

## Waqf as Administered in Bangladesh: A Critical Review

Shahin Zohora, PhD<sup>1</sup>

*Abstract: This article is designed to go through the prevailing legal provisions relating to waqf administration and management in search of updating from its effectiveness considering the present day situation. The purpose of this article is to identify the shortcomings and lacunas of the present Waqf law enforced in Bangladesh, to examine the suitability of Waqf legislation through a comparative study between Waqf laws in Bangladesh and the Sub-Continent. There is a critical analysis over the Amendment Proposal of Waqf Ordinance and some recommendatory measures proposed by the Parliamentary Standing Committee of Ministry of Religious Affairs and Waqf Administration in Bangladesh. At the conclusion of this article some observations and recommendations are drawn with a view to overcoming the existing lacunas and problems relating to Waqf laws in Bangladesh.*

### 1. Introduction:

Waqf as one of the modes of spiritual dedications to the Almighty has in any way got its passage in the mindset of the Muslims for being used with firm belief and religious sanctity. Much more practicability of the institution is its worthiness that the entire dedicated property shall be managed in such a manner that only its proceeds are used to satisfy the specified will of the waqif keeping the length and breath of the property in tact.

The Waqf institution is a religious endowment of the Muslims, by the Muslims and for the Muslims. One more fragrance of Islam needed legal support for its smooth guidance. Some of the legal provisions were undertaken in the British regime and subsequently followed in Pakistan and presently in Bangladesh. As a matter of fact, Bangladesh has taken no step whatsoever to enact legislations for the betterment of waqf rather than simply stepping into the shoes of its predecessor Pakistan. Before the partition of this Sub-Continent the administration of waqf estates in Bangladesh was governed under the Bengal Waqf Act 1934. After the partition The Waqf Ordinance 1961 was promulgated for the management of waqf estates in West Pakistan and The Waqf Ordinance 1962 was promulgated for the management of waqf estates in the then East Pakistan (presently Bangladesh). After the liberation in 1971 Bangladesh Govt. adopted the Waqf Ordinance 1962 for the proper management, control and supervision of the waqf estates in Bangladesh.

---

<sup>1</sup> Assistant Professor, Department of Law, University of Rajshahi.

## *Waqf as Administered in Bangladesh: A Critical Review*

It has created an administrative agency to properly administer and look after the all waqf and any part of property, which is situated in Bangladesh. Even though the chief aim of this Ordinance is better supervision over the administration of waqf, it cannot reach its goal.

### **2. A Short Criticism on Waqf Laws in Bangladesh:**

The Waqf Ordinance 1962 is mainly related to the administrative machinery of waqf in this country. The present discussion covers only those enactments, which deal with the administration of waqfs leaving aside the Mussalman Waqf-Validating Act, 1913, which is only declaratory in nature.[1] Section 92 of the Civil Procedure Code of 1908 has also been omitted from the present discussion, as it does not lay down any administrative machinery for waqfs and only provides for the institution of law suits to remove an erring Trustee, for furnishing of accounts or to authorize alienation of a trust property. The Mussalman Waqf Act 1923 is related to the administrative machinery of waqf but excessive caution, some lacunas, and shortcomings relating to this Act make it ineffective.

#### **2.1 A Review on Mussalman Waqf Act 1923:**

The Mussalman Waqf Act 1923 was passed for the better management of waqf property and for ensuring the keeping and publication of proper accounts. Under the provision of this Act it is made obligatory on the part of mutawallis of every waqf (except Waqf-al-aulad) to furnish to the Court, a statement containing such particulars of waqf as description of property, income and expenditure a copy of waqf nama (waqf deed) etc. [2] This statement was to be furnished to the court and any person could ask for more particulars. [3] Mutawallis were further required to annually furnish to the Court a true and full statement of accounts after getting of audited. [4] Any false or untrue furnishing of statement was liable to a penalty of upto Tk. 500 for the first and Tk. 2000 for every subsequent offence. [5] The Act of 1923 heavily banked on Civil Courts in all matters from the inspection of accounts and auditing to the imposition of penalty. Since the Court was over burdened by civil litigation, it was not possible for them to effectively implement the provision of the Act. And so supervision through courts did not go from improving waqf administration. [6]

After an analytical discussion over the above mentioned Act it is observed that this Act—

- (a) did not confer any authority on the court to direct a mutawlli to file a statement of accounts under section 3 of the Act. [7] No doubt a penalty could be imposed upon a mutwalli in such an event, but nothing more.
- (b) it did not lay down any procedure in case the holder of the property denied its Waqf character. [8]

The question whether the Court could hold an enquiry under the Act as to the nature of the property was answered differently by the various High Courts, [9]

resulting in confusion over this important and basic issue. Thus a good effort taken by the Mussalman Waqf Act 1923 failed because of excessive caution and an illusory fear of discontentment.

## **2.2 An Analytical Discussion over the Waqf Ordinance 1962:**

The Waqf Ordinance 1962 is mainly related to the administrative machinery of waqf in this country. This Ordinance applied to all waqf created before or after the commencement of the Ordinance. Overall activities of waqf administration and waqf estates throughout the country are being controlled and managed under the Waqf Ordinance 1962. Moreover for smooth and efficient management of the Waqf estates "The Bangladesh Waqf Administration Rules" was introduced in 1975 and "The Bangladesh Waqf Administration Employee service Rules" was also introduced in 1989 by the Government.

