The Role of Waqf in Improving the Ummah Welfare

Prof. Dr. M. A. Mannan
Founder Chairman
Social Investment Bank Ltd.
Dhaka, Bangladesh

Presentation at the International Seminar on Islamic Economics as Solution organized by Indonesian Association of Islamic Economists and Muamalat Institute, Jakarta

Medan, Indonesia
18-19, September, 2005
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0.</td>
<td>Institution of Waqf: Its Meaning:</td>
<td>3-4</td>
</tr>
<tr>
<td>1.1.</td>
<td>Waqf, Sadaqa and Gifts</td>
<td>4</td>
</tr>
<tr>
<td>1.2.</td>
<td>Waqf and Trust</td>
<td>4-5</td>
</tr>
<tr>
<td>2.0.</td>
<td>The Institution of Waqf: Five Key Roles and Operation from Historical Perspectives:</td>
<td>5-6</td>
</tr>
<tr>
<td>2.1.</td>
<td>Eight Predominant Rules of the Shariah Governing Waqf.</td>
<td>10</td>
</tr>
<tr>
<td>3.0.</td>
<td>Securitization of Islamic Voluntary Sector: Financing of Awaqf Properties</td>
<td>12</td>
</tr>
<tr>
<td>3.1.</td>
<td>Key Methods and Modes of Financing Techniques: An Overview</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td><strong>(A) Key Methods:</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Long lease (Hikr) Contract</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>(b) Istisna (construction) contract</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td><strong>(B) Key Modes:</strong></td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>(a) Floating of Muqaradah or Mudarabah Bond.</td>
<td>14-15</td>
</tr>
<tr>
<td></td>
<td>(b) Floating of Musharakah (diminishing partnership)</td>
<td>15</td>
</tr>
<tr>
<td>3.2.</td>
<td>Floating of Cash Waqf Certificate and Social Investment Bank Ltd. (SIBL)</td>
<td>15-19</td>
</tr>
<tr>
<td>4.0.</td>
<td>Agenda for Action</td>
<td>19-20</td>
</tr>
<tr>
<td>5.0.</td>
<td>Conclusion</td>
<td>20-21</td>
</tr>
<tr>
<td>Appendix –I</td>
<td>Specimen of Cash Waqf Certificate of SIBL, Bangladesh, 1997</td>
<td>22</td>
</tr>
<tr>
<td>Resume</td>
<td></td>
<td>28</td>
</tr>
</tbody>
</table>
The Role of Waqf in Improving the Ummah Welfare

By
Prof. Dr. M.A. Mannan

1.0. Institution of Waqf: Its Meaning:

The word Waqf (pl. Awqaf) comes from a root meaning "to prevent or restrain". In Arabic, it literally signifies "confinement or detention. As the terminology of Islamic jurisprudence, it may be defined as an act of refraining from the use and disposal of any asset from which one can benefit or use its proceeds for any charitable purpose as long as it exists. In fact, the vast majority of Hanafi scholars regard Waqf as "taking the corpus of any property out of ownership of Allah, and dedicating its usufruct to others". In the language of the contemporary law, Waqf" does signify the usufructuary donation, made in favor of a beneficiary, with a view to fulfillment of some pious aim or some projects of general utility and which entailed the legal sequestration of gift or donation, whether this donation included, did not include, a usufruct". It is also defined as "non-negotiable property dedicated to charitable purposes, once for all", or as "the permanent dedication by a person professing the Musalman faith of any property for any purpose recognized by the Musalman law as religious, pious or charitable".

(1) This paper is expected to add to Dr. M.A. Mannan’s earlier following major works, which author has revisited in writing this paper:
i. Islamic Economics: Theory and Practice (revised edition) published by Hodder and Stoughton, Mill Road, Dunton Green, Sevenoaks, Kent, U.K. (1986). This Award-winning book was first published in Pakistan (1970), reprinted over 20 times, and translated over nine languages.
iii. The Frontier of Islamic Economics, published by Idarah-i-Adabiyat-Delhi, 200 Qasimjan Street, Delhi-7, India (1984).
viii. Cash-Waqf Certificate- An innovation in Islamic Financial Instrument, Global Opportunities for Developing Social Capital Harvard University, Cambridge, MA, USA, October 1, 1999

The author is Founder Chairman of Social Investment Bank Ltd., Dhaka, Bangladesh. Here, the words “Islam” and “Muslim” are used interchangeably.
Following up these definitions, we can say that "by Waqf (pl. Awqaf) is meant a thing which, while retaining its substance, yields a usufruct of which the owner has surrendered his power of disposal with the stipulation that the yield is used for permitted purposes. Waqf really means, however, the legal process by which one creates such an endowment (synonymous with tahlis, tasbil or tahrin or tahrin)."

1.3. Waqf, Sadaqa and Gifts

From the very nature of its transaction, Waqf may be seen as a kind of Sadaqah. But what distinguishes it from Sadaqah is that in the case of Sadaqah, the substance is transferred and also the profits but in Waqf, the substance is retained but the profits go to the beneficiaries of the Waqf. Similarly, the difference between Waqf and gift is that, in the case of a gift, the substance is transferred from one person to another person and without consideration but a Waqf is for a consideration, the same being religious merit. Clearly, Waqf revenue cannot be regarded as Zakat which is obligatory and its eight heads of expenditure are specified in the Holy Qur'an.

