Chapter-III

Institution of Wakf and Its Religious, Socio-Economic and Political Relevance in Contemporary India and other countries
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An Overview

It has always been a policy of divine discourse to make provisions for a better *modus vivendi* for the betterment of the down trodden, marginalized and disadvantaged people of the society and Islam is not an exception thereto. Universal brotherhood is the keystone of Islamic concept of welfare wherefrom geopolitical divide immersed in the unity of God and his commands. Therefore, Waqf institutions in different nations are having a unity of action, object and purpose, which is persuading some distinctions of every kind whatever. Unity and universality of the waqf institution can be understood by undertaking a comparative transnational understanding of this institution of immense importance. Hereunder, a comparative study of waqf institution in different Muslim countries has been made along with south-Asia. In this backdrop, the institution of Waqf has been ordained in the light of Quranic injunctions and consequently institutionalised by the *Muslim Ummah*.

Wakf in Contemporary India

The law relating to Wakf forms an essential and most important branch of Islamic Law. As has already been submitted in the previous chapter, the institution of Wakf developed considerably during the Prophet Mohammad’s (PBUH) time, further continued during the following periods of Khulafa-e-Rashidin and Tabain. Ever since then it
continued to enlarge both in size and number during the last more than fourteen hundred years of Islamic history. The Islamic law of Wakf, too, developed along with the institution and eventually grew into a full-fledged, complete, exhaustive and settled system of Islamic law. Since it has been in force for the last more than fourteen hundred years, and cherished all over the Muslim countries and Muslim population being in non-Muslim countries, it is recognised and practised as an integral and essential part of the Islamic law. It is based on the Qurnic injunctions dealing with charity and *Sadaqa* and, supplemented by the direct instructions from the Prophet himself.

In India, there are hundred of thousands of *awkaf*, which have been created for religious as well as secular purpose like the sustenance, and development of the weaker sections of the society. Whether these *awkaf* are fulfilling the purposes for which, they have been created is a mootable question. *Shariah* is the basic law to determine questions about every aspect of *awkaf*. Islam envisages an egalitarian and accountable society wherein collective and individual care considered to be the prime mover of the institution of Wakf. The Holy Quran has given a code of life beyond religion, which is socio-economic and political in substance also. Since India happens to be a secular state where downtrodden, disadvantaged, marginalised and poor among the Muslims has not been fully integrated with the newfound economic change. They do not have access to the accruals and opportunities of the New Economic Order and other economic evolutions taking place in the country. The institution of Wakf is a manifestation of social security available to the above-mentioned classes of people and this has established the religious, socio-economic and political relevance of the Wakf in the contemporary India more than ever before.
Thus, there are many matters of Muslims pertaining to matrimonial causes, widow’s re-marriage, maintenance, rearing and education of orphan children and so on so forth. In these matters, state protection and help seem difficult and remote even, sometimes, denied on flimsy grounds. Therefore, institution of Wakf becomes very relevant in such situations, the help rendered, and support of Wakf apart from the family and institutional Wakfs can fill in these black holes.

**Wakf Laws in South Asia**

In Pakistan, after experimenting with many wakf enactments, two major enactments for West and East Pakistan were passed in 1961 and 1962. These Ordinances place the administration of wakfs in the hands of Administrators, doing away with the system of Boards. Soon afterwards, in 1976, the (Federal Control) was passed taking away wakf administration from the hands of the Provincial Governments and placing it in the hands of the Federal Government. However, political considerations again prompted a change, and four separate Wakf Ordinances were passed in Punjab, Sind, NWFP and Baluchistan, decentralizing wakf administration.¹

In Bangladesh, the Wakfs Ordinance, 1962 and those provisions of the Bengal Wakf Act, 1934, which are not in conflict with the 1962 Ordinance, apply to whole of country except to Chittagong Shahi Masjid and those few mosques governed by the Islamic Foundation Act, 1975. This is not an ideal situation and considerations of certainty demand the enactment of a new comprehensive law governing wakf administration in the country. The new Law may also cover those wakfs and mosques currently covered by the Islamic Foundations Act, 1975.

¹ Syed Khalid Rashid, Awkaf Experiences in South Asia - A Seminar whereat A paper “Awkaf Legislation in South Asia: A Comparative Study” was presented on May 8-10, 1999, New Delhi.
In Sri Lanka, the Muslim Mosques and Charitable Trusts or Wakfs Act, 51 of 1956 establishes separate supervisory set-up for the mosques and other wakfs. It is a lengthy piece of legislation, like the Indian Wakf Act, 1995 and need to be condensed. The enactments should know that brevity is the beauty of law.

In Myanmar, the wakf law stands frozen at the 1923 stage, ignoring the developments in the adjoining countries. The law of 1923 and section 92 of the Civil Procedure Code are so obsolete and unsatisfactory that the Myanmar government should enact a new comprehensive wakf legislation involving the Muslim community in wakf administration. A survey of wakfs must also be conducted.

Maldives has many mosques, graveyards, dargahs and other types of wakfs, but does not have wakf legislation. The economic potentiality of wakfs may be bettered realized if wakfs are administered effectively and developed to increase their income.

A study of wakf legislation in South Asia reveals a marked preference for federal wakf legislation. India, Bangladesh, Sri Lanka and Myanmar have federal wakf laws, and Pakistan had it upto 1979. However, if federal law were preferred for the sake of uniformity throughout the country, then even Pakistan would be said to have one, as the wakf laws in all the four Provinces are identical.

The definition of “wakf” contained in all the wakf legislation follows the one given in the Mussalman Wakf Validating Act, 6 of 1913 according to which only a Muslim may be wakif and “any properly” may be made wakf. Both the suppositions are incorrect according to Islamic law and as such, the definitions in the various wakfs legislation need to be reviewed. The enabling provisions in the (Indian) Wakf Act, 43 of 1995 which treats as wakf all donations made by non-Muslims in
favour of mosques is not correct in so far as non-Muslims cannot make wakf in favour of a mosque.

The lengthy and inclusive definitions of "wakf" contained in the Indian and Pakistani wakf legislation may be tolerated keeping the fact in view that such definitions may really help to avoid quite much of litigation two countries already have more than enough of petty litigation on wakfs.

In this long list of inclusions, wakf-al-al-aulad is expressly excluded, except in the wakf legislation of Jammu and Kashmir. It is not correct to exclude wakf-al-al-aulad from the preview of wakf legislation, because unlike private trusts in Common law, family wakfs are for perpetuity, and are regarded as charitable in Islamic Law as any other wakf. Giving to one's own family members is as charitable in Islamic law as giving to the public. Future generations of beneficiaries do have a claim on the corpus of these wakfs. Therefore, if the present generations of beneficiaries are left to their own devices, they may even eat up the corpus, leaving nothing or very little for the future generations of beneficiaries. As wakf-al-al-aulad is also wakf, and it is the Constitutional responsibility of the Government of India and the States to supervise and administer wakfs, this responsibility automatically extends to wakf-al-al-aulad notwithstanding the clamour of those having a stake in such wakfs. This applies equally to Pakistan, Bangladesh, Sri Lanka, Myanmar and Maldives. The amount of regulation and supervision might be minimal in comparison with other wakfs, but at least something must be there. Let us make such wakfs non-perpetual, or completely abolish them. Because, left to their present fate, they are going to become extinct very soon. Survey of wakf properties is necessary because no effective administrative scheme could be formulated unless the number, nature, value and income of all wakfs in
a country are known. As such, enabling provisions should be inserted in the wakf laws of Pakistan, Bangladesh, Sri Lanka and Myanmar, preferably based on the experience in India where survey has successfully brought to light a large number of wakfs. In the 1960s, their number was 100,000, today it is reported to be about 250,000, and the survey is still not finished in some places.²

The experience gained in India in the aftermath of the Wakf (Amendment) Act, 49 of 1984 and out of the Muslim opposition generated but it shows the decreasing confidence of the Muslim community in State appointed bodies to administer wakfs. Although some effort towards democratization is made in constituting Wakf Boards, yet the amount of State Control exercised through nomination of Board members. The Chief Executive Officer of the Board, then the authority of the State to supersede the Board and above all the power given to State and Central Governments to lay down policies and directions for the wakf administration makes the Muslim public very uneasy. Probably this erosion in the confidence of the Community may be attributed to the fast declining image of the Government as an efficient and neutral organ of administration.

In Pakistan too, the long innings played by the system of total governmental control has not produced any note-worthy beneficial result. Even such a basic thing as development of wakf properties and generation of additional income from wakfs to be used for education and economic betterment of Muslims has not found serious attention. Thus in Pakistan, community participation in wakf matters should be given serious thought. This is also true in other countries of

². Ibid.
the region, particularly Myanmar and Maldives, which are doing nothing for the betterment of wakfs.³

The statutory control of various matters like audit of accounts, alienations, etc. is satisfactory in all the countries of the regions except Myanmar and Maldives. Also in Pakistan, three objectionable provisions, which allow sale of wakf properties for reasons entirely unknown to Islamic law must be revoked. These are sub sections (e), (f) and (g) of section 16 of the Wakf Ordinance in all the four Provinces of Pakistan, allowing sale of wakf properties inter alia:

(e) to provide maintenance to those who, on account of unemployment, sickness, infirmity or old age are unable to maintain themselves; or
(f) to provide education, medical aid, housing, public facilities and services such as roads, sewerage, gas and electric power; or
(g) to prevent danger to life, property or public health.