The Waqf Ordinance 1962 is promulgated with a great expectation that the administration and other management of waqf estates in Bangladesh would be possible to conduct smoothly and perfectly. But this Ordinance constantly failed to give a fruitful and effective management and administrative setup about waqf affairs in this country because of some inadequacies and lacunas related there to.

After conducting an analytical discussion on the Waqf Ordinance 1962, the short comings and deficiencies that identified are uplifted below-

### **2.1.1 Provision Relating to Survey of Waqf Properties:**

The Waqf Ordinance 1962 empowers the Administrator of Waqf to run survey work on all the waqf estates in the country. [10] For the purpose of conducting survey the Waqf Administrator may appoint such persons as he deems fit in this matter. The objects of this survey are to enroll the waqf properties and also to examine and acquire adequate knowledge about the conditions of the waqf estates in the country. But there is no obligatory provision and time limitation that after the expiration of every 10/12 years and whatsoever, survey should be conducted on waqf estates in Bangladesh. That's why within the span of 49 years the survey of waqf properties could be made only once. First, attempts were made in 1981 to conduct a survey of all the waqf properties through local administration but the same could not be started even in proper form. Indication was also given in the report of the *Enam Committee* that the Waqf Administration even failed to conduct a survey as per the requirements of the waqf administration." [11] Regretfully it is true that till 1985 no formal survey was conducted upon the waqf estates throughout the country. In 1986 a detailed survey of waqf properties existing in various divisions and districts was carried out by the Bangladesh Bureau of Statistics at the request of Administrator of Waqf and Ministry of Religious Affairs. [12]

But this survey could not fulfill the objects of the Waqf Administration properly because of some deficiencies. Some serious deficiencies of the survey were that there was no information about the illegal occupation of waqf lands, no detailed observation about the Dargah/Mazar waqf estates and Waqf-al-awlad estates in

## ***Waqf as Administered in Bangladesh: A Critical Review***

Bangladesh. The statistics Bureau also did not pay any attention to the disputed cases of waqf in Bangladesh.

So it is necessary to carry on an extensive survey on all waqf estates in Bangladesh. And also a provision may be added that after the expiration of certain period necessary survey should be conducted on waqf estates in Bangladesh.

### **2.1.2 Provision Relating to Removal of Mutwalli:**

Section 32 of the Waqf Ordinance provides that the Administrator of Waqf may on his own motion or on an application of any person, remove a mutwalli on some specified grounds such as if any mutwalli misappropriates waqf properties giving incorrect accounts of income, showing bogus vouchers for amount not spent, not accounting donations, Nazranas or subscriptions come from different sources alienating the waqf properties illegally; realizing the receipt for lower amounts issues and the balance pocketed, holding compensation bonds for abolition of zamindari, jaigardai or Inam preparing in their own name and sold by them for personal benefit and so on. But Waqf Administrator cannot stop the harmful work of mutwalli by giving order of injunction and also he does not have any power to rescue the illegally transferred property or money grabbed by Mutwalli without intervention of the Civil Court.

It is needless to say that civil litigation is so a cumbersome process that it takes a long time to recover the dispossessed property or grabbed money that's why many times the same could not be possible to reinstate. However it is a matter of regret that under this Ordinance there is no provision that if any inserted mutwalli convicted [13] and removed from the charges of the estate for the financial and other losses of the estates incurred during his tenure will be treated as personal liabilities of the removed mutwalli. Also no indication is found that if any property recorded under the Khas Khation of the Govt. for the malfeasance of the mutwalli, what kinds of measures will be adopted to stop such harmful work against the waqf property.

### **2.1.3 Provision Relating to Enrollment of Waqf Estates:**

Before Waqf Ordinance 1962 being passed the waqf estates of East Bengal (At present Bangladesh) were governed and supervised by the Bengal Waqf Act 1934. Under this Act a large numbers of waqf estates were enlisted. But the Waqf Ordinance 1962 requires fresh enrolment of those waqf estates which were enrolled under Waqf Act 1934. [14] Further enrollment creates different kinds of complicacies. Consequently a large number of waqf estates are not being possible to bring under the Waqf Administration in Bangladesh. Thus Waqf Administration being deprived of a lot of waqf contribution and the waqf estates enrolled under the Bengal Waqf Act losing their waqf character becoming abolished forever.

**2.1.4 Provision Relating to the Determination of the Nature of Waqf Property:**

According to the provision of the Waqf Ordinance whether a particular property is waqf or not shall be decided by the Administrator of Waqf. [15] But the decision of the Administrator is not final, the decision of the Civil Court is final in this regard. As a result problem arises from different points of view because civil courts are always busy with various civil litigations as well as due to the highly cumbersome and dilatory process which civil suit involves it takes a lot of time to settle any dispute which is really hazardous and expensive task for both the Administration and mutwalli. [16]

**2.1.5 Provision Relating to Transfer of Waqf Property:**

The Waqf Ordinance 1962 expressly debar Mutwallis from transferring in any way immovable waqf property over a specified period of time without the previous sanction of the Administrator. [17] This Ordinance also provides that if any transfer is made without the previous sanction of the Administrator shall be void and the Administrator applies to the Civil Court within 4 months of his coming to know of such a transfer or within 3 years from the date of such transfer whichever late. The serious defect of this provision is that the period of limitation to recover the waqf property illegally alienated by the mutwalli is so short that in most of the cases, Waqf Administrator cannot be able to recover such property. As a result Mutwalli grabbed the waqf property by illegal transfer.

