Chapter-I

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The institution of wakf is a unique feature of socio-economic structure of Islam. Wakf means dedication of movable and immovable property in the name of Allah for religious, pious and charitable purposes. Wakf is the unconditional and permanent dedication of properties in the ownership of God in such a manner that the property rights of the owner are extinguished. It cannot be sold, gifted or given to charity. It is only managed and the manager is simply the custodian, he is neither the owner nor a trustee. Wakf is an act of piety and is perpetual in nature, rewards of which one shall get even after his or her death. The prophet himself established the institutions of Wakf. Since then it became the tradition in Muslims and the practice has continued in all periods of the Islamic history. Abu Hanifa, the founder of the distinctive Sunni School known as Hanafi, his tenets are in force among the majority of the Indian Muslims and among all Central Asian Nation States who are pre-dominantly Muslims. His teachings are amplified by his disciples Abu Yusuf and Imam Mohd who have in the estimation of many Sunnis almost over shadowed the fame of the great master.

According to Abu-Yusuf, “Wakf is the detention of a thing in the implied ownership of Almighty God in such a manner that its profits may be applied for the benefit of human beings and the dedication, when once made is absolute, so that the thing dedicated can not be sold”. Imam Mohd, the fellow disciple of Abu Yusuf agrees with him on this point, but he thinks that the right of the Wakif does not cease in the property until he has appointed a Mutawalli delivered it into his hands.
According to Abu Yusuf the dedication becomes absolute and the right of the person making it becomes extinguished by the mere fact of his declaration that he dedicates it or has dedicated it. This rule of Law laid down by Abu Yusuf is in force among all the Hanafis Jurists.

To make provision for one's self as regarded by Hanafi's lawyers is an act of Khair, for the prophet declared a man giving substance to himself as giving charity and settlements upon one's family are approved of and regarded as lawful by all schools.

During the British Government of India in 1810, the general superintendence of religious and charitable endowments was vested in Board of Revenue and Board of Commission. In 1863 the religious Endowment Act was passed and the property relating to religious, charitable and public endowments were transferred to trustees, manager or superintendent. Local Committees were also appointed who exercised the powers of the Board of Revenue or local agents. In 1890 the British Government appointed a Central Treasurer of all Charitable Endowments for the whole country under the Charitable Properties Act of 1890. It applied to those charitable endowments, which had been established for the relief of the poor's education, medical relief or any other object of public utility. In 1908 the code of civil procedure was reframed and sections 92 and 93 were incorporated in it for the proper administration of trust. Under these sections two or more persons having any interest in the trust could file a suit with the prior permission of Advocate general in relation to the matter regarding the appointment and removal of trustees, sales, exchange or mortgage of trust property.

In 1913, the Musalman Wakf Validating Act 1913 was enacted which came into force on 7th March 1913. It was enacted because before
this Act, wakf was supposed to be invalid if it is made for the benefit of the family. This was held by the privy council in *Abul Fate Mohammed V. Rasamaya 22 IA 76* case, that if the primary object of the wakf was aggrandizement of the family and the gift to charity was illusory, whether from its uncertainty and remoteness, the wakf for the benefit of the family was invalid and no effect could be given to it.

This decision caused great dissatisfaction among Mohammadan community of India because this paralysed the power to make a settlement in favour of his family, children and descendant or Wakf-Alal-Aulad. Therefore, Indian Muslims submitted Memorandum to Lord Curzon then the Viceroy of India containing authoritative quotations which showed that for family settlement by way of Wakf from the time of Mohammad (SAW) down to the present time is an unbroken chain of evidence to show that law existed in Arabia, Central Asia, Persian, Afghanistan and India. They also quoted many precepts of Prophet Mohammad (SAW) regarding the validity of family settlement by way of Wakf. It was due to their efforts the government of India passed this Mussalman Wakf Validating Act 1913 and Sections 3 and 4 of this Act clearly revealed that it shall be lawful for any person professing Islam to create Wakf for the maintenance and support wholly or partially of his family, children and descendants. In 1920 Charitable and Religious Trust Act was passed by the British Government to provide more effective control and enable the trustees to obtain the directions of a court on certain matters. This conferred power, control, supervision or co-ordination in matter of Wakf administration upon the central government.

Act of 1913 could not overcome the hindrances created by the decision in *Abul Fata Mohammad V. Rasamaya* case because it was so held by their Lordship of Privy Council in a number of cases that Act of 1913
not being retrospective, it cannot be effective on the deeds executed before its date. Therefore, Mussalman Wakf Validating Act 1930 came into force which conferred retrospective operation in the Act of 1913 and the hindrances created by the decisions in the present cases which continued till 1930 were over.


The most prevalent comprehensive, consolidated and latest Act is the Wakf Act, 1995 it came after many amendments since 1954 because the actual working of the Wakf Act 1954 had brought out many deficiencies in it. The definition of Wakf according to this Act is exhaustive as it reveals that the Wakf are permanent dedication by a person professing Islam, of any movable and immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable.

In this background, the instant research study makes an attempt to investigate, analyse and critically appreciate the state of affairs of Awkaf properties of Muslim Educational Institutions in the State of Uttar Pradesh but thrust of the study is wakf properties of Aligarh Muslim University, Aligarh, because AMU is considered to be the most important Muslim Educational Institution not only in the State of Uttar Pradesh but in entire country. AMU always attracts the attention of the
entire Muslim community to its functioning, affairs and anything which may have any impact on its existence.