The above problems are so pervasive in every society including that of Pakistan that if even all the wakfs in the country are sold-out the sale proceed would not enough to give fraction of relief even for a short time.

The wakf laws in India and Pakistan have the best provisions for speedy and inexpensive eviction of unauthorized occupants of wakf properties. These do not require filing of suit, and administrative action is enough. However, in Bangladesh, Sri Lanka (except in case of mosques), Myanmar and Maldives, court action is necessary. There is a need of suitable legislation in these countries on the lines of India and Pakistan.

In matters of legal adjudication of wakf disputes, it is desirable that, in the interest of speedy and inexpensive, Wakf Tribunals must be

³. Ibid.
established as provided in the wakf legislation of India and Sri Lanka.

Pakistan and Bangladesh would especially stand to benefit much from the establishment of Wakf Tribunals, due to large number of court cases relating to wakfs. So if the amount of litigation surely comes out of the coffers of wakf. So if the amount of litigation cannot be reduced, the cost of litigation by establishing Circuit Wakf Tribunals which may go to places instead of mutawallis and others connected with wakf administration spend wakf money on travelling and lodging, to go to and stay at the place where the Wakf Tribunal is situated. If wakf legislation could also provide for mediation, conciliation and arbitration before allowing adversarial litigation, it might save much of the precious wakf resources.

An overview on wakfs in South Asia shows that not much effort have been made to exploit the latent capability in many wakf properties that can be developed for generating enormous wealth to be used for the educational and economic betterment of the community and society. Legislating the right type of wakf legislation is the first step forward in this direction.

**Wakf Law in Egypt**

The earliest known document dealing with a genuine charitable wakf of agricultural land in Egypt dates from the ‘Abbasid period; the founder, the financial official, Abu Bakr Muhammad b. ‘Ali al-Madhara’, alienated the pond called Birkat al-Habash together with the orchards around it for charitable purposes. The revenue was to be used to operate a hydraulic complex and to buy food for the poor. Ibn Dukmak publishes the text of this wakf as a resume. 4

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Another document from the *Ikshidid* period (355 - 965) refers to a hydraulic complex known as *Bi‘r al-Watawit* consisting of waterwheels and a well, which were endowed for charitable use.\(^5\) *Al-Makrizi* states that the earliest pious wakfs were based on the alienation of commercial buildings, mainly apartment houses (*riba*) and that no land was alienated in the early period of the governors and their successors, even Ibn Tulun’s foundations of a mosque, a hospital and an aqueduct were financed only with the revenue of apartment buildings.\(^6\) The previous examples, however, show that during the ‘Abbasid period pious and family endowments did include agricultural land.\(^7\) The origins of a central wakf administration cannot be precisely defined. *Al-Kalkashandi* attributes, in rather vague terms, the origin of the *diwan al-ahbas* to the time of ‘Amr-b.al-As.\(^8\) The Fatimids modified the wakf administration. The caliph al-Muizz ordered that the ahbas funds be transferred to the *Bayt al-Mal* and that the beneficiaries should prove their claims.\(^9\) With these funds, the *Fatimid* state used to support all types of philanthropic foundations, in particular those whose assets were exhausted.

A large and detailed wakfiyya in the name of the Fatimid Vizier al-Salih Tala‘I ‘b. Ruzzik, preserved in a Mamluk-period is the only known Fatimid wakfiyya and the oldest example of this type. It refers to an agricultural estate alienated in a private wakf to the benefit of the family of Ibn Masum, a descendent of the Shi I Imam Musa al-Kazim.\(^10\) The state controlled over the *awqaf* by the *diwan al-ahbas* did not exclude

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7. Ibid. II, p. 114
8. Amr bin-Asal, *Subh el-a sha*, IV, p. 38
the role of the Kadi, however, which was directly in charge of the inspection of the premises. The Fatimid kadis of al-Fustat and al-kahira used to inspect yearly the religious buildings in both cities.

With the Ikta system introduced by the Ayyubids, important changes occurred in the situation of the awkaf. Land that was previously dedicated to philanthropic purposes was given as Ikta to officers and state servants, who were to collect its kharadj, and this was often detrimental to the philanthropic services, which this land originally financed. Following the overthrow of the Fatimids, Salah al-Din, endeavouring to cope with Crusader threats, alienated on a large-scale land of the Bayt-al-Mal in order to pay ransoms of Muslim prisoners of war and to support religious foundations and various philanthropic services aiming at consolidating Sunni Islam. An important number of madrasas and a major khanqah were created sustaining communities of scholars and Sufis, including Muslim migrants to Egypt.

The Mamluk wakf system consisted largely of irsad, referred to as wakf, thus blurring the line between the Bayat-al-Mal and the sultan’s private property. The Mamluk establishment thus acquired the benefit of fulfilling a charitable act at the expense of the state. Scholars of the Hanafi madhhab, and mostly during the Ottoman period, did not consider the alienation of Bayt al-Mal funds as a true, sound wakf. Sultan Barkok, who favoured the Hanafi madhhab, tried to liquidate some of the great wakfs established by his predecessors on the ground that they were from the outset illicit because they were based on the alienation of Bayt al-Mal land. The jurists, however, did not authorise him to liquidate wakfs serving pious works. The Shafi‘is preferred to tolerate wakfs financed by Bayt al-Mal estates despite their doubtful

status, as long as they supported the religious foundations which were, per se, entitled to funds from the public treasury.

The *awqaf ahliyya* included the great foundations of sultans and amirs, such as *madrasas*, *khanakahs*, *kuttabs* and funerary complexes; they were supported by urban and agricultural estates, both in Egypt and Syria, and their revenue was to serve combined charitable and private purposes by sustaining a religious institution and securing an income to the founder and his clan.

The *rizak* provided for the salaries of the religious personnel of the mosques and *zaviyas* for craftsmen and employees, such as the guardians of fields and villages, and building craftsmen. They also provided funds for the purchase of agricultural tools. These services include Christian villages as well. The supervision of the *rizak* came within the Great Dawadar's sphere of competence. N. Michel sees the *rizka* as a local Egyptian, non-religious institution, which originally was not ruled by religious law and was thus distinct from *wakf*. Over the course of time, however, *rizak ahbasiyya* were mistaken for *wakf*, acquired their legal status as irrevocable, and accepted of taxes.

At this time, all kinds of movable objects or chattels could be alienated, not only books, utensils and furniture for the religious foundations but also slaves or animals. Although discussions about the *wakf* of cash did take place in Mamluk Egypt, no such *wakf* is so far known prior to the Ottoman era. The Mamluk elite also made use of the family and the clan. Sultan al-Nasir Muhammad remunerated his *amirs* by making family *wakfs*, for them and their descendants. In his own family endowment deed, he stipulated explicitly that his daughters

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13. Ibid., p. 114
should get the same share as his sons, thus circumventing the inheritance law.\textsuperscript{15}

The Mamluk historians repeatedly criticised \textit{wakf} abuses by the ruling establishment. A devise used by sultans and \textit{amirs} to acquire \textit{wakf} property was simply to invalidate the \textit{wakf} on legal grounds, either justifiably or not. The most famous case of \textit{wakf} confiscation in the Mamluk period was that of Djamal al-Din al-Ustadar.\textsuperscript{16} Sultan Barsbay, who demolished \textit{wakf} shops to build his own \textit{madrasa} in their place, is reported to have made a fair offer to the tenants without pressuring them.\textsuperscript{17} The \textit{wakf} properties accumulated over generations represented a significant share of Egypt's resources and at the same time a great temptation to the rulers. Whenever, the \textit{Mamluk} state is need of liquid funds, especially in times of war or other crisis, the tapping of the \textit{wakf} resources was inevitable.

The \textit{awkaf} were a major concern for the Ottoman conquerors of Egypt and one of the first issues which Selim I tackled once he entered Cairo. According to legend, Selim decided to conquer Egypt after having tested the Egyptian 'ulamla' and finding them corrupt enough to authorise the liquidation of the Azhar endowments for a good bargain. A decree dated Rabi II 923/May 1517, i.e., the year of the Ottoman conquest, affirms, however, Selim's intention to respect the pious endowments established by the Mamluks.\textsuperscript{18}

The \textit{awkaf} of the Haramyn came similarly under Ottoman control. The supervision of the great pious \textit{wakfs}, however, remained in the hands of local \textit{amirs}. Ottoman aghast of the \textit{Dar al-Saada} in Istanbul sometimes controlled Thbose of the Holy cities. Also, \textit{awkaf} were now

\textsuperscript{15} Ibid., II, p. 378.
\textsuperscript{16} Makizi al-Makrizi, Bulak, II, pp. 70-1.
\textsuperscript{17} Ibid, p. 330.
\textsuperscript{18} Afifi, Awkaf, pp. 256-7.
no longer exempt from taxes, as had been the case in the Mamluk period. Giving supremacy to the Hanafi madhhab, the Ottomans stressed the distinction between wakf and irdad, a distinction that had not had much relevance under the Mamluks because of the prevalence of the Shafi madhhab at that time. The alienation of treasury land under the Ottomans needed therefore to be authorised by the Sultan or his governor. Due to the resistance of the 'ulama', however, the Ottomans were cautious when dealing with pious endowments inherited from their predecessors, which they preferred to maintain as long as they fulfilled philanthropic purposes. The rizak ahbassiya were also investigated as long as they secured an income for the needy. They were called wakf irdad or simply irdad.