It is a matter of regret that above mentioned malfeasance of mutwalli would not be treated as punishable offence under this Ordinance. For this reason illegal alienation of waqf property by the mutwalli cannot stop.

**2.1.6 Provision Relating to the Statement of Accounts of the Waqf Estates:**

According to the Waqf Ordinance 1962 it is provided that a Mutwalli/committee shall prepare a full and true statement of accounts and furnish to the Administrator. [18] And in Receiver appointed by any Court in any suit or proceeding in respect of a waqf property, he shall submit a statement of accounts to the Administrator under the provision of this Ordinance. In addition the statement also may be submitted by him to the Court. But no provision is included that if any Mutwalli/ committee/ Receiver fails to submit the accounts of waqf estate or furnish the statement it will be treated as punishable offence under section 61 of the Ordinance. Consequently Mutwalli/ Committee/ Receiver showing various reasons, delay improperly to submit the statement and they also become severely irregular as a result the waqf estates fall into extreme disorder.

**2.1.7 Provision Relating to Punishment:**

In accordance with the Waqf Ordinance 1962 if any mutwalli fails to maintain a clear and accurate accounts of waqf estate to supply information and particulars to the Administrator to pay waqf contribution and some other duties and responsibilities related to waqf estates as required under section 61, he shall be punishable with fine which may extend to two thousand taka and in default with

## ***Waqf as Administered in Bangladesh: A Critical Review***

simple imprisonment which may extend to six months or both. After promulgating Waqf Ordinance 1962 almost five decades have passed so with the efflux of time, it is said that the above mentioned penalty is too much inadequate to stop the above mentioned irregularities done by the mutwalli.

### **2.1.8 Provision Relating to the Waqf Contribution:**

Under the Waqf Ordinance 1962 it is provided that the mutwalli of every waqf estate shall pay annually to the office of the Waqf Administration contribution at the rate of five percent of the net available income of the waqf.

The 5% contribution coming to the Waqf Administration from income of the waqf estates is too inadequate to meet the expenditure to be involved. Waqf Administration of Bangladesh is beset with the problem of paucity of fund. [19] Because with the efflux of time, income of waqf estate. increases side by side establishment cost of Waqf administration including expenditure in the head of "Lillahs" increase ; so it is not possible to meet all the expenses of Waqf Administration only by 5% contribution coming from the waqf estate because the tasks of Waqf Administration are many while the hindrance is no fewer. [20]

### **3. Some Initiative for Amending the Present Waqf Ordinance in Bangladesh:**

A meeting of Waqf committee constituted under Waqf Ordinance was held on 26.10.1997 in order to discuss the subjects of the amendment of some sections and subsections of Waqf Ordinance 1962. In this meeting it was decided by the members of committee that on behalf of Waqf Administration a draft proposal would be prepared and submitted it to the next meeting of the Waqf committee for the consideration. [21] A meeting of Waqf committee held on 30/04/1998 on behalf of Waqf Administration and a proposal regarding the amendment of Waqf Ordinance was presented for the consideration. In this meeting Waqf Administration and other members of the committee made an elaborate discussion on the above mentioned draft proposal. [22]

In the mean while a meeting of the Parliamentary Standing Committee under Ministry of Religious Affairs was held on 25 August 1998 considering the necessary amendment. The honourable members of the committee reached an agreement finally to bring necessary amendment of Waqf Ordinance, in addition to keeping view with the Islamic Law and sharia for making waqf administration more healthy and suitable for the age of time. After an analysis and discussion over different kinds of problem relating to Waqf Administration, the Parliamentary Standing Committee of Ministry of Religious Affairs constituted a sub-committee with three honourable members of the National Parliament with a view to making a recommendation proposal on Waqf Affairs. [23]

Further a meeting of Waqf Committee was held at the office of the Administrator of Waqf on 11 November 1998. The meeting was confined to the consideration of Amendment Proposal of Waqf Ordinance as well as it was decided unanimously that the full Amendment proposal of certain sections and subsections of Waqf Ordinance would be submitted to the National Parliament. [24]

Afterwards a full Amendment proposal of certain sections and sub-sections of the Waqf Ordinance with some recommendations for solving the legal, financial and administrative problems of Waqf Administration and waqf estates were referred to the Parliamentary Standing Committee of Religious Ministry for kind information and sympathetic consideration On 3 March 1999.