1.2. WAQF AND TRUST

It should be noted here that a Waqf must also be distinguished from Trust. In a Waqf, the property is vested in Allah, while in a Trust it is vested in the Trustee. Unlike a Waqf, in a Trust, it is not necessary that a Trust must be perpetual, irrevocable or inalienable or made with a pious or religious motive. Waqf can, however, be created in favour of both affluent and indigent alike or in favour of family or indigent exclusively, although pious and religious motive becomes predominant concern of Awqaf endowments. Thus, according to all schools, a Waqf may be created for the benefit of any person or class of persons or for the service or well-being of humanity, although a founder may make his own maintenance for life a first charge on the income of the Waqf. All the schools of Shari'ah have, however, stressed the importance of the creation of a Waqf which had played an important role in ameliorating poverty and in furthering learning in the past and it is expected to play its role in the future provided this institution is re-activated and its management is placed on the sound footing.

The very development of Waqf as an Institution in Islam and its legitimacy can be deduced from the Qur'anic repeated "exhortation at a number of places, and in different ways and contexts to render voluntary economic assistance to the fellow-beings and the poor" as well as from various
traditions of the Prophet (Peace be upon him). In fact, the positive evidences of the legitimacy of the Institution of Waqf can implicitly be found in the Qur'anic verse in Sura Al-Imran which says: "You shall not receive godliness unless you spent out of that which is dear to you". Again the Prophet (Peace be upon him) is reported to have said that "a man's work ends upon his death except for three things: (a) contribution to knowledge, (b) on-going charity, and (c) faithful child praying for him". Here the Institution of Waqf is seen by scholars as an “on-going charity”.

2.0. THE INSTITUTION OF WAQF: FIVE KEY ROLES AND OPERATION FROM HISTORICAL PERSPECTIVE

As stated earlier that the institution of Waqf owes its origin to the traditions of the Prophet (Peace be upon him) mainly due to the remarkable impulse for charitable deeds which are characteristics of Islam. This institution assumes its rigid forms only after the death of the Prophet (Peace be upon him) during the second century of Hijra.

The most significant contribution made by the institution of Waqf is in the area of education and research, although its indirect contribution to promoting of the cause of Islam cannot be underestimated.

Indeed, from historical perspectives, the institution of Waqf played a significant role mainly in the following five areas both in direct and indirect ways:

(a) Promotion of Islamic Ideology
(b) Promoting Education and Research
(c) Supporting Development of Medical Science
(d) Supporting Development of Art and Architecture and
(e) Helping Recovery of Islamic Values from Colonialism.

(a) Promotion of Islamic Ideology

This institution helped promote the cause of Islamic ideology through support of mosques and mosques centered activities such as holding religious meeting and dialogue. The role of Waqf-supported mosque activities can hardly be overestimated in the face of the widespread devastations of the Mongol Wars, resulting in destructions of libraries, the crusades and European colonialism of Muslim countries. Their activities enables succeeding Muslim
generations particularly at the grass-root level of Muslim society to preserve the Islamic values and injunctions. In fact “Islamic beliefs were inculcated and internalized by recitation of relevant Quranic verses and repetition of popular phrases such as those praising the virtue of relying on God and emphasizing God’s possession of all that is, in heaven and earth and the return of everything unto Him. Guided by this system, Muslims held together the political reins of a vast empire, started an efficient postal service, struck coins (the golden dinar and silver dirham), built roads, canals, palaces, and cities, and left behind magnificent landmarks. Muslims set up professional and trade guides which cooperated in various parts of the Islamic would and organized and developed their skills in each locality. Their artifacts fill Islamic museums in the Muslim capitals, and their international trade left some traces in European culture, including the terms traffic and tariff.1

(b) Promoting Education and Research

This institution also helped further the cause of Islamic education and research through establishment of schools, Madrasahs and public libraries. We have evidence to support that Waqf resources were used not only to construct libraries, reading rooms, but also for residential quarters of the scholars, as well as for other research activities such as copying services by professional copies, centre for decorative arts etc.

In an attempt to encourage research, translation programme was supported out of the revenue of the Waqf properties. A large number of books was either written or translated by Muslim scholars and scientists with the support of the Waqf fund.2 Researches using empirical and scientific methods were encouraged and supported.

(c) Supporting Development of Medical Science

The Waqf supported fund encouraged the development of medical science by providing facilities for better public health and education through establishment of hospitals, medical schools, and by encouraging development of local medicine and chemistry. Waqf revenues were used not only for the development of human medicine and health care but also for veterinary medicine.

---

2 Abdel Malik al Sayed: The Social role of Waqf; unpublished-Arabic paper-presented at the Waqf Seminar organised by IRTI, Jeddah, 1984.. This paper has been translated by Mr. A. Qadir Deria into English in a summarised form, unpublished IRTI, 1964.
Students used to learn medicine and its application by attending these hospitals. Medical education was not confined only to medical schools and hospitals but also offered in mosques and universities such as Azhar in Egypt. Even as early as 4th Century of Hijra, hospital for the treatment of children was built in Istanbul out of the Waqf fund. In Spain hospital facilities were made available to both Muslims and non-Muslims alike.³