The Ottoman governors of the 10th/16th and the 11th/17th centuries created important charitable wakfs in Egypt, some of which also included a private share for the founder. Their awkaf involved the foundation of new religious institutions mostly favouring the Hanafi madhhab but most of all they endowed, upgraded and often transformed existing ones. Special attention was devoted to saint's tombs and shrines, AL-Azhar's prestige as a teaching institution increased during this period. The pilgrimage infrastructure and its caravan benefited. Selim I enlarged sultan Djakmak and Kaitbay's endowments for the Holy cities (dashisha kubra) and Suleyman the Magnificent, Murad III made a new endowment called the dashisha sughra and Mehmemmad IV's wife alienated agricultural land in Egypt for the Holy cities. The Ottomans thus supported the Haramyn mainly with the wakf revenue of Egyptian land. Following Kaitbay's example, Suleyman and Murad III

endowed ships for the transportation of wheat from Egypt to Mecca and Madina.\textsuperscript{21}

The military aristocracy of the Ottoman period became increasingly involved from the 11\textsuperscript{th} to 17\textsuperscript{th} century onwards in the creation of large private \textit{wakfs} in Cairo for the benefit of the founder's own clan or household, which had a great impact on the upgrading and revitalising of their urban neighbourhoods. Notables of the religious establishment and the merchant class also created such endowments, which included the large number of \textit{sabil maktabs} built all over Cairo during the Ottoman period. The Black Eunuchs of the Imperial Harem, whose careers often ended in Cairo, also figure among the founders of great private \textit{wakfs} that included a philanthropic share; that of Othman Agha in the early 11th to 17th century, however, was purely charitable and of particular urban importance for the city of Cairo.\textsuperscript{22}

In 1864, Isma'il ordered that the \textit{wakf} administration established by 'Abbas I in 1851 should acquire the status of a ministry which would assume greater control over the pious \textit{wakfs}, and he introduced severe punishment for usurpation and abuses. To achieve this, he needed the authorisation of the Porte to act on behalf of the Ottoman Chief \textit{Kadi}, who continued to be the \textit{de jure} official authority in Egyptian \textit{wakf} matters, including those of the \textit{Haramyn}.

In 1884, two years after the British occupation Khedive Tawfik abolished the \textit{Wakf} Ministry and replaced it by an independent administration under his own direct supervision, a measure necessary in order to prevent Christian officials, now in control of the ministries, from dealing with the Muslims' pious endowments and getting

\textsuperscript{21} D. Behrens-Abouseif, "Qaytbays' Investments in the city of Cairo, Wakf and Power" Al. XXXII, 1998, p.67
\textsuperscript{22} D. Behrens-Abouseif, "An Industrial complex in Ottoman Cairo: The tanneries of Bah al-Luq"., Cairo, 1996.
involved with Sharia issues. The British, however, did not approve of the way in which the new body functioned and in 1913, Lord Kitchener re-installed the wakf Ministry with the consent of the Porte, under the condition, however, that it would be allowed to maintain a certain autonomy including the budget. During the late 19th century, the Khedive's control of the awkaf was indisputable, assuming the traditional competencies of the Ottoman Chief Kadi, from whom he still needed an authorisation. This went on until World War I when the de jure Ottoman authority was finally also abolished.

The problems of abuse of the wakf system in Egypt have been virtually the same for all periods of Egypt's pre-modern history. Ever since Ibn Mammati's comments in the 6th/12th century, the subject of wakf abuse was a regular issue in the chronicles and often a major political issue setting rulers against 'ulama'. The tremendous accumulation of assets in wakf properties made it inevitable that the rulers, whether due to pressing circumstances or simply to greed, would turn to these resources. The success of the 'ulama's resistance varied. The Mamluk sultans managed to a great extent to manipulate judges according to their own will, Ottoman once were more independent.

Long-term lease contracts were another solution to the problem of wakf decay. This allowed the tenant himself to carry out the necessary repairs and restorations, and to subtract the expenditures gradually from the rent. The long-term often implied sub-renting the estate and freezing the rent for a long period, while it gave the tenant a proprietor-like status. The hikr was a long-term lease of land only, giving the tenant

24 Ibid., p. 109.
the right to own and alienate the buildings on it. He could then replace dilapidated *wakf* buildings by new ones and alienate them in a *wakf* of his own. As a result, several *wakfs* could be involved in the same plot. The Mamluk sultans often participated as shareholders in commercial structures within the city that belonged to older *wakfs*; this offered them lucrative investment opportunities for their own *wakfs*, while they could rescue an old one from total decay. The *khulmow* was a device that evolved during the reign of Sultan al-Ghawri and was vividly discussed among the jurists of the time. It was a form of rent that gave the tenant the right to act like a proprietor i.e. in selling, bequeathing and alienating his rights in the property.25

**Waqf Endowments in North Africa**

The Marinid endowments had a significant impact on many aspects of urban life and contributed to the urbanisation of Moroccan towns and cities. Public endowments attracted teachers, staff and students to urban centres, thereby increasing the demand for food, shelter, and clothing; the purchase, sale and rental of real estate added capital to the economy. However, the heavy reliance on a single sector of the economy, such as real estate, meant that the daily operation of the endowment system was sensitive to economic fluctuations. It was not difficult for individuals to misuse the system through embezzlement, extortion or theft, and it was therefore necessary for the agents of the legal system to play an active role in the regulation of endowments.26

The Marinid sultans created public endowments (*wakf khayri*) for mosques, *Zawiijas*, hospitals and, especially, *madrasas*. They built at least six *madrasas* in the period between 721/1321 and 756/1356,

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designating revenue-producing properties as endowments to pay the salaries of teachers and the expenses of students. These assets include stores (hanuts) used for commerce and crafts, houses, apartments, stables, public baths, mills, orchards, public ovens, inns, halls, factories for weaving and soap-making, and arable land. Marinid support for madarasas was an aspect of their internal politics. At the beginning of their reign and power of Fasi notables and religious leaders and to foster a new religious elite that would support their rule. This they accomplished by building madarasas and supporting the religious personnel associated with them. Wakf inscriptions served as an instrument of Marinid propaganda.\(^{27}\)

The management of wakf resources was a position of great responsibility to be undertaken only by persons of unquestioned integrity. A supervisor (nazir), specifically appointed for this task, was entrusted with the administration of these funds under the supervision of the kadi. This office, like others, was often inherited.

A family endowment may be created for many reasons: as an act of piety; as a legal fiction to prevent revocation of sale or to secure property whose ownership is contested; to avoid confiscation, as an act of loving, kindness toward a dying husband; etc. Whatever the founder's motive, the endowment serves to keep property intact, to assure the entitlement of beneficiaries for the duration of the object and to regulate the transmission of usufructory rights from one generation to the next. Not only does the institution accord a founder the freedom to make decisions denied him by Islamic inheritance law, but the creation of a family endowment also gives a proprietor a legal means to remove all or part of a patrimony from the effects of that law.\(^{28}\)

\(^{27}\) Ibid.
\(^{28}\) Id.
In a study of 101 disputes related to family endowments, seventy-five cases were identified in which both a founder and a beneficiary are mentioned. Of these endowments, fathers and mothers on behalf of their children created 75 percent and, less frequently, grand children, father outnumber mothers as founders by a ratio of six to one. The remaining 25 percent of the endowments were created for someone other than the founder’s children and lineal descendants. Males to support the interests of other males used the institution commonly. In the same sample, fathers were three times as likely to create an endowment for sons and daughters. By contrast, mothers appear to have been more even-handed.

Twelve percent of the endowments created by parents for the benefit of their children were minors at the time the endowments was created, suggesting that it was common for a parent to establish a family endowment soon after he or she married and produced offspring. This practice points to a desire on the part of proprietors to make de facto arrangements for the ultimate devolution of their property while they were in the prime of life, a phenomenon that required founders to make special provisions for the inclusion of unborn children in the endowment. If a man had two or more wives, his calculations were more complex. Some husbands favoured the offsprings of one wife over those of another; others treated sons of co-wives equally.

When a designated family line becomes extinct, the endowment revenues to a public institution, commonly, a founder specifies that the

31. Ibid., pp.278, 281.
revenues are to revert to ‘the Muslim poor’ or to ‘the poor and indigent’. Some made very particular designations, e.g. ‘the poor and the indigent in Granada and al-Bira’, or “the poor and indigent who reside in the mausoleum of Shaykh Abu ‘l-Abbas al-Sabti”, or ‘lepers’. One founder stipulated that upon the extinction of the designated line, the revenues were to be used to support students, ransom captives and to manumit slaves.

The tendency for disputes to arise one or more generations after the death of both the founder of the endowment and the witnesses to the deed meant that written records played a critical role in the resolution of disputes. For this reason, an endowment deed was customarily deposited in a family archive for safekeeping, and it would pass from one generation of beneficiaries to the next. In the event of a dispute, the deed, together with other important documents, would be presented to the judicial authorities. In one case, a woman produced an endowment deed in an effort to secure her status as a member of the first set of beneficiaries. The deed was torn, and this fact cast doubt on the validity of the endowment.

In response to the contention that the revenues of a testamentary endowment created for both currently alive and unborn persons should be frozen until all of the potential beneficiaries had come into existence, the Fasi jurist al-Mazjdaldi (d. 864/1459-60) said, “This [conclusion] is not required by either the founder’s words or his intention”.  