#### **4. A Review on the Amendment Proposal of Waqf Ordinance 1962-**

Through the above mentioned proposal, Sub-committee of Parliamentary Standing Committee of Religious Ministry and Waqf Committee suggested and recommended adding certain sections and sub-sections, changing some sections and enlarging some sections of the Waqf Ordinance 1962. [25]

##### **4.1 An analysis over some provisions of the Amendment Proposal of Waqf Ordinance:**

Some useful provisions and suggestions made by this Amendment Proposal are discussed below-

As per the suggestion of both Waqf Committee and sub-committee of Parliamentary Standing Committee of Religious Ministry, at first this Amendment Proposal added some new definition to section 2 of the Waqf Ordinance 1962. The most useful definition in this regard is 'waqf by user' if any land has been used from time immemorial for religious purpose e.g. mosque, graveyard or a Mazar for its maintenance and management (cheragi/ pirotan/ pirlul/ Jimmadar/ Khademadari/ land used by public for religious purpose) such property shall be treated as waqf property although there is no evidence of any expressed dedication. As there is no provision in the Ordinance to treat adjoining lands including Mosques, Eidgah, Imambara, Dargah, Mazar, khankah, Takia (cheragi/pirotan/pirlul/Jimmadar /Khademadari/land used by public for religious purpose) as waqf by user, this sub-section is added. [26] Because 'waqf by user' word is applied in many places of the waqf but in the absence of enrolment no right indication is found that which property be deemed as a 'waqf by user' difficulties are arising from different points of view.

This proposal adds a new sub-section in section 27 for the appointment of a committee by the Administrator in place of mutwalli for certain period of time with the approval of the waqf committee for maintaining the waqf administration smoothly. Because as per the provision of the Section 34 the Administrator may by notification in the official gazette take over the administration, maintenance, management and control of any waqf property and necessarily may appoint a committee for the management of only Shrine, Dargah, Imabarah. But whereas Administrator appoints a committee in place of mutwalli of any other waqf estates after taking over the control of the waqf estate complicated situation is created at the time of appointing any committee. [27] So to avoid the complicated situation arising at the time of appointing any committee in place of mutwalli while the waqf estate is not any Shrine, Dargah or Imabarah, the Amendment proposal suggests for adding new subsection to section 27 in this regard.

### *Waqf as Administered in Bangladesh: A Critical Review*

This Proposal also adds a new sub-section in the section 27 regarding granted temporary injunctions by the Waqf Administrator. According to this the Administrator may by an order grant temporary injunction status quo upon the estate and appoint an official receiver or suspend the mutwalli/ committee on his own motion. [28] Addition to this sub-section the Administrator may be able to take prompt action against the malfeasance and misappropriation as regards waqf estate.

As per the section 32 of the Waqf Ordinance, if any mutwalli misappropriates waqf property of any act of the property or has been convicted under section 61 or he is found unsuitable, incompetent or negligent in the management of the waqf estate will be removed by the waqf Administrator. But there is no provision added that if any loss is caused to the waqf estate for the misappropriation or negligence of the mutwalli such loss will be treated personal liabilities of said mutwallis and also he will be liable to compensate it. The Amendment Proposal add a new sub-section in the section 32 that "if any mutwalli is convicted and removed from the charges of the estate under section 32 he shall be liable for the financial and other losses of the estates incurred during his trend and such liabilities will be treated as personal liabilities of the removed mutwalli and shall be recoverable as a public demand under the Public Demand Recovery Act 1913. [29] Addition to this sub-section it is expected that the mutwalli will be more careful to make any unnecessary expenditure from the fund of the waqf estate and the reckless use of waqf properties.

Regarding enrolment of the waqf estate, the Waqf Ordinance 1962 provided that all waqf existing or created after the commencement of this Ordinance shall be enrolled at the office of the Administrator. By this provision those waqf estates which were enrolled under the Bengal Waqf Act 1934 required further fresh enrolment under the Ordinance. So for this reason the Amendment Proposal inserted a provision in this regard as a part of the sub-section (1) of section 47 of the Waqf Ordinance which provided in the case of waqf property already enrolled under the Bengal Waqf Act 1934 does not require fresh enrollment rather the waqf estates enrolled under the said Act shall be treated as enrolled under the Waqf Ordinance 1962. [30] As a result the difficulties arisen at the time of fresh enrolment can be avoided.

This proposal also provided a new provision adding new subsection (d) to the section 52 that in case any mutwalli or committee fails to produce or supply document/accounts required by the auditor or Administrator it will be treated as punishable offence under section 61 of the Ordinance. Under this provision in sub-section (2) of section 52 and sub section (3) of section 53 mutwalli/committee will be bound to produce and supply documents/accounts required by the auditor or Administrator and also they will come to know the offence to be committed if they fail to submit the accounts. To reduce the illegal alienation and transfer of waqf properties by the mutwalli/committee and to prevent such a transaction and ensure recovery of waqf property, Waqf Committee and sub-committee of Parliamentary Standing Committee suggested



through the Amendment Proposal that the bar of law of limitation has been exempted from sub-section (3) of section 56.

For reducing the tendency of extravagant expenses from the fund of the waqf estate concerned by the outgoing mutwalli or committee section 60 of the enforced Waqf Ordinance is amended by the Amendment Proposal of Waqf Ordinance 1962. Section 60 of the Proposed Amendment of the Waqf Ordinance 1962 provided that no mutwalli can pay from the income of the waqf property any expenses incurred by him for the purpose of enabling him to furnish any particular documents or copies under section 47 or any accounts under section 52 or expenses related to be incurred in connection with the appeal in the Court. But only the cost fixed by the Court shall be borne from the fund of the waqf estate. [31] Under this Ordinance for false, untrue or inaccurate statement, or wrong information furnished by the mutwalli, the provision of punishment is so inadequate and insufficient at the perspective of present circumstances that it would never be possible to stop corruption of mutwallis through the same.