(d) Supporting Development of Art and Architecture

The Waqf-fund helped establish the Centre for Decorative Arts particularly during the Abbasid's period and contributed immensely toward the growth of Islamic architecture particularly in the construction of mosques, schools and hospitals. The fact is that "functions, schools, shops, hostels, hospitals, caravanserais, baths, street fountains, even warehouses acquired great facades and decoration and the latest and most sophisticated techniques of construction were used, as for instance in the spectacular caravanserais of Anatolia in the thirteenth century. The reasons for this development are to be sought in a number of social and religious characteristics of the Muslim world: the importance of 'work' next to faith which gave particular stress to social activities, the power of an urban bourgeoisie with its own taste and needs, the institution of the Waqf which gave religious sanction and freedom from confiscation' to many humanitarian and economic institutions, and the tendency of the medieval period to invest in construction and land rather than in trade or industry.⁴

(e) Helping Recovery of Islamic Values from Colonialism:

The Waqf-fund supported Madrasahs, schools, and mosques in different parts of the Islamic world played an important role not only in containing the cultural invasion of British colonialism in India, Dutch colonialism in Indonesia and French colonialism in Arab and Maghreb countries but also helped recovery of Islamic culture and language particularly of Arabic language.⁵ The Muslim University at Aligarh, India, Azhar University, Cairo, the Supreme Islamic Council in Palestine which built many schools and appointed its Mufti, are some of the notable examples of institutions that helped to mobilize the Islamic intellectual resources against foreign culture during different period of Islamic history.

It may be noted here that the first *Waqf* in Islam was Quba' mosque near Madina which was established by Prophet Muhammad (Peace be upon him). The second *Waqf* was the Prophet's mosque in Madina - Dar Al-Hijra, which was built by the Prophet (Peace be upon him) and also reported to have made the first *Waqf* for charitable purposes after he took over the possession of the seven gardens of one Mukhairaiq in accordance with his desire and endowed them as such. Mukhairaiq who was a jew was reported to have been killed while he was fighting on the side of the Muslims in the battle of Uhud. This was followed by the endowments of Umar and other companions like Abubakar, Osman, Ali and others.

During the Abbasid’s the waqf property and revenues were left outside the treasury department and entrusted the Qadi with the supervision. A special Bait -al - Mal (treasury) was instituted during the Abbasid period.\(^{(3)}\) Again, in the Mamluk period the Awqaf properties were divided into three groups: (a) “Abbas”, comprising extensive estates in Egypt used mainly to keep up mosques; (b) “Awqaf Hukmiya”, comprising town lands in Misr and Kahira intended mainly for the two holy cities (c)“Awqaf Ahliyah” or family endowments. Each of these categories had its own administrator.

Although the waqf played a significant role in social development of the Muslim communities throughout Islamic history, we have evidence to support that the waqf did not always produce the desired result. On the contrary, the study of actual *Waqf* administration provides many valuable details not only about its uses but also its abuses. Mismanagements and embezzlements of *Waqf* funds were not rare. As a result, various administrative strategies were adopted to achieve the objectives for which the *Waqf* was made.\(^{(4)}\) Thus, varieties of agreements were created not only for the letting of *Waqf* estates but also for granting perpetual leases, adopted to the institution of *Waqf*. Since the 16th century, in contrast to temporary leases of three years, perpetual leases were granted in some cases to encourage personal incentives in the management and keep up the *Waqf*, as in some cases, the condition of the *Waqf* possessions deteriorated so much that the revenues were not even sufficient for the necessary maintenance of the properties, not to speak of benefiting the poor, or achieving the objectives for which the original endowment was made. Under these perpetual leases, particularly in Turkey and Egypt, tenant used to pay lump


sum rent so that right of ownership may not lapse. Sometime rental income was also linked to the value of the real estates in Syria and Egypt.

Perhaps Turkey which has one of the longest history of Awqaf administration reached its peak during the Ottoman era, where Awqaf properties were estimated to have three quarters of the whole arable land in 1925. A Central Administrator of Awqaf was re-established after its abolition in 1924. Recently, a Waqf Bank and Finance Corporation has been set up to mobilize the Waqf resources and to finance various types of joint venture projects.

It is not out of place to mention here that the need for reform in many Muslim countries arises due to the fact that about one half (1/2) of the cultivable land in Algeria in mid nineteenth century was dedicated to Waqf. Similarly, in Tunis one third (1/3) (1883), in Turkish empire (3/4), (1928), in Egypt (1/7) (1935), in Iran about 15% (1930), of the whole arable land were endowed to Waqf. The accumulation of such extensive possession of land under waqf had prompted many countries to introduce many reforms. Thus, Egypt enacted a law in 1946 under which all family Waqfs were made temporary. Then, in 1952, a new decree was issued to the effect that no private Waqf can be created except for charitable purposes. Egypt which has a long history of Waqf management also allowed bank credit as a subject of Waqf endowment. In Syria, the question of family Waqf was prohibited in 1949 but, in Lebanon it was allowed but limited to two generations in duration after which ownership reverts to Waqif or heirs. Therefore, the Waqf was not considered to be an irrevocable legal transaction. Furthermore, several reforms were introduced both in Tunisia and Algeria during the French colonial rule where the legal position of land was brought completely under French law and the sale of Waqf (habous) was recognized in practice\(^{(5)}\). In middle Asia at least 10% to 15% of land came under Waqf in the Muslim majority areas at least eight hundred years ago, this vast area of land came under the state during the Communist rule in former Soviet Union. In India, the statutory control of Waqfs started with the passing of the Musalman Waqf Act of 1923 during the pre-partition days. During the post-partition era, several acts were enacted and ordinances promulgated in Pakistan which was adopted in Bangladesh also. Though the Chief Administrators has assumed the administrative control and maintenance of Awaqf properties in Pakistan as well as in Bangladesh, in many cases, the income from many small and scattered Awaqf properties are too insufficient to upkeep Waqf properties. While permanent lease is giving insufficient income to maintain the property,
family *Waqf* has become one of the sources of litigation particularly in Bangladesh. This calls for necessary reforms in the management and administration of *Waqf* properties. Although there is a general tendency to have a state control over the management and administration of *Waqf* properties, there are notable exceptions (e.g., Uganda, South Africa, Philippines) where *Waqf* is still designed as a purely private managed institution. This brief survey shows that there is considerable flexibility and scope for further reform in the development, management and administration of *Waqf* properties in Muslim countries as well as in Muslim communities with special reference to Cash-*Waqf*.