32. Ibid., p.49.  
33. Id., p.60.  
34. Id., p.463.  
35. Id., p.343.  
36. Id., p.186.  
37. Id., p.438.  
40. Ibid., VII, p.23.
Waqf Institution in Algeria

The 19th century was a turning point for Muslim family endowments. Observers of early modern Muslim society have noted the rapid rate at which religious endowments proliferated throughout the Muslim world. By the beginning of the century, one-half of the land in Algeria and one-third in Tunisia had been reportedly transformed into endowment land. In Algeria, the endowment system frustrated French efforts to purchase land on the open market. From Algeria to India, endowments in the 19th century increasingly were viewed as an obstacle to economic welfare and social progress. Inspired by Western social and economic theories, modern advocates of reform-Muslim and non-Muslim-marshalled economic, moral, religious and legal objections to the wakf system. These objections were directed exclusively at family endowments, which, so the argument ran, were solely responsible for retarding a given nation’s social and economic development by sequestering large quantities of its capital resources. Despite the fact that the overwhelming majority of Muslim scholars have always accepted family endowments, advocates of reform now cited the opinions of early Muslim jurists who had opposed the institution, and they asserted that objections to the institution had persisted through the centuries.

In the period immediately following the occupation of Algiers, Muslims sold large amounts of habous property to Europeans, who were ignorant of the fact, that such property was inalienable. Other Muslims, presumably the endowment beneficiaries, subsequently entered claims to the property on the strength of endowment deeds in their possession. These litigations created considerable turmoil. Although the French

42. E. Mercier, Le Code de Habous, Constantinople 1899, p. 90.
ceased to be duped as they grew more familiar with the system of endowments, the *habous* system continued to remove large amounts of land from the free market, thereby posing a serious, ongoing obstacle to 'economic progress'.

Initially, the French tried to mitigate the effects of *habous* by legislative means. French settlers pressured their leaders to create better conditions for European entry into the Algerian land market. In response, the French government enacted a legislative decree on July 26, 1873, that was intended to resolve the land problem by declaring that all land in Algeria was henceforth subject to French law known as the *Loi Wamier*, the decree stated that "the establishment of immovable property in Algeria, its conservation. The contractual transmission of immovables and property rights irrespective of the [legal status] of the proprietor, will henceforth be subject to French law". Article Seven of this decree left Muslims subject to their own laws in matters of personal status and inheritance provision that was to be of critical importance.\(^\text{43}\)

Like its predecessors, the *Loi Wamier* proved inadequate, in part because the divisions and categories of French law do not correspond exactly with those of Islamic law. Most French jurists maintain that family endowments were subject to the law of property, while Muslims viewed them as subject to the law of succession.\(^\text{44}\) French jurists understood the economic and political interests of colonialism, and many served those interests, consciously or unconsciously, by advocating changes that facilitated the new system of land tenure.

\(43\) Sautayra and Cherbonneau, Droit Musulman, ii, p.414.
\(44\) Henry and Balique, La doctrine colonial, pp.15-6.
The Waqf Institution in Sub-Saharan Africa

Unlike the Middle East and North Africa, in most of sub-Saharan Africa before the 20th century the *wakf* institution was little used as an instrument for endowing mosques, colleges, and other religious establishments. The reasons for this are not entirely clear, but the lack in most parts of Africa of building stone and the consequent impermanence of structures may have been a contributory factor. In West Africa and the Nile valley, the institution of the *madrasa* was itself lacking, even in such considerable centres of learning as Timbuktu, and nor ruler saw fit to endow one. Learning was imparted on a purely individual, non-institutional basis.

Only in Zanzibar under the Bu Sa’idi dynasty (1804-1964) was land regularly set aside as *wakf*, and this was not for the construction of religious buildings but to create inalienable areas in the N’gambo, the non-elite quarter of the city. This was typically, where ex-slaves were settled and their elite owners made the plots of land into *wakf* for the benefit of the poor and needy, or in some cases for the benefit of sons or daughters. The British bureaucratized the institution in the 20th century, and a Wakf Department was created. Many *wakf* dedications were invalidated by the British, resulting in the loss of such land and the imposition of land rents and even house rents on the poorest segment of the population, despite protests from *wakf* dedicators and the poor of N’gambo.45

In 19th-century Timbuktu, individuals made slaves into *wakfs* for their descendants; documents preserved in the Center Ahmad Baba their show, for example, a woman making a slave woman into a *wakf* for her male and female children, and another in which a woman makes a

slave woman a *wakf* exclusively for her daughter and the daughter's female descendants. Again in Timbuktu, in the 10th/16th century Askiya al-hadjdj Muhammad made a *wakf* of sixty *dijuz'* (two complete copies) of the *Qur'an* for the Great Mosque of Timbuktu. In Lamu on the East African coast there is evidence that, in the nineteenth century, not only were copies of parts of the *Qu’ran* endowed in perpetuity but an array of other Arabic Texts.

In the case of religious scholars and holy men, these grants were made in order to encourage them to settle in the sultan's domains, and often to perform religious services for him. These are only occasionally designated as *wakfs*; more usually they are called *djah* or *sadaka* in the Sudanese Kingdoms (the estate granted being called *hakura*). While the documents making such grants do not always state that land is alienated in perpetuity, as one would expect in a true *wakf*. They were effectively titles to land that extended to descendants, and were often confirmed and reconfirmed by succeeding sultans; indeed, those that have been published were discovered in the personal archives of the families concerned in the 20th century, indicating their continuing validity in the eyes of their owners. In Kanem-Bornu and Songhay, where the documents grant privilege without land, they are called respectively *mahram* and *hurma*, terms that indicate that the grantee's person and property were inviolate.

**Waqf Institution in Lebanon and Syria:**

Until the military coups, reforms were confined to supervision of the *wakf* administration by means of governmental agencies, and moderate substantive amendments in the *wakf* itself.

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In Lebanon (1947), the validity of the family *wakf* was limited in time; a *wakf* *Khayri* could be either temporary or perpetual. The founder could revoke his *wakf* and recover it for himself, and after him, for the beneficiaries; the exclusion of legal heirs from their rights to entitlement was prohibited; and the founders stipulations designed to restrict the freedom of the beneficiaries with respect to marriage, place of residence, or the raising of credit were deemed null and void.\(^{48}\)

The circumvention of the *shar'i* inheritance rules were frustrated through ‘obligatory entitlement’ to chose relatives with respect to two-thirds of the estate; the founder could grant his or her orphaned grandchildren are entitlement equal to what would have been due to their parent had he or she been alive at the time of the founder’s death. *Wakf* property was to be managed, wherever possible, by the beneficiaries; the administration of a *wakf* *khayri*, in default of an administrator was vested in the Ministry of Awkaf; the consideration of sold *wakf* property (*amwal al-badal*) was to be invested in constructive projects, and *awkaf* irretrievably neglected were to be abolished.\(^{49}\) The actual effect of these reforms was slight because most of them were related to future, rather than existing, *awkaf* and royal ones were excluded from most of these reforms.

In Syria, under the French Mandate to Control General Des Wakfs was established in 1921, but no reforms beyond *wakf* registration were introduced. The military regimes in Syria and Egypt introduced radical reforms in the *wakf* to the point of its complete abolition.\(^{50}\) Syria, in 1949, abolished both the family *wakf* and the *mushtarak* (partly *dhurri* or *ahli* and partly *kharyl*) *wakf*, and prohibited the foundation of such *awkaf* in future. The family *wakf* was to be registered, in full ownership,

\(^{49}\) Ibid  
\(^{50}\) id
the name of the founder, and if not alive, in that of the beneficiaries.\textsuperscript{51} The administration of the public \textit{awkaf} was transferred to a special Ministry. In case of \textit{Idjaratyn} (prolonged lease), the \textit{wakf} was to be sold and its consideration distributed among the beneficiaries. A founder's stipulations intended to exclude legal heirs from the estate were invalidated.

The function of \textit{mutawalli} (administrator) of both family and public \textit{awkaf} was abolished, and the management was vested in the Ministry of Awkaf, which could allocate entitlement to charitable purposes regardless of the founder's stipulations. Under the 1961 Law, the ministry of Awkaf was authorised to administrator the \textit{awkaf khayriyya}, including those had been abolished, family \textit{awkaf} of which there were no longer any beneficiaries, \textit{wakf ghayr sahih} (of the miri category), \textit{wakf} with no specification of beneficiaries, and \textit{wakf al-Haramayn}.\textsuperscript{52}

Between 1952-4, \textit{hikr} (long term lease of dilapidated \textit{awkaf}) on \textit{awkaf ahliyya} and \textit{Khayriyya} was abolished. In 1960, the lessee was given the option to buy the property from the \textit{wakf} failing which it would be sold by auction. The full ownership of all agricultural lands pertaining to \textit{awkaf Khayriyya} was nationalised to be distributed within the framework of the agrarian reform. Their former \textit{nazirs} were to receive bonds, and on their redemption after 30 years the capital as to be invested in development projects. Under Law No.29 of 1960, the founder may dedicate property to charitable purposes and allocate entitlement to himself. In the presence of close relatives, the \textit{wakf} is valid only with respect to one-third of the estate.\textsuperscript{53}

\begin{itemize}
\item \textsuperscript{51} ibid.
\item \textsuperscript{52} Id.
\item \textsuperscript{53} Id.
\end{itemize}
Waqf Institution in Palestine, Jordan and Israel:

In Palestine under the Mandate, the British established the Supreme Muslim Council (1921) with a view to replacing the Ottoman Ministry of Awakaf. In 1937, the Council’s Wakf committee was relieved of its functions, and *wakf* properties were transferred to a government-appointed commission. The attempts during the Mandate to convert Muslim *awkaf* into secular trusts failed. After the incorporation of the West Bank into the Hashemite Kingdom in 1951, the government’s policy was aimed at strengthening the state control in the management of the *awkaf*. In 1951, the 1921 Order establishing the Supreme Muslim Council was abrogated and the 1946 Wakf Law was extended to the West Bank and Jerusalem. A wakf Council presided over by the *Kadi l-Kudat* was established under that Law, to be replaced, with minor changes, by the 1962 and 1966 Wakf Laws and amended by that of 1982; it controls the management of the *awkaf* and its budget. No reform, however, have been introduced in the actual institution of the *wakf*.