The institution of Wakf is the best manifestation of Islamic conception of human rights and human duties in realizing a society which is envisioned of by every order of secular governance in the contemporary circumstances. Moreover, Wakf is a notion and instrument of Islamic Equity which has developed the potentiality of the English legal system remarkably. The institution of wakf tries to establish the concept of substantive equality.

Throughout the Muslim history, Wakf has been a way of supporting Mosques, graveyards, Islamic schools, Madrasas etc. It has also been used as a means to support and help kindred generation to generation. Therefore, it could be used to benefit individuals, institutions as well as family unit. There are in almost all parts of India numerous religious and public Wakfs of various kinds for the creation, maintenance and support of mosques, Idgahs, Dargahs, Maqbaras, Qabristans, educational institutions and hospitals etc. There are innumerable family Wakfs in the U.P. that are vanishing day by day due to the want of effective administration and management.

Considering the large number of wakf and their resources, a Wakf can become a strong instrument not only for the preservation of religious and charitable institutions, but also for the educational and economic development of the community. Wakfs constitute a national asset, for a very large number of these support schools, colleges, technical institutes, libraries, reading-rooms, charitable dispensaries and Musafirkhanas, etc., which benefit the public irrespective of their religion or creed. It is of utmost importance, therefore, that Wakfs should be maintained properly and their resources should be utilized
for the objects and the purposes of dedications. But unfortunately, many of the existing Wakfs have not escaped the process of decadence brought in by the twin impact of neglect and misuse.

The subject of *Wakf* is relative to Entry No. 10 "Trust and trustees" and Entry No. 28 "Charities and charitable institutions", in the concurrent list attached to the VIIth Schedule to the Constitution of India. Supervision over the administration of Wakfs is, therefore, the responsibility of both the Central and State Governments. Article 26 of the Constitution gives freedom to every religious denomination to establish and maintain its religious and charitable institutions subject to public order, morality and health. They are also allowed the right to administer the properties of these institutions in accordance with the law. In other words, the right of administration is left to the institutions themselves.

The State however, cannot interfere in the establishment or maintenance of religious and charitable institutions or in the management of religious affairs. The various religious denominations or sects are allowed to manage them in accordance with the tenets of their religions.

The contribution of Wakf properties in supporting and sustaining the educational institutions has been rather nominal and is by far diminishing for the reason that the educational institutions have fallen into steep decadence due to mismanagement and misappropriation. This study therefore, concerns itself to the contemporary position regarding management and administration of Wakf properties in educational institutions and conducts an empirical survey of the Wakf properties in UP generally and in Aligarh Muslim University particularly.
The Choice of the Topic

Owing to my keen interest in the socio-economic affairs of the Muslim community, it has become my obsession to contribute something very substantial for the betterment of the Muslim community within the ambit of Islam in consonance with the modern institutional framework. Moreover, I had important discussions with my teachers regarding the functioning of the wakf institutions in the country particularly in the State of Uttar Pradesh. They had shared their vast experiences with me whereby it had been inferred that there was an urgent need to look into the mal administration and mismanagement of the wakf properties. In the same vein, my learned supervisor Prof. Iqbal Ali Khan, Chairman and Dean, Faculty of Law, AMU, Aligarh has pragmatically persuaded, guided and impressed upon me the sorry state of affairs of institution of wakf in Uttar Pradesh. He is also very anxious about the pathetic condition of wakf properties of AMU, Aligarh. Wakf Institutions are in a very bad shape and suffering from the apathy, insensitivity and carelessness of Mutawallis and others high officials of the wakf properties, who have been entrusted with the responsibilities of care and upkeep of the wakfs.

Therefore, having conducted preliminary investigations in the management and administration of wakf properties, it has been decided that institution of wakf warranted an immediate enquiry and research for evaluating, examining and understanding the proper functioning of the wakf institutions as per law i.e. Wakf Act, 1995. Subsequently, it has been found that wakf institutions are highly mismanaged and badly administered institution in the State of Uttar Pradesh and situation is not different or otherwise in rest of the Country. Thus, this has prompted to undertake the present research study.
Object of the Study

In the wake of contemporary technological advancement and in the age of economic globalisation the study of wakfs administration of Muslim educational institutions, properties attained new dimensions. The law relating to wakfs is an important branch of Islamic Jurisprudence. In India, there exits more than a lakh of public wakfs, majority of them are in U.P. It is known to all that in our country this pious institution is not functioning properly. Moreover, it is badly crippled in U.P. The incomes of these wakfs are not utilized according to the objects mentioned by the wakifs in the deed. In most of the cases Mutawallis have either managed to transfer wakf properties or utilising the wakf resources themselves.

The present system at state level is far from satisfactory. The Wakf Boards and Wakf Council are not paying adequate attention to the development of wakf properties of educational institutions under their management.

Therefore, the object of the present study is firstly, to find out ways to improve the management of the grossly mismanaged wakf properties of the educational institutions by the Mutawallis of AMU. Secondly, to make efforts to improve the wakf properties so as these properties may become a real source of economic upliftment of the Muslim Education Institutions; and thirdly, to suggest measures to make appropriate amendments in the existing legislations so as to improve the management on the legislative front.

Hypothesis

There are more than a lakh wakfs in India having assets worth more than Rs. 150 crores and annual income too in crores. Proper utilization of this huge resource could have become a powerful