### 2.1. EIGHT PREDOMINANT RULES OF THE SHARIAH GOVERNING WAQF.

Without going into details, it should be possible to identify at least eight predominant rules of the Shariah governing Waqf.\(^6\)

They are as follows;

(a) Legal ownership

(b) Perpetuity

(c) Permanent object

(d) Lawful and clear purpose

(e) Irrevocability

(f) Public interest

(g) Public control

(h) Infidelity

(a) **Legal ownership**

The founder should have an unrestricted legal ownership in the object of the endowment. He must also be an adult and a free-man. In Islam, this legal ownership has to be seen in the context of the Shariah. That is, Islam allows private ownership of property, but subjects the owner to restrictions preventing him from using the property as a tool of exploitation. His ownership is therefore, relative, not absolute.\(^7\)

---


(b) Perpetuity

The Waqf must be made in perpetuity. It is said to be inalienable, although inalienability of the Waqf was disputed, as Prophet (Peace be upon him) was reported to have sold things which have been made Waqf.

(c) Permanent Object

The Waqf is primarily concerned with real estate of permanent nature. There are, however, differences of opinion as regards movables as objects of endowment. While some of the Hanafis do not regard the movables as object of Waqf, the majority like the Shafis and Malikis accept movables as object of the endowment. But foodstuff, clothes and other articles of consumption are considered to be the subject of Sadaqa, not of Waqf.

(d) Lawful and Clear Purpose

The purpose of the Waqf must be lawful from the viewpoint of the Shariah. It is imperative that the founder must state clearly the objectives for which this endowment is made. Two kinds of endowments are distinguished: one for public good (i.e., mosques, schools, and madrasahs, hospitals, waterworks, bridges, etc.) and another for family endowment (i.e. children or grandchildren). The ultimate purpose of such a foundation is to help the poor and is intended to serve the greater interest of the community. The founder cannot, however, create an endowment in his favour, although Abu Yusuf recognizes the owner's right to do so.

(e) Irrevocability

The Waqf is generally considered to be an irrevocable legal transaction. There is however, difference of opinion. On the question of irrevocability, some Hanafis including Abu Yusuf, Shafi and his school are of the view that the Waqf is an irrevocable legal transaction. Thus the founder's right of ownership ceases, once the Waqf is made. This view is not shared by Abu Hanifa and the Maliki's. Because they hold the view that the founder retains the right of ownership although he is not expected to exercise his right to the detriment of the larger interest of the community. Lastly, according to some Shafi's and Ahmad B. Hanbal, the beneficiaries are considered to be the real owner.
(f) Public Interest
As noted earlier, the institution of Waqf is essentially for the benefit of the larger members of the community. The concern for the poor is one of the significant cornerstones of the institution of Waqf. As such the Shariah does not recognize pursuing of the private gains through the institution of Waqf.

(g) Public Control
It follows that the overall supervision and administration of Waqf remain in the hand of the state, the first administrator is usually appointed by the founder, although the Maliki’s do not endorse such appointment by the founder. The Qadi has the right of supervision as per terms and conditions of the Waqf. After deducting the maintenance cost, the surplus revenue goes to the beneficiaries.

(h) Infidelity
If the founder abandons his Islamic faith, the endowment becomes invalid and it passes on to his heirs, although endowment by the non-Muslim is acceptable, if the purpose for which the endowment is made is compatible with the principles of Shariah.

In the context of historical role performed by Awaqf, it is necessary to discuss securitization of Islamic Modes of Financing Properties.

3.0. Securitization of Islamic Voluntary Sector: Financing of Awaqf Properties

3.1. Key Methods and Modes of Financing Techniques: An overview
In the context of 21st Century, Islamic Banks must work for Securitization of Islamic Voluntary Sector. Islamic Bank should look for developing suitable methods and modes of financing Awaqf Properties and financial instruments with different sets of rules in conformity with Shariah: It will eventually lead to development of Islamic Voluntary Sector, Social Capital Market operation for raising capital financing Awaqf Properties. The value of all the Bonds and certificates as the case may be can be guaranteed by Islamic Banks against surrender of the instrument on maturity.
(A) Key Methods

Let us now review some of the major methods prescribed by jurists for financing Awaqf Properties:

(a) Long lease (Hikr) Right:

The first method for investing a Waqf landed property prescribed by jurists is the long lease (Hikr) right. This right entitles the lessee to a long lease of the landed property concluded under the judge's care which pays to the Waqf authority a certain sum of money that is near to the value of the land, with an annual tiny amount to be paid to the Waqf authority by the lessee or the one to whom this right is delegated, provided that the lessee be given the right to plant and to build on it and any other way of utilization. The long lease (Hikr) right is transferable through purchase and sale is transferred to heirs. The purpose of this contract is to benefit by investing the land. There is a historical evidence that Hikr (long lease contract) has been known since mid third century Hijri. If we look through this contract, we find that Awqaf have benefited from it as they have procured a relatively high amount of money that is approximately equal to the value of land and in advance. In return, it has actually sold the right to utilize the land to the lessee and for a very long period of time (i.e. 40 to 50 years). The lessee, in addition to that great sum of money, pays an annual sum of money that can only be a mere recognition. Awqaf has obtained ready cash money in return for selling the long lease (Hikr) right, but actually it declined its right to utilize this property later. This enormous amount of money that it received for selling this Hikr right and which is near to the value of the property can be utilized by the Awqaf for financing other Awqaf properties. It should be noted that as the Hikr right can be inherited, it is not the same as the right of utilization because the letter ends with the death of the utilizer, and it is not the same as the different types of the rights of sustenance which commit a certain property to sustain another contiguous property. The Hikr or long lease right is of a peculiar nature. Weighing the advantages and disadvantages of Hikr method, we can see the advantage clearly in that it enables the Awqaf to get a sum of money which is almost the equivalent to the value of Waqf overcoming the problem of the Waqf irrevocability from Islamic legal point of view.8

8 Dr. Mohammad Anas Al-Zarqa some modern means for the Financing and investment of Awaqf Properties in “Management and Development of Awaqf Properties proceeding of the seminar held on 04-16 August 1984, Islamic Development Bank (IDB), Jeddah.
(b) Istisna (construction) contract

An Istisna’ (construction) contract refers to an agreement with body that erects the building on the Waqf land. As known, the price of the Istisna’ (construction) contract can be deferred. This deferred price will be paid in annual installments with the value of each being less than the rent to be received while leasing the building. In this way Awqaf can be reassured that it will find enough money available to timely pay the installments of the building price. As a consequence of their contract, the land is basically owned by Awqaf and the ownership of the building is transferred to Awqaf after concluding the contract, if price of the building is refunded gradually out of the sums collected as rent.

(B) Key Modes:

(a) Floating of Muqaradah or Mudarabah Bond (specific and general)

Muqaradah Bonds can be floated by Islamic Banks for raising capital for financing Awaqf properties. Mudarabah or Qirad (Trust Financing) shall mean an agreement between two parties under which one party provides capital and the other party (the entrepreneur) contributes his skill, efforts and work for an agreed percentage of profit. In the event of loss, the owner of the capital shall bear loss unless such a loss arises as a result of infringement, negligence or breach occasioned by the other party (the entrepreneur). Mudarabah / Bond Certificate means a certificate of definite denominations issued to the subscriber of the Mudarabah as the case may be acknowledging receipts of money subscribed by him. Mudarabah Fund means a fund raised through floatation of Mudarabah certificate and/or Mudarabah deposit account of an Islamic Bank.

Thus under Mudarabah arrangement Awqaf give up the property they own to a financier who would then, with Awqaf permission, build a building on' this land. A capital is raised through floating of Mudarabah Bond / Certificates. The building is then leased with the rent divided between the financier and the Awqaf on the premises that Awqaf provide the land and the financier erects the building on this land on condition that the rent received from leasing the building shall be Proportionally divided between them. This formula is similar to what Imam Ahmed Ibn Hanbal advocates to and approve a formula for Mudarabah contract.

The term "Muqaradah” has been taken from the Fiqh concept from its synonym “Mudarabah” which s commonly used by the Hanafi and Hanbali schools of thought. But the Maliki and Shafei
call this transaction 'Qirad'. It is also said that 'Qirad' is derived from “Muqaradah” which is ‘equality’ because they are both equal in the profit or because the capital is from the owner and the labour is from the worker. Mudarabah or Muqaradah means an agreement between two parties by which one of the two parties provides the capital for the other to work on condition that the profit between them is by a joint share of it in the total. It has been authoritatively dealt with in several books of Fiqh and need no further elaboration.

(b) Floating of Musharakah Certificate (diminishing partnership)

Musharakah Certificate / Bond can be floated by Islamic Banks for diminishing participation for development of Awaqf properties. Musharakah (Participation Financing) means an agreement whereby one party provides a part of the capital while the balance is provided by the other party. All partners are entitled to manage the project. Profits are shared according to agreed ratio, but losses are shared as per capital contribution of the partners. Musharakah partnership may assume the character of diminishing partnership.

Musharakah certificate mean a certificate of definite denominations issued as the subscriber of the Musharakah may be acknowledging receipts of many subscribed. Therefore, Musharakah fund means a fund raised through flotation of Musharakah certificates and /or Musharakah deposit of an Islamic Bank.

Thus under mode of Musharakah - Awqaf provide the land and the financier erects the building. The value of the land and that of the building are estimated from the beginning. The financier and the Awqaf become partners in the building and the land in the same ratio of the estimated two values. The building is leased and the rent will be shared according to this ratio. Thus this is an exchange of a part of the land for a part of the building according to certain conditions. This may be acceptable from Shariah point of view as long as the land and the building are both property and Awqaf give up a part of the land and in return it gets a part of the building.

