upon direct interference in matters of endowments, the British crown decided to pursue a policy of total non-interference, which was later replaced by a 'middle-of-the road' policy. The Policy of Direct Interference was followed by the English between AD 1765 and 1863. The first step towards the religious endowments was taken by the British in AD 1817. The Madras Code of 1817, Regulation IV enacted and the general superintendence of endowments in several districts passed on to the Board of Revenue or Board of Commissioners. However the British Government received earlier complaints on the *mutawalli* or manager of the *dargah* of Saleem Chishti. In reply, the Board of Commissioners observed that the board or of the opinion that consideration the reputed sanctity of the *dargah* and the veneration in which it is held, the utmost circumspection may be necessary in interfering with the prejudices of its votaries.

This policy was once again reiterated by the Board of Commissioners when in a dispatch to the local agents, Agra and disagreeing with their proposal to remove the *mutawallis* of the same dargah. However, this cautious approach did not last long. Endowed properties, irrespective of their being religious or secular, came to be encroaching upon by the company's servants. Instances of such encroachments are found in important official papers. The stage was thus set to usher in an entirely new policy of total non-interference and consequently the Religious Endowment Act of 1863, was passed. This act aimed to relieve Government officers from governing directly non-Christian institutions. The previous regulations and codes, regarding religious endowments were repealed and replaced by the Act of 1863.

According to this Act the Government had thus washed its hands of all responsibilities of managing the landed and other properties attached to mosques, temples and such religious establishments, which at the time of the passing of the Act were under superintendent, or in the possession, of the Board of Revenue or local agents. The endowed properties were transferred to trustees, managers of superintendent. Local committees were appointed to exercise the powers of the Board of Revenue and local agents. These committees were generally constituted in accordance with the wished of those interested in the maintenance of such institutions. The cases of disputes were required by the Act to be referred to the ordinary courts of the district. The Act provided that when the object of a suit was to protect an endowment against misfeasance, breach of trust or neglect of duty, any interested person not necessarily with pecuniary interests, could initiate proceedings in a court of Law. The Act was applicable only to public religious endowments or public Wakf not to private or charitable institutions.

After the passing of the Religious Endowment Act, 1863, the administration of religious endowments was left to the judiciary. Initially *Qazis* and *Pandits* were appointed under Regulation XII of 1793, assisted English Judges in the matter of Hindu and Muhammadan Law. But in 1864 these institutions of *Qazi* or Islamic Juri and *Pandits*, Hindu Law experts came to an end. In certain cases, it resulted in a miscarriage of justice. It paved the way for corruption and mal-administration in the funds of the religion and charitable endowments. Because Wakfs was left to English Judges who because of their very scanty knowledge of the subject had other than source materials to guide them.

Consequently, several bills were introduced in the councils as well as in the Council of the Governor General of India regarding Endowments. Between 1878 and 1912, no less than eleven Bills were submitted for approval. But none of these were ever passed. In 1890, however, the Charitable Endowments Act VI of 1890 was enacted for the administration of Public Endowments of non-religious

character. By the turn of the century Muslim public opinion began agitating for fairer deal to Wakfs, which by then were openly misappropriated. In 1902, the Calcutta Muhammadan Union sent two memorials to viceroy, demanding government's intervention for ensuring the proper management of Wakfs. A similar memorial was sent to the viceroy by the society for the preservation of Wakfs and the support of widows in India by the *Anjuman-e-Himayat-Islam* of Lahore. An important resolution passed by the All India Muslim League in 1910 and 1913 regarding the protection of Wakf properties were rejected by the British government. On account of the non-supervision of the government, Wakf properties worth crores of Rupees and yielding an annual income of lakhs of rupee were encroached by greedy administrators and *mutawallis*.

The Muslim and Hindu members of the Legislative Council expressed their dissatisfaction over the Mismanagement of Wakfs and other religious endowments. They expressed their dissatisfaction with the working of the Act of 1863 and the similar complaints were received by the Government from Province like Bombay, Bengal, United Provinces and Madras. Meanwhile there was a change in government's perspective, the Religious Endowments Conference was held in Delhi on March 1914, under the Presidentship of Sir Reginald Craddock, Home members, and was attended by 26 persons, consisting of 17 non-officials (eight Hindus, seven Muslims, one Sikh, and one Burmese) and eight official members. This Conference made an impact on passing of the Charitable and Religious Trusts Act XIV of 1920. However the Act contained nothing of much value, no statutory obligation were imposed on the trustees to publish account and no set these accounts audited much was left, in vain to the civil courts.