In Israel, the vast majority of the Muslim *awkaf* became absentee property after their administrators had left Israel for the Arab states. The management and entitlement of absentee beneficiaries were vested in a Custodian. The ministry of Religious Affairs, on behalf of the Custodian, by means of Muslim advisory boards, administered holy places. The income was allocated to Muslim religious services and social welfare. The consideration of properties that had been transferred to a governmental development authority was invested in the establishment of educational and social institutions and projects for the benefit of the Muslim Community.

54. Ibid
Under 1965 Law, the Custodian may transfer the family *wakf* to the beneficiaries' full ownership. *Wakf khayri* is to be transferred in Muslim boards of trustee empowered to own and dispose of it at will, to use the income for social and cultural purposes regardless of the founder’s stipulations, and to use the *amwal al-badal* to establish institutions for the same purposes. The *wakf* properties in East Jerusalem, under Israeli rule, have been exempted from the status of ‘absentee properties’. The powers of the council of Wakf and Muslim Affairs and the General Director of the Muslim Wakf Department – as defined in Jordanian law – were delegated to the Shari’ā Court of appeal in East Jerusalem. The Palestinian authority appointed a General Director of the *awkaf* in the West Bank of East Jerusalem, who, holds, since the early 1990s, the office of President of the supreme Muslim Authority.

**Waqf Institution in Saudi Arabia and Yemen**

No statutory legislation relating to *awkaf* except certain minor provisions with no substantive, has taken place, but *kadis* may resort here, as in other aspects of the law, to a school other than the Hanbali one in case the relevant doctrine in the latter may cause hardship and is opposed to the public Interest. The Saudi Ministry of Awkaf supervises the administration of the *wakf khayri*. The 1962 regulations prescribe that, upon the extinction of beneficiaries, income shall pass to charitable purposes and a *nazir*, preferably the Director of the Awkaf, be appointed by Court. The Ministry allocates the income of the *wakf* in accordance with the founder’s stipulations. Foreigners are prohibited from transmitting the income abroad. Pilgrims from all over the Muslim world have founded endowments on a large scale in favour of *ribats* (hostels for the poor); these *ribats* are managed by *nazirs*. The 1939

55. Ibid
Ordinance restored the validity of the family wakf in the Aden Colony, following its invalidation by the British Privy Council in 1894.\textsuperscript{56}

The Yemenite 1992 law prohibits an endowment exceeding one-third of the estate in the pressure of a heir. Poor descendants of the founder have priority over other poor. Upon the extinction of a beneficiary, the founder may replace him by another one. A family wakf is deemed void unless the beneficiary enters the category of a charity, or is physically disabled and has nobody to maintain him.\textsuperscript{57}

Family awkaf contradicting the provisions of this law are deemed null and void unless endorsed by a Shari'a court or the founder's heirs, or forty years have elapsed since their establishment. The beneficiaries and the court may abolish a family wakf, whereupon the ownership reverts to the beneficiaries according to their shares in entitlement. A beneficiary's heirs take their share in entitlement according to inheritance rules. In case of dispute between the beneficiaries concerning entitlement in and matters pertaining to division of a wakf that has been revoke. The court will apportion entitlement according to the rules of inheritance or, in case of obscurity, per capita among the existing beneficiaries, male and female; the division of the property will be according to their shares in the entitlement.\textsuperscript{58}

**Waqf Institution in Kuwait and the United Arab Emirates**

Under the Kuwait 1951 Decree, the founder's poor relatives have precedence in a wakf khayri. In awkaf, Khayriyya or mushtaraka where the founder has not stipulated otherwise, supervision is invested in the General Awkaf Department. The founder may revoke any part of a family or charitable wakf (excluding mosques). Where a family wakf is in

\textsuperscript{56} Ibid
\textsuperscript{57} id
\textsuperscript{58} id
a state of dilapidation, or the beneficiaries are numerous, the share of each being insignificant, the *wakf* expires and reverts to the ownership of the founder or-if dead-to the beneficiaries. The family *wakf* terminates with the expiry of the beneficiaries or the period specified by the founder; the ownership thereof reverts to the founder, his heirs, and-in their absence-to some public charity. The 1992 Law provides for the establishment of a General Secretariat for the Awkaf and a Board of Awkaf, the Chairman of which is the Minster of Awkaf. In the United Arab Emirates, the 1980 decree abolished the existing family *wakf* and prohibited its creation in the future.59

**Turkey**

In 1926, Turkey abolished the family *wakf* and nationalised the public ones. Agricultural properties (exchanged for urban properties) were distributed within the framework of agrarian reform. In 1935, *idjaratayn* and *mukata'a (=hikr)* were abolished and the establishment of new ones was prohibited. Lessees were made owners of the properties in return for monetary compensation. *Charity associations replaced Wakf institutions.* Public *awkaf* were transferred to public ownership (known as ‘foundations’) to be administered either directly by the foundations (*mazbut*) or by the *mutevellis* under the control of the foundations (*mulhak*). The Turkiye Vakiflar Bankasi was established under a 1954 act in order economically to utilise the capital of these foundations. The Bank may lend against securities and immovable assets, establish or participate in partnerships and insurance, buy and sell real estate, and perform all kinds of banking transactions and services.60

59. Ibid
60. id
Waqf Institution in Libya

During Italian rule over Libya, some reforms were introduced in the administration of the wakf (decree of 1939), but the institution itself remained intact. No substantial changes occurred during the British rule and under King Idris al-Sanusi. Prior to the military coup, the bulk of khayri endowments belonged to the Sanusi order and served its lodges (zawiyas). Colonel Gaddafi outlawed the order and confiscated its awkaf. The 1971 law provides for the establishment of a general Board of Awkaf to administer awkaf in favour of charitable purposes or those whose beneficiaries are not known. The Board supervises the awkaf in favour of the zawiyas and tomb and the administration of family ones. The 1972 law, drafted along the pattern of the Egyptian 1946 law, introduced moderate reforms regarding the wakf. The 1973 law abolished the wakf ahli. The founder may revoke his wakf and resume the ownership himself provided he has retained the right to do so, failing which the wakf reverts to the beneficiaries. Amwal al-badal following expropriations for public purposes or sale due to dilapidation are to revert to the beneficiaries. Wakf properties nationalised by virtue of 1971 law with a view to being distributed within the framework of the agrarian reform, are to be revived in favour of the original purposes, failing which they are to revert to the Wakf Authority.61

Waqf Institution in Persia

The extent of wakf in Persia and its value at different periods and in different places are not available and the effect spread of wakf on the economy of the country has yet to be worked out. Moreover, what was typical of one district at one point in time cannot be taken as typical of others at all times. Government offices not doubt contain records of

61. Ibid
awkaf but these are not generally available. Shrines also presumably have records of awkaf constituted in their favour. Many surviving wakfiyyas are held in private hands and some have been published. Some also survive in the form of inscriptions in mosques and other charitable buildings; historical works, especially local histories, biographical works and collections of state documents also contain information on awkaf. Much of what follows is based on state documents and wakfiyyas and does not necessarily reflect practice as opposed to theory. The available information on awkaf for some districts, notably for some districts, notably Yazd, Kum, Kirman and, for the Safawid period, Isfahan, is richer than elsewhere. 62

The stipulation that property to be made into wakf must be in the full legal possession of the founder was in theory observed, and sometimes it is specifically mentioned in the documents that the property had been legally bought by the founder. It is, however, doubtful whether all the awkaf constituted by rulers were in fact made out of crown property [Khalisa] or had been legally bought and not usurped; similarly, some of the property of powerful individuals made into awkaf may, at some stage, have been usurped. 63

In practice, there does not appear to have been any restriction on the type of land made into wakf. As well as landed estates, water rights, water mills, real estate, bazzars, shops and houses were also constituted into awkaf, and, more rarely, rights of usufruct. 64 Jean Aubin noted that Oldjeytu authorised Inal Khatun in a decree (nishan) dated to the equivalent of July 31, 1305 to constitute over half of the village of Kalkhuran, which Ghazan Khan had given her for her upkeep (ikhrajat), into wakf for Shaykh Safi and his descendants. Ten years

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62. Ibid
63. id
later, Oldjeytu constituted the remainder of the village into wakf for the Shaykh, who later nevertheless managed to sell it to the descendants of the sahib diwan Shams al-Din Djuwayni, to whom it had originally belonged. “Books, carpets and other objects were frequently made into wakf for mosques and madrasas”. The great majority of charitable institutions were constituted for the benefit of mosques, madrasas and khanakahs, and their revenue devoted to purposes such as the support of the 'ulama', feasts and the feeding of the poor on religious festivals, the holding of religious assemblies, roza-khwanis and so on. Many were also made for the upkeep of charitable buildings such as hospitals, caravansarais, water storage tanks and drinking fountains.

The first call on the funds of a wakf was the development and upkeep of the property itself and, then unless exemption had been granted by a special farman, the payment of government taxes, after which came the payment of the wages of the servants of the foundation for which the wakf had been constituted and the mutawalli, who was usually entitled to one-tenth of the revenue, though in some cases it was stipulated in the wakf-nama that he should be paid more or less than this. Landed property held as wakf was often leased; some wakfiyyas laid down that the term of the lease should not exceed three years.