3.2. Floating of Cash Waqf Certificate and Social Investment Bank Ltd. (SIBL)

The Cash-Waqf Certificate is an innovation in Islamic Social Finance and a strategy for global mobilization of perpetual social capital. Generally, Waqf is known to be related to endowment of any property of permanent nature by a Muslim for any purpose recognized by Islamic law as religious, pious or charitable. The use of “Cash Waqf” as recognized in Islam can be traced
during the Ottoman era as well as in Egypt. But Cash Waqf as a financial instrument is indeed a new product in history of Islamic Banking. The Cash-Waqf supported activities can be divided into social and private good and provide a basis for interesting economic analysis of resource allocation in public finance.

The floating of Cash-Waqf Certificate or Bond by Social Investment Bank Ltd., Dhaka, Bangladesh can help monetizing Islamic Voluntary Sector, accumulation of Social Capital and National Wealth, implementing strategic social investment program that reinforces family values. Cash-waqf Certificate provides new opportunities to transfer liquid asset and make connection with one another on a global scale and opened up new possibilities for Social Capital Market.

**Operation of Cash Waqf Certificate:**

In the voluntary sector, SIBL has also introduced Cash Waqf Certificate, a new product for the first time ever in the Banking history in 1997 so that a new beginning can be made for a participatory economy. This scheme has been well received by the public in general for its unique feature. The guidelines for operation of this scheme are stated below:

- Cash Waqf is an endowment in conformity with Shariah. Bank manages the waqf on behalf of he waquif.
- Waqfs are done in perpetuity and the A/C is opened in the Title given by the waquif.
- Waqf have the liberty to choose the purpose(s) to be server either from the list of 32 purposes identified by the bank covering (a) family empowerment credits (b) Human resource development (c) Health and sanitation and social utility services or any other purpose(s) permitted by shariah.
- Cash waqf amount earns profit at the highest rate offered by the Bank from time to time.
- Cash waqf amount remain intact and only the profit amount is spent for the purpose(s) specified by the waquif. Unspent profit amount automatically added to waqf amount and earn profit to grow over the time.
- Waquif can also instruct the Bank to spend the entire profit amount for the purpose specified by him/her.
• Waqif have the opportunity to create cash waqf at a time. Otherwise he / she may declare the amount he/she intends to build up and may start with minimum deposit of Tk. 100/- (one hundred ) only. The subsequent deposits may also be made in hundred or in multiple of hundred.

• Waquif have the right to give standing instruction to the bank for regular realization of each waqf at a rate specified by him/ her from any other a/c maintained with SIBL. Cash waqf is accepted in specified endowment Receipt voucher and a certificate for the entire amount is issued as and when the declared amount is built.
### Showing the growth of Cash Waqf Accounts and Deposits

(Bangladesh Taka in thousand)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Nos. of A/C</td>
<td>21</td>
<td>215</td>
<td>457</td>
<td>888</td>
<td>991</td>
<td>1052</td>
<td>1,089</td>
<td>1,156</td>
</tr>
<tr>
<td>Amount deposited (Taka)</td>
<td>39</td>
<td>1,249</td>
<td>3,881</td>
<td>5,445</td>
<td>7,124</td>
<td>8,130</td>
<td>9,222</td>
<td>12037</td>
</tr>
</tbody>
</table>

(Tk. 60=1 US$ as on 31-12-2005)

**Source:** Annual Reports of Social Investment Bank (SIBL), 1998 to 2004
Conversation of small and scattered Awaqf into Cash Waqf certificate:

Since Cash Waqf permissible in Shariah, it should be Islamically legal to sell a Waqf property and use cash collected buying cash Waqf certificate for investment by Islamic Bank, the income of which can be used in spending on the original Waqf expenditure. Many Awqaf authorities have numerous real estates scattered in the same country. Each of these real estates is too small to be profitable. In such cases, these scattered Awaqf estates may be sold for cash for purchase of cash waqf certificate to be invested by an Islamic Bank. The profit can be distributed value of Awaqf.

4. Agenda for Action:

(a) Floating Murabah Bond and Mushrakah Certificate

It is felt that Indonesian Islamic Banks should take initiative either individually or jointly in designing and floating Mudarabah Bond and Mushrakah certificate for raising capital for development of specific Awaqf properties in Jakarta and other major cities on commercial lines.

(b) Floating Cash Waqf Certificate and Mobilization of Cash Waqf Fund

During my presentation at the Second Harvard University Forum on Islamic Finance in 1998, it was suggested that Islamic Banks in the 21st Century should make an effort for global mobilization and creation of **Cash-Waqf for US$ 1 billion by 2010 AD** mainly through sale of Cash Waqf Certificate to support development of human and Social Capital infrastructure of the Islamic world in particular and disadvantaged people of the world in general. The challenge of bankruptcy of the Muslim World in the field of education, science and technology, health and research as well as the level of general economic deprivation of the masses have reached at level of global crisis. The lack of human and social capital infrastructure, colonial era bureaucratic set-up, pervasive corruptions, lack of political, social will and national commitment in the field of economics, education, health and research have placed more than half of one billion Muslims in the darkness of illiteracy and ignorance and poverty.

In this context, on a national scale, Indonesian Islamic Banks should introduce Cash Wash Certificate and Mobilize Cash Waqf Fund to support human and social infrastructure of Indonesia in particular and Islamic Ummah in general. Each of the local Islamic Banks, Islamic Voluntary
Organizations or Non-profit Trust and Foundation may volunteer to act as an agent to sell Cash-Waqf Certificates for local and national mobilization and raising Cash-Waqf fund with a target.