So for this reason the penalty related to the removal of the mutwalli has been increased taka 10 thousand in place of taka two thousand and in default with simple imprisonment which may extend to 2 years in place of six months by the Amendment Proposal. The contribution coming from every waqf estate annually at the rate of 5% of the net available income of the waqf estate is the main source of income of waqf administration in Bangladesh. But it is not possible to meet overall expenses of waqf administration through aforesaid contribution. So amending the enforced provision in this respect the rate of waqf contribution has been proposed to increase 10% instead of 5% by the Amendment Proposal. [32]

The provision of sub-section (2) of the section 72 of the Waqf Ordinance has been repealed by the Proposed Amendment of Waqf Ordinance. Under this new provision the Administrator may require loan for any development work of the waqf estate. In accordance with the provision of subsection (1) of section 74 instance of trial cases relating to waqf the Administrator could not pay the legal cost and fees of the appointed lawyers for the prevention of the interest of the waqf estate due to monetary problem.

Repealing that section the Amendment Proposal of Waqf Ordinance suggested that to safeguard the interest of the waqf property the legal cost and fees of the lawyers be borne from the waqf fund with the approval of Administrator. The Proposed Amendment of Waqf Ordinance 1962 added a new provision entitled subsection (5) to the section 81. The provision is that before any waqf property is notified for sale in auction or attachment due to non-payment of municipal taxes, land development taxes, income taxes electricity charges, water, gas bill etc for negligence of mutwalli/ committee prior notice must be given to the Administrator as one of the parties. By inclusion of this provision it may be possible to check the auction/sale of valuable waqf properties from fraudulent and forgery.

For minimizing the tendency of causing any default to the estate by any beneficiary a provision is included to the sub-section (2) of section 84 in the

### *Waqf as Administered in Bangladesh: A Critical Review*

Amendment Proposal that for any damage caused against the estate due to the breach of trust by any beneficiary shall be punishable offence under section 61 of the Ordinance. Explaining the rationale behind the Amendment Proposal of Waqf Ordinance 1962 it has become clear that there is no alternative to the amendment and reform certain sections and sub-sections of the enforced Waqf Ordinance. Five decades ago the Waqf Ordinance was promulgated. However after all these years with the efflux of time a radical change has come into society, the effectiveness of waqf administration therefore require a progressive and dynamic waqf legislation. That's why it is needless to say that the suggestion to amend and reform of Waqf Ordinance not only a necessity of Muslim society but also a claim of time. Above all in order to make fruitful the great intention of prophet (Sm.) beyond of suggesting the property dedicated as waqf suitable waqf legislation is urgently needed.

#### **5. Some Recommendatory Measures on Waqf Affairs :**

To make this Ordinance a comprehensive legislation further a comparative reappraisal is needed on the waqf laws of the Sub-continent and other Muslim countries. In supporting of this view opinion of the exponent persons are uplifted here. The Chief Adviser to the Prime Minister of Pakistan, Sharifuddin Pizada has said in this regard that-[33]

"with the constructive changes in contemporary waqf laws, we can render effective services for promoting socio-economic development in Muslim countries to help alleviate poverty among masses and to contribute to education specially technical and medical education, including information technology, engineering and space sciences".

The seminar which was jointly organized by the institute of objective studies, Islamic Development Bank and Awaqf foundation of Kuwait also felt the existing laws regarding waqf properties and other issues in India, Pakistan need to be reviewed. [34] As to the Indian waqf Act 1995, Dr. Mohammed Rizwanul Haque, Secretary, Central Waqf Council opined that in spite of the fact that the said Waqf Act was comparatively a better piece of legislation, the actual working suggested that it still needed certain improvements. Echoing the same view Prof. Aiquie A Khan, MD University, Rohtak, asserted that the Waqf Act 1995 was not being implemented properly and the corrupt employees encouraged encroachment of property. Prof. Mahmood hailed Pakistan's waqf laws and said that it was the most comprehensive law in South Asia which is fully aimed at stopping encroachments. Indian Waqf Act 1995 had no such provision to stop on evict unlawful occupation. In Bangladesh existing provision for the eviction of unlawful occupiers is quite bold. As a result encroacher have grabbed at least seven lakh acres of waqf land out of Nine Lac acres. [35] The waqf administration is incurring heavy losses every year due to lack of useful provision in this regard. Some suitable provisions which are come to the view through a comparative study on the legislations of the sub-continent are following below.

**5.1 Laws Relating to Recover Waqf Property from Illegal Occupation:**

In accordance with the section 64 of the Waqf Ordinance 1962 in Bangladesh if any property grabbed by the illegal occupiers, the Administrator shall apply to the Deputy Commissioner for eviction of such encroachers and Deputy Commissioner will take such steps as he deems fit to evict such unlawful occupiers. In the matter of recovery of waqf property under illegal occupation, however the Indian Waqf Act appears quite good. [36] It empowers the collector to pass an order directing the person in possession of the property to deliver the property to the Waqf board within a period of 30 days from the date of the service of the order on receipt a requisition from the Board.