With the fragmentation of the caliphate and the rise of semi-independent dynasties, the conquered territories, whether belonging to Muslims or non-Muslims, fell to the conquerors and their military auxiliaries. The extent to which existing awkaf continued to function varied and is not well documented. Many were probably usurped; and others decayed over time and fell out of operation.

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66. Ibid
68. Ibid
For the Tahirid, Buyid, Saffarid, Samanid and Ghaznawid periods, information on *awqaf* is sparse, and such *awqaf* as were constituted were probably of a modest nature. Under the Samanids there was a separate *diwan* for *awqaf*. Narshakhi mentions a number of *awqaf* made by Amir Ismail'Ilb. Ahmad, all apparently of a modest nature. Much *wakfi* land was seemingly held by the ‘ulama’ as *mutawallis*.

Under the Saldjuks [Saldjukids], there was probably an increase in *wakfi* land and in the control exercised over it by the state. The spread of *madrasas*, apart from anything else, and the foundation of mosques and other charitable buildings, is likely to have contributed to an increase of *awqaf*. Mafarrukhi states that Nizam al-Mulk constituted innumerable estates into *wakf* for a *madrasa* which he had built in the Dar Dasht quarter of Isfahan and that its annual revenue was over 10,000 dinars.

Husayn b. Muhammad b. Abi 'l-Rida Awi states that when he was writing (ca. 729 / 1328-9), the *madrasa* was still in existence but its *awqaf* had been misappropriated. It is probable that Nizam al-Mulk’s foundations were made partly with government funds.

General supervision over *awqaf* was exercised by the *wazir*, the head of the *diwan-i a ‘la*, but immediate supervision was probably usually exercised by the *kadi al-mamalik*. The *mutawalli* of an important *wakf* or group of *awqaf* was probably often appointed by the state and, even if named in the *wakfiyya*, was given a document of appointment. If

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70. Amir Ismail b. Ahmad, K. Ahkam al-Awkaf, Cairo, 279-95/892-907, pp. 16-17, 33-4.
74. Lambton, op. cit., p. 43.
not a *kadi*, he was usually a member of the religious classes. The extent of the control exercised by the *diwan-i awkaf al-mamalik* over *awkaf*, especially with regard to provincial *awkaf*, is not entirely clear. Practice varied. In general, it seems that the provincial *kadi al-kudat* was appointed by the *kadial-mamalik* and had charge or provincial *awkaf* but the general supervision of provincial *awkaf*, like the most other aspects of the administration, was delegated to the provincial governor or *mukta*.

Under the Khwarazmshahs, the situation with regard to *awkaf* was probably broadly similar to that which had prevailed under the Seljuks. A diploma (Manshur) for the Kadi al-Kudat Khalaf al-Makki renewed his charge of *awkaf* properties, which had been in the possession of his trusted agents (mutamidan) and of the tawliyat of the *awkaf* of the mosques and madrasas, which had been in the care of former kadis. And at his request the accountant of the diwan, who had been in charge of the wakfi accounts, was recalled and all affairs connected with the administration of the *awkaf* their development and their protection from the hands of those who would encroach upon them, were entrusted to him.

Terken Khatun, who ruled Kirman after the death of her husband Kutb al-Din Muhammad in 665/1257 until her death in 681/1282, made numerous villages and estates into *awkaf* for mosques, shrines, hospitals and lesser charitable purposes. These are recorded in the *Tarikh-i Shahi-yi Kara Khita’iyan*, the anonymous author of which states that records of the *awkaf* of Kirman had been kept in the provincial *divans*. Piety may have been her primary motive, but it may be that she needed the public

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support, which such foundations have, she is stated to have claimed her dowry (sadak) on her husband's death and with the 10,000 dinars to which it amounted to have bought land, which she made into awkaf for the madrasa and tomb complex which she built in Bardasir.\(^{80}\)

It seems likely that many, if not all, of her awkaf were made out of her personal property. She had a private diwan (diwan-i khass) separate from the state or public diwan and owned considerable resources.\(^{81}\) Her sons, Sultan Hadjdjadji and Soyurghatmish also made many charitable foundations out of their inherited estates and private property.\(^{82}\) Terken, 'Khatun designated herself as mutawalli of some of the foundations she constituted, including the numerous properties she made into wakf for the Friday mosque outside Bardasir.\(^{83}\)

In some of her smaller foundations, especially those made for slaves and slave-girls, her children were designated mutawalli. This was also the case of the mill (in Bahramdjird) which she had bought and repaired and made into wakf for the shrine in the village of Ardashir in Djuwayn.\(^{84}\) The office of mutawalli of the awkaf of the Friday mosque which she built at the New Gate of Bardasir in 673/1274-5 was entrusted to "the ruler who was on the throne of Kirman and (thereafter) to his/her children".\(^{85}\) Some of Terken Khatun's awkaf were of administrative affairs and public welfare.

During the Mongol invasions, much wakfi land, which lay in the path of the invading hordes, must have suffered devastation, but so far as it escaped its status appears to have been little changed. From an

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80. Ibid., p. 100.
81. Ibid., p. 232.
83. Terken Khatun, Tarikh-i Shahi-yi Kara Khitaiyan, p. 244-5.
84. Ibid., pp. 225-6.
85. Ibid., pp. 235-6.
early date there was a department of *awkaf* in the Ilkhanate. When Hulegu charged Nasir al-Din Tusi with the establishment of an observatory at Maragha, the building of which was begun in 657/1259, he appointed him over the *awkaf* of the empire. Nasir al-Din also held this office under Abaka and finally died when on a tour of inspection of *awkaf* in Iak. He appointed in each locality an official responsible for the administration of *awkaf*, allowing him to keep one-tenth of the *wakfi* revenue for his salary.

The *diwan's* share of the revenue was to be sent to Maragha for the observatory. Teguder Ahmad, who succeeded Abaka in 680/1282, appointed Kamal al-Din 'Abd al-Rahman al-Rafi'i mutawalli of the *awkaf* of the empire, and ordered the proceeds of all *awkaf* to be expanded as laid down by their founders with the cognisance of Kamal al-Din and the great imams and ulama. The proceeds of the *awkaf* for the Haramayn were to be collected annually and sent to Baghdad at the time of pilgrimage. Under Ghazan Khan (694-703/1295-1304) there was probably an attempt to tighten control over the administration of *awkaf*.

This may have been an accurate statement as regards the central government, but there was much usurpation of property in general, including *awkaf*, by Mongol officials and others. Hamd Allah Mustawfi states that Shiraz there were over 500 charitable foundations, which had innumerable *awkaf*, but the revenues of few of them reached their property purposes. He also alleges that the Mongols have usurped the Pishkil Darra district of Kazwin, which was *wakf* for the Friday mosque

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of Kazwin. Wassaf asserts that most of the awkaf of the empire and the buildings, which they served, were in a state of ruin. Their revenue misappropriated, but he sates that Kurdudjin, the daughter of Tash Mongke. Abish Khatun, to whom the last Ilkhan Abu Said had given the taxes of Fars on a permanent contract (bar sabil-l mukata a-yi abadi) three years after his accession, paid particular attention to the buildings of his forebears, increased their awkaf and devoted their revenues to their proper purposes.

Ghazan Khan and Oldjeytu founded many awkaf. Their motives were various some of Ghazan's benefactions were clearly prompted by charity. And some by a desire to secure the possession of property to his descendants, as when he laid down that his indju lands should be constituted into wakf for the sons of his chief wife Bulughan Khatun, or, if she had no sons, for the sons of his other wives and their male descendants. Al-Kashani mentions that Ghazan have orders for a dar al-siyada to be built in every province in Persia and for estates and villages to be made into wakf for them, so that the annual income of each would be 10,000 dinars. Rashid al-Din confirms that Ghazan made such buildings in Isfahan, Shiraz, Baghdad and various other towns. However, most of Ghazan Khan's awkaf, and also Oldjeytu's, were for the benefit of foundations in their respective capitals, Tabriz and Sultaniyya.