(c) **A Survey of Awaqf Properties**
A survey should be carried out for preparing not only an inventory of Awqaf properties Indonesia but also for classifying social and private goods, supported by Waqf fund.

(d) **Supporting Study of Islamic Economics**
Joint efforts are needed to mobilize the Waqf to support the study and teaching of Islamic economics, banking and financing, at Islamic universities in Indonesia and development of Islamic curriculum in all branches of knowledge instead of floating scholarship for imparting inappropriate education.

(e) **Forming a Confederation of Islamic Voluntary Organizations:**
Since the purchase and sale of Cash Waqf Certificates provide new opportunities to transfer liquid asset and make connections with one another on a national and global scale and opened up possibilities for greater variety of pluralism in the expression of Muslim identities and reconstruction Islamic Ummah, and in the services of mankind as a whole or Non-Government Organizations (NGOs), Islamic Development Bank, local Islamic Banks, Indonesian Islamic Economist Association may initiate formation of confederation of Muslim Voluntary Organization by holding a meeting of the Volunteers.

5. **Conclusion**
Taken all-in-all, it can safely be said that the institution of Waqf has played a positive role in social, economic and moral development of Muslim societies over time. The administrative diversities and different uses of their revenues provide an element of flexibility in introducing needed reform in our time. This institution which reconfirms the role of "Ijtihad", is capable of dealing with modern problem of public finance. If properly organized and supervised, it can provide a sustained source of transfer payments for eradicating sufferings of the poor in the Muslim countries. We need more analytical study in dealing with problems of income and expenditure out of Awqaf properties. For, a good act may produce bad results, if macro-economic analysis is not linked.
The Cash Waqf Certificate Scheme is an epoch making event. As this Cash Waqf is arranged by
the Bank, it has its transparency, liquidity and accountability. It is a perpetual deposit and its profit
can be invested in a wide spectrum of social investment. This will certainly pave the way for a
new dimension of social development. Cash-Waqf fund can be spent for the welfare of Non-
Muslim too, thereby paving the way of serving the humanity at large.
Appendix- I :
Specimen of Cash Waqf Certificate of SIBL, Bangladesh, 1997

In the name of Allah, the Most Gracious & Most Merciful
The prophet (SM) is reported to have said that a man’s word ends upon his death except for three things (Contribution to Knowledge (b)
On-going charity and (c) Faithful child.

SOCIAL INVESTMENT BANK LIMITED
(A Three Sector Unique Model Joint Venture Bank)
Working Together For A Caring Society

CASH-WAQF CERTIFICATE

(SAMPLE)

(Issued in pursuance of the clause Nos. 3, 18 & 3.32 of Memorandum and Articles of Association of the Social Investment Bank Ltd. as approved by Bangladesh Bank)

This is to certify that

S/D/W of

of (address)

Has/have made a Cash Waqf of Tk.

(in words)

for enduring contribution to society in the field of

Certificate No.

Cash Waqf A/C No.

Branch

Date of Issue

Branch Incumbent

Incharge, Voluntary Sector

Managing Director
APPENDIX- II

ACT OF MUQARADAH BOND NO. 10 OF JORDAN 1981

Under the Jordanian law Muqaradah. Bonds are:

(1) Documents of definite value issued in the names of their owners against funds they pay to the owner of the project in question with the object of executing the project, utilizing it and making profits.

(2) Bond owners acquire a definite proportion of the project profits, this proportion being set out in the bond issuance publication.

Muqaradah Bonds neither yield interest nor entitle owners to make claims for any fixed annual interest rate.

A look at this definition shows the following:

1. That the value of amounts by which bonds are issued should be definite and known beforehand.
2. That such amounts should be linked with the issue of bonds allocated and related to a specific project.
3. That the proceeds of the issuance of such bonds should be directed to the implementation of an income-yielding project.
4. The Bonds participate in a proportionate share of the total net profits of the investment according to the terms detailed in the issuance publication.
5. These bonds do not carry any kind of interest and their owners cannot, nor are they entitled to make claims for any specific annual interest.

Reproduced from the article Al-Muqaradah Bonds as the basis of Profit-sharing by Waleed Khaiyrullah in Management and Development of Awaqf Properties proceeding of the seminar 04-16 Aug, 1984, IDB, Jeddah.
MINISTRY OF AWQAF, ISLAMIC AFFAIRS AND HOLY PLACES MUQARADAH BONDS ALLOCATED TO AWQAF PROJECT NO. ____________________________

MATUREY _______________________

for the value of ______________________ Jordanian Dinars

Issued in virtue of Muqaradah Bonds Act No. 10 for the year 1981

This is to certify that Mr. / Mrs. ____________________ allocated ______________________ is the registered owner of _________________ Muqaradah Bonds/extinction ______________

The total nominal value being ________________________________

The Ministry of Awqaf, Islamic Affairs and Holy Places promises to pay to the owner of these Bonds the full nominal value with profits according to terms shown overleaf. The Government has undertaken to honour the full nominal value of the bonds in the fixed time.

Amman, this __________________ Signature __________________ Signature
Practical case showing financing of a construction on a Waqf by Muqaradah Bonds.