But the Waqf Ordinance 1962 does not prescribe any such provision to evict the trespasser directly and there is no specific period for delivering the dispossessed waqf property to the Waqf Administrator. Section 64 (2) of the Waqf Ordinance provided that if any person being aggrieved by the order of the Deputy Commissioner may prefer an appeal to the District Judge Court within the period of ninety days whose jurisdiction the property is situated and the decision of the District Judge on such appeal should be final. As a result in most of the cases the illegal occupiers may take recourse of Civil Court against the order of the Deputy Commissioner which may bring the delay and heavy expenses due to dilatory process of Civil Court. Experience shows the Civil Court generally takes not less than three years and sometimes even 12 years to decide a case. [37]

The Waqf Ordinance 1961 of Pakistan and the Punjab Awaqf Ordinance 1979 were the most advanced piece of legislation on this point. In accordance with the provision of this Ordinance any person unauthorized entering upon occupation of any immovable waqf property or using or occupying any such property to the use or occupation where of by reason of any provision of this Ordinance or any rule made there under, he is not entitled or has ceased to be entitled may, after being given a reasonable opportunity of showing cause against such action be summarily evicted by the Administrator with the use of such force as may be necessary and crops raised in such property should be liable to forfeiture and any building or other construction created there on shall be removed by such person after service on him of a notice by the Administrator servicing him to remove such building on construction within a period of not less than thirty days of the service on him of such notice be liable to summary removal after the expiry of the period specified in the notice. [38] Any person evicted under the provisions of section 8 may within sixty days of such eviction prefer an appeal to Chief Administrator and the Chief Administrator after giving such person an opportunity of being heard confirm modify or vacate the order made by the Administrator.

If there is no appeal against an eviction under section 8 made by the Administrator, the eviction shall be final and when there is an appeal the decision of the Chief Administrator shall be final. [39]

## *Waqf as Administered in Bangladesh: A Critical Review*

### **5.2 Bar to transfer the Waqf Property by way of Sale, Gift, Lease, Mortgage or Exchange:**

Indian Waqf Act contains a very useful provision in this regard. Although under the Muhammedan Law and the Waqf Laws, waqf property cannot be transferred without the permission of the Court or the State Waqf Board, mutwalli fraudulently make illegal alienations. The only alternative way left to the Waqf Board was to file civil suits for recovery of the properties. Filing of a large number of suits entails such a heavy expenditure that Board finds it difficult to take action in many cases.

To check this tendency of unscrupulous mutwalli and to prevent loss of waqf properties, it was necessary to provide a simple procedure for recovery of the property, all transfer without the previous sanction of the Board has been made invalid and provided that the Board can get back the possession of illegally alienated waqf properties by issuing a requisition to the collector of district. If anyone dissatisfied with the order he can prefer an appeal and take the matter in a Civil Court. [40] In the Waqf Ordinance 1962, if any mutwalli illegally alienated the waqf properties without previous approval of the Waqf Administrator, the Administrator cannot set aside the alienation without the intervention of the civil court. [41] That's why above mentioned provision may be incorporated to the Waqf Ordinance 1962.

### **5.3 Suitable Provision for Settling Waqf Disputes Speedily and Cheaply:**

Above all to make the Waqf Ordinance 1962 a comprehensive piece of legislation another important provision should be added regarding settlement of waqf disputes. There is no such provision existing for minimizing the expenditure of litigation and also the delay procedure relating to a regular suit. Because a regular suit which is decided by a court of law involve distinct stages, presentation of case, production of evidence, legal arguments and decision, strict adherence to this processes for every dispute involves considerable expenses and dilatoriness. The only way to reduce time and expenses on litigation is to lay down a simplified procedure which may confirm the four, recognized principles of natural justice namely notice, hearing, impartiality and orderly course of proceeding. [42] In this case the UP Muslim Waqf Act, 1960 is the only Waqf Act in this Sub-continent which provided for the establishment of tribunals to adjudicate waqf disputes in accordance with the provision.

Since the tribunal will be subject to the supervisory jurisdiction of the High Court Division under the constitutional provision, it will ensure that they decide the cases coming before them judiciously and in accordance with law and not arbitrarily or capriciously. [43] It should be also provided to fix up a limitation period so that Tribunal settles the dispute within a specific period. In this connection it will be appropriate to make an experiment of holding ADR system which has already been introduced amending the Code of Civil Procedure.

## **6. Criticism over the Proposed Amendment of Waqf Ordinance 1962:**

After the securitization thoroughly the Amendment Proposal of Waqf Ordinance

and the recommendations on waqf affairs it explores that the proposal overlooked some major and complicated problem related to waqf estates. However the Proposed Amendment of Waqf Ordinance 1962 could not achieve the comments from the mutwalli of the waqf estates. The existing scant records show that the Proposed Amendment was not received well. Mutwalli of the waqf estates uplift their objection against the Proposed Amendment of Waqf Ordinance to the Waqf Administration and also to the Parliamentary Standing Committee of the Ministry of Religions Affairs on the substantive grounds.

Firstly no opinion was taken from themselves at the time of preparing the Proposed Amendment of Waqf Ordinance in spite of being an important person for supervising the management of waqf estates.