Among private individuals who constituted their property into awkaf, the example of Sayyid Rukn al-Din Muhammad and his son Shams al-Din Muhammad of Yazd is notable. Sayyid Rukn al-Din

89. Ibid., p. 67.
91. Lambton, op. cit., 315 ff.
92. Rashid al-Din, Tarikh-i-mubarak-i-ghazani, p. 331.
disposed of a great deal of property—shares in *kanats*, land and real estate in Yazd—and he also apparently had considerable capital available with which he purchased new property with a view to making it into *awqaf*. His foundations and those of his son and their *awqaf* are set out in the *Djama' al-khayrat*, dated 748/1347-8.95

An interesting feature of Shams al-Din Muhammad’s *awqaf* is the inclusion of pensions (*idrarat*) which he held on various funds among the property ‘which he made into *wakf*’.96 Rukn al-Din Muhammad, Shams al-Din’s father, has also had a pension drawn on the revenue of Yazd, part of which he had inherited from his forefathers and part from the *sayyids* and *imams* of yazd. After his death, it passed to Shams al Din.97. On the other hand, that *idrarat*, which consisted of money or villages, were the property of their holders, who could dispose of them like landed estates, sell them, give them away, or constitute them into *wakf*.98

Many of the *awqaf* constituted during the Ilkhanate disappeared over time. On Rashid al-Din’s fall, the revenue of the *awqaf* which he had made for the Rab’-i Rashidi was withheld from expenditure on its proper purposes and his estates taken for the *diwan*.99 The Ghiyathiyya *awqaf* or some of them, made by his son Ghiyath al-Din Muhammad, appear to have still been in existence in 1073/1662.100 There is also mention of Ghazani *awqaf* in the 10th/16th century.101

96. Shams al-Din Muhammad’s *Djaml khayrat*, pp. 174, 203, 213, 214; 216.
The Timurids in Bukhara, Harat and elsewhere, and the Safawids in Isfahan, followed the practice of Ghazan and Oldjeytu in founding magnificent buildings in their capitals and constituting valuable *awkaf* for them. Perhaps partly as a result of the increasing number of royal foundations, the *sadarat* was expanded and separated from the wazirate and the office of *sadr* regularised.\(^{102}\) Maria E. Subtelny has drawn attention to the proliferation of *awkaf* in Khurasan under the Tamurids, especially Husayn Mirza Baykara.\(^{103}\)

Under the Safawids, there was probably an increase in family *awkaf*, made in the hope of ensuring the enjoyment of their revenues by the founder and his family and of preventing, or at least lessening, the interfere of the government in the administration of the property so constituted. A typical example is the *Wakfnama* of Ghiyath al-Din Ali al-Ghiyathi dated Ramadan 951/November-December 1544.\(^{104}\) The founder relinquished ownership of the endowed properties and took them over again as *mutawalli*.\(^{105}\)

The Safawid shahs made extensive *awkaf* for various shrines and appointed *mutawallis* for them. Shah Ismail I allegedly took possession of estates in Maymand, which had been made into *wakf* for the Shah Ciragh mosque in Shiraz, and vested the office of *mutawalli* in his children.\(^{106}\) Misappropriation of *awkaf* was not uncommon. The *wazir* Kadi Djahan is alleged to have converted certain *wakf* villages into his private property. After he had retired to Kazwin, this came to the ears of Shah Tahmasp, who ordered him to be deprived of their possession.


\(^{105}\) Ibid., p. 471.

\(^{106}\) *Fasa'i, Fars-nama-i-nasiri*, lith, Tehran 1313/1895,11, p. 305.
and the equivalent of the revenue due from them to be recovered. However, because of Kadi Djahan's age and weakness, the Shah forgave him and granted him a sum of money as a soyurghal.107

Shah Sultan Husayn, the last of the Safawids, constituted property into wakf for the Madrasa-i Sultani (Madrasa-i Madar Shah, now known as the Madrasa-i Cahar Bagh) in Isfahan in 1122/1711-12 and designated himself as mutawalli and thereafter the reigning shah.108 He made the taxes and dues of the property so constituted into a permanent soyurghal for the administration of the madrasa.109

When the Afghans took Isfahan on the fall of the safawids, they usurped much wakfi property and made into khalisa; and many records were destroyed.110 Under Nadir Shah, many wakfi properties were resumed in Isfahan. If not elsewhere, and included in the Nadiri registers.111 Adil Shah revoked Nadirs regulations and ordered the awokaf to be returned to their mutawallis. However, a good deal of confusion prevailed and it is not clear to what extent this took place.112 Karim Khan, according to Sipinta, made an abortive attempt to rectify affairs (343). Further decay and confusion occurred in the feminine years of 1871-2.113

The Kadjar period was not notable for the constitution of awkaf. One of the most important was that made for the Sipahsalar Madrasa in Tehran. Amin al-Dawla Hadjdji Muhammad Husayn Khan Sadr-I Isfahan, who designated himself first as mutawalli and thereafter the

109. Ibid., p. 131.
110. Shaykh Djabir Ansari, Tarikh-i-Isfahan wa Ray, Isfahan, AHS 1322/1943, p. 35.
111. Ibid., pp. 37-38; Mirza Muhammad Kalantar-i- Pars, Ruznama, ed. 'Abbas Ikbal, Tehran, 1946, p.-13.
112. Ibid.
ruling shah, began the building in 1819. He died after two years later before the building was completed. His brother Yahya Khan Mushir al-Dawla continued the work but also died before it was completed. It was finally finished by the shah's mutwallis.

In 1854 a Ministry of Pensions and Awkaf was founded. In 1863 it was announced in the official gazette, Ruznama-i dawlat-i aliya-yi Iran, that those in charge of all awkaf both in districts near the capital and in the provinces were to send their accounts, duly attested by a mudjtahid, to the Ministry of Pensions and Awkaf. Anyone who failed to do so would be deprived of office (no. 535, 17 Radjab 1279/1863). After the grant of the Constitution the duties of the department of awkaf, which came under the Ministry of Education, were set out in Article 6 of the Law of 28 Shaban 1328/1910 and in the Supplementary Law of 19 Djumada II 1329/1911. The legal position was in due course laid down in the Civil Code.

Wakf Institution in the Ottoman Empire: Understanding and Interpretation

The Understanding and interpretation of the role of wakf in the Ottoman Empire has radically changed since the opening of the vast Ottoman archival holdings in Turkey and the successor states, to which should be added the considerable number of Ottoman documents held in European libraries and archives. The increased accessibility, especially from the 1970s onwards, for the International scholarly community to study portions of the Ottoman imperial and provincial archives and the wakf documents within them-in addition to the ongoing publication of archival catalogues in Turkish, Arabic, the Slavic

languages, English etc. represents no less than a revolution in research on Ottoman wakf. Furthermore, Ottoman wakf foundation deeds themselves (wakfiyye and kitab al-wakf) and associated documents are gradually being published under the auspices of the General Directorate of Wakfs in Ankara (i.e. the foundation document of the Ottoman Sultan, Mehemmed the Conqueror, published in 1938 and the deeds published in the Vakıflar Dergisi). By Wakf Ministers in the former Ottoman provinces (such as the Lala Mustafa Pasha wakfiyya published by the Syrian Wakf Ministry in Damascus) and by other organisations.

An overall picture of Ottoman foundations, which comes closer to reality, is made possible by understanding wakf as a dynamic and very diversified institution, which partially developed on the ground in reaction to altering circumstances but which responded at least to a certain extent, to predefined structures. Both the changing as well as the continuous practices of wakf was reflected in the juridico-administrative Ottoman tribunal and bureaucratic records (which, though seemingly of formulaic language, expressed nonetheless changing circumstances), but also within the corresponding legal normative framework articulated in fiqh (Husnu) and kanun. In other words, the primary sources have indisputably shown that, far from being static or in 'mortmain', foundation properties were not, in fact, inalienable and often changed hands not only through the legal mechanism of istibdal, lrsad and other legalised means, but also simply as an integral part of

119. Ibid.
the economy, in line with market demands.\textsuperscript{121} The economics and politics of Ottoman \textit{wakf} were based upon a flexible but stable system that had, long since produced an institution capable of interacting and responding to individual, family, community and state needs.

\textit{Wakf} was omnipresent in all levels of Ottoman society, urban and rural, both in the form of individually functioning units and as separate parts of a basic single institutional system. Studying the institution in \textit{situ} from the vantage point of the data found in endowment deeds. In the \textit{hudjdjal al-wakf} and in documents inscribed in \textit{wakf} and other registers (i.e. the \textit{tahrir}, the \textit{daftar mufassal}, etc.) reveals the extreme multiplicity of functions that were initiated, established and activated by \textit{wakf} networks in the Ottoman world, over which the imperial authority attempted to exercise supervision with varying degrees of success over the centuries.\textsuperscript{122}

Ottoman endowments included the \textit{khayrl}, \textit{dhurri/ahli} and \textit{mushtaraka wakfs} (identifiable according to the wakfs immediate line of beneficiaries). The politically influential pilgrimage foundations— including the dashisha and Haramayn foundations the israd (Cuno) wakfs, as well as a plethora of foundations the israd (cuno) wakfs, as well as a plethora of foundations which simultaneously incorporated elements from several of the above categories.\textsuperscript{123} Boundaries between the types of \textit{wakf} were not impermeable and differences between them should often be sought in term of nuances.

The Ottoman world was profoundly shaped by the foundations, each of which was administered as a separate unit by one or several

\textsuperscript{121} Deguilhem, The loan of mursdon waqf prosperities, 1988.
\textsuperscript{123} Ibid.
mutawalli, supervised by a nazir (a) who, depending upon the size of the endowment, may have had an accountant (muhasib) and other personnel under this his or her authority. During the expansionist periods of the empire, especially in the 9th/15th and 10th/16th centuries, wakf was an important political instrument for the Islamisation of newly conquered localities and frontier areas. To this end, the endowments funded convent-type structures (ribat) situated in areas near or bordering on the dar ul-harb, notably in the European Ottoman provinces where Sufis and other Muslims lived, worked the land, engaged in commerce and eventually colonised regions as a concrete means of increasing the expanse of lands belonging to the realm.

Wakf networks in Ottoman lands were the essential infrastructural link in the transmission of knowledge, since the construction and patronage of places for ritual observances and institutionalised learning, i.e. the mosques and religious schools mentioned above, were almost exclusively subsided by wakf, this was equally true from many libraries, both public (associated with mosques, Sufi lodges or schools) and private. By way of a famous example, Mehemmed the Conqueror, immediately upon annexing Konya to his empire. in the middle of the 9th/15th century, recorded, in the wakf registers, the magnificent 7th/13th-century manuscript collection dear, which had formerly belonged to the Sufi Sadr al-Din al-Kunawi, son-in-law of Ibn Arabi.\textsuperscript{124} As dispensers of justice toward the community, the Ottoman sultans and members of their extended households as well as the average Muslims, overtook poor relief, via the agency of wakf, as one of their responsibilities.