Wakf Legislations

After a long civil struggle, the Mussalman Wakf Act was passed in 1923, to make provision for the better management of Wakf property and for ensuring the keeping and publication of proper accounts. However the Act heavily banked on civil courts in all matters from the inspection of accounts and auditing to the imposition of penalty. The Act did not confer any authority on the court to direct a *mutawalli* to file a statement of account under section 3 of the Act. However the Act made it obligatory on the part of *mutawallis* of every Wakf, except *Wakf alal-aulad* or private Wakf, to furnish to the court about the detail of Wakf property. Further they also insisted to file a copy of Wakf *nama* or Wakf deed.

Another enactment relating to Wakfs was the Dargah Khwaja Sahib Act of 1936, which aimed of regulating the affairs of the *dargah* of Ajmer. According to this Act, a new committee of 25 members was constituted and it comprised of none local and sixteen outsiders, who were included to break the mono poly of

the local members in dargah administration. Meanwhile many local Wakf Acts were passed in different states for effective governing of Wakf properties. The Act of 1923 paved the way for the passing of Wakf Act of 1954. The Wakf Act, 1954 is a landmark in the history of Wakf administration in India.

This Act was passed by the effort of the late S.M. Ahmad Kazmi, a sitting Congress Member of Parliament and the President of the *Anjuman Himayat-e-Islam* of Punjab. The Act further ensured that to constitute central and state Wakf Boards. It applied to the whole of India except Bengal, Uttar Pradesh, Kashmir and certain parts of Maharashtra and Gujarat, where local Acts supervise Wakfs. The fact however, remains that Englishmen gave to this country a few very sound pieces of Wakf legislation. The Wakf Acts of Bengal and United Provinces served as models for the Wakf Act of 1954. The Bengal Wakf Act, 1934 is still in force and the administrative Machinery it provides as proved to be best suited to the needs of this country. However the Act 1954 made uniformity in Wakf administration in India.

In Tiruchirappalli region, the Wakfs classified into many category such as Mosque Wakf, Dargah Wakf, *Kabarstan* or graveyard Wakf, *Ashurkana* or Muharram festival Wakf, *Khangha* Wakfs, *Fakir* Wakfs, *Maulid* or Eulogy of prophet Wakf, *Idga* or General prayer ground Wakf, etc. A public Wakfs were created for the religious and charitable purposes while a private Wakf is created for individuals to manage charitable and religious institution. Later these Wakfs were managed by their descendants. The court scheme decree is applicable in five Wakfs of Tiruchirappalli such as Nathar Wali dargah, Kutbisha dargah, Jalali fakir Wakf (fort station), Hazrat Nabi Sallallahu Alaihisalam Fathiha Wakf and Thennur High Road *dargah* mosque Wakf.

Most of the Wakf properties are encroached by the private individuals or organizations. In the cases of encroachments, of properties of *dargah*, the *dargah* administration reports the same to Wakf Board which constitutes the Committee for recovery of the property. In several cases, the Government Policies are also enforced to abolish the *inam* scheme. The Abolition of *Inam* Act, and Conversion of *Inam* into Ryotwari Act, 1963 (26) are the two major acts that lead to a huge property transfer that were previously owned by the *dargah* and Wakf Committees. The highest record of such recovery is in Tiruchirappalli in which the Wakf property to the tune of more than 3000 acres in Kalpalayam, Samayapuram, Rajampalayam villages which were originally donated by Rani Minaksi, a Nayak Queen to Rahmathulla Shah Shattari Wakf.

II. Conclusion

There are several historical judgments of Court on Wakf properties. Important one among them was the verdict of the case between Syed Ali and others Vs. Andhra Pradesh Wakf Board (1995). The verdict says “It may be stated that a Wakf is a permanent dedication of property for purposes recognized by Muslim law as pious religious or charitable and the property having been found as Wakf would always retain its character as a Wakf, in other words, once a Wakf, always a Wakf and a grant of *patta* in favour of individuals under the *inam* Act does not, in any manner nullify the earlier dedication made of the property constituting the same as Wakf”. This verdict is an important landmark showing legal support and philanthropy towards the Wakf land in India.

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