Secondly mutwalli of the waqf estates alleged that Amendment proposal was most likely similar to the management of Trust property. There is a basic difference between Trust and waqf. Waqf is completely a permanent dedication on the way of God for the religious, pious and charitable purpose but no necessary provision was inserted to the proposed Amendment of Waqf Ordinance for the fulfillment of the waqif's religious and charitable purposes, instead it's rather importance was imposed upon for the betterment of Waqf Administration.

Other serious defect related to the Amendment was that no provision included for the management of Dargah/Mazar waqf estates. [44] There are 201 enrolled Dargah/Mazar waqf estates under the Waqf administration, a huge quantity of offering received from these estates every year. But in many cases unscrupulous person to trade for their personal aggrandizement in the name of holy Saint used the said offering as an unholy alliance. The Amendment Proposal does not prescribe any provision for prevention of said malfeasance and also no certainty has been given that the offering received from *Nazars* and contribution should be used in Philanthropic purpose of the Muslim community.

Further a serious omission of this Amendment Proposal deducts to include any provision for bringing upon the transparency over the work of the Waqf Administration. To increase the faithfulness incredulity of the mutwalli to the waqf administration it might have provided through, an amendment that waqf administration will prepare an annual report including the statistics of trial cases of waqf, the amount of waqf land grabbed by the trespassers, different development scheme adopted by the Waqf Administration, annual grant paid on behalf of the Waqf Administration to the mosque, madrasha, orphanage etc. and other curriculum of this institution of waqf as well as said report have to be preserve in the Central Office of Waqf. However due to the objection raised by the mutwalli as well as shortcomings and lacunas mentioned above there fore, the Amendment Proposal was foredoomed. [45]

Since the doctrine of waqf is interwoven with the entire religious life and social economy of Muslim, effective administration of waqfs therefore remains an intimate knowledge of the tenets of Islam. Thus some shortcomings related to said proposal would have become liable not to reduce it to the law. Afterwards

## *Waqf as Administered in Bangladesh: A Critical Review*

the Parliamentary Standing Committee of Ministry of Religious Affairs decided to prepare further new Amendment Proposal of Waqf Ordinance 1962, in this purpose the Waqf Ordinance 1962 referred to the BABACO of Ministry of Establishment for scrutinization. [46]

Parliamentary Standing Committee of the Ministry of Religious Affairs decided that public opinion should be collected in order to make a suitable and comprehensive amendment of Waqf Ordinance 1962. In this regard on behalf of the Ministry of Religious Affairs a letter was issued directing, the waqf Administrator to compile public opinion. [47]

The Administrator of Waqf in Bangladesh has taken a decision that sending questionnaire to mutwalli and publishing it to the newspapers opinion should be collected as to the amendment of Waqf Ordinance. [48] Regretfully neither Waqf Administrator nor Parliamentary Standing Committee has still taken any effective steps for amending the Waqf Ordinance, which is not only the necessity of making the waqf administration streamline but also a claim of time for the proper management of waqf estates.

### **7. Conclusion:**

Despite some of its shortcoming the Waqf Ordinance 1962 is enforced in Bangladesh for administering the waqf estates for more five decades ago. The mode of problem and socio-economic perspective of the country have changed with the efflux of time. So some amendments are necessarily important for the better administration of waqf estates throughout the country. Although Parliamentary Standing Committee of the Ministry of Religious Affairs and Waqf Administration gave their suggestion through an Amendment Proposal of Waqf Ordinance, due to some difficulties it could not be accepted well by the mutwalli and also not be reduced into the law. Mutwallis protested against the proposed Amendment of Waqf Ordinance 1962 since any reflection of their opinion was hardly found in this Amendment Proposal. So for this reason it is said undoubtedly that any forcible thrusting to accept this Amendment Proposal may most likely to arose the displeasure that's why it would be proper to prepare new Amendment Proposal of Waqf Ordinance compiling opinion from mutwalli and persons to the waqf estates concerned. Because no legislation in respect of waqf should obtain any legislative sanction without the express consent and agreement of the Muslim community. In addition to make the Waqf Ordinance a suitable piece of legislation, waqf laws of the Sub-Continent should be examined and useful provisions in this regard may be adopted for better management of waqf estates in Bangladesh. Moreover without ignoring completely the previous Amendment Proposal it might be better to take this proposal as a suggestion to some extent in case of adopting new one. Whatever it would thus be wise to take quick step for amending the present Ordinance of Waqf.