Basic Assumptions

1. Existence of Waqf land suitable for constructing commercial shop and office for various purposes.
2. The land on which the construction is to be made is Waqf and cannot be owned nor can transfer of its ownership be effected.
3. It should be suited on the basis of the income it may yield if it were occupied by the building.
4. The area of the proposed project shall be 10,000 square metres which there shall be 20 stores with an area of 40 square metres each, the remainder being left for various kinds of commercial offices.
5. Expected estimates show that the cost of construction per square metre is 100 Dinars, that is, the total cost of the project shall be 1,000,000 Dinars and shall be spent in the first year.
6. It is assumed that the area of the 20 stores is 800 square metres and that 120 square metres are allocated for corridors and services, the total area for offices thus becomes 9,080 square metres. Assuming that what is allocated for corridors and services constitutes 20% of this area, the net area after deducting the built up area thus becomes equivalent to 7,264 square metres.
7. It is assumed that the return to the project from rentals is as follows:
   a. Goodwill for stores at an average rate of 5,000 Dinars per store.
   b. Annual rentals per store on the basis of 50 Dinars per square metre = 2,000 Dinars.
   c. Annual rental per square metre from offices=35.
8. There is an offer from financiers on the basis of Muqaradah Bonds for the project, so that 25% of profits be reserved for bond holders as return for financing; the balance of the profits (75%) shall be used for bond extinction in a periodic way (annually).
9. The construction work shall last one year and the building shall be fully occupied upon its completion.
10. Returns from rentals are calculated on a net basis and so there shall be no other expenses.
JORDANIAN ACT OF MUQARADAH BOND
NO. 10 FOR THE YEAR 198110

Article 1
This act is named "Act of Muqaradah Bonds for the year 1981" and comes into force one month after being published in the Gazette.

Article 2
(a) "Muqaradah bonds"11 mean the documents of definite value issued in the name of their owners against funds they pay to the owner of the project in question with the object of executing the project, utilizing it and making profits.
(b) Bond owners acquire a definite proportion of the project profits, this proportion being set out in the bond issuance publication.
(c) Muqaradah bonds neither yield interest nor entitle owners to make claim for any interest rate.

Article 3
Muqaradah bonds can be issued to the following organizations:
(a) The Ministry of Awqaf, Islamic Affairs and Holy Places.
(b) Public institutions financially independent.
(c) Municipalities.

Article 4
The project the Muqaradah Bonds are issued for financing should be:
(a) Economically feasible.
(b) Thoroughly independent from other projects belonging to the issuing authority.
(c) Administered financially as an independent unit so as to be manifest, by the end of the fiscal year, the profits meant to extinguish bonds and to distribute dividends according to the rate defined in the issuance publication.

Article 5
The Issuing body may hold agreements with the bank operating on the basis of Islamic Sharia (law) and the specialized financial institutions to administer the issuance of Muqaradah Bonds, their coverage, and marketing in return for defined charges paid from the issuance proceeds.

10 The Arabic version, rather than this English is the official one.
11 A sort of non-interest bonds.
Article 6 A publication is arranged for each issuance including, inter alia, these points:
(a) Nominal value of issuance.
(b) Description of the project the issuance proceeds would be used to finance.
(c) Project feasibility study.
(d) Defining the grace period required for the project execution.
(e) The rate of annual profits distribution between bond extinguishing and dividends due to bonds' owners.
(f) Dates of opening public subscription and its closure as well as payment of dividends and extinguishing of bonds.
(g) The nature of the bonds: whether belonging to holder, or registered in the name of their owner.
(h) Category (or categories) of bonds and their divisibility.
RESUME

Prof. Dr. M. A. Mannan*

Over 43 years' experience of money, banking, finance, economic planning, civil administration, teaching, and research in several universities and countries around the world including Australia, Bangladesh, Pakistan, Papua New Guinea, Saudi Arabia, U.K. and the USA; a pioneer in the field of Islamic Economics, Banking and Finance; Research Professor, King Abdul Aziz University, Jeddah, Saudi Arabia, (1978-84); Commissioned as Consultant, Islamic Development Bank (1978) and Asian Development Bank, Consultant in the areas of Development, Monetary Economics, Public and Islamic Finance; Visiting Professor/Scholar, Georgetown University, USA in early 80s*. Served about 13 years at the highest professional position of Senior Economist/Chief Economist in Islamic Development Bank (IDB), Jeddah, Saudi Arabia (1984-96). Founder Chairman: a) Social Investment Bank Ltd. (SIBL); Targeting Poverty, approved in 1994, b) Bangladesh Social Peace Foundation (BSPF) (A Non-profit Trust) and c) Holistic Family Health Clinic (HFHC) (A Non-profit Organization), Dhaka, Bangladesh; Started career as University College Professor and as a Member of the then East Pakistan Civil Service and Central Superior Service of Ex-Pakistan in 1963-64; served as Asst. Financial advisor and Asst. Chief of Planing Commission of Ex-Pakistan in early’60s.


*Dr. Mannan, born in 1938, a Bangladesh national returned to his country after living 33 years abroad taking premature retirement from Islamic Development Bank, in 1996: married with two children: Wife, Nargis Mannan, MA, International Award winning Copper Artist and Director, Social Investment Bank Ltd. Daughter, Dr. Reshmi Mannan, BSc.(LSE), Msc (Oxon) MS (NY), Ph.d. (USA): Son, Dr. Ghalib Mannan, M.B.Bch.(UK), MD (USA) Fellow (USA):

Mailing Address: “Megh Mallar”, 97 Suhrawardy Avenue (Biswa Road), Baridhara, Dhaka- 1212. Tel: (880-2) 8811241 (Res.), Tel & Fax: (880-2) 8821654(Res), E-mail: cmsibl@bdonline.com (Res).