\textsuperscript{124} S. Faroqhi, Pilgrims and sultans. The Hajj under the Ottomans, London – New York, 1994, p. 46.
The year 1914, does not in any way reflect a chronological rupture in the history of Ottoman wakf, the hostilities of World War I did not specifically affect the endowments in the empire. A much more significant date was 1924 when, along with the abolition of the caliphate and the Ministry of Sheri'at, wakf administration and its properties were incorporated within the secular state apparatus of Mustafa Kemal's Turkish Republic.

**Wakf Institution in Central Asia**

Since in Islamic times the region governed from such Transoxanian cities as Bukhara and Samarkand often included the southern banks of the upper Oxus river course, it is convenient to consider here also what is now northern Afghanistan.

**Pre-Mongol Period**

One of the earliest, if not the earliest, known wakf foundations was established by the Samanid Isma'il b. Ahmad (d. 295/907) at Bukhara. The date of the original deed was 254/868, but it was redrafted in 676/1277 and the surviving version written during the reign of the Manghit Amir Haydar (1215-42/1800-26). According to this last, the foundation supported both the family mausoleum and the descendants of Isma'il. The Karakhanid or Ilek-Khanid Tamghac Bughra Khan founded wakfs, for a hospital (bimaristan) in Radjab 458/May-June 1066 and for a college (madrasa) at some unknown date in Samarkand. In the course of listing the properties abutting the Karakhanid endowments, other wakf-supported institutions are mentioned: the Madjid-I Dawud; the Congregational Mosque; the tomb (mashhad) of 'al-Tarkhan' and his daughter al-Khattun'; and a student scholarship fund.\(^{125}\)

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A second known Karakhanid *wakf* is that of Arslan Khan Muhammad b. Sulayman (495-?523/1102-?1129) for a *madrasa* for jurists in Bukhara. The documentation on it includes a reference to it in the version of Narshakhi that has survived and a lawsuit of unknown date seeking restitution of grain and money embezzled from the *wakf* income.\(^{126}\)

A family endowment (*wakf-i awlad*) from 698/1299 by 'Abd. al-Rahim b. Muhammad b. 'Abd Allah Istidjabi (Isfidjabi) for his son Kutb al-Din Yusuf and then his male descendants in Bukhara and for the upkeep of the mosque and shrine of a local saint, Khwadja Khamana, is the first known *wakf* from Transoxania in the Mongol Period.\(^{127}\)

The *wakfiyya* exists in its Arabic original with an accompanying contemporary Persian translation. The endowment included the village of khamana in the district (*luman*) of Samdjan, including its own canal (*nahr-i khass*). One unusual feature of this *wakf* was the assignment of the income of specific amounts of land (rather than a percentage of the endowment income or fixed amounts of money) to pay the salaries of the mosque officials and for the specific requirements of the *wakf*.

**Post-Mongol Era**

The 726/1326 *wakf* founded by Shaykh Yahya in memory of his grandfather, the Sufi shaykh Sayf al-Din Bakharzi, established a pattern of large *wakf* complexes associated with the shrine of a religious figure, a pattern which is a characteristic feature of the urban landscape of the region. Major architectural complexes, usually with a shrine at a focal point, underwritten by extensive *wakf* endowments that were in turn

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administered by family dynasties, are a recurrent, feature of the socio-economic history of the cities of Central Asia.

The Bakharzi wakf is also an example of how wakf was used as a source of development capital in Bukhara as it was in Isfahan in order to revive local economies. The foundation document, a scroll of nearly 1,000 lines, detailed a vast agricultural expanse, including an area outside the Karshi Gate of Bukhara estimated at more than 100km. These lands, which were intended to support a mosque and Khanakah complex as well as the tomb of Sayf al-Din Bakharziu, were situated amidst extensive ruins.

At the same time, on its own lands the document speaks of newly planted vineyards, orchards and vegetables gardens. When Ibn Battuta recalled his stay at the khanakah in 1333, only seven years after the foundation was established, he mentions vast agricultural wakfs belonging to it and just ability to feed 'all comers.' Like many of the large foundations of the time; the Bakharzi foundation was very long lived. The surviving documents pertaining to the foundation include a grant in 1745 of two parcels of irrigated land totalling four, hectares, and a record of the restoration (tamir wa marammat) of the wakfiyya itself by the khatib of fathabad, the location of the tomb, al-Hadjdj Mir Maksud Dahbidi.

Timurid Wakfs

The advent of the Timurid era in Central Asia brought an efflorescence of large wakf foundations. Those published or described include:

1. A wakf of 785/1383 involving much irrigated land in the Samarkand region.\textsuperscript{131}

2. Timur's wakf for the shrine of Shaykh Ahmad-I Yasawi. The document, purporting to be Timur's original wakfiyya for the shrine in Turkistan, has been called a 'crude foggery' but it is more likely that Timur did endow the shrine when it was built, or at least encouraged others to do so.\textsuperscript{132} In 1866, Mir Sahib Begcurin described the wakf of the shrine compel (which at the time included a mosque, a madrasa, and a staff of eight, not including the madrassa teachers) as comprising two inns and a caravanserai, this last, donated in 1820, with 80 shops producing 100 tillas of income used for upkeep of the shrine.\textsuperscript{133}

3. The endowments for the library, madrasa, khanakah, and mosque of Khwadja Muhammad Parsa (d. 822/1420), one of Baha al-Din Nakhsband's chief disciples.\textsuperscript{134}

4. The wakfs for Ulugh Beg's madrasa and Khanakah in Samarkand and his madrasa in Bukhara (1417-20).\textsuperscript{135} Although modern scholars have not yet yielded studied in any detail the endowments for the two great madrasas founded by Timur's grandson, there is a considerable amount of archival material on them in the Uzbek state Archives, including a series of 17th century endowments of books for the madrasa library.

\textsuperscript{132} Ibid., p. 309.
\textsuperscript{133} Opisanie meceti Azreta, in Voennii sbornik, VIII, 1866, pp.209-17.
\textsuperscript{134} Maria Eva Subtelny, \textit{The making of Bukhara-yi Sharif: Scholars, books, and libraries in medieval Bukhara}, n.d.
\textsuperscript{135} Hafiz Abru, \textit{Zubda}, Tehran 1372/1993, pp.743-4.
5. The 868/1464 wakf of Habibi Bigum, daughter of the Turkid amir djalal Suhrab for the mausoleum called Ishrat-Khana in Samarkand, the tomb of Khawand Sultan Bigi.\[136\]

6. Sultan Husayn Baykara's endowment with commercial properties and a large canal at the rediscovered alleged tomb-site of Ali b. Abi Talib east of Balkh in 885/1480-1.\[137\]

7. The wakf foundation of Khwadja Ubayd Allah Ahrar in Samarkand for the complex called Muhawwata-I Mawali in the city district of Khwadja Kafshi (Kafshir), present day Ulugh Beg. It held properties throughout Central Asia right up to the Soviet period, and was established principally as a family trust.

The pattern of large wakfs jointly supporting public institutions and the private interests of future generations of the founder's family continued through the 16th and 17th centuries. In Bukhara, one of the more notable wakf founding families was the Djuybaris. From their origins as keepers, of the Car (Cahar) Bakr shrine in the western Bukharam suturbs and beneficiaries of its endowments. The family emerged as one of the wealthiest and most influential families in Central Asia, and preserved in both wealth and influence for several centuries, in large part through the purchase of real estate, conversion of those purchase into wakf and designating as beneficiaries not only the 'madrasa' mosque complexes that they built but also succeeding generations of the family. There are many unpublished endowment deed of the family in the Uzbek State Archives, which taken together


establish the long-term economic influence of the family in Central Asia.138

In the 11th/17th century, besides additions made to the large endowments of the preceding centuries (e.g. Nadr Diwan-Begi Arlat’s dramatic-expansion and endowment of Khwadjia Ahrar’s tomb area on the southern side of Samarkand with a large madrasa, and several large wakfs of books for the Ulugh Beg madrasa in Bukhara), there were new projects in Samarkand (the Shir Dar and Tillakar madrasas on the Rigistan built -by another leading amir, Yalangtush Bi Alcin). In Bukhara (Nadr Diwan Begi’s madrasa and Khanakah and Abd al-Aziz Khan II’s two madrasas), and in Balkh (the two madrasas of father and son, Nadhr Muhammad and Subhan Kuli all of which generated major new endowments.139

Throughout the century, the issue of wakf also touches on the relations between the Tukay-Timurids in Bukhara and the Timurid rulers of India. A tradition about the endowment of the Gur-1 Amir Complex in Samarkand had persisted through the centuries. Muhammad Sultan (d. 805/1403), grandson of Timur, was believed to have founded a wakf for his madrassa, as one of the buildings of the complex; the terms of which local residents believed they knew as late as- 1101/1690. Because of the importance of the tombs they’re to such Timurid epigoni as the Mughals ruling in India, efforts, Ultimately unsuccessful, were made by the latter late in 1102/1690-1 to re-capitalize the wakf with cash sent from Kabul and to revive the terms of what was believed to be the original endowment.


139. A.D. Davidov, "Imeniya medrese Subkhankuli-khana v Balkhe (po vakufnoi gramole XVII v.)", Kratkiye Soosheniya Instituta Vostokovedeniya XXXVII, 1960, pp. 82-128.