**8. References**

- [1] See section 3 of the Mussalman Waqf Validating Act 1913.
- [2] See section 3 of the Mussalman Waqf Act 1923.
- [3] *ibid* Section - 4.
- [4] *ibid* Section - 5.
- [5] *ibid* Section - 10.
- [6] Syed Khalid Rashid, *Waqf Administration in India*, Vikas Publishing House( 1<sup>st</sup> edition),New Delhi, 1978. PP27.
- [7] See, The Judgement, *inre waqf paramathe Nemakkal Taluk*,\_1946, Mad, 146.
- [8] See, *Shia Young man's Association V. Sayed Fateh Ali Shah (1941)*.
- [9] The Oudh and Allahabad High Courts held that the court can make such enquiry, *Mahammad Baqar V Syed Mohammad Qasim (1923)* Oudh 210, 90 WN 538. Nasirullah Khan V. Wajid Ali, 53 Alid. 167. The Bombay, Patna and Madras High Court held a contrary view.
- [10] Sec-Section-7 of the Waqf Ordinance 1962.
- [11] *Memo No-14 g (Survey) dated 12 August 1985*, issued by Md. Azizul Haque Bhuiya, Administrator of Waqf Bangladesh.
- [12] Memo-No-14-g- (survey) on 8 December issued from Administration of Waqf Bangladesh to the secretary Ministry of Religions Affairs Bangladesh Secretariat Dhaka.
- [13] See-section 32 of the Waqf Ordinance 1962.
- [14] *ibid*. Section 47.
- [15] *ibid* 50.
- [16] *S.S.M Osman Gani Vs Bangladesh 39 DLR (1987) 45*.
- [17] See section – 56 of the Waqf Ordinance 1962.
- [18] *ibid* section 52 (a).
- [19] Annual Report on Waqf Affairs (2009) available in the central Waqf office Dhaka.
- [20] *Proceedings of the Waqf committee* Memo No-Account 14/85/1248-1256 Dated 16.04.1996. Available in contant Waqf office Dhaka.
- [21] *Proceeding of the meeting of the Waqf committee* October 1997 Memo No 14/85/104(21).
- [22] *Proceeding of the meeting of the Waqf committee* April 1998 Memo No. 14/85/248 (5).

*Waqf as Administered in Bangladesh: A Critical Review*

- [23] Report of the sub-committee No-1 of Religious Ministry. Members of the sub-committee No-1 of the Parliamentary Standing Committee of Religious Ministry was as follows - (i) Md. Hafej Ruhul Amin Madani (Convenon), (ii) Prof. Md. Abdullah (Member), (iii) Md. Lulfur Rahman Member.
- [24] *Proceeding of meeting of the Waqf committee* – Memo No – 14/85/72 (14).
- [25] Report of Sub-committee of the Parliamentary Standing Committee of the Ministry of Religious Affairs, March 1999, Preserved the Central Waqf office Dhaka.
- [26] New addition of existing section 2 (14) of the Waqf Ordinance 1962 by the *Amendment proposal of Waqf Ordinance*. appendix "A", Pp. 2, said proposal available in Central Waqf Office, Dhaka.
- [27] Tabarak Ali, *Sikdar VS Administrator of Waqf*, 48DLR, 1993.
- [28] New addition of existing section 2 (14) of the waqf ordinance 1962 by the *Amendment proposal of waqf ordinance*. appendix "A", Pp. 2, said proposal available in Central Waqf Office, Dhaka.
- [29] *Ibid*-new addition of subsection (7) of section 32 of the waqf ordinance 1962, appandix-A, Pp-2, said proposal available in the central Waqf office Dhaka.
- [30] *Ibid* 47 (I) Appendix "A" Pp. 10-11.
- [31] Amendment of section 60 of the Waqf ordinance 1962 by the *Amendment Proposal of Waqf Ordinance* appendix-"A". Pp. 2, said proposal available in the Central Waqf Office Dhaka.
- [32] Amendment of section 70 of the Waqf ordinance 1962 by the *Amendment Proposal of Waqf ordinance 1962*-Appendix "A". Pp.24, said proposal available in the Central Waqf Office Dhaka.
- [33] The Report, *Waqf Act needs to be reviewed published*, in Indian Express, The Daily News Paper on 09.11.2004.
- [34] Report, *Need stressed to promote institution of waqf*, DAWN-National, 16 December, 2003.
- [35] The Report *Js bod Movements to recover grabbed waqf land*, The Daily Star Web edition Vol.-4, number 64, dated 01.01.2000.
- [36] Section 36-B of the *Waqf Act 1954* ins by 5 Section of Act 34 of 1964.
- [37] *Md. Shamidullah Vs Abdus Sobhan Taluker*, 48DLR (1993).
- [38] Section - 8, of the *Pubjab a waqf Properties Ordinance 1979*. SAection 6-A of the *Waqf Properties Ordinance 1961*.
- [39] *Ibid* Section - 10, *Ibid* 6 C.



- [40] Section 56 (3) of the *Waqf Act 1954* Ins by S.U. of Act 34 of 1964.
- [41] Section 56 (3) of the *Waqf Ordinance, 1962*.
- [42] The opinion of Fajal Ali, In *A. K. Gopamao Vs State of Madras*, AIR 195, S. C. 27.
- [43] Justice- C. K. Thakker (Takwani), *Civil Procedure Code* (4ted 1997) Eastern Book Company, Lacknow, Pp. - 449.
- [44] Informations have been collected from personal Interview of Mutawallis and Administrator of Waqf in Bangladesh, on 06.12.2005.
- [45] Information, based on the opinion of the Mutwallies which collected from personal interview from them.
- [46] Proceeding of the Ministry of Religious Affairs Memo No Religious-13/99/11/28 Dated, 12-07-03.
- [47] Proceeding of the Ministry of Religion Affairs, Memo No. Religious/6-1/08/857, Dated 22.12.2004.
- [48] Information collected from the personal interview of the Admisnistrator of Waqf and also Memo No. Waqf Admin/11/90 3rd Part/305 Dated 18.06